



**PILLAR III
HUMAN RIGHTS**

The Right to Access to Higher Education in Albania
by Av. Holta Ymeri

I. ABSTRACT

The right to access to higher education is a hot topic being discussed around the world, which involves a series of legal, policy and human rights issues. This paper will deal with the right to access to higher education in Albania, analyzing the new education reform and its impact on access to higher education under the light of the ECHR convention.

KEYWORDS: *Access to Higher Education; ECHR; Foreseeable; Legitimate Aim, Merit; Preference; Proportionality; Reform*

ABBREVIATIONS

DCM

Decision of the Council of Ministers

DCM 407

Decision of the Council of Ministers, No. 407, dated 1.6.2016 “Establishing the criteria of average grade for the admission of candidates to the study programs of first cycle and integrated programs of second cycle, at the high education institutions for Academic Year 2016-2017”.

ECHR

European Convention of Human Rights and Fundamental Freedoms

ECtHR/Court

European Court of Human Rights

HEI

Higher Education Institution

Instruction no. 27

Instruction of the Minister of Education no. 27, dated 19.08.2015 “On the admission and registration procedures to the first and second round of successful candidates, for the full-time, first cycle of studies, professional study programs, and integrated study programs of the second cycle of studies, in the high education public institutions, for the academic year 2015-2016”.

Law 9741

Law no. 9741, dated 21.5.2007 “On higher education in Albania”

Ministry of Education

The Ministry in charge of education, despite the specific name used under each period.

New HE Law

Law No. 80/2015 “On Higher Education and Scientific Research in the Higher Education Institutions in the Republic of Albania”

SAE

State Agency of Exams



II. INTRODUCTION

During 2015, Albania adopted the reform on the higher education system by approving the New HE Law which repealed and replaced the old law, introducing some important changes to the education system as a whole. As it was held in the explanatory Report¹ of the draft-law on higher education, the reform was necessary in order to increase the quality of the education system and at the same time, provide access to higher education to a maximum number of students². In terms of access to higher education, the transitional provisions of the New HE Law³, established that it would start producing its effects only on students applying for higher education during academic year 2016 – 2017. These effects became noticeable shortly after the results of the first round of applications to higher education for academic year 2016 – 2017 were revealed to the students. Several protests of high school graduates followed⁴, under the claim that the new admission procedures, adopted as a result of the New HE Law, impaired their right to access to higher education despite their merits (*high average grades*).

Believing that higher education is a milestone toward a developed society, this article intends to address and analyze this topic which has been very much debated in the Albanian arena. The aim of the analysis will be that of providing an objective overview of the impact that higher education reform produced on access to higher education in Albania. It will be first inquire whether the reform achieved its aim of providing access to a maximum number of students. Secondly, a broader angle of the issue, going beyond the local debate, and rather focused on the right to higher education seen as a human right will be introduced. In order to answer the above questions it is necessary to analyze the new reform in a twofold way: how it impacted access to higher education and whether, when analyzed under the light of Article 2 Protocol no. 1 of the ECHR⁵ and through the criteria identified by the ECtHR in its related judgments, it complies with ECHR standards on access to higher education.

III. ACCESS TO HIGHER EDUCATION FOR ACADEMIC YEAR 2015-2016

During academic year 2015-2016, access to higher education in Albania was regulated by the old admission system, through Law 9741 and its sub-legal acts. Law 9741 established that access to higher education for the first cycle of studies (bachelor) was limited to students fulfilling the criteria established in its Article 33 and specifically: (i) students having successfully concluded

¹ Report on the Draft-Law “*On Higher Education and Scientific Research in the Higher Education Institutions in the Republic of Albania*”, Council of Ministers.

https://www.parlament.al/wp-content/uploads/2015/11/relacion_arsimi_i_larte_21943_1.pdf

² Report on the Draft-Law “*On Higher Education and Scientific Research in the Higher Education Institutions in the Republic of Albania*”, Council of Ministers, pg. 1.

³ Article 135, New HE Law.

⁴ <http://www.citynews.al/2016/10/maturantet-jofitues-protesta-para-kryeministrise/1>
<http://shqiptarja.com/m/aktualitet/maturant-t-para-kuvendit-zgjidhje-ose-protesta-t-tjera-373778.html>

⁵ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Paris, 20.III.1952, Article 2, The Right to Education: “*No person shall be denied the right to education...*”

http://www.echr.coe.int/Documents/Convention_ENG.pdf



the maturity exams⁶; (ii) students complying with the special admission criteria established by each HEI for specific courses⁷.

The special admission criteria were to be assessed and evaluated by the Ministry of Education, having obtained the consultancy of the Conference of Chancellors and the Council of High Education and Science, and afterwards approved by Instruction of the Minister of Education⁸. This process resulted in the adoption of a complicated mathematic formula⁹ which was used to evaluate merits of each students based on several indicators (*average grades of high school years; grade for specific compulsory and selected subjects; the coefficient of the high school profile; the coefficient of chosen subjects*)¹⁰. The points collected by each student, decisive for admissions to selected HEI courses, were calculated through the formula. There is no legal act found during this research, which explains the ratio of the formula and why that specific formula was the best option for the assessment of the students' merits.

In addition, the Council of Ministers was entitled to establish through a DCM and following the proposal of the Ministry of Education, the total number of access quotas for each HEI. When making the proposal on quotas, the Ministry of Education consulted with respective HEIs and obtain recommendations from the Council of High Education and Science regarding the availability of quotas for each HEI¹¹.

The admission procedures to higher education, for academic year 2015-2016, were guided by Minister's of Education Instruction, no. 27, which provided admissions principles, rules and procedures. The main principle was that successful candidates would be evaluated pursuant to merit and preference. Merit was measured based on the above mentioned mathematic formulae. Preference was expressed through 10 course choices of the candidate, from the highest choice to the lowest one¹². Based upon the admission criteria and the established formula, the National Exams Agency, compiled the preliminary list of admissible candidates, pursuant to merits and preference, and published it. Following publication of the preliminary list of admissible candidates, the registration procedure, consisting of two rounds, was opened.

During the first round of registration, students admitted in the preliminary list had to register on the on-line website and make two choices: (i) finally register in the awarded preference/course, by terminating further participation in the competition; (ii) continue the competition in order to be awarded a higher preference/course on the list of preferences, which was not awarded to the

⁶ Article 33 (1), Law no. 9741.

⁷ Article 33 (5), Law no. 9741.

⁸ Article 33 (5), Law no. 9741.

⁹ Guidelines for the Transparency Book, State Matura 2015, pg 2. Example of the formula, for courses which did not provide for entrance exams/tests: $\{ [26 \times M + 20 \times (D1 + D2)] \times K + 17 \times (Z1 \times F1 + Z2 \times F2) \} \times 5$

http://www.akp.gov.al/images/matura2015/libri_transparence/udhezues_perdorimi.pdf

¹⁰ The same formula was valid for academic year 2014-2015

http://www.akp.gov.al/images/matura2014/libri_transparence/udhezues_perdorimi.pdf

¹¹ Article 33 (2), Law no. 9741.

¹² Article 2 (a) and (b) of Instruction no. 27.



candidate during the first round¹³. The second round of registrations started on late September, and was valid only for the courses and quotas remaining available after the first round, published by the Ministry of Education¹⁴. The following categories of students were entitled to participate in the second round of registrations: (i) students who didn't participate in the first round for several specified reasons¹⁵; (ii) students who participated in the first round of registrations, but were not awarded any of the selected courses¹⁶; (iii) students who participated in the first round, were awarded one and/or some of the selected courses, but intended to continue the competition in order to be awarded a course which was higher on their list of preference¹⁷. It is important to point out that the evaluation of the second round was also based on the principles of merit and preference and that students who were competing for a higher preference, had the right to still register in the course awarded during the first round, should the higher preference was not awarded to them during the second round.

It can be concluded that access to higher education during the academic year 2015-2016 was limited by the following conditions:

- i. A sufficient number of access quotas for each HEI;
- ii. Sufficient points awarded based on the mathematic formula and/or entrance exams/tests, when applicable.

IV. ACCESS TO HIGHER EDUCATION FOR ACADEMIC YEAR 2016-2017

Access to higher education for academic year 2016-2017 was governed by the New HE Law and its sub-legal acts. As it was explained above, the New HE Law intended to reform the higher education system, thus it introduced some important changes. It extended the principle of autonomy of HEIs¹⁸, also enunciated by Law 9741, in a twofold way: (i) by establishing that admission criteria to HEIs were their sole responsibility, removing the obligation of the approval through ministerial instruction¹⁹ contained in the previous system; (ii) by establishing that the number of available quotas, were to be determined by HEIs pursuant to their capacity standards, as certified by the Ministry of Education, removing the obligation of approval of quotas through DCM²⁰, contained in the previous system.

Pursuant to the provisions of the New HE Law, access to higher education for the first cycle of studies (bachelor) was limited to students fulfilling the criteria established in its Article 74 and specifically: (i) students having successfully concluded high school²¹; (ii) students complying with the criteria of a generalized average grade, established each year through a DCM²²; (iii)

¹³ Article 8 (a) and (b) of Instruction no. 27.

¹⁴ Article 15 of Instruction no. 27.

¹⁵ Article 17.1 (a), (b) and (c) of Instruction no. 27.

¹⁶ Article 17.2 of Instruction no. 27.

¹⁷ Article 17.2 of Instruction no. 27.

¹⁸ Article 3, New HE Law.

¹⁹ Article 74 (2), New HE Law.

²⁰ Article 69 (3), New HE Law.

²¹ Article 74 (1), New HE Law.

²² Ibid



students complying with the special admission criteria established by each HEI for specific courses (*merit/entrance exams/tests*)²³.

Following the requirement of the generalized average grade, introduced by the New HE Law, DCM 407 was issued. It established that access to higher education, for academic year 2016-2017, was limited to students with an average grade of 6²⁴. The calculation methodology of the generalized average grade, established by the DCM consisted in the simple arithmetic average of: (i) the final grades of the subjects for every high school year²⁵; and (ii) the final grades of the Maturity Exams²⁶. It is worth mentioning that the requirement of an average grade of 6 is not applicable to students intending to participate in two-year professional study programs²⁷.

The admission procedures were then performed pursuant to Instruction No. 13 of the Ministry of Education, which was amended 5 times within a four month period²⁸. Instruction no. 13 introduced important changes to the application and registration procedure. Similarly to the old system, the application procedure was performed on-line and divided in two rounds. Differently from the old system, only students who possessed the generalized average grade of 6 could register on-line and proceed with the application²⁹ (apart from two-year professional studies programs). The State Agency of Exams managed and cooperated with HEIs during the application phase.

During the first round, each student whose average grade was 6 or higher, could apply by selecting up to 10 courses³⁰ offered by HEIs. The winning candidates of the first round were obliged to register in the awarded course through on-line registration and by providing documents to respective HEIs' secretariats³¹.

As it was mentioned above, the criteria and formula were not reconciled with the Ministry of Education. The criteria and formula used by HEIs for academic year 2016-2017 varied from course to course. For instance the Law Faculty of Tirana University established that admission criteria would be as follows: (i) 50% weight would be given to the average grade of all high school years including Maturity Exams; (ii) 50% weight would be given to the average grades of the group of subjects, considered important for the Law Faculty, of all high school years. The groups of subjects relevant to the Law Faculty were: History, Citizenship, Literature, Economy

²³ Article 74 (2), New HE Law.

²⁴ Article 2, DCM 407.

²⁵ Article 2 (a), DCM 407.

²⁶ Article 2 (b), DCM 407.

²⁷ Article 3, DCM 407.

²⁸ Instruction no. 13, which was issued on 22.07.2016, was amended at least once every month, and three times only during October. Specifically amendments were made on: 01.08.2016; 06.09.2016; 07.10.2016; 12.10.2016; 27.10.2016.

²⁹ Paragraph II, Article 8, Instruction no.13.

³⁰ Paragraph II, Article 7, Instruction no.13.

³¹ Paragraph II, Article 18, Instruction no. 13.



and one optional subject among Sociology, Psychology and Philosophy. Each of these subjects had an own specific weight of 10%.

After termination of the first round, the second round of registration followed. The category of students entitled to participate in the second round were: (i) students who were not able to apply during the first round³²; (ii) students who applied during the first round but did not win³³; (iii) students who won during the first round but could not register³⁴. Differently from the old system, winning candidate who intended to continue competition in the second round in order to be awarded a higher preference, were not allowed to do so. As a result, winning the higher preference which was previously possible within the two registration rounds became a one shot opportunity (only during one round).

Another novelty was brought by the fourth amendment of Instruction no. 13, which provided for yet another registration phase, should there be any more free quotas. More specifically it was provided that, the registration process would continue with phases lasting 48 hours, if there were any free quotas left upon termination of the second round, up to completion of available quotas but no later than October 27, 2016³⁵.

It can be concluded that access to education during the academic year 2016-2017, governed by the newly introduced reform, was limited by the following conditions:

- i. A sufficient number of access quotas for each HEI;
- ii. Generalized average grade of 6;
- iii. Sufficient points awarded based on the evaluation criteria and formula and/or entrance exams/tests, established by HEIs.

V. THE RIGHT TO EDUCATION

The importance of higher education is clearly expressed in the Preamble to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region. It states that *“the right to education is a human right, and higher education, which is instrumental in the pursuit and advancement of knowledge, constitutes an exceptionally rich cultural and scientific asset for both individuals and society”*³⁶.

In fact, the right to education has been considered as a human right and introduced in international human rights documents since early on. In 1948 the importance of the right to education was understood and expressed through these simple enunciations contained in the Universal Declaration of Human Rights: *“Everyone has the right to education...higher education*

³² Paragraph III, Article 3, Instruction no. 13.

³³ Ibid

³⁴ Ibid

³⁵ Paragraph III, Article 13, Instruction no. 13, changed by 4th amendment.

³⁶ Paragraph 2 of the Preamble to the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, 1997, pg 1.

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168007f2c7>



*shall be equally accessible to all on the basis of merit*³⁷. In 1950, the right to education was for the first time introduced into a legally binding international convention, the ECHR which established in its Article 2, Protocol no. 1 that “*no person shall be denied the right to education*”. In 1976, the right to education was included in yet another important international convention, the International Covenant on Economic, Social and Cultural Rights which recognized “*the right of everyone to education*”³⁸ and broadened the obligations of states regarding the right to access higher education by establishing that “*higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education*”³⁹.

But how does this right become effective into a complicated reality of means, opportunities and policy decisions? Naturally, there is no uniform answer to this question, since different states are currently living under different economic and political conditions, which necessarily impact decision makers when adopting their education policies. Nevertheless there are by now, some important criteria identified under the frameworks of the abovementioned international conventions, where states participate. These criteria are sometimes soft-laws serving as guidelines and other times, legally binding norms, obliging states to direct their policies toward guaranteeing and/or broadening the right to education and to remove policies which have the effect of impairing the very spirit of the right to education.

This section will deal with the legally binding norms regarding the right to education, which are produced under the framework of one of the most active human rights Conventions, the ECHR, operating in the European area, to which Albania is a member state. Through its human rights court, the ECtHR, an important line of principles related to the right to access to higher education has been identified and constitute the framework within which every member state of ECHR should adopt its education policies related to this matter.

When enunciating that “*no person shall be denied the right to education*” the ECHR has recognized that the right to education is a human right *par excellence*. The extension of this maxim has been better clarified throughout the years by ECtHR judgments which have been fundamental to the development of the human rights enshrined in the Convention. In fact, as it was held in its Ireland v. the United Kingdom judgment “*The Court’s judgments serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties*”⁴⁰.

³⁷ Article 26. The Universal Declaration of Human Rights.

http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf

³⁸ Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights.

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

³⁹ Article 13 (2) (c) of the International Covenant on Economic, Social and Cultural Rights.

⁴⁰ Ireland v. the United Kingdom, Application no. 5310/71, Judgment of 18 January 1978, § 154.

<http://www.uio.no/studier/emner/jus/jus/JUS5710/h12/undervisningsmateriale/ireland-v-uk-court.pdf>



Several important judgments of the ECtHR have elaborated by fare an important corpus of principles which are applicable to the right to education. First of all it is important to mention that States have a twofold obligation regarding the right to education: (i) to refrain from interfering to the right of education of citizens⁴¹; (ii) to ensure respect for the right to education⁴². Secondly, it is held in general that restrictive interpretation of such a fundamental right would not be consistent with its aims or purpose⁴³. Restrictions to the right to education may exist and are accepted by the ECtHR, under the condition that such restrictions do not “*curtail the right in question to such an extent as to impair its very essence and deprive it of its effectiveness*”⁴⁴. Furthermore, there are three compulsory conditions that restrictions should comply with in order for them to be considered as not impairing the right to access to higher education, and specifically that restrictions are foreseeable, pursue a legitimate aim and are proportional to the legitimate aim pursued⁴⁵. Lastly the right to education naturally includes the right to access to education and it is extended not only to elementary and secondary education but as it was held in its pivotal Leyla Şahin v. Turkey Judgment⁴⁶, to higher education⁴⁷ as well. As a result, when analyzing whether admission/restrictions criteria on access to higher education are conform to the right to education as interpreted by the ECtHR, the Court will perform the following test:

- i. Was the restriction foreseeable?
- ii. Does the restriction pursue a legitimate aim?
- iii. Is the restriction proportionate to the legitimate aim?

It is worth pointing out what do the principles of foresee-ability and proportionality mean pursuant to the ECtHR. For a law or regulation to be foreseeable under the ECHR, that law or regulation should be sufficiently precise and accessible in order to enable citizens to foresee its consequences. While proportionality of a measure with the pursued aims, means that there was no other available and less restrictive measure which could be used to achieve the same aim.

VI. ANALYSIS OF THE ALBANIAN EDUCATION REFORM

The education reform brought about several changes to the higher education system in Albania which produced an impact on access to higher education. The main differences between the old and the new system are the following:

- i. Access quotas to higher education are not anymore determined by the central government through a DCM, but by HEIs pursuant to their capacities as certified by the Ministry of Education;

⁴¹ “Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to Education”, Council of Europe/European Court of Human Rights, 2015, par. 4, pg 5.

⁴² Ibid

⁴³ Ibid, pg 6.

⁴⁴ “Ibid, pg 7.

⁴⁵ “Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to Education”, Council of Europe/European Court of Human Rights, 2015, par. 4, pg 7.

⁴⁶ Leyla Şahin v. Turkey, Application no. 44774/98, Judgment of 10 November 2005, § 141.

⁴⁷ “Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, Right to Education”, Council of Europe/European Court of Human Rights, 2015, par. 4, pg 6.

- ii. Admission criteria to higher education are not anymore determined by Instruction of the Ministry of Education, but by HEIs themselves pursuant to their specific academic needs;
- iii. The registration process which provided opportunities of being awarded the higher preference on the students list, in both the first and the second round, has now become a one shot opportunity to obtain the highest preference, only during one round;
- iv. The requirement of a generalized average grade of 6 has been introduced as a restriction to participate to admission procedures.

The abovementioned novelties introduced through the education reform will be analyzed in this section in order to answer the main questions of this paper and specifically, whether access has been provided to a maximum number of students due to the reform and whether the New HE Law and access procedures are compliant with the ECHR test on the right to education.

1. Is access provided to a maximum number of students due to the New HE Law?

Comparing the changes introduced by the New HE Law it can be easily identified that the reform has further restricted access to higher education in Albania in a twofold way: (i) by introducing the generalized average grade of 6; (ii) by removing the opportunity to continue competition in order to obtain the highest preference on the list, during the second round. As a result, it is not possible to claim that the reform has reached its aim of providing access to a maximum number of students. Instead of broadening access, it has potentially narrowed it by introducing new restrictions on access to higher education in Albania.

2. Are the New HE Law and access procedures compliant with the ECHR test on the right to education?

In order to perform the ECtHR test on the education reform it is necessary to enquire whether the restrictions introduced by the reform were foreseeable; pursued a legitimate aim; and were proportionate to that aim.

i. Foresee-ability

It should be first pointed out that the old admission system to higher education was highly elaborated. As it was explained, a complicated mathematic formula was the basis for the calculation of students' points. This formula included a variety of elements, such as average grades of high school years, grades for specific compulsory and selected subjects, the coefficient of the high school profile, the coefficient of selected subjects. All these elements were inserted and calculated within the mathematic formula and provided the student with his/her points. Naturally, high school students intending to choose a study path or another, directed their study programs to specific subjects or focused more on some of them. In 2016 the formula was repealed by the New HE Law which provided HEIs with sufficient autonomy to decide admission criteria. At that point, students of academic year 2016-2017 did not have any guide as to which admission criteria HEIs would apply, not until the last year of high school was terminated.



Secondly, the new requirement of the generalized average grade of 6 was introduced and applied for students of academic year 2016-2017, who had started high school when this requirement was not present. The methodology of calculation of this average grade meant that average grades of each high school year should be 6 for a student to be permitted to even start admission procedures. This meant that high school graduates of year 2016, found themselves under the conditions that subjects on which they had not been extensively focused previously, due to the fact they did not intend to follow that study path, could lower their average grade, even risking their exclusion for competition to higher education. It is true that average grades were also included in the calculation of the mathematic formula of the previous system, but in that case, average grades were only one element of a variety of other indicators weighted within the formula. Under the New HE Law, the average grade of 6 became the first fundamental element of access to higher education. Lastly the registration procedure regulated by Instruction no. 13, changed five times during the registration process, three times only in October 2016, which was the final phase of registration. These changes impacted the opportunity of students to compete for their highest preference during the second round and introduced the third registration round consisting of registration opportunities lasting 48 hours.

As it was mentioned above, foresee-ability requires two conditions: that there is access, meaning opportunity of knowledge of the norm and that the norm is sufficiently precise to be understandable and predictable of the results it will produce on the interested category. The new admission criteria established by HEIs around July 2016, were neither foreseeable nor accessible to students until their last high school year was completed. At that point it was too late for students to act accordingly and make any relevant choices which could increase their opportunity of access. The new criteria of the generalized average grade of 6 was accessible to students only shortly before the high school year ended, specifically in June 2016. This accessibility in that case had no real impact, since students could not impact in any way the effects that the norm was about to produce on them. Similarly Instruction no.13, through its continuous amendments, especially the three amendments during the final registration phase (October 7, 12 and 27), severely impacted accessibility and foresee-ability of students.

ii. Legitimate aim

The explanatory report of the New HE Law indicated some of the aims of the reform. Relevant to this paper are the aim of increasing the quality of higher education, providing access to the maximum number of students and guaranteeing autonomy to universities⁴⁸. All of these aims can easily be considered as legitimate aims of the state, pursued for the public interest.

iii. Proportionality

It is necessary to assess whether the adopted measures were proportionate to the legitimate aim pursued, meaning assess whether there was the availability of adopting less restrictive measures to achieve the same aim.

⁴⁸ Report on the Draft-Law “On Higher Education and Scientific Research in the Higher Education Institutions in the Republic of Albania”, Council of Ministers, pg.2.



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL ♦ Issue 1 February 2017

With regards to the legitimate aim of increasing quality of higher education, it may be held that such an aim was followed by introducing the generalized average grade of 6, which excludes low merits students from higher education institutions. While it is true that quality of a higher education institutions is impacted by the quality of its students, it also true that this is neither the main nor the most important element of quality for a HEI. Nevertheless, without deepening debate on how higher education quality is achieved, what interests us here is to evaluate whether the measure pursued the legitimate aim in a proportionate manner. Even before introducing the general average grade of 6, the mathematic formula contained elements of average grades for specific subjects important to specific HEIs. As a result, HEIs already had the opportunity to absorb only those students who had the necessary minimum merits to access that course. Similarly, with the new admission criteria introduced by HEIs, average grades of specific courses had a particular weight on calculating admission points of students. As a result, doubling the requirement of average grades, especially through a generalized and indistinctive average grade of 6, excessively restricting access to higher education, it is not a proportionate measure because it is not necessary to pursue the legitimate aim already pursued and achieved by HEIs through their own criteria.

As regards the legitimate aim of increasing autonomy of HEIs, it may be held that this was pursued by establishing that admission criteria would be decided by HEIs. This positive development nevertheless resulted in amendments to the system which could retroactively impact students' points. While the measure in itself was proportionate to the aim, better coordination was needed among HEIs and the Ministry of Education in order to ensure that the new criteria was early disclosed to the students and did not harm any category of students due to miss calculations.

In addition to unforeseen-ability and un-proportionality of the abovementioned norms of the education reform, some elements of discrimination as identified by the ECtHR in its *Altınay v. Turkey* judgment⁴⁹, regarding students of Academic year 2016-2017, may be spotted. In fact as it was held by the Court in *Altınay v. Turkey* judgment “*the fact of changing the rules governing access to university unforeseeably and without transitional corrective measures*” may cause differential treatment and curtail the right to access to education, constituting a violation of Article 14 of the Convention taken together with Article 2 of Protocol No. 1⁵⁰. As it was held above, students of academic year 2016-2017, differently from those of the previous years, found their selves under a new admission system which retroactively impacted their study choices of high school years and points, and under the impossibility to make any changes to their situation. In addition, the generalized average grade of 6, further restricted their right to access and no transitional or corrective measures where designed to prevent such situation.

⁴⁹ *Altınay v. Turkey*, Application no. 37222/04, Judgment of 9 July 2013.

⁵⁰ *Ibid*, § 60.



ALBANIA

Law Journal

ISSN 2523-1766

LAWJOURNAL.AL

Issue 1

February 2017

V. CONCLUSIONS AND RECOMMENDATIONS

Despite the positive intents of increasing quality of education and autonomy of HEIs, the new education reform brought about restrictions to access to higher education for academic year 2016-2017 and legal uncertainty for students as to criteria and applications procedures which as assessed above are contrary to the ECHR test. Consequently the following interventions are recommended:

- i. Repeal the generalized average grade of 6 which has the potential to restrict access to education and doubles the requirement of average grade introduced in the access criteria autonomously established by HEIs. In addition to the technical legal assessment of lack of proportionality of this measure, there is another reason to repeal it: that of equal opportunities. Even though it may be held that this average grade is not that high as to excessively restrict access, nevertheless it has the potential to impact vulnerable categories of students of low income families. These students, may have to work in addition of studying, or may face other important constraints impacting their study results due to their economic situation. In the absence of specific studies in this regard, and in the current economic situation of Albania, these elements should be seriously considered when adopting higher education policies, which have a real impact on the future of students, and a real potential to ameliorate or adversely change their future.
- ii. Conduct a thorough enquiry in order to identify the number of students who were adversely impacted during the registration procedures, due to applicability of the new system , identify miss calculations of points and adopt specific corrective measures in this regards.
- iii. Identify the flaws of the system in order for the situation not to be represented for students of academic year 2017-2018.

Determine and settle well in advance admission criteria of HEIs (as is currently happening by some HEIs issuing criteria for 2017-2018) and establish a registration system which does not change several times when the process is on-going, and leave the latter to be administered by each HEI, without the intervention of state authorities, in the name of HEIs autonomy.