

# THE RELATION BETWEEN COMPETITION AND HIGHER EDUCATION. LEGAL FRAMEWORK OF AN ALBANIAN CASE

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## Abstract

*At present, Albania faces a reality in which education as a public interest is provided by both public as well as private institutions. The liberalisation of access in higher education has resulted in public and/or private institutions which provide the same service – education, compete with each other in trying to attract the same customer – the student.*

*Competition is considered as a key instrument that has produced a diversity/variety of higher education institutions and with more choices to the student.*

*This research is aimed at analysing the relation existing between competition and higher education as well as its impact on higher education in Albania.*

*In this analysis we have addressed four important issues:*

- 1. Liberalisation of higher education and the impact of competition*
- 2. Competition law in education*
- 3. The mechanism of free competition - the market of students*
- 4. Using competition to promote reform in higher education*

*This study is based on the interpretation of the domestic legislation, analysis of policy documents and articles, as well as interviews with 10 key persons and 20 students.*

*This research helps understanding the role competition plays in the higher education sector, which has resulted in a tangible reform being undertaken by the public and private HEI themselves. This reform is based on the adaptation of competition rules with the purpose of achieving provision of a qualitative service – standards based education.*

**Key words:** *competition law, higher education, quality, reform, student.*

## Introduction

Competition, as an economic phenomenon, operates in a market economy and creates an environment, in which, public and private institutions that provide the same services, try to gain as many customers as possible in order to achieve their objectives with more choices for the customer (National Competition Policy in Albania, 2006).

The following question naturally arises: where does the relation between competition and education lie? The answer can be found in the combination created among constitutional provisions.

Article 11 of the Constitution of the Republic of Albania 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 that are established and operate pursuant to the law”.

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

On the other hand, the state, in the framework of the constitutional competences, the 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 by public and private HEI therefore, increasing the quality standards offered.

In this article we aim to analyze the relation between competition and higher education according to four main pillars:

1. Liberalisation of higher education and impact of competition.
2. Competition law in education.
3. The mechanism of free competition - the market of students.
4. Using competition to promote reform in higher education.

Addressing these issues in this research, we aim to give a general picture for higher education in Albania, where its liberalization is associated with the establishment and functioning of the private sector in this field.

The diversity of Higher Education Institutions, regardless of the status they have, public or private legal entities, has made them “players” in the same market where the competition mechanism operates and enforces the rules of the game and the client, in this case the student, has the right to choose between the options that are offered.

The situation in Albania today is similar to that of many Eastern European countries, in which academic offerings have been “suppressed” for a relatively long time, nearly 40 years, where the right to education belonged to only one class called “elite”.

The constitutions of these countries, as well as in the case of Albania, recognize the principle of freedom of economic activity, and national laws in the field of higher education have promoted the private sector of higher education (Pachuashvili, 2009).

In Eastern Europe, the private sector promotes a diversity of institutions of higher education. This diversity has brought *novelty* due to, that their way of organization and operation has made them having differentiated missions from the traditional concept that there is only one kind of institution of higher education, i.e. an institution that provides a full range of subjects and combines education with scientific research (Linden, Arnhold, & Vasiliev, 2008).

Despite the small structures that represent private institutions of higher education in Eastern European countries, when compared to public institutions, they have brought a new dimension to the higher education market.

The liberalization of education has allowed these countries to undertake an educational reform where the adoption of competition rules has permitted the private sector to modernize access to education, introducing new skills and practices, for example: Online learning, part-time courses, teaching at times that suit the working population, improvement of study programs closer to labor market requirements (Linden, Arnhold, Vasiliev, 2008).

In this research, the relationship created between education as a service and competition will allow us to understand the role competition currently plays in the Albanian higher education market, where public and/or private Higher Education Institutions (HEI) compete with the purpose of adapting competitive rules and providing a qualitative service - standards based education.

## Research Methodology

The research methodology used in this study is based on the interpretation of the Albanian legal framework, analysis of documentation, interviews and the support of presented arguments through official data (statistics) published by state institutions.

The interpretation of the Albanian legal framework in this study follows the hierarchy (priority) line of the norms of law from the Constitution of the Republic of Albania. This is followed by different laws and the provisions of which, in combination with each-other, makes us achieve important results with regards to the chosen topic, as well as to identify the problems which arise.

The analysis of the documentation used, allows us for the purpose of addressing this topic, to base also on other juridical addressing which gives us the possibility to understand how the education that is currently provided as a service is a right of both public as well as private institutions.

The interviewing process was made by grouping the interviewees into two main groups. The first group included 10 key persons which were also divided into three subgroups: officials of the Ministry of Education and Science (MES) (3 persons), officials of public HEI (3 persons) and officials of private HEI (4 persons). The second group was comprised of 20 students, who were divided into two subgroups: students who study in public HEI (10 persons) and students who study in private HEI (10 persons).

The interviewees have been interviewed according to predefined questions. Their structured opinions have been incorporated in this study according to the addressed issues.

Along with the predefined questions, the 20 students were also allowed to express their opinions which were then restructured and became part of this study. Their opinions will allow us to understand their demands and what information they need when it comes to choosing the HEI and the relevant study program.

The official data (statistics) have been used in this study with the purpose for them to reflect the situation of higher education in Albania in tangible figures.

The research methodology used for this study will allow us to understand how it has been carried out and what the achieved results were.

## Liberalisation of Higher Education and Impact of Competition

The liberalisation of higher education in Albania has become reality. With a surface area of 28,748 square meters and a population of approximately 2,831,741 million inhabitants (Census-Albania, 2011), Albania to date has 59 higher education institutions. From these 59 HEI, 13 are public while 46 are private institutions (Annual Report. Public Agency for the Accreditation of Higher Education - PAAHE, 2011).

Similar to other countries of South-Eastern Europe, the Albanian government policies have been aimed at the promotion of higher education in the private sector. (Pachuashvili M., 2009).

These policies have provided the following to the higher education private sector: (1) An adequate legal framework - for their establishment, organisation and promotion; (2) A supportive regulative framework - MES through its mechanisms and especially PAAHE - implements the licensing, assessment, accreditation of private HEI and their study programs; (3) Favourable tax policies - amendment of the Law "On Value Added Tax" No. 7928, dated 27 April 1995, and with Law No. 10215, dated 21 January 2010, excluding private HEI from the obligations to pay VAT.

The licensing of private HEI has also been accompanied by their positive impact in the higher education market. According to the interviews made with 10 key persons, this impact is focused on several main directions, with the following being the more obvious:

1. Private HEI are contributing to meet the 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. (Author's note: 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 the academic year 2011-2012").
2. Private HEI are establishing a new physiognomy in higher education. They 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. In compliance to the Higher Education National Strategy, they 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.
3. 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.
4. 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.
5. 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 this positive impact that private 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 predomination and preference of public HEI compared to the private ones.

**Table 1. Number of students enrolled in Public and Private HEI.**

Year	2004-2005	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010
Public HEI	62274	73031	81102	81100	45672	98917
Private HEI	983	1716	5761	9506	6938	23409
Total	63212	74747	86863	90606	52610	122326

There are many reasons for this, but the main two, as also identified by the interviewed students, include the following:

- payment of an education fee which is much cheaper compared to private HEI (this ratio in Albania is at 1/10 respectively);
- confidence in the diplomas awarded by the public HEI which serve as a guarantee for a future job.

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

Thus, at present, study programs provided by private HEI in Albania are focused in four main directions: law, economy, teaching, and infirmary. 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 the private HEI study the above mentioned sectors (Annual Report, PAAHE)

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.

Table 2 shows the “fierce” competition between the public and private HEI.

**Table 2. 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

Public HEI, due to the advantages they offer, dominate the higher education market. Private HEI must compete both with public HEI which have guaranteed customers-students, as well as among each-other. In the competitive higher education market, “quality” is the element that makes the difference.

### Competition Law in Education

HEI (Author’s note: 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) have been traditionally perceived as education service providers in one way or another. Their basic characteristics have been considered as being of a non-commercial nature. However, at present we face a new concept which has two opposite economic interpretations of higher education. 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 (Fels, 1998).

The first interpretation is applicable to both 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 (Amato, Day, 2009).

According to the official data from PAAHE, there are 43 licensed Albanian private HEI which have a commercial company status while only three have a NGO status and are organised as foundations. (Author’s note: they are registered as limited liability companies and joint-stock companies).

Private HEI with a commercial company status, being profitable legal entities, focus their activity on economic interests thus, they are allowed to provide education as a commercial activity. The students receiving this service there have to pay for it. The education fees charged to the students comprise of their main source of profits.

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 2001, 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 main 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 (Gjata, 2007).

Public HEI are established by the state. Their main funding is represented by the grants

from the state budget which guarantees the activity and the necessary human resources. Students pay a very small education fee compared to the services 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 (Hee, 2009).

Due to their status as public institutions which do not pursue economic goals, their different activities are 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 have also the “social obligation” to provide education in the benefit of national interest (Higher Education National Strategy, 2008-2013).

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

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”. 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”. (Author’s note: 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).

The 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.

From 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 and education. They are “players” in the same market (Steyger, 2009). It is important for them to observe the rules of this market based on the principles and rules which in the education sector means, standards that they have to provide are well defined by the current relevant legal framework that makes reference to the “Higher education quality state standards”.

### **Free Competition Mechanism – Student Market**

The diversity of public and private HEI creates a colourful market in which students are free to choose. Their choice is based on the information provided.

The interviewees (persons working at the MES) say that the state mechanisms, especially MES and PAAHE, have published information on their websites about the official status of each program and about each HEI (licensed or accredited), but the information available is neither comprehensive nor updated.

On the other hand, some of the interviewees (officials of the public and private HEI), evaluate that both public and private HEI must be subject to ranking and must also be made part of the provided official information. The ranking must be made pursuant to the standards set forth in the “Quality state standards legal framework”.

The other group of interviewees, who are the main players in the higher education market - the students, say these 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.

Moreover, groups of students said that 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.

Based on the predefined questionnaire, the students were interviewed in relation with the following two issues:

1. If the HEI where they study offers study programs in accordance with its mission and its infrastructure conditions.
2. If the HEI where they study promotes the employment of the students.

**Table 3. The institution offers study programs in accordance with its mission and its infrastructure conditions.**

No.	The institution offers study programs in accordance with its mission and its infrastructure conditions	Positive answer	Negative answer
1.	The institution provides the opportunities that the study programs offered by it to be recognized by the public.	15	5
2.	The institution keeps constant contact with the institutions of secondary education where its future students have completed their school.	2	18
3.	The institution has defined priority programs of study that it offers and which it has decided to create in its profile.	17	3
4.	The institution follows a clearly defined policy for enrolment of students in accordance with the study programs that it offers.	17	3
5.	The study programs offered by the institution are organized in such ways that harmonize all their components.	15	5
6.	The requirements that serve to test the capabilities of the students are considered and classified by the collegial bodies of the institution.	15	5

In the group of 20 students interviewed (Table 3) shows their perception of the issue: The institution that offers study programs in accordance with its mission and its infrastructure conditions was different. The question that received a negative response was question 2. The reasons given were the lack of cooperation between the HEI and the secondary education.

The answers concerning other questions had a positive trend.

The majority of students expressed that the HEI where they study tries to provide information published in this regard, however it is not thorough.

**Table 4. The institution promotes the employment of the students.**

No.	The institution promotes the employment of the students	Positive answer	Negative answer
1.	The institution has a structure that disposes of statistical data on employment of its graduates.	2	18
2.	The institution provides support for integration into employment.	5	15
3.	Academic staff, teaching, scientific support staff and administrative staff are committed to implementing this policy.	5	15
4.	The institution pursues policies favourable to the employment of its graduates.	7	13

In contrast with the positive trend of the responses on Table 3, Table 4 shows that the perception of students in relation with this issue: The institution promotes the employment of the students had a negative response. The majority of students expressed that HEI do not have information published in this regard.

Based on these interviews, HEI, public and private, do not possess full information that they can provide them with a real competitive chance.

As such, only accurate information provided in a real and transparent 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 (Funding reform in higher education in Albania, 2010).

### Using Competition to Promote Reform in Higher Education

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 the academic supply has led the higher education system in Albania to detach from the traditional scheme (public institutions only) and to undergo a reform according to a new vision in which both the public and private HEI have to “cohabit” in the same market. This reform process is visible in several directions (also according to the interview with the first group – 10 key persons), which may be summarised as follows:

1. *Whole inclusiveness.* Public and private HEI are operating in observance and pursuant to the competitive principles and rules. 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” including 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 have never been 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 can provide. Any necessary information is being published in their websites.

4. *Integrity.* Public and private HEI are changing 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.

## Conclusions

During these last 10 years, higher education in Albania is facing a new reality. Besides public institutions, there are now private institutions that have opened and are operating. The entry of Private Higher Education Institutions in the higher education market changed its physiognomy and turned it into a “competitive market” which shows significant differences.

On one hand, we have the public HEI with funding provided by the state budget grant, have a consolidated structure and a considerable time era (from 30 to 70 years). On the other hand, the private HEI have to provide for their own income with little or medium structure and have been created a short time ago (the oldest being 10 years).

There is no a legal act in definite terms to regulate the issues of competition in higher education.

Regardless that public HEI are already established, the same habits and competitive practices from private HEI in the market, example, provide online learning, have set the education fees, etc., it can be said that the adoption of a legal framework is necessary. This will make it possible that in the competitive market of higher education, both public and private higher education enter equally and with the same goal - to provide quality based on the standard. This is a necessary requirement for access to the Albanian education to be closer to the standards of the European Higher Education Area.

This legal framework makes it also possible to prevent a negative phenomena that competition brings, such as abuse of dominant position, prohibited agreements (Cartels) or consortiums (mergers) that have as their objective, price fixing, or forced withdrawal from the game and/or not to let the introduction of other competitors in the future.

In a variety of academic offers that the Albanian educational reality shows us, it is necessary that for the client / student to be better informed. Thus, public and private HEIs should provide reliable and accurate information for quality service as a key condition of the rules of the game in a competitive market.

However, the Albanian reality speaks otherwise. Both HEI, public and private are far from observing this standard. Their information is not complete and accurate. The students find it difficult to be directed or orientated in the proper way, both as when he/she begins their studies for the first time, as well as in the case when he/she are already in the process.

From this point of view, each HEI should provide the publication of an informational packet based on real data, what it actually offers and on how it provides it. Only in this way its

activity will be reliable for the client /student while it could also become a serious competitor in the higher education market.

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