

Competition Law of Higher Education in Albania

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1. Introduction

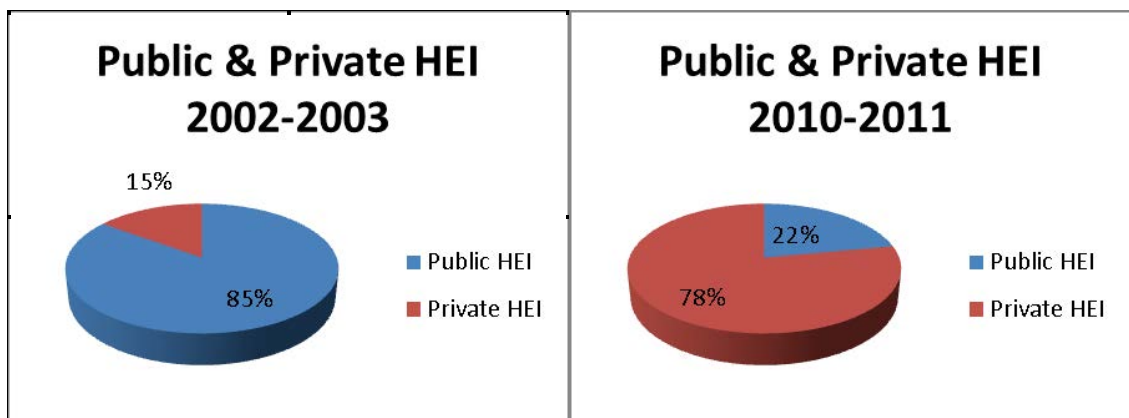
The liberalisation of higher education in Albania is new phenomena, after the change of the communist political regime in 1990. The free market economy created conditions to the growth and expansion of the higher education sector in Albania.

During the last 10 years the government policies have been aimed at the promotion of higher education in the private sector. Thus, Albania, with a surface area of 28,748 square meters and a population of approximately 2,831,741 million inhabitants¹, today has 59 higher education institutions, 13 out of which are public and 46 are private.²

These policies are particularly focused on: (1) An satisfactory legal framework – for their establishment, organisation, and promotion; (2) A helpful regulative framework – Ministry of Education and Science (MES) through its mechanisms and especially of Pubic Agency of Accreditation of Higher Education (PAAHE) – implements the licensing, assessment, and accreditation of private HEI and their study programs; (3) Encouraging tax policies – the law ‘On Value Added Tax’ No. 10215, dated 21 January 2010³, excluded private HEI from the obligation to pay VAT.

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2. Increase in the number of private HEI in Albania



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1 Institute of Statistics of the Republic of Albania (2011). *Institute of Statistics of the Republic of Albania, Census-Albania*.

2 Public Agency for the Accreditation of Higher Education (2011). *Public Agency for the Accreditation of Higher Education, Annual Report 2011*.

3 Law No. 10215, dated 21 January 2010 'On Value Added Tax', *Official Gazette of the Republic of Albania no.8/2010*.

Number of Public and Private HEI

Year	2002-2003	2004-2005	2006-2007	2008-2009	2010-2011
Public HEI	11	12	13	13	13
Private HEI	2	7	15	34	46
Total	13	19	28	47	59

The liberalisation of higher education in Albania has been accompanied by its positive impact in the higher education market. This impact is focused on several main directions with the following being the more obvious:

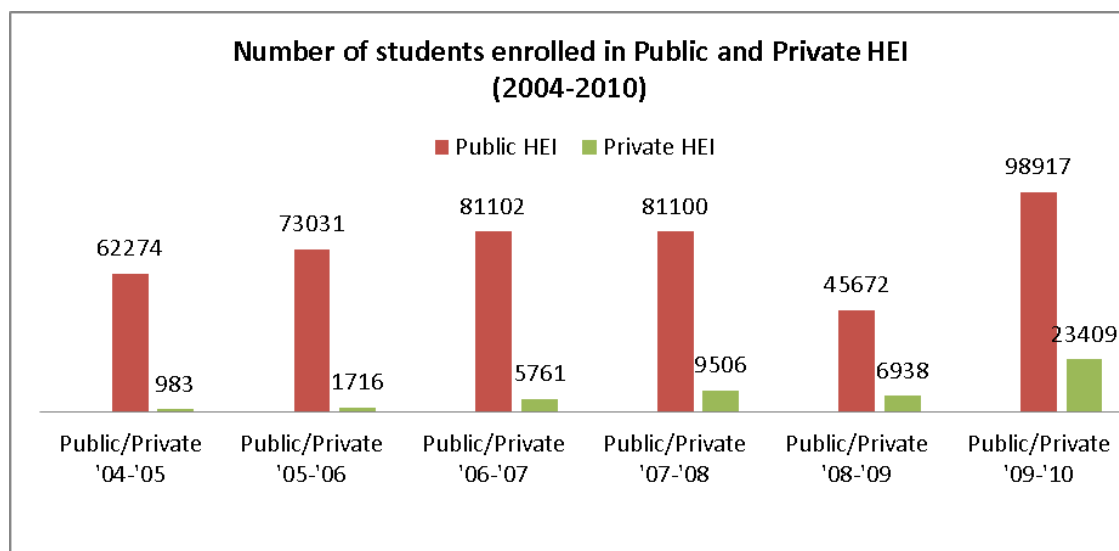
1. Higher education now presents a new physiognomy. Private HEI are challenging the idea of only one kind of higher education institution, i.e. an institution that provides a full range of subjects and combines education with scientific research. Private HEI are identifying the need for differentiation of the HEI mission which would allow private HEI to be positioned and to fulfil their mission and objectives.⁴
2. Higher education providing the fulfilment of academic demand. Thus, private HEI are contributing to the meeting of academic demand regarding higher education. The system of quota limits the academic supply of public HEI and prevents them from meeting the demand of the market.⁵
3. The employment in higher education institutions is motivated. Private HEI are promoting motivated academic staffs, meaning a staff which is prepared, devoted to education, and is well paid compared to their colleagues in public HEI.
4. The quality assurance mechanisms are operating today in the higher education system. Private HEI are seeking that the quality assurance system makes differentiations in the interest of priority – more students enrolled and provision of a qualitative standards based service.
5. Public and private HEI are offering contemporary infrastructure, with modern equipment and means for the purpose of education, comfortable premises, online libraries, computer rooms, etc.

However, despite the liberalisation of higher education and the significant number of private HEI, the trend continues to be public HEI. There are many reasons but the two main ones include the following:

- educational fees which are much cheaper compared to private HEI (this ratio in Albania is at 1/10 respectively);
- credibility of degrees offered by public HEIs is a better guarantee for future jobs.

4 Decision of the Council of Ministers No. 1509, dated 30.07.2008 'On the adoption of Higher Education National Strategy, 2008-2013'; *Official Gazette of the Republic of Albania*, no.180/2008.

5 Each year, the Council of Ministers adopts the admission quota in the relevant study cycles in public HEI. Example: Decision of the Council of Ministers No.423, dated 08 June 2011 'On the admission quota in public higher education institutions, for the first study cycle, full time, for academic year 2011-2012'.



The liberalisation of higher education has entered in action the competition mechanism.

Competition is not a state of affairs, it is a process. Competition is defined not by the number of competitors in a market, but by the ease with which potential competitors can enter the market. The competition is not only between both the public and private HEI but also between the private HEI.

In the process of competition facing each other, both public and private HEI have the same objective: to offer the quality standards and to be competitive in the market of higher education.

On the other hand, the competition of higher education has also been accompanied by its problems.

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Thus, at present, study programs provided by private HEI in Albania are focused in four main directions: law, economy, teaching, and infirmary.⁶ Private HEI does not support the provision of these study programs with a study of the potential labour market. The number of students that graduated in these sectors in the last 5 years does not meet the real labour market, because the demand-supply ratio for these professions is disproportionate in regards to the creation of new jobs. Approximately 50% of the students enrolled in private HEI study the abovementioned sectors.⁷

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' in the diplomas they issue compared to the diplomas issued by public HEI in relation to the labour market.

⁶ Public Agency for the Accreditation of Higher Education, *op. cit.* note 2.

⁷ Public Agency for the Accreditation of Higher Education, *op. cit.* note 2.

3. Competition law in education

In the Albanian legal framework, a reference point to determine where the link is between competition and education are constitutional provisions. The relation between competition and education can be found in the combination created among constitutional provisions.

In the Constitution of the Republic of Albania⁸, Article 11, envisages the following: ‘The economic system of the Republic of Albania shall be based on private and public property, as well as on market economy and economic activity freedom.’

Article 57 envisages the following: ‘Each and everyone shall have the right to education. [...] Pupils and students may also receive education in non-public schools of all levels, which are established and operate pursuant to the law.’

The abovementioned provisions mean that the Constitution of Albania allows not only public institutions, but also private ones, to provide the same service – education, for the same customer – student (in higher education), therefore providing them the opportunity to be competitive in the same market and for the same customer.

On the other hand, the state, in the framework of the constitutional competences and means at its disposal and for the purpose of fulfilling private initiative and responsibility, does not only recognise ‘the constitutional right to education’, but this right also represents one of its social objectives which the state offers as ‘a public good’ (Article 59).

For the purpose of fulfilling this social objective, in a market economy which is based on the principle of economic activity freedom, ‘competition’ is the mechanism which promotes the diversity of academic supply provided as well as by public and private HEI.

Seen from the view of competition, higher education offered by HEI (Universities)⁹ as a service has two opposite economic interpretations.¹⁰ The first is that universities are essentially service institutions provided by the community for its own good. The second is that they are commercial enterprises selling educational services for the benefit of individuals. This distinction is applicable for both their teaching and research functions.¹¹

The first interpretation is applicable to public and private HEI, when they have a non-profit organisation status. The second interpretation is applicable to private HEI that have a commercial company status.¹² According to official data from PAAHE, there are 43 licensed private HEI in Albania, which have a commercial company status¹³ and only three of them have a NGO status and are organised as foundations. Private HEI with a commercial company status, being profitable legal persons, focus their activity in economic interest, thus, they are allowed to provide education as a commercial activity.¹⁴ The students receiving service there have to pay. The education fees for students comprise their main source of profits.

8 The Constitution of the Republic of Albania, available at: < [http:// legislationline.org/documents/section/ constitutions](http://legislationline.org/documents/section/constitutions)>.

9 In everyday speech in Albania, HEI means universities, but not all HEI have the status of the university; there are 11 public universities and 3 private universities.

10 Fels, A. (1998), ‘*The Impact of Competition Policy and Law on Higher Education in Australia*’, paper presented at the Australasian Association for Institutional Research International Conference, November, available at: < [http:// www.accc.gov.au](http://www.accc.gov.au)>.

11 Fels, A., *ibid*.

12 Amato, F., Day, J. (2009), ‘*Competition law and education: Defining relevant market*’, paper presented at the Conference ‘On “Commercialisation and Competition in Education”, 20-21 November, Antwerp-Belgium.

13 They are registered as limited liability companies and joint-stock companies.

14 Law No. 9901, dated 14 April 2008 ‘On entrepreneurs and companies’, *Official Gazette of the Republic of Albania no.60/2008*.

Private HEI with a non-profit organisation status, due to their nature, cannot be profitable. Law No. 8788, 'On Non-Profit Organisations' dated 07 May 2001¹⁵, envisages that their activity must be focused on the benefit and interest of the public (Article 2§6). In their activity, they aim at providing education as a public good. Their finances are not based on education fees, but on different grants and donations which comprise the main source for their incomes. Students may pay a certain education fee, but this does not represent the income base of the HEI, given that the economic activity is not the purpose of their activity, but it is of a secondary relevance and in the interest of the institution's progress.¹⁶

Public HEI are established by the state. Their main fund is represented by the grant from the state budget, which guarantees the activity and the necessary human resources. Students pay a very small education fee compared to the service they receive. This education fee is of a secondary relevance for the income source of public HEI. This shows that public HEI have their funding guaranteed. They do not have to compete in order to generate the necessary funds, since the grant from the state budget, envisaged in the annual budget, is in favour of public HEI.¹⁷

Due to their status as public institutions which do not pursue economic goals, their different activities of a profitable character that they might carry out (consultancies, participation in research-scientific activities) eventually result in the purpose of fulfilling their public mission.

Public HEI also have the 'social obligation' to provide education in the benefit of national interest.¹⁸

In this diversity of types of HEI; profitable private HEI, non-profit private HEI, and public HEI, they operate in the same market, the higher education market, and there is competition of course.

The relations in the competition sector in the Republic of Albania are regulated by Law No. 9121, dated 28 July 2003 'On the Protection of Competition'.¹⁹ Article 1 of this Law envisages the following: 'The purpose of this law shall be to protect free and effective competition in the market, specifying the behaviour rules for enterprises and institutions responsible of protecting competition and their responsibilities'.²⁰

The abovementioned provisions mean that they cover commercial activity. These provisions are aimed at regulating commerce in general, as well as to provide consumer protection. Therefore, the content of the provisions on competition addresses the concept according to which education is provided as a commercial service.

In this point of view, there is no adequate legal framework to regulate in tangible terms the competition in the education sector.

On the other hand, HEI (public and private), provide the same service, education. They are 'players' in the same market.²¹ It is important for them to observe the rules of this market, based on principles and rules which, in the education sector, means standards they have to provide, which are well defined at present by the relevant legal framework that makes reference to the 'Higher education quality state standards'.

15 Law No. 8788, dated 07 May 2001 'On Non- Government Organisations', *Official Gazette of the Republic of Albania no.28/2001*.

16 Gjata, R. (2006), *E Drejta Civile*, AlbPAPER, Tirana, pp. 15-16.

17 Hee, F.T (2009), 'Competition law and education in south East Asia (ASEAN)', paper presented at the Conference 'On Commercialisation and Competition in Education', 20-21 November, Antwerp-Belgium.

18 Decision of the Council of Ministers, *op.cit.* note 3.

19 Law No. 9121, dated 28 July 2003 'On the Protection of Competition', *Official Gazette of the Republic of Albania no.71/2003*.

20 Enterprise, in the meaning of this law, is each and every legal private and public person who carries out economic activity, which consists in providing a service.

21 Steyger, E. (2009), 'Competition and Education', paper presented at the Conference 'On Commercialisation and Competition in Education', 20-21 November, Antwerp-Belgium.

4. Application of Competition Policy to Higher Education Institutions

On the diversity of HEI students are free to choose. Their choice is based on the information provided by HEI.

Each HEI should publish its policy of competition, which means that they should be in accordance with the legal framework that allows a competition based on the rules and principles.

Thus, alternative information sources must be included with updated and real information by the HEI themselves in their official websites. Therefore, this would allow them (the students) to receive adequate information, to know of a certain study program, to have a general perception on the academic quality of HEI and as well as to know the evaluation from the labour market.

Each HEI must as a rule, have an information package for the potential students as well as to specify information contact points. This information package must be easily understandable and must include data on the indicators measuring the quality of study programs, such as (1) number of applicants for each year, (2) success rate of the students graduated in the State Test for the regulated professions, (3) statistical data on the employment of the graduated students, (4) minimal threshold of the grade or points of students admitted in the previous years, (5) percentage of study dropouts, (6) lecture/seminar ratio, etc.

At the same time, the state mechanisms, especially MES and PAAHE, must control the information published by HEI, and themselves must have published information on their websites about the official status of each program and about each HEI (licensed or accredited), and the information available should be comprehensive and updated.

On the other hand, evaluate that both public and private HEI must be subject to ranking and must also be made part of the provided official information. Ranking must be made pursuant to the standards set forth in the 'Quality state standards legal framework'.

As such, only a transparent policy and the accurate information provided in a real and clear way would allow public and private HEI to compete in the higher education market in a professional and responsible manner that would allow the students to make their free choice.²²

5. The competition in function to promote reform in higher education

In the last ten (10) years higher education in Albania is facing both quantitative and qualitative changes.

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' as amended²³ (Art.61), has adopted the higher education quality state standards, which have been considered as the 'Legal framework for quality state standards'²⁴, which comprises:

1. 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'.

22 Ministry of Education and Science (2010). *Ministry of Education and Science, Funding reform in higher education in Albania, 2010*. (Green Paper-Public Consultation Document), available at: <<http://www.mash.gov.al>>.

23 Law No. 9741, dated 21 May 2007 'On Higher Education in the Republic of Albania' as amended, *Official Gazette of the Republic of Albania, no .68/2007 & Official Gazette no.111/2010*.

24 Ministry of Education and Science, available at: <<http://www.mash.gov.al>>.

2. 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’.
3. 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’.
4. 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 represents a positive step to ensure the quality of higher education in Albania. Such a framework makes HEI face the challenge of meeting quality state standards and the adaptation of competition rules, with the purpose for them to provide a qualitative service – standards based education.

The diversity of the academic supply has led the higher education system in Albania detach from the traditional scheme (public institutions only) and to undergo a reform according to a new vision, in which public and private HEI have to ‘cohabitare’ in the same market.²⁵ This reform process is visible in several directions, which may be summarised as follows:

1. *Whole inclusiveness.* Public and private HEI are operating in observance and pursuant to the competition principles and rules, and the provision of education as a service has resulted in the creation of a competitive environment between public and/or private HEI. Thus, private HEI, which are respected for the quality and reliability in the higher education market, have set the education fees which at present have become a “force of the habit.”
2. *Responsibility.* Public and private HEI, which want to have ‘their physiognomy’ in compliance to the ‘Higher Education National Strategy’ and the economic and social development needs of the country, are observing and applying the competition rules, for the purpose of improving the service quality for students. Thus, in this ‘race’ private HEI are providing contemporary study programs which had been never before applied in Albania. They are recruiting qualified academic staff, participating in scientific research projects, regional and European, among which we can mention: Tempus Program, FP7, etc.
3. *Transparency.* When carrying out their activity, public and private HEI are aiming at being open and are trying to show what quality standards they provide. Any necessary information is being published in their websites.
4. *Integrity.* Public and private HEI are turning the declaration of their financial schemes, regarding the provision of income and use of financial resources, to the academic staff, administrative staff, and students, into a norm. Such a requirement is also envisaged in the ‘Institutional standards’ (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’).
5. *Cooperation.* HEI are carrying out their activity in cooperation with all market players and factors that operate in the higher education sector, including: students, parents, public and private institutions, and other public or private HEI.

Therefore, this reform process of public and private HEI is in their interest and the responsibility increase of their roles in society as main players that provide an education service. This must also be qualitative and based on ‘Quality state standards’, which are aimed at an approach of higher education in Albania towards the European Higher Education Area standards.

25 National Competition Policy (2006), available at: < <http://www.caa.gov.al>>.

6. Conclusions

Competition, as an economic phenomenon, operates in a market economy and creates an environment where public and private HEI, which provide the same service – education, try to gain as many customers-students as possible in order to achieve their objectives: better quality and more choice for the customer – student.

The relation between competition and education lies in the combination which is created among constitutional provisions, which allow not only public institutions, but also private ones, to provide the same service – education, for the same customer-student (in higher education), therefore providing them the opportunity to be competitive in the same market and for the same customer.

The liberalisation of higher education has also resulted in the noticeable increase of competition, which, seen as a mechanism in the market economy, has led the public and private education face each-other. The government policies have been oriented towards the promotion of the private sector in higher education, providing it with the following: (1) An adequate legal framework; (2) A supportive regulative framework; (3) Favourable tax policies. The education situation in Albania at present is characterised by the diversity of academic supply, with private HEI, despite being young in the higher education market, have noticeably influenced the reformation of this market.

The licensing of private HEI has also been accompanied by their positive impact in the higher education market, also meeting the ‘constrained’ academic demand, which is limited by the system of quota in the public HEI. However, despite this positive impact, the trend continues to be oriented towards public education. The reasons for this include the low education costs of the public education and the confidence its diploma provides when it comes to employment.

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There is no adequate legal framework to regulate competition in the education sector, in tangible terms. Thus, there is need for a clear legal framework on competition in the education sector, since it would encourage the increase of the number of education institutions that offer wide solutions for the customer-student, as well as guarantee the provision of low-cost education service, increasing the access to the customer-student.

Competition among HEI in Albania has also been accompanied by a tangible reform undertaken by the HEI themselves, in order to provide a direct influence in the higher education market. This reform is based on the adaptation of competition rules, with the purpose for them to provide a qualitative service – standards based education.

The diversity of public and private HEI has created a colourful market in which students are free to choose. Their choice is based on the information provided by state mechanisms, especially the MES/PAAHE and the public or private HEI themselves. This information must be accurate, real, and transparent, because only so it would create confidence and more choice for the students.

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