

Legal aspects of education quality assurance and its external evaluation in the higher education institutions of the Czech Republic. The role of the Accreditation Commission

Introduction

As S. Nasir and Z.B. Avunduk summed up, higher education provides opportunities for graduates, but also has significant benefits for society: “[w]hen more people access higher levels of education, it also leads to better growth in the fields of science, technology, business and entrepreneurship as well as social well-being”. Thus they consider higher education “the most important factor to the nation’s sustainability”¹. Unfortunately, this does not apply to any education formally termed ‘higher’, but only to that higher education which can be considered as ‘quality higher education’. Therefore all the nations wishing to take advantage of higher education need to assure its high quality.

The principal aim of this paper is to provide information on the legal aspects of one of the current European models of ensuring quality in higher education – the Czech model, with particular emphasis on the role of the key authority – the Accreditation Commission. It aims to inform, initiate a discussion and consequently to suggest ideas of how to improve quality assurance in both the Czech Republic and the Republic of Poland. Even if their laws are not the same and their

¹ S. Nasir, Z.B. Avunduk, *The Evolution and Transformation of Higher Education. A Content Analysis of Articles Published in Journal of Higher Education*, in: *The International Higher Education Congress. New Trends and Issues (UYK-2011): the Conference Proceedings*, vol. 1, Istanbul 2011, p. 395.

quality assurance systems are organized in different ways, the historical experience reflected in the university environment and social background should lead to a beneficial sharing of knowledge between them.

As its starting point, the paper introduces higher education in the Czech Republic, with special emphasis on its autonomous character. It also introduces, in very general terms, the levels of quality assurance. It goes on to deal with the external evaluation of the quality of higher education institutions and the education provided. Since external evaluation is a pillar of the current system of quality assurance, the paper introduces its measures, main actors and procedures. The core of the article deals with the Accreditation Commission as the body which upholds the whole system, highlighting some of the problematic issues related to its position and composition. In the conclusions, it summarizes the main critical points of the system analyzed².

The final remark should be given to the references. Since Czech legal theory has for the most part not paid any attention to quality assurance³, this analysis is carried out using the descriptive method based on the interpretation of Czech legal regulations and court decisions, as well as evaluation of the administrative praxis.

1. Initial remarks

This section aims to provide basic information on higher education in the Czech Republic, concerning the aspects relevant for quality assurance. Additionally, it outlines the levels of Czech education's quality assurance, while emphasising that external evaluation is the most important type of evaluation.

² The article does not deal with the evaluation of the quality of research carried out by higher education institutions, nor the qualifications of the academic staff (professors, associate professors). Although it has to be admitted that both topics are connected to the quality of higher education, which may result in them being included, each topic seems too complicated an issue in itself to be treated as just a part of another issue.

³ See however public discussion in the daily press: M. Rychlík, *Profesor Karel Eliáš vyžívá: Šavle vzhůru, profesori!*, "Česká pozice" 24 IV 2012, http://ceskapozice.lidovky.cz/profesor-karel-elias-vyzyva-savle-vzhuru-profesori-f9m-/tema.aspx?c=A120424_074218_pozice_64867 (accessed: 22 VIII 2014); A. Winterová, *Šavle tala na špatné místo*, "Lidové noviny" 30 IV 2012; T. Richter, *Šavlový tanec kolem horké kaše*, "Lidové noviny" 21 V 2012; M. Rychlík, *Šavlovačka právních vzdělavců o školství*, díl IV., "Česká pozice" 23 V 2012, http://ceskapozice.lidovky.cz/savlovačka-pravnich-vzdelancu-o-skolstvi-dil-iv-fuf-/tema.aspx?c=A120523_144203_pozice_67794 (accessed: 22 VIII 2014).

1.1. Higher education in the Czech Republic

Like most European countries, the Czech Republic is a state with a continental legal culture. Its legal system is based on two constitutional documents – the Constitution⁴ and the Charter of Fundamental Rights and Basic Freedoms⁵. While the Constitution provides a framework for the basic arrangement of governmental authorities, the Charter contains a catalogue of fundamental human rights and freedoms. Some of the fundamental rights and freedoms stipulated in the Charter are exercisable directly, while others require the active involvement of the state (public authority). The right to higher education is an example of the latter.

Free exercise of the right to higher education is primarily provided for by **public higher education institutions** (veřejné vysoké školy) established by the State. In addition to these, the State also establishes and funds **state higher education institutions** (státní vysoké školy). However, they are not chiefly intended to satisfy the population's need to receive higher education, but rather to satisfy the need for qualified professionals in the strategic components of the State. These include the police and the army. Both public and state higher education institutions are set up by law.

The Charter also allows for the establishment of **private higher education institutions** (soukromé vysoké školy), although only since 1999, the year in which the law⁶ set up a mechanism for their establishment. The right to operate as a private higher education institution is subject to approval granted by the Ministry of Education, Youth and Sports (Ministerstvo školství, mládeže a tělovýchovy, hereinafter 'the Ministry

⁴ Constitution of the Czech Republic of 16 XII 1992 (Constitutional Act No. 1/1993 Collection of Laws of the Czech Republic, hereinafter "Coll." as amended). In English available on the website of the Constitutional Court of the Czech Republic, <http://www.usoud.cz/en/constitution-of-the-czech-republic/> (accessed: 31 V 2014).

⁵ Resolution of the Presidium of the Czech National Council of 16 XII 1992 on the declaration of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic (Constitutional Act No. 2/1993 Coll. as amended), hereinafter "the Charter". In English available on the website of the Constitutional Court of the Czech Republic, <http://www.usoud.cz/en/charter-of-fundamental-rights-and-freedoms/> (accessed: 31 V 2014).

⁶ Act of 22 IV 1998 on higher education institutions and amending and supplementing other laws (Consolidated text, Act No. 111/1998 Coll. as amended) hereinafter the "Act on Higher-Education Institutions", "Act on HEIs" or also "the Act". In English available at: http://www.muni.cz/general/legal_standards/higher_education_act?lang=en (accessed: 31 V 2014).

of Education'). Rather than to serve the general interest, private higher education exists to generate profits. The provision of a public service is something of a side effect in the running of their business.

As regards the actual position of each kind of higher education institution (hereinafter also the 'HEIs'), some of the 26 public (and partly state) HEIs can be regarded as successors to the traditional universities, some of which were established in the Middle Ages. In contrast, the majority of the 44 private HEIs were established in the last ten years. In terms of public faith in the quality of the education provided by private HEIs, it can be stated that the average quality of the education provided by these institutions is generally considered to be lower⁷ than the quality of education provided by public and state (totally 2) HEIs.

Under Czech law, no-one other than a higher education institution may provide higher education or grant academic degrees. All three kinds are also subject to division into two types – university and non-university. In contrast to the past⁸, **the university type** does not reflect its universality, but is based rather on the level of programmes the higher education institution offers. It can be agreed that "there is no attempt to differentiate the university and non-university sectors on the basis of a distinction between «academic» and «professional» orientation"⁹. While HEIs of the university type (which are allowed, but not obliged, to call themselves 'universities') offer degree programmes on all three levels (bachelor's, master's and doctoral), **non-university HEIs** offer mainly bachelor's degree courses, although they can also offer master's degree programmes. It is necessary to carry out research, development, artistic and other creative activities related to the level and area of a study programme¹⁰.

⁷ Cf. E. Bártová, *Oxford ve Starém Hrozenkově: Titul za 12 víkendů*, Aktualne.cz 3 XII 2009, <http://aktualne.centrum.cz/domaci/zivot-v-cesku/clanek.phtml?id=654605> (accessed: 12 VIII 2012); V.R.M. Dvořáková, *Na problémy Rašínovy vysoké školy jsme upozornili už loni*, Česká televize 3 IV 2011, <http://www.ceskatelevize.cz/ct24/domaci/119901-dvorakova-na-problemy-rasinovy-vysoke-skoly-jsme-upozornili-uz-loni/> (accessed: 12 VIII 2012); ČTK, *VŠ Bankovní institut hrozí ztráta akreditace*, Lidovky.cz 15 IV 2011, http://www.lidovky.cz/vs-bankovni-institut-hrozi-ztrata-akreditace-fo3-/ln_veda.asp?c=A110415_093743_ln_domov_pks (accessed: 12 VIII 2012).

⁸ Cf. V. Kudrová, *Správní rozhodování vysokých škol*, 2012, p. 202 (dissertation thesis submitted under supervision of JUDr. J. Jurníková in the Faculty of Law of Masaryk University; not published).

⁹ OECD, *OECD Thematic Review of Tertiary Education. Review of Tertiary Education in the Czech Republic*, Paris 2009, p. 13.

¹⁰ Cf. Section 2 (5) of the Act on Higher-Education Institutions.

Public and state HEIs may be divided into four constituent parts (Section 22 (1) of the Act on HE), but only those in the university category can divide into **faculties**. Unlike the other constituent parts, faculties enjoy a partial internal autonomy (as specified below).

1.2. Higher education autonomy (self-government)

While state administration “is the part of public administration which is carried out by the State as the competent entity and the State exercises it directly through its bodies and authorities or indirectly through other parties, and delegates or confers this power on them by law or through a decision on the basis of the law”¹¹, **self-government** can be defined as a form of public administration constituting a legal entity, where a community of people organized on a particular basis related to the public interest administers its affairs autonomously and makes decisions regarding these directly or through bodies elected by them. In general terms¹², autonomy encompasses the capacity of a subject of self-government to be managed by its own internally and independently established bodies, the related power to adopt normative acts as well as to make individual authoritative decisions on the rights and obligations of subordinate entities, and, if applicable, the power to exercise the entrusted competences in other ways. Self-governments are authorized to take responsibility for these actions; they also have the right to own property and to establish their own budgets. All the competences mentioned above are exercised independently of governmental authorities¹³.

As the Act on Higher-Education Institutions indirectly declares, **public higher education institution is a subject of self-government**. As autonomous subjects with legal personality¹⁴, public HEIs have their own budgets (whose income consists primarily of allocations from the State budget) and are managed by their own autonomous and other bodies

¹¹ D. Hendrych et al., *Právnícký slovník*, 2nd ext. CD-rom ed., Prague 2001. See explanation on the entry ‘self-government’.

¹² J. Filip, *Ústavní právo České republiky. I. díl: Základní pojmy a instituty. Ústavní základy ČR*, Brno 2003, p. 501.

¹³ V. Kudrová, *Academic Autonomy. Case of the Czech Republic*, in: *Law, Regulation and Public Policy Proceedings*, Singapore 2012, p. 83.

¹⁴ Considered by K. Beran as an entity of dual character “where a state institute and a public-law corporation exist in parallel”. Cf. K. Beran, *Právnícké osoby veřejného práva*, Praha 2006, p. 125.

with various levels of mutual links and responsibility relations¹⁵. A list of the autonomous competences of a public HEI was set out in Section 6 (1) of the Act on Higher-Education Institutions. The most important competences which concern the quality in higher education are: determining which applicants are to be admitted, "the design and implementation of degree programmes as well as the organization of studies, [setting] the objectives of scholarly, scientific, research, development, artistic and other creative activities and their organization" and running "the procedures for conferring «venium docendi» (habilitation) and for the appointment of professors". According to Section 17 of the Act on Higher-Education Institutions, public HEIs are obliged (in addition to the other autonomous normative acts) to adopt their own normative act, called the Statute, including "a description of the nature, conditions and frequency of the evaluation of the higher education institution's activities". So, in fact, the competence to establish a system for evaluating the higher education institution's activities can also be recognized as autonomous.

Even if each kind of higher education institution is subject to specific regulation of its institutional aspects¹⁶, and state HEIs are not legal entities and some of their competences as listed above are shared with the Ministry of Defence (Ministerstvo obrany) or the Ministry of the Interior (Ministerstvo vnitra) or their ministers, the provisions on the activities through which higher education institutions carry out their basic mission¹⁷ are common to all three kinds of HEI¹⁸. This is why the competences explicitly awarded to public HEIs apply mostly to the same extent to state and private HEIs as well.

¹⁵ Cf. V. Kudrová, *Higher Education (Reform) in the Czech Republic*, in: *Reforma systemu szkolnictwa wyższego w Polsce na tle wybranych krajów Europejskich*, pod red. A.K. Modrzejewskiego, Białystok 2011, p. 98–99.

¹⁶ The internal organisation of a public higher education institution is regulated in Part Two of the Act on HEIs – Public higher education institutions and their constituent parts. A substantial portion of the text also applies to state higher education institutions, along with the regulation in Part Twelve – Military and police higher education institutions. Part Three – Private higher education institutions – is dedicated to the status of private higher education institutions.

¹⁷ Specified in Section 1 of the Act on HEIs.

¹⁸ In this point of view opinion of the Supreme Administrative Court of the Czech Republic – pursuant to the Education Act of 24 IX 2004 (Act No. 561/2004 Coll.) – in which the act "is based on uniform provisions for the provision of education, in principle, irrespective of the founder of the school or school facility" is applicable (trans. – V.K.). Cf. the judgment of the Supreme Administrative Court of 27 VII 2011, f. No. 1 As 53/2011, <http://www.nssoud.cz/main0col.aspx?cls=JudikaturaExtendedSearch> (accessed: 31 V 2014).

As indicated above, when a university divides into faculties, it loses part of its self-government to these faculties. Concerning the issue of the quality assurance, **the faculties have**, according to Section 24 of the Act on HEIs, **a right** to make decisions with respect to such issues as the “design and implementation of degree programmes”, “the objectives and organization of scholarly, scientific, research, development, artistic and other creative activities” and partially the “carrying out the procedures for conferring «venium docendi» (habilitation) for the appointment of professors [...]”.

To award self-government power to HEIs does not entail giving up **supervision**. Thus the state may become involved in the following situations: the funding of public and state higher education institutions, supervision of the adoption of internal regulations, supervision of legality and specific obligations (e.g. proper economic management or establishment of appropriate bodies) and finally, in connection with the authorization to provide degree programmes and general activity as a private higher education institution. The two latter authorizations are directly related to external quality assurance of higher education.

1.3. Ensuring the quality of higher education – general background

It should be admitted that the Czech Republic lacks a functioning system of **internal quality assurance** for higher education, at least a mandatory one¹⁹. Higher education institutions, as autonomous institutions, may perform their own evaluation (adopted in their Statute), which differs substantially from school to school in terms of its scope, subject and follow-up work done with the evaluation results. Unlike Austria whose higher education system shares certain roots²⁰, and which set the basic

¹⁹ Some higher education institutions have already started work on internal quality assurance systems. Masaryk University introduced such a system in 2008, <http://www.muni.cz/general/evaluation?lang=en> (accessed: 29 VIII 2014), and Charles University in Prague did it several years later, <http://www.cuni.cz/UK-4058.html> (accessed: 29 VIII 2014). However, some of the HEIs in the Czech Republic have still not done so.

²⁰ The territory and nation of today's Czech Republic was part of the Austro-Hungarian Empire until its collapse in 1918. Thus both the Austrian and Czech higher education systems were based on the same laws for quite a long period. In fact, the last common act on higher education – the Act of 27 IV 1873 o organizaci úřadů universitních (J. L. of the Austro-Hungarian Empire No. 63/1873), <http://is.muni.cz/el/1422/jaro2009/EL006/um/>

requirements on internal evaluation and quality assurance by law in 2002²¹, the Czech Republic has left the framework of this obligation very open until the present day. Concerning this fact, it is not surprising that in 2006 the OECD²² described internal evaluation in the Czech Republic as follows:

The great diversity and rather low effectivity of internal forms of evaluation can be ascribed to the still insufficient awareness and prevailing mistrust of the role of quality evaluation in higher education among members of the academic community, resulting in the adoption of a purely formal approach designed to cover up weak points in the activities that HEIs pursue. Hence, with the exception of a few cases [...] Czech higher education lacks a sophisticated internal evaluation system.

It indicates that internal evaluation of higher education in the Czech Republic has not yet been developed and can be considered insufficient. This situation makes external quality assurance even more imperative and is why the primary focus of this paper is the external quality assurance and related issues.

Just to outline **external quality assurance**, it should be stated that it is fully centralized and there is no plurality of evaluation bodies. Furthermore, external evaluation is not privatized, as it is the Ministry of Education which has a monopoly on granting the relevant authorizations, while the Accreditation Commission (Akreditační komise) has a monopoly on certain aspects of quality evaluation. Some of the evaluations conducted by the Accreditation Commission are partially based on self-evaluating reports submitted by HEIs themselves (in accordance with the requirements set by the Accreditation Commission) and at

ru_sbirka/rs.html (accessed: 31 V 2014) was superseded by a Czech (Czechoslovakian) law no earlier than in 1950 (by Act 58/1950 Coll.). While the Austrian higher education has been continuing in the development of the university autonomy already set by the common act (of 1873), Czech university autonomy development was interrupted due to 50 years of the centrally-planned, socialist system. Thus Czech (Czechoslovakian) HEIs were not endowed with any autonomy between 1950 and 1990. For additional information on the historical background of Czech higher education autonomy, see the following: V. Kudrová, *Historické a ústavní základy akademické samosprávy*, "Časopis pro právní vědu a praxi" 2012, vol. 19, iss. 1, p. 62–68.

²¹ Cf. Act of 9 VIII 2002 on the Organisation of Universities and their Studies (Federal Law Gazette (Bundesgesetzblatt, BGBl.) I No. 120/2002 as amended), Section 14, <https://www.ris.bka.gv.at/defaultEn.aspx> (accessed: 31 V 2014).

²² OECD, *Tertiary Education in the Czech Republic: Country Background Report for OECD Thematic Review of Tertiary Education*, Centre for Higher Education Studies, Prague 2006, p. 76.

the same time, the Accreditation Commission itself is also subject to evaluation carried out by the European Association for Quality Assurance in Higher Education (ENQA)²³ every five years. From this point of view, the quality assurance system in the Czech Republic comprises three levels of evaluation.

2. Measures of external quality assurance

External supervision of the quality of higher education is provided mainly *via* two legal forms – **accreditation** (Section 78 of the Act on HEIs) and **state approval** to operate as a private HEI (Section 39 of the Act on HEIs). Both represent specific authorizations granted by the state, in which state approval is needed for every entity intending to operate as a private HEI, and accreditation of a study programme is the indispensable prerequisite for a particular HEI (faculty) to conduct its activities. Since non-university HEIs are not allowed to provide doctoral study programmes, a **binding standpoint**²⁴ expressed by the Accreditation Commission in respect of the type of HEI (Section 2 (6) of the Act on HEIs) may be understood as an auxiliary measure.

Other auxiliary measures conferred on the Accreditation Commission which have a direct effect on a HEI include the following: an **un-binding standpoint** pertaining to the establishment, merger, amalgamation, splitting or dissolution of a faculty (Section 24 (3) of the Act on HEIs); **evaluation of the activities** of higher education institutions and of the quality of accredited activities; publishing the results of such

²³ The European Association for Quality Assurance in Higher Education (ENQA) is an umbrella organisation which represents its members at the European level and internationally, especially in political decision-making processes and in co-operation with stakeholder organisations. The Association aims to maintain and enhance the quality of European higher education at a high level, and to act as a major driving force for the development of quality assurance across all the Bologna signatory countries. Information about ENQA is available at <http://www.enqa.eu/> (accessed: 31 V 2014).

²⁴ Pursuant to the part IV of the Administrative Procedure Code a binding opinion is an act of a particular administrative authority, which is not an administrative decision, whose content is binding for statements of the law in a decision of another administrative authority. Cf. Section 149 of the Act No. 500/2004 Coll., Administrative Procedure Code (hereinafter 'the Administrative Procedure Code'), in English available at <http://portal.gov.cz/app/zakony/zakonInfo.jsp?idBiblio=58370&fulltext=&nr=500~2F2004&part=&name=&rpp=50#local-content> (accessed: 31 V 2014). See also J. Vedral, *Správní řád: komentář*, Praha 2012, p. 1138.

evaluations; and **revision of other issues** affecting the system of higher education, when asked to do so by the Minister, as well as expressing its standpoint on these issues (Section 84 (1) of the Act on HEIs).

Even if both evaluations and revisions are not legally designed to lead to the adoption of a legally binding decision, the findings presented within them can have some effects. They may lead the Accreditation Commission to propose to the Ministry of Education a limitation of accreditation, temporary termination of accreditation or revocation of accreditation (Section 85 (2) of the Act on HEIs) or they may influence the content of a binding standpoint given by the Accreditation Commission during the process of accreditation itself.

2.1. Accreditation

Accreditation of a degree programme is an authorization in terms of implementation. It is related to the general authorization to accept applicants for study at a HEI, to provide teaching, carry out examinations and to grant academic degrees. Accreditation is provided for a degree programme, which constitutes an integral part of studies. A degree programme is characterized mainly by its duration (3 to 4 years for bachelor's programmes, 1 to 3 years for follow-up master's programmes, 4 to 6 years for master's programmes that do not follow on from bachelor's programmes and 3 to 4 years for doctoral studies), the form of studies (face-to-face, distance and combined courses) and the study plan (configuration of subjects and their attributes, such as whether they are mandatory or optional).

Accreditation is granted to a HEI if it demonstrates having sufficient staff, finances, and material (technical) know-how resources for the relevant degree programme at least for a standard period of study; it must also demonstrate that the development plan for the degree programme, its substantiation and the anticipated number of applicants accepted for study are satisfactory; there may be some other criteria in addition to these²⁵. As a rule, staffing is assessed on the basis of the number (or proportion) of qualified academic staff (associate professors and professors) who provide teaching in the given field of study.

In Czech higher education, the 'labels' *associate professor* (hereinafter also 'doc.') and *professor* (hereinafter also 'prof.') are not tied to a scholar's

²⁵ Cf. Section 79 (5) of the Act on HEIs *a contrario*.

post but rather to their personal qualification gained *via* the procedure for conferring *venium docendi* (habilitation)²⁶ or the procedure for appointment of a professor²⁷ set by the HEI (and in the case of a university, to some extent at least, usually by the faculty) as one of its autonomous competences with a partial external control²⁸. It is in fact a higher stage of higher education, the output being that a specific qualification and degree are granted. If an associate professor or professor terminates his or her employment at a HEI, he or she retains the doc./prof. degree (title) when employed at another HEI or not employed at any HEI at all.

The status of associate professor and professor is designed as 'gained once, used always'. It constitutes a problematic issue for the quality assurance system in the Czech Republic informally known as '**flying professors**'. The point is that once a person attains the status of doc./prof., he/she becomes a valuable employee for every HEI (faculty) offering a degree programme in the field he/she is operating in, because by having him/her 'on board', the HEI (faculty) can easily fulfil the *criterion of staff*. As soon as accreditation becomes the crucial condition for running a degree programme, a HEI is motivated to accept employment of a doc./prof. even if it knows that he/she already has a full-time job at his/her home HEI (faculty) and very often has another full- or at least part-time position at another institution. Concerning the workload, it is quite obvious that having several academic posts cannot really lead the doc./prof. towards quality teaching at all the HEIs (faculties) he/she 'belongs' to, and can easily result in all being neglected²⁹.

²⁶ Section 72–73 of the Act on HEIs.

²⁷ Section 74–75 of the Act on HEIs.

²⁸ The main role in both procedures is taken by the scientific board. As the Act on HEIs requests (in Section 11 (2) and Section 29 (2)), at least one-third of the members of the Scientific Board must be from outside the academic community of the public higher education institution in question.

²⁹ It needs to be admitted that the system outlined here has also other weak points. Some of them have already been discussed in the Czech press or legal blogs, some others were debated at international conferences. Cf. M. Rychlík, *Profesor Karel Eliáš vyžívá...*; T. Richter, *Šavlový tanec...*; M. Rychlík, *Šavlovačka právních vzdělavců...*; V. Šimíček and responders, *Habilitace: iniciační rituál anebo správní řízení?*, "Jiné právo" 11 I 2012, <http://jinepravo.blogspot.cz/2012/01/habilitace-iniciacni-ritual-anebo.html> (accessed: 23 VIII 2014); T. Opatrný, *Nový vysokoškolský zákon – výzkumné školy nebo fakulty? Co s profesory a docenty?*, *Ihned.cz* 26 IX 2011, <http://opatrný.blog.ihned.cz/c1-53005250-novy-vysokoskolsky-zakon-vyzkumne-skoly-nebo-fakulty-co-s-profesory-a-docenty> (accessed: 23 VIII 2014); V. Kudrová, J. Jurníková, *Decision of Collegial Body on Academic Degree – Conflict of Right of Academic Self-Administration and Right of Due Process*, EGPA Annual Conference, Edinburgh 2013.

To combat the 'flying professors' effect, the Accreditation Commission has decided not to take into account the assessment of the academic staff composition of a study programme of any doc. or prof. whose combined workload on contracts at HEIs and other institutions (including the scientific departments of the Academy of Sciences of the Czech Republic) exceeds 1.75 (i.e. 70 hours per week)³⁰. The tool to provide information relevant to this assessment is the Registry of associate professors and professors (Registr docentů a profesorů, ReDoP)³¹, introduced in 2010 by Act No. 159/2010 Coll. amending the Act on HEIs. According to the law, every public and private HEI is obliged to register every associate professor and professor it employs and also to supply data of his/her workload. The registry is not freely accessible, and only bodies related to the accreditation procedure are allowed to enter.

Although ReDoP should have been the efficient tool for fighting the 'flying professors' effect, it is apparent that there are several weaknesses to this tool. Firstly, it does not apply to state HEIs and the Academy of Sciences of the Czech Republic, and thus does not cover all the relevant institutions. Secondly, it does not apply to the workload in non-academic fields (e.g. advocacy), which can obviously also affect an individual's total workload. Thirdly, it only applies to Czech HEIs, and finally, no mechanism for checking how accurately HEIs are fulfilling their duty to register has been adopted so far.

Luckily, the third weakness is being reduced as far as Slovakian HEIs is concerned by way of Slovakian higher education law, which has introduced its tool relevant to the issue of 'flying professors' – the Slovakian Registry of employees of HEIs. The Slovakian Registry provides information on associate professors and professors employed at Slovakian HEIs. Moreover, it also applies to other academic employees (assistants, assistant professors). The most helpful feature of the Registry is that it is freely accessible online³². Thus even if the Registry of employees existing in Slovakia has not been introduced to provide the Czech quality assurance system with information related to the employees of

³⁰ By the Accreditation Commission Standards for assessment of applications for granting, expanding and extending accreditation of study programmes and their fields of study. The Accreditation Commission Standards are available also in English at http://www.akreditacnikomise.cz/attachments/article/83/EN_Standards%20for%20study%20programmes_4_2014.pdf (accessed: 31 V 2014).

³¹ Cf. Section 87 (j) of the Act on HEIs.

³² Portál vysokých škôl, <http://portalvs.sk/regzam> (accessed: 31 V 2014).

the Czech HEIs, in fact it does this, as it is used when the Accreditation Commission searches for relevant information.

Under the law, accreditation may be granted for a **maximum of ten years**; in reality, however, it is usually granted for eight years³³. Even though it is the Ministry of Education who decides on accreditation, the Accreditation Commission is allowed to shorten the period, a fact confirmed by the Constitutional Court of the Czech Republic by its standpoint³⁴. If there are doubts regarding the quality of the proposed education, the accreditation is ordinarily granted only for four years or less. The validity of a particular accreditation may be repeatedly extended. It should be pointed out, however, that neither the Act on HEIs nor the Accreditation Commission follows any line between the period granted and the length of a study programme. Therefore if any doubts of the quality are present in the case of a five-year master's degree in law or dentistry, accreditation is usually granted for eight years. The same is true of a two-year master's degree that follows on from bachelor's degree. Accreditation is granted for the same period of time regardless of the expected length of study. This approach obviously emphasizes the presumed stability of a HEI's (faculty) conditions rather than the expectations of applicants about the future of the degree programme they are about to commence. However, the question of its suitability can be highlighted especially when the effects of the possible expiry of a degree programme are concerned.

If any shortcomings in the running of a degree programme are established, accreditation may be withdrawn, limited (i.e. the acceptance procedure may be prohibited for a given degree programme) or suspended (i.e. state final examinations may be prohibited in a given degree programme) until the shortcomings are remedied. A HEI whose accreditation has been withdrawn (or has expired) is obliged³⁵ to ensure continued study for students on a similar degree programme at the same or another HEI.

³³ Only a six-year degree programme in medicine is usually entitled to gain accreditation for ten years.

³⁴ The resolution of the Constitutional Court of the Czech Republic of 29 II 2012, f. No. I. ÚS466/12, <http://nalus.usoud.cz/Search/Search.aspx> (accessed: 31 V 2014). The Court stated that the "Ministry of Education is not allowed to prolong the accreditation of a degree programme if the Accreditation Commission has not issued a positive standpoint (a fortiori Ministry of Education is not allowed to award the accreditation for period extending the period covered by a positive standpoint of the Accreditation Commission)" (trans. – V.K.).

³⁵ Cf. Section 80 (4) of the Act on HEIs.

However, this obligation creates certain difficulties in practice, the most significant being that there is no corresponding obligation of any HEI to accept the students. This is obviously not a problem where there are several students or dozens of students; they are usually 'dispersed' among the other students of the recipient school. On the other hand, in a situation where there are hundreds of students, or even more, enabling them to complete their studies may be a serious problem. No single HEI (faculty) is ready to accept hundreds of students within a short period and be sure of maintaining the quality of its education on a high level. It is especially true that a public HEI, which has already been financially supported by public funds corresponding to the actual amount of students, does not seem very motivated to spend the financial resources it has been allocated on covering the education of a significantly larger group of students. Such a practice could be considered a breach of the HEI's duty to provide efficient and effective education.

To complete the information on accreditation, it should be pointed out that there is a special item to be accredited – the procedure for conferring *venium docendi* (habilitation) as well as the procedure for the appointment of professors. **Accreditation for the awarding of habilitation degrees or the procedure for appointing professors** is also granted for a maximum of ten years. The requirements are the sufficient guarantee of the HEI (faculty) that it will carry out the habilitation procedure or procedure for the appointment of professors in the proper fashion (including the criterion of having qualified academic staff as mentioned in 2.1), and simultaneous accreditation of a doctoral degree programme. The latter condition indicates that only a university can carry out the procedure for conferring *venium docendi* (habilitation) and for the appointment of a professor.

2.2. State approval

State approval is an authorization of an institutional character, which provides a private legal entity with the right to exist and act as a HEI. As public and state HEIs are established by law, the requirement of gaining state approval only applies to a **private HEI**. Such approval may only be awarded where accreditation is granted in parallel, because a HEI which does not provide education is not permitted to exist. Approval can be obtained by any legal entity which has been established under the laws of the Czech Republic or another European Union member state.

In order to obtain state approval, the entity concerned must demonstrate, amongst other things, how it intends to provide for its activities as a private HEI in terms of funding and material (technical) know-how resources and must obtain accreditation for at least one degree programme. The disadvantages of this approach include the need to demonstrate staff, e.g. through concluded employment contracts, without it being certain that the work agreed upon will be actually performed.

Awarding state approval to operate as a private HEI is not the subject of *discretion*³⁶ when the applicant fulfils the legally requested criteria, the Ministry of Education is obliged to grant its approval. Such an impossibility to limit the number of private HEIs by awarding state approval only to a reasonable number of the applicants differs from the possibility existing in the field of 'lower schools' (basic, high, etc.). As the state spends barely any funds in relation to higher education provided by private HEIs, while contributing to education in lower schools, such a solution seems to make sense. Unfortunately, the problem appears where private HEIs operate many branches in several places, including branches abroad. This makes conducting regular evaluation activities at private HEIs expensive and demanding in terms of personnel.

If **shortcomings** are discovered in the way a private HEI operates, especially in providing degree programmes foreseen by Section 43 of the Act on HEIs, the Ministry of Education may withdraw or be forced to withdraw state approval from a private higher education institution. This withdrawal means the legal entity is no longer authorized to act as an institution of higher education. At the same time, the Ministry withdraws its accreditation of degree programmes.

3. Proceedings

It is the mission of a HEI or one of its faculties to design a degree programme, and as indirectly mentioned above, this competence is autonomous (cf. section 1.2). As learning outcomes refer to the aim of a degree programme, it makes sense to define them first. Subsequently, a study plan should be drawn up with respect to adequate staffing

³⁶ Administrative decision (discretionary power) occurs when the law does not follow a certain factual situation by the only possible legal consequence, but lays down several possible consequences to be chosen by the authority making the decision. S. Skulová, *Správní uvážení: základní charakteristika a souvislosti pojmu*, Brno 2003, p. 15.

(cf. section 2.1). A degree programme introduced by the faculty or the HEI management is subject to approval by the scientific board of the faculty (vědecká rada fakulty) or the scientific board of the HEI (vědecká rada vysoké školy). Following this, a proposal on granting accreditation can be submitted legitimately.

The procedures for granting state approval are initiated upon receipt of the proposal, i.e. in the same manner as the proceedings on granting accreditation. The application is lodged with the Ministry of Education (section 4.1), which forwards it to the Accreditation Commission (section 4.2) without delay. The Commission has 120 days to adopt a standpoint on the application.

Technically, after the application has been received, its content is sent to the members of the working groups (section 4.2). They carry out a professional assessment under the supervision of the chairperson. The outcome of the working group is a report including a favourable or negative standpoint, which by definition must be reasoned. The Accreditation Commission subsequently discusses the group's position, this time in the absence of the working group members, although the chairperson of the working group is present. The chairperson reports back to the others on the conclusions of the working group; they are subject to further discussion, especially where the official standpoint is negative. The Accreditation Commission is not bound by the standpoint of the working group; it may diverge from it in part or entirely. The Commission subsequently adopts an independent resolution on the standpoint; by its nature, the resolution is binding upon the Ministry of Education. The Accreditation Commission must properly substantiate its standpoint.

The Ministry of Education must make a decision within 30 days of the Accreditation Commission delivering its standpoint to the Ministry. This decision must also be reasoned. In terms of the decision-making discretion of the Ministry of Education in the matter, it should be noted, as already mentioned above (section 2.1), that the Ministry may comply with the application, and hence grant accreditation or state approval, only if the Accreditation Commission has taken an affirmative standpoint regarding the accreditation. Otherwise, the relevant authorization cannot be granted. However, this does not mean that the Ministry must always grant an application on which the Commission has adopted an affirmative standpoint. It independently assesses some requisites

of the application as well as the conditions to be complied with³⁷. If compliance is not found, the Ministry, in accordance with the law, does not grant its consent.

In proceedings on granting authorization or state approval, the Accreditation Commission acts as a professional evaluation body; as a rule, the Ministry of Education evaluates the 'technical' aspects. Given that the standpoint issued by the Accreditation Commission can be considered as a *binding standpoint*, the status of the Commission is similar to that of an *affected body*, i.e. in Czech legal terminology this is a body which defends a different general interest than the body which is to make a decision in the matter. This is not entirely the case here; nevertheless, the authorization of an affected body remains vested in the Accreditation Commission; it may lodge an application for review proceedings if it considers the decision of the Ministry of Education to be unlawful. Under the law, such an application is to be further addressed by the Minister. Based on his/her interpretation of the situation, he/she may then commence *review proceedings*³⁸ of the Ministry's decision. Nevertheless, this is not a mandatory procedure.

In Czech law, a decision becomes effective on coming into force, which is strictly at the time when the period for lodging an ordinary remedy, whether it be an appeal or remonstrance (section 4.2), expires to no effect. Alternatively, it becomes effective on delivery of the decision regarding the appeal (remonstrance). Only an administrative court may intervene in this; under the law, administrative courts resolve actions against administrative decisions and may do so only based on a proposal for granting suspensive effect with respect to the decision under review. If the court does not make a decision on the suspensive effect, the decision granting accreditation or state approval remains effective until the time of its annulment. Any rights or assets (e.g. higher education) acquired on the basis of a decision which was subsequently annulled remains unprejudiced after this annulment. From the legal point of view, this may create a situation where accreditation is granted unlawfully but produces the same effects as if granted lawfully.

³⁷ For example, if a legal person applying for accreditation has been declared by a court in a final decision to have infringed the law, due to which pursuance of an accredited degree programme cannot be guaranteed.

³⁸ Section 94 et seq. of the Administrative Procedure Code.

It is obvious from the nature of the matter that an unlawfully granted accreditation or state approval will not be contested by the party to which it has been granted. Nor may it be contested by anyone who is not party to the proceedings. Thus, the authorization of the Supreme State Attorney³⁹ to lodge an action in the public interest is the only option available in the event of unlawful granting.

4. Bodies of external quality assurance

As already outlined, the granting of accreditation and state approval is centralized, with the involvement of central government bodies. The central body, i.e. **the Ministry of Education**, receives applications, keeps the relevant file and decides on the merits of the respective case. The decision of the Ministry is conditional on the standpoint of the Accreditation Commission.

4.1. Ministry of Education

The Ministry of Education “is responsible for public administration in education, for developing educational, youth and sport policies and international cooperation in these fields”⁴⁰. As the supreme state body for education, it supervises public, private and also to some extent state HEIs in selected areas, funds public HEIs and decides on the existence of private HEIs.

Concerning its role in quality assurance, the Ministry of Education, as an administrative authority, conducts the administrative case of a request for accreditation, as well as a request to act as a private HEI, and adopts the final decision. In the procedure of accreditation and the request for state approval, it is incumbent on the Ministry of Education to decide whether implementation of a degree programme is backed by sufficient financial, material or technical resources and whether the HEI offers sufficient guarantees of regular teaching on the programme.

³⁹ Pursuant to the Section 66 of the Code of Administrative Justice (Act No. 150/2002 Coll.) hereinafter “the Code of Administrative Justice”, in English available at <http://www.nssoud.cz/docs/caj2002.pdf> (accessed: 31 V 2014).

⁴⁰ Ministry of Education, Youth and Sports, <http://www.msmt.cz/index.php?lang=2> (accessed: 4 VI 2014).

If it is not or “if the Accreditation Commission has issued a negative standpoint” on how the degree programme complies with the requirements listed in Part 4 of the Act on HEIs or its on sufficiency of staff, equipment and information support, the Ministry of Education is not allowed to grant accreditation. In all other cases, it is required to do so⁴¹.

This concept makes the standpoint of the Accreditation Commission binding for the decision of the Ministry of Education, regardless of whether this is legally called a *binding standpoint*. If the Ministry “learns that the facts included in the negative standpoint of the Accreditation Commission with respect to a particular degree programme are not in accordance with the real state of affairs or the Act, it can ask the Accreditation Commission to renew the procedure for issuing its standpoint and to correct any deficiencies in the reasons it has given”⁴². If the Accreditation Commission maintains its original standpoint, the Ministry is required to respect it.

4.2. Accreditation Commission

The Accreditation Commission is a non-political professional body consisting of 21 leading experts in their respective fields, usually scholars (mostly employees of Czech HEIs). Its members are appointed by the Government at the proposal of the Minister of Education (who may receive proposals for suitable candidates from representatives of HEIs and science and research representatives⁴³). They may be recalled only on the grounds of long-term absence or at their own request. “Members of the Accreditation Commission are appointed for a six-year term; they may serve a maximum of two terms of office” (Sec. 83 (2) of the Act). The term is non-uniform in that initially, one third of the members of the Commission were changed; now, due to some early terminated memberships, the number of members to be replaced is uneven.

The Accreditation Commission and its competences are set up by the Act on HEIs (Sec. 83 et seq. of the Act). The manner in which the Accreditation Commission and its working groups carry out their discussions is stipulated in the Statute of the Accreditation Commission⁴⁴

⁴¹ Cf. Section 79 (5) of the Act on HEIs.

⁴² Section 79 (8) of the Act on HEIs.

⁴³ Cf. Section 83 (1) of the Act on HEIs.

⁴⁴ Akreditacni Komise, *Statute of the Accreditation Commission*, http://www.akreditacnikomise.cz/attachments/234_the_statute_of_the_ac2004.pdf (accessed: 31 V 2014).

approved by the government. In order to inform the public of the evaluation criteria, the Accreditation Commission issues various *standards* and recommendations⁴⁵. As *internal regulations*⁴⁶, the standards are only legally binding for the Accreditation Commission itself, but in fact they have an effect on the praxis of external entities (HEIs).

The Accreditation Commission also establishes permanent and *ad hoc* **working groups**⁴⁷; as a rule, they are headed by a member of the Commission. The members of the groups are selected in the light of their expertise. Generally speaking, permanent working groups assess applications for accreditation or state approval, i.e. the regular agenda of the Accreditation Commission. In addition to this agenda, the Accreditation Commission performs certain *ad hoc* evaluations (as mentioned in section 2), particularly evaluation of doctoral degree programmes and evaluation of universities and faculties. It further performs a comprehensive evaluation of doctoral programmes at the Minister of Education's request. HEIs and faculties are usually evaluated in the event of specific doubts. As an outcome of the evaluation, a proposal may be presented to the Ministry for the limitation, suspension or withdrawal of accreditation or even the withdrawal of state approval in the case of private HEI (cf. section 2.1 and 2.2).

Several problematic issues arise in connection with the nature and position of the Accreditation Commission. The first is related to its composition. Given that the language of the Commission's meetings is Czech⁴⁸, there is limited scope for foreign experts to become members; this is possible only if the person speaks Czech. It is for this reason that the Commission usually consists of Czech members, usually employees of Czech HEIs. Technically, non-employees of Czech HEIs can also be members. It is usually through having a career at a HEI that a person becomes a "osoba, která je všeobecně uznávanou odbornou autoritou"⁴⁹, therefore making it possible to fulfil the criterion pursuant to the Sec. 83 (3) of the Act on HEIs. The

⁴⁵ Akreditacni Komise, *Standardy pro posuzovani zadosti*, <http://www.akreditacnikomise.cz/cs/standardy-pro-posuzovani-zadosti.html> (accessed: 31 V 2014).

⁴⁶ Normative administrative acts regulating legal relationships within a certain public authority or among public authorities or subjects in a subordinate position to the authority who has issued them.

⁴⁷ Art. 9 of the Statute of the Accreditation Commission.

⁴⁸ Cf. Section 16 (1) of the Administrative Procedure Code.

⁴⁹ That is "a person who is universally recognized as a professional authority".

same applies to the members of the working groups⁵⁰, headed by the Commission members.

In general, the Czech Republic is a small country and it is unavoidable that the leading figures in fields of study (and, consequently, scientific fields) know each other and are active at individual institutions. Quite logically, the members usually make decisions on applications from a HEI which employs them or where they are external members of the scientific board, or to which they are formally or informally connected in some other way. In such a situation, the **issue of bias** might emerge.

In Czech law, a person in authority recognized as biased is replaced by another person in authority⁵¹. If there is no such person within the administrative authority which has jurisdiction, the superior administrative authority authorizes a specific subordinate administrative authority in its administrative district with subject-matter jurisdiction to hear and decide a case (Section 131 (4) of the Administrative Procedure Code). A similar procedure applies when a college body is unable to act, due to the lack of a quorum in attendance⁵². Concerning the Statute of the Accreditation Commission, "attendance of at least two thirds of Commission members (and approval of more than half of all Commission members) is required"⁵³. That means that a bias of 8 members is enough to authorize the case to another authority with subject-matter jurisdiction. The problem is that no such authority exists, because there is only one, 'central' Accreditation Commission. In this case, the provision excluding heads of central administrative authorities and state secretaries from the consequences of bias⁵⁴ has probably to be applied. Not excluding members related to the applicant from the decision-making process solves the 'technical issue'; unfortunately, it does not protect the decision-making from the risk of potential bias.

Another specific problem with bias arises from the requirement of a minimum number of members agreeing with the adoption of

⁵⁰ As Annual Report of the Accreditation Commission for 2013 indicates, more than 200 persons annually have been involved just in the activities of the permanent working groups. Cf. Akreditacní Komise, *Annual Report of the Accreditation Commission for 2013*, http://www.akreditacnikomise.cz/attachments/article/514/EN_Annual%20Report%20of%20the%20ACCR_2013.pdf (accessed: 24 VIII 2014).

⁵¹ See Section 14 (4) of the Administrative Procedure Code.

⁵² Cf. J. Vedral, *Správní řád...*, p. 999.

⁵³ Art. 12 (9) of the Statute of the Accreditation Commission.

⁵⁴ Cf. Section 14 (6) of the Administrative Procedure Code.

a proposal. As the Statute of the Accreditation Commission requires “approval of more than half of all Commission members”⁵⁵, it is obvious that excluding a member would *in fact* increase the number of members present in the vote required to agree. Such a rise in the number of members voting for the proposal does not make the adoption of the standpoint automatically impossible, but does change the flexibility of the procedure. One question which has not yet been discussed within Czech legal theory is whether excluding a member should automatically cause a reduction in the number referring to ‘all members’.

Another problem arising from the position of the Accreditation Commission is connected with the first and refers to the monopoly enjoyed by the Accreditation Commission (as well as the Ministry of Education) on its evaluation. To some extent, this is a positive unifying element for evaluation standards. On the other hand, it does not allow a standpoint (or evaluation) to be reviewed by a superior or alternative body. Thus, if the Commission errs in its work, there seems to be no State body or non-State entity which could counter its opinion. This makes any review of a binding standpoint issued by the Accreditation Commission factually impossible, despite the fact that in general a review of a binding standpoint is legally expected⁵⁶. Hence, the standpoint of the Accreditation Commission is in fact being issued in a **single-level procedure**.

It could be argued, on the other hand, that every administrative procedure should consist of at least of two levels, i.e. every single binding individual act should be subject to an appeal (review taken by a superior authority), in order to fulfil the constitutional principles. Within the legal environment of the Czech Republic, however, in which the Constitutional Court⁵⁷ and the Administrative Supreme Court consistently decide that two-level decision making is not covered by the

⁵⁵ Art. 12 (9) of the Statute of the Accreditation Commission.

⁵⁶ In general, it is not possible to appeal directly against a binding standpoint. “But if an appeal directs against the content of the binding opinion, the appellate administrative authority will require a confirmation or an alteration of the binding opinion from the superior administrative authority of the administrative authority which has the jurisdiction to issue the binding opinion” (Section 149 (4) of the Administrative Procedure Code).

⁵⁷ Cf. Resolution of the Constitutional Court of the Czech Republic of the 19 X 2004, f. No. II. ÚS 632/02, <http://nalus.usoud.cz/Search/Search.aspx> (accessed: 31 V 2014). In the resolution, the Court declares “[...] that the Charter, neither the Convention for the Protection of Human Rights and Fundamental Freedoms [of 4. XI. 1950], does not guarantee a basic right to a decision adopted in an administrative procedure consisting of two or more levels [...]” (trans. – V.K.).

basic principles concerning decision making on the rights and duties of individuals or legal entities, such an argument remains void⁵⁸.

What needs to be stated is that standpoint of the Accreditation Commission is only the grounds for the Ministry of Education's decision, which is subject to a specific administrative review called **remonstrance**⁵⁹. This is lodged against a decision rendered in the first instance by a ministry, being decided on by the minister. Before issuing the decision, the minister is obliged to establish a remonstrance commission, which assesses the case and submits a proposal for his decision.

The **remonstrance commission** is a collegial body consisting of at least 5 members. Most of its members should be "experts" who are not employees of the Ministry of Education. At this point, it seems remonstrance could fulfil the procedural rights of the party to proceedings, while ensuring an independent review. However, as S. Skulová, L. Potěšil and D. Hejč⁶⁰ state:

[...] the legislation does not specify the term "expert" and does not impose any requirements on the expertise of the members of the Remonstrance Committee, either in factual or legal terms. The legislation's weakness lies in the fact that these members are appointed directly by the head of the central administrative body. He or she therefore selects the particular people who then assess (often also his own) decisions and give him or her recommendations. Therefore, the

⁵⁸ Cf. Resolution of the Administrative Supreme Court of 25 V 2011, f. No. 2 As 37/2011, <http://www.nssoud.cz/main0col.aspx?cls=JudikaturaExtendedSearch> (accessed: 31 V 2014). The Court stated the following: "Concerning the issue, the Administrative Supreme Court first declares that concerning the consistent court decisions «two levels of decision making is not a subject of the basic principles of administrative decision making on rights and duties of individuals and legal entities» (see the judgement of Supreme Administrative Court [SAC] of 27 X 2005, f. No. 2 As 47/2004 – 61, issued in the Collection of SAC as No. 1409/2007). This means that decision making consisting of two levels does not comply with the general principles of administrative procedure and itself is not a principle resulting from the constitutional order of the Czech Republic. The fact that section 81 (1) of the Administrative Procedure Code allows a participant to lodge an appeal against a decision, except when otherwise provided by the statute, does not imply that the exception is contradictory to the general principles of administrative procedure, or even it is contradictory to the constitutionality" (trans. – V.K.).

⁵⁹ Section 152 of the Administrative Procedure Code. The majority opinion on the nature of remonstrance is that it is a specific form of appeal. S. Skulová, however, raises the question of whether such an opinion should not be redefined. Cf. S. Skulová, *Úvahy nad institutem rozkladu jako prostředku ochrany práv*, in: *Kolegiální orgány ve veřejné správě*, Brno–Praha 2013, p. 33–34.

⁶⁰ S. Skulová, L. Potěšil, D. Hejč, *Remonstrance Against Decisions Made by Central Administrative Bodies in the Czech Republic*, "International Public Administration Review" 2014, vol. 8, iss. 2–3, p. 135.

selection is not limited in any way with regard to the vague concept of expertise. Anyone whom the head of the central administrative head considers to be an expert or appoints as an expert can become a member of the Remonstrance Committee.

One problem linked to the one described above is that the law does not claim that the remonstrance commission would be set up as a permanent body or that a ministry would only have set up a single remonstrance commission for all upcoming remonstrance. Therefore, the minister can, technically, set up an *ad hoc* commission or choose one of several established commissions based on the expected opinions of its members. In general, concerning the fact that “remonstrance is a remedy to which one is legally entitled, like an appeal, but it is not decided upon by any higher, independent administrative authority”⁶¹, as well as the unbinding nature of the proposal for the minister’s decision, remonstrance itself needs to be understood as a problematic measure for assuring the quality of decision.

Another problem with remonstrance, which also applies to the **court review** of remonstrance itself⁶², is the ability to perform a **professional evaluation**. The minister, the remonstrance commission and also the administrative court are obviously not capable of adopting a professional decision on quality assurance matters to the same quality standard as the Accreditation Commission is. If they were capable, no professional body like the Accreditation Commission would be needed. Thus they should not tend to replace the professional evaluation dedicated to the Accreditation Commission⁶³. In fact, no real review of a standpoint of Accreditation Commission is possible.

⁶¹ Ibidem, p. 138.

⁶² Pursuant to the Section 65 et seq. of the Code of Administrative Justice.

⁶³ Moreover, judicial evaluation of the professional evaluation seems to be disputable. In the judgement of the Supreme Administrative Court of the Czech Republic of 17 XII 2009, concerning ‘professional evaluation’, the Court concluded that classification of the state exam is the result of evaluating students’ knowledge, which belongs only to the examination committee and is not subject to judicial review. Cf. the judgement of the Supreme Administrative Court of the Czech Republic of 17 XII 2009, f. No. 9 As 1/2009, <http://www.nssoud.cz/main0col.aspx?cls=JudikaturaExtendedSearch> (accessed: 31 V 2014). On the other hand, in the decision of the Municipal Court in Prague of 29 XI 2013, the Court agreed on the professional evaluation of the Accreditation Commission, by which it obviously made the evaluation subject to judicial review. Cf. the decision of the Municipal Court in Prague of 29 XI 2013, f. No. 6 Ca 145/2009, accessed privately using the right to information (pursuant to the Act No. 106/1999 Coll. on Free Access to Information, as amended).

Since the article is concerned with the legal aspects of quality assurance of higher education, the weaknesses pointed out above were mostly related to law. There is, however, at least one other issue concerning the Accreditation Commission to be mentioned – the complete lack of personal and financial resources.

As mentioned in section 2, the Accreditation Commission has to evaluate and adopt a standpoint for each request for accreditation, a change to or prolongation of this accreditation. Since there are more than 70 HEIs in the Czech Republic providing education on more than 9,100 degree programmes⁶⁴, it is not surprising that the Commission has to deal with more than 1,500 applications annually⁶⁵. At the same time, each application consists of c. 300 pages of text, tables or forms⁶⁶. It is obvious that the amount of work to be done in the context of accreditation procedures each year is quite substantial. In addition to this, further aspects need to be considered, such as other evaluations of the activities of HEIs or of the quality of accredited activities, as well as revision of other issues affecting the system of higher education as outlined above.

It is true that members of the Accreditation Commission are not its full-time employees; they serve much more on a voluntary basis, or in return for minor remuneration, and thus they perform the evaluation alongside their regular occupation. The same applies to the members of working groups. It would not be a problem if there were a large executive background consisting of highly qualified officials helping the members with the workload (tasks not requiring the specialist professional skills of the members of the Accreditation Commission). Unfortunately, such a situation is much more a wish than reality. In fact, all the administrative and technical support for the Accreditation Commission is guaranteed only by its secretariat. This is an organizational unit of

⁶⁴ Cf. Overall summary of accredited degree programmes conducted by the Ministry of Education. Ministry of Education, Youth and Sports Celkový přehled akreditovaných studijních programů. <http://www.msmt.cz/vzdelavani/vysoke-skolstvi/akreditovane-studijni-programy-vysokych-skol-kody-programu-a> (accessed: 24 VIII 2014).

⁶⁵ As the Annual Report of the Accreditation Commission for 2013 states, the Accreditation Commission issued a total of 1,711 statements on applications for accreditation, expansion and extension of accreditation in 2013. Akreditační Komise, *Annual Report of the Accreditation Commission for 2013*, http://www.akreditacnikomise.cz/attachments/article/514/EN_Annual%20Report%20of%20the%20ACCR_2013.pdf (accessed: 24 VIII 2014).

⁶⁶ As results from the requirements set by decree 42 of the Ministry of Education, Youth and Sports of 10 February 1999 on the content of applications for the accreditation of study programmes (Decree No. 42/1999 Coll.).

the Ministry of Education, and is managed directly by the minister. The whole secretariat is only composed of five employees, none of whom is a lawyer. So in fact, a great deal of ordinary work connected to the evaluation procedure is on the shoulders of Accreditation Commission members and the members of working groups.

At the same time, the activity of the Accreditation Commission is also poorly supported as far as finance is concerned. Its annual operating budget, excluding the cost of the secretariat itself, is in the region of 4 million CZK (c. €150,000). From this it has to cover all the expenses related to Accreditation Commission meetings, travel and the related costs borne by members of the Accreditation Commission and working groups related to meetings and evaluations performed at HEIs, as well as their insubstantial salaries for their work, and expenses for expert evaluations if necessary. In view of the fact, that the annual budget of the largest Czech universities runs into the billions, it is obvious that financial support for the Accreditation Commission's activities is inadequate.

Conclusions

The process of ensuring the quality of Czech higher education is based on external evaluation, which is not performed by private entities or other pluralistic entities or institutions. It is carried out by the state through the Ministry of Education, Youth and Sports, which, in specialized matters, relies on the binding standpoint of an independent state expert body – the Accreditation Commission. The latter consists of experts from fields of science (study), who are usually scholars.

The main measures for external supervision of the quality of higher education are accreditation of a degree programme, which represent unavoidable state approval to run academic studies in a particular field, and state approval to operate as a private HEI, which is required in order for such an institution to commence its operations.

The advantage of the centralized system described above is that there is a high degree of unification of requirements and, consequently, comparability. Furthermore, some shortcomings of the system and some significant disadvantages connected with the position and composition of the Accreditation Commission were identified (in the sections 2.1 and 4.2). The danger of bias was mentioned in connection with the Accreditation Commission first, followed by the absence of any real

review of Accreditation Commission standpoints. More than 70 HEIs running accredited degree programmes, with the majority being 8 years in length, also generates a huge workload. The issues of 'flying professors' and 'displaceable students' were also introduced.

The design of current laws on higher education and the Administrative Procedure Code means that solutions to the problems outlined cannot depend on minor changes in these laws. The system of quality assurance needs to be significantly redefined. A good point is that significant changes in the quality assurance system within the Czech Republic are now being prepared. There are plans to emphasise internal quality assurance and redefine the status and composition of the national accreditation authority. Unfortunately, such a change may generate new challenges as well as new dangers. It is also possible that the issue of 'flying professors' may not be solved entirely in this way. In view of the fact that the proposal on a new law is unfinished, and several previous efforts to change the system of quality assurance have already failed, it is too early to evaluate the proposed changes together with the problems discussed above.

PRAWNE ASPEKTY ZAPEWNIENIA JAKOŚCI KSZTAŁCENIA I JEJ ZEWNĘTRZNA OCENA W SZKOLNICTWIE WYŻSZYM REPUBLIKI CZESKIEJ. ROLA KOMISJI AKREDYTACYJNEJ

Streszczenie

Artykuł zawiera analizę prawnych aspektów zapewnienia jakości kształcenia w szkołach wyższych na przykładzie modelu czeskiego, ze szczególnym uwzględnieniem kluczowej roli, jaką w tym procesie odgrywa Komisja Akredytacyjna. Punktem wyjścia dla podjętych rozważań jest system szkolnictwa wyższego w Republice Czeskiej i jego autonomiczny charakter. W ramach analizy tego systemu autorka omawia kwestię zewnętrznej oceny jakości kształcenia, a następnie prezentuje podstawowe środki nadzoru, w które Ministerstwo Szkolnictwa, Młodzieży i Sportu wyposażył ustawodawca, tj. akredytację i zezwolenie (*state approval*). Zastosowanie tych środków jest możliwe na podstawie stanowiska przyjętego przez Komisję Akredytacyjną, której opinie, chociaż nie mają rangi decyzji administracyjnej, pozostają dla Ministerstwa wiążące. Następnie autorka przedstawia zakres kompetencji i zadań Ministerstwa i Komisji Akredytacyjnej oraz stosowane przez te podmioty procedury. W tym kontekście omówiono zagadnienie „latających profesorów” (*flying professors*) oraz prawną sytuację studentów realizujących programy tych kierunków studiów, wobec których akredytację cofnięto (lub która wygasła). Zasadnicza część artykułu dotyczy Komisji Akredytacyjnej. Wskazano tu pewne kwestie problematyczne

związane z jej pozycją i składem – przede wszystkim ryzyko stroniczości i braku mechanizmu realnej kontroli stanowisk przyjmowanych przez Komisję. Podniesiono również problem braku zasobów ludzkich i finansowych niezbędnych do wypełnienia wymogów Komisji Akredytacyjnej.

Wnioski sformułowane przez autorkę sugerują, że w świetle obecnego prawa o szkolnictwie wyższym i Kodeksu postępowania administracyjnego rozwiązanie zarysowanych problemów nie będzie możliwe w przypadku wprowadzenia do obowiązujących przepisów jedynie niewielkich zmian. System zapewnienia jakości kształcenia musi zostać znacząco zredefiniowany, a w ustawie o instytucjach szkolnictwa wyższego konieczne są niezbędne zmiany. W rzeczywistości prace nad ustawodawstwem na nowo określającym pozycję i skład Komisji Akredytacyjnej już się rozpoczęły. Istnieje jednak potencjalne ryzyko, że projekt ustawy, nawet jeżeli zostanie poddany pod głosowanie, spotka się z ponownym odrzuceniem ze względu na wrażliwość tej kwestii i obecną sytuację polityczną w Republice Czeskiej.

Słowa kluczowe: szkolnictwo wyższe w Republice Czeskiej – zapewnienie jakości kształcenia – instytucje szkolnictwa wyższego – Komisja Akredytacyjna – akredytacja