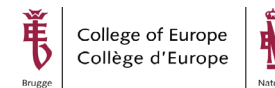
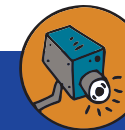


# Case Studies on Dignity in Education

Gracienne Lauwers & Jan De Groof (Eds.)

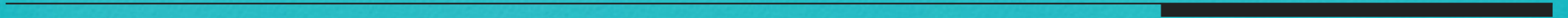
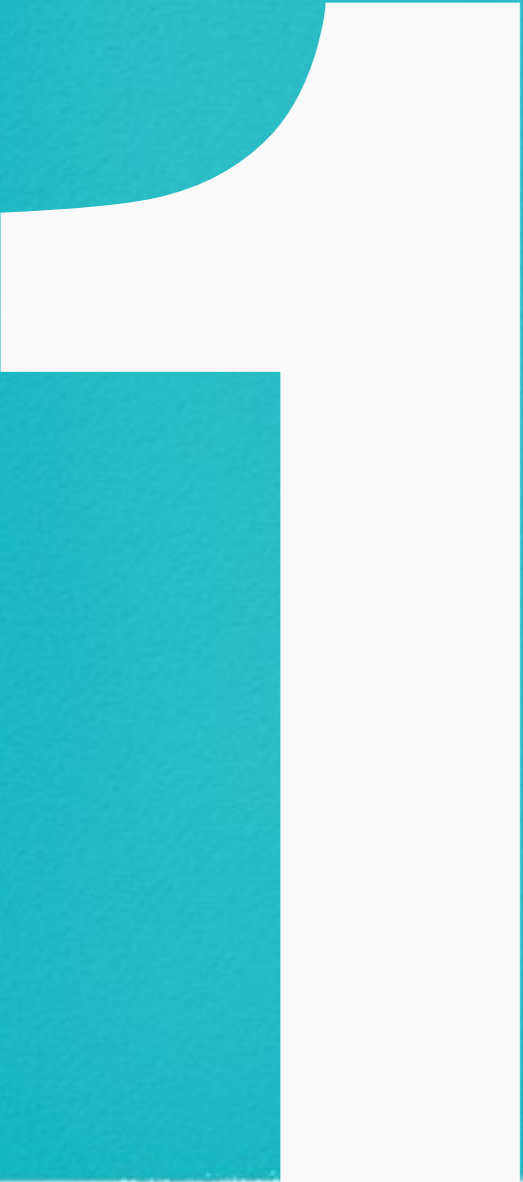


With the support of the Lifelong Learning Programme of the European Union



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# INTRO





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DIGNITY researchers, focusing on 'Safety in a Rights based Education,' conducted a European conference for researchers, inspectors, policymakers, judges, representatives from European networks of equality bodies, and stakeholders in education in Brussels on 8th-10th November 2012.

Over the past years, violence in schools has occurred with incidents ranging from minor discipline problems, to verbal and physical threats. While an understanding of the phenomenon of violence in schools has progressed in various disciplines, a significant gap on the legal framework and the enforcement of law in schools to guarantee a safe educational environment remains.

The papers intend to provide a better understanding of how law influences and might effectively be modified to reduce violence in schools in a given European context and create safe educational environments.

The papers address the legal challenges for creating a safe educational environment. Moreover, it considers the need of officials who supervise schools, of directors and teachers, of education providers to acquire understandings of international norms for safety plans in schools within the framework of respect for human rights.

The ultimate objective of the papers is to make violence in schools regarded as a preventable problem instead of being inevitable.

<http://www.ua.ac.be/main.aspx?c=.ELA&n=98474>





# VIOLENCE IN EDUCATION IN AUSTRIA

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Florian Lehner







## SAFETY REGULATIONS AND PENALTIES

### Significant acts against violence in education

In Austrian law there are different provisions prohibiting violence in education. Before going into details I should mention that the domestic legal system contains the fundamental right of the child to be raised (up) free from violence. This right is guaranteed in Article 5 of the Federal Constitutional Act on Children's Rights (Bundesverfassungsgesetz über die Rechte von Kindern – BVG Kinderrechte, Federal Law Gazette [henceforth BGBl.] I 2011/4).<sup>2</sup> According to this provision corporal punishment, the infliction of emotional distress and sexual or corporal abuse towards children are prohibited.

Furthermore by being omitted in Article 7 BVG Kinderrechte, it constitutes an absolute (fundamental) right. This special nature is comparable to Art 3 ECHR<sup>3</sup> and implies that there must not be any restriction by the state. In other words there is no legitimate public interest that could justify any legal restriction of the said right even if it was proportional.<sup>4</sup> Moreover, there is a positive obligation of the state to prevent violence towards children. This conclusion can already be drawn from the wording of the model provision Article 19 UNCC, which has to be taken into account when interpreting Article 5 BVG Kinderrechte.

To sum up it is clear that these guarantees have to be especially valid for schools. Consequently the prevention of violence at schools is constitutionally granted and can be enforced by complaints to the Constitutional Court.<sup>5</sup>

A provision, which significantly inspired the wording of Art 5 BVG-Kinderrechte is Section 137 Austrian Civil Code (Allgemeines bürgerliches Gesetzbuch – ABGB, Justice and Statutory Collection (JGS) 1811/946 as last amended by BGBl. I 2013/79). This statutory provision also states an overall ban on violence (*Gewaltverbot*) against children. Although it mainly refers to parents and legal guardians, it is also directed towards other adults, for instance teachers or other school personnel.

The specific ban on violence as educational measure in school is to be found in Section 47 Para 3 School Instruction Act 1986 (Schulunterrichtsgesetz 1986 – SchUG, BGBl. 1986/472 as last amended by BGBl. I 2013/76). This provision explicitly prohibits corporal punishment, insulting remarks and collective punishment but it also implies the ban on any detention measures towards pupils. The scope of this prohibition covers all public and private schools and also includes vocational training. Besides Section 22 of the Children and Young People Employment Act (Kinder- und Jugendlichen- Beschäftigungsgesetz 1987 – KJBG, BGBl. 1987/599 as last amended by BGBl. I 2013/138) protects apprentices from corporal measures and considerable insulting remarks by their employer or their colleagues.

Recent efforts to improve school safety in response to the rise of violence in schools

Contrary to various non-binding policy measures which will be mentioned later, concrete statutory regulations to counteract the different forms of violence in schools have not been numerous. Maybe the most remarkable adjustment has been the reform of Section 44 School Instruction Act.<sup>6</sup> This provision authorizes the Minister for educational affairs to implement provisions relating to the security of the students. Additionally, the educational community may adopt house rules, which can include behaviour agreements.

The first but less important novelty was to change the title of this provision from “School Order and House Order” to “School Life Development and Quality Assurance”. However, this already shows that the topic of discipline and rules at schools is now seen from a more holistic perspective and that the legislator has acknowledged the decisive role of violence prevention for the quality of school life.

The second innovation in this provision characteristically constitutes the creation of a new and non-binding instrument: Behaviour agreements (Verhaltensvereinbarungen). Section 44 last sentence School Instruction Act now mentions that according to the task of the school (school type, school type), the age of the students and other conditions (composition of the class, school-autonomous profiling, involvement in projects and school partnerships, regional conditions) autonomous behaviour agreements for students, teachers and guardians can be implemented as part of the house rules. Furthermore, the provision states that the implementation of behaviour agreements is necessarily linked with the quest for consensus among all the school partners. On the whole, behaviour agreements allow for more flexibility and autonomy in finding common and transparent social standards in the day to day life at school. As already mentioned, non-binding policy measures in violence prevention have been intensified during the last years. The measures are part of an overall national strategy against violence in schools which was commissioned by the Ministry of Education in 2007. The overall strategy is based on five dimensions: teacher training, the recruitment of additional school psychologists, the fostering of behaviour agreements, violence prevention programs at school and the creation of networking fora.

To boost the overall strategy, the Ministry created the initiative White Feather – Joining Forces for Fairness and against Violence (Weisse Feder- Gemeinsam gegen Gewalt). White Feather serves as a platform for various violence-prevention measures. For example it prizes behaviour agreements and violence-prevention programs with a Fairness Award or offers an anonymous hotline (Rat auf Draht) for students who have suffered violence. In the course of this report other projects promoted by White Feather will be highlighted.

Provisions and guidelines to prevent violence and to respond to major threats of violence Various provisions state that schools and their employees have to take all necessary measures to protect students from danger. This aim is stated to be fundamental for the supervisory role of teachers regulated in Section 51 SchUG. It is furthermore qualified as crucial for the organization and realization of school events according to Sections 2 and 10 Para 3 School Event Ordinance (Schulveranstaltungenverordnung – SchVV, BGBl. 1995/498) and it is also established in Section 6 Para 2 School Order Ordinance (Verordnung betreffend die School Order – henceforth School Order, BGBl. 1974/373 as last amended by BGBl. 2013/76). To fulfill this purpose the latter provision additionally prescribes the implementation of a special emergency drill at least once a year.

The Ministry and the respective Provincial School Authorities periodically issue guidelines containing detailed recommendations to enable the school staff to respond to major threats of violence such as riots, hostage taking, kidnapping, bomb threats or the use of firearms, incendiary devices, chemical or biological weapons. These guidelines refer to a safe evacuation of the students and the obligation to contact law enforcement authorities, the ambulance or the fire brigade.

Additionally, they inform about an appropriate consultation of parents and other legal guardians. By way of example, the School Council of Upper Austria has published a compendium of checklists. It deals with a vast list of possible violent scenarios ranging from A like amok-run to W like weapons and does not only offer recommendations for the actual emergency situation but also contain forms for the posterior documentation of the respective emergency event.<sup>7</sup>

The involvement of teachers and other personnel in the development of policies concerning safe schools

Based on the already mentioned Section 44 SchUG regulations concerning safety issues at school have to be adopted by the federal Ministry of Education. This statutory mandate is currently carried out by the already mentioned School Order. Apart from this, according to the second sentence of Section 44 SchUG special house rules for every school can additionally be established. They are adopted by the so called School Forum (Schulforum) or the School Community Council (Schulgemeinschaftsausschuss). Both institutions are decision-making bodies anchored in the school's organisation and are made up by representatives of teachers, parents and pupils. The house rules have to be notified to the competent school district authority and later have to be published in the respective school.

Although it is not mandatory, the establishment of the already mentioned behaviour agreement gives teachers and other personnel the opportunity to participate in the creation of rules of conduct concerning the prevention of and the reaction to violence. Behaviour agreements can also be established on class level.

#### Consequences of assaults by any individual on a teacher or school employee

Special penalties for assaults by any individual on a teacher or school employee do not exist. Depending on the outcome and whether the (alleged) offender can be held liable or not, civil and criminal proceedings may follow.

If a teacher is assaulted by a pupil, educational measures according to Section 8 School Order (e.g. verbal admonition or advisory talk with the student and his or her parents - for complete list see below) will not be sufficient in the majority of the cases. Depending on the circumstances and the intensity of the assault, the principal will probably be involved. He or she has the possibility to assign the respective students to another class of the same level (Section 47 SchUG). If the teacher is considerably injured, the School Conference has to be invoked to discuss the permanent expulsion (see below) of the student.

Consequences of assaults by any non-student on a student?

Apart from eventual criminal charges, again it has to be clearly differentiated between the offenders of the respective assault. In the case a teacher having the status of a civil servant, an assault on a student signifies a breach of the official duties laid down in Section 43 Civil Servants Employment Act (Beamten-Dienstrechtsgesetz – BDG BGBl. 1979/333, as last amended by BGBl. I 2013/147) and Section 29 Provincial Teachers Service Regulations Act (Landeslehrer-Dienstrechtsgesetz' – LDG, BGBl. 1984/302, as last amended by BGBl. I 2013/151) and necessarily leads to disciplinary procedures. A review of case law of the competent Disciplinary Commissions (*Disziplinarkommissionen*) shows that in the case of a clear infringement of the already mentioned Section 47.3 SchUG at least a fine up to the amount of five monthly wages will be imposed and in many cases the teacher will be dismissed.

Concerning teachers with the status of contract agents, an assault upon a child presents a ground for dismissal according to Section 43 Para 2 Contract Agents Act (Vertragsbedienstetengesetz – VBG, BGBl. 1948/86, as last amended by BGBl. I 2013/147). The same has to be said about other school employees, because they are normally contract agents.

#### DEALING WITH DISRUPTIVE STUDENTS

##### Codes of Conduct

Generally students have the duty to collaborate in the promotion of the best interests of the school by cooperating during the lessons and by integrating into the community of the class and the school (Para 43 SchUG). Analogously to safety issues, the regulation of pupils' con-

duct is in principle laid down in the mentioned School Order of the Ministry but it is completed by the "house rules" of the specific school. The house rules can furthermore contain so called behaviour agreements, which have to meet the consent of all groups: pupils, teachers and parents or legal guardians. As already mentioned, promoting behaviour agreements as an expression of a consensus-oriented culture in schools is one of the government's main strategies to achieve the prevention of violence in schools.

On the one hand, the relevant provisions in the School Order repeat the general duty of the students to participate in the lessons and to integrate into the class and school. Additionally, they state that students have to act in a helpful, understanding and polite manner (Section 1 School Order). On the other hand, there are concrete provisions as to the mandatory attendance such as the conduct when being late or the obligatory presence in the school area during the pauses (Section 2 and 3 School Order). Furthermore, pupils are not allowed to bring objects which could disrupt the lesson or which could be a risk to security; said objects have to be handed over to the school personnel and shall at least be retained during the duration of the lessons or the school event (Section 4 School Order); obviously the consumption of alcohol and tobacco is generally forbidden (Section 9 School Order) and finally, pupils are obliged to render information in the case of security issues to the principal (Section 10 School Order).

##### Responsibilities of the teachers

Apart from their general educational duties, teachers are also responsible for the supervision of students in order to prevent any risks especially to the safety and the health of the students. (Section 51 SchUG). A decree issued by the Ministry of Education (Erlass des BMBWK 28.07.2005, 10.361/0002-III/3/2005, RS 15/2005) specifies the supervisory duties of the teachers and other responsible school personnel.

According to this decree the supervision duty has to be fulfilled not only during the lessons but also 15 minutes before classes begin and during breaks (with the exception of lunch break). Apart from the supervisory duty, the teacher has to cover the time immediately after the end of classes while the students are leaving the school. Furthermore there has to be supervision at school events and school related events and in schools with full day classes, students additionally have to be supervised during learning and leisure activities and during lunch time. The latter mentioned supervisory tasks can be also be fulfilled by other school personnel.

Furthermore it lies within the discretion of the teachers to refrain from supervising students who attend the 8<sup>th</sup> or any higher grade (age 13-14) , if they are mature enough to be left alone.

The teachers have to make use of educational measures (*Erziehungsmaßnahmen*) which are appropriate for the specific situation and which promote the student's personal development and the community spirit (Section 47 SchUG). According to this provision Section 8 School Order Ordinance enlists an exhaustive catalogue of educational measures in the case of a student's misconduct (*Fehlverhalten*), which have to be observed by the respective teacher.

The list varies according to the intensity of the misconduct and read as follows:

request (e.g. to change the disruptive behavior)

verbal admonition

the reassignment of tasks the student has missed to fulfill

advisory or instructive talk with the student

advisory or instructive talk with the student in the presence of his or her parents or legal guardians

It is important to note that according to Section 8 Para 2 School Order the mentioned measures have to take place immediately, have to be proportionate to the student's action and should be transparent for the student.

### 3. Removal of Students from a Classroom

The removal of disruptive students by the teacher from a classroom is in principle not prohibited, since it is not included in the catalogue of disciplinary measures of Section 8 School Order. Apart from that, a removal of a student from the classroom generally collides with the above-mentioned supervisory duty of the teacher laid down in Section 51 SchUG. There are only a few cases where a student can be separated from the class(room) because of his or her behaviour. Only in the case of concrete danger an exclusion of a student can be permitted. For example, it is expressively stipulated to exclude the student from instruction, when he or she repeatedly ignores safety instructions for the use of machines in class. (Section 5 School Order).

### 4. Principal Suspension

#### (a) Substantive law

According to Section 49 SchUG principal suspension in the sense of a permanent expulsion (*Ausschluss*) of a student is to be seen as *ultima ratio*. It is only applicable in the case of a heavy infringement of the student's duties (Section 43 SchUG) and when the preceding educational measures or the assignment of the student to another class of the same level by the principal (Section 47 Para 2 SchUG) have not shown any satisfactory effect. By way of exception it is applicable if the behaviour of the student constitutes a permanent danger for other students or the school staff. Additionally, in compulsory schools there has to be a guarantee that the student still can fulfill the compulsory education (e.g. by matriculating to another school).

#### (b) Procedural law

According to Section 49 Para 1 SchUG the School Conference<sup>8</sup> is the competent body to decide if an application for the permanent suspension of a student has to be issued, whereas the final decision about this application is made by the competent school district authority.

According to the *ultima ratio*-quality of the suspension procedure and according to Section 47.2. SchUG, the School Conference must already have pronounced a formalised threat of suspension (*Androhung des Ausschlusses*) on another occasion before the actual suspension procedure can be initialized. Furthermore there are procedural guarantees such as the right of the student to explain him- or herself to the School Conference, the right of the parents or legal guardians to deliver their opinion and the right to receive a copy of the eventual application, which has to contain a statement of reasons.

The competent school authority is then obliged to investigate. It can come to the conclusion that the application for a principal suspension is unfounded and terminate the proceeding. The authority can also find that – although the reasons are not sufficient for an expulsion – there has been another (minor) breach of student's duties. In this case disciplinary measures according to Section 47 Para 2 SchUG can be adopted.

Finally the school authority has to grant the application, if it finds that the reasons for an expulsion are sufficient. The permanent suspension can be extended to various schools of the jurisdiction and the decision has to be issued via administrative act. This is necessary to re-

spect the right of the student and the parents to an efficient judicial protection according to Article 6 ECHR. After receiving the administrative act they can challenge the decision with a complaint before the provincial administrative court.

### EDUCATION AND TRAINING FOR THE PREVENTION OF VIOLENCE

The already mentioned initiative White Feather, which is sustained by the ministry; is merely an informational platform which does not offer courses, but provides access to material for the prevention of violence and promotes courses of other institutions. In this context, the Austrian Centre for Personality Development and Social Learning (Österreichisches Zentrum für Persönlichkeitsentwicklung und Soziales Lernen-ÖZEPS) has to be emphasized. ÖZEPS was established in 2005 by the Ministry of Education and addresses issues relating to personal and social development in Austrian schools. Apart from publishing monographs about different approaches in violence-prevention at school such as behaviour agreements or peer mediation, ÖZEPS organizes a considerable variety of seminars, workshops and conferences for teachers in this field of practice. ÖZEPS is integrated in the University of Education (Pädagogische Hochschule) in Linz. Also other Austrian Universities of Education, independently offer violence training for future and already active teachers of all school types and levels. Again White Feather tries to gain synergic effects by having appointed violence-prevention representatives for every region. The majority of them are at the same time active teachers in schools and lecturers at the local University of Education.

Requirement for teachers to complete course work or training in school relating to violence and its prevention

Generally teachers have to undergo further training, although the quantity of the training seminars or courses is largely not prescribed.<sup>9</sup> This creates the opportunity for teachers to do in-service training in violence-prevention. Nevertheless, the respective provisions do not specify in any way the content of the training. Consequently this means that there is no requirement for teachers to complete courses or training in violence in schools and its prevention yet.

#### Citizenship and character education components

Since the end of the seventies the former citizenship education (*Staatsbürgerschaftskunde*) has been replaced by Political Education (*Politische Bildung*). The concept focuses more on a critical, analytic and discursive approach towards the understanding of political processes and generally aims to foster the willingness of students to assume responsibility and to engage in society. This is stated by the respective decree (*Grundsatzlerlass*)<sup>10</sup> of the Federal Ministry of Education. It established Political Education not as curriculum subject but declared it an overarching Instruction Principle (*Unterrichtssprinzip*) that has to be taken into account by all teachers and all subjects as a guiding principle. Later on other Instruction Principles such as Media Education<sup>11</sup>, Sexual Education<sup>12</sup>, Education in Gender Equality<sup>13</sup> or Environmental Education<sup>14</sup> have been decreed. The increasing existence of Instruction Principles shows a certain motivation of the ministry to foster character development in different contexts and segments of contemporary life. However, the deficiency of the Instruction Principles as such is that they do not have the character of mandatory provisions and that teaching materials are often not available. Lacking a binding fundament it is left to the motivation of the teachers to impart the already stuffed curricula while promoting personality development and social learning in certain segments of contemporary life.

### PREVENTION, PROTECTION, PENALTIES

Background check of school personnel regarding their criminal history

Generally, a criminal history check before the beginning of the employment is obligatory. In the case of provincial teachers and those federal teachers and other school employees, who are contract agents, the competent school authority is obliged to apply for an electronic criminal record expedient. Because of data protection the electronic extract has to be deleted immediately after the check has been carried out. (Section 6 Para 5 LDG, Sections 3. Para 4,5 and 6 VBG). Similarly the Instruction Internship Act (Unterrichtspraktikumsgesetz – UPG, BGBl. 1988/145 as last amended by BGBl. I 2013/151) which regulates the obligatory one year internship of future federal teachers requires in its Section 3 a previous check on the intern's criminal record before the beginning of the employment. In the case of federal teachers with the status of civil servant there are no similar provisions, although it has to be noted that this status is not available for teachers anymore. Once a person has been accepted at a school, however, no regular checks on the criminal history background are prescribed.

#### Requirements for schools to furnish information on violent and disruptive incidents at schools and to report incidents to local enforcement authorities

According to Section 47 SchUG Austrian schools only play a participatory role in the education of children. Pursuant to the Austrian Civil Code the general duty of raising and educating the child lies within the responsibility of the parents or other legal guardians. Thus in the first place it is the parents or legal guardians who are required to report violent and disruptive incidents (Section 48 SchUG). Therefore, whenever the educational situation of the students requires it, the school, namely the class/form teacher, has to consult the parents or legal guardians. Only if those are evidently not capable of performing their parental responsibilities the competent youth welfare authority has to be contacted. (Section 48 SchUG).

When it comes to report requirements towards other addressees it has to be distinguished between report duties towards enforcement authorities applicable to schools as a whole and purely internal report requirements within the school organization. Report requirements *ad extra* refer exclusively to alleged criminal offences. Purely disruptive incidents normally do not have to be reported to any local enforcement authority.<sup>15</sup>

#### Reporting duties concerning alleged criminal offences

In the case of incidents susceptible for criminal charges the situation is more complex. This derives from the wording of Section 78 Criminal Procedure Act (Strafprozessordnung – StPO, BGBl. 1975/631 as last amended by BGBl. I 2013/116) In its first Paragraph Section 78 StPO prescribes a general reporting duty of public authorities when there is a suspicion that a criminal offence has occurred within its statutory field of action. Schools are also covered by this provision, since they - performing their statutory task to instruct and educate the students<sup>16</sup> always act with public authority notwithstanding if they are private or public. The reporting duty on the one hand binds the public authority's employees whose suspicion is first aroused. The employees have to inform the head official. In the case of schools this is the principal who is then obliged to issue the report to the police or to the public prosecutor's office.

However, Section 78 Para 2 StPO contains an exception in cases where the performance of official duties requires a special relationship of confidence (*persönliches Vertrauensverhältnis*). Thus it allows for the respective authority to abstain from reporting a criminal offence, if this has a negative impact on the relationship. This being said, there is no doubt that this exception is applicable for schools. The official task of schools to instruct and participate in the education of the students clearly depends on a functioning personal relationship between the

students and the parents or legal guardians on the one side and teachers and other school employees on the other side.

Consequently one might think that this regime opens a considerable margin of discretion for the teachers and the principal to abstain from their duty to report suspected criminal offences. This was also pointed out by the ministry, which even stated that in the case of sexual abuse there would be no obligatory general reporting duty.<sup>17</sup> However, since 2008 a third Subparagraph has been added to Section 78 StPO. It states that the public authority has to adopt all necessary measures to protect the victim or other persons and that it can also observe whenever necessary its reporting duty in cases where Subparagraph 2 would be applicable. This "exception from the exception" at a first glance certainly does not clarify the issue.

To sum up, it has to be admitted that there may be cases where the abstention from a report can be seen as beneficial for the child, as long there is an (other) adequate reaction to the incident (e.g. psychological assistance). For example in the case of offences committed by the child's parents it can in some cases make sense to avoid criminal procedures to protect the child from eventual retaliatory incidents. Thus it should not be forgotten that the possibility to abstain from a report can have stipulating effects on the willingness of students to talk about their problems with a teacher.

However in the case of criminal acts that are committed by school staff (especially sexual abuses of students) there must be a duty of report. Especially one has to bear in mind the destructive effect a later detected abstention from reporting may have on the confidence of all school partners.

#### The right to report criminal offences

Nevertheless, it has to be noted that the general right of individuals to report criminal incidences to the police (Section 80 Criminal Procedure Act) remains unaffected. This means that every school employee has the right to report criminal offences not only to the principal but directly to the police or the public prosecutor's office. Notwithstanding, in comparison to recent developments in the US and the UK there is no legal protection of "whistleblowers" and especially teachers of private schools could suffer libel claims or other retaliatory actions by their employers.

#### Internal reporting duties and Teacher Discipline

The regulation of Section 78 StPO has been implemented in the relevant service regulations. Section 53 BDG as well as Section 37 LDG provide for report requirement with the exception of cases, in which the performance of official duties is based on a special relationship of confidence.

The reporting duties are complemented by Section 6 School Order which states that teachers, other employees and students are obliged to report all safety- endangering on goings to the principal.

#### **REPORTING REQUIREMENTS**

#### Violent incident reporting to the ministry, uniform violent incident reporting, minimum annual reporting requirements and reporting sentences to schools

Schools are not expressively obliged to render reports relating to violent incidents to the ministry on a regular basis. Moreover violence in the Austrian system violence is qualified as an issue that has to be tackled first of all on a school building level. This is why the Ministry recommends the use of the Austrian Violence Evaluation Online Tool (henceforth AVEO) which was developed by ÖZEPS. The online tool facilitates an autonomous self-evaluation of

the reasons, the quantity and the quality of violent incidents at a specific school and allows for an analytical evidence-based approach towards violence on a grass roots level. The respective decision making bodies such as the principal, the School Council or the Class Teacher Conference can then take the adequate steps to counteract their specific problems.

## Endnotes

1. Florian Lehne ([florian.lehne@sbg.ac.at](mailto:florian.lehne@sbg.ac.at)) is academic assistant at the Department of Public Law at the University of Salzburg.
2. This relatively new constitutional act was intended to rank certain rights granted in the UN-Convention of the Rights of the Child (henceforth UNCRC) on a constitutional level. It has been criticized for being a rather timid implementation of the Convention into the constitutional system. However this is certainly not the case of its Article 5, which is significantly more rigid than its model provision Art. 19 UNCRC.
3. I would like to point out, that Art. 3 ECHR with its absolute prohibition of torture, inhuman and degrading treatment or punishment holds constitutional rank in Austria's legal framework, too. This is of course especially relevant, since it is known that on a European level precisely this provision has been repeatedly interpreted to imply the unlawfulness of corporal punishment in education (See *Tyrer v. United Kingdom*, Appl. 5856/76; *Campbell and Cosans v. United Kingdom*, Appl. 7511/76; 7743/76 and *Costello-Roberts v. United Kingdom*, case 89/1991/341/414). This leads to the existence of a second fundamental right in Austria prohibiting corporal punishment, although yet no domestic cases involving the treatment of students and Art. 3 ECHR have been reported.
4. Likewise to the wording of some ECHR rights Art. 7 BVG Kinderrechte states that Art. 1,2,4 and 6 BVG Kinderrechte may be subject to restrictions which are prescribed by law and which represent measures that are necessary in a democratic society to serve certain enlisted public interests.
5. Due to the recent amendment of this provision to Austrian constitutional law no jurisprudence is yet available.
6. The said reform was amended by BGBl. I 2001/78.
7. Available at [http://www.lsr-ooe.gv.at/gesunde\\_schule/lsr\\_notfallmappe/Checklisten.pdf](http://www.lsr-ooe.gv.at/gesunde_schule/lsr_notfallmappe/Checklisten.pdf) – 15 August 2013.
8. In principle the School Conference is a pure teacher conference consisting of (all) the teachers of a determined school (s. 57 para 2 SchUG). However, in the case of a procedure on principal suspension students and the legal guardians enjoy the right co-decision (s. 57 para 5 SchUG in conjunction with s. 58 para 2 SchUG and s. 61 para 2 subpara 2 SchUG). The right to co-decision is exercised by the respective representatives on both school-building and class level.
9. S. 58 BDG contains the mere duty for federal civil servants to participate in further training. Pursuant to s. 29 LDG Act there has to be further further training for provincial teachers, too, which is specified in s. 43 para 3 LDG, where a minimal amount of 15 hours of further training per year is prescribed.
10. Ministry of Education – Decree, GZ 33.464/6-19a/78-republished via GZ 33.466/103-V/4a/94.
11. Ministry of Education – Decree, GZ 48.223/0006-B/7/2011.
12. Ministry of Education – Decree, GZ 36.145/28-I/10/90.
13. Ministry of Education – Decree, GZ 15.510/60-P/3/95.
14. Ministry of Education – Decree, GZ 37.888/61-V/3/94.
15. Evidently an exception is the already mentioned consultation of the youth welfare authority. Apart from the condition of parental incapacity this is the case if the disruptive behavior of the child shows a certain intensity and permanency and is suitable to hinder his or her forthcoming.
16. The instructive and educational task of the Austrian School has been enshrined both in the constitutional framework and in form of a (simple) statutory act. ( See Art. 14 Para 5a of the Federal Con-

stitution [Bundesverfassungs-Gesetz – B-VG, BGBl. 1930/1, as last amended by BGBl. I 2013/164] and s. 2 School Organization Act [Schulorganisationsgesetz – SchOG, BGBl. 1962/242 as last amended by BGBl. I 2013/75.

17. Ministry of Education – Legal Opinion, GZ. 10.361/19-III/A/4/97.



# QUESTIONNAIRE ON VIOLENCE IN EDUCATION IN ESTONIA

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Jüri Ginter  
Kristiina Tropp







## SAFETY REGULATIONS AND PENALTIES

Is there any act against violence in education in your country?

There is no special act against violence in education, it is regulated by the Basic Schools and Upper Secondary Schools Act. Punishment for violence is regulated by the Penal Code. Which efforts have been taken to improve school safety in response to the rise of violence in schools?

Each school has to do a risk analyze and work out measures and procedures to solve crisis situations (acts of violence, safe evacuation during a violent incident, contacting law enforcement officials and parents during a violent incident, and protocol for responding to bomb threats, hostage-takings, intrusions and kidnappings, other life threatening events that warrant the evacuation of students and/or staff because of an imminent threat to their safety or health, including, but not limited to: riot, hostage-taking, kidnapping and or the use of threatened use of a firearm, explosive, bomb, incendiary device, chemical or biological weapon, knife or other dangerous instrument capable of causing death or serious injury). Schools have regulations for conduct of pupils and teachers to avoid violence. Schools use video cameras, security guards and other methods. They cooperate with police, social workers and families. Teachers attend special courses. Several school violence and bullying prevention measures (School Peace movement, support students movement TORE) are available and employed in schools. KiVa antibullying program launches in 2013.

How are teachers and other school personnel involved in the development of school district policies and procedures concerning safe schools

They are involved in risk analyze and working out regulations and plans against violence of their school. Usually there is no such policy on the local government level.

What are the penalties for assaults by any individual upon a teacher or school employee?

There are no special penalties for assaults upon a teacher or school employee. Our penal code foresees only two types of penalties: fine and arrest or imprisonment.

What are the penalties for assaults by any non-student upon a student?

There are no special penalties for assaults upon a student.

## DEALING WITH DISRUPTIVE STUDENTS

Codes of Conduct

Each school has to work out its code of conduct and it is introduced to pupils, parents and teachers.

Teacher Responsibilities

Teachers are responsible for the situation in the classroom. During the breaks the school territory is divided between teachers or there are special security guards.

Teacher Removal of Students from a Classroom

The principal may give their teachers a right to remove some students from a classroom to a special room with an individual task and under supervision.

Principal Suspension

A school may temporarily suspend a pupil for 10 days in a semester.

Do teachers have the authority to remove disruptive students from the classroom? Yes. If affirmative, pursuant to which provisions or code of conduct? It is not regulated on the state level. How has it been elaborated? This may be elaborated on the school level, but usually it

is not regulated. When can students return to the classroom and who makes a final determination about the case? It is not regulated on the state level. Usually it is not regulated also on the school level. The student returns to the next lesson. The final determination is made by the principal.

Who is required to adopt a code of conduct to provide for the maintenance of order on school grounds? The principal adopts a code of conduct. Are student, teacher, administrator and parent organizations involved in the development of the code? The principal has to ask the opinion of the teachers and the school board including representatives of parents, students and the owner of the school. In some schools interest groups are involved in the development of the code and such codes are agreed also in every class.

Do ministries develop district-wide and at building-level school safety plans that provide for crisis response and management?

Safety plans are only on school level.

## EDUCATION AND TRAINING ABOUT VIOLENCE

Did the ministry develop violence prevention education and training packages?

Violence prevention education and training packages are developed by universities and other training institutions and some of them are ordered and financed by the ministry.

Are teachers required to complete course work or training in school violence and prevention?

There are no course works in Estonian teacher education. Some students complete their bachelor or master thesis in school violence and prevention. All teachers get training in school violence and prevention and this is also a part of their practice in schools. The training system is different in different universities and faculties. The University of Tartu intends to increase the dole of practical training.

Is a civility, citizenship and character education component included in the course of instruction?

Civility, citizenship and character education components are more important in new curricula for basic schools and high schools. The ministry is financing projects to help teachers to involve these components in instruction of different subjects and to assess the outcome.

School Violence Prevention Training is organized in every school differently.

## PREVENTION, PROTECTIONS, PENALTIES

Have employees in schools to pass a criminal history background check?

Yes.

Are schools required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities?

No. Such information is shared through voluntary network.

Are employees given "whistleblower" protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence?

There is no special protection.

Is there a child abuse reporting obligation prohibiting silent resignations?

Yes.

Is there a legal obligation for certified or licensed school personnel to report allegations of child abuse committed in an educational setting by school employees or volunteers?

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No  
Child Abuse Reporting and Prohibiting Silent Resignations  
Whistle Blower Protection for Employees Reporting Acts of Violence  
Teacher Discipline  
Assaults by any individual upon a school employee on school grounds or by any non-  
student upon a students on school grounds

REPORTING REQUIREMENTS

Did the ministry develop a uniform violent incident reporting system?

No

Uniform Violent Incident Reporting

No

Minimum Annual Reporting Requirements

No

Reporting Sentences to Schools

No

# QUESTIONNAIRE ON VIOLENCE IN EDUCATION IN RUSSIA

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Anna Vavilova  
Vitaly Matveev

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## SAFETY REGULATIONS AND PENALTIES

Is there any act against violence in education in your country?

Yes, there is quite a big number of legal acts in the Russian Federation, which can be used against violence in education. But usually they have the general character, and they are aimed against violence in general, or violence regarding children in general, or in families. Here in the Russian Federation the measures of pedagogical influence are considered to be effective against violence in schools. Besides, there is a number of criminal law and labor law regulations.

Which efforts have been taken to improve school safety in response to the rise of violence in schools?

In the Russian Federation the rise of violence in schools is not detected yet, so we do not have system measures aimed at it. According to the Federal law "On education in the Russian Federation", educational organizations must prevent incidents with children. Any incident in school must be investigated and registered. The founder of the educational organization can act against the head of the organization if he thinks his actions in the sphere of providing safety were not effective enough. The head can be dismissed from his post, the order depends on the labor contract.

What do such plans include (eg. policies and procedures for responding to threats of violence, responding to acts of violence, safe evacuation during a violent incident, contacting law enforcement officials and parents during a violent incident, and protocol for responding to bomb threats, hostage-takings, intrusions and kidnappings, other life threatening events that warrant the evacuation of students and/or staff because of an imminent threat to their safety or health, including, but not limited to: riot, hostage-taking, kidnapping and or the use of threatened use of a firearm, explosive, bomb, incendiary device, chemical or biological weapon, knife or other dangerous instrument capable of causing death or serious injury, ...)

Here in the Russian Federation we do not have special plans. But the Federal body of Executive power, carrying out functions on development of state policy and normative legal regulation in the sphere of education, in coordination with the Federal Executive power body carrying out functions of development of state policy and normative legal regulation in the sphere of health care set the order of investigation and registration of accidents with the students during their stay in the organization. This order is obligatory. Safe evacuation is something, which is worked upon in any school regarding fire safety. So each school makes training evacuations on the regular basis. We have some general problems with safety in our country, so nearly each school has strict access control, security guard. If something happens with a child, school notifies his parents, if necessary, provides the organization of medical aid (calls the ambulance, for example). After it in general the welfare of the child is carried out in the family.

How are teachers and other school personnel involved in the development of school district policies and procedures concerning safe schools

As we generally do not have such special policies and procedures, they are not involved. But there can be some policies and procedures, which are somehow connected with safety. Any person can voice his comments and suggestions without special order. Education authorities hold regular meetings with heads of educational organizations, where they can express their position. In the Russian Federation the tradition to take projects of significant decisions for public discussion also develops.

What are the penalties for assaults by any individual upon a teacher or school employee?

They are set in the criminal code of the Russian Federation. There are no differences in penalties for assaults in school compared with any assaults committed in any place by any other person. The status of a teacher or school employee gives no additional protection.

What are the penalties for assaults by any non-student upon a student?

They are set in the criminal code of the Russian Federation. There are no differences in penalties for assaults in school compared with any assaults committed in any place by any other person. The status of a student gives no additional protection.

## DEALING WITH DISRUPTIVE STUDENTS

Codes of Conduct

Teacher Responsibilities

Teacher Removal of Students from a Classroom

Principal Suspension

Do teachers have the authority to remove disruptive students from the classroom? If affirmative, pursuant to which provisions or code of conduct? How has it been elaborated? When can students return to the classroom and who makes a final determination about the case? These issues are not regulated directly on the level of law in the Russian Federation. As a general rule, the student has the right to receive educational service and, therefore, cannot be removed from the lesson. However, if his behavior impedes conducting the lesson, the teacher can remove him, which is done in accordance not with the law or codes of conduct, but as a measure of pedagogical influence in accordance with the policy of a particular school. As the teacher is criminally responsible for the life and health of the student, he often does not risk to make a decision to remove him from the lesson (if something will happen with the child during removal, criminal penalties for the teacher are possible). Some schools have internal regulations on the order of removal. In some schools it is forbidden in any case. In some schools it is freely permitted (however, this is the risk for the teacher and the school). Some schools allow it, but only if the student is passed under the supervision of another employee of the school. When the student is allowed to return to the lesson depends on the teacher. However, according to the law, student has the right to demand attending school, regardless of his behavior. General education is guaranteed to him by the Constitution. Teacher, denying him the opportunity to be at the lesson, thereby violates his constitutional right. A final determination about the case makes the teacher, but the student can complain to the head of educational organization, who can influence himself, or to a special body, the Commission for the settlement of disputes between participants of educational relations (is formed within each educational organization).

Who is required to adopt a code of conduct to provide for the maintenance of order on school grounds? Are student, teacher, administrator and parent organizations involved in the development of the code?

The code is adopted by the head, or the collegial management body (the general meeting etc), depending on the Charter. There can be representative bodies of workers and students (trade unions, councils of students, parents) in the school. If there are such bodies, the local normative act must be adopted with consideration of their opinion. This is the law provision and the first mechanism of participation of workers and students, parents. The second mechanism is to be included in the collegial management bodies of the educational organiza-

tion, which will participate in enacting a code of conduct. Its implementation depends entirely on the charter (what part in the enacting will collegial management bodies have, what role the representatives of workers and students will play in the bodies, it all depends on the Charter).

Do ministries develop district-wide and at building-level school safety plans that provide for crisis response and management?

This depends on the education authorities. Schools have plans to combat terrorism and extremism, plans for the prevention of other dangerous situations (for example, fire safety). Such documents are usually enacted at the level of the school, however, education authorities often develop their recommendations, and the school works on the basis of these recommendations, when making internal documents. Some of the measures of such plans can be financed by the founder. In the Russian Federation plans are focused on external to school violence, combating terrorism is an important activity in our country. At the school level and it has become especially important after the tragedy in Beslan. Plans to combat terrorism generally include measures aimed at protecting school (areas, buildings) against wrongful actions.

#### EDUCATION AND TRAINING ABOUT VIOLENCE

Did the ministry develop violence prevention education and training packages?

No, but some questions can be covered within other topic training

Are teachers required to complete course work or training in school violence and prevention?

No

Is a civility, citizenship and character education component included in the course of instruction?

No

School Violence Prevention Training

Do not have such special training

#### PREVENTION, PROTECTIONS, PENALTIES

Have employees in schools to pass a criminal history background check?

No

Are schools required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities?

Yes. The Federal body of Executive power, carrying out functions on development of state policy and normative legal regulation in the sphere of education, in coordination with the Federal Executive power body carrying out functions of development of state policy and normative legal regulation in the sphere of health care set the order of investigation and registration of accidents with the students during their stay in the organization. The special commission is formed, which includes representatives of authorities.

Are employees given "whistleblower" protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence?

No, but it does not seem to be a problem and to influence rate of reporting

Is there a child abuse reporting obligation prohibiting silent resignations?

In accordance with the previous legislation, the results of the investigation of abuse by teachers were disclosed only with the consent of the teacher. The new legislation does not contain

such restrictions. The use of mental and physical abuse of students serves as a separate ground for dismissal of a teacher.

Is there a legal obligation for certified or licensed school personnel to report allegations of child abuse committed in an educational setting by school employees or volunteers?

No, but it can be included in the labor contract

Child Abuse Reporting and Prohibiting Silent Resignations

Partially regulated at the level of a under-the-law regulation

Whistle Blower Protection for Employees Reporting Acts of Violence

No

Teacher Discipline

In accordance with labor legislation

Assaults by any individual upon a school employee on school grounds or by any non-student upon a students on school grounds

In accordance with general rules, no specifics

#### REPORTING REQUIREMENTS

Did the ministry develop a uniform violent incident reporting system?

There are requirements for the reporting on accidents, by analogy with the labor protection requirements. There is no unified system of reporting about the facts of violence at school.

Uniform Violent Incident Reporting

-

Minimum Annual Reporting Requirements

-

Reporting Sentences to Schools

-

# A COUNTRY REPORT ON VIOLENCE IN EDUCATION IN SOUTH AFRICA

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Georgia A. du Plessis<sup>1</sup>







## INTRODUCTION

There is a scourge of violence in South African schools with daily reports in the media about high levels of violence, physical and sexual abuse, gang-related activities, carrying of knives, guns and other weapons.<sup>2</sup> Violence in South African schools is merely mirroring the fact that crime and violence in South Africa are a way of life.<sup>3</sup> In South Africa, violence has been normalised as a necessary and justified way of resolving conflict. Also, the vulnerability of young people linked to inadequate child rearing and poor youth socialisation, resulting from poverty, unstable living arrangements and being brought up with inconsistent and uncaring parents are prevalent in South Africa. This means that South African children are exposed to risk factors which enhance the changes that they will become involved in criminal activity as well as violence. This is also enhanced by inequality, marginalisation and poverty.<sup>4</sup> A report by the South African Institute of Race Relations (SAIRR) (2008) suggested that only 23% of South African learners said they felt safe at school. In contrast, research suggests that schools in Norway, Denmark, and Sweden were the safest in the world with approximately 70% of learners saying they felt safe at school (SAIRR 2).<sup>5</sup>

For purposes of this conference, several questions had to be answered regarding the safety regulations and penalties concerning violence in schools, dealing with disruptive students, education and training about violence, prevention, protections and penalties and finally, reporting requirements.

Within the context of the high degree of violence found within South African education, the mentioned questions will be dealt with in the following paragraphs.

## SAFETY REGULATIONS AND PENALTIES

### Acts against violence in South Africa

The Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution) provides for values of human dignity, equality and freedom. For example, section 1 states that the Republic of South Africa is a democratic country founded on the values of human dignity, equality and freedom. Section 9(1) elaborates on the value of equality by stating that everyone is equal before the law. Section 10 elaborates on the value of human dignity by providing that everyone has inherent human dignity and the right to have their dignity respected and protected.

Since the Constitution is the supreme law of the country, as stated in section 1, all laws governing education and all educational institutions must adhere to the values of human dignity, equality and freedom. All students or learners, when attending educational institutions, must have their human dignity, equality and freedom protected and especially protected against violence.

This is further protected in section 12 of the Constitution promising the freedom and security of all persons, to be free from all forms of violence from either public or private sources and not to be treated or punished in a cruel, inhuman or degrading way. This will also apply to

schools and other education institutions. In terms of section 24 of the Constitution a learner has the right to an environment that is not harmful to their well-being.

The rights of children are protected in section 28. Here, the child's well-being, physical or mental health, social development and education cannot be placed at risk. The best interests of the child are always paramount and therefore an education system where violence prevails will be directly in contravention of section 28. Section 28 obliges the school to respect, protect and fulfil these children's rights in the educational context. These obligations bind schools, educators and the community. Section 29 of the Constitution provides for the right to basic education (Grades R–7) and to further education, which the state, through reasonable measures, must make progressively available and accessible.

The standard of the right to education is further determined by regulations and legislation giving effect to these rights. Provision is made for protecting the rights of children and the safety of learners in the *Child Care Act*<sup>6</sup>; the *Domestic Violence Act*<sup>7</sup>; the *South African Schools Act*<sup>8</sup>, *Regulations to prohibit initiation practices in schools*<sup>9</sup>, *Regulations for safety measures at public schools*<sup>10</sup> and the *Occupational Health and Safety Act*<sup>11</sup>. These Acts and regulations are all (to a smaller or larger extent) concerned with protecting the physical and psychological integrity of learners in South African schools and in effect also protecting them against violence in educational institutions. *Regulations for Safety Measures at Public Schools* were published in the Government Gazette No. 22754 of 12 October 2001 and the *Amendment Regulations for Safety Measures at Public Schools* on 10 November 2006. Finally, the *Education Laws Amendment Act* 31 of 2007 is intended to, *inter alia*, provide guidance pertaining to drug testing, random search and seizure at schools. Section 8A of this section prohibits any person to bring to the school any dangerous objects and illegal drugs unless the principal has granted permission to such a person. The section further stipulates procedures that should be followed when searching learners and testing them!

Firstly, the *Regulations prohibiting initiations practices in schools* provide for non-discrimination, privacy, equality and human dignity (regulation 3). Regulation 3.2.1 states that every learner has the right to privacy and the right not to have his or her property or person searched or his or her possessions seized. However, this regulation protects the school environment against violence in that there is one exception created – the principal or an education may search learners based on his or her reasonable suspicion that the learner is in possession of an illegal object, using reasonable search methods. Regulation 3.3.1 further states that every learner has the right to freedom and security of his or her person (echoing section 12 of the Constitution). This includes the right to be free from all forms of violence or assault. Regulation 3.4 provides for protection from maltreatment, neglect, abuse or degradation. All appropriate social and educational measures must be taken to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of any person who acts *in loco parentis* (when learners are in school, the school acts *in loco parentis*). Regulation 3.5 states there should be a safe environment conducive to education, including security of property, security of person, well-cared for school facilities, school furniture and absence of harassment in attending classes. All parties have a responsibility to maintain such an environment.

Secondly, the *Schools Act* 84 of 1996 places an obligation on governing bodies to promote the best interests of the schools and to administer control over the school (section 20). However, there is no specific reference to providing a safe school environment. The governing body is under duty to provide for a code of conduct (section 8), and such a code of conduct may regulate the safety of a school. Furthermore, section 10 of the Act prohibits any corporal punishment at a school which can result in a sentence of assault.

Thirdly, the *Education Laws Amendment Act* 31 of 2007 states that no person may bring a dangerous object or illegal drug onto school premises (section 8A(1)) and the principal may at random search learners if a fair and reasonable suspicion has been established (section 8A(2)) with regards to illicit drugs or dangerous objects. Such a search can only be conducted if the following factors are taken into account: the best interests of the learners, the safety of the learners, reasonable evidence of illegal activity and all relevant evidence received (section 8A(3)(a)).

Fourthly, the *Regulations for Safety Measures at Public Schools*, and the *Amendment Regulations for Safety Measures at Public Schools* states in regulation 9 (amongst other things) the following: all public schools must display clear signs at the entrance that any person who enters the school may be subjected to a search; public schools must cooperate with police stations, public schools must encourage governing body members and parents to participate in community policing forums; public schools must develop action plans to counter threats of violence which have the potential to have a negative impact on the school; safety of parents, learners and staff members must be insured during school activities and public schools must engage in advocacy campaigns to communicate to the public the status of the schools concerning the regulations and the right to protection against violence.

#### Efforts taken to improve school safety.

Several efforts have been taken against the rise of violence in education within South Africa.

The Department of Education announced the *Tirisano-plan*<sup>12</sup> for enabling the development of a fully-functioning education and training system in South Africa. Project 6 of this plan provides for school safety. The objective of this project states that a safe and tolerant learning environment should be created where schools are free from crime, violence and sexual harassment. Basic level of security should be ensured and community involvement should contribute to the development of a safe and secure environment. Part of this will include initiating the *Safe Schools Project*, establishing links between schools and police stations and initiating a safe schools campaign, including awareness of violence, drugs and sexual harassment of girls and women.<sup>13</sup>

As a result of this plan the *Safe Schools Project* was launched in 2000 to create a safe disciplined learning environment. Subsequently, the *Regulations for Safety Measures at Public Schools* were published in the Government Gazette No. 22754 of 12 October 2001 and the *Amendment Regulations for Safety Measures at Public Schools* on 10 November 2006. The

*Safe Schools Project* focused on the development of policies on school safety, the management of drug usage in schools and a national sexual harassment policy.<sup>14</sup>

Other efforts include: handbooks for learners such as “*Speak Out: Youth Report Sexual Abuse*” provide information to learners on how to prevent sexual abuse in public schools<sup>15</sup>; and *Early Childhood Development Programmes* (ECDs). These *Programmes* are in place in South Africa and the responsibility of their implementation falls across three departments; Education, Health and Social Development. Pre-school educators are trained to facilitate pro-social skills, conflict resolution and anti-violent behaviour in young children. These *Programmes* provide the opportunity to address issues in the family environment through family-based interventions. Parents’ relationships with schools are aimed at being improved aiming to curb hostile and violent environments at home.<sup>16</sup>

#### Nature of these efforts: What do they include?

As already stated the *Tirisano-plan* resulted in the *Safe Schools Project* and subsequently the *Regulations for Safety Measures at Public Schools* were published in the Government Gazette No. 22754 of 12 October 2001 and the *Amendment Regulations for Safety Measures at Public Schools* on 10 November 2006.

The *Regulations* (2001) states in regulation 1 that a dangerous object includes explosive material, firearm or gas weapon and any article used to cause bodily harm or to render a person paralysed. Regulation 4 declares schools drug free and dangerous object free (as indicated above) zones. All of these substances and objects are thus prohibited.

As indicated above, handbooks against sexual abuse have been distributed to students and Childhood Development Programmes have been put into place to deal with violent homes and their effects on violence in education.

The South African Police Services is also involved by way of the Family Violence, Child Protection and sexual offences Unit (FCS)<sup>17</sup>.

#### The involvement of teachers and other school personnel in the development of school policies and procedures concerning safe schools

The *South African Schools Act* clearly states in section 8 that the governing body of an institution is responsible to draft the code of conduct of the school. This may include procedures and policies regarding the safety of schools. Section 8(1) places an obligation on school governing bodies to draw up a code of conduct for learners after consultation with learners, parents and educators. Therefore, the governing body involves the teachers, learners and parents in the creation of measures concerning the safety of schools. Section 20 (1) also states that the governing body should adopt a constitution, develop a mission statement and adopt a code of conduct for the school. The governing body of a school has to establish a disciplined school environment by adopting a code of conduct and to conducting fair disciplinary hearings in cases of serious misconduct.<sup>18</sup>

The governing body consists of (section 23) elected members, the principal, co-opted members. Elected members will comprise of parents of learners, educators, members of staff at school who are not educators, and the learners. Therefore, educators and members of staff, as members of the governing body, are given the opportunity to develop a code of conduct or policies and procedures concerning the safety of the school. However, despite the existence of these democratic principles and practices, Naidoo still found that learners were insufficiently involved in decision making. A number of scholars in South Africa have been critical of the actual practices of Governing bodies. Members of governing bodies also tended to be male and that principals still played a dominant role in meetings and decision making processes, and that teachers tended to participate in meetings more than other stakeholders. Parents were hampered in many areas by a skills capacity deficit and communication and transportation problems. Learner participation was only moderate and concentrated on fundraising, learner discipline and sports activities.<sup>19</sup>

What are the penalties for assaults by any individual upon a teacher or school employee?

The *Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners* (RSA, 1998)<sup>20</sup> states in guideline 11 that conduct which endangers the safety and violates the rights of others, possession, threat or use of a dangerous weapon, use, possession and transmission of drugs or alcohol, fighting, assault or battery and immoral behavior or profanity are offence that may lead to suspension. Guideline 12 states that a governing body may, after a fair hearing, suspend any learner who has been found guilty, for a period of one week or for a reasonable period not exceeding one week, pending a decision by the Head of Department on the recommendation of the governing body as to whether or not the learner is to be expelled from the school. Principles of just administrative practices must apply at all times.

What are the penalties for assaults by any non-student upon a student?

According to South African case law and depending on the nature of the assault, the penalty will usually amount to a fine. Also, it will usually be the Code of Conduct as determined by the Governing Body that will determine the penalty and procedures in cases of assault by a non-student upon a student.

## DEALING WITH DISRUPTIVE STUDENTS

### Codes of Conduct

Section 8(1) of the *Schools Act* places an obligation on schools' governing bodies to draw up a code of conduct for learners after consultation with learners, parents and educators. Section 8 (2) states that the code of conduct must be aimed at establishing a disciplined and purposeful school environment and section 8(4) places a legal obligation on learners to comply with the code of conduct. The code of conduct must also make provision for legal processes and disciplinary proceedings (section 8(5)).

Prinsloo states that the code of conduct is also essential for setting out the expectations and standards for learner behaviour, for putting necessary procedures in place for dealing with threats to safety and security, and for protecting learners and staff against physical and psychological danger such as assault, bullying, sexual harassment and rape.<sup>21</sup>

With regards to the *Dynamics of Violence in the Schools of South Africa Report*, schools are supposed to have in place policies and a learner code of conduct to deter violent behaviour. These should impede the use of drugs or any intoxicating substance, the carrying of weapons or any sharp objects, the use of violent or vulgar language, and also to discourage threats against persons or their property.<sup>22</sup>

The *Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners* (RSA, 1998)<sup>23</sup> sets out the framework of a code of conduct for schools. According to guideline 1.3, the "Code of Conduct must be subject to the Constitution of the Republic of South Africa, 1996, the South African Schools Act, 1996 and provincial legislation. It must reflect the constitutional democracy, human rights and transparent communication which underpin South African society". Guideline 1.4 states that the Code of Conduct must inform the students of the way in which they should conduct themselves at school in preparation for their conduct and safety in civil society. The main focus should be positive discipline. Guideline 1.10 also indicates that the Code of Conduct should clarify and promote the roles and responsibilities of various stakeholders in the creation of a proper learning environment in schools. Regulation 3.5 indicates that learners must understand the action taken against them if they contravene the Code of Conduct. This information should be part of the Code of Conduct. Guideline 3.8 also refers to the principal's and educator's authority to conduct a search of a learner's property subject to certain requirements being met. Guideline 4 also indicates that the Code of Conduct should affirm values of democracy, non-discrimination and equality, privacy, respect and dignity, non-violence and the freedom and security of a person. Guideline 7 also states that disciplinary processes must be expeditious, fair, just, corrective, consistent and educative.

### Teacher Responsibilities

Educators have a legal duty in terms of the common law principle, *in loco parentis*, to ensure the safety of learners in their care. This means that educators are vested with special status that empowers them to act authoritatively in terms of the law. They have powers of authority over learners on the school grounds and during the normal school sessions and they are also granted this authority during extramural activities outside of school property. There are two coextensive pillars to this role that educators play: the duty of care (looking after the physical and mental well-being of learners) and the duty to maintain order at a school (duty to discipline). According to

The duty of care of an educator is compared to the degree of care that a diligent father of a family would serve towards his family.<sup>24</sup> The common law principle - *in loco parentis* - also forces educators to foresee the potential dangers to which learners may be exposed at schools and to act proactively by taking steps in the form of policy to protect learners from harm. "This means that educators are legally obliged to ensure the physical and psychological safety of learners in their care."<sup>25</sup>

The *Code of Professional Ethics of the South African Council for Educators*<sup>26</sup> also provide for guidelines for the duties placed on educators. For example, teachers should respect the dignity, beliefs and constitutional rights of learners, their right to privacy and confidentiality. Authority should be exercised with compassion and physical or psychological abuse or humiliation should be avoided. Improper physical contact should be refrained from and also any form of sexual harassment or any form of sexual relationship with learners at a school. Also, teachers should take reasonable steps to ensure the safety of the learners.

The purpose of the *Child Care Act, 1983* (Act 74 of 1983) on the other hand, is to protect children's rights, and the provisions of this *Act* and those of the *Domestic Violence Act, 1998* (Act 116 of 1998) place a legal obligation on educators to report any form of maltreatment, neglect, abuse or degradation of children to social welfare or the police. Section 4(4) of the *Domestic Violence Act* for example states that any person may, on behalf of a minor, apply to the court for a protection order without the assistance of a parent or guardian. The concept, *in loco parentis*, supports this.

According to the *Regulations to prohibit initiation practices in schools*<sup>27</sup>, regulation 5 places duties on the principal to ensure that no initiation practices, harassment, humiliation, degradation and intimidation occurs. According to regulation 6, educators are responsible to protect, promote and respect the rights of learners. Educators also have a duty to control the actions of learners when such actions may inflict harm to others or to the learner, or violate the rights of other learners or educators. Educators must take reasonable measures where necessary to prevent a learner from harming himself or herself or others. Regulation 6.5 repeats the *in loco parentis* principle by stating that an education at the school has the same rights and obligations as a parent to protect, control and discipline a learner according to the Code of Conduct during attendance at the school.

#### Teacher Removal of Students from a Classroom and Principal suspension.

As stated earlier, according to the *Regulations to prohibit initiation practices in schools*, educators may take reasonable measures to prevent learners from harming himself or herself or others. If the removal of a student from a classroom is a reasonable measure in specific circumstances then this can be allowed.

As already stated, the *Guidelines for the Consideration of Governing Bodies in Adopting a Code of Conduct for Learners* (RSA, 1998)<sup>28</sup> sets out the framework of a code of conduct for schools. Guideline 3.5 indicates that learners must understand the action taken against them if they contravene the Code of Conduct. Guideline 7 also states that disciplinary processes must be expeditious, fair, just, corrective, consistent and educative. In guideline 11 it is stated that conduct which endangers the safety and violates the rights of others; possession, threat or use of a dangerous weapon, use, possession and transmission of drugs or alcohol, fighting, assault or battery and immoral behavior or profanity are offence that may lead to suspension. Guideline 12 states that a governing body may, after a fair hearing, suspend any learner who has been found guilty, for a period of one week or for a reasonable period not exceeding one week, pending a decision by the Head of Department on the rec-

ommendation of the governing body as to whether or not the learner is to be expelled from the school. Principles of just administrative practices must apply at all times.

Do teachers have the authority to remove disruptive students from the classroom? If affirmative, pursuant to which provisions or code of conduct? How has it been elaborated? When can students return to the classroom and who makes a final determination about the case?

This question is already discussed in paragraph 3.3. The *Education Laws Amendment Act*<sup>29</sup> provides that if a governing body, after a fair hearing, recommends to the Head of Department that a learner be expelled; the governing body may suspend the learner or extend his or her suspension for a period of 14 days to allow the Head of Department to take a decision. If the Head of Department decides not to expel a learner as contemplated in subsection 9(2) within 14 days of receiving such recommendation he or she may impose a suitable sanction on the learner; or the Head of Department may refer the matter back to the governing body for an alternative sanction other than expulsion. The governing body of a public school must then implement the sanction contemplated.<sup>30</sup>

Who is required to adopt a code of conduct to provide for the maintenance of order on school grounds? Are student, teacher, administrator and parent organizations involved in the development of the code?

Section 20 of the *Schools Act* states that the functions of a governing body include the promotion of the best interests of the school, the adoption of a constitution, the development of a mission statement, the adoption of a code of conduct and administration and control of the school's property. The adoption of a code of conduct for the maintenance of order on school grounds is therefore mainly the function of the governing body. According to section 23 of the *Schools Act*, the governing body consists of elected members (parents, educators, members of staff not being educators and learners in the eighth grade or higher), the principal and co-opted members (for example, in the case of children with special needs). The adoption of the code of conduct for the maintenance of order on school grounds thus includes teachers, students, administrator and parent organizations.

Joubert clearly states that the governing body of a school (thus selected teachers, principal, students and parents) has to establish a disciplined school environment by adopting a code of conduct and to conducting fair disciplinary hearings in cases of serious misconduct.<sup>31</sup>

Do ministries develop district-wide and at building-level school safety plans that provide for crisis response and management?

A *South African Violence Prevention Model and Action Plan* have been created by the National Prosecuting Authority of South Africa and UNICEF.<sup>32</sup>

#### EDUCATION AND TRAINING ABOUT VIOLENCE

Did the ministry develop violence prevention education and training packages?

The *South African Council for Educators Act, 2000* provides for the establishment of the *South African Council for Educators (SACE)* who is given the functions of promoting professional development of educators and establishing a code of professional ethics for educators (2002). With regards to SACE, special attention is paid to learner safety and the duty of care responsibilities of educators.<sup>33</sup>

Furthermore, the *Regulations for Safety Measures at Public Schools*, and the *Amendment Regulations for Safety Measures at Public Schools* state in regulation 9 public schools must develop action plans to counter threats of violence which have the potential to have a negative impact on the school.

Reports have also been made available in the form of handbooks to students. One of these includes, as already mentioned, *Speak Out: Youth Report Sexual Abuse – A Handbook for learners on how to prevent sexual abuse in public schools*<sup>34</sup>.

Are teachers required to complete course work or training in school violence and prevention?

The *South African Council for Educators Act, 2000* states that one of its purposes for the Council to promote the professional development of educators.

Is a civility, citizenship and character education component included in the course of instruction?

There is only a *Victim Empowerment Programme* where members are given the necessary skills to handle all victims of crime in a sensitive manner.<sup>35</sup>

#### School Violence Prevention Training

*Victim Empowerment Programme* training is provided for where members are given the necessary skills to handle all victims of crime in a sensitive manner.<sup>36</sup>

There is also a *Youth Violence Prevention Programme by the Centre for the Study of Violence and Reconciliation*.<sup>37</sup>

“Within the 40-schools project, a 10-member teachers' committee from various schools serves as an advisory committee to the Youth Violence Prevention Programme. The committee identifies the training needs of the educators in the area. Each year, since 1996, about 80 teachers have been trained in trauma management. School principals have showed great enthusiasm in the training programmes. Most schools also expressed a need for training on conflict management and the Youth Violence Prevention Programme had introduced the Independent Mediation Services of South Africa (IMMSA) for this component. However, the CSVR now runs these workshops as IMMSA has closed down. Other training given to the educators by the CSVR included the building of safety teams, using the peer counselling manual, understanding alternatives to corporal punishment and issues of diversity. They also

received further training on human rights and anti-racism practices in schools. In certain instances training is offered in the form of videos and manuals.”<sup>38</sup>

#### PREVENTION, PROTECTIONS, PENALTIES

Have employees in schools to pass a criminal history background check?

Section 21 of the *South African Council for Educators Act, 2000* requires that: “1.1 every educator contemplated by the Act must register with the Council before appointment to a teaching post; and 1.2 no person may be employed as an educator by an employer unless that person is registered with the Council.” However, according to the *Registration Criteria and Procedures of the South African Council for Educators*<sup>39</sup>, to be registered, the educator has to disclose to the Council details of: “2.3.1 any previous employer disciplinary action or conviction for a criminal offence; 2.3.2 any pending employer disciplinary proceedings or criminal proceedings against the applicant; and 2.3.3 any previous disciplinary proceedings against the applicant by the Council.”

Are schools required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities?

Section 59 of the *Schools Act* states that: “(1) A school must make information available for inspection by any person, insofar as such information is required for the exercise and protection of such person's rights. (2) Every school must provide such information about the school as is reasonably required by the Head of Department.”

This duty has been recognised by section 42(1) of the *Child Care Act*, which provides that various professional workers, including medical and social workers and teachers, have a duty to notify the Director-General. Also the purpose of the *Child Care Act, 1983 (Act 74 of 1983)* is to protect children's rights, and the provisions of this Act and those of the *Domestic Violence Act, 1998 (Act 116 of 1998)* place a legal obligation on educators to report any form of maltreatment, neglect, abuse or degradation of children to social welfare or the police. Furthermore, the common law principle of *in loco parentis* forces educators to foresee the potential dangers to which learners may be exposed at schools and to act proactively by taking steps in the form of policy to protect learners from harm. This means that educators are legally obliged to ensure the physical and psychological safety of learners in their care.<sup>40</sup>

Are employees given "whistleblower" protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence?

According to the *Protected Disclosures Act 26 of 2000*, employees will be protected against retaliatory actions if they make a report about a suspected act of violence. This *Act* states in section 2 that it aims to protect an employee, whether in the private or the public sector, from being subjected to an occupational detriment on account of having made a protected disclosure.

Is there a child abuse reporting obligation prohibiting silent resignations?

The *Regulations Regarding Safety in Public Schools* indicate that violence free schools should report the sighting or presence of any dangerous objects to the departmental authorities or police.

Also, to stop practices of male educators demanding sex with schoolgirls, the National Department of Education introduced an amendment to the *Employment of Educators Act*, No. 76 of 1998 in the *Education Amendment Act of 2000*, (SA, 2000b). Section 17 (c) of the *Employment of Educators Act* requires provincial departments of education to dismiss any educator found guilty of having a sexual relationship with a learner of the school where he or she is employed. In terms of section 23 (c) of the *South African Council for Educators (SACE) Act*, No. 31 of 2000, the council may direct the chief executive officer to remove the name of the educator from the register if the educator was found guilty of a breach of the code of professional ethics.

If a teacher is told by a learner that he or she is sexually abused by another teacher, the teacher to whom the abuse was reported must report this to the Education department or the South African Council for Educators.

Is there a legal obligation for certified or licensed school personnel to report allegations of child abuse committed in an educational setting by school employees or volunteers?

If an employee refuses to divulge information that could lead to the detection of colleagues' misdemeanors and the Department of Education receives a complaint about serious misconduct of an educator at a school, and the culprit cannot be identified but there is reason to suspect that the school principal is aware of the identity of the culprit, the possibility of 'derivative misconduct' arises.<sup>41</sup> This means that if an employee refuses to divulge information that might help to identify the perpetrator he or she may be subject to disciplinary action.<sup>42</sup>

#### Teacher Discipline

All teachers are subject to the Code of Conduct of a school and *the Code of Professional Ethics* of SACE. This *Code* also prescribes the procedures to be taken during disciplinary hearings and suspensions of educators.

#### REPORTING REQUIREMENTS

Did the ministry develop a uniform violence incident reporting system?

South Africa's Department of Education indicated that they are aware of the reluctance of many young persons and their parents to report cases against teachers.<sup>43</sup> In order to address this, the Department has produced a user friendly booklet for learners: *Speak Out. Youth Report Sexual Abuse. A Handbook for learners on how to prevent sexual abuse in pub-*

*lic schools*. The purpose of the handbook is to equip learners with knowledge and understanding of sexual harassment and sexual violence, its implications, ways to protect themselves from perpetrators, and where to report it in the unfortunate event that it happens. The booklet spells out clearly how the learner should write a letter reporting such cases particularly against teachers, and explains what should happen at school if the abuser is a learner. The booklet also provides very useful contact details of national and provincial organizations that can assist. Learners and their parents or care givers and members of the community requiring further information can contact the Department of Basic Education through the Hotline 0800 202 933 or the Gender Equity Directorate in the Department on 012 357 3373.

#### CONCLUSION

An extremely high rate of violent behaviour by teachers and students demonstrate a serious problem within South Africa. Unprofessional and criminal behaviour by educators and teachers perpetuate the violent cultures in schools. There should be stronger and more pro-active realization of regulation and policy to prevent violence in schools. Socio-economic circumstances in South Africa also contribute to a violent culture in South African schools and education in general. Also, greater care should be taking as to the character and competence of teachers when allowing them to enter the teaching profession. Already existing laws and regulations protecting all stakeholders against violence in education should be implemented properly as well as better regulations and laws created.

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# VIOLENCE AND SAFETY IN SCHOOLS: A ROMANIAN PERSPECTIVE

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Raluca Alecu





## Introduction

The phenomenon of violence in schools has been given a constant attention in recent years in Romania, but in spite of the official hype, few measures were implemented, partially due to changing several ministers of education on a short time, and the results are barely noticeable. Moreover, in spite of a surge in cases of violence in schools, repeatedly reported by the Romanian media over the last year, including one incident that left one student dead, new legal measures to address these problems remained at the level of promises. The problem is further complicated by the fact that at the level of teachers, at least, there is a tendency to hide or deny the phenomenon, for fear of facing unofficial sanctions or affecting the school "prestige". Still, many of the incidents in schools do get into public attention, because sometimes students are recording them, post it to the internet or send them to the media.

According to the Ministry of Education, at the national level, the number of acts of violence in schools reported for the school year 2011-2012 was 15.358, comprising both verbal and physical violence. Most of these incidents (6.275) were acts of mild physical violence, while 143 implied serious physical violence.

Still, the police representatives talk about a surge in the number of acts of violence in schools for the school year 2012-2013. Only in the first semester of this school year there has been an increase by 13.6% in the number of thefts, physical incidents between pupils, or other forms of violence, compared to the same period of the previous school year. Moreover, 85% of events occurred in the schoolyard or in the class and only 15% in the vicinity of the schools, according to the representatives of the Romanian Police.

## Legal framework

The legal framework for guaranteeing a safe environment in schools can be found in Law 29/2010, amending and supplementing Law 35/2007 on improving safety in schools, in the Law 272/2004, on the protection and promotion of child rights (updated to 10 January 2008), and in the Education Law 1/2011. Also, there are two important Ministerial Orders of the Ministry of Education, Research, Youth and Sports: OMECT 4295/2005, approving the "Rules of organization and operation of schools" and OMECT 1409/2007, approving the strategy of the Ministry of Education on curbing violence in schools.

## Efforts to improve school safety

The first major step in the field was taken only in 2006, with a study called "Violence in schools", conducted by the Institute of Education Sciences, with the support of UNICEF Romania. The study offered for the first time a glimpse into in scale of violence in the Romanian schools and, also, a grim result: the percentage of schools that recorded phenomena of violence exceeded 75%, despite of the peaceful picture offered at the time by the authorities. The most common forms of violence in schools included student-student violence and student-teacher violence, but also thefts and bullying incidents from outsiders of the school, both in the schools area and in their proximity.

On this basis, in 2007, the Ministry of Education developed a National Strategy, aimed to act as the main coordinating document for preventing and curbing violence in schools. While setting the principles and the general recommendations on preventing and curbing violence

in schools, the strategy also goes into details about the role of each institution in the educational system, and proposes a minimal operational plan, at the schools' level, for intervention in case of violence. In addition, the National Strategy establishes in detail several new bodies, at the national, county and school level, to deal with the phenomenon.

Last year, the Ministry also announced that it will develop a National Action Plan for Curbing Violence in Schools, but till now, no such plan appeared, in part because of successive changes in the leadership of the Ministry. Also in the first half of 2012, the Ministry established the National Council for the Prevention and Curbing Violence in Schools (as requested by the Strategy), a national body aimed to monitor and assess the implementation of the National Strategy to curb violence in schools.

In addition, between 2009 and 2011, Ministry of Education, together with Institute of Education Sciences, the OSC Agency and "Save the Children" Organization, implemented the "Youth against violence" program, funded by European Social Fund, in order to develop structures and mechanisms for informing, training, monitoring and communicating, at local, county and national level, to prevent and curb the phenomenon of violence in schools.

## Curbing the violence at school level

While at the country level, the main document for curbing violence in schools is the National Strategy, at county and school levels, the documents that guide the efforts are the operational plans to address the phenomenon. Following the provisions of the Strategy, each school inspectorate (the educational structure at the level of counties) develops a plan to reduce violence in schools, whom implementation involves the collaboration with the Ministry for Internal Affairs.

According to the Law 29/2010 (Art.3), at the level of each school, the teachers, together with the parents' representatives, issue a set of internal rules of the school ("regulament intern"), specifying the way that school is organized and run, including the policies and the procedures that make the school a safe environment for education. The document is then made available to County Police Inspectorate and to County Gendarmerie Inspectorate. Each internal set of rules is drawn according to Romanian Constitution, the Education Law and the "Rules of organization and operation of schools" - a set of guidelines drawn by the Ministry of Education that every school must take into account when designing their own set of rules. Following the National Strategy, the teachers can be involved in the policies for curbing violence in schools by taking part in the activities of the Commission for preventing and curbing violence in schools, presided by the headmaster of the school. This Commission involves 4-6 representatives of teachers, elected by the teachers council, a deputy headmaster, the president of the class masters committee, 1-2 representatives of the local authority, 2-4 representatives of associations of parents and 2-4 students elected by student council. The Commission is responsible for the development, implementation and assessment of objectives set in the operational plan, at school level, for curbing the violence in schools, but also for monitoring how the school promotes and guarantees the rights of the child, as established by Law no. 72/2004.

## Disruptive students, sanctions, and codes of conducts in schools

According to the “Rules of organization and operation of schools”, the sanctions that may be applied to students are the following: individual warning; the rebuke in front of the class of the class / class council / teachers council; the written rebuke; temporary or permanent withdrawal of a scholarship; *withdrawing from the courses* over 3-5 days; transfer to another class in the same school; transfer to another institution, with the consent of the receiving school; expulsion warning; expulsion.

It is important to say that a teacher cannot decide by himself/herself to remove a disruptive student from the class. The case of the student must be first brought in from of the class council (consisting of all the teachers of a certain class). The class council then proposes a sanction to the teacher’s council, the teacher’s council decides the sanction, and then class master should apply it. In case the sanction consists in withdrawal of the disruptive student from classes for 3-5 days, the school has to replace the classes with a different type of activity, usually in the school. If the student refuses to take part in these activities, absence is considered unexcused and shall be recorded. It is important to say that this penalty does not apply to students in grades I-IV, and it is accompanied by a lower conduct mark.

In practice, the removal of a disruptive student from a class by a teacher is still common in Romanian schools, as one of the mildest forms of sanctions. Usually, the teacher gets annoyed by the behavior of the student, and orders him/her to leave the classroom for his/her class’ time. Still, over the years, the practice became less popular, as concerns about it increased, and teachers started to be seen as responsible for letting the students out, without any supervision.

It must be said that in Romania, the curriculum for primary and secondary education addresses students’ behavior and responsibilities toward the others, by including an optional discipline called “Civic Education”/“Civic culture”. Moreover, besides the core curriculum and the optional subjects, the teachers may propose some extracurricular activities outside the classroom or the school, in order to cultivate in students a sense of citizenship and the responsibility toward the others. The most common types of extracurricular activities include participation in decision making activities in school / community (school boards, school councils, children's parliaments etc.) and civic actions (support for disadvantaged people, volunteering work, etc.).

Returning to the subject of penalties, another type of common penalty that Romanian teachers are still applying to students - even the cases are isolated - consist in physical punishments, even though according to Law 272/2004 (art.28), it is forbidden for a teacher to do so. According to Romanian law, besides the fact that teachers are forbidden to have criminal history background, there are also health and moral requirements that a teacher has to fulfill. Thus, according to Law 272/2004, on the protection and promotion of child rights (updated in January 2008) (art. 97), “it is forbidden to employ a person against whom a final and irreversible court decree has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children”.

Moreover, as mentioned above, according to the Education Law, there are also some requirements for teachers mainly focused on the moral qualities and physical and mental health of the teacher, as well as on his/her capacity to relate appropriately with students, parents and colleagues.

Still, there were cases when a teacher was convicted with a suspended sentence, but was still teaching in school after several months since the conviction (2011), or when a religious

education teacher was convicted for corruption, but still offered a merit salary increase for his teaching activity (2013).

In this situation, a nation-wide code of conduct for schools proved to be necessary, and one proposal was developed by the Ministry of Education in 2011. Since then, the draft was subject to public debate, but later, abandoned, as the Ministry got a new minister. Some schools set up codes of conduct, as additional acts to internal rules of the schools, while others have included conduct regulations in their internal set of rules. These codes of conduct are approved by school boards, consisting of teachers (including the headmaster) representatives of the parents, of the mayor and of the local council.

But the codes of conduct were not sufficient to change teachers’ mentality towards disruptive students. More efforts were needed and parts of them were addressed by “Youth against Violence” program. Conducted by the Ministry of Education, Research and Innovation, the program focused on the implementation of awareness activities concerning the acts of violence in schools, and offered support for institutional development in the field. For example, within the program, the Ministry developed two guiding documents aimed at institutions with responsibilities in curbing violence in schools. One was the “Good practices guide on preventing and curbing violence in schools”, and the other “The Guide for structures with responsibilities in preventing and curbing violence in schools at school, county and national level”.

Moreover, the project organized several activities aimed at creating a network of trainers with skills in preventing and curbing violence in schools at various decision levels, for example, by training pupils how to manage conflicts. In addition, the program focused on drawing up a monitoring system for cases of violence in schools, and a unitary methodological framework to deal with the problem.

The target groups of the project were actors from the whole spectrum of the educational system, from students, staff with management, monitoring, evaluation and control responsibilities within the school inspectorates to school inspectors, directors and members of the school boards.

Although the teachers are not required to be trained in curbing school violence, a great number of them took part into training activities within the program “Youth against Violence”, between 2009-2011.

Within this program, the Institute of Education Sciences offered a course for teachers that combined direct meetings with learning activities on an online platform. The training program was accredited, offered 84 hours of instruction over two months, and was later adopted with success by some local teaching staff research centers in several counties. The courses were initially free of charge and then sponsored by the donations of the participants.

### **Reporting violence in schools**

In Romania, the schools must report any violent/ disruptive incident to school inspectorates in every county. As there is no legal binding that schools should report the incidents to police authorities (with the exception of serious and violent incidents that fall directly into the responsibility of the police), in a vast array of cases the teachers prefer to deal with the incidents themselves and not to call the police or the emergency number. According to the police representatives, even if there are cooperation protocols with school inspectorates, according to which police can intervene whenever the schools ask for support, the image of the school is

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considered altered, if the police is called every time an incident occurs. Still, sometimes teachers call Community Police in case of minor cases (when the incident have already occurred or it's not going to reappear or escalate) and emergency number 112 for Police (usually when the incident is still happening or is about to happen).

In what concerns the persons reporting the incidents, the whistleblower's protection is ensured by Law 571/2004 concerning the protection of personnel from public authorities, public institutions and from other establishments who report illegal actions. This law only applies to employees of the public sector, including those in public schools (art. 2). Moreover, the law provides strict whistleblower confidentiality and protection against abusive sanctions. Till now, I am not aware of any whistleblowing cases in public schools.

On the other hand, according to Law 272/2004 on the protection and promotion of child rights, teachers are required to notify the public social service or, where appropriate, the general social assistance and child protection cases of mistreatment, abuse or neglect of children. Representatives of legal entities and individuals caring for a child are obliged to cooperate with the representatives of the General Directorate of Social Assistance and Child Protection and provide all information necessary to resolve complaints.

Moreover, by the same law (art.96), in case the child abuse or neglect were committed by persons who, based on a legal working contract or another type of contract, were providing the protection, upbringing, care and education of the child, the employers of these persons must notify immediately the criminal investigation authorities and must separate the respective persons from the children who are in their care.

Still, for the moment, the main problem for Romania is that here is no such a uniform violent incident reporting system at the national level, so the schools have to report the incidents at the school inspectorates. In this respect, some of these inspectorates developed procedures by which schools report the incidents, while at the level of schools, the incidents are recorded in a database to be submitted monthly to inspectorate. A record of each case must be filled by the class masters within 5 days after the occurrence of an incident, and then sent to the person, designated by the school board or by the Commission against violence in school, with filling in the data base. The data base is then submitted to the school inspectorate, even if the schools don't have anything to report, case in which the document submitted should mention that there were no incidents occurred. The inspectorate centralizes all relevant information from the schools and draws quarterly and annual evaluation reports on school violence to be sent to the Ministry of Education.

In 2012, the National Council on preventing and curbing violence in schools was established, with the main task of assuming the role of a national anti-violence watchdog that will monitor and evaluate the implementation at national level of the National Strategy for curbing violence in schools. The council is supposed to develop and validate methodologies for collecting information on school violence (indicators, data collection procedures, etc.) and to coordinate regular collection of data at local and county level.

While the National Strategy talks explicitly about creating a nation-wide database about the incidents occurred in schools, until now, such a centralized database has not been created, and remains one of promises every new minister of education makes after accepting the job.

## Conclusions

In Romania, the phenomenon of violence in schools was widely discussed only in recent years, due to numerous incidents reported by the media, with the help of the students, who recorded them and made them public.

Yet, at the level of schools, and especially at the level of teachers, there a persistent feeling that reporting an incident will affect school's reputation - despite the trainings numerous teachers took for curbing this phenomenon.

In addition, changes at the top of the Ministry of Education in the last 3-4 years affected significantly the efforts made in the field, letting some important initiatives, such as creating a unified database for reporting cases of violence in schools, at the stage of promises.

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10. Institute for Education Studies ([www.ise.ro](http://www.ise.ro))
11. Project "Youth against violence"(<http://www.tineriimpotriviavolentei.edumanager.ro>)



# QUESTIONNAIRE ON VIOLENCE IN EDUCATION IN ROMANIA

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Raluca Alecu







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## SAFETY REGULATIONS AND PENALTIES

Is there any act against violence in education in your country?

The legal framework for guaranteeing a safe environment in schools can be found in Law 29/2010, amending and supplementing Law 35/2007 on improving safety in schools, in the Law 272/2004, on the protection and promotion of child rights (updated to 10 January 2008), and in the Education Law 1/2011. Also, there are two important Ministerial Orders of the Ministry of Education, Research, Youth and Sports: OMECT 4295/2005, approving the “Rules of organization and operation of schools” and OMECT 1409/2007, approving the strategy of the Ministry of Education on curbing violence in schools.

Which efforts have been taken to improve school safety in response to the rise of violence in schools? What do such plans include?

In 2007, the Ministry of Education developed a National Strategy, aimed to act as the main coordinating document for preventing and curbing violence in schools. While setting the principles and the general recommendations on preventing and curbing violence in schools, the strategy also goes into details about the role of each institution in the educational system, and proposes a minimal operational plan, at the schools’ level, for intervention in case of violence.

Last year, the Ministry also announced that it will develop a National Action Plan for Curbing Violence in Schools, but till now, no such plan appeared, in part because of successive changes in the leadership of the Ministry.

Also in the first half of 2012, the Ministry established the National Council for the Prevention and Curbing Violence in Schools (as requested by the Strategy), a national body aimed to monitor and assess the implementation of the National Strategy to curb violence in schools. In addition, between 2009 and 2011, Ministry of Education, together with Institute of Education Sciences, the OSC Agency and "Save the Children" Organization, implemented the “Youth against violence” program, funded by European Social Fund, in order to develop structures and mechanisms for informing, training, monitoring and communicating, at local, county and national level, in order to prevent and curb the phenomenon of violence in schools.

How are teachers and other school personnel involved in the development of school district policies and procedures concerning safe schools?

According to the Law 29/2010 (Art.3), at the level of each school, the teachers, together with the parents' representatives, issue a set of internal rules of the school (“regulament intern”), specifying the way that school is organized and run, including the policies and the procedures that make the school a safe environment for education. Each internal set of rules is drawn according to Romanian Constitution, the Education Law and the “Rules of organization and operation of schools” - a set of guidelines drawn by the Ministry of Education that every school must take into account when designing their own set of rules.

Following the National Strategy, the teachers can be involved in the policies for curbing violence in schools by taking part in the activities of the Commission for preventing and curbing violence in schools, presided by the headmaster of the school.

What are the penalties for assaults by any individual upon a teacher or school employee?  
What are the penalties for assaults by any non-student upon a student?

There are no specific regulations / sanctions concerning assaults by a non-student upon a teacher/student. All the assaults are addressed by the general legislative framework dealing with such offences.

## DEALING WITH DISRUPTIVE STUDENTS

Do teachers have the authority to remove disruptive students from the classroom? If affirmative, pursuant to which provisions or code of conduct? How has it been elaborated? When can students return to the classroom and who makes a final determination about the case?

According to the “Rules of organization and operation of schools”, the sanctions that may be applied to students are the following: individual warning; rebuke in front of the class / class council / teachers council; written rebuke; temporary or permanent withdrawal of a scholarship; *withdrawing from the courses* over 3-5 days; transfer to another class in the same school; transfer to another institution, with the consent of the receiving school; expulsion warning; expulsion.

A teacher cannot decide by himself/herself to remove a disruptive student from the class. The case of the student must be first brought in front of the class council (consisting of all the teachers of a certain class). The class council then proposes a sanction to the teachers’ council, the teachers’ council decides the sanction, and then class master should apply it. In case the sanction consists in withdrawal of the disruptive student from classes for 3-5 days, the school has to replace the classes with a different type of activity, usually in the school.

Who is required to adopt a code of conduct to provide for the maintenance of order on school grounds? Are student, teacher, administrator and parent organizations involved in the development of the code?

A draft for a country-level code of conduct for schools was developed by the Ministry of Education in 2011. Since then, the draft was subject to public debate, but later, abandoned, as the Ministry got a new minister. Some schools set up codes of conduct, as additional acts to internal rules of the schools, while others have included conduct regulations in their internal set of rules. These codes of conduct are approved by school boards, consisting of teachers (including the headmaster) representatives of the parents, of the mayor and of the local council.

Do ministries develop district-wide and at building-level school safety plans that provide for crisis response and management?

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Based on the provisions of the National Strategy, each school inspectorate develops a plan to curb violence in schools, whose application involves the Ministry for Internal Affairs.

#### EDUCATION AND TRAINING ABOUT VIOLENCE

Did the ministry develop violence prevention education and training packages?

Between 2009 and 2011, the program "Youth against Violence", conducted by the Ministry of Education, Research and Innovation, focused on the implementation of awareness activities concerning the acts of violence in schools, and offered support for institutional development in the field. For example, within the program, the Ministry developed two guiding documents aimed at institutions with responsibilities in curbing violence in schools. One was the "Good practices guide on preventing and curbing violence in schools", and the other "The Guide for structures with responsibilities in preventing and curbing violence in schools at school, county and national level".

Moreover, the project organized several activities aimed at creating a network of trainers with skills in preventing and curbing violence in schools at various decision levels, for example, by training pupils how to manage conflicts. In addition, the program focused on drawing up a monitoring system for cases of violence in schools, and a unitary methodological framework to deal with the problem.

Are teachers required to complete course work or training in school violence and prevention?

Although the teachers are not required to be trained in curbing school violence, a great number of them took part in training activities, under the program "Youth against Violence", between 2009-2011.

Within this program, the Institute of Education Sciences offered a course for teachers that combined direct meetings with learning activities on an online platform. The training program was accredited, offered 84 hours of instruction over two months, and was later adopted with success by some local teaching staff research centers in several counties.

Is a civility, citizenship and character education component included in the course of instruction?

In Romania, the curriculum for primary and secondary education includes an optional discipline "Civic Education"/"Civic culture". Besides the core curriculum and the optional subjects, the teachers may propose some extracurricular activities outside the classroom or the school, in order to cultivate in students a sense of citizenship and the responsibility toward the others. The most common types of extracurricular activities include participation in decision making activities in school / community (school boards, school councils, children's parliaments etc.) and civic actions (support for disadvantaged people, volunteering work, etc.).

#### PREVENTION, PROTECTIONS, PENALTIES

Have employees in schools to pass a criminal history background check?

According to Law 272/2004, on the protection and promotion of child rights (updated in January 2008) (art. 97), "it is forbidden to employ a person against whom a final and irreversible court decree has been issued for intentionally committing a crime, in the public or private institutions, as well as in the public or private residential services, which provide the protection, upbringing, care or education of children".

According to the Education Law, there are also some requirements for teachers mainly focused on the moral qualities and physical and mental health of the teacher, as well as on his/her capacity to relate appropriately with students, parents and colleagues.

Still, there were cases when a teacher was convicted with a suspended sentence, but was still teaching in school after several months since the conviction (2011), or when a religious education teacher was convicted for corruption, but still offered a merit salary increase for his teaching activity (2013).

Are schools required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities?

In Romania, the schools must report any violent/ disruptive incident to school inspectorates in every county. As there is no legal binding that schools should report the incidents to police authorities (with the exception of serious and violent incidents that fall directly into the responsibility of the police) in a vast array of cases the teachers prefer to deal with the incidents themselves and not to call the police or the emergency number.

Are employees given "whistleblower" protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence?

In Romania, whistleblower protection is ensured by Law no. 571/2004 concerning the protection of personnel from public authorities, public institutions and from other establishments who report illegal actions. This law only applies to employees of the public sector, including those in public schools (Art. 2). Moreover, the law provides strict whistleblower confidentiality and protection against abusive sanctions.

I am not aware of any whistleblowing cases in public schools.

Is there a child abuse reporting obligation prohibiting silent resignations?

According to Law 272/2004 on the protection and promotion of child rights, teachers are required to notify the public social service or, where appropriate, the general social assistance and child protection cases of mistreatment, abuse or neglect of children. Representatives of legal entities and individuals caring for a child or provide protection are obliged to cooperate with the representatives of the General Directorate of Social Assistance and Child Protection and provide all information necessary to resolve the complaints.

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Is there a legal obligation for certified or licensed school personnel to report allegations of child abuse committed in an educational setting by school employees or volunteers?

According to Law 272/2004 (art.96), in case the child abuse or neglect were committed by persons who, based on a legal working contract or another type of contract, were providing the protection, upbringing, care and education of the child, the employers of these persons must notify immediately the criminal investigation authorities and must separate the respective persons from the children who are in their care.

#### REPORTING REQUIREMENTS

Did the ministry develop a uniform violent incident reporting system?

There is no such a uniform violent incident reporting system at the national level in Romania, so the schools have to report the incident at the school inspectorates. In this respect, some of these inspectorates developed procedures by which schools report those incidents, while at the level of schools, all incidents are filled in a database that will be submitted monthly to inspectorate.

In 2012, the National Council on preventing and curbing violence in schools was established, with the main task of assuming the role of a national anti-violence watchdog that will monitor and evaluate the implementation at national level of the National Strategy for curbing violence in schools.



# LEGAL FRAMEWORK ON VIOLENCE IN EDUCATION: COUNTRY BRIEF FINLAND

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Päivi Gynther





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This paper has been prepared in response to a request in August 2013 from the European Education Law and Policy (ELA) to be presented at the Conference “Coping with New Legal Challenges in Education” September, 13-14, 2013, Kaunas, Lithuania. The structure of the paper follows the format given by the ELA. The focus is on the legal framework for safe learning environments, besides which general laws that contain safety provisions applicable to education sector are also taken into account.

## 1. SAFETY REGULATIONS AND PENALTIES

Both legal efforts and policy measures have been adopted in recent years to improve school safety in Finland. School safety was addressed already in the comprehensive reform of school legislation that took place in 1998. The key provisions concerning the right to safe learning environment were further elaborated and updated in 2003.

Two truly grave cases of violence occurred in Finnish schools in the late 2000s, which speeded up school safety reforms. A shooting incident took place in a secondary school in 2007, killing eight persons. Another fatal shooting took place at a polytechnic in 2008, killing ten persons. In both cases the shooter was a student of the school who shot himself after the massacre. These two incidents had strong impact on continuous measures taken to improve school security and safeguards.

The most recent law amendments came into effect from January 2012. At that point amendments were made to the legislation on universities, polytechnics, vocational education and training, and vocational adult education and training, and to the Criminal Records Act. These amendments clarified factors preventing admission to vocational and academic studies in fields that involve the safety of minors. The legislation now enables the cancellation of a student's right to study on the grounds of unsuitability for the profession, the permanent disciplinary expulsion of a student from an educational institution as a consequence of serious offences, and the introduction of drug testing.

At the moment of this writing, a draft law (hereafter Draft Law 2013) has been passed to the Parliament proposing legislative changes to further improve safety in education, as will be described in this paper.

As to recent policy efforts to improve school safety, the Programme of the current Government of Finland expressly sets out safe schools as one of the fundamental premises of organisation of basic education. In relation to this, the Government Programme stipulates that the right of individuals in community care to participate in the compulsory basic education will be improved, the right of children placed in foster care to basic education will be secured, and more effective steps to reduce bullying in schools will be taken.

In the Development Plan of Education and Research 2011–2016, which specifies the Government Programme, it is stipulated that the child's right to safe instruction will be guaranteed. The Development Plan recognizes that children and young people have the right to a safe growth and learning environment, and that schools should stress inclusion, well-being, safety and respect of fellow beings. Consequently, “measures will be taken to strengthen the

school's role in developing pupils' emotional and social skills and to support pupils' and students' inclusion and communality. Action will be stepped up to combat bullying. Education for tolerance and good conduct will be increased in schools”.

School safety is promoted not only in the education laws, but also in cross-sector legislation of general applicability. The Occupational Safety and Health Act (738/2002) applies to work carried out under the terms of an employment contract and to work carried out in an employment relationship in the public sector or in comparable service relation subject to public law. Most of Finland's 62,000 educators are covered by this Act that sets the minimum requirements for safe working environment. According to Section 2, employers are required to take care of the safety of their employees while at work. For this purpose, employers shall consider the circumstances related to the work, working conditions and other aspects of the working environment as well as the employees' personal capacities.

The Occupational Safety and Health Act puts employers under an obligation to design and choose the measures necessary for improving the working conditions as well as decide the extent of the measures and put them into practice. The following principles shall be observed as far as possible: (1) preventing the creation of hazards and risk factors; (2) eliminating the hazards and risk factors or, if this is not possible, selecting a less hazardous or harmful alternative; (3) adopting safety measures which have a general impact before individual measures; and (4) taking account of technological developments and other available means. Employers shall ensure that safety and health measures are taken into account in an appropriate manner in the operations of each part of their organisations. Section 9 of the Act stipulates that the employer shall have a policy for action needed in order to promote safety and health and to maintain the employees' working capacity. The objectives for promoting safety and health and maintaining working capacity deriving from the policy must be discussed together with the employees or their representatives. Moreover, Section 10 obliges the employer to systematically and adequately analyse and identify the hazards and risk factors caused by the work.

Another general law with relevance to school safety is the Health Care Act (1326/2010), which includes specific provisions on duties relating both to school-based health care and to student health care. Section 16 states that the provision of school health services for pupils enrolled in educational institutions providing basic education are in the responsibility of local (municipal) authorities, and that such school health services shall include triennial checks on the health and safety of school environments. Similarly, Section 17 stipulates that student health care services to students enrolled in upper secondary schools, educational institutions providing vocational basic education, and universities and other institutes of higher education shall include triennial checks on health and safety in educational institutions.

The content of school safety plans is not defined in detail on the national level. Each provider of basic education, compulsory schooling and pre-primary education has a legal duty to develop its own plans and guidelines relating to safety, crisis situations and occupational safety. The Basic Education Act was amended on this issue latest in 2003, and Section 29 currently stipulates that the education provider shall draw up a plan, in connection with curriculum design, for safeguarding pupils against violence, bullying and harassment, execute the plan

and supervise adherence to it and its implementation. The National Board of Education shall issue regulations in the National Core Curriculum concerning the formulation of the plan. Moreover, the education provider shall adopt school rules or issue other regulations to be applied in the school with a view to promoting internal order in the school, unhindered learning and the safety and satisfaction of the school community. These school rules and other regulations may lay down practical arrangements and proper conduct necessary for safety and satisfaction at school. Furthermore, regulations may be issued concerning the handling of school property and staying and moving on the school premises and in the school area. As regards the formulation of safety plans on individual school level, the National Board of Education issues regulations in the National Core Curriculum, in line with the duty laid to it in Section 29 of the Basic Education Act. The National Core Curriculum stipulates on the promotion of safety and security in the following words:

“Every school must have school rules or other regulations applied within the school to promote internal order. In addition, it is imperative to draw up a plan, in connection with curriculum design, for safeguarding pupils against violence, bullying and harassment, to execute the plan and to supervise adherence to it and its implementation. Prevention of and intervention in violence, bullying and harassment is assigned to everyone working within the school community. Violence, bullying or harassment may be direct or indirect verbal or physical use of force or social manipulation, which violates a person’s physical, mental or social integrity. The perpetrator may be a pupil, an adult working in the school or a person from outside the school community. Bullying means systematic, intentional and repeated verbal or physical negative action targeted at the same individual or group. An imbalance of power between the bully and the bullied is characteristic of bullying. It is also common for bullying to take place in a group. Harassment may manifest itself as inappropriate treatment and language, which may involve gender-related insinuating facial expressions, gestures or double engenders, or unwanted physical contact. In addition to bullying and harassment, other undesirable or aggressive and violent forms of behaviour may also occur within a school community. Violence refers to threats or acts of intentional use of physical force or power targeted at oneself, another individual, a group or a community. It may result in injury, mental handicap or developmental difficulty. All such cases must be addressed.

There are provisions analogous to Section 29 of the Basic Education Act in the General Upper Secondary Schools Act and in the Vocational Education Act, along with the effectuating curricula intended for young people. The duty to draw up safety plans in connection with curriculum design does not apply to providers of adult education.

With regard to safety plans, a significant general law is the Rescue Act (379/2011) that aims to improve the safety of people and to reduce the number of accidents in all sectors of society. It also aims to ensure that when there is the threat of an accident or when an accident has occurred, people are rescued, important functions are secured and the consequences of the accident are successfully limited. Section 14 of the Act stipulates on the self-preparedness. Education providers, for their part, are put under an obligation to prevent dangerous situations; to prepare for the protection of persons, property and the environment in dangerous situations; to prepare for taking rescue action which they are capable of performing independently; and to take measures to ensure safe exit in other dangerous situations and to facilitate rescue operations.

Educational institutions shall have an emergency plan in accordance with Section 15 of the Rescue Act. The drawing up of the emergency plan is the responsibility of the occupant of

the building or the site. The plan shall contain the details of the conclusions on the assessments of the dangers and risks; the safety arrangements of the building and the facilities used for the operations carried out in the building or at the site; the instructions for building residents and other persons on how to prevent accidents and what action to take in accidents and dangerous situations; any other measures related to self-preparedness at the site.

Teachers and other school personnel are involved in the development of procedures concerning safe schools primarily through curriculum development. The local education authorities and the schools themselves draw up their own curricula for pre-primary and basic education within the framework of the national core curriculum. These curricula may be prepared for individual municipalities or institutions or include both sections. The local curriculum, which must include a plan for safeguarding pupils against violence, bullying and harassment, also must be drawn up in cooperation with the local health care and social services authorities. Where necessary, drawing up the curriculum may also involve cooperation with other authorities and partners. Municipal and other policies concerning the safety and well-being of children and young people are to be taken into account when drawing up the curriculum. The National Board of Education produces materials on safety at school along with other crisis materials for educational institutions. The National Board also arranges educational events for school personnel nationwide aiming to upgrade safety and communality competencies and prevention and anticipation skills in educational institutions. The events have dealt with preparation for crises, instructions for crisis situations, guidelines for crisis management and for after-care, and the treatment of crises in the media. There are also university-based professional development programmes in Safety Training for Schools, targeted both to school personnel and to school authorities.

The penalties for assaults are prescribed in the Criminal Code (39/1989), which applies to an offence committed in school environment as to offences committed anywhere in Finland. Chapter 3, Section 4 of the Criminal Code stipulates as prerequisites for criminal liability that the perpetrator had reached the age of fifteen years at the time of the act and is criminally responsible. The police can carry out pre-trial investigation even of an offence committed by a person that has not reached the age of fifteen years. Intoxication or other temporary mental disturbance induced by the perpetrator himself or herself is not taken into account in the assessment of criminal responsibility unless there are particularly weighty reasons for this.

The Criminal Code also stipulates that an act that is necessary to defend against an on-going or imminent unlawful attack is lawful as self-defence. In such a situation, however, the nature and strength of the attack, the identity of the defender and the attacker and the other circumstances must be taken into account. The need to act in self-defence actualises in many instances of school violence.

The types of general punishment listed in the Criminal Code are summary penal fine, fine, conditional imprisonment, community service, monitoring sentence and unconditional imprisonment. A special punishment for offences committed by a person below the age of 18 years is the juvenile penalty. Special punishments for public officials are warning and dismissal from. School rules or other regulations issued by education provider shall subordinate to state legislation on the same subject. Corporal punishment administered to children is not permitted by anybody.



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## 2. DEALING WITH DISRUPTIVE STUDENTS

The Basic Education Act, the General Upper Secondary Schools Act, and the Vocational Education and Training Act each contain specialized provisions on procedure in a disciplinary matter and enforcement of suspension, on removal of a disruptive and potentially dangerous pupil, and on disciplinary action in relation to pending legal action and a court order.

The following disciplinary measures against disruptive students are listed in the Basic Education Act:

A pupil who disrupts teaching or otherwise transgresses against school order or cheats may be kept in detention for a maximum of two hours or may be given a written warning. If the offence is serious or if the pupil carries on inappropriate conduct referred to above after detention or a written warning, the pupil may be suspended for a maximum of three months. A written warning and suspension are sanctions.

A pupil who disrupts teaching may be dismissed from the classroom or other teaching facility for the remainder of the class or be ordered to leave a school function.

A pupil may be banned from participating in education at the most for the remainder of the school day if there is a risk that the pupil's violent or aggressive behaviour will endanger the safety of another pupil or a person working at the school or another teaching facility or that the pupil's disruptive behaviour will inordinately complicate teaching or an activity associated with it.

The Basic Education Act provides following procedures that must be followed in a disciplinary matter:

Before a pupil is kept in detention, before a written warning is issued to a pupil and before a pupil is suspended, the deed or dereliction of duty which has caused the disciplinary measure must be specified, the pupil must be heard, and any other necessary investigation must be made. Before a disciplinary action is taken, the pupil's parent/carer must be given an opportunity to be heard. A formal decision must always be issued concerning a detention and a written warning.

The education provider shall arrange teaching to prevent a suspended pupil from falling behind the progress made by his or her year-class and teaching group. A personal plan based on the curriculum according to which teaching is given and learning monitored shall be devised for the suspended pupil.

When a pupil has behaved so violently or threateningly as to endanger the safety of another pupil or a person working at the school or in another teaching facility and there is a manifest risk that the violent or threatening conduct will recur, suspension may be enforced whether or not the decision on suspension has come into effect.

The Basic Education Act stipulates on the authority of teachers to remove a disruptive and potentially dangerous pupil as follows:

The headteacher and teacher have the right to remove from the classroom or other teaching facility a pupil who does not obey a dismissal. The headteacher and teacher also have the right to remove from the school premises a pupil who does not leave after having been temporarily banned from participating in education.

If the pupil to be removed seeks to resist efforts to remove him or her, the headteacher and teacher have the right to remove the pupil using force which can be deemed justifiable in view of the pupil's age and the imminence of threat or the severity of the resistance and which is based on an overall assessment of the situation.

No implements of force may be used to remove a pupil. A teacher or a headteacher who has resorted to force shall submit a written account of the occurrence to the education provider.

At present, it is not the responsibility of ministries to develop district-wide and at building-level school safety plans that provide for crisis response and management. Nonetheless, a working group that was set in 2010 to follow up the development of school safety proposes in its final report that safety will be included as an integrated part of all the strategies in the education sector, from national to local level (Reports of the Ministry of Education and Culture 2013:8, available only in Finnish).

## 3. EDUCATION AND TRAINING ABOUT VIOLENCE

Currently, teacher training providers are not required to deliver mandatory and consistent courses in school violence and prevention. Municipalities, under whose auspices the pre-primary, primary, lower secondary and upper secondary school operate, are responsible for providing teachers in-service education. Some municipalities organize in-service programs uniformly for all teachers, whereas others let teachers themselves or school principals to decide what type of further training is need and how much of it is funded by the employer.

The preparatory documents for the Draft Law 2013 raise concerns about the unevenness of in-service educational options in different parts of the country. Consistently, the final report of the Follow-up Group mentioned above proposes that know-how in school safety issues will be strengthened through teacher training. Moreover, the final report proposes that the culture of safety will be promoted in educational institutions; that cross-sector collaboration of public authorities will be intensified; and that the legislation on school safety will be extended to cover even publicly funded providers of day care and pre-primary care.

Even though there is no law-based requirement for teacher training providers to deliver particular courses on school violence, the Ministry of Education and Culture has taken many measures to advance crisis management in educational institutions. In the aftermath of the school shooting tragedies in the 2000s, the Ministry opened web-pages contain information about how to prepare for crisis situations, with links to materials available to schools. A letter was sent to universities and polytechnics, drawing their attention to the need to prepare for different crises. The National Board of Education also started to publish support material in-

tended for use by all educational institutions in crisis situations at web sites oph.fi and edu.fi. Moreover, a joint taskforce was established to plan short-term training for teachers, students and school staff on "Safety and preparation for crises in educational institutions", which started in spring 2008. Planning for longer-term training began.

There are continuous pressures to include new competencies in teacher education, and many teachers may find it exhausting to cope with the multitude of requirements. Some researchers also suggest that, due to high school-level variance of physical violence, training for handling violent situations could be targeted to the category of special education teachers and to schools in which teachers' exposure to violence is common (Ervasti et.al. 2012). As to child abuse awareness training, a national action plan was established in the aftermath of the new child welfare act of 2007 to train law enforcement, judicial and social welfare officials in methods of identifying, protecting, and assisting child victims of sexual abuse. Educators were not among targeted audiences.

School violence does not only occur in acute crisis situations. It is also related to more or less silent bullying culture in education. In this broad sense of the word, there is a long tradition of measures intended to tackle violence in schools. The tradition includes diverse intervention programmes, peer mediation where pupils are given an active role, and even alarm brackets worn by pupils prone to be victimized (Björkqvist & Jansson 2002). From a legal point of view, the responsibility for dealing with bullies remains with adults in the school, as was described in Section 2 above. The Draft Law 2013 strives to clarify the rights, duties and responsibilities at school and class-room level.

In spite of many programmes and initiatives, bullying is reportedly remaining a serious problem and calling for continuous action. The Development Plan of Education and Research 2011–2016 mentions expressly the anti-bullying programme KiVa-koulu (Cool school), a research-based anti-bullying program funded by the Ministry of Education and Culture. The effectiveness of KiVa-programme has been shown in a large randomized controlled trial and it is being applied by some 2500 comprehensive schools.

The National Board of Education has amended the national core curricula for basic and general upper secondary education levels to integrate tolerance and anti-bias issues into subjects taught. Responsibility, a sense of communality and respect for the rights and freedoms of individuals are mentioned among values that must be evident in the curriculum. As was described above, the national core curricula provide guidance to teachers, whereas local curriculum planning is the responsibility of schools and municipalities. Teachers and school principals play a key role in curriculum design. The school-level curriculum is approved by local education authorities.

#### **4. PREVENTION, PROTECTIONS, PENALTIES**

The Act on checking the criminal background of persons working with children (504/2002) contains provisions on the procedure for obtaining the criminal record of persons appointed to work with minors. The Act applies to work performed in employment and civil service relationships which involves, on a permanent basis and to a material degree and in the guardian's absence, raising, teaching or caring for or looking after a minor or other work performed

in personal contact with a minor. An employer must ask a person to produce an extract from the criminal record when the person is employed or appointed for the first time to a position which includes work with children. In addition to persons in employment relationship, the Act also applies to persons in non-military service, to interns and to trainees, and to family care provides, as defined in respective Acts. However, the Act does not apply to work referred just above which lasts for a maximum of three months within one year. Neither does it apply to volunteers providing support to schools or other institutes working with minors.

Important amendments entered into force in 2012 in the Child Welfare Act concerning mandatory reporting on child abuse. Since then, persons employed by, or in the positions of trust for, education services, education or training providers, and units engaged in morning and evening activities for schoolchildren were included in the list of actors that have a duty to notify the municipal body responsible for social services without delay and notwithstanding confidentiality regulations if, in the course of their work, they discover that there is a child for whom it is necessary to investigate the need for child welfare on account of the child's need for care, circumstances endangering the child's development, or the child's behaviour (Child Welfare Act, Section 25 (Amendment 88/2010). Moreover, they have a duty, notwithstanding confidentiality provisions, to notify the police when they have cause to suspect on the basis of circumstances that have come to their knowledge any sexual abuse of person below the age of 18 punishable under the Penal Code (39/1889). (542/2011) (Subsection 3 added by Act 542/2011 enters into force on 1 January 2012)

Thus, teachers not merely have a right but a duty to report their suspicions to the police. It is not possible to make anonymous reports and the parents are on request allowed to know the name of the reporter. At least Education Department of the City of Helsinki has provided guidelines for schools on the practical application of the mandatory reporting.

Among child abuse preventive measures, it is also noteworthy that the legislation on universities, polytechnics, vocational education and training, and vocational adult education and training includes, since 2012, the possibility to revoke a student's right to study fields which involve the safety of minors. The right to study can be revoked on the grounds of a conviction for an act of obscenity, a sexual crime, homicide or aggravated assault or a gross narcotics offence. The student can be required to provide an extract of his/her criminal record.

Also worth mentioning is that a draft law on checking the criminal background of volunteers working with children is presently in the round of comments. This law reform aims to ensure that the law Finland is in harmony with EU Directive 2011/93 on combating sexual abuse and sexual exploitation of children, and child pornography, Article 10, which reads: "Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 entered in the criminal record or of the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions."

The committee proposes amendments to the Vocational Education and Training Act, the Vocational Adult Education Act, the Polytechnics Act, the Universities Act, and the Criminal Records Act. The purpose of the amendments is to improve safety in education and subsequent working life by increasing the range of measures available to education providers and higher education institutions in matters regarding the unsuitability and security of students. The key

amendments would relate to factors preventing admission, the right to a safe study environment, the revocation and restoration of the right to study, drug testing and disciplinary action. In addition, the committee proposes that the legislation be amended to include necessary provisions on procedures, access to information and the processing of information, and appeals in the aforementioned situations.

## 5. REPORTING REQUIREMENTS

Information on violence in schools is not collected comprehensively. Neither bullying nor violent incident statistics are compiled systematically. The main actor in collecting data on school welfare and its deficiency is the National Institute for Health and Welfare (THL), a research and development institute under the Finnish Ministry of Social Affairs and Health. In its capacity as the statutory statistical authority for school and student welfare, THL carries out School Health Promotion Study (available only in Finnish) every two years. Responses are collected from pupils in year 8 and 9 of comprehensive school and year 1 and 2 of upper secondary school and vocational schools.

The issue of child abuse is on the state level primarily the responsibility of the Ministry of Social Affairs and Health (child protection and health care) and the Ministry of Justice (juridical questions, conviction). Child Welfare Act stipulates that the municipal body responsible for social services must keep a register of child welfare notifications and requests for investigating the need for child welfare made instead of child (Section 25b, amendment 88/2010).

Law enforcement authorities have their own register (criminal record) of people who are convicted of child abuse and related crimes. The Statistics Finland release numbers of court decisions of different crime types annually. According to these statistics, the number of cases of child sexual abuse in the country has increased since 2011. The increase in numbers may also depend on the reporting obligations laid down in the new Child Welfare Act, as was discussed above.

Summary records on bullying and school violence summarise the content of diverse records kept by education providers. As far as confidentiality of the records is concerned, the general laws addressing the key data protection issues shall apply whenever there is no special law that prevails. The general laws in question are the Personal Data Act (523/1999), the Act on the Openness of Government Activities (621/1999), the Act on the Protection of Privacy in Electronic Communications (516/2004), and the Act on the Protection of Privacy in Working Life (759/2004). Among special provisions in the education sector can be mentioned Section 40 of the Basic Education Act (amendment 642/2010), Section 32 of the General Upper Secondary Schools Act, Section 42 of the Vocational Education and Training Act, and Section 16.4 of the Vocational Adult Education Act, which all stipulate on confidentiality and handling of personal data.

In spite of the unavailability of comprehensive statistics on school violence, it is reasonable to conclude that in international comparison, Finnish schools are relatively safe sanctuaries. There are no violent political or military attacks against education institutions or against those working and learning in them. School buildings are not bombed, rocket-attacked, burned or ransacked, as occurs in countries suffering from large-scale violent conflicts.

Nevertheless, the need for law reform in service of safe learning environments seems to be continual even in Finland. According to the Trade Union of Education in Finland, threatening situations and violence in schools have increased in recent years. The number of schoolchil-

dren who have experienced bullying has reportedly remained unchanged notwithstanding the multitude of programmes planned to tackle the problem. Measures to guarantee both the pupil's and teacher's right to safe learning and working environment are persistently considered as unsatisfactory.

The case of Alppila lower secondary school is illustrative. In spring 2013, a teacher physically removed a disruptive, abusive student out of a school cafeteria. As a consequence, the Education Department of the City of Helsinki dismissed the teacher with immediate effect, arguing that he had endangered the pupil's right to a safe learning environment. The case set off a nationwide debate over teachers' rights to impose discipline on disobedient pupils. An online petition in support of the teacher gained more than 100,000 signatures within a day of being launched. The teacher appealed the decision to the Helsinki Education Board, which cancelled his dismissal and reinstated him, but with a written warning appended to his employment file. The Alppila school incident speeded up demands on laws and regulations that are responsive to everyday conflict situations.

The latest draft law -- at the moment of this writing in the reading of the Parliament -- also proposes legislative changes to provide teachers and school principals with the authority to search students' clothing and possessions and to confiscate devices causing disruption. The new law would make it easier for school officials to search for and confiscate dangerous objects that students may be carrying. The amendment would also allow teachers to forcibly confiscate phones from recalcitrant students. Mobile phones and smartphones in particular are reportedly disrupting learning as students play games, download material, talk and send messages during classes. Moreover, mobile phones with build-in video cameras enable cyber-bullying of fellow pupils as well as teachers. The new regulations are expected to come into force in 2014.

## 6. REFERENCES

Instructions for the conference contributors suggest that it may not be useful to include publications difficult for an international audience to obtain or to read. Accordingly, the following list of references contains just three key reports that are available in Finnish only:

Opiskeluvoimien perustaminen, päihdetestaus ja kurinpito turvallisuutta edistävinä keinoina. Opetusministeriön työryhmämuistioita ja selvityksiä 2010:7

Turvallisuuden edistäminen oppilaitoksissa. Seurantaryhmän loppuraportti. Opetus- ja kulttuuriministeriön työryhmämuistioita ja selvityksiä 2013:8.

HE 66/2013 vp. Hallituksen esitys eduskunnalle laeiksi perusopetuslain, lukiolain, ammatillisesta koulutuksesta annetun lain, ammatillisesta aikuiskoulutuksesta annetun lain ja kunnan peruspalvelujen valtionosuudesta annetun lain 41 ja 45 §:n muuttamisesta.

For comparative law research, it is basic legal texts that are most relevant references. The law of Finland contains no special Act against violence in education as such. Instead, important provisions addressing violation in education are to be found in the following Acts of Parliament (in brackets the consecutive numbering in the Statutes of Finland). Unofficial translations of the acts that are marked with an asterisk (\*) are available online in English at FINLEX database maintained by Finland's Ministry of Justice <http://www.finlex.fi/en/>

Basic Education Act (628/1998)\*,

General Upper Secondary Schools Act (629/1998),

Vocational Education and Training Act (630/1998),

Vocational Adult Education Act (631/1998),

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Polytechnics Act (351/2003)\*,  
Universities Act (558/2009)\*,  
Criminal Records Act (770/1993)\*,  
Act on Checking the Criminal Background of Persons Working with Children (504/2002)\*,  
Occupational Safety and Health Act (738/2002)\*,  
Child Welfare Act (417/2007)\*,  
Health Care Act (1326/2010)\*,  
Rescue Act (379/2011)\*.

Policy documents, research reports and briefs in English:  
Programme of Prime Minister Jyrki Katainen's Government, 22 June 2011,  
<http://valtioneuvosto.fi/hallitus/hallitusohjelma/pdf/en334743.pdf>  
Development Plan of Education and Research 2011–2016. Reports of the Ministry of Education and Culture 2012:3  
<http://www.minedu.fi/export/sites/default/OPM/Julkaisut/2008/liitteet/opm11.pdf>  
Björkqvist Kaj & Viktoria Jansson 2002. Tackling violence in schools: A report from *Finland*, in Smith, P.K. (ed.) "Violence in Schools: The Response in Europe", pp. 187-199.  
[http://www.vasa.abo.fi/svf/up/articles/tackling\\_violence\\_in\\_schools.pdf](http://www.vasa.abo.fi/svf/up/articles/tackling_violence_in_schools.pdf)  
Ervasti J, et.al. 2012. Work-related violence, lifestyle, and health among special education teachers working in Finnish basic education. **J Sch Health**, 82 (7) 336 - 343.)  
Sahlberg Pasi 2010. The Secret to Finland's Success: Educating Teachers.  
<http://edpolicy.stanford.edu/sites/default/files/publications/secret-finland%E2%80%99s-success-educating-teachers.pdf>

# QUESTIONNAIRE ON VIOLENCE IN EDUCATION IN FINLAND

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Päivi Gynther





## SAFETY REGULATIONS AND PENALTIES

Is there any act against violence in education in your country?

There are miscellaneous provisions in several acts.

Which efforts have been taken to improve school safety in response to the rise of violence in schools?

Several amendments in the law of education.

Several national committees, working groups and follow-up groups.

Policy measures ranging from national to local levels.

What do such plans include (eg. policies and procedures for responding to threats of violence, responding to acts of violence, safe evacuation during a violent incident, contacting law enforcement officials and parents during a violent incident, and protocol for responding to bomb threats, hostage-takings, intrusions and kidnappings, other life threatening events that warrant the evacuation of students and/or staff because of an imminent threat to their safety or health, including, but not limited to: riot, hostage-taking, kidnapping and or the use of threatened use of a firearm, explosive, bomb, incendiary device, chemical or biological weapon, knife or other dangerous instrument capable of causing death or serious injury, ...)

School safety plans shall be in line with the national legislation in force, with the national core curriculum, with municipal regulations and guidelines. Nevertheless, safety plans are drawn up at school-level and may include a variety of issues.

How are teachers and other school personnel involved in the development of school district policies and procedures concerning safe schools

Teachers play an active role in the design of local curriculum as well as other documents. By-laws are commonly drawn up at school level and approved by the municipal education board.

What are the penalties for assaults by any individual upon a teacher or school employee?  
What are the penalties for assaults by any non-student upon a student?

The types of punishment listed in the Criminal Code are: summary penal fine, fine, conditional imprisonment, community service, monitoring sentence and unconditional imprisonment. A special punishment for offences committed by a person below the age of 18 years is the juvenile penalty. Special punishments for public officials are warning and dismissal from office.

## DEALING WITH DISRUPTIVE STUDENTS

Codes of Conduct

School-specific

Teacher Responsibilities

Stipulated in law

Teacher Removal of Students from a Classroom

Principal Suspension

Stipulated in law (.e.g. Basic Education Act, Section 36).

Do teachers have the authority to remove disruptive students from the classroom? If affirmative, pursuant to which provisions or code of conduct? How has it been elaborated? When can students return to the classroom and who makes a final determination about the case?

Yes. Basic Education Act, Section 36. Amendment further clarifying the content of this provision is in the reading of the Parliament (August 2013).

Who is required to adopt a code of conduct to provide for the maintenance of order on school grounds? Are student, teacher, administrator and parent organizations involved in the development of the code?

It is education provider's duty to oversee that schools have up-to-date codes of conduct.

Do ministries develop district-wide and at building-level school safety plans that provide for crisis response and management?

School safety plans are drawn up at the local level.

## EDUCATION AND TRAINING ABOUT VIOLENCE

Did the ministry develop violence prevention education and training packages?

Yes.

Are teachers required to complete course work or training in school violence and prevention?

No obligatory.

Is a civility, citizenship and character education component included in the course of instruction?

Yes.

School Violence Prevention Training

Available.

## PREVENTION, PROTECTIONS, PENALTIES

Have employees in schools to pass a criminal history background check?

Yes.

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Are schools required to furnish information on violent and disruptive incidents at schools and to report such incidents to local enforcement authorities?

No obligatory.

Are employees given "whistleblower" protection (i.e., immunity from civil liability and protection against retaliatory actions by their employers), if they make a report about a suspected act of violence?

No.

Is there a child abuse reporting obligation prohibiting silent resignations?

Yes.

Is there a legal obligation for certified or licensed school personnel to report allegations of child abuse committed in an educational setting by school employees or volunteers?

Yes (employees), Draft law (volunteers).

Child Abuse Reporting and Prohibiting Silent Resignations

Yes.

Whistle Blower Protection for Employees Reporting Acts of Violence

No.

Teacher Discipline

?

Assaults by any individual upon a school employee on school grounds or by any non-student upon a students on school grounds

?

#### REPORTING REQUIREMENTS

Did the ministry develop a uniform violent incident reporting system?

No.

Uniform Violent Incident Reporting

No.

Minimum Annual Reporting Requirements

No.

Reporting Sentences to Schools

?



# QUESTIONNAIRE ON BROAD SCHOOLS TO SUPPORT PUPILS LIVING IN POVERTY IN ESTONIA

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Jüri Ginter  
Sille Uusna

100



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Remark: the focus of the country reports is on law and policy, and how they correspond with reality, not on educational programs and not on educational outcomes

#### Definition of the broad school concept in your country

The “broad school concept” is not in use in Estonia. The term is “ühtluskool” which may be translated as “comprehensive school”. In reality we do not have comprehensive schools as “elite” municipal schools select pupils to their first form (at the age of seven). The graduates of these schools are the majority of the students in the universities. To pass this selection children go to special pay courses.

#### Definition of poverty in your country

The state has fixed the coping boarder, what is 76,70 euros in a month (excluding housing expenditures) for a single person and 61,36 euros in a month for other members of the family. All people get at least this amount of money. The relative poverty line is 60% of median income of household members. 17 % of children up to 17 lived under this poverty line in 2011.

#### Target groups of broad schools

Target groups are remote and sparsely inhabited areas, where the income level is also lower, families with many children and single parent families and families at risk (parents are unemployed, alcoholics or handicap). There are also some Roma children.

#### Funding of broad school activities

Broad school activities are mainly funded from public resources (municipality, state and EU). In some cases the funding is not sufficient.

#### The role of broad school projects to support pupils living in poverty

Pupils get free meal in basic schools. Textbooks and workbooks are free. Transportation to the school is free and organized by the municipality. Municipalities support pupils living in poverty to buy cloths, glasses. Municipalities support poor families with housing. The forms and level of the support in municipalities is different. The state pays income support to poor families and helps to find a job. The state supports teachers who go to work outside of big towns. Some municipalities help them with housing and pay additional salary. There are also some projects to support “street children”, which are often carried out by different churches. There are no special projects to decrease the difference between the schools.

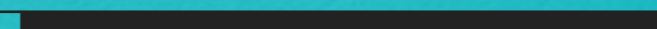
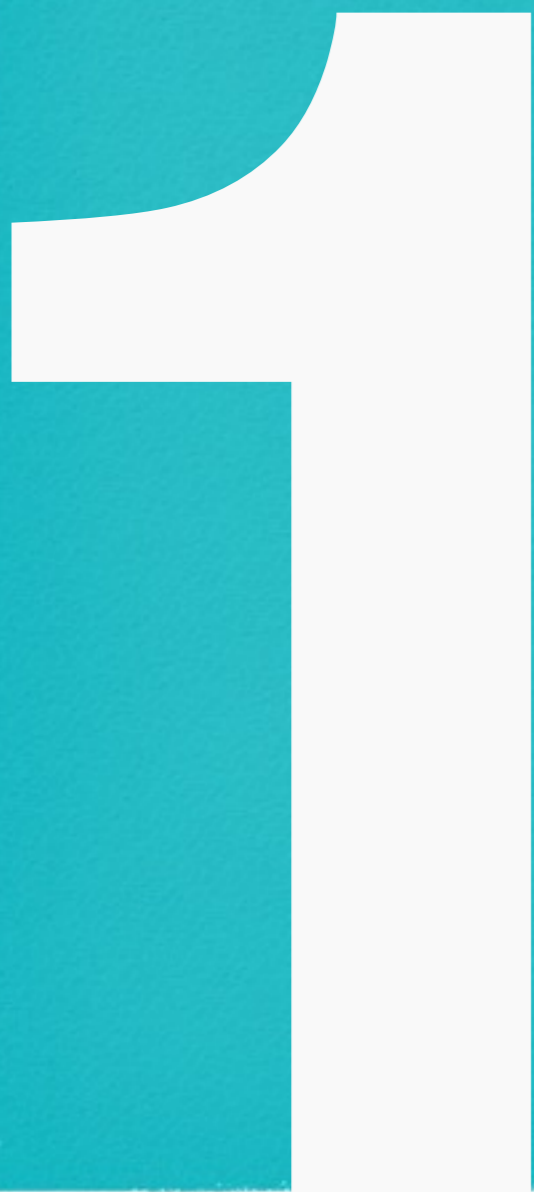
#### REFERENCES

<http://www.sm.ee/tegevus/sotsiaalhoolekanne/toimetulekutoetus.html>

<http://pub.stat.ee/px-web.2001/Dialog/Saveshow.asp>



# CORRUPTION IN EDUCATION BAROMETER





5 PERCENTAGE OF RESPONDENTS WHO FELT THESE INSTITUTIONS WERE CORRUPT/EXTREMELY CORRUPT IN THIS COUNTRY/TERRITORY



**70%**  
of respondents in **Albania** who felt that **education systems** were corrupt/extremely corrupt



**81%**  
of respondents in **Albania** who felt that **judiciary** was corrupt/extremely corrupt

PERCENTAGE OF RESPONDENTS WHO FELT THESE INSTITUTIONS WERE CORRUPT/EXTREMELY CORRUPT IN THIS COUNTRY/TERRITORY

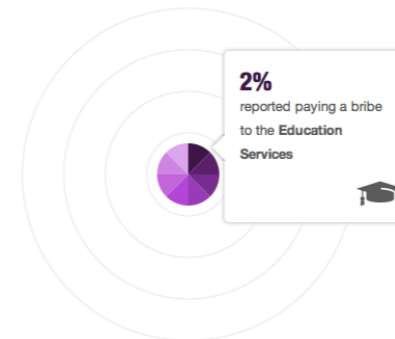


**17%**  
of respondents in **Belgium** who felt that **education systems** were corrupt/extremely corrupt

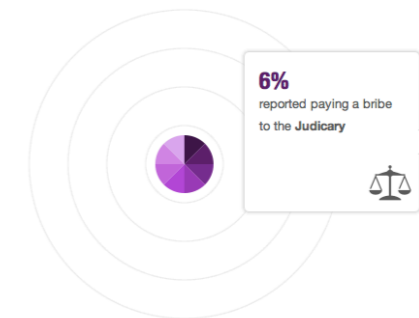


**43%**  
of respondents in **Belgium** who felt that **judiciary** was corrupt/extremely corrupt

6 HAVE YOU OR ANYONE IN YOUR HOUSEHOLD PAID A BRIBE TO ONE OF THESE EIGHT SERVICES IN THE LAST 12 MONTHS?\*



6 HAVE YOU OR ANYONE IN YOUR HOUSEHOLD PAID A BRIBE TO ONE OF THESE EIGHT SERVICES IN THE LAST 12 MONTHS?\*





**47%**

of respondents in **Bulgaria** who felt that **education systems** were corrupt/extremely corrupt



**50%**

of respondents in **Croatia** who felt that **education systems** were corrupt/extremely corrupt



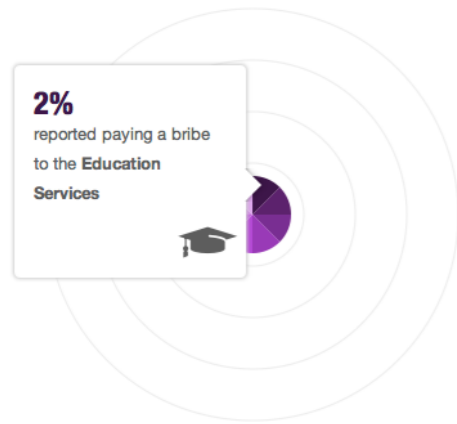
**86%**

of respondents in **Bulgaria** who felt that **judiciary** was corrupt/extremely corrupt

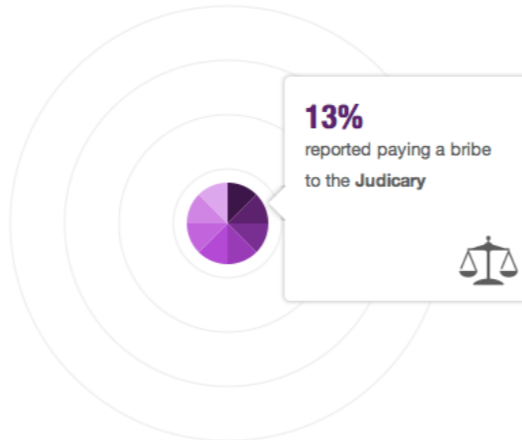


**70%**

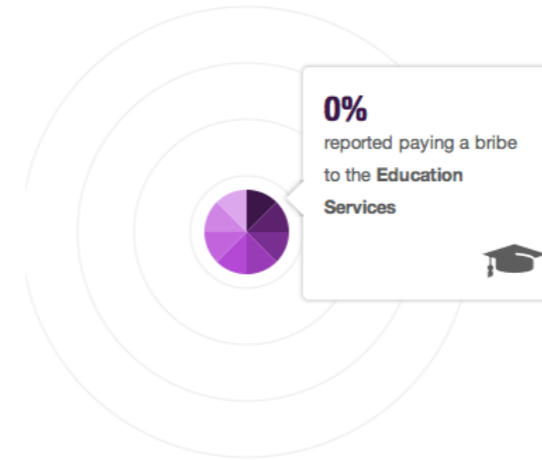
of respondents in **Croatia** who felt that **judiciary** was corrupt/extremely corrupt



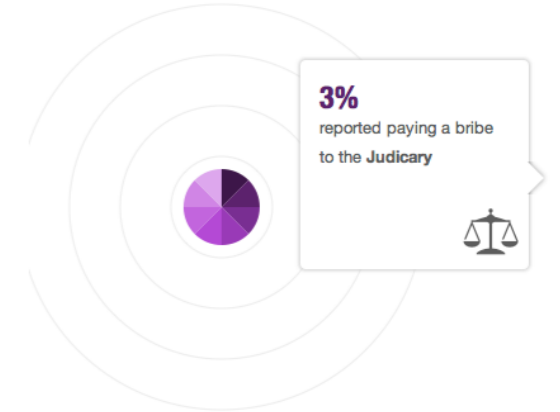
**2%**  
reported paying a bribe to the **Education Services**



**13%**  
reported paying a bribe to the **Judiciary**



**0%**  
reported paying a bribe to the **Education Services**



**3%**  
reported paying a bribe to the **Judiciary**





**13%**

of respondents in Estonia who felt that **education systems** were corrupt/extremely corrupt



**19%**

of respondents in Germany who felt that **education systems** were corrupt/extremely corrupt



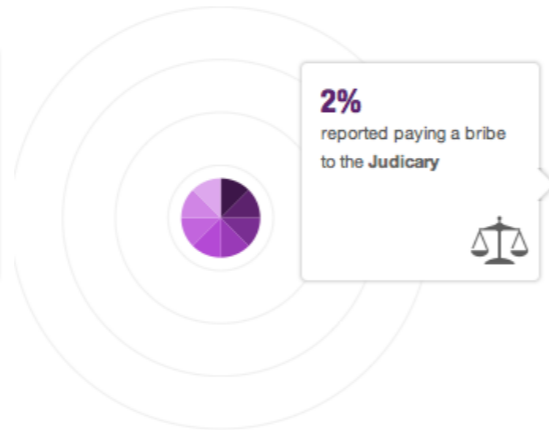
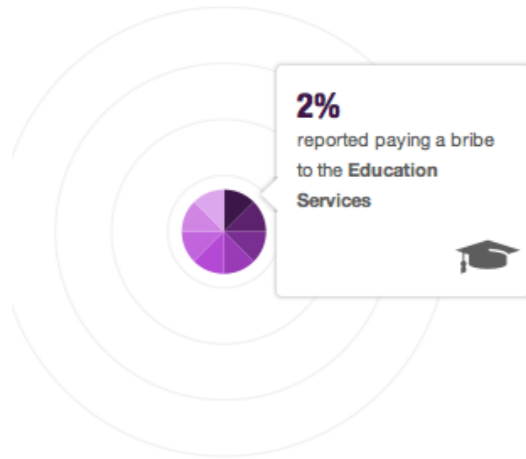
**26%**

of respondents in Estonia who felt that **judiciary** was corrupt/extremely corrupt



**20%**

of respondents in Germany who felt that **judiciary** was corrupt/extremely corrupt





7%

of respondents in Finland who felt that **education systems** were corrupt/extremely corrupt



29%

of respondents in Italy who felt that **education systems** were corrupt/extremely corrupt



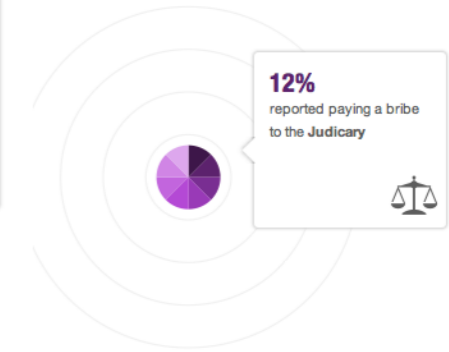
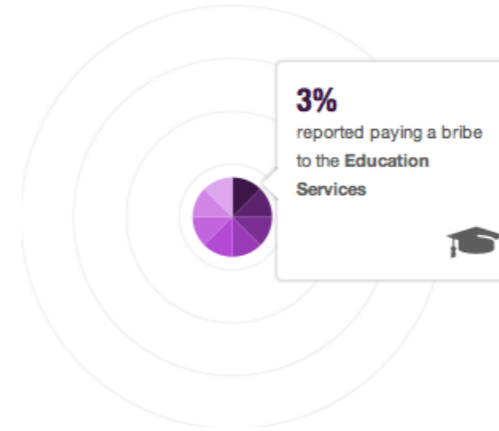
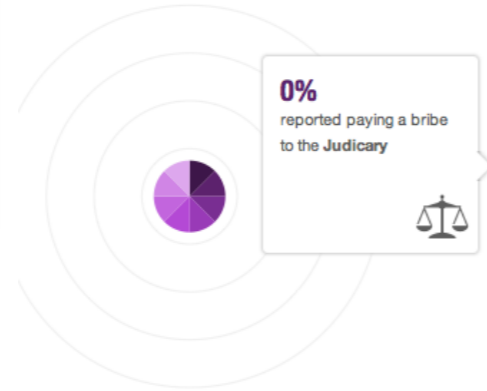
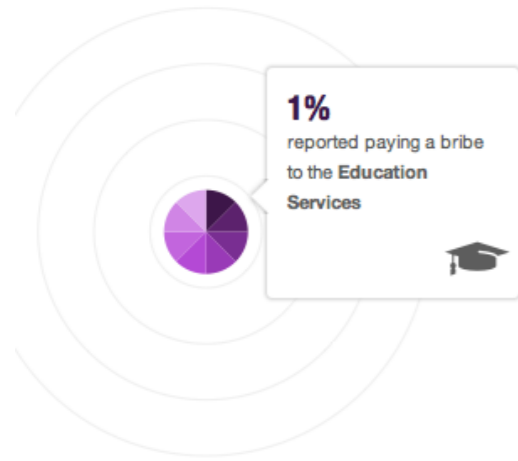
9%

of respondents in Finland who felt that **judiciary** was corrupt/extremely corrupt



47%

of respondents in Italy who felt that **judiciary** was corrupt/extremely corrupt





**45%**

of respondents in Greece who felt that **education systems** were corrupt/extremely corrupt



**19%**

of respondents in Latvia who felt that **education systems** were corrupt/extremely corrupt



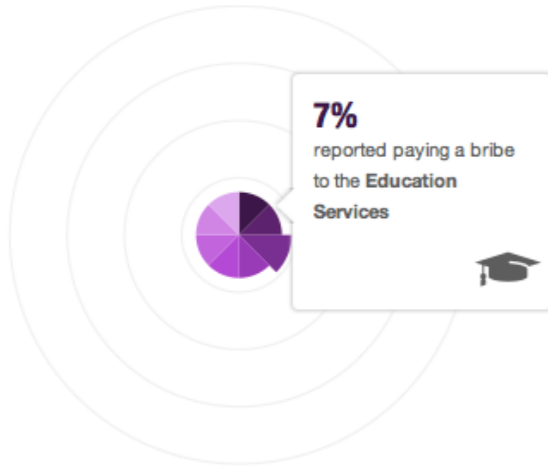
**66%**

of respondents in Greece who felt that **judiciary** was corrupt/extremely corrupt

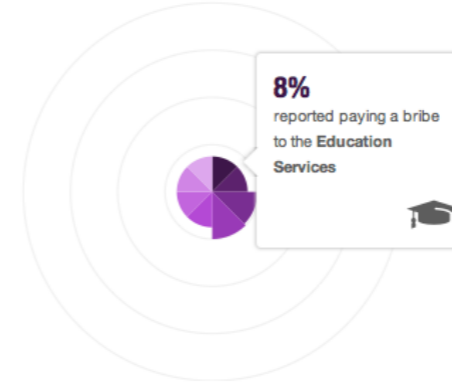


**48%**

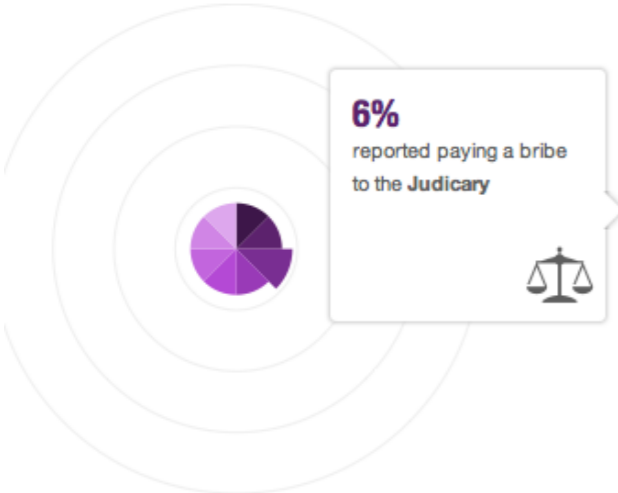
of respondents in Latvia who felt that **judiciary** was corrupt/extremely corrupt



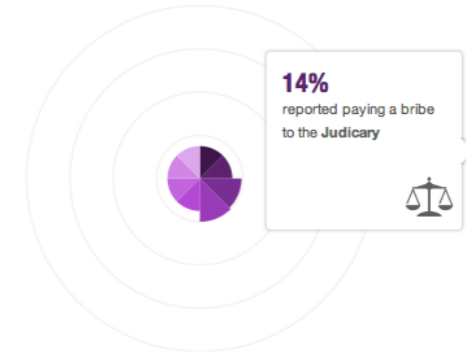
**7%**  
reported paying a bribe to the **Education Services**



**8%**  
reported paying a bribe to the **Education Services**



**6%**  
reported paying a bribe to the **Judiciary**



**14%**  
reported paying a bribe to the **Judiciary**





40%

of respondents in Lithuania who felt that **education systems** were corrupt/extremely corrupt



72%

of respondents in Russia who felt that **education systems** were corrupt/extremely corrupt



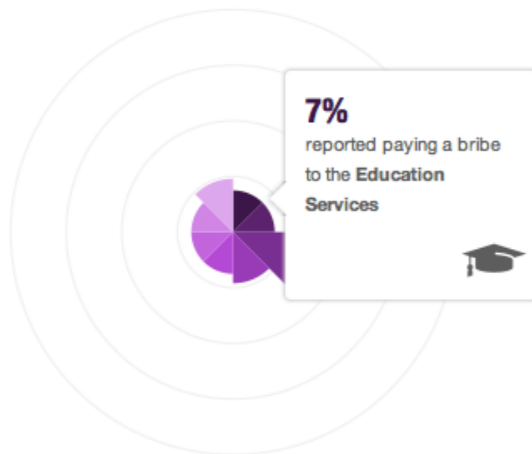
79%

of respondents in Lithuania who felt that **judiciary** was corrupt/extremely corrupt

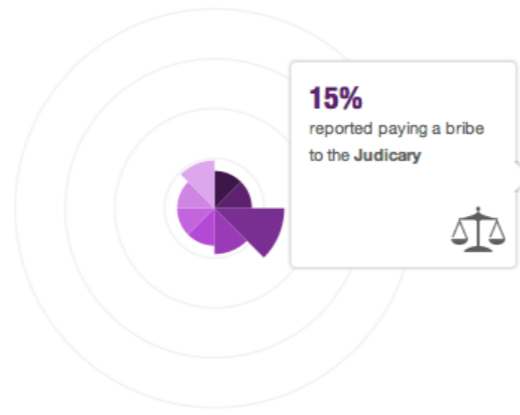


84%

of respondents in Russia who felt that **judiciary** was corrupt/extremely corrupt



**7%**  
reported paying a bribe to the **Education Services**



**15%**  
reported paying a bribe to the **Judiciary**





**33%**

of respondents in Romania who felt that **education systems** were corrupt/extremely corrupt



**32%**

of respondents in South Africa who felt that **education systems** were corrupt/extremely corrupt



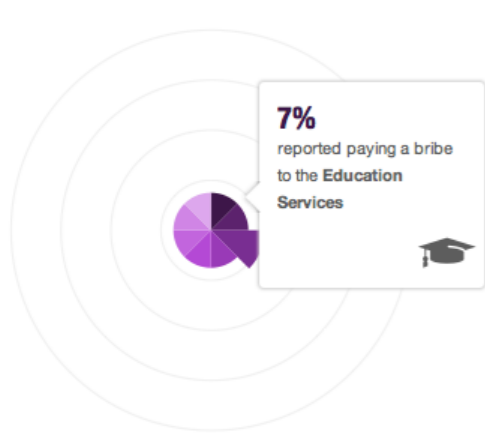
**58%**

of respondents in Romania who felt that **judiciary** was corrupt/extremely corrupt

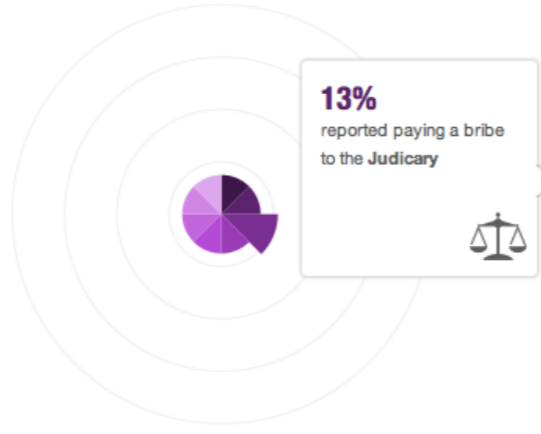


**50%**

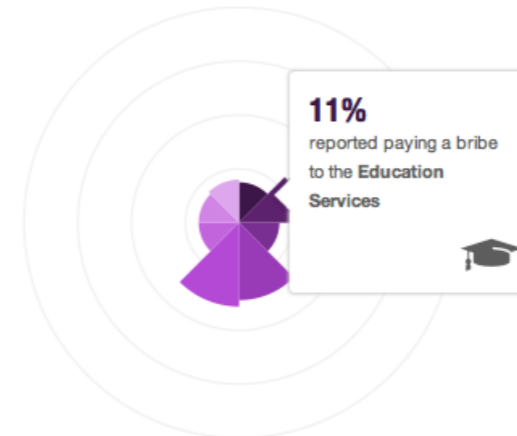
of respondents in South Africa who felt that **judiciary** was corrupt/extremely corrupt



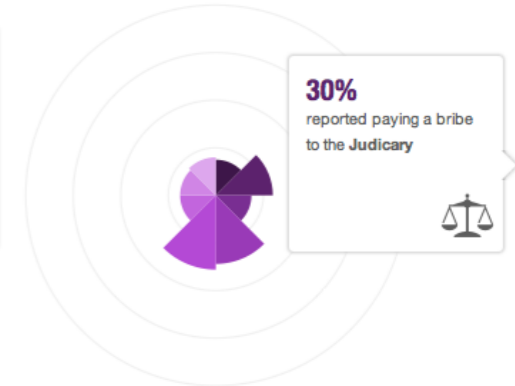
**7%**  
reported paying a bribe to the Education Services



**13%**  
reported paying a bribe to the Judiciary



**11%**  
reported paying a bribe to the Education Services



**30%**  
reported paying a bribe to the Judiciary



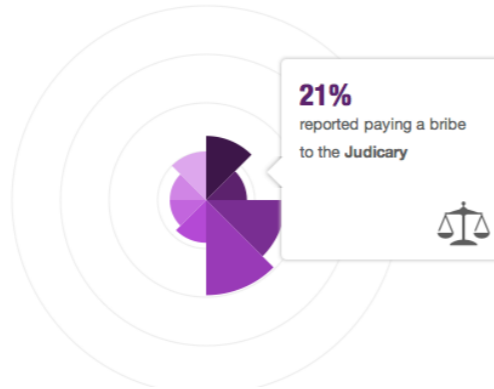
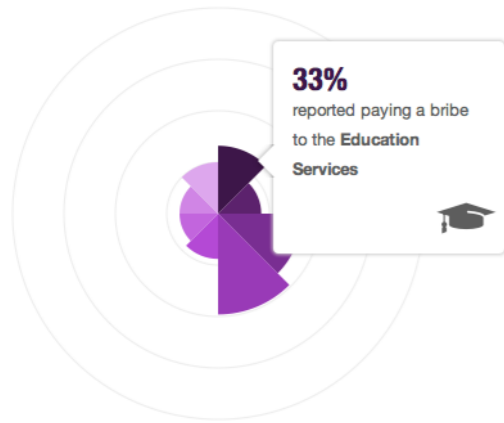
**69%**

of respondents in **Ukraine** who felt that **education systems** were corrupt/extremely corrupt



**87%**

of respondents in **Ukraine** who felt that **judiciary** was corrupt/extremely corrupt



# CORRUPTION IN U.S. EDUCATION AND RESEARCH

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Joel H. Scott

12





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### *Defining Corruption and General Information about Education*

#### 1. Definitions of the notion of corruption in your country:

Educational corruption, similar to corporate corruption, is rooted in power whether it is an individual or systematic (organizational) act. The abuse of one's power or privileged status or capacity for personal gain often at the expense of others or institutional integrity is an act of corruption.<sup>1</sup> U.S. higher education is generally characterized by the "complexity and plurality of forms of organization, governance, management, financing, and property,"<sup>2</sup> making it contextually vulnerable to assorted individual or systematic acts of corruption.

#### 2. What is the annual budget of an average university? Variations?

There are over 7,000 post-secondary institutions in the United States. Qualifying an "average" institution is challenging given the diverse landscape of small-liberal arts, publics, privates, community colleges, technical schools, online and for-profits. Moreover, all these institutions have varying Carnegie classifications and federal or state support structures (e.g. Title IX institutions<sup>3</sup>) that direct budget processes and access to grants. Institutions also vary greatly in student and university population sizes, which greatly impact annual operational budgets.

The Integrated Postsecondary Education Data Systems (IPEDS),<sup>4</sup> a major postsecondary data collection center of the National Center for Education Statistics, annually publishes an aggregate analysis of a variety of financial demographic data of over 6,800 institutions. The report provides insight into collective operational budgets within institutional categories. For example, the collective operational budgets for the 2800 institutions designated as four-year degree granting public or private institutions exceeded \$209 billion.

#### 3. How high is the percentage of public and of private money?

The Bill and Melinda Gates Foundation is one of the largest secondary and post-secondary funders of educational grants in the United States and the world. In a cursory review of U.S higher education financial data, there was no reporting agency that contains the specific data on exact percentages of public and private monies allotted to the thousands of institutions in the U.S. IPEDS organizes institutional financial data aggregated by types and Carnegie classifications. Universities maintain a financial endowment funded by alumni and prominent donors to supplement capital debts and operational expenses. Many universities in the U.S. experienced major economic loss in endowments during the most recent economic recession.

Since the passing of major higher education acts decades ago, the federal government makes available billions of dollars in student loans with competitively low interest rates. Unfortunately higher interest rates are currently being considered by Congress in a time when higher education costs are heavily criticized, especially liberal

arts and other undergraduate degrees that do not directly lead to post-graduate employment. American higher education has long been heralded as a step toward the "American dream" and success. For a growing number of Americans, especially of the middle socioeconomic class, the tension between escalating costs (due in part to universities benefiting for years from federal student aid) and lack of equitable output (employment options, amount of college student-debt, low graduation rates) has become a moral crisis.

Some have likened the amount of college student debt and the return on investment with the recent American housing crisis where banks loaned out more money for homes than people could afford leading to a decline in the housing market, and many people with a mortgage debt they could no longer afford in houses that were no longer at market value, leading to thousands of foreclosures and personal bankruptcy. While the economic trajectory for possessing an undergraduate degree in the U.S. is still more financially and socially advantageous, critics of the costs of higher education believe that the bachelor's degree may be following a degree deflation if the upward trend of costs and output continues.

#### 4. Do the universities have lump sum budgets?

Most university budgets are approved line-itemed budgets with supplemental lump sum categories. For example, it is common practice at major, degree-granting universities to take up to 50% of research grants for "lump-sum" administrative costs.<sup>5</sup> These "costs" are often very general and non-specific related costs to hosting and supporting the research. (See more about this questionable practice in question 9d especially in an era of escalating salaries for presidents and other senior university administrators.<sup>6</sup> Many research grants (especially ones provided by less restrictive foundations) contain costs identified as lump sum categories for spending. For instance, there might be \$50,000 in a Research Project category. This broad category could include salary, travel and equipment depending on the specific project that is eventually funded.

Senior administrators (President, Provost, Vice Presidents, Deans) are often provided discretionary budgets to respond to emergent opportunities that may benefit the school but only loosely accounted for in annual fiscal budgetary processes. Individual or group donors may designate funds for endowed faculty positions in areas of donor interest. These endowments often include discretionary budgets for research related activities as designated and directed by the endowed faculty member.

#### 5. Are the universities autonomous in administering the budget?

Generally, yes. University senior administrators (e.g. President, and Executive Council of Vice presidents, Chief Financial Officers, Deans) are tasked by a board of directors/trustees with the oversight and stewardship of the operations budget. This budget supports hundreds of professional staff and faculty in departments and schools within the university structure. Directors of departments and deans of schools annually submit budgets for perspective operations to the executive council

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and who then submits the budgets for final approval to the board of directors. The board of directors finalizes the annual budget and tuition-rate for the subsequent year. It is important to note a few distinctions, however. Private universities have the most budgetary autonomy because they do not receive state funds. Accountability is internal—university stakeholders, alumni, etc. Privates, however, contend with the challenges of escalating costs as it can more directly impact students and university endowments.

Public and state universities and community colleges benefit from the support of tax dollars, but are responsible externally to state leadership and the public. Moreover public universities contend with budgets that are more vulnerable to state economic fluctuations. This reality has been significantly apparent for many publics who are in states who economically suffered the most from the current (2009) economic recession. In general, the administration of the universities budgets are hierarchically organized with greatest autonomy reserved for the top-senior leadership.

According to a recent report released by the National Center for Education Statistics, private colleges and universities spent only .5 percent (less than 1 percent) net grant aid on students, only .2 percent more than for-profit institutions reported in 2009.<sup>7</sup> Moreover, a 2013 economic study of university grant-aid provides a glimpse of the economic challenges facing less-resourced students, highlighting that at hundreds of colleges, low-income students pay high net prices, even after grant aid.<sup>8</sup>

For-profits operate similarly to a corporate model with individual and group investors-stakeholders who financially benefit from the success and growth of these schools, and for many for-profits, benefit too from access to federal student loans. For-profits have been the subject of many controversies and are of great concern to not-for profit advocates and higher education policy makers.

#### 6. Who is responsible for the controlling?

Daily budget operations and university endowment oversight is controlled by the chief financial officers and chief operations officers (CFO and COO) and team of directors and assistants. The CFO is usually a member of the President's executive council and often reports directly to the President, giving weekly/monthly reports on fiscal issues, debts, needs, and investment/endowment updates. With for-profit schools it is often the President and team of financial managers who control the daily operations and report to an executive board who provides fiscal oversight to all the schools within the for-profit company and updates for private and public investors.

#### 7. Are there rich and poor universities in your country?

Yes. The "Ivy-League" universities chartered early in the Colonial years of the United States are considered academically prestigious, highly ranked, and well resourced with multi-billion dollar financial endowments and federal research grants. These

schools are located primarily in the northeast region of the country and host an elite student population. Per capita student and university staff and faculty, these universities have the most lucrative budgets. There are several large public universities with 50,000+ student bodies and large operating budgets and endowments, but are burdened by heavy operational expenses and capital debts.

Poorer schools in the United States unfortunately include small publics serving historically lower socioeconomic southern and mid-west regions of the country. While Historically Black University and Colleges (HBCU's) are rich with tradition and strong academics, many also suffer from small endowments making it difficult to increase staffing to meet student demand and/or build on capital projects. Just as the K-12 education system has suffered from socio-economic, racial, and class disparity for years, critics and reform advocates argue that the U.S. higher education, too, has become a two-tiered class system: "If you add up the value of the direct and indirect help it receives, Princeton [private, Ivy League school] gets about \$54,000 a year per student in government subsidies. The College of New Jersey [public, similar student population size to Princeton and geographically close by] receives a total of about \$1,600."<sup>9</sup> Privileged students often are able to attend prestigious, well-resourced schools, while largely underprivileged students, especially minority student populations, are systematically directed toward less resourced, but more affordable universities.

#### 8. Is the decision-making process within the university public or secret? Is it parliamentary or bureaucratic?

Higher education administration is primarily bureaucratic. However faculty strive to operate more democratically, which adds to the complexity of university culture tensions regarding governance and decision-making. While administration operates hierarchical, faculty within individual schools and collectively as a university senate operate in an open, shared-governance decision-making process. Private universities do not have to disclose decision-making process, meeting notes, etc. to the public. Public or state schools are required to operate more transparently. Stakeholders, including students, can formally request "open records" to review university documents, meeting notes detailing decision-making processes. Most degree-granting universities provide a "voice" for students through elected student government capacities and representatives to executive council, the board, and faculty senate.

#### *Background Information about Corruption*

#### 9. Which are the corruption sensitive areas in the Higher Education System of your country?

While studies and scholarship on corruption in American post-secondary settings is surprisingly nascent,<sup>10</sup> documented cases of individual and systematic corruption are evident throughout American higher education history involving diploma mills, fraudu-

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lent degrees and accreditation systems, misrepresentation of research, plagiarism and cheating, sexual harassment, and administrative and faculty misconduct, student organization (fraternity and sorority) hazing traditions of new members, mis-use of university property and funds for personal gain, and financial aid corruption.<sup>11</sup>

The following are corruption sensitive areas in American higher education today:

a). Admissions:

American universities are ranked by the U.S. News World & Report, a branch of a for-profit American news magazine. While it is widely reviewed and followed closely by universities, most ranking factors have little to directly do with student learning. Indirect factors that are believed to support learning and academic rigor (selectivity, average incoming student SAT (college entrance exam score), faculty to student ratio, endowment size, among others) are surveyed by US News World & Report and published annually. While regional accreditation bodies facilitate academic accountability and measures of organizational efficacy for universities every 10 years, the annual rankings report is the primary benchmark of success for university leadership. The pressure to increase ranking status and claim “Tier 1 status” (the top 50 universities) remains at the top of all research universities’ agendas, all of which host the four-year degree granting institutions in the U.S. This pursuit of academic prestige is in the very fabric of American higher education since the adoption of the Germanic research and scholarship model in the early 20<sup>th</sup> century. Admissions staff and departments experience great pressure to annually increase selectivity rates and SAT scores of incoming first-year students.

Recent cases of admissions departments inflating college entrance exam scores (SATs)<sup>12</sup>, providing student incentives to retake entrance exams and submit higher scores,<sup>13</sup> and preferential treatment of applications connected to politicians, trustees, high-level donors<sup>14</sup> reveal how the tireless pursuit of academic and social prestige has resulted in the increase of questionable recruitment and admissions tactics. The for-profit university industry, who is eligible to receive the same benefits of federal student loans as not-for-profit universities, has been heavily criticized for its aggressive recruitment of under-resourced students and questionable business and academic practices to increase profits. (See more regarding for-profit cases in question 17).

b). Personnel: Tenure track faculty may be most vulnerable to corruption due to pressures to “publish research or perish.” Junior faculty (who have yet received tenure) are on the “tenure clock” from day one and are placed in an awkward position of quickly adapting to their department’s organizational culture and balancing collegial relationships. Faculty are evaluated on teaching, research, and service to the university or community; however at a research-extensive university faculty know the primary merit for tenure is research publications. Junior faculty cases of corruption related to tenure often include: 1) fabricated publications 2) misrepresentation of author

status on multi-authored curriculum; 3) grade inflation/changes in exchange for high student course evaluations; 4) graduate student abuse (taking authorship credit for graduate student studies/work) 5) abuse of academic freedom.

Adjunct professors are highly educated and experienced practitioners, but undervalued by universities. For years, schools within universities have contracted out classes to adjuncts or have graduate students teach to free up teaching loads for tenure faculty to do more research. These have been common practices that allow the tenured track faculty to benefit at the expense of the adjunct faculty or graduate student assistant. However, labor reform advocates liken this to a form of systematic exploitation of adjunct or contingency faculty due in part to inequitable stipends for the number of course credits adjuncts generated. Despite teaching classes that generate the majority of tuition dollars for the university, adjuncts are treated as contract employees with no health care benefits and meager pay.<sup>15</sup>

c). Plagiarism/cheating/grade inflation:

Students who are pursuing advanced graduate degrees in competitive fields, medical schools, etc. are most vulnerable to grade-inflation corruption (protecting their grade-point averages through inappropriate pressures placed upon faculty (e.g. utilizing their status if they are a child of a donor, legacy family, plagiarism, cheating, or fabricating application essays about student leadership in undergraduate experiences). Student government leaders (who have access to large student activity funds) are vulnerable to personal gain opportunities through inappropriate use of fiscal and social capital opportunities. Student-athletes, are particularly susceptible to the academic and athletic pressures and succumb to cheating in order to remain eligible to play their respective sports. A recent cheating scandal involving athletes at a prestigious university has once again brought the conversation about athletics and academic integrity to the forefront of student-athlete conversations.<sup>16</sup> Compounding this reality, university students in the U.S. reported a high percentage of witnessing or personally cheating in a recent international survey.<sup>17</sup>

d). Research Grants:

A controversial practice receiving growing criticism is the taking of a large percentage of research grants for “university administration costs” for the university’s part as the host site and support structure for research faculty who are awarded the grants. In some cases, close to 50% of a grant goes to non-research related activity.<sup>18</sup> Many faculty view these “costs” as an unaccounted form of “administrative bloat” to supplement other agendas and activities in the university, and furthermore, as a subtle example of systematic corruption.

d). NCAA, Athletics & Academic Integrity:

Critics of the National Collegiate Athletic Association (NCAA), the national governing body for university student-athletes, have long questioned its “student-athlete” mis-

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sion for big Division 1 (D-1) sports (football and basketball) which generate millions of dollars in revenues in sports gear, and T.V. contracts for the NCAA and universities. Yet, student-athletes receive no percentage of the funds (except student scholarships). Moreover, the NCAA places heavy regulations upon athletic programs (which incurs more costs to the university) to ensure the integrity of financial incentives and transactions for student-athletes. Many D-1 universities are under NCAA investigation each year for a number of violations involving illegal recruitment or incentivizing of current or incoming student-athletes. Further, the debate continues on if universities should simply pay their football and basketball players as “pre-professionals” rather than support players as student-athletes. While many students, faculty and administrators enjoy the college spirit and national attention of big college sports, many question the admission of any student-athlete who is academically unprepared for college (low high school GPA and low SAT scores) and unlikely to graduate. In addition, only a handful of the 130 D-1 sports universities are financially solvent.<sup>19</sup> Most athletic programs are supplemented by the university operational budget despite access to supplemental private foundations supported by athletic boosters.

e. Town-Gown/Commercialization of Higher Education:

Most universities (including for-profit) aspire to graduate engaged citizens, students who will lead socially responsible lives. The social mission of American higher education is rooted in its early colonial charters and evident today in most university mission statements. Civic engagement advocates have long challenged universities to “return to the civic roots” and proactively intersect teaching and scholarship that engages real-world problems rather than commercial/industry agendas.<sup>20</sup> Further, the commercialization of higher education and subsequent industry agendas may be viewed as corrupting the academic mission and values of the university.<sup>21</sup> As institutions espousing social and moral responsibility, universities have a responsibility to take care of all their employees, including entry-level staff. For example, many large universities have been recently criticized for contracting out their housekeeping/food personnel staff to companies who pay only federal-minimum wage and offer comparatively little in social, educational, and health benefits.

f. Information Technology-Copyright Violations

With the advent of digital information and streaming of information online, university members struggle with the ethical line between what is considered use of copyrighted material for collective “educational purposes” versus personal gain (e.g. cost-savings for university or individual benefits for faculty/student) at the expense of additional royalty fees for authors, publishing sites, etc. (More details on a recent federal copyright violation case in question #17).

10. What kind of benefits are available for university members in case of corruption?

Academic prestige, senior status, supplemental funds from grants and consulting, scholarship awards, graduate school acceptance, etc. Senior administrators with access to discretionary funds may jockey for organizational or political favors utilizing funds to bribe administrators, faculty, or other leaders with social and organizational influence. Faculty are susceptible to abuse of individual power when it pertains to promotion—research agendas, publications, and ultimately tenure and senior status.

11. Who is willing to influence the university decision-making process by corruption? American universities are a complex make up of multiple internal and external stakeholders. Depending on the context of the institution, the degree and access of influence can vary; however, all members of a U.S. university can utilize power and privileged access to funds or authority for personal gain. Wealthy donors and alumni may leverage impending donations and resources for personal, social or political interests.

*Public Awareness*

12. Is there any public awareness about corruption in higher education? Public awareness is greater now due to information technology and seamless streaming of updates through social media outlets, direct emails, and online resources such as *The Chronicle of Higher Education* and *Inside Higher Education*. Moreover, there are hundreds of non-profit associations focused on higher education reform to improve university transparency and accountability, including addressing issues of corruption (e.g. American Association of Colleges & Universities (AACU), Association of American University Professors (AAUP), Campus Compact). The U.S. Department of Education also assigns special commissions in times of perceived crisis to survey and study higher education issues related to learning, assessment, and evaluation (e.g. Spellings Commission, 2006) and provide reform recommendations. The US Department of Education also provides the College Affordability & Transparency Center to educate and empower families and incoming students.

*Internal Procedures*

13. Are there Codes of Conduct regarding corruption? Within a university structure there is a student code of conduct governing general student body behavior, academic honor codes governing academic expectations, and institutional review boards (IRBs) who review and approve prospective research proposals. Faculty and professional staff are also guided by university professional conduct codes. Collectively these internal codes and accountability procedures are designed to guide university behaviors and values, and lessen the likelihood of individual or systematic misconduct or abuse.

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14. Is there a special office within the State or the University administration for corruption problems?

Major degree-granting universities have full-time university lawyers (general counsel) who handle internal and external legal grievances and lawsuits, including issues of corruption. A university ombudsmen and/or office facilitate internal grievances between university personnel, and offices of judicial affairs process student misconduct (violations of the student code of conduct) and provide "due-process" hearings to adjudicate. Many universities have faculty serve on an Academic Council to process academic violations of the university academic code of conducts; however, schools within a university may also have additional standards and elect to have councils facilitate academic grievances.

15. Is there an internal supervision process?

See 14.

#### *Jurisprudence*

16. Are there means of redress?

Means of redress are similar to other corporate settings: Personal or civil lawsuits for prosecution and financial recoupment. Internally, universities often dismiss guilty offenders (firing of employees, faculty tenure denial or demotions, student-expulsion or probation, and scholarship, grants or other funds revoked) in response to unfair or undesirable situations.

17. Are there cases of corruption in higher education and were they brought before the courts?

Yes. The sexual abuse scandal (as described in other related questions) at Penn State University involving an ex-high-profile football coach is a case highlighting issues with transparency and accountability in a complex hierarchical culture of a major research-D-1 sports university. The number of lawsuits against the university for its lack of leadership and stewardship of its athletic program is still in process. The ex-football coach has recently been indicted on several counts of sexual abuse and is currently serving a 30-60 year sentence.

Cases involving the mis-handling of sensitive information (as in the Penn State case) has reshaped higher education practice. Prior to 1990 universities were not required to publicize criminal activity on campus or surrounding areas. *The Cleary Act of 1990* was a result of the murder of a college student on campus and the subsequent backlash of unreported crimes on several campuses across the country. The Act was created to increase university transparency and has led to major security reform to protect all stakeholders. The Cleary case and subsequent incidences of failure to report crimes on campuses<sup>22</sup> reflects a continuing transparency issue for universities. By

failure to inform the public of criminal activity in negligence or in order to protect university reputation (personal gain) causes harm to others and is a form of systematic abuse. Universities are entrusted by the government, state tax payers, and students to appropriately process and steward sensitive information for the protection of all university stakeholders. Federal mandates such as the *Cleary Act*, and *FERPA Act of 1974* (Family Education Rights Protection Act) was enacted to limit public access to student educational and mental health information. University violations lead to heavy fines and/or potential lose of federal funding as determined by the U.S. Department of Education.

Pending cases involving for-profit institutions with high percentages of federal student loan defaults have led to federal<sup>23</sup> and state investigations in to questionable recruitment tactics of under-resourced students, and potential violations of consumer protection laws, and possible misrepresentation of federal financial aid dollars.<sup>24</sup>

The increase of digital access and cost-control for university library systems is at a fundamental crossroad. While universities pay copyright licensure fees to offer university member access to digital files (articles, books, etc.), the ethical dilemma is whether or not universities "should be permitted to create digital course packs consisting of excerpts from copyrighted works and to make those course packs available to students without permission from or payment to copyright holders"<sup>25</sup> as seen in a recent landmark federal case *Cambridge University Press et al., vs. Becker et al.*, (Georgia State University). While the federal ruling was favorable toward university use of electronic reserves and fair use of copyrighted material, this case is indicative of future ethical issues in the authorship and dissemination of educational sources in higher education contexts.<sup>26</sup>

The highest court in the United States, the Supreme Court, generally review controversial university cases/verdicts rendered by lower federal courts. The recent *Fisher vs. University of Texas* (2013) highlights the complex nature of university admissions and culturally competent practices for effectively evaluating all student applications. The *Fisher* case (and the pivotal case *Grutter v. Bollinger*-University of Michigan law admissions case 2003) shed light on the realities of a country still wrestling with minority population representation and equal opportunity for all minority students. While the court did not call for an outright ban on affirmative action as many feared it might, the court did demand that race-based admissions programs be judged using a test known as "strict scrutiny."<sup>27</sup>

18. Are there cases of corruption in research and were they brought before the courts?

Yes. The most famous case was the Tuskegee Syphilis Study<sup>28</sup> (1932-1972) conducted by the U.S. Public Health Service to study the progression of untreated syphi-

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lis in rural African American men who thought they were receiving free health care from the U.S. government. The 40-year study is considered one of the most unethical and immoral acts of research in U.S. history because researchers knowingly failed to treat patients appropriately after the discovery of penicillin as an effective cure for the disease. This egregious act of abuse and research corruption led to federal law and regulation. Now research requires informed consent outlining the rights of participants. Subsequently, the Office of Human Research Protection was created to oversee all research activity in the United States, including the administration of Institutional Review Boards (IRBs) for the protection of human-participant studies. All university research is now guided by an internal IRB committee of faculty-researchers who thoroughly review research proposals and amendments, and provide final approval. Many universities also require anyone conducting research to complete an online training on research ethics, provide confidentiality for research participants, and “no-harm” research before the IRB approves the research.

19. Can the administration and/or the university be sued in case of corruption?

Yes. Primary university personnel and faculty are usually protected under a general university liability. But in cases of egregious acts of negligence that causes harm or corruption, university general counsel will likely direct individuals to personal lawyers. Individual faculty and university staff are encouraged to carry professional liability protection with their own associations if available (e.g. AAUP, NASPA, ACPA). Some universities are unionized (primarily in the Mid-western part of the U.S.) therefore, union protection is another entity that also provides professional advocacy for its participants and can be an agency that countersues universities in systematic acts of abuse or grievances against faculty or staff.

20. Is corruption in Higher Education a crime under the Criminal Code of your country? Yes. If the act of corruption is considered criminal, prosecution and due process occurs concurrently with university internal investigations. Many cases can be handled internally as explained in answers to other questions above.

21. Is corruption in Higher Education an infringement under the Disciplinary Code?

Yes, if you mean the disciplinary code of a university system as I describe in the internal section of the questionnaire.

### *Monitoring*

22. Does the administration make use of special rapporteurs in case of corruption?

University general counsel members and/or designated university spokesperson(s) will represent university proceedings and matters relevant to local, state, and national media.

23. Is there an independent institution outside the administration like a governmental ombudsman or similar?

In cases such as the sexual abuse scandal involving a high profile ex-football coach at Penn State University (Fall 2011), the federal government conducted an independent investigation in addition to the internal investigation provided by the university general counsel. In this case, tensions arose between internal and external investigations. The involvement of governmental investigations and participation is on a case-by-case basis.

24. Is there regular reporting on corruption in Higher Education?

Social media sites and mainstream media in the United States are very focused on controversies and questionable practice and conduct in K-12 and higher education. The general public has free membership access to receive daily email updates from the *Chronicle of Higher Education* and *Inside Higher Ed*, both considered responsible reporting agencies by many higher educators. Boston College’s Center for International Higher Education hosts a website on American and global university corruption and provides an updated list of global resources and related websites.<sup>29</sup>

25. Are there independent commissions for certain decisions?

Regional accreditation bodies are independent commissions who have a direct role in ensuring academic standards and accountability for universities. Every ten years a university goes through a reaccreditation process. The accrediting group is often comprised of faculty and professionals of other universities within the same accrediting region. The NCAA is a considered an independent entity that implements infractions and probation in response to university athletic misconduct and corruption (ranging from loss of student-athlete scholarships, suspension from conference participation, limited recruitment and outreach; probation can last for years depending on the severity of misconduct). Oftentimes, universities will implement their own internal investigation and place themselves on probation in addition to the NCAA sanctions. The federal government through its Department of Education can instigate special independent commissions to investigate questionable practices, especially cases involving federal financial aid as well as state governments involving respective public/state universities.

The governance process (disciplinary code) of higher education corruption in the United States is complex due to a number of confounding variables: a) the general rights given to universities to govern their own internal processes; b) competing interests, values, and governance processes within a typical not-for-profit degree granting university and academic freedom; c) and diverse schools, disciplines and professional associations and accreditation bodies involved in one university setting.

26. Are there independent commissions for exams or research commissions?

Accreditation agencies require reports on how universities facilitate assessment of learning and evaluation of learning outcomes; however, most universities give complete autonomy to faculty (academic freedom) to determine the syllabi, assignments, and exams. Professional disciplines with licensure requirements (such as a law degree) must abide by state, federal, and professional association standards for accreditation. Undergraduate, graduate and medical school admission exams (SAT, ACT, GRE, MCAT) are designed, assessed and reported to prospective schools by reputable independent agencies. University admissions officers and faculty receive entry exam scores directly to factor student qualifications alongside other required admission(s) materials.

#### 27. Are there protocols available?

Regional accreditation commissions issue standards for universities to meet in order to remain an accredited university. The U.S. Department of Education and professional associations provide organizational standards and practices for academic and professional conduct. The NCAA provides the regulations and protocols for ethical and professional handling of student-athletes. Internally, the university provides codes of conduct for student and academic conduct made accessible to all university members. Each university ascribes to their regional, athletic conference, and national association standards required to be an accredited degree-granting institution.

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# **CORRUPTION IN EDUCATION AND RESEARCH: RUSSIA<sup>1</sup>**

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## DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

### 1. Definition(s) of the notion of corruption in your country

According to legislation enacted by the Russian Federation, corruption means the 'use by an official of his/her powers, contrary to the interests of the civil service, if this deed has been committed out of mercenary or any other personal interests and has involved a substantial violation of the rights and lawful interests of individuals or organizations, or the legally-protected interests of the society or the State'<sup>2</sup>. This definition can be considered official and is the definition most widely used in the academic literature as well as among common citizens. In addition, this legislation also provides definitions of several kinds of corruption, for example, bribery<sup>3</sup>, unapproved usage and stealing budgetary funds<sup>4</sup>, abuse and exceeding official authorities<sup>5</sup>.

In the scholarly discourse the definition of corruption does not have a single meaning, and it is always structured by the limitations of the theoretical and methodological approach of a researcher. Therefore, in the Russian social and economic sciences, many definitions of corruption exist. As for Russian citizens, research data shows that most of them give intuitive definitions of corruption that are close in meaning to the legal one. Most Russians connect corruption to bureaucratic procedures and big business, but not to common citizens' lives. However, sociological research demonstrates that, even in cases when routine corruption in everyday life is admitted, in most cases it is justified, for example, by receiving a place in a kindergarten, getting better treatment from a clinic or speeding up the waiting time in some public institutions (Denisova-Schmidt 2012, Denisova-Schmidt & Leontyeva 2012a, Denisova-Schmidt & Leontyeva 2013).

### 2. What is the annual budget of an average university? Variations?

The budget of a state university<sup>6</sup> as opposed to a private university can be divided into two parts: federal budget funds and money earned by university. Federal budget money is directed towards educational and research activities. The budget for education completely depends on the number of students, and this principle was named '*Den'gi idut za studentom*' (Engl.: 'Money follows the student') by Russian universities. The number of such students – that is, the number of the universities' so-called '*budzhethnye mesta*' (Engl.: 'budget seats')<sup>7</sup> – is defined by the Ministry of Education and Science every year. Therefore, the more students that enter the university, the bigger the budget. According to 2011 data, the State paid 223.400 Rubles (~ 6800 USD) for one student's education<sup>8</sup>. Using this figure and the number of students attending a university, the approximate budget allocated by the Ministry for educating the students can be calculated.

A university is given money according to a separate plan of action (that is, the 'State's order') for research, as well as the results of a competition between grant applications in special programs. However, there are particular universities with a 'National Research' or 'Federal' status, which receive, for example, for conducting research, purchasing equipment, information resources, additional education, sufficient financing in the form of additional subsidies, which are not given to universities without this particular status. At the present time, the priority lists include 29 National Research Universities<sup>9</sup> and 9 Federal Universities<sup>10</sup>. Moreover, special financing is given to the two oldest state universities in Russia: the Moscow State University and the Saint Petersburg State University.

For example, the budget of the Pacific National University, one of the biggest universities in the Russian Far East located in Khabarovsk (19,704 students, 5,096 of which receive state

financing and 14,608 pay privately), in 2012 was 1.485 billion Rubles (~ USD 42.4 million)<sup>11</sup> (Figure 1). This is not a particularly large budget; for comparison, the budget of National Research Tomsk State University, which has a similar number of students (18,021 students, 9,340 of which receive state financing and 8,681 students pay privately) in 2012 was 3.859 billion Rubles (~ USD 117.4 million)<sup>12</sup>.

### How high is the percentage of public and of private money?

In an average university, this correlation is close to 50/50. The share of the federal funding might be slightly larger, but not over 60%. The richer the university, the bigger the share of state funds in its budget.

	2010	2011	2012
State Subsidies	51%	53.4 %	54.5%
Other Sources	49%	46.6%	45.5%

Figure 1: The example of the Pacific National University, Khabarovsk

### 4. Do the universities have lump sum budgets?

Formally, every university has some offices which distribute received and earned money. Such offices are created in accordance with the university's Charter; they could include an Economic Council or an Academic Council. However, their decisions are limited by the structure of budget itself. A budget includes several expense items, such as, for example, salaries, investment in equipment, and payment for reconstruction. Financing from the federal budget comes not in a lump sum, but in separate sums designated for particular expense items and the university cannot redistribute that money between different items. Thus, the allocated federal money must be spent by university strictly according to the Ministry's plans. We know cases in which university rectors were removed from their positions for breaking this rule<sup>13</sup>.

### 5. Are the universities autonomous in administering the budget?

In the distribution of financing from non-budgetary sources, a university can be more independent. This money may be spent according to the university's interests, including as contributions to faculties' and chairs' funds. At most universities, there are departmental ratings which serve as a basis for rewards. There are also special rector's funds that provide bonuses and additions to the salaries of particular workers for their special accomplishments. On the one hand, this system allows the creation of stimulus funds, which is very important. On the other hand, the mechanism for their formation can easily be made non-transparent in order to hide manipulations.

### 6. Who is responsible for controlling them?

In the first place, this would be the rector of the university, who is actually responsible for everything. Together with the rector, the chief accountant and vice-rector for economic or house-keeping issues also share responsibility for spending money. Such questions are out of the competencies of independent agencies or boards of trustees, although they exist. This might create the possibility for corruption.

## 7. Are there rich and poor universities in your country?

Yes, there are. 40 universities can be considered rich, and they include:

29 National Research Universities (NRU);

9 Federal Universities (FU);

Moscow State University and Saint Petersburg State University, which have a special status as unique science and education complexes and the oldest universities in the country. The founder of these universities is the Government of the Russian Federation, and their charters are also approved by the Government.

All of the universities mentioned above receive priority financing from the federal budget. In July 2013, 15 out of 40 universities were selected by the Ministry of Education and Science as prospective universities for entering world rankings. According to an order from the President of the Russian Federation, by 2020 at least 5 Russian universities must enter top 100 in the world rankings and at least 15 should be in top 200. Nine billion rubles (~275 million USD) would be allocated for this project, and the money would be classified as state subsidies for the development of the international competitiveness of the selected universities<sup>14</sup>.

## 8. Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic?

The decision-making process depends on the particular problems that need to be solved. There are some questions which are not discussed publicly; these include, for example, issues of changes in university structure, appointments for administrative positions. Still, many questions, including, for example, issues of budget allocation, internal regulations are discussed publicly in the Academic Council. This is the main managing agency, elected by university representatives, and it includes members of all departments, including students. In addition, there are independent self-administered student agencies (Students' Council, student union committee), which have a right to participate in the decision-making process for issues concerning their interests by delegating representatives for negotiations with the university administration.

## BACKGROUND INFORMATION ABOUT CORRUPTION

### 9. Which are the corruption-sensitive areas in the Higher Education System of your country?

#### a. Admissions

Entering university is one of the most problematic issues in higher education in Russia in terms of corruption. Since the late 1990s, higher education has been considered a luxury item for which people would be willing to pay large sums of money – including deals on the black market. Until 2009, all universities held entrance examinations for admission. The level of corruption in this sector was the highest of all kinds of corruption in education, and in 2002-03 it reached 10.7 billion Rubles (USD 455 million) (Galitskii & Levin 2004). In order to solve this problem, since 2009, university admission has been granted on the basis of the *EGE*<sup>15</sup>, which all school graduates must take. Because universities do not conduct their own entrance examinations anymore (except for creative disciplines such as music, theater, and dance), but they accept only the results of the *EGE*, corruption has moved from the universities to the structures responsible for conducting this examination. Corruption in this context includes different affairs connected with readjusting the test scores and spreading exam questions before the examination (Denisova-Schmidt & Leontyeva 2012b, Denisova-Schmidt

& Leontyeva 2012c)<sup>16</sup>. The exact volume of corruption in this sector is unknown, but every summer the examination period is accompanied by a large number of scandals and disclosures<sup>17</sup>. As for other corruption schemes in university admissions, they are close to non-existent now. There are some other tendencies, however: The number of students receiving certificates of physical disability and diplomas for achievements in academic competitions has increased significantly. Those documents allow a student to enter university without taking the examination.

#### b. Graduation

Graduation itself is not a sector of increased corruption. However, existing widely spread practices of buying prepared graduation papers and plagiarism are used in graduation theses very often, particularly by students in the distant learning system.

#### c. Personnel (recruitment, tenure, promotion, other)

In case of recruitment and career promotion, informal connections, protectionism, and the promotion of relatives are common. The majority of Russian universities recruit new lecturers from the graduates of the same university (Sivak & Yudkevich 2008). In 2009, for example, 90% of all lecturers at the National University of Science and Technology 'MISIS' (MISIS) were graduates of that institution (cf. Kastouéva-Jean 2013).

#### d. Public research commissions

This may exist in universities with a large amount of financing for research activities (like national research universities), but there is no official data for such cases.<sup>18</sup>

#### e. Private research commissions

Also no data is available. There are certain commissions which are subtracted from the total amount of a grant for university development, but this is not considered corruption.

#### f. Publications and plagiarism

A widespread practice is students' plagiarism, copying answer sheets and different kinds of students' cheating during examinations and while completing written papers. Research into this phenomenon shows that 85-90% of students use one or another kind of cheating, the most popular of which is coping off during tests and exams (Latova & Latov 2007). The practice of buying ready-written papers, which are submitted and presented as original, is also used quite often. An obligatory plagiarism check is conducted only by certain universities (such as the Higher School of Economics), but for the vast majority it is only voluntary. Students actively take advantage of this situation, as well as the crushingly high workload of the teachers, and submit false papers.

As some events involving plagiarism and document falsification during the presentations of dissertations at the Moscow State Pedagogical University during the winter of 2013<sup>19</sup> showed, plagiarism is actively used on a higher level, while attaining an advanced degree. Neither in dissertation councils nor in *Vysshaia Attestatsionnaia Komissiiia* (Engl.: the Higher Attestation Commission) are there mandatory checks to confirm the authorship of dissertation texts, which creates favorable conditions for widely spreading false papers.

#### g. Conference participation

#### h. Consulting

#### i. Other

In Russian universities, the most active site of corruption is the classroom itself. Here we can find a large number of cheating practices, including different kinds of student cheating, such as using paper ponies or coping off during tests and exams, plagiarism, as well as bribery in monetary and non-monetary forms, such as trading grades for money or services (in cases when student does something for a teacher) (cf. Leontyeva 2010). To cover up such bribery cases, special schemes have been developed, both with and without intermediaries. Receiving grades without passing an examination, due to personal requests from a dean, university administration or an acquaintance with a lecturer, is also quite popular. According to the Department for Fighting Corruption of the 'Complex Security of the Fatherland' parliamentary center, in 2009, the total amount of university bribes reached USD 200 million<sup>20</sup>.

#### **10. What kinds of benefits are available for university members in case of corruption?**

##### **Money?**

Yes, in cases of bribery in the education process money is exchanged for grades.

##### **Promotion?**

Yes, promotion is possible in cases when a subordinate fulfills the administration's request, supposedly breaking the rules. In exchange for loyalty, the administration promotes the subordinate by moving him or her up the career ladder or creating other preferences.

##### **Grants?**

This is seldom the case for the majority of universities, especially for those that do not receive substantial financing for scientific research.

##### **Publicity?**

This practice is unknown in Russia.

#### **11. Who is willing to influence the university decision-making process through corruption?**

Such decisions can be made by the university rector together with administration of faculties and departments. However the problem of making such decisions is that the system of higher education works in such a way that all participants in the education process are more or less forced to break the rules one way or another. It is impossible to solve the problem of corruption within one particular university.

### **PUBLIC AWARENESS**

#### **12. Is there any public awareness about corruption in education?**

**a. Research publications?** Yes, although there are not many research results, all of them have been published and are widely accessible (cf. recent publications by Klein 2011, 2012, Oleinik 2012, Osipian 2012a, 2012b, 2012c, 2012d, 2012e, 2013, Rimskii 2010, Titaev 2012).<sup>21</sup>

**b. Media awareness?** Yes, there is a lot of information, as this is one of the most popular topics, especially during the state examinations in schools and the examination sessions in universities. Also, many publications provide information on cases of disclosure of teachers involved in bribery. Openness and publicity are important factors which are currently used by the most active representatives of civil society for uncovering and disclosing the facts of corruption. For example, the initiative of a few bloggers led to the beginning of campaign by the

Ministry of Education to verify the quality of dissertations<sup>22</sup>. As a result of these checks, some facts of improper work of dissertations councils were revealed, the Vice-Minister of education Igor Fedyukin lost his position, and amendments to the process of obtaining advanced degrees were made.

### **INTERNAL PROCEDURES**

#### **13. Are there Codes of Conduct regarding corruption?**

No, in Russia, codes aimed at resisting corruption are not a popular practice. In the sphere of education there are no such examples. In other spheres there are cases when anti-corruption behavior is included in the code of professional ethics. For example, in the code of ethics and professional behavior for federal state civil servants, there are special articles prescribing resistance to corruption.

#### **14. Is there a special office within the State or the University administration for corruption problems?**

As a rule, there are no such special offices. When necessary, such as when students or their parents file a complaint to administration concerning suspicion of corruption, a special investigation commission is created. However such complaints are very rare, first, because students are afraid of a latent conflict with lecturers and a department with whom they would need to cooperate afterwards. Second, a university is not interested in loud scandals and such cases are dealt with very quietly and formally. In those rare cases when students reveal allegations of corruption, most often they complain to the office of the public prosecutor. Situations in which investigations are conducted and guilty officials are punished due to student complaints happen regularly.

#### **15. Is there an internal supervision process?**

No, there are no special structures or organizations in Russia which would fulfill this function in relation to universities. However, recently, non-governmental organizations offering ideological programs for anti-corruption consciousness raising started appearing. These organizations spread information among a wide strata of citizens about their rights and opportunities to stand against corruption; they also publish informative products providing basic knowledge on corruption, codes of conduct in situations with a risk of corruption, trust services' phone numbers, etc. For example, the Saratov Center for Civil Control and Resistance to Corruption published in 2011 a manual for citizens entitled 'Cost-free education without bribery and abuse'<sup>23</sup>. Although there are not many such organizations, their activities are well known in the information space and their products are available to people through the Internet.

### **JURISPRUDENCE**

#### **16. Are there means of redress?**

Corruption in education like in any other sphere is governed by the norms of criminal law. According to the article 290 of the Criminal Code of the Russian Federation (see question 20), for receiving a bribe there is a punishment ranging from a large fine to imprisonment of up to five years, as well as the loss of a professional license for up to three years. The problem is that it is very difficult to prove bribery, especially when a deal includes non-monetary

forms of compensation. All known cases that revealed corruption with the assistance of the police were based on a scheme of 'catching at the scene of the crime'. In reality, more resourceful and complicated schemes are used, as well as non-monetary exchanges and multi-level negotiations, which are practically impossible to uncover.

#### **17. Are there cases of corruption in higher education and were they brought before the courts?**

Yes, as a result of students' complaints to police, such cases are sometimes brought forward. In most cases, punishment means a fine and a prohibition from engaging in professional activities. Imprisonment is almost never imposed. Here are some typical examples of such cases:

- December 2012, Ulan-Ude city (Buryatia), a lecturer on physics and information technologies at the Ulan-Ude Institute of Railway Transport was punished for 23 acts of bribery ranging from 500 Rubles (~ 15 USD) to 3000 Rubles (~ 90 USD) with a fine of 450.000 Rubles (~ 13.700 USD) and a prohibition from teaching for two years<sup>24</sup>;
- June 2012, Nizhny Novgorod city, a lecturer at the Agriculture Academy was punished for 12 acts of bribery in the amount of 46000 Rubles (~ 1400 USD) with a fine of 900000 Rubles (~ 27.000 USD) and a prohibition from teaching for three years<sup>25</sup>;
- February 2013, Krasnoyarsk city, a lecturer of the Krasnoyarsk State Agriculture University was punished for 59 acts of bribery ranging from 1000 Rubles (~30 USD) to 1500 Rubles (~45 USD) with a fine of 240.000 Rubles (~7000 USD) and a prohibition from teaching for two and half years<sup>26</sup>.

#### **18. Are there cases of corruption in research and were they brought before the courts?**

Astounding cases of illegal obtaining and granting of advanced degrees have been widely publicized in the mass media, but these scandals did not make it to the courts. Nevertheless, in February 2013 by an order of the Ministry of Education and Science of the Russian Federation, 11 researchers lost their advanced degrees and the time limitation for reconsidering decisions on granting advanced degrees was raised from 3 to 10 years<sup>27</sup>.

#### **19. Can the administration and/or the university be sued in case of corruption?**

In case of corruption caused directly by the administration of the university, it is possible, for example, when budget money was stolen or used not in accordance with plans. In this case the university administration's activity becomes subject to the Criminal Code and is considered to be a professional crime. From time to time the mass media bring to light some cases when, for example, a very expensive car was purchased for the university rector using university funds, or when the rector is dismissed for misdeeds revealed during a checkup. However, there are no outstanding cases with decisions made by a court of law. Besides, an accusation of corruption can be used as means of punishment for disloyalty towards decisions by the Ministry of Education. For example, a suit alleging corruption was filed against Moscow university rectors who demonstrated disagreement with the project of reorganizing ineffective universities. In case when corruption factors take place with respect to a certain lecturer or a coworker at the university, he/she (and any accomplices) becomes personally responsible for corruption. The university's administration and management in this case can act only as witnesses or advocates.

#### **20. Is corruption in Higher Education a crime under the Criminal Code of your country?**

Yes, it is the same as in other spheres, in cases where the participants' actions are subject to articles 285, 290, 291. There are no specific articles or clauses which would consider responsibility for corruption in higher education – a situation that leads to discussions between lawyers. The aforementioned articles of the Criminal Code are designed for civil servants, as indicated by the term 'official'. This became grounds for discussion as to whether it is correct to consider a lecturer to be a civil servant or an official. Still, all known court decisions in corruption cases involving teachers are decided on the basis of article 290.

##### **Article 290. Bribe-taking**

1. Bribe-taking by a functionary, in person or through an intermediary, in the form of money, securities, or other assets or property benefits, for actions (inaction) in favor of a bribe-giver or the persons he represents, if the functionary then takes actions (inaction) which are part and parcel of the functionary's official powers, or if the latter, by virtue of his official position may further such actions (inaction), and also for overall patronage or connivance in the civil service, shall be punishable by a fine in the amount of 700 to 1,000 minimum wages, or in the amount of the wage or salary, or any other income of the convicted person for a period of seven to twelve months, or by deprivation of liberty for a term of up to five years, with deprivation to hold specified offices or to engage in specified activities for a term of up to three years.
2. Bribe-taking by a functionary for illegal actions (inaction) shall be punishable by deprivation of liberty for a term of three to seven years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.
3. Deeds provided for in the first or second part of this Article, and committed by a person who holds a government post of the Russian Federation or a government post of a subject of the Russian Federation, or by the head of a local self-government body, shall be punishable by deprivation of liberty for a term of five to ten years, with disqualification to hold specified offices or to engage in specified activities for a term of up to three years.
4. Deeds stipulated in the first, second, or third parts of this Article, if they have been committed:
  - a) by a group of persons in a preliminary conspiracy, or by an organized group;
  - b) repeatedly;
  - c) with the extortion of a bribe;
  - d) on a large scale, shall be punishable by deprivation of liberty for a term of seven to twelve years, with confiscation of property or without such confiscation.

#### **21. Is corruption in Higher Education an infringement under the Disciplinary Code?**

In the Civil Code of the Russian Federation there are no special articles for corruption. However, article 575 (chapter 32) prohibits giving presents worth more than 3,000 Rubles (~ USD 90). Therefore it is customary to consider any present beyond this value a bribe.

##### **Article 575. Prohibition of Gift**

1. It is not allowed to make a gift, with the exception of customary gifts whose value does not exceed five times the minimum monthly wage established by a statute:
  - 1) in the name of minors and citizens found incompetent, by their legal representatives;

- 2) to employees of medical and educational institutions, organizations of social protection and other analogous institutions, including institutions for orphan children and children without parental care, by citizens who are in them for treatment, maintenance or education, nor by the spouses and relatives of these citizens;
- 3) to state employees and employees of agencies of municipal formations in connection with their official position or in connection with their fulfillment of official obligations;
- 4) in relations among commercial organizations.
2. The prohibition to give presents to persons in position of government officials of the Russian Federation, government officials of an administrative region of the Russian Federation, municipal officials, civil servants, municipal servants, personnel of the Bank of Russia, defined by clause 1 of this article, does not extend to cases of giving presents during events according to diplomatic protocol, business trips and other official events. Presents received by persons in position of government officials of the Russian Federation, government officials of an administrative region of the Russian Federation, municipal officials, civil servants, municipal servants, personnel of the Bank of Russia which are worth over 3,000 Rubles (~ 90 USD), are considered federal property, property of the administrative region of the Russian Federation or municipal property respectively, and they are transferred by coworkers with a report to the agency where the person holds his/her position.

## MONITORING

### 22. Does the administration make use of special rapporteurs in case of corruption?

No, disclosed and proven cases of corruption are reported only by the mass media, which has no relationship with the university. The administration most often holds a neutral position, giving no comments on the situation. We know cases in which the university administration conducted internal investigations on corruption within the institution by questioning students, but this is a rare practice and the data is never publicized for a wider audience.

### 23. Is there an independent institution outside the administration, like a governmental ombudsman or similar?

In some cities there are special anti-corruption services which are created on the initiative of public organizations and have free phone lines for consultations. They provide legal and information support in cases of corruption, but their decisions and actions have no obligatory power for any organization.

### 24. Is there regular reporting on corruption in Higher Education?

No, there is no such practice, at least is not one that is freely available. Even the scarce empirical data and estimates that sometimes appear in the mass media with reference to the Ministry of Internal Affairs do not reach a wider audience. The mass media only publishes isolated reports, investigations and scandals. A broader systemic picture based on scientifically collected data in this sphere can be made based on the results of interviews conducted in 2003-08. Within the project called 'Monitoring of Education Economy', which was realized by the National University Higher School of Economics, there was a block of questions designated specially for corruption. There has been no newer data, and certainly no complete reports.

### 25. Are the independent commissions for certain decisions?

If such commissions are created at universities, they may be formally independent but in fact they are not. Their main job is to do their best not to allow negative information to spread and to minimize damage to university's reputation. As state universities are subordinate only to the Ministry of Education and Science, and they do not answer to regional or municipal authorities, theoretically such commissions can only be created by the federal Ministry, but the Ministry does not do this. The best example of an independent commission is the one from the Office of the Public Prosecutor, but it acts only when corruption suits are filed.

### 26. Are the independent commissions for exams or research commissions?

According to the rules at the majority of Russian universities, examination commissions are created only for special kinds of examinations. They could include entrance exams for the arts (painting, performing, composition, etc.), state examinations before graduation, and entrance examinations for master's or doctoral degrees. These commissions are not independent, as they consist of representatives from the same university and deal with students of that university. Common exams during session are conducted without a commission by the lecturer in this discipline. At the majority of universities there is a rule that only in cases where a student failed to pass the exam with the same lecturer three times can a commission be created, consisting of lecturers from the department that could conduct this exam one more time. In cases where the student does not pass the exam with the commission, he/she would be expelled from the university. Such a commission can be only formally independent.

### 27. Are the protocols available?

Yes, the protocols can be submitted on request but they have a formal character, as a rule, and they can hardly be considered reliable documents for making important decisions about the quality of the procedures or whether they are followed.

Corruption in higher education in Russia is not an isolated phenomenon, however; it is tightly embedded into general corruption in society and seems to be a part of the system (cf. Ledeneva 2013).

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## Endnotes

1. We would like to thank *Tatiana Kastouéva-Jean* for her valuable comments and discussions.
2. The Criminal Code of the Russian Federation, article 285, <http://www.ukru.ru/code/10/285/index.htm>, accessed August 12, 2013.
3. Bribe taking (articles 290) and bribe giving (article 291) <http://www.ukru.ru/code/10/290/index.htm> and <http://www.ukru.ru/code/10/291/index.htm>, accessed August 12, 2013.
4. Article 285.1, <http://www.ukru.ru/code/10/285.1/index.htm> accessed August 12, 2013.
5. Articles 285, 286, <http://www.ukru.ru/code/10/285/index.htm> and <http://www.ukru.ru/code/10/286/index.htm> accessed August 12, 2013.
6. Russia has a large number of universities; in September 2012 there were 965 universities in Russia, including 607 state and 358 private schools (cf. <http://stat.edu.ru/>, accessed 12 August 2013).
7. There are two different groups of students in Russia: 'budgetary' students, who have their tuitions paid by the state, and 'non-budgetary' students, who pay their own tuitions (cf. Leontyeva 2013).
8. *Obrazovanie v Rossiiskoi Federacii. Statisticheskii ezhegodnik* (2012), Moskva, GU–VShE
9. The full list is available here <http://www.edu.ru/abitur/act.72/index.php> accessed August 12, 2013
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11. [http://pnu.edu.ru/media/filer\\_public/2013/03/20/report\\_2013.pdf](http://pnu.edu.ru/media/filer_public/2013/03/20/report_2013.pdf) accessed August 12, 2013
12. <http://www.tsu.ru/content/om/om1.php> accessed August 12, 2013
13. For example, the rector of the Moscow Power Engineering Institute was dismissed for this reason. See more in <http://www.rosbalt.ru/main/2013/03/15/1106218.html>, accessed August 12, 2013
14. <http://минобрнауки.рф/3503>, accessed August 12, 2013
15. *EGE – edinyi gosudarstvennyi eksamen* an examination, which serves as school finals and university entrance examinations) (cf. Denisova-Schmidt & Leontyeva 2012b)
16. Some possible schemes include taking this exam in advance for 'valid reasons', such as health problems, participation in sports competitions or performances.
17. <http://ria.ru/society/20130527/939708339.html>. or <http://www.rg.ru/2013/06/06/ekzamen.html>, accessed August 12, 2013
18. See more about the work of RFBR, a government science foundation, in Graham & Dezhina 2008.
19. [http://ria.ru/trend/mpgu\\_dissertation\\_falsification\\_31012013/#ixzz2aLCPH2Ef](http://ria.ru/trend/mpgu_dissertation_falsification_31012013/#ixzz2aLCPH2Ef), accessed August 12, 2013
20. <http://s-pravdoy.com/protiv-korruptcii/3211--55-.html>. accessed August 12, 2013
21. Conducting empirical studies on corruption in academia is not an easy task. Take for example the case of the Russian scholar Igor Groshev: After conducting his empirical investigation into the sources and roots of corruption in Russian law enforcement authorities at the Juridical Institute in Tiumen', and publishing his study outcomes in 2008, Groshev was dismissed from his academic position and asked by the local court to disprove his previous results (Denisova-Schmidt & Leontyeva 2012b).



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22. <http://ria.ru/science/20130219/923619204.html#ixzz2aLCtBdB3>. accessed August 12, 2013  
<https://www.facebook.com/Dissernet> accessed August 12, 2013  
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  23. <http://www.anticor.wildfield.ru/files/obr.pdf> accessed August 12, 2013
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# QUESTIONNAIRE ON CORRUPTION IN EDUCATION AND RESEARCH IN THE RUSSIAN FEDERATION

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14



## DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

### Definition(s) of the notion of corruption in your country

Corruption is abuse of one's official position, active or passive bribery, abuse of power, corrupt business practices or other illegal use by an individual of his or her official position contrary to the legitimate interests of society and the state in order to obtain benefits in the form of money, valuables or other assets or monetized services, other proprietary interests for himself or for a third party or illegal provision of such a benefit to the person by other individuals. Same actions committed on behalf of or in the interest of a legal entity are equally considered corruption.<sup>2</sup>

### What is the annual budget of an average university? Variations?

There are several considerations that should be taken into account as far as the budgeting of educational institutions in Russia is concerned.

First, difference exists between the financial models of private and public institutions. The former are mainly sponsored by their founders, private investments and obtain profit from remunerable education products that they are allowed to sell. They can be subsidised by the state but to a very limited extent. The latter are fully funded from the state budget, be it the federal budget – for federal state universities, or regional budget – for universities operated by the federal subjects. Nevertheless, they are still allowed to acquire external funds either in the form of charity endowments or as a payment for educational services outside those financed from the budget. For the purpose of comprehensiveness examples of both private and state-owned universities will be provided.

Second, although public disclosure of financial information concerning educational activities of all education providers is compulsory since 1 January 2011,<sup>3</sup> relevant data is still difficult to obtain through publicly available resources.

Finally, the discrepancies between regions in terms of educational expenditures are tremendous and, technically speaking, an average number would not be an adequate reflection of the situation. Therefore, examples will include universities from different regions of Russia.

Name of the University	City / Region	Private / State-Owned	Federal or regional state budget funding or subsidy, RU (EUR)	Additional income (from private sources), RU (EUR)	Total annual budget, RU (EUR)
Irkutskiy State University of Transport Communication	Irkutsk, Irkutskaya oblast	State	592,263,000 (13,531,000)	920,124,000 (21,022,000)	1,512,388,000 (34,553,000)

### How high is the percentage of public and of private money?

It depends on the legal status (private or public) of the university, as well as the region. As illustrated by the table above share of budget and private money can be nearly equal in a state-funded university, while a private university may only enjoy a relatively small subsidy from the budget.

### Do the universities have lump sum budgets?

State-funded universities usually do have lump sum budget rather than a project-based budget. In addition to the funds allocated for general expenses of the state universities, the Ministry of Education and Science also distributes funds 'following the students'. As per general rule (Articles 100.2. and 100.3. of the Federal Law on Education) the number of such places fully subsidized from the state budget is calculated according to the quota: at least 800 places for each 10,000 residents aged 17 to 30. The places are distributed between all universities (both private and public) having state accreditation.

### Are the universities autonomous in administering the budget?

The universities are autonomous in administering their budgets to a certain extent. According to the general rule of Article 28.1. of the Federal Law on Education all educational institutions enjoy autonomy, by which the law understands independence in educational, scientific, administrative and financial and economic activities. The funds received from the state budget have a designated purpose and can only be used for this purpose. The income generated by universities from rendering private educational services can only be used in accordance with their charter goals and objectives (Article 101.1. of the Federal Law on Education).

### Who is responsible for the controlling?

According to Article 93.1. of the Federal Law on Education general control and supervision over educational activities is exercised by the Federal Service of Supervision in Education and Science.<sup>4</sup> However, this authority only deals with quality education control and violations of the rights of participants of education process. Financial control over budget funds is exercised by the Federal Treasury.<sup>5</sup> For private university the main financial control body is the Federal Revenue Service,<sup>6</sup> while the Chief Branch of Economic Security and Combatting Corruption of the Ministry of Internal Affairs<sup>7</sup> is dealing with the cases of misappropriation of funds, embezzlement and fraud and bribery in all spheres of activities, including education.

### Are there rich and poor universities in your country?

Yes, it can be said that there are, generally speaking, rich and poor universities. It is usually said that according to the salaries of the professors the 'richest' universities are in St. Petersburg, while the 'poorest' can be found in the region of North Caucasus. But the only official data source that can be used to make such conclusions is the Ministry of Education and Science which is obliged by the Federal Law on Combatting Corruption to publish the data on the income of the heads of universities established by the Ministry.<sup>8</sup> Such obligation is implied in Article 8.6., 8.4. and 8.1.3. of the law. This requirement entered into force on 1 January 2013 in respect of the income of the chief officials of state and municipal establishments, even though they are not considered civil servants according to Russian legislation.

The 56 universities that have won Government competition of innovative development programs can be also described as 'rich', because the grants add to their annual budgets an equivalent of 68 million euros.<sup>9</sup>

**Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic?**

As per general rule, the system of management in a university is governed by the combination of the principles of sole command and collective decision-making (Article 28.2. of the Federal Law on Education). The former is the executive level (individual director, rector, president), while the latter can be an assembly of employers, management and students (their representatives), academic council, other collegial bodies as per the university's charter. The competence of such bodies is defined by the charter as well, however, such questions as, *inter alia*, adoption of annual financial statement and accountancy report, approval and modification of financial plan of the organisation must be allocated to the supreme collegial body in accordance with the Federal Law on Non-Profit Organisations.<sup>10</sup>

**BACKGROUND INFORMATION ABOUT CORRUPTION**

**Which are the corruption sensitive areas in the Higher Education System of your country?**

The seven most common economic crimes connected to corrupt practices in the sphere of education are as follows:

- inappropriate use of budget funds;
- abuse and exceeding of official capacity by heads of state and municipal educational institutions as well as by officials of state authorities;
- active and passive bribery;
- manufacture and sale of forged diplomas;
- using fake diplomas to secure employment;
- combination of state and municipal civil service with the positions in commercial organizations.<sup>11</sup>

Cases of inappropriate use of budget funds are common and well-documented both in courts and administrative practice. For example, cases of this category include violating tender procedures for the purpose of securing construction or procurement contracts with commercial companies affiliated with the university management.<sup>12</sup> Another example: in Perm city an officer of an education authority paid 10 million roubles (approx. 230,000 EUR) from the budget to a private company that repaired the central heating of all educational institutions in the city, but only on paper, fictively.<sup>13</sup>

Abuse of official capacity may include contribution to, condoning of or covering of creation of a fictive private educational institution that only exists on paper and does not in fact engage in educational activities. 'Students' of such institutions pay for being enrolled for the duration of a course of study and receive a diploma which has the same status as any other diploma of a fully licensed and accredited university.

Other examples of corrupt activities in higher education in Russia include admission bribes, illegal payments to pass the exams, payment for illegal and undocumented additional classes with the same professor that is teaching the course (either factual tutoring or pseudo-tutoring), buying coursework prepared (or plagiarised) by someone else, selling text-

books and teaching aids that are supposed to be distributed for free, bribing dissertation council members, renting out university premises without the owner's explicit consent as required by the legislation, nepotism.<sup>14</sup>

In total the annual turnover of this 'market' is estimated by some experts as 1 billion USD. Students pay admission bribes from 500 to 20,000 USD and most of them continue to pay after being admitted to pass the exams and to graduate.<sup>15</sup>

**Admissions**

Admissions alone are roughly calculated to contribute from 520<sup>16</sup> to 618 million USD<sup>17</sup> to the black market of education services. Paradoxically, the highest bribes are paid for being admitted to law schools and faculties of economics (10,000-25,000 EUR in Moscow and 9,000-22,000 EUR in the regions). Admission to humanities faculties cost 8,000-15,000 EUR and 8,000-12,000 EUR respectively, while technical sciences are cheaper – 6,000-8,000 EUR in Moscow and 3,000-5,000 in the regions.<sup>18</sup>

There is a difference in the 'price' to be admitted to a prestigious state university as a 'quota student', i.e. to a place fully funded by the federal budget, and to the same university and program but to a non-subsidised place. In the former case the future student will need to pay in average 35,000 EUR, while in the latter case the price drops to 15,000 EUR and this does not include the official tuition fee that is established by the university for non-quota students.<sup>19</sup>

In average, admission to a Moscow university can be up to three times more expensive than a regional one.<sup>20</sup>

Corruptive admission practices have always been a matter of utter concern and in 2009 the Ministry of Education and Science introduced Unified State Examination with an aim to reduce bribery during admission period. The USE is a nationwide centralized testing administered from the Ministry itself through the network of organizational and control points. The results of USE count towards the final mark for school graduates and, at the same time, perform the function of entry examination to the university of the future student's choice.

However, the USE did not solve the problem of corruption, which just reportedly moved from university admission commissions to school level: correct answers to exam questions are sold online, teachers help students during the exam, education authorities disclose the contents of confidential exam packages, certificates are being forged etc. Effectiveness of this mechanism is further constrained by the priority guaranteed by the law to more than 150 categories of benefit holders.<sup>21</sup> In 2009 'good results' of USE could be bought for 2,200 EUR.<sup>22</sup>

Buying the status of a benefit holder also can be regarded as a form of corruption. Some people illegally obtain a proof of belonging to a disadvantaged category (such as victims of Chernobyl catastrophe) entitled to bypass competitive admission or provide fake proofs of first places in national school subject 'Olympics'.<sup>23</sup>

Another example of corrupt admission practice is so-called 'targeted tutoring' when admission to a university is promised to those prospective students who agree to pay for a preparation course of a certain length with a professor (or several professors of different subjects) of the same university.

graduation

According to the Federal Service for Supervision in Education and Science up to 500,000 higher education diplomas are being sold annually in Russia including approximately 20,000 PhD diplomas per annum (average price 20,000-50,000 USD) and around 5,000 doctorate diplomas (average price 30,000-70,000 USD).<sup>24</sup>

Approximately one fifth of all diplomas sold on the black market are so-called diplomas 'with a lead'. It means that the buyer not only receives a formal proof of qualification, but also all internal documentation of the educational institution reflects his or her full 'participation' in educational process: from presence in the classroom to passing the exams and coursework. Understandably, due to its complexity this is the most expensive service, it involves a high level of involvement of different actors (from the employees forging the records to the supervision authorities covering up the violation of licensed student quota and other requirements); therefore, the price may reach \$ 150,000-180,000.

Diplomas 'without the lead' are widely sold on the black market, including via the Internet, and the price varies greatly depending on the region and status of the university and the quality of forgery: those on original watermark protected forms may cost \$ 20,000-50,000, while those produced off a print-shop may be bought for a price as low as \$ 700-1000.<sup>25</sup> Annual turnover of this market is estimated to reach approximately \$ 2 billion.<sup>26</sup>

personnel (recruitment, tenure, promotion, other)

There is limited information about corruption in personnel recruitment or promotion in the field of education and no case law. However, considering malicious practices existing in other spheres (selling government positions<sup>27</sup>) and the possibility to gain illegal income through the schemes described above the idea of paying for a high position in a management of a well-off university seems feasible. Another incentive might be connected with considerations of 'academic prestige' – a position of a professor or a dean can be appealing for some businessmen of politicians trying to create an impression of a respectable and reliable person. Sometimes an academic department sponsored by such a businessman will be opened especially for this case only on paper, without leading any academic or scientific activities.<sup>28</sup>

public research commissions

Decisions on awarding academic degrees in Russia are made by dissertation councils of the universities (both private and public) and are subject to approval by the public authority - Higher Attestation Commission established by the Government Decree with an aim to assist the Ministry of Education and Science as a body of unpaid independent experts.<sup>29</sup>

Despite the efforts made to secure transparency of the process, the black market of academic degrees offers such confidential services as preparation of the dissertation with the ensuing support of public defense that would include taking care of publications and all necessary paperwork and ensuring positive reaction of the members of the dissertation council to the work presented by applicant. Average price of the original, non-plagiarized text starts at 2,500 EUR for a PhD thesis<sup>30</sup> and may reach 6,800 EUR depending on the prestige of the university.<sup>31</sup> An equivalent sum goes to the dissertation council members in order to ensure their 'flexibility' during public defense.<sup>32</sup>

According to various sources approximately 10,000 PhD degrees are bought in Russia per annum<sup>33</sup> that makes up almost half of all dissertations.<sup>34</sup> In 2013 academic degrees were

withdrawn from eleven people as a result of a monitoring campaign by the Ministry of Education and Science.<sup>35</sup>

private research commissions

The situations does not differ significantly between public and private universities in terms of the work of their research commissions (dissertation councils). In 2011 there were 3,317 dissertation councils in 1,124 universities (both private and public).<sup>36</sup> After the massive campaign of 2013<sup>37</sup> aimed at closing down of dissertation councils awarding dubious academic degrees the number of the councils decreased significantly. Currently, according to the data provided by the Higher Attestation Commission the number of dissertation councils nationwide slightly exceeds 2,400.

publications and plagiarism

According to the Regulations on Awarding Academic Degrees<sup>38</sup> the main results of the dissertation must be published in peer-reviewed academic journals. The list of such journals is approved by the Higher Attestation Commission.<sup>39</sup> It includes 2,268 journals that correspond to the criteria of being peer-reviewed, included into international citing systems, strict periodicity, ISSN and, inter alia, lack of fee for publishing the articles of PhD applicants.<sup>40</sup>

Although official websites of the journals and their publishers insist on the guarantee to publish candidates' articles free of charge, in practice, according to the candidates' forums, the price of publication ranges from 50 to 600 EUR depending on the reputation of the journal and urgency of the publication.<sup>41</sup> The participants of the forum admit that due to artificial deficit created by the exhaustive list of journals and long queues for publication (3 months to a year) the illegal payment is unavoidable.

conference participation

Organizational fee for participation in a scientific conference is common in Russia and is not considered illegal if properly documented. Of 900 conferences announced on the portal 'www.konferencii.ru' one-third require payment.

consulting

Sometimes 'consulting' in higher education system implies informal consultations with those students who want to secure a good grade for the exam. Those students who paid for such consultations that may even not take place are listed in a special register that the professor consults during the exam. As a result the students from the list receive preferential treatment and are being asked less demanding questions during oral examination for a better mark.<sup>42</sup>

other

Among other fields of higher education system that are open for corruptive practices paying for exams and coursework is the most common. If a student is unable to pass an oral or written exam he or she will usually try to buy it. Average price is \$ 50-200 for a pass-fail test and \$ 100-400 for an oral exam. Successful defense of a written coursework may cost up to \$ 500.<sup>43</sup>

Sometimes fees for re-admission to a missed or failed exam are officially established by the university and are paid by the students via the university's cashiers.<sup>44</sup> In some universities,

reportedly, such payment even may release a student from the obligation to come to the exam.<sup>45</sup>

Another corruptogenic sphere is, allegedly, supervision and control procedures. \$ 300 million-worth black market of university-level bribery must be 'covered up' by the supervising authorities that will ignore inadequacies in licensing and accreditation requirements. According to some research the annual turnover of control procedures 'market' reaches \$ 25 million. The same amount is said to be spent on bribing the licensing committees and twice as much – on buying accreditation.<sup>46</sup>

#### **What kind of benefits are available for university members in case of corruption?**

According to the explanation provided by the Supreme Court of Russian Federation the notion of bribery includes, besides monetary remuneration, non-pecuniary services of assessable value provided free of charge, such as, for instance, providing a loan with a lowered interest rate, free travel vouchers, renovation of the apartment, construction of a house, free rent of a car etc.<sup>47</sup> In this sense any sort of benefit received by a university official in return for an academic forgery can be qualified as a corruption crime.

Money? +

Promotion? +

Grants? +

Publicity? -

#### **Who is willing to influence the university decision-making process by corruption?**

The initiative to resolve a certain academic issue by bribery can come from both sides: either the student is willing to pay to ensure the desired outcome of an exam or the admission procedure, or a professor or another university member is putting the students in such circumstances that imply resolving the problem by a certain payment or a free service.

Understandably, in both cases the participants are willing to remain undercover and to avoid publicity, therefore, these cases are difficult to detect and investigate, unless one of the parties is dissatisfied with the outcome of the clandestine operation.

### **PUBLIC AWARENESS**

#### **Is there any public awareness about corruption in education?**

Research publications?

All research publication on corruption in education cited throughout this report are accessible to general public via the Internet. Russian branch of Transparency International publishes reports on corruption in education in Russia that are also available online and appear in media and / or periodic legal journals.<sup>48</sup>

Among the latest legal PhD researches on corruption in education the most relevant are: 'Combating Corruption-Related Crimes in Social Sphere through the Example of Healthcare and Education' (Sergey Plohov, Saratov, 2013); 'Corruption Crimes in the Sphere of Education' (Yuriy Strebkov, Moscow, 2012); 'Administrative Procedures as a Tool of Combating Corruption in Education in Russian Federation' (Dmitry Povniy, Chelyabinsk, 2011).

Media awareness?

Corruption in higher education has a high profile in Russian media: in 2010 education was ranked third in the annual research on public awareness of corruption in all professional

spheres. Nine per cent of all media publications of the facts of financial abuse referred to the corruptive practices in the sphere of education, such as bribes for admission to institutions of higher education or secondary schools and preschools, bribes for passing examinations and tests, etc. Only state officials and the police ranked higher.<sup>49</sup>

According to the same research higher education is on the second place (preceded by schools) with 37 % of all instances of mentioning corruption in education in Russian media. Media awareness has its own risks. For example, in 2006 a sociologist from Tyumen Law Institute of the Ministry of Interior was accused of defamation for publishing the findings of his public opinion poll conducted among the students of the university. During the research 30 % of students confessed that they have paid for getting admitted to the university and only 3 % claimed that they have never bribed the university officials.<sup>50</sup>

### **INTERNAL PROCEDURES**

#### **Are there Codes of Conduct regarding corruption?**

In the majority of cases the internal codes of conduct are adopted with the aim to set requirements for students' behaviour and outlook during the classes, to prohibit use of mobile phones etc.<sup>51</sup>

Some examples of such codes contain general statements on combatting corruption as an act undermining personal dignity of an academic staff member.<sup>52</sup>

However, there are some examples of internal university codes of conduct specifically regarding corruption:

Kuban State Technological University – the University's anti-corruption policy is published on the website, including a comprehensive set of measures to combat corruption, local legal documents and description of adopted procedures.<sup>53</sup>

Kuzbass State Technical University – the Code of Conduct contains a general prohibition for the professors to ask for additional payment from students for consultations and tutoring and, likewise, for the students – to suggest additional payment for such services.<sup>54</sup> In addition to this the Code contains a chapter on anti-corruption behavior of the staff members and sets the procedure for conflict resolution.<sup>55</sup>

Tula State University – the university has adopted and published a comprehensive policy on combatting corruption<sup>56</sup> that includes organizational, educational, informational and legal measures. This policy is supported by the detailed action plan<sup>57</sup> and a warning published on the university's website to all staff members that all cases of corrupt practices are and will be prosecuted and reported to the police.<sup>58</sup>

#### **Is there a special office within the State or the University administration for corruption problems?**

Combating corruption is one of the main functions of the Chief Branch of Economic Security and Combatting Corruption of the Ministry of Internal Affairs.<sup>59</sup>

National Anti-Corruption Council is an autonomous non-state non-profit organisation aimed at publicising the President's anti-corruption policies and conducting research activities and opinion polls on the negative effect of corruption on the enjoyment of human rights.<sup>60</sup> There are 26 civil society initiatives that focus on combating corruption and are listed on the Council's website.<sup>61</sup>

Ministry of Education and Science has adopted their own anti-corruption policy. The dedicated webpage lists more than 30 federal acts and regulations on combating corruption<sup>62</sup>



and specifically mentions the action plan,<sup>63</sup> requirement to report of the officials' income and property,<sup>64</sup> regulations on conducting anti-corruption expertise of the ministerial normative acts,<sup>65</sup> establishment of the specialized ministerial Commission for Surveillance over Ethical Conduct of the Civil Servants,<sup>66</sup> regulations on informing the employer of the facts of inducement to engage in corruptive activities,<sup>67</sup> and Code of Ethics and Official Conduct of the ministerial staff.<sup>68</sup>

Federal Service for Supervision in Education and Science (FSSES), as a subsidiary body of the Ministry, has only the capacity to supervise educational activities, however, in coordination with the Ministry of Internal Affairs the FSSES conduct annual strategic preventive operations since 2008.<sup>69</sup>

In some federal subjects regional anti-corruption agencies are created.<sup>70</sup>

### **Is there an internal supervision process?**

In some universities specialised anti-corruption commissions have been established as internal supervisory bodies with the mandate to consider individual claims:

Commission to Combat Corruption of Saint-Petersburg State Agrarian University;<sup>71</sup>

Anti-Corruption Commission of the Kazan (Privolzhsky) Federal University;<sup>72</sup>

Anti-Corruption Commission of the Federal State Budget Institution of Higher Education 'Udmurtskiy State University';<sup>73</sup>

Anti-Corruption Commission of the Volgograd State Medical University;<sup>74</sup>

Anti-Corruption Commission of the Ryazan State Medical University in the name of Academic I. P. Pavlov;<sup>75</sup>

Commission to Combat Corruption of Kazan National Research Technical Institute in the name of A. N. Tupolev,<sup>76</sup> to name but the few.

## **JURISPRUDENCE**

### **Are there means of redress?**

Yes, both criminal and administrative procedures of redress are available for victims of corrupt practices.

### **Are there cases of corruption in higher education and were they brought before the courts?**

Yes, cases on corruption in higher education are often brought before the courts and are numerous.<sup>77</sup> The main problem in early cases on corruption in higher education was the incompatibility of legal definition of corruption as an act committed by a 'person acting in official capacity' and the fact that university staff members are not considered civil servants according to the law.

However, this incompatibility was resolved by the Supreme Court in 1998 in *Krasilnikov* case.<sup>78</sup> The Court stated that since the professor accused of bribery was appointed to perform a certain function in the admissions commission, he could be regarded as possessing organisational and decision-making functions to the same extent as a person acting in official capacity. Therefore, his illegal actions (bribery for allowing unprepared students to pass the entrance exams) were qualified by the court as the crime of bribery with three years of imprisonment and two years of prohibition to be appointed to teaching positions.<sup>79</sup>

Later cases of similar nature confirm the Supreme Court's position. For example, in another Supreme Court case a university docent *M.* was accused of committing bribery as an official

of a state institution for multiple cases of accepting money from students of Kurgan State University for successful results of the interim examinations.<sup>80</sup>

A professor of foreign languages *Sh.* was accused of bribery and extortion for multiple cases of accepting money or food from students of a state pedagogical university in exchange for forging examination sheets and students record books without actually conducting the examination. The Supreme Court later dismissed the allegations of extortion, stating that discouraging students from taking the exam may not necessarily mean asking for payment. However, the bribery accusation was left intact.<sup>81</sup>

As follows from the landmark Decision of the Supreme Court Plenary of 2009<sup>82</sup> summarizing the practice on abuse and/or exceeding of official position not every member of the university staff can be unequivocally referred to as acting in an official capacity. The Decision is only clear about members of state examination commissions exceeding their capacity by overrating the results demonstrated by unprepared students, whereas professors conducting interim assessment are not mentioned at all. Nevertheless, as illustrated by the relevant case law, the determining argument in assessing whether a person is charged with decision-making capacity is the potential ability of his or her legally significant acts of administrative nature to entail generation, alteration and/or termination of legal relationships.<sup>83</sup>

### **Are there cases of corruption in research and were they brought before the courts?**

Cases of corruption in research are less publicized (unless it is a generously sponsored political move<sup>84</sup>) and are rarely brought before courts. The latest plagiarism scandal resulted in withdrawal of 11 academic degrees,<sup>85</sup> however, none of these decisions were appealed in court.<sup>86</sup> The two existing cases of appeal of withdrawal decisions do not mention bribery, forgery of documents or other corruption practices.<sup>87</sup>

### **Can the administration and/or the university be sued in case of corruption?**

No, as a criminal offense, corruption can only be imputed on a person, particularly a person charged with official capacity, and not an organization (university).

### **Is corruption in Higher Education a crime under the Criminal Code of your country?**

Yes, the following crimes are imputed under the general notion of corruption: fraud committed by a person in official capacity (Article 159.3. of the Criminal Code<sup>88</sup>); appropriation and embezzlement of funds and property (Article 160.4.); corrupt business practices (Article 204); unlawful diversion of funds (Article 285.1.1.); abuse of official capacity (Article 285); exceeding of official capacity (Article 286.1.); passive bribery (Article 290.2.); active bribery (Article 291); forgery by an official (Article 292.2.); forgery, issuing of or trading in forged documents (Article 327.1.); submission of a document known to have been forged (Article 327.3.)

It should be mentioned that different articles of the Criminal Code apply to the same corrupt actions of the staff of public and private universities: the former will most likely be accused of

bribery (article 290), while the latter will be brought to justice for 'corrupt business practices' (article 204).

### **Is corruption in Higher Education an infringement under the Disciplinary Code?**

Yes, and liability for administrative offense related to corruption practices can be imputed on organizations.

According to Article 19.23. of the Code of Administrative Offenses<sup>89</sup> forgery of documents, forms, seals as well as use of such documents and their distribution or trade incurs liability for organisations in the form of administrative fine.

Article 19.28. sets liability for corrupt business practices, i.e. illegal transmission, proposal or promise of money or other benefits on behalf of an organisation to an official of another organisation (not a civil servant) for performing certain actions in the interest of the paying organisation. This administrative offense also leads to an imposition of a fine.

Article 19.30. concerns violations of the requirements for educational process and includes corruption-sensitive offenses, such as violation of the regulations concerning paid educational services (applicable when a professor suggests tutoring bypassing the university financial system), illegal denial of issuing qualifications (applicable when the university charges students for issuing of the state diploma), deliberate tampering of the results of state graduate examinations (common corrupted practice), violation of admission regulations (applicable in cases of extortion of bribes for admission).

### **MONITORING**

#### **Does the administration make use of special rapporteurs in case of corruption?**

In some universities special anti-corruption commissions are set up to adopt strategies and action plans for combating corrupt practices and to follow-up the implementation thereof (see sections 14-15 of this report).

There is no special rapporteur on corruption in Russia within the government structure.

#### **Is there an independent institution outside the administration like an governmental ombudsman or similar?**

There is an autonomous National Anti-Corruption Council, see section 14 of this report.

The only federal subject in Russia that has a dedicated ombudsman for corruption is Ulyanovsk Region.<sup>90</sup> Comprehensive report of this body on monitoring the implementation of anti-corruption activities is a good example of systematic approach to reporting.<sup>91</sup>

#### **Is there regular reporting on corruption in Higher Education?**

There is no centralized requirement for regular reporting on corruption, however, such reports can be found on all levels of administration: schools,<sup>92</sup> municipal authorities,<sup>93</sup> regional education authorities,<sup>94</sup> universities,<sup>95</sup> federal Ministry of Education and Science.<sup>96</sup>

#### **Are there independent commissions for certain decisions?**

Decisions on admissions to the university programs, graduation exams, awarding of academic degrees are made by independent commissions acting with the protected guaranty of academic autonomy.

#### **Are there independent commissions for exams or research commissions?**

Yes. See above.

#### **Are the protocols available?**

Protocols of the Higher Attestation Commission on awarding academic degrees are available online.<sup>97</sup>

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[use your judgment about how much to include; it's probably not useful to include publications that would be difficult for an international audience to obtain or to read]

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# CORRUPTION IN EDUCATION AND RESEARCH IN CROATIA

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Dražen Cepić

15





In the last two decades, corruption has become one of the central problems facing Croatian society. State-socialist heritage, as well as problems specific for postsocialist social, economic, and political context, including lack of democratic culture, weak independent media, and the persistent capacity deficit in public administration,<sup>1</sup> made Croatia especially prone to the ills of corruption and nepotism. In the course of the preparation for the EU accession, the issue of corruption has been placed high on the agenda, when through the strategy of carrots and sticks Brussels sought to assure the accession states' compliance to the norms of transparency and justice. However, despite introducing a host of anti-corruption measures, ranging from penalizing various conducts previously not recognized as criminal, to setting up specialized anti-corruption agencies, courts, and prosecution services,<sup>2</sup> these efforts were not always met with success. The sector of science and higher education in Croatia, as it will be shown in this report, represented no exception.

#### DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

In Croatian legal framework corruption is defined as “any form of misuse of public authority for acquiring personal or collective gain, regardless whether this is done in public or private sector”. Both Ministry of Judiciary and Ministry of Internal Affairs use the conventional definition of corruption assuming any act which, contrary to the public interest, undoubtedly violates moral and legal norms, infringing the foundations of the rule of law. Any person with a public or official responsibility who in order of obtaining personal gain neglects the general interest which he or she is obliged to protect, given the laws, the position and the power entrusted to them, will be considered corrupt, just as well as citizens who offer or agree with giving bribe, with a goal of persuading official person to help the citizen in achieving profit or benefit.<sup>3</sup> Even though university statutes in Croatia contain less extensive definitions of the concept, they are written in accordance to the formulations in the general legal framework.

In Croatian higher education system there are seven public universities and three private universities. According to the data gathered in the ACCESS project, financed by the European Commission program Tempus and the Croatian Ministry of Science, Education and Sport<sup>4</sup> (Table 1), annual budgets of Croatian universities vary from roughly €8 million in case of smaller universities (Dubrovnik, Pula), €60 million for universities in Rijeka and Split, to €340 million for the largest state university in Zagreb.<sup>5</sup>

Table 1.

Name of the University	Annual budget/Millions (€)	Public funds (%)	Private funds (%)
University of Dubrovnik (2009/2010)	8	86	14
University “Juraj Dobrila” in Pula (2009-2010)	7.4	73	27
University of Rijeka (2009)	60	76	24
University of Split (2010)	54	69	31
University of Zadar (2009-2010)	16	88	12

As can be seen from the Table 1, University of Zagreb annual budget is roughly 40 times larger than University of Dubrovnik or University of Pula. Even though such huge difference has to do more with the size of the respective universities and the number of students, number of teaching and administrative staff (Table 2), than with actual differences in resources provided for the researchers and students, University of Zagreb indeed is better off than other universities. Whereas average annual spending for each student enrolled at the University of Zagreb amounts to €5, 446, in case of other public universities these numbers range from €2, 312 for the University of Split to €3, 875 for the University of Dubrovnik.<sup>6</sup>

Table 2.

Name of the University	Number of students	Average annual spending per student/(€)
University of Dubrovnik (2008/2009)	2, 064	3, 875
University “Juraj Dobrila” in Pula (2009/2010)	2, 889	2, 561
University of Rijeka (2009/2010)	19, 332	3, 103
University of Split (2009/2010)	23, 350	2, 312
University of Zadar (2009/2010)	5, 179	3, 089
University of Zagreb (2007/2008)	62, 196	5, 446

The government budget represents the most important source of funding for universities in Croatia. As seen from the Table 1, in no public university is the share of private funding higher than one third of the overall annual budget (even though the information on the budgets of private universities are lacking, anecdotal evidence suggests that at least two of three private universities are to a significant extent funded with public funds: whereas Catholic University is, either directly or indirectly<sup>7</sup>, funded directly from the government budget, Media University is largely dependent on the funds from local municipality). Government funding is allocated mostly by the Ministry for Science, Higher Education and Sport, whereas other sources of state financing include the National Foundation for Science and regional authorities. The private source of financing is largely dependent upon tuition and administrative fees paid by the students. Additional sources of private funding (expert studies, reports, publishing, donations) are less represented.

An attempt to introduce lump sum funding in administering university budgets has been long and complicated. The proposition had firstly been passed in 2003 through the Law on Scientific Activity and Higher Education. However, due to the fragmentation of most Croatian universities and large autonomy possessed by the faculties and academies within them, the Croatian Ministry of Science continued financing faculties for four years after the new legisla-

tion has been adopted – the lump sum was formally introduced in 2007. Yet, in reality, the budget of the University of Zagreb still consists of 35 individual budgets (for the 35 faculties and academies which make the University), even though the means for the budgets are transferred to the centralized account of the University. Therefore, despite formal existence of the lump sum system, in reality Croatian universities are closer to line item budgets, given that budget allowed by the Parliament in detail describes which part of the budget will be spent on salaries, infrastructural development etc.<sup>8</sup>

Universities are autonomous in administering the budget as much as this is allowed by their degree of integration (as pointed out in the previous point), while the university budgets are proposed and controlled by the Budget Committees, which represent advisory boards of the Senate and the Rectorial Board. Budget Committees are comprised of representatives of each academic field, elected by the Senate and Rectorial Board. According to the university statutes, and as in most other countries of Central and Eastern Europe, decision making process within the universities lies in hands of the **Senate**, the expert council of the University, comprised of the professors and students representing different academic fields; **Rector** (in other academic traditions known as Chancellor or President), who is elected by the Senate from among the professors of the University; **Rectorial Board**, comprised of Rector, Pro-rectors (Rector's deputies), representatives of different academic fields, and a student representative, which functions as a managerial body of the University; and finally, the **University Council**, as the advisory and supervisory body, comprised of the representatives of state and local authorities. Thus, the decision making process is supposed to be parliamentary and public.

## BACKGROUND INFORMATION ABOUT CORRUPTION

Corruption in terms of nepotism and clientelistic networks is present in most segments of higher education.<sup>9</sup> Employees are frequently being recruited in unmeritocratic manner (whom you know is more important than what is the quality of your application), promotions are being given along the same lines, whereas publishing in scientific journals quite often least depends on the quality of scientific output: a small, isolated academic market such as the one in Croatia, and a limited number of journals, especially with regard to small academic communities scattered in barely a dozen academic institutions, provide perfect conditions for nepotism in form of “returning a favor” (“if you back me up, I’ll back you up in the future”; “if you publish my paper, I’ll publish yours”).

In the postsocialist “sea of informality”,<sup>10</sup> personal social ties play notoriously important role in all realms of social life<sup>11</sup> – but, nevertheless, without necessarily entering the realm of illicit practices. However, while the former cases can be said to belong to a gray zone, transgressing the legal boundaries of corruption only in a very indirect way (decision on whom to promote to a tenured position or which paper to publish are very rarely conducted in a form of a bribery, that is, for a financial equivalent), exchange of money and gifts in return for admission to university, or for passing university exams and increasing the exam mark of students (the exam bribe), represent the most sensitive areas with regard to corruption. Except the

financial benefits which take the largest share in the corruptive exchanges, and other, in legal terms more ambiguous cases (promotions, publications), where benefits are issued more in form of a favor, corruption cases investigated in the action “Index” (described below) indicated existence of alternative forms of benefits: sexual favors, a new set of car tires, an iPhone 4, a pig, a lamb, and a piece of ham. These cases indicated that corruptive practices have been conducted in cooperation between the academic staff (ranging from the teaching assistants to the full professors, and even heads of departments and vice-deans), administrative staff, and the middle-men, officially unaffiliated with the universities.

Media awareness about corruption in higher education<sup>12</sup> has risen substantially in the last five years. As a result of the EU accession process, primarily the reform of the judiciary and special attention of state administration on anti-corruption policies, Croatia witnessed several big corruption cases being brought to court, which received significant media attention. However, even though researchers in Croatia and abroad issued several publications on corruption in Croatia, none of them explored corruption in education.

## INTERNAL PROCEDURES

Code of conduct of the University of Zagreb includes several paragraphs regarding corruption: article 19 on plagiarism, article 21 on gift giving (forbidding any practice involving requiring gifts or any form of counter-value which might endanger objective evaluations), and article 22 on conflict of interests (caused by family relations, close friendships or intimate relations). Other universities share similar or identical codes of conduct. However, university administrations do not contain a special office dealing with corruption. Internal supervision process regarding corruption within higher education and research are conducted within ethical committees of the universities and respective faculties. As for the state administration, after 2000 the Croatian government created a specialized prosecution service called USKOK (the Bureau for the Suppression of Corruption and Organized Crime), to work in concert with other anti-corruption institutions.<sup>13</sup>

## JURISPRUDENCE

USKOK represents the strongest and most well-resourced state institution in charge of preventing and redressing corruption. As a proof of country's dedicated anti-corruption measures, in 2007 USKOK began preparing a case called “Index” which would mark a first serious attempt to fight corruption in higher education. In the last 6 years the action led to more than 100 arrests and dozens of convictions, mostly related to bribes paid for admissions and the examination malpractice (so-called “exam buy-off”), mostly at the Faculty of Traffic and Faculty of Economics in Zagreb. Besides the students and parents of students who engaged in illegal exchange, criminal convictions included highly posited members of the teaching staff and university administration (full professors, vice-deans), which were sentenced to prison. One of the university professors convicted for exam bribery was even the Head of the Parliamentary Committee for the Conflict of Interests, but was eventually freed by the Supreme Court on procedural matters (whether as a mere coincidence or not, the judge of the county court made a series of such crucial mistakes that the Supreme Court had to accept the ap-

peal instantly). In a separate case called “Anatomija” from 2012, police arrested 12 suspects from Zagreb Medical School (professors at the School, students of medicine and their parents<sup>14</sup>) for the exam bribe. Whereas the latter cases referred to the corruption cases at the University of Zagreb, in April 2013 USKOK expanded the investigation to University of Osijek. Police and the USKOK agents arrested 39 students members of the teaching staff on corruption charges and exam bribe.

Even though these cases might suggest a firm decision of the judiciary to stop the corruption in higher education, some critics warn that each of these prosecutions corresponded either with annual parliamentary discussion on the work of the Office of the State’s Attorney, or with the parliamentary ballot on prolonging the State’s Attorney’s mandate (already his third mandate in a row). Although a case against the Deputy State Attorney’s husband resulted with her resignation, which was supposed to confirm the State’s Attorney’s willingness to investigate corruption even within his own office, critics warn that it was directed against a person installed by the former government, with whom the State Attorney was not known to be in amicable relations. Therefore, as seen from the cases brought before the courts, in the weak rule of law (the Office of State’s Attorney, and judiciary in general) an independent prosecution service, such as USKOK, is hardly a guarantee that corruption cases will be brought to justice.

USKOK has investigated several cases of corruption in the research activities within Croatian science and higher education (e.g. the consultancy which the Faculty of Economics did for the national power company). However, none of the cases has yet been brought before the courts. Also, even though according to the “Law on responsibility of legal entities for criminal offences” from 2003, legal entities, e.g. universities, can be held responsible for any violation of the Criminal Code – and besides international legal instruments accepted in the legal framework of Republic of Croatia, corruptive actions in higher education represent a violation of the articles 293-296 of the Criminal Code – none of the cases thus far ended up with the administration of the university as a whole being sued for corruption. Finally, Croatian universities do not have disciplinary codes. Issues of corruption are dealt with in codes of conduct on the university level, and Criminal Code on the state level.

## MONITORING

In cases of corruption the university administrations can appoint special rapporteurs and committees, as it was the case in 2009 when the Rector formed a special committee in order to investigate corruption at the University of Economics, which resulted with the resignation of the Dean of the Faculty. Even though the office of state ombudsman, as the central independent body in charge of fighting discrimination, maladministration and violation of rights, can be addressed with complaints on corruption, there is no independent monitoring institution specialized for the corruption issues. Also, there is no regular reporting on corruption. According to the university statutes, rectors can appoint permanent and temporary independent commissions for expert advice, and independent commissions for exams are formed in case students fail an exam four times, or in case of a grade appeal made by students, but protocols are not available.

## REFERENCES

[use your judgment about how much to include; it’s probably not useful to include publications that would be difficult for an international audience to obtain or to read]

## Endnotes

1. Dionisie, Dan, and Francesco Checchi, "Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: a Practitioners' Experience.", edited by UNDP Bratislava Regional Center, Bratislava, 2008, p. 2.
2. Batory, Agnes, "Why do anti-corruption laws fail in Central Eastern Europe? A target compliance perspective.", *Regulation & Governance*, Vol. 6, no. 1, March 2012, p. 66.
3. Ministarstvo pravosuđa Republike Hrvatske [Croatian Ministry of Judiciary], *Što je korupcija?*, retrieved 3 August 2013, <<http://www.antikorupcija.hr/Default.aspx?sec=488>, <http://www.mup.hr/main.aspx?id=32#1>>.
4. Doolan, Karin, Danijela Dolenc, and Mladen Domazet, *Hrvatski sustav financiranja visokog obrazovanja u europskom kontekstu: komparativna studija* [The Croatian Higher Education Funding System in the European Context: A Comparative Study], Zagreb, Institut za razvoj obrazovanja, 2012. Given that crucial data about financing higher education and research in Croatia have been inaccessible, the data have been collected through questionnaires completed by the administrative staff. The fact that three largest universities (in Zagreb, Rijeka and Split) have not been integrated – in the sense that faculties and schools which are part of the University nevertheless have an independent legal status – rendered the data collection rather difficult. Given that accounting and financial reporting is still not conducted in a centralized way on the level of University, the data acquired, as the authors warn, are not entirely valid.
5. The table contains no information about the University of Osijek, and three private universities, Media University in Koprivnica, International University in Dubrovnik and Catholic University in Zagreb, for which the data had been inaccessible.
6. As can be seen from Table 1 and Table 2, in some cases the data do not refer to the same year, which makes the comparison not entirely valid.
7. The direct financing refers to the salaries of the University staff which are funded from the government budget, while the rest of the costs are covered by the Catholic Church in Croatia. However, given that according to the so-called Vatican Agreement between Croatia and the Holy See from 1997, Catholic Church in Croatia is funded from the government budget as well, it can be said that Catholic University is almost fully funded by the State.
8. Doolan et al., p. 35.
9. A survey in frame of the IPA 2008 project „Improving the Capacity of the University System to Create a Framework for Preventing Discrimination and Corruption aimed at Improving Academic Integrity”, conducted by the University of Zagreb, showed that 9% of the teaching staff were offered bribery, one third of them knew of a case of plagiarism among their colleagues (also, 26% of the respondents among students declared to have used a plagiarism when fulfilling their written assignments, indicating the existence of a *culture of plagiarism*—that is, the mores within the academic community according to which plagiaristic practices can be seen as something, if not fully allowed, than informally very much tolerated), and almost half of them encountered nepotism in their work environment. M.H., *Akademski zajednica u Zagrebu: Nepotizam, plagijati, diskriminacija i korupcija*, Srednja.hr, 2012, retrieved 3 August 2013, <<http://www.srednja.hr/Studenti/Vijesti/Akademski-zajednica-u-Zagrebu-Nepotizam-plagijati-diskriminacija-i-korupcija>>.

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10. Böröcz, József, "Informality rules.", *East European Politics and Societies*, Vol. 14, no. 2, March 2000, pp. 348-380.
  11. Gerber, Theodor P., and Olga Mayorova, "Getting Personal: Networks and Stratification in the Russian Labor Market, 1985-2001.", *American Journal of Sociology*, Vol. 116, no. 3, November 2010, pp. 855-908.
  12. The public awareness of corruption in other segments of educational system is far less expressed. This can be easily explained by the focus of the media on the USKOK actions, which thus far concerned only with corruption in higher education. Media coverage of corruption in primary and secondary schooling mostly revolved around the initiative of Ministry of Science, Education and Sport from May 2013 pointed against the corruptive affairs between teachers and publishing houses. Given the right of teachers to choose textbooks of their own choice which students then have to use (and purchase!), several publishers have been quite generous in treating teachers with laptops, excursions, and other sorts of "gifts".
  13. Gabriel Kuris, *Cleaning House: Croatia Mops Up High-Level Corruption, 2005-2012*, Innovation for Successful Societies, Princeton University, 2013, retrieved 3 August 2013, <http://www.princeton.edu/successfulsocieties/content/focusareas/AC/policynotes/view.xml?id=226>
  14. One detainee was the husband of the Deputy State's Attorney. In order to help his son, a medical student, to pass the anatomy exam he paid for a copy of the exam questions several days prior to the examination. After his son nonetheless managed to fail the exam, USKOK recorded the conversation between the father and the professor, with the latter saying: "Why are you pushing him so hard? Can't you see that your son is a complete moron? He'll never manage to graduate!"

# QUESTIONNAIRE ON CORRUPTION IN EDUCATION AND RESEARCH IN ESTONIA

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Sille Uusna

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## DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

Definition(s) of the notion of corruption in your country

The notion of corruption is mostly regulated in the context of public service. According to Anti-Corruption Act an official is prohibited from:

- 1) demanding, intermediating and receiving income derived from corrupt practices;
- 2) corrupt use of official position;
- 3) corrupt use of public resources;
- 4) corrupt use of influence;
- 5) corrupt use of inside information.

Income derived from corrupt practices is the proprietary or other benefits offered to the official or any third person due to his or her official duties or demanded by the official, and benefits received by violation of the obligations of the official.

Corrupt use of official position is the making of a decision or performing of an act in the competence of an official by such official in violation of his or her official duties in the interests of the official or any third persons, participation therein or substantive directing thereof, if this brings about unequal or unjustified advantages for the official or the third person from the point of view of public interest.<sup>1</sup>

What is the annual budget of an average university? Variations?

There are 6 public universities in Estonia. Budget volume varies from 6 to 146 million Euros.

How high is the percentage of public and of private money?

Different universities have different percentage – public money varies from ca 50 to 75% of the budget.

Do the universities have lump sum budgets?

Universities have lump sum budget for higher education; research funding is project-based.

Are the universities autonomous in administering the budget?

Universities are autonomous in administering the budget, but they have to take account the purpose of the targeted funding.

Who is responsible for the controlling?

The State Audit Office audits the activities of universities pursuant to the State Audit Office Act, the economic activities are monitored by regular and special audits prescribed by the council of the university and state supervision over the legality of the activities of universities is exercised by the Ministry of Education and Research.

Are there rich and poor universities in your country?

There are universities and professional higher education institutions. Universities are probably better funded because of research projects, although there are also remarkable differences between them. In general all higher education funding is based on same principles and the financial situation depends more on the number of students and study fields.

Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic?

Universities are autonomous within the limits prescribed by the Universities Act, but often are their activities related to administrative procedures which are regulated by state. Decision making process is formally public. Decision making bodies consist mainly of professors.

## BACKGROUND INFORMATION ABOUT CORRUPTION

Which are the corruption sensitive areas in the Higher Education System of your country

admissions

graduation

personnel (recruitment, tenure, promotion, other)

public research commissions

private research commissions

publications and plagiarism

conference participation

consulting

other

In some extent could be sensitive all areas, but considering the meaning of corruption in our legislation those cases do not qualify as corruption. Mostly are in focus problems with plagiarism and with following graduation. In regulations have been paid attentions that important decisions must be made by collegiate bodies in order to reduce the influence of one person. Some researchers accuse public research commissions of corruption and some universities are not satisfied how the state divides money to the universities.

What kind of benefits are available for university members in case of corruption?

Money?

Promotion?

Grants?

Publicity?

It's hard to say. Last case of plagiarism was related to doctoral thesis, but there have been no evidence that someone of university staff have had some benefits through that.

Who is willing to influence the university decision-making process by corruption?

Probably students are interested of getting better grades. Better relations with decision makers can provide some benefits for teaching staff or researchers.

## PUBLIC AWARENESS

Is there any public awareness about corruption in education?

Research publications?

Media awareness?

There has been adopted Anti-Corruption Strategy 2013-2020 which marks that corruption in education needs more attention and further investigation.

In this year defended Mari-Liis Sööt doctoral thesis: "Explaining corruption: Opportunities for corruption and institutional trust"

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<http://dspace.utlib.ee/dspace/handle/10062/29468>

#### INTERNAL PROCEDURES

Are there Codes of Conduct regarding corruption?

There are Codes of Conduct initiated by the State and to some extent also by universities.

Is there a special office within the State or the University administration for corruption problems?

Ministry of Justice is coordinating anti-corruption activities in all country.

Is there an internal supervision process?

Universities can enact internal regulations concerning corruption and supervision.

#### JURISPRUDENCE

Are there means of redress?

Corruption is a crime. If someone has suffered from corruption he/she may go to a civil court and ask compensation.

Are there cases of corruption in higher education and were they brought before the courts?

No.

Are there cases of corruption in research and were they brought before the courts?

No.

Can the administration and/or the university be sued in case of corruption?

Basically yes.

Is corruption in Higher Education a crime under the Criminal Code of your country?

Corruption is a crime under the Criminal Code.

Is corruption in Higher Education an infringement under the Disciplinary Code?

#### MONITORING

Does the administration make use of special rapporteurs in case of corruption?

When needed, then yes.

Is there an independent institution outside the administration like a governmental ombudsman or similar?

Anti-corruption combat is one task of the Estonian Internal Security Service.

Is there regular reporting on corruption in Higher Education?

No.

Are the independent commissions for certain decisions?

So far not.

Are the independent commissions for exams or research commissions?

In some universities, mostly in doctoral level.

Are the protocols available?

Yes.

#### Endnotes

1. <http://www.legaltext.ee/et/andmebaas/tekst.asp?loc=text&dok=2012X15&keel=en&pg=1&ptyyp=RT&tyyp=X&query=korrupsioonivastane+seadus>



# THE CORRUPTION IN EDUCATION AND LEGAL FRAMEWORK. ALBANIAN CASE



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**Juliana Latifi**  
**Nikoleta Mita**  
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## BACKGROUND OF SITUATION

In the last decade, higher education in Albania is facing both quantitative and qualitative changes. At present, the higher education landscape is very dynamic. Nowadays the liberalization of higher education in Albania has become a reality. Today, Albania counts 58 higher education institutions, 14 out of which are public and 44 are private.<sup>1</sup> Despite the positive impact that private Higher Education Institutions (HEI) have in the higher education market, the trend continues to be oriented towards public education. The overall number of the students enrolled in the public higher education is a clear indicator of the predominance and preference of public HEI, compared to private ones.

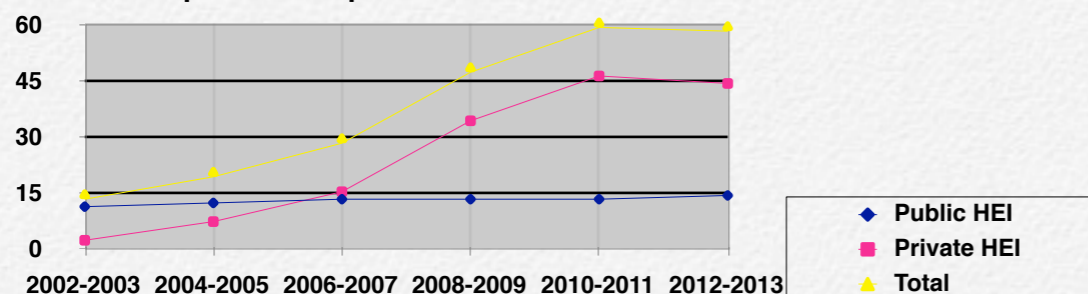
There are many reasons for this but the following reasons remain the main ones: The tuition fee for public universities is much cheaper compared to private HEI (this ratio in Albania is at 1/10 respectively); Confidence in the diplomas provided by public HEI which serve as a guarantee for a future job. Thus, the public HEI, due to the advantages they offer, dominate the higher education market.

On the other hand, this picture in the Albanian higher education has also been accompanied by its problems. Thus, study programs provided by private HEI in Albania at present, are focused in four main directions: law, economy, teaching, and nursing. The number of students graduated in these sectors in the last 5 years in Albania does not meet the real labour market demands, because the demand-supply ratio for these professions is disproportioned in regards to the creation of new job places.

Moreover, private HEI have a low student admission threshold. They do not make the selection of students on the grounds of the A-level score. The low admission threshold directly affects their quality, which results in "lack of confidence" by the labour market in the diplomas they issue compared to the diplomas issued by public HEI.

The table below shows the "fierce" competition between the public and private HEI.

### The ratio of private and public universities



Beside these, corruption is a negative phenomenon remarked in Higher Education Institutions, both in private and public ones.

In "The 2012 corruption perceptions index" which measures the perceived levels of public sector corruption in 176 countries and territories around the world, Albania has rank 113/ score 33 (high level of corruption)<sup>2</sup>. Obviously at this level (score) of corruption has impacted also the corruption in education.

"Global Corruption Report Education, 2013" states:

*"Corruption and poor governance is a major impediment to realizing the right to education, and to reaching the Millennium Development Goals (MDGs) and Dakar Education for All, Framework for Action by 2015. Corruption not only distorts access to education, but affects the quality of education and the reliability of research findings. From corruption in the procurement of school resources and nepotism in the hiring of teachers, to the skewing of research results for personal gain, major corruption risks can be identified at every level of education and research systems".<sup>3</sup>*

## LEGAL FRAMEWORK ON ANTI-CORRUPTION

Albania has a complex legal framework against of the corruption.

In the Criminal Code of the Republic of Albania<sup>4</sup>, it is provided the definition of the notion of corruption. According to this definition corruption is divided in passive and active corruption, like in the public and the private sector.

**Active corruption means:** The direct or indirect proposal, offer, or giving, to a person, who exercises public functions/ the person that exercises a management function or works in whatever position in the private sector of any irregular benefit for himself or a third person in order to act or not to act in relation to his duty (Art.164/a, 244).

**Passive corruption means:** Soliciting or taking, directly or indirectly, by a person who exercises public functions / the person that exercises a management function or works in whatever position in the private sector of any irregular benefit or of any such promise for himself or for a third person or accepting an offer or promise deriving from an irregular benefit in order to act or not to act in the exercise of his duty (Art.164/b, 259).

Albania has ratified two conventions "On corruption"<sup>5</sup>, and precisely: The United Nations Convention "Against corruption", by Law No. 9492, dated 03.13.2006.<sup>6</sup>

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so.

The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Convention offences also deal with the problematic areas of private-sector corruption.

The Civil Convention of Council of Europe "On corruption", by Law No.8635, dated 06.07.2000.<sup>7</sup>

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The Council of Europe Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption.

The Civil Law Convention aims at requiring each Party to provide in its internal law for effective remedies for persons who have suffered damage as a result of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.

This Convention, which is the first attempt to define common principles and rules at an international level in the field of civil law and corruption, deals with the definition of corruption, compensation for damage, liability, contributory negligence, limitation periods, the validity of contracts, the protection of employees, accounts and audits, the acquisition of evidence, interim measures, international co-operation and monitoring.

Within Decision No.1561, dated 03.10.2008, Albania government has approved “Cross-cutting strategy for preventing and combating corruption for transparent governance” (2008-2013).<sup>8</sup>

According to this document, the general vision comprises the progressive and sustainable reduction of corruption, strengthening of the institutions integrity and promotion of values in the governance.

The priority and the scope of the overall vision, is the fight against and progressive and sustainable reduction of corruption through:

- reforms for its prevention;
- strengthening the integrity of the institutions and promoting the values of governance;
- comprehensive monitoring of the corruption phenomena;
- fight against corruption by the civil society and the strengthening of its role;
- administrative punishment for corrupted officials.

This document identifies that the fight against the corruption requires consideration of two important approaches in the effort to reduce corruption:

**“First**, it is important to establish a normal situation by creating and consolidating standards and best practices in the public administration and mainly in specific sectors such as education, health, law enforcement bodies and justice. Subsequently, this approach commits a wide range of actions that are aimed at preventing corruption by encouraging the public administration and the society to pursue those practices that promote integrity and operate on universal integrity standards.

**The second** approach involves the investigation and effective penalization of legal violations in this field and circumvention of the standards and it includes measures to counteract on corruptive deeds, as well as the complementation and consolidation of the institutional frame in function of ensuring an effective investigation and penalization”.

In section 6 of this document entitled “Reform of Education System” for higher education it is provided that education of corruption in the educational system shall focus in several priority tracts, as below:

- regulation of human resources management in the education system (establishment of clear standard criteria and procedures for the competition, appointment, promotion, performance evaluation and encouragement, documentation, transparency and publication);
- consolidation of the financial system in education: strengthening of central and local monitoring and audit mechanisms, development of auditing techniques in the education institutions, enhancement of the coordination and communication system, increase of the role of the parents community, teachers, students associations and civil society in monitoring the expenditures and outcomes at sector and institutional level, the activity of the auditing authorities and the implementation of recommendations;
- increase of procurement capacities, improvement of the rules and procedures of the procurement process, focussing on the approximation with international education practices: promotion of advanced consultancy practices in the process of monitoring analysis and evaluation in the field of planning and achievement by institutionalizing along with the internal control systems the external mechanisms of the evaluation of results and the complaint administration mechanisms;
- guaranteeing of the registration of private teaching activities through the self-declaration of public officials;
- boost of inspecting the quality of services provided by the public and private higher education operators;
- establishment of the indexing and categorization system of the higher and secondary education institutions according to their quality and features and values they provide;
- guaranteeing of the transparency in the delivery of schooling subventions and education budget at all levels;
- consolidation and applicability of state mature experience in the exams and admission of students at the higher education and advancement of access in education institutions (admission to universities);
- step-up of the technical and human infrastructure, of the procedures and transparency in function of ensuring quality, efficiency and integrity of the certification of exams, corrections, results and admissions;
- introduction in the school curricula of information dealing in issues of corruption, operation ethics of the public officials behaviours and attitude of public and non-public institutions, education and participation of citizens in the fight against corruption;
- extended inclusion of the community of pupils and students, as well as of the citizens’ community in the transparent policy-making for education.

A comprehensive international and domestic legal framework is in place but its implementation is far away. Albania ranks one of the corrupted countries.

#### **Anti-corruption legal framework in higher education**

The fight against corruption in higher education is efficient whet it is done according to some quality standards.

Thus, facing a reality which increasingly requires a higher education closer to the European Higher Education Area Standards, the Albanian Government, pursuant to Law No. 9741, dated 21 May 2007 “On Higher Education in the Republic of Albania”<sup>9</sup> amended, (Art.61) has adopted the higher education quality state standards, which have been considered as the “Legal framework for quality state standards”<sup>10</sup>, which comprises:

Minister of Education and Science Order No. 126, dated 17 March 2011, “On the adoption of quality state standards for the assessment and institutional accreditation of higher education institutions”.

Minister of Education and Science Order No. 134, date 21 March 2011 “On the adoption of quality state standards for the assessment and accreditation of higher education institutions’ first cycle study programs”.

Minister of Education and Science Order No. 135, date 21 February 2011 “On the adoption of quality state standards for the assessment and accreditation of higher education institutions’ second cycle study programs”.

Minister of Education and Science Order No. 136, date 21 February 2011 “On the adoption of quality state standards for the assessment and accreditation of higher education institutions’ third cycle study programs”.

“The legal framework of quality state standards”, is focused in two main directions:  
Standards to be met by a higher education institution in order to be evaluated and accredited, called “institutional standards”.

Standards to be met by study programs in the three study cycles, in order to be evaluated and accredited, called “standards of study programs”.

Institutional standards are focused on three main directions:  
study programs;  
scientific activity;  
management of the institution

All these standards recommended by Minister of Education Order No. 126, rightfully lead to the question:

What is the awareness extent of HEI on the importance to observe such standards?

What is the binding power of these standards and which sanctions will HEI and their directors face if they fail to observe them?

Is the awareness of public HEI higher compared to private ones when it comes to meeting these standards, given they are funded by the state budget and they comprise approximately 90% of the students’ bulk?

Is the awareness of private HEI higher when it comes to meeting these standards, so to gain a certain physiognomy and to be competitive in the education market?

These questions have to be further researched.

The awareness of both public and private HEI to respect these standards is low. In the current situation of the higher education in Albania which is characterized by a low credibility rate, HEI is accused of formalism and fictiveness; it is influenced by politics, and in

some cases it is accompanied by phenomena of a corruptive nature. It is necessary for institutional standards to be binding<sup>11</sup>, especially those related to institutional management.

The cases of disrepute both in the public and private HEI are more than evident: thus, the major public university, the University of Tirana, has not accepted to undergo the evaluation and institutional accreditation process. The private HEI are characterized by a very high rate of fictiveness; only 12 private HEI are institutionally accredited.<sup>12</sup>

Under these conditions, when there is a lack of adequate programs which meet the needs and requirements of the labour market and the current European development trend, the lack of duly academic staff and appropriate infrastructure, private HEI continue to flourish in the framework of the “education liberalization”, which has no criterion.

## THE ANTI-CORRUPTION POLICY OF THE MINISTRY OF EDUCATION AND SCIENCE

According to the Report before the Justice, Freedom and Security (JFS) Subcommittee Meeting, the MEoS has arrived to these concrete results for anti-corruption in higher education<sup>13</sup>

**The State Matura (SM).** For the first time the students who successfully completed Matura in 2011 were awarded with diplomas issued by the National Examination Agency (NEA). Each diploma has the same identification number (ID) of students who passed the Matura and is registered in the database to the NEA. This is a new standard of quality that approximates Albanian Matura with European standard.

Currently it has started to implement the process of SM on-line that reduces the duration of registration and cancellation of registration, guarantees a quick and safe communication among NEA, students, Regional Educational Directories/Educational Offices, MEoS and HEI. The candidate students have the opportunity to make optimal choices of preferences for different study programs through the processing and rapid exchange of information..

**The State Exam.** The law No. 10 171, dated 22.10.2009 “For regulated professions in the Republic of Albania”<sup>14</sup> has foreseen as one of the requirements to obtain the right to exercise a profession through passing the State Exam.

Between January 2012 and May 2013, the National Agency of Examinations organized state examination for the seven regulated professions: (a) medical doctor (b) dentist (c) pharmacist; (d) nurse (d) midwife; (e) physiotherapist; (f) teacher.

For the first time in Albania, it was developed and implemented a completely digital international standard. This procedure was transparent and the possibility of corruption was zero.

**The digital management system.** The Public Agency for Accreditation of Higher Education (PAAHE) is building the digital management system, as a mechanism that will facilitate the evaluation and accreditation procedures. This system will serve for well-informed and increased cooperation between stakeholders and the public.

In the context of the reform in higher education, in order to ensure the quality, especially in the Master programs and the PhD programs at universities the Ministry of Education and Science has approved “**The rules of ethics in research and publishing**”.

This sub legal act has sanctioned European standard that must be fulfilled in the field of research: in research masters; doctoral studies; scientific research and publication in general.

The regulation provides *inter alia* the obligation of institutions and researchers to publish in their official websites research work, as well as to verify with contemporary methods, every scientific master thesis, doctoral dissertation, monograph, book, article or scientific reference, as well as each other research and publications for the originality, authenticity and plagiarism.

The rules of this Regulation will impact the quality and transparency of research and publications in higher education in Albania.

**The ranking and evaluation of all public and non-public HEI** by the German company “CHE” on 15 July 2011 the Centre for Higher Education Development located in Germany (Centrum fuer Hochschulentwicklung-CHE) announced the results of the pilot ranking of higher education institutions, study programs for the first cycle (Bachelor) in the fields of economy social sciences, law and nursing.<sup>15</sup>

## **CORRUPTION SENSITIVE AREAS IN THE HIGHER EDUCATION SYSTEM IN ALBANIA**

The corruption sensitive areas in the Higher Education System in Albania are several

**The graduation of the students**<sup>16</sup> both in public and private universities is an area where are remarked cases of corruption. The bribes (data are informal) are given either before or after the exams by the students’ parents or even by the students themselves.

**The personnel recruitment in the public universities**<sup>17</sup> in some cases is based on personal preferences, political criteria and private interventions to the authorities of the university. The recruitment is not based on the professional criteria and merits of the candidates. The recruitment is not always a transparent process.

**Publications and plagiarism** is a corruption sensitive area. Despite the efforts of the Ministry of Education which through a sub legal act “The Regulation of ethics in research and publishing activities” has tried to sanction the European standard that must be met in research, publishing, master’s and doctoral studies, it has not given any concrete results. A number of publications do not meet the ethical research standards. Books published by different lecturers are commonly forcibly sold to students.

Plagiarism is a common phenomenon. The master’s thesis strolls from one university to another. Also some PhD theses do not contain the references and literature sources.

**The decision making process**<sup>18</sup>, in public universities is influenced by ‘friendship’ relations or certain political influence. The reason is that the authorities of the university: rector, dean and head of department want to maintain “their chairs” for a long time.

In most of the private universities, regardless of the academic structures, decision-making is a process that is carried out according to the interests of the owners of the universities themselves.

As a rule, the decision making process should be public, such as those taken by collegial bodies, as well as those taken by the authorities of Universities. In most cases, the decisions of collegial bodies or authorities are not published in official site of universities or the faculties.

## **PUBLIC AWARENESS ABOUT CORRUPTION**

There are some publications on the topic of corruption.

*Edukimi kundër korrupsionit. Manual për mësuesit (Education against corruption Handbook for Teachers)*. Project against corruption in Albania (PACA) Tirana, September 2012  
Ian Smith and Tom Hamilton, *Assessment and recommendations concerning draft amendments to the law on higher education regulating inspections of higher education institutions, and sublegal acts to implement the law*. Technical Paper. Project against corruption in Albania (PACA), Tirana, July 2012.

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*Politika të MASH për anti-korrupsionin*. Raportimi për nënkomitetin Drejtësi, Liri, Siguri (EU). (MEoS policies on anti-corruption. Reporting Subcommittee on Justice, Freedom, Security), available at [www.mash.gov.al](http://www.mash.gov.al). Accessed 10 August 2013

Gentian Opre, *Access versus Quality in Albania’s Higher Education System: A Necessary Trade-Off?* Research Paper, The Hague, The Netherlands, November, 2009

*Vlerësimi i transparencës në arsimin e lartë (Evaluation of transparency in higher education)*. Soros Foundation, Tirana, March 2005.

The media is very sensitive regarding corruption in education.

The media has informed the public for the cases of corruption. After this publication, nobody knew the end of the story; there is the lack of information on the sanction against the corrupted persons.

## **INTERNAL PROCEDURES ON COMBATING CORRUPTION**

There is no Code of Conduct regarding corruption. The provisions, referred to corruption are involved in the Criminal Code, mentioned above (Art.164/a,b, 244, 259).

The Albanian government approved with Decision No.1561, dated 03.10.2008 “Cross-cutting strategy for prevention, fight against corruption and transparent governance, 2008 – 2013”.

The Albanian government ratified by Law No. 9492, dated 03.13.2006 The United Nations convention “Against corruption” and by another law No.8635, dated 06.07.2000 the Civil Convention “On corruption”. Article 116 of the Albania Constitution provides the hierarchy of legal

norms, which are as follows: (a) Constitution; (b) Ratified international agreements; (c) Laws; (d) Normative acts of the Council of Ministers. So, the Convention of Council of Europe "On corruption" became automatically an integral part of the Albanian legal order from the moment of its entry into force.

In the structure of public administration, attached to the Prime Minister's office, the Department of Administrative Internal Control and Anticorruption is set up and operates.

The Department of Administrative Internal Control and Anticorruption in the Council of Ministers has been re-organized and functions in line with decision No. 94, dated 15.02.2006 of the Council of Ministers "On approval of regulation about functions and procedures of administrative inner control and anticorruption of the Council of Ministers". This department is the relevant structure for administrative inner control and anticorruption in the institutions of executive power like the ministries, the central institutions, subordinated by the prime minister and ministers, prefect administration as well as in trade associations of state capital.

The Department's mission is to carry out verification of administrative investigation regarding application of legitimacy and/or denouncements to abusive, corruptive and arbitrary practices, to identify the public administration employees, who by action or failure to act have committed violation of the legal and sub-legal acts in force, to prepare recommendations about issues also regarding the type of measures to the authors, as well as to make the public institutions aware in fight against corruption.

There is no any structure of anticorruption in ministerial level, but the Ministry of Education and Science has the duty to declare the case of corruption to the Department of Administrative Internal Control and Anticorruption.

There is no adequate structure of anticorruption at the university level. However, one structure that could treat the issue of corruption is the Council of Academic Ethics. According to the Law for Higher Education, Art 17, the universities have to set up the Council of Academic Ethics.

1. The Council of Academic Ethics is established in every Institutions of Higher Education and deals with problems related to university ethics and problems. The Council sends proposals related to this matter to the Rector.
2. The members of the Council of Ethics are selected by the academic senate. Similar Councils may be established in Faculties.
3. The Statute and the Regulation of Institution of Higher Education provide for the composition, tasks, organization and functioning of the Council of Ethics.

## **JURISPRUDENCE**

### **Can the affected people receive redress?**

According to Albania Civil Code the affected person or institution have the right to address a civil suit for damages and compensation in the civil section of the court (Art. 608, 625, 640 C.C).

### **Cases of corruption in higher education sent to the courts**

In some cases teachers are accused for the passive corruption, especially for "accepting bribes". These cases are denounced in electronic media, as well as in the newspapers. Last year newspapers denounced the cases of two university teachers, one from the Polytechnic University of Tirana and another from the University of Elbasan.

These persons were accused for the passive corruption and were brought before the courts. Currently only two cases mentioned above, in point 17, are presented before the courts.

### **Can the administration and/or the university be sued in case of corruption?**

Currently there is no such case in Albania when administrations and / or university are sued before the court for a corruption case. But based on the legal framework, and especially in the Procedure Civil Code, everybody has the right to sue a corruption case based on the complaint to be lawful, actual and concrete.

### **Is corruption in Higher Education a crime under the Criminal Code?**

The Criminal Code of Albania does not contain a specific provision regarding corruption in higher education. The Criminal Code contains the provisions in general, for corruption in public and private sector as mentioned above in point (1).

### **Is corruption in Higher Education an infringement under the Disciplinary Code?**

There is no Disciplinary Code in Albania. There are rules in the regulation of each HEI, which require the standards of professional ethics. The violation of these rules, as may be the case of corruption, leads to removal from work.

## **MONITORING**

### **Does the administration make use of special reporters in case of corruption?**

The administration has no special reporters. The Department of Administrative Internal Control and Anticorruption in the Council of Ministers, can exercise control in the educational institutions, or the administration can send information, whenever this is required by the Department of Administrative Internal Control and Anticorruption, for any case initiated from it.

### **Is there an independent institution outside the administration like a governmental ombudsman or similar?**

In Albania, the institute of ombudsman operates since 1999. It is created by Law no. 8454, dated 4.02.1999 "On Ombudsman" that is amended. In the Annual Report of "Ombudsman" for 2012, 83 complaints related to education issues were presented, and 54 of them are completed. These issues are related to the public education institutions, as well as to the interested individual persons. The Ombudsman has given his recommendations to the Ministry of Education and Science.

### **Is there a regular reporting on corruption in Higher Education?**

There is no regular reporting of corruption in education. This reporting is carried out when requested by the superior authority. University has to report to the Ministry of Education and Science, while the Ministry of Education and Science has to report to the Council of Ministers.

### **Are there independent commissions for certain decisions?**

There are independent commissions for certain decisions. According to article 19 of the Law for Higher Education, one of them is the Council of the Professors.

The Council of Professors is set up for the organization and management of the doctorate studies and scientific and pedagogical post-doctoral qualification at the main units of the higher education institutions, providing study curricula of the third cycle. The Council of Professors may be set up even at the level of the higher education institution or faculty level.

The statute of the institution and other sub normative acts provide for the composition, tasks and the functioning of the Council of Professors.

#### **Are there independent commissions for exams or research commissions?**

There is always a commission for each exam. This commission is composed by 2 or 3 persons and in the case of graduation can be by 4 to 5 persons. As a rule, each commission should be independent in providing judgments.

#### **Are the protocols available?**

As a rule, any meeting of the basic units, departments, as well as the main units, faculties should have a protocol. Also, the meetings of the Senate or the Administrative Council of each University should have its protocol. Regulations on protocol, as a rule should be part of the Statutes and Codes of the Universities and Faculties. Summary of protocols do not circulate.

#### **REMARKS**

The current situation of the higher education in Albania is characterized by a low credibility rate; it is accused of formalism and fictiveness; it is influenced by politics and in some cases it is accompanied by phenomena of a corruptive nature.

The Albanian government approved a complex legal framework of a general nature in the fight against corruption, as well the special laws in the field of higher education. This legal framework is in compliance with EU standards.

To fight against the corruption in higher education means: to establish a normal situation by creating and consolidating standards and best practices and to penalize the legal violations in this field and circumvention of the standards.

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5. Article 116 of the Albania Constitution provides the hierarchy of legal norms, which are as follows: (a) Constitution; (b) Ratified international agreements; (c) Laws; (d) Normative acts of the Council of Ministers.  
Based on these articles it is clearly evident that the ratified international agreements which are published in the Official Gazette, in hierarchy of legal norms, have priority over national laws. They come directly after the Constitution. Accordingly, the ratification by Albania of an international agreement results in this treaty becoming automatically an integral part of the Albanian legal order from the moment of its entry into force.
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# QUESTIONNAIRE ON CORRUPTION IN EDUCATION AND RESEARCH DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION<sup>1</sup> IN ALBANIA

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### **Definition(s) of the notion of corruption in your country**

The definition of the notion of corruption is provided in the Criminal Code of the Republic of Albania.

This definition provides the notion of the corruption as a passive and active corruption, like in the public and the private sector.

#### **Active corruption**

The direct or indirect proposal, offer, or giving, to a person, who exercises public functions/ the person that exercises a management function or works in whatever position in the private sector of any irregular benefit for himself or a third person in order to act or not to act in relation to his duty (Art.164/a, 244).

#### **Passive corruption**

Soliciting or taking, directly or indirectly, by a person who exercises public functions / the person that exercises a management function or works in whatever position in the private sector of any irregular benefit or of any such promise for himself or for a third person or accepting an offer or promise deriving from an irregular benefit in order to act or not to act in the exercise of his duty (Art.164/b, 259).

#### **What is the annual budget of an average university? Variations?**

There are two types of universities in Albania: public and private.  
For public universities the main annual budget is provided by the State every year based on the law "On budget".  
According to the law No.9741, date 21.05.2007 "On the Higher Education in the Republic of Albania" in Art. 73, sources of financing of the public institutions of higher education are provided.

Public institutions of higher education are funded by:  
transfer from the state budget;  
incomes created by the institutions on their own;  
other resources with a destination.

The Council of Ministers, through the Ministry of Education and Science allocates funds to public institutions of higher so that they can carry out their missions pursuant to the standards.

Referring to the public universities, not all have the same status. Universities that are located in the capital city (Tirana) due to the large number of students and diversity of programs they offer, get the biggest portion from the state budget.

The budget of the private universities, which most are created as the companies (especially Limited Liability Company), the budget is closely related to the number of students enrolled for each academic year. Even in those universities which are organized in the form of non-profit organizations (NGO), a considerable part of the budget is provided by the students "fee for each academic year.

#### **How high is the percentage of public and of private money?**

As for the public universities, every year, the State provides the budget for them.  
As for the private universities, currently there is no legal framework to provide funding from the state budget.

In 2010 the Albanian government in accordance with the National Strategy for Higher Education (September 2008-2013), whose main objective is to increase access of the Albanian youth in higher education and improve its quality standards, published a study concerning the reform for the financing of HEI. The document "Reform of financing higher education in Albania, Green Paper", prepared by the Ministry of Education currently is not accompanied by concrete steps.

#### **Do the universities have lump sum budgets?**

According to the law No.9741, date 21.05.2007 "On the Higher Education in the Republic of Albania" the universities have lump sum budgets.

Public institutions of higher education are funded by the transfer from the state budget; incomes created by the institutions on their own and other sources with a destination. The Council of Ministers, through the Ministry of Education and Science allocates funds to public institutions of higher education, so they can carry out their missions pursuant to the standards.

The funds allocated to public institutions of higher education public institutions of higher education by the state budget as grant, fall into two main categories:

Unconditional transfer;  
Transfer on competition for investment.

The unconditional transfer serves to cover the expenses related to the functioning of Institution of Higher Education and the steady financing.

The transfer on competition for investment is used to finance investment for construction or other big projects as described in the procedures for the management of the public investments.

Public institutions of higher education are entitled to make their regulations with regard to the use of their own generated incomes and funds pursuant to the financial provisions of the laws in force. Law No. 9741, date 21.05.2007 "On the Higher Education in the Republic of Albania" (article 73).

The National Strategy for Development and Integration foresees followings to improve financing: a) Public institutions of higher education do not have a strong financial outlook; the state will remain their main source of financing. b) General public funding for each university will reflect performance and will be based on a funding formula which provides for equity, fairness and transparency. The criteria and the components of the formula are determined by the Minister of Education and Science, relying on the recommendations from the Council of Higher Education and Science and is passed in the annual law on the state budget. Investment funds will be allocated on a project basis, accompanied by a cost proposal prepared by each university. The efficiency in building utilization will be improved. Two other sources of revenue to supplement the public provision will be considered. First, universities will sell services, including research studies for the benefit of third parties or in-service teacher training. Second, student fees, which currently cover about 22% of the full cost, will gradually increase (25-30%). Each university will be allowed to retain the funds that it earned. The current National Strategy for Development and Integration support scheme to poor students will be replaced by a new scholarship system to improve targeting and promote high educational achievement.

#### **Are the universities autonomous in administering the budget?**

According to law on higher education, Art.72, public institutions of higher education function on the basis of the principle of financial autonomy. Each public institution of higher education has full authority over its own incomes. In all the cases when such funds have not been fully exhausted during the current financial year, they are carried forward onto the following year. All transactions and payments of the public Higher Education Institution, including their incomes, are made through the Treasury System, pursuant to all the rules of financial control, provided by the laws. The financial administration rules for public institutions of higher education are the same as the rules for the other public institutions.

#### **Who is responsible for the controlling?**

According to the Law on Higher Education, public institutions of higher education are subject to financial auditing carried out by institutions as provided in the law for this purpose. While the Order of the Minister of Education and Science No. 126, dated 17 March 2011, "On the adoption of quality state standards for the assessment and institutional accreditation of higher education institutions", contains the standard on budgetary and financial control (Standard VI.3). Thus, the Higher Education Institutions are subject to financial audit which is realized by institutions provided for by law for this purpose.

Public and private institutions of higher education are subject to financial auditing carried out by institutions as provided in the law for this purpose. In this process, the public authorities responsible for the financial auditing may invite even specialized private companies for the purpose. The results of the financial auditing are made public.

The internal auditing in public institutions of higher education and their constituting units is carried out by the Internal Auditing units at the Ministry of Education and Science and Institutions of Higher Education. The results of the financial auditing are made public.

According to the Order No.126 (mentioned above) the financial audit report of the nonpublic Institutions of Higher Education should identify the policy of using income from student fees

in favor of the quality of teaching and service to students. However, the private higher education institutions are not transparent related to this issue.

#### **Are there rich and poor universities in your country?**

It depends what we understand by "rich" and "poor" university. The public universities are not rich. Public universities present a different picture from the private ones. There are different factors that can be considered such as: the budget, the assets, the number of students, the infrastructure, the profit from the economic activity, the profit from the research activity, the publications, the geographical location, the reputation etc. As for the private universities, 95% of them are profit institutions and some of them make a lot of money. There is no official data on this issue.

#### **Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic?**

As a rule, the decision making process should be public, such as those taken by collegial bodies, as well as those taken by the authorities of Universities. In most cases, the decisions of collegial bodies or authorities are not published in official site of universities or the faculties.

### **BACKGROUND INFORMATION ABOUT CORRUPTION**

#### **Which are the corruption sensitive areas in the Higher Education System**

**of your country**

**admissions**

**graduation**

**personnel (recruitment, tenure, promotion, other)**

**public research commissions**

**private research commissions**

**publications and plagiarism**

**conference participation**

**consulting**

**other**

The corruption sensitive areas in the higher education system in Albania are several.

The graduation of the students both in public and private universities is an area where are remarked cases of corruption. The bribes (data are informal) are given either before or after the exams by the students' parents or even by the students themselves.

The personnel recruitment in the public universities in some cases is based on personal preferences, political criteria and private interventions to the authorities of the university.

The recruitment is not always a transparent process.

Publication is also a corruption sensitive area. Despite the efforts of the Ministry of Education which through a sub legal act “The Regulation of ethics in research and publishing activities” has tried to sanction the European standard that must be met in research, publishing, and doctoral studies, there are not seen the concrete results.

A number of publications do not meet the ethical research standards. Books published by different lecturers are commonly forcibly sold to students.

Plagiarism is a common phenomenon. The Master’s thesis strolls from one university to another. Also some PhD theses do not contain the references and literature sources.

#### **What kind of benefits are available for university members in case of corruption?**

**Money?**

**Promotion?**

**Grants?**

**Publicity?**

In most cases, benefits are in money, which does not exclude sometimes professional promotion.

#### **Who is willing to influence the university decision-making process by corruption?**

The decision making process in public universities is influenced by “friendship” relations or certain political influence. The reason is that the authorities of the university: rector, dean and head of department want to maintain “their chairs” for a long time.

In most of the private universities, regardless of the academic structures, decision-making is a process that is carried out according to the interests of the owners of the universities themselves.

### **PUBLIC AWARENESS**

#### **Is there any public awareness about corruption in education?**

**Research publications?**

**Media awareness?**

There are some publications on the topic of corruption.

*Edukimi kundër korrupsionit. Manual për mësuesit (Education against corruption Handbook for Teachers).* Project against corruption in Albania (PACA) Tirana, September 2012

Ian Smith and Tom Hamilton, *Assessment and recommendations concerning draft amendments to the law on higher education regulating inspections of higher education institutions, and sublegal acts to implement the law.* Technical Paper. Project against corruption in Albania (PACA), Tirana, July 2012.

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*Vlerësimi i transparencës në arsimin e lartë (Evaluation of transparency in higher education).* Soros Foundation, Tirana, March 2005.

The media is very sensitive regarding corruption in education.

The media has informed the public for the cases of corruption. After this publication, nobody knew the end of the story; there is the lack of information on the sanction against the corrupted persons.

### **INTERNAL PROCEDURES**

#### **Are there Codes of Conduct regarding corruption?**

There is no Code of Conduct regarding corruption. The provisions, referred to corruption are involved in the Criminal Code, mentioned above (Art.164/a,b, 244, 259).

The Albanian government approved with Decision No.1561, dated 03.10.2008 “ Cross-cutting strategy for prevention, fight against corruption and transparent governance, 2008 – 2013”.

The Albanian government ratified by Law No. 9492, dated 03.13.2006 The United Nations convention “Against corruption” and by another law No.8635, dated 06.07.2000 the Civil Convention “On corruption”.

#### **Is there a special office within the State or the University administration for corruption problems?**

In the structure of public administration, attached to the Prime Minister’s office, the Department of Administrative Internal Control and Anticorruption is set up and operates.

The Department of Administrative Internal Control and Anticorruption in the Council of Ministers has been re-organized and functions in line with decision No. 94, dated 15.02.2006 of the Council of Ministers “On approval of regulation about functions and procedures of administrative inner control and anticorruption of the Council of Ministers”. This department is the relevant structure for administrative inner control and anticorruption in the institutions of executive power like the ministries, the central institutions, subordinated by the prime minister and ministers, prefect administration as well as in trade associations of state capital.

The Department’s mission is to carry out verification of administrative investigation regarding application of legitimacy and/or denouncements to abusive, corruptive and arbitrary practices, to identify the public administration employees, who by action or failure to act have committed violation of the legal and sub-legal acts in force, to prepare recommendations about issues also regarding the type of measures to the authors, as well as to make the public institutions aware in fight against corruption.

There is no any structure of anticorruption in ministerial level or university level.

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### **Is there an internal supervision process?**

According to the Law for Higher Education, Art 17, the universities have to set up the Council of Academic Ethics.

1. The Council of Academic Ethics is established at Institutions of Higher Education and deals with problems related to university ethics and problems. The Council sends proposals related to this matter to the Rector.
2. The members of the Council of Ethics are selected by the academic senate. Similar Councils may be established in Faculties.
3. The Statute and the Regulation of Institution of Higher Education provide for the composition, tasks, organization and functioning of the Council of Ethics.

### **JURISPRUDENCE**

#### **Are there means of redress?**

There are means of redress. According to Albania Civil Code the affected person or institution have the right to address a civil suit for damages and compensation in the civil section of the court (Art. 608, 625, 640 C.C).

#### **Are there cases of corruption in higher education and were they brought before the courts?**

In some cases teachers are accused for the passive corruption, especially for “accepting bribes”. These cases are denounced in electronic media, as well as in the newspapers. Last year newspapers denounced the cases of two university teachers, one from the Polytechnic University of Tirana and another from the University of Elbasan. These persons were accused for the passive corruption and were brought before the courts.

#### **Are there cases of corruption in research and were they brought before the courts?**

Currently only two cases mentioned above in point 17 and are presented before the courts.

#### **Can the administration and/or the university be sued in case of corruption?**

Currently there is no such case in Albania when administrations and / or university are sued before the court for a corruption case. But based on the legal framework, and especially in the Procedure Civil Code, everybody has the right to sue a corruption case based on the complaint to be lawful, actual and concrete.

#### **Is corruption in Higher Education a crime under the Criminal Code of your country?**

The Criminal Code of Albania does not contain a specific provision regarding corruption in higher education. The Criminal Code contains the provisions in general, for corruption in public and private sector as mentioned above in point (1).

### **Is corruption in Higher Education an infringement under the Disciplinary Code?**

There is no Disciplinary Code in Albania. There are rules in the regulation of each HEI, which require the standards of professional ethics. The violation of these rules, as may be the case of corruption, leads to removal from work.

### **MONITORING**

#### **Does the administration make use of special rapporteurs in case of corruption?**

The administration has no special reporters. The Department of Administrative Internal Control and Anticorruption in the Council of Ministers, can exercise control in the educational institutions, or the administration can send information, whenever this is required by the Department of Administrative Internal Control and Anticorruption, for any case initiated from it.

#### **Is there an independent institution outside the administration like an governmental ombudsman or similar?**

In Albania, the institute of ombudsman operates since 1999. It is created by Law no. 8454, dated 4.02.1999 “On Ombudsman”, that is amended. In the Annual Report of "Ombudsman" for year 2012, 83 complaints related to education issues were presented, and 54 of them are completed. These issues are related to the public education institutions, as well as to the interested individual persons. The Ombudsman has given his recommendations to the Ministry of Education and Science.

#### **Is there regular reporting on corruption in Higher Education?**

There is no regular reporting of corruption in education. This reporting is carried out when requested by the superior authority. University has to report to the Ministry of Education and Science, while the Ministry of Education and Science has to report to the Council of Ministers.

#### **Are the independent commissions for certain decisions?**

There are independent commissions for certain decisions. According to article 19 of the Law for Higher Education, one of them is the Council of the Professors. The Council of Professors is set up for the organization and management of the doctorate studies and scientific and pedagogical post-doctoral qualification at the main units of the higher education institutions, providing study curricula of the third cycle. The Council of Professors may be set up even at the level of the higher education institution or faculty level.

The statute of the institution and other sub normative acts provide for the composition, tasks and the functioning of the Council of Professors.



### Are the independent commissions for exams or research commissions?

There is always a commission for each exam. This commission is composed by 2 or 3 persons and in the case of graduation can be by 4 to 5 persons. As a rule, each commission should be independent in providing judgments.

### Are the protocols available?

As a rule, any meeting of the basic units, departments, as well as the main units, faculties should have a protocol. Also, the meetings of the Senate or the Administrative Council of each University should have its protocol. Regulations on protocol, as a rule should be part of the Statutes and Codes of the Universities and Faculties. Summary of protocols do not circulate.

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### Endnotes

1. The answers of this questionnaire are given by Juliana Latifi, Nikoleta Mita and Edlira Haxhiymeri



# REPORT ON CORRUPTION IN EDUCATION AND RESEARCH IN LATVIA

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Edvins Danovskis<sup>1</sup>

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## DEFINITIONS AND GENERAL INFORMATION ABOUT CORRUPTION AND EDUCATION

### General remarks on corruption legislation in Latvia

The notion of corruption is widely used in Latvia, both in everyday speech and in journalism. In legal regulation the notion „corruption” as such is neither used, nor explained. It is because that the legal regulation is first of all intended for the prevention of causes of corruption. One of the main causes of corruption are the situations of a conflict of interests in the activities of public officials. The notion of a conflict of interests is included in the Law, passed in 2002, „On Prevention of Conflict of Interest in Activities of Public Officials”.<sup>2</sup>

According to this Law, a conflict of interests „is a situation where in performing the duties of Office of the public official, the public official must take a decision or perform other activities related to the office of public official which affect or may affect the personal or financial interests of this public official, his or her relatives or counterparties.” The Law stipulates different restrictions and prohibitions for public officials, including restrictions on holding more than one job, restrictions on gaining profits and engaging in commercial activities, decision-making restrictions etc.

As public officials within the context of this Law, are considered the officials directly named in the Law (e.g., deputies of the Parliament and of self-government, heads of institutions, civil servants etc.), as well as any other state or municipal officials, if they within the scope of their position have the right to issue administrative acts, as well as perform supervision, control, inquiry or punitive functions in relation to person who are not under their direct or indirect control or to deal with the property of the state or self-government. In the area of higher education, public officials are the rectors of state-founded universities, heads of departments and other institutions of the university, persons who have the rights to manage the university's property within the university (building maintenance managers, managing directors etc.). For example, the Senate of University of Latvia (the main decision-making institution, which passes the normative acts of the university and approves its budget) has 38 senators, all of which are public officials, because they have the rights to make decisions, concerning the property of the university. The decision-making restrictions, stipulated in the Law, are binding also for the faculty members of the university, when they issue administrative acts (evaluations of exams).

The supervision of implementation of the Law on Prevention of Conflict of Interest in Activities of Public Officials is carried out by the Corruption Prevention and Combating Bureau who plays a central role in the system and in its ten years of existence has acquired broad recognition both at domestic and international levels. It is said to be one of the most trusted pillars of the State apparatus.<sup>3</sup>

### General information on Institutions of Higher Education

There are both state and private universities in Latvia. Data about the budgets of private universities are not available publicly. In 2012, there were 34 state universities and colleges in Latvia,<sup>4</sup> but their budgets differ widely. The largest state university is the University of Latvia, whose planned budget expenditure in 2012 was approx. LVL 44.8 million (approx.

EUR 64 million).<sup>5</sup> On the other hand, the annual budget expenditure of the regional Vidzeme University of Applied Sciences in 2012 was LVL 2 million (approx. EUR 2.9 million).<sup>6</sup>

According to the Law on Institutions of Higher Education<sup>7</sup>, universities are financed by their founders. The financing of state universities is formed of state budget subsidies and their

own revenue. State universities use the state subsidies for the intended purposes, but they can use their own revenue autonomously. State universities have their independent budgets, which are approved by their senates.

According to Part 1 of Article 77 of the Law on Institutions of Higher Education, the rector submits an annual report about the budget execution to the Senate, the Minister of Education and Science and the Minister of the respective industry or the university. There are also audit commissions, organized in the universities for the performance of inner audits. The universities are subject also to the audits of the State Audit Office, but in practice universities very rarely are included in the audit plans of the State Audit Office.

The Law on Institutions of Higher Education defines the basic structure of any university. The most important decisions in the university are made by its constituent assembly and (e.g., the approving of the Constitution of the university, election of the rector and senate) senate (the approving of the university's inner normative acts, approving of its budget), which are democratically elected institutions. The decision-making in these institutions also takes place democratically. Of course, the making of different decisions, important for the functioning of the university, is within the competence of its administration, but there are no measurable criteria for characterizing this decision-making as democratic or bureaucratic.

## BACKGROUND INFORMATION ABOUT CORRUPTION IN HIGHER EDUCATION

Only a few studies have been made during the last decade in Latvia concerning the existence and manifestation of corruption in the higher education. In 2004, the students of one of the universities performed a sociological survey about the use of illegal methods and corruption in the universities of Latvia. 268 students of five state universities participated in this survey. Some fragments from the article, written by the survey's authors:

„27% of all respondents admitted that at least once they have used other authors' works, passing them as their own. Almost a half (48%) of all respondents confess that at least once they have given their own works to others for copying and submission with smb. else's name. Sometimes, works necessary for studies are bought – 46% of respondents admitted that most of all reports are bought, followed by term papers and homeworks, as well as the questions or answers of exams or other kinds of tests, already passed by others.

The use of illegal aids (“cribs”, lecture notes, books) are most frequently mentioned by respondents as illegal methods, used by students during their study process – 88% of respondents confirm having used illegal aids themselves or knowing about others using them.

As the next illegal method in passing tests 7% of respondents mention the finding out of questions or answers, as well as buying them, e.g., from senior students, because many tests with the same professors are the same each year. Without these methods, the students often communicate among themselves during tests, in order to find out the necessary information.

A number of the surveyed students have heard or know about instances when an examination at a university was passed by some other person instead of that which was supposed to do it.

Only a very small portion of the surveyed students are aware of instances when professors were bribed by students or received some gifts (flowers, sweets, alcohol, etc.) to facilitate easier passing of exams, or on purpose made greater complications in the exams for the pur-

pose of selfish gain. However, 13% of respondents have heard about the corruptibility of the members of administration of their university.<sup>48</sup>

A study about academic honesty in the context of e-technologies was performed in 2007 and 2008 in the University of Latvia, where faculty members and students were surveyed. This study shows that the majority of faculty members have seen the use of illegal methods in the students' works. And „judging about the activities of their colleagues, the lecturers think that the stealing of ideas, using other authors' research without reference to the source, is a rather common (42%) or sometimes encountered practice (24%). Also the lecturers mention as a practice, rather often used by their colleagues, use of fictitious or falsified research results (very often – 66%).”<sup>9</sup>

In 2007, an NGO „Akadēmiskā godīguma centrs” (The Centre for Academic Honesty) was formed, which has developed the Concept of Academic Honesty.<sup>10</sup> These activities and the abovementioned sociological studies can serve as basis for suggestion that the use of illegal study methods, especially plagiarism, is very common in the higher education system of Latvia. At present there are no data available, which would confirm the presence of other acute corruption problems in higher education.

#### PUBLIC AWARENESS

There have been only a few research publications about the corruption in higher education in Latvia. The most significant of them are the study of the sociology students of Riga Stradins University, performed in 2004 as part of their term paper „The Use of Illegal Study Methods and Corruption in the Universities of Latvia”, and the study made in 2007/2008 in the University of Latvia “Academic Honesty in the Context of E-technologies: Manifestation, Monitoring and Control”. The complete versions of these studies are not publicly available at present. Knowing that the instances of corruption in universities attract great public attention, media have always tried to cover the possible instances of corruption in universities of Latvia in a rather detailed way (see the chapter about instances of corruption in higher education). Internet portals have published some opinions about corruption, e.g. the article „Latvijas augstskolas kā korupcijas kalves”<sup>11</sup> [Universities of Latvia as a Training-ground of Corruption], as well as media news about the problem of plagiarism.<sup>12</sup> The fight of the universities against plagiarism by conclusion the agreement among several universities about the elimination of plagiarism, is also covered.<sup>13</sup>

#### INTERNAL PROCEDURES

Most of state universities have their Codes of Conduct.<sup>14</sup> The norms, included in these Codes, by themselves create a sufficient normative basis for the prevention of manifestations of academic dishonesty in the universities. For example, Article 1.15 of the Code of Conduct of students, faculty members and employees of Riga Technical University (RTU)<sup>15</sup> stipulates the obligation „to oppose any manifestations of corruption in RTU and to inform the management of RTU or competent authorities about each such instance”. Faculty members are not allowed ask and accept illegal payment from students for teaching and consultations, as well as are not allowed to pass the original ideas, created by students, as their own. The wording of the Code of Conduct of the regional Vidzeme University of Applied Sciences (ViA)<sup>16</sup> is more general, but fully sufficient for combating academic dishonesty. One of the basic principles of the staff of this university is „a fair attitude towards the study and research

process and persons, involved in it. In their academic and research and development work the staff shall observe copyrights, respect the intellectual property, respect the results of other persons' work, guarantee the truthfulness of data, used in research, and analysis performed.” The staff of the university also avoid the conflict of interests, incl. nepotism, which could harm the functioning and reputation, and inform the university's management about such risks. The staff of ViA avoids the acceptance of presents and gifts which could impair the impartiality of decision-making.

One of the most recent inner normative acts of universities, concerning academic honesty, are the regulations of academic honesty, passed in the University of Latvia in early 2013.<sup>17</sup> These regulations describe the manifestations of academic dishonesty in rather great detail and contain a special annex with descriptions of different types of plagiarism.

The tendency to express the condemnation of corrupt activities in the inner normative acts of universities cannot be objectively explained with the lack of normative regulation. The basis for the termination of employment, stipulated in the Labour law of Latvia (e.g., acting contrary to good practice) are fully sufficient for firing a professor, who allowed plagiarism or violated any other self-understandable academic ethics requirements. These normative acts mostly express the condemning attitude of the university towards academic dishonesty. In any case, the practical significance of these normative acts is proved not by their mere existence, but the application in practice (noticed violations and their legal consequences). Alas, such data are not available.

At the state level, for the prevention and combating of corruption, the Prevention and Combating of Corruption Bureau was established in 2002 (see also chapter DEFINITIONS AND GENERAL INFORMATION ABOUT HIGHER EDUCATION). Within the universities, fighting against corruption is the responsibility of each university's administration. Usually the universities establish Ethics commissions, which deal with the violations of the Codes of Conduct and give recommendations to the university's administration. However, usually these Ethics commissions do not perform preventive control, but only respond violations already occurred.

The internal supervision of corruption risks is realised by the universities at their own discretion. It mostly manifests itself as inner audits, as well as other *ad hoc* activities.

#### JURISPRUDENCE

If corruption (in its different manifestations) is recognized in the activities of a university's staff (academic staff, students and technical staff), the following legal consequences are possible:

exclusion of the student from the study program, if a student is involved in corruption. At present there are no outer normative acts, stipulating the duration of this punishment (e.g., after how long period the student may resume studies), which is considered a serious drawback in the regulation of students' disciplinary responsibility. At present there are no obstacles for a student, which was punished for a grave disciplinary violation in one university, to apply immediately at another and be accepted;  
dismissal of the university's employee;  
criminal responsibility, if the case corresponds with a substance of crime, defined in the Criminal Law.

Cases of corruption are rather infrequently covered in the mass media of Latvia. But, as such occurrences attract major public attention, any particular corrupt activities are covered in

rather great detail. In 2001, publicity surrounded a possible abuse of power, when a deputy dean of a state university allegedly asked for money in exchange for acceptance in a study program.<sup>18</sup> Criminal procedure was started in this case, but the accused died before the proceedings were over. In September of 2004, a former rector of a state university was arrested and later criminally prosecuted for bribetaking in connection with the acceptance in a municipal educational institution.<sup>19</sup> This person has not served his sentence, because he is missing. In 2010, a student of a state university published a statement about a possible plagiarism in a translation of the work by Immanuel Kant "Critique of Practical Reason", done by a philosophy professor. The Ethics Commission of the university established that this supposedly original translation indeed is an editorial improvement of another's author's translation, done more than sixty years ago.<sup>20</sup> The university submitted in court a claim statement for the termination of employment relations with the respective professor, but after some time a settlement was reached and the professor continued working at the university.<sup>21</sup> In 2013, in one of state universities was found out that one of filing clerks has entered wrong marks in the results' register – either non-existent marks, never given by lecturer's to a certain student, or higher than actual. This fact was accidentally found out by the department's administration. The employment of this employee was terminated.<sup>22</sup>

The Criminal Law does not stipulate the corruption in higher education as a special substance of crime. But the Criminal Law does stipulate criminal liability for bribetaking, bribery, abuse of power, commercial subornation, unlawful asking for and accepting benefits and other crimes.

#### MONITORING

There are no special institutions outside universities in Latvia, created specially for the prevention and combating of corruption in higher education. Actually, the corruption in higher education officially is not considered a national level problem, therefore no great attention is being paid to this issue. There are no regular reports, and „monitoring of corruption in higher education” does not exist.

At present no data are available, ascertaining problems in the activities of the examination commissions or decision-making about the awarding of higher education degrees. The examination commissions of universities consist of the members of academic staff, but in the state examinations commissions for awarding professional qualification also specialists from outside of the university are included. However, it must be noted that nowadays the Law of Personal Data Protection prohibits to publicly disclose information about any person's academic performance, including the state examinations results. It means that the normative acts, regulating education do not regulate the issue of data processing, therefore at present there is no legal basis for public disclosing of such data. The problem of data processing and information transparency was recognized also by some Parliament members in 2011, but the draft law<sup>23</sup>, stipulating the exclusion of data about a natural person's academic performance from data protection, has not been accepted in the Parliament yet.

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# QUESTIONNAIRE ON CORRUPTION IN EDUCATION AND RESEARCH IN THE UKRAINE

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Svitlana Kalashnikova

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## DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

Definition(s) of the notion of corruption in your country

**Corruption is the abuse of power and related advantages by an official with the purpose to obtain undue benefits or the promise / offer of the above benefits for oneself or other persons. (The Law of Ukraine On the Prevention and Combating of Corruption)**

What is the annual budget of an average university? **2,6 million euro**

How high is the percentage of public and of private money? **60:40**

Do the universities have lump sum budgets? **No**

Are the universities autonomous in administering the budget? **No**

Who is responsible for the controlling? **For controlling of the budget – relevant state organization of the national level (State Treasury, Control Audit Administration)**

Are there rich and poor universities in your country? **Yes**

Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic? **It depends on the administrative culture of the concrete university**

## BACKGROUND INFORMATION ABOUT CORRUPTION

Which are the corruption sensitive areas in the Higher Education System of your country

**admissions**

**graduation**

**personnel (recruitment, tenure, promotion, other)**

**public research commissions**

private research commissions

publications and **plagiarism**

conference participation

consulting

other – **accreditation and licensing**

What kind of benefits are available for university members in case of corruption?

**Money**

**Promotion**

Grants?

Publicity?

Who is willing to influence the university decision-making process by corruption?

## PUBLIC AWARENESS

Is there any public awareness about corruption in education?

Research publications

**Media awareness**

## INTERNAL PROCEDURES

Are there Codes of Conduct regarding corruption? **No**

Is there a special office within the State or the University administration for corruption problems? **No**

Is there an internal supervision process? **No**

## JURISPRUDENCE

Are there means of redress?

Are there cases of corruption in higher education and were they brought before the courts? **Yes**

Are there cases of corruption in research and were they brought before the courts? **No**

Can the administration and/or the university be sued in case of corruption? **Yes**

Is corruption in Higher Education a crime under the Criminal Code of your country? **Yes**

Is corruption in Higher Education an infringement under the Disciplinary Code? **Yes**

## MONITORING

Does the administration make use of special rapporteurs in case of corruption? **No**

Is there an independent institution outside the administration like an governmental ombudsman or similar? **No**

Is there regular reporting on corruption in Higher Education? **No**

Are the independent commissions for certain decisions? **No**

Are the independent commissions for exams or research commissions? **Yes**

Are the protocols available? **Yes**

## REFERENCES

[use your judgment about how much to include; it's probably not useful to include publications that would be difficult for an international audience to obtain or to read]



# **CORRUPTION IN EDUCATION AND RESEARCH BACKGROUND REPORT: BULGARIA**

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**Boryana Velcheva**





The main goal of this country background report is to provide general information on the Bulgarian higher education system that will allow comparative research on best practices in the sphere of corruption in higher education. **The focus is on the legal framework and its implementation in policies, and how they correspond with reality.**

## DEFINITIONS AND GENERAL INFORMATION ABOUT EDUCATION

### 1. Definition(s) of the notion of corruption

Although Bulgaria has various administrative organs devoted to fighting corruption<sup>1</sup>, the national legislation does not offer one single definition of the term but rather contains definitions of different forms of corruption. The Criminal Code defines “bribery” as follows:

*An official who accepts a gift or any other undue benefit, or accepts a proposal or a promise for a gift or benefit, in order to perform or to fail to perform an act connected with his service, or because he has performed or failed to perform such an act<sup>2</sup>*

The penalty provision for bribery is of one to six years of imprisonment.

The lack of a single legal term for corruption has led to the use of more free definitions by researchers both in the sphere of corruption research in general and in education in particular. One of the first, comprehensive studies of the problems of corruption in Bulgarian higher education from 2004 defines the phenomenon as:

*Every intentional way of performing a public activity in which the essence of this activity is being changed in a way that its performance contradicts with the general interest of the citizens, equal in their rights before the law.<sup>3</sup>*

The authors underline the importance of corruption as a threat to the *public interest* in order to distinguish from the idea of corruption as *personal demoralization* or the simple understanding of the phenomenon as a *criminal act*.

A more recent research by the Open Society Institute – Sofia, aiming to evaluate the corruption risks in higher education, sticks to the widest adopted definition by international institutions, such as the UN and the World Bank - *the abuse of public office for private gain<sup>4</sup>*, underlining the *intentionality* of the act in order to satisfy the condition for *abuse<sup>5</sup>*.

In 1998, the Center for the Study of Democracy, a Bulgarian anticorruption think-tank based in Sofia, introduced the Corruption Monitoring System (CMS) as a tool to collect information periodically and to enable conclusions about the scope of corruption in a country and the related public attitudes, assessments, and expectations. Since then, CSD has amassed the longest available national dataset for measuring the levels of corruption in Bulgaria. The CMS provides annual information on corruption through several corruption indexes, each of which measures corruption victimisation, the acceptance of corruption, trust in government, as well as public perceptions about corruption. The operational definition of corruption, adopted by the CMS, is somewhat more specific but similar to the internationally adopted one:

*the abuse of power (economic, political, and administrative) in the interest of personal or group gain and at the expense of the individual, specific groups or the society as a whole<sup>6</sup>.*

The CMS authors stick to a broader definition, stressing on the complexity of the corruption phenomenon and taking into account the use of CMS for more wide-scope initiatives against corruption on a national and international level. The CMSs did have questions related to corruption in education in Bulgaria, though these were dropped from the surveys after the scaling down of the programme in 2005.

All of the mentioned definitions follow the general understanding that the essence of corruption is the contradiction of public and private interest, more specifically where resources serving public interests are abused for private gain. The differences between definitions are functional, related to the context of the particular studies they were created for, and are generally related to the role of the actors, being public officials or not necessarily.

### 2. What is the annual budget of an average university? Variations?

Currently, there are 51 accredited universities in Bulgaria, out of which 16 private and 35 public.

Under the Accountancy Act and under the Higher Education Act universities are obliged to publish annual financial reports and annual reports for their activity. However, due to weak regulations on the publication they are very hard to find. They are accessible from the universities through the Access to Public Information Act, after a slow administrative procedure. For this reason, instead of the annual budget of an average university, here are some examples from the budgets of several private and public universities from 2011. The main difference is that public universities receive a financial subsidy from the state (Table 1).

The numbers vary significantly, as the universities are also of very different size, professional orientation, ownership, with different infrastructure, etc.

2011	University	Own Income (1000 EUR)	Subsidy (1000 EUR)	Total income (Income plus subsidy) (1000 EUR)	Spending (1000 EUR)	Balance (1000 EUR)	Number of students	Total income per student EUR	Total spending per student EUR
Public	Sofia University	17,384.00	18,498.78	35,882.78	39,625.13	-3,742.35	23,819	1,506	1,664
	Plovdiv University	6,749.60	8,770.75	15,520.35	16,063.99	-543.64	19,440	798	826
	South-West University	4,539.15	7,073.21	11,612.36	10,971.10	641.26	15,868	732	691
						0.00			
Private	American University in Bulgaria	8,260.43	0	8,260.43	9,596.44	-1,336.01	1,438	5,744	6,673
	Burgas Free University	6,068.01	0	6,068.01	6,068.01	0.00	4,298	1,412	1,412

Table 1. University budgets for 2011. Source: Annual financial reports of the universities.

Public universities depend fully on the state subsidy they receive. Budgets of public universities devoted to education, which is the main budget item, tend to be fairly stable over time as they are linked to the number of students enrolled. At the same time, budgets for research and in particular those for capital investment can vary substantially based on the relationship between the university management and the central government.

### 3. How high is the percentage of public and of private money?

As most of the universities are public, where the tuition is significantly lower, the public money for private education greatly exceeds the private money. Below is the comparison from 2000 to 2010. Beside the difference between public and private spending – 2 to 3 times, there is also a visible rising trend until the economic crisis after 2009.

Figure 1. Public and Private Spending in Higher Education. Source: National Statistical Institute

### 4. Do the universities have lump sum budgets?

Yes. Universities receive lump sum budgets with limitations within particular items of expenditure. What is more important, the source of income of the money places restrictions on the sectors of spending (see 5).

### **5. Are the universities autonomous in administering the budget?**

Yes. The Higher Education Act regulates the rules of administering the university budgets. While the administration is done autonomously by the universities, the Act regulates strictly the sources of income, as well as the rules of expenditure of the Public universities, which are financed primarily by the state budget. Moreover, the remuneration of the administration in the Public universities is defined by the state, under rules adopted by the Council of Ministers.

Beside the state subsidy, universities can generate income from donations and sponsorships, as well as from their own strictly regulated activity (mainly tuition, consultancy, administrative services and renting. The tuition in the Public universities is subject to a decision by the Council of Ministers).

The subsidy from the state budget is decided by the Council of Ministers. It takes into account the various professional fields in which the university teaches as well as the number of students in the university (defined also with a decision of the Council of Ministers). It also includes a general assessment of the university on the basis of the evaluation given by a National Evaluation and Accreditation Agency, as well as some additional indicators – number of citations of its research, realization at the labor market, etc. The subsidy can hence be used for only a few strictly defined purposes, mainly covering the expenses for providing education, science & research, publications and necessary equipment. The universities have the right to autonomously spend the subsidy within some general items of expenditure. These are all regulated in Regulation No 9 (Regulation No 9 from 08.08.2003 for the Conditions and Rules of Planning, Distribution and Spending of Funding, Provided from the State Budget to State-Owned Universities for Scientific and Creative Activities).

### **6. Who is responsible for the controlling?**

Public universities report before the Ministry of Education and Science. The financial control is done by the Public Financial Inspection Agency at the Minister of Finance, upon the receipt of a signal, and the National Audit Office, which audits the annual financial reports of all public universities. All universities are obliged by law to produce such annual reports.

In general, all universities (all companies) in Bulgaria are obliged to publish annual financial reports in accordance with the Accountancy Act and the respective European legislation. The accounts of the private universities are checked and confirmed by an external auditor. In private universities, there is also a Supervisory Board, which monitors budget spending.

Although all universities are obliged by the Higher Education Act to publish annual reports for their activity, which includes also the financial data, these are typically hard to find – the Act does not say where should they be published, who is responsible for the publishing, and what are the sanctions in case of violation.

### **7. Are there rich and poor universities in your country?**

Yes. As an unwritten rule, private universities are richer than public universities, managing to offer professors better remuneration, as well as better conditions for the students in terms of introducing new technologies in education (including international journal databases). However, only a few private universities have rich library funds. Beside the greater freedom on spending their budget and the generally better management, private universities have the advantage to choose freely the number of students in each professional field. To the contrary, the bigger public universities sustain professional fields, “ordered” by the state, which do not attract students but need greater expenses, such as physics and chemistry.

For the public universities, the Council of Ministers accepts a norm for the costs of sustaining a student, which serves as a basis for calculating the amount of the state subsidy. A possible indicator for measuring the “richness” of a university would be to compare the norms per student of public and private universities. However, this would also not be very relevant, as some universities manage to provide better conditions with less money as compared to others.

### **8. Is the decision making process within the university public or secret? Is it parliamentary or bureaucratic?**

The decision making process in the universities follows parliamentary principles – from the lowest to the highest level of administration. The faculties, departments and chairs have their own councils, and the Rector is chosen for a 4-year mandate by a General Assembly. There is also an Academic Council which determines the education policy and plays the role of an executive body.

In addition, every university is obliged to have a Student Council, which also takes part in the decision-making process. All of these are regulated in the Higher Education Act. As a result, the decision-making process is often very slow. Private universities are allowed to apply a different management structure, as long as it does not contradict with the rules of academic freedom. Typically they do have a rector, responsible for the educational and research process, but also a management board and a supervisory board to take care of the management. While university management in Bulgaria is parliamentary, it is often difficult to grasp by an external observer and can tend to be closed-in within the boundaries of the formal university institutions. Publicly accessible data on the functioning of the universities, their accounts, audit reports, etc. is generally not accessible for the general public.

## **BACKGROUND INFORMATION ABOUT CORRUPTION**

### **9. Which are the corruption sensitive areas in the Higher Education System of your country?**

Corruption is usually found in zones where there is a possibility for some persons to monopolize the access to a particular resource<sup>7</sup>. The corruption risks are highest in these zones of the education sector, with limited access, which allow the acquisition of valuable resources: *admissions, graduation, career development, examination*<sup>8</sup>. In addition, in the Bulgarian system of higher education these areas are characterized by factors further exacerbating corruption risks, such as unclear or contradictory rules, weak control, and last, but not least – lack of financial resources.

Qualitative studies of corruption practices<sup>9</sup> in the **examination process** indicate the following typical problems – direct bribery for passing the exam; corrupt university professors tend to force students to buy their textbooks in order to pass the exam or to receive a higher grade; lowering the examination standards for students who have “connections”, and can help the professor in the future; provision of “private lessons” for students in order to pass the exam.

Similarly, in the admission process students are compelled to take “private lessons”, sometimes with professors participating in the subsequent evaluation of university exams. The universities also offer such courses.

Until recently, entering the university was only possible with exams valid only for the particular school. In 2008, universal state matriculation examinations were introduced for high school students, and some universities started to accept the grade from the matriculation



exam (the admission process is subject to the decision of the university). In 2013, 15 public universities out of 34 accept the matriculation exam grades, although not in all professional fields<sup>10</sup>. Big public universities tend to organize exams in professional fields of high interest, such as law, economics and public administration, and to accept the grades from the state exams in professional fields where the competition among the students is weak. In this way they attract students in the unpopular fields and manage to fill the places detached by the state, helping them to get a higher state subsidy.

Corruption at the **exit of the university** – at graduation – takes rather remarkable forms. The weak control by the National Evaluation and Accreditation Agency (NEAA), responsible for the accreditation of new and existing universities, has led to the creation of various small universities with questionable quality of teaching, no research activity and a majority of visiting professors who rarely appear in class at all. Beside the doubts of corruption in NEAA, these universities became popularly known as “diploma factories” as they ensure easy access to higher education with minimum (or no) requirements. This is especially true for rich foreign students, usually from Turkey, Greece and the Arab countries, as the taxes for foreign students are sometimes up to 20 times higher than the taxes for Bulgarian students<sup>11</sup>. As a result of the growth of the “diploma market”, in 2012 the Higher Education Council in Turkey decided to temporarily suspend the legalization of university diplomas issued in Bulgaria.<sup>12</sup> The motivation of the Council was that “the falsification of examination grades and of the diplomas has taken the size of an organized criminal activity”. It took almost a year to reverse this decision.

Until recently, one of the main areas of corruption risk was the system of *professional academic development*. Under the Academic Degrees and Academic Ranks Act, adopted in 1972 and valid until 2010, all academic degrees and ranks were given by a Higher Attestation Commission and respective professional commissions with permanent membership under a slow and non-transparent procedure. The average academic practice needed by an academic in order to become a professor was 25-35 years, and it was highly dependent on the personal relations between the candidate and the members of the Commission. In 2010, a new Act on the Development of the Academic Staff was adopted, giving the possibility of the universities to award their own professorships with the decision of commissions including external members. While this has caused concern of corruption of different nature - an explosion of professorships, it has dealt away with the old system of awarding academic degrees. An area of particularly high corruption risk is the distribution of the **state funding for research**. In the beginning of 2013, the Bulgarian Minister of Education resigned after the General Inspectorate of the Council of Ministers found more than 60 violations in the distribution of research funding by the National Science Fund in the end of the previous year. Some of the institutions, which received money from the state fund were created only days before the application deadline and were registered in private apartments, which led to protests by the academic community and to the consequent inspection by the General Inspectorate of the Council of Ministers. The Minister of Finance admitted that the current Scientific Research Encouragement Act does not give the possibility for control by the Ministry of Education, the Minister and the state financial inspectorate.<sup>13</sup>

#### **10. What kind of benefits are available for university members in case of corruption?**

Different forms of corruption are related to different benefits. According to the Act on the Development of the Academic Staff, higher academic degrees are related to a higher salary. Moreover, it ensures better access to research activity, as well as more publicity. The great-

est benefit, however, remains money. Also, as many of the students start their careers early on, and some apply for a degree when already high in the hierarchy of business firms and/or government offices, they are often in a position to return the favor to a teacher by kicking back business/consulting contracts, etc.

#### **11. Who is willing to influence the university decision-making process by corruption?**

Depending on the level of corruption, the stakeholders are different. Both students and professors are active sides at the lowest level (trade of exams), which is one of the main reasons for the consistency of this type of corruption – it satisfies both sides in an attempt to “get the job done”. The university management on the other side is interested in attracting more and more public funds for the university and in using the university to achieve higher social and economic standard in society. At the highest level, several examples mentioned in this text show that, although more rarely, universities could be an attractive field for money laundering, organized criminal activities such as organized trading of diplomas, and abuse of public resources. In this sense, influencing the decision-making process through corruption could attract politicians, business, criminals, as well as the very rectors as stakeholders.

### **PUBLIC AWARENESS**

#### **12. Is there any public awareness about corruption in education?**

Until 2005-2006, corruption in higher education attracted the attention of both media and researchers. In July 2003, *Coalition 2000*, an anti-corruption initiative led by the Center for the Study of Democracy, presented its quarterly corruption indexes, in which the bribery demand on citizens by university professors was at levels substantially higher than in the previous period (21.5% in July 2003, up from 11.8% in May 2003). University professors topped the rankings of corrupt officials, which attracted public attention and led to the reaction of the academics – the Council of Rectors issued a special declaration claiming that the survey was biased and “provides no specific facts”<sup>14</sup>. *Coalition 2000* organized a special meeting on the subject, attended by representatives of the Parliament, the National Audit Office, the Ministry of Education, university management and academics, etc. The National Audit Office presented the results of its auditing activity on the universities, underlining the necessity of improving the educational standards. At the meeting, the main areas of corruption risk in universities were identified – exams mechanism, the publication of textbooks and reference materials, remuneration of the academic staff, corruption in the housing provision.

Two years later, the so identified risks were confirmed by the sociological research “Anti-Corruption/Anti-Education” (2005)<sup>15</sup>, showing that corruption is a result of institutional deficiencies, and not of the moral deficits of the participants in the educational system. In another study - “The State against the Reforms”<sup>16</sup>, Dimitrov et al. (2004) show the unintentional institutional resistance against the reform in the field of education and how it breeds corruption.

In the second half of the 2000's the interest of researchers decreased together with the decrease of financing for anti-corruption research. With Bulgaria's accession in the EU the public attention focused on other spheres where corruption is not less significant, such as corruption in public procurement, in the judiciary, and its relation to organised crime. The media also shows only sporadic interest to corruption in the higher education, as in 2010, when the Parliamentary anti-corruption commission investigated the Rector of the Economic Academy

in Svishtov for money laundering. The Rector was suspected of money laundering through offshore companies where he participated together with a couple of suspicious businessmen accused of three murders.<sup>17</sup> The case was later dismissed but it uncovered some very high reaching into the political hierarchy unclear relations between the university management, business and political leaders.

## INTERNAL PROCEDURES

### 13. Are there Codes of Conduct regarding corruption?

There is no general Code of Conduct regarding corruption in universities in Bulgaria. However, most universities have their own Code where corruption is mentioned. In the Code of Conduct of the New Bulgarian University (NBU), one of the biggest private universities in the country, it is stated that the students, faculty and administration “reject all forms of corruption”<sup>18</sup>. Similarly, the Code of the Plovdiv University says “The professional and the personal behavior are incompatible with corruption acts of any form”<sup>19</sup>. While in general the legal status of these documents and the consequences of breaching their rules remain unclear, some universities use them as a part of the procedures for internal control. The University of National and World Economy has a special Academic Ethical Commission with the only aim to apply the Code of Conduct of the university. It can be referred with regard to its violation and can invoke disciplinary measures<sup>20</sup>.

### 14. Is there a special office within the State or the University administration for corruption problems?

There is no legal requirement for universities to provide an office for fighting corruption problems. Some of the universities have internal structures responsible for corruption signals – such as the already mentioned Ethical Commission. An Inspectorate at the Ministry of Education and Science serves to apply the Conflict of Interest Prevention and Ascertainment Act<sup>21</sup>. In case of violations, the Inspectorate turns to the Minister and to the respective independent state commission with a report. However, public data for its activity is difficult to find, or is outdated.

### 15. Is there an internal supervision process?

The internal control process under the Higher Education Act is formally a function of the Control Council which is responsible for checking the legality of the university management elections; evaluating the proposal for the annual budget and its control; controlling for corruption and power abuse within the higher school. In addition, the universities have internal procedures for controlling the quality of education, including anonymous questionnaires distributed to students and faculty. Despite the fact that these anonymous questionnaires give a chance for the students and academics to show criticism, it has several disadvantages. On the one hand, the academic staff within departments tends to hold together and evaluates its members high. On the other, students tend to give higher evaluation to teachers with low requirements, as the learning process with them takes less time. In addition, students complain that once they fulfill questionnaires, they do not know how are they collected and summarized and what the effect is.<sup>22</sup>

## JURISPRUDENCE

### 16. Are there means of redress?

In case of violations, students and staff can approach the Control Council, as well as the courts of the country. In addition, in 2004 the Sofia University introduced an “academic ombudsman” who has the function of an advisory and mediator between the institution and its staff and students.

### 17. Are there cases of corruption in higher education and were they brought before the courts?

Various cases of corruption in higher education have been brought to court. In 2009, the police arrested an assistant professor in the University for National and World Economy. He was brought to court with the accusation of organized trade with exams. According to the Prosecution a very good grade could have been bought for about 300 leva (150 euro). In 2013 the assistant professor was freed of all charges by court but his reputation was severely damaged. In 2010, a similar case was filed in the Southwest University, in Blagoevgrad. It is still pending in court.

In March 2010 the Minister of education announced that he has asked the Prosecution to check various violations in 10-12 universities. Some of the signals were for corruption, in violation of the Public Procurement Act and other laws. The Minister announced that there were universities, which set illegal taxes in order to blackmail students who leave school before graduation. Illegal donations were also under investigation<sup>23</sup>.

### 18. Are there cases of corruption in research and were they brought before the courts?

Most of the known corruption cases concern the educational system, and only rarely are there such problems with research, which is a much smaller market. Here, it is worth mentioning the case with the distribution of research project budgets by the National Science Fund, which erupted in 2010 and is still ongoing (see 9).

### 19. Can the administration and/or the university be sued in case of corruption?

Yes.

### 20. Is corruption in Higher Education a crime under the Criminal Code?

Yes. There is no specific penalty for corruption in Higher Education but corruption is punishable by law no matter where it happens.

### 21. Is corruption in Higher Education an infringement under the Disciplinary Code?

Yes, corruption in higher education is an infringement of the Disciplinary Code – it is specifically mentioned in the Higher Education Act that any member of the academic personnel for whom corruption is established by the established order shall be disciplinarily discharged. Until 2010, corruption was a reason for the deprivation of the academic rank of the guilty.

## MONITORING

### 22. Does the administration make use of special rapporteurs in case of corruption?

In general, no particular state body has the permanent duty for the application of the legal articles concerning corruption. The inspectors of the National Inspectorate at the Ministry of Education, who however work after a signal has been issued to them, are the ones responsible for the application of the Conflict of Interest Prevention and Ascertainment Act (see 14.)

### **23. Is there an independent institution outside the administration like an governmental ombudsman or similar?**

There is an independent National Ombudsman, working under the Ombudsman Act. However, he does not have any executive or judicial power, thus serving only as an advisor, carrying out the dialogue between citizens and institutions.

### **24. Is there regular reporting on corruption in Higher Education?**

No, the state does not provide regular reporting on corruption in higher education. There are annual reports of the activity of the National Inspectorate at the Ministry of Education and Science, as well as the other anti-corruption administrative bodies. These, however, do not constitute a sufficient database and do not allow comparison. Most of the data on corruption in higher education is collected by NGO's, and is hence dependent on external financing. As a result, the data is not regular.

### **25. Are there independent commissions for certain decisions?**

The National Evaluation and Accreditation Agency (NEAA) is an external body, which evaluates the quality of the educational process, including corruption. Beside giving accreditation to the universities, without which they cannot issue diplomas or receive money from the state, the NEAA gives each university a grade, which then plays a critical role when defining the state budget for the public universities.

### **26. Are there independent commissions for exams or research commissions?**

Under the Development of the Academic Staff Act, the commissions, which give the academic degrees "doctor" (PhD), "doctor of science", as well as the commissions taking decisions on academic positions for assistants, associate professors and professors, are independent and more than half of their members are external for the university, which gives the degree. The defenses and the decisions are also public, unless there is classified information to be announced during the defense procedure. Similar rules apply for the defenses of BA and MA theses, regulated in the Higher Education Act.

### **27. Are the protocols available?**

The protocols are available to the controlling organs.

## **Endnotes**

1. Such as: The Center for Prevention and Countering Corruption and Organized Crime at the Council of Ministers; the parliamentary Commission for Countering Corruption and Conflict of Interest; the independent Commission for Prevention and Ascertain of Conflicts of Interest; the Commission for Prevention and Combating Corruption at the Council of Ministers.
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