

Right to University Education in the Czech Republic

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Anotacija. *The article deals with the international background and the Czech constitutional background of the right to university education and implementation of the above in the legal system of the Czech Republic. It is further concerned with the background for implementation of the statutory provisions by universities' own acts; it also explains that, with respect to the definition of the limits. The article also explains why university education in the Czech language is provided free of charge to everyone irrespective of nationality – i .e. not only to the citizens of the Czech Republic.*

Keywords: *constitutional right, Higher Education Act, free study, admission to university studies, autonomy.*

Raktažodžiai: *konstitucinė teisė, Aukštojo mokslo įstatymas, nemokamos studijos, priėmimas į universitetines studijas, autonomija.*

Introduction

Aim of this article is to provide information on constitutional right to university education and its implementation in the legal system of Czech Republic. Also the political impact on decision making of public universities in this field is mentioned. A special attention pays to the fact, that free education in Czech public universities is accessible for everyone irrespective of their nationality.

Education, as one of the basic human rights (at least as regards the attention paid and importance attributed to it), is one of the key areas to which prominent international organisations pay their attention. The most important of them on global scale, i. e. *the United Nations Educational, Scientific and Cultural Organization (UNESCO)*, believes that education is the key to social and economic development. Education for all is considered to be the right step towards creating a global knowledge society promoting culture and peace, celebrating diversity and protecting human rights. In the field of higher education, UNESCO deals with the following topics: reform and innovation, international university cooperation, quality assurance and recognition [22]. In October 1998, the UNESCO World Conference on Higher Education in the Twenty-first Century adopted the *World Declaration on Higher Education for the Twenty-first Century: Vision and Action*. It does not concern right to higher education itself, rather it deals with the crucial features and challenges in higher education.

In European context, mention should be made of the *Council of Europe*, which sets for itself a number of education objectives, consisting in the implementation of important projects involving school and out-of-school education (introduction of policies, curricula and methods), sharing ideas, experience and research results, support for mutual contacts and exchange events, networking and encouraging new partnerships, support for international recognition of received training, publishing of studies, manuals and other practical materials for policy makers and teachers and co-operation with other European institutions and non-governmental organisations. As follows from the Art 2 of the *Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [3], the Council of Europe recognizes right to education as one of the fundamental rights. It does not, however, put the same accent to the general right to higher education.

The right to education is stipulated in major international treaties on the legal status of individuals and human rights protection. The most important ones include, for example, Art. 26 of the *Universal Declaration of Human Rights* [1], Art. 13 of the *International Covenant on Economic, Social and Cultural Rights* [2] and Art. 2, Right to Education, of the *Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms* [3]. The binding nature and primacy in application of the ratified and promulgated international treaties in the legal system of the Czech Republic are based on Art. 10 of Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic (hereinafter also the “Constitution”). The binding nature of potential judgments of international courts can also be derived from international treaties binding upon the Czech Republic.

Czech constitutional right to education and Czech education system

The basic regulation of human rights in the Czech legal system, including the right to education, is stipulated by Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., on promulgation of the *Charter of Fundamental Rights and Freedoms* as part of the constitutional order of the Czech Republic (hereinafter the “Charter”); the Charter represents a catalogue of human rights in the Czech constitutional order. Together with Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, they form the main constitutional documents of the Czech Republic.

The general regulation of the right to education contained in the Charter is intended for every human being irrespective of nationality, origin, membership in a national or ethnic minority, property, birth or other status. It is not bound to the fulfilment of any other conditions such as age or economic capacity. It is probably in view of the intellectual and volitional maturity of an individual at an early age in comparison with the importance of education for the freedom of personal development, social inclusion and the exercise of his or her other fundamental freedoms [16, p. 481] that the right to education is partly designed as an obligation in that there are 9 years of compulsory schooling. Citizens constituting national and ethnic minorities are also guaranteed the right to education in their language under conditions set by law [7, sec. 13 – 14].

Throughout Czech history, education has been regarded with great respect and groups of people who would not have received any education in other countries often did so here [14, p. 23]. Since the soviet times (1948), there are three basic levels of

education in the Czech Republic: elementary education in basic schools (recently taking nine years), secondary education¹ in grammar schools and vocational and technical schools (taking usually three to four years) [7] and higher education in universities/institutes of higher learning (taking usually three to five years of regular study depending on the study programme or combination of them) [6].

Next to the higher education, tertiary education covers also higher vocational education. Traditionally, higher education is provided by institutions of higher learning at levels ISCED² 5A and 6, while higher vocational education is provided by more practically oriented schools (ISCED 5B) [24, p. 146].

Higher education institutions are either of university (24 public, 2 state, and 3 private institutions in 2010) or non-university types (2 public, 42 private institutions) [25, p. 7]. Only institutes of higher learning providing all types of degree programmes as well as related scholarly, scientific, research, development, artistic and other creative activities are the university type; only they may use as part of their name the term “university” or verbal derivatives of this term. Higher education institutions of the non-university type provide Bachelor’s degree programmes and may also carry out Master’s degree programmes as well as related research, development, artistic and other creative activities [6, Sec. 2 (3,4)].

As explained below, the most important *components* of the higher education system in the Czech Republic are the public universities (institutions of higher learning). They are subject to autonomy, *state authorities may only intervene in the activities of public higher education institutions on the basis and within the confines of the law and in a manner established by the law* [6, Sec. 6(3)].

Governance of higher education

Central body of higher education governance is Ministry of education, youth and sports³. It is responsible for public administration in education, for its development and policies and international cooperation. The Ministry of education, youth and sports decides the funding of public universities and supervises the autonomy of universities in strictly defined areas. With respect to decisions of the national accreditation authority⁴ – the Accreditation Commission – it grants accreditations of degree programmes and state permissions to legal entities wishing to operate as private universities.

The representative bodies of higher education institutions are the Council of Higher Education Institutions⁵, consisting of members of academic communities (including academic staff members and students) of higher education institutions, delegated by their

¹ After completing compulsory schooling, 96 % of the Czech population (in relation to the age cohort of 15 to 18-year-old youths) continue studies in non-compulsory upper secondary education. [23, p. 7].

² UNESCO International Standard Classification of Education.

³ <http://www.msmt.cz/>.

⁴ Accreditation Commission *is concerned for the quality of higher education and carries out comprehensive evaluation of the teaching, scholarly, scientific, research, development and innovative, artistic and other creative activities of higher education institutions.* [20].

⁵ <http://www.radavs.cz>.

academic senates (further in the chapter *Public University*) and the Czech Rectors' Conference⁶, a body composed of representatives of higher education institutions [6, Sec. 92].

Public universities are legal entities under public law. They are bestowed with autonomous competence under which internal autonomous bodies exercise clearly defined powers. As autonomous entities, they have their own budgets, whose income, in accordance with the Higher Education Act, consists primarily of allocations from the State budget, study-related fees, revenues on property and additional activities, revenues from donations and inheritance and other income from the State budget, State funds and municipal budgets (see the table 2). Public universities are managed by their own autonomous and other bodies with various levels of mutual links and responsibility relations. A list of public higher-education institutions is attached to the Higher Education Act as its Appendix No. 1.

In addition to public universities, the Czech State also provides free education at *State universities* (institutes of higher learning)⁷. The primary purpose of the latter is to train experts for strategic forces of the State rather than to provide general university education. State universities therefore do not have legal personality, the University of Defence in Brno is a part of the Ministry of Defence and Armed Forces and the Policy Academy in Prague is a part of the Czech Republic; do not own any property and financial means are allocated to them from the budgetary chapters of the competent ministries⁸. Their bodies share certain competences with the relevant ministries and ministers (see the Table 1).

To complete the information on Czech higher education system, also the third type of universities appears in the field of higher education: the *private universities* (institutes of higher learning). As not funded by the State, they are subject to a deeper autonomy of internal governing and directing. At the same time, as will be mentioned thereafter, they have the right to collect tuition fees [6, Sec. 59].

Table 1: Categories of institutes of higher learning [6, Sec. 5–43, 94–95]

	<i>Public university</i>	<i>Private university</i>	<i>State university</i>
<i>Legal entity</i>	Public legal entity	Private legal entity	No legal personality
<i>Funding</i>	Basically state	Basically on their own	State
<i>Governing and directing</i>	Autonomous and other bodies	The entities' bodies & autonomous and other bodies	Ministry (of Defence and Armed Forces / of Interior) and other bodies
<i>Establishing (dissolving)</i>	Law	Establishment of the entity & state permission	Law

Structure of responsibility relations within a public university is presented in Figure 1. The most important academic body is the *academic senate*. It is an autonomous representative academic body, consisted of one third to one half of students (and rest of the academic staff), which is directly elected by the academic staff and students. Academic

⁶ <http://crc.muni.cz/>.

⁷ The University of Defence in Brno and the Policy Academy in Prague.

⁸ The Ministry of Defence and the Ministry of Interior.

senate votes on proposals to nominate (or dismiss) the *rector*, the head of the university. Both academic senate and rector cooperates on constitution of the other academic bodies – the *scientific board* and the *disciplinary committee*. While the academic senate expresses its (unbinding) view on the rector's appointments (and dismisses) of Vice-Rectors, no previous expression of the academic senate is needed for appointment of the bursar.

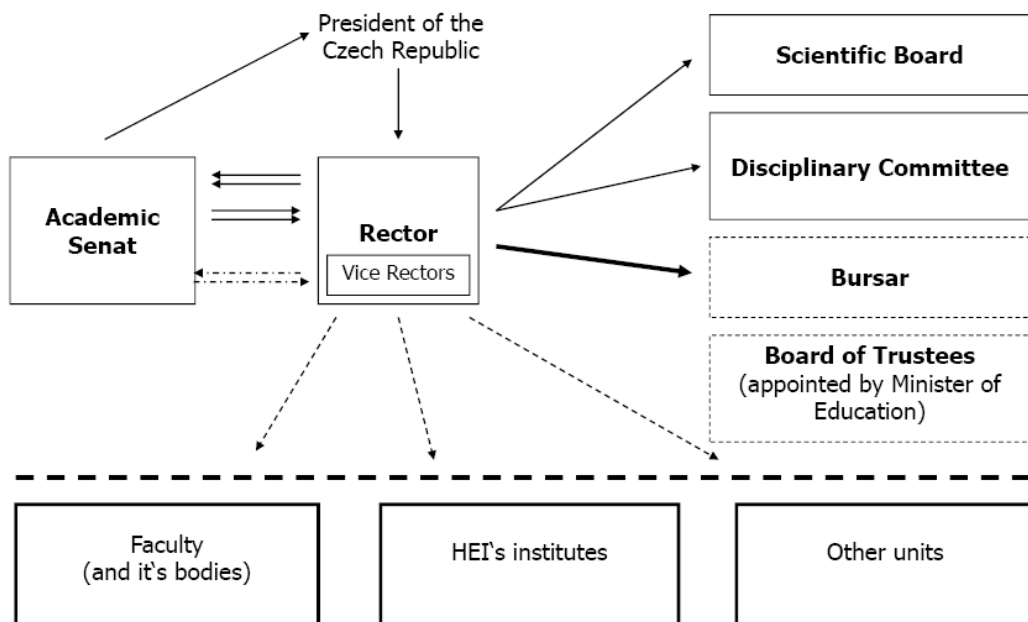


Figure 1: Structure of responsibility relations within a public university [18, p. 99]

The *bursar* is not an academic body, it is rather the operating body. It is responsible for the financial management and internal administration. Out of the influence of the public university bodies is the *board of trustees*, a supervising body of the public university, which supervise the real estate and high value property movements.

Public higher education institutions may be divided into the faculties, higher education institution institutes, other units focusing on teaching, scholarly, scientific, research, development, artistic and other creative activities and units providing information services and specialized units for cultural and sports activities, accommodation and catering and operational units. Those parts are subject to a limited autonomy of the university governing.

Right to charge-free education at universities

Czech constitutional right to education, as well as Slovakian, is designed as charge-free at elementary schools, secondary schools and universities (institutes of higher learning) established by the State (including schools established by local and regional governments). Nine years of schooling is compulsory at the elementary level, while receiving education at a secondary school is, at the very least, generally

desirable.⁹ University education is also socially beneficial, although its provision is not as feasible and indeed desirable as at lower levels of education. Its charge-free nature is therefore significantly limited and is stipulated as conditional. In Czech constitutional law, these preconditions for university education consist in the *capacity of society* and *particular skills of the given citizen* [5, Art. 33(2)].

The free nature of education, regardless the level of education, is not understood so broadly in Czech law as to imply that the State should bear all the costs that arise in the exercise of the right to education, including free provision of textbooks and other teaching materials. On the contrary, according to Award of the Constitutional Court¹⁰ of 13 June 1995, File No. Pl. ÚS 25/94, free education is limited to the duty of the State to *bear the costs of establishing schools and school establishments, their operation and maintenance* and, in particular, *it does not require payment of so-called tuition fees* at primary and secondary schools.

A similar approach can be expected in relation to the content of the right to free education at *universities (institutes of higher learning)*, which is confined by the boundaries set out by the Charter (based on particular citizen's ability and the capacity of society). The State is certainly not responsible for providing university students with sufficient resources allowing them not to invest their own financial means in their study. In addition, although secondary schooling also *de facto* limits the right to education at a particular institution based on the capability of society (capacity) and particular citizen's ability (only the most successful ones are admitted), certain differences can be found: while the capability of society (vacancies) at secondary educational establishments do not allow everyone to study at any school of their choice, they will generally obtain a place at an available secondary school (although it is indisputable that e. g. academic secondary schools provide education of a different scope and content than technical vocational establishments). In contrast, as a result of the obvious excess of demand for free university education over the supply of such education causes, some prospective students must be rejected each year¹¹.

Finally, the natural limits to access to a particular university were emphasised by the Constitutional Court in its award of 3 April 1996 [10], where it ruled that the *right to university education cannot be seen as a fundamental right in the sense that everyone would have the right to study at a university of their choice and that the State would be obliged to guarantee everyone the education of their choice*.

The constitutionally guaranteed right to free education at Czech universities based on particular citizen's ability and capacity of society is exercised through institutions established by the State that serve public needs, i. e. autonomous legal entities of public law [12, pp. 11–51]: public universities (institutes of higher learning). Their status, as

⁹ At least the system established in the territory of the Czech Republic suggests that there is general consensus on the need for secondary education and that some form of secondary education can be accomplished essentially by anyone who wishes to study it.

¹⁰ <http://www.usoud.cz/view/interneten>.

¹¹ According to the data of the Institute for Information on Education, the success rate of Czech nationals who applied for bachelor's study programmes and "long" master's study programmes was 76 % in the admission process for the academic year 2010/2011 [16].

the status of other kinds of institutes of higher learning, is regulated by Act No. 111/1998 Coll., on universities and amending and supplementing other laws (the Higher Education Act) (hereinafter the “Higher Education Act” or also the “Act”).

As mentioned above, the constitutionally guaranteed right to free university education is exercised through the public universities (institutes of higher learning). They are bestowed with autonomous competence under which internal autonomous bodies exercise clearly defined powers.

Although the Higher Education Act tasks public universities with making university education in a foreign language subject to a fee [6, Sec. 58(5)], it does not permit fees for university education in the Czech language¹². Taking account of the constitutional limitation according to which *taxes and fees may be imposed only on the basis of the law* [5, Art. 11(5)], in reality, it extends the right to free university education in the Czech language to anyone who meets the conditions for admission (see the chapter *Verifying the right to free education at universities*).

Paid education

In addition to the above-described right to free education at elementary schools, secondary schools and universities, the Charter also admits paid education at schools established by persons other than the State – private entities. Such schools, often called *private* (although they also include church schools) may make the provision of education subject to the recipient’s obligation to pay for the services received, i.e. to pay *tuition fees*.

Higher vocational schools are a special element in the Czech educational system. Although they provide education only to those who have attained secondary education, they do not provide university level education. Education at these schools is always provided in exchange for payment, including in schools established by the State. According to the Award of the Constitutional Court of 19 December 1995 [9], this cannot be regarded as unconstitutional, because *on the one hand, higher vocational schools are part of the educational system, but on the other hand they represent a type of schools that differs from secondary schools because admission to these schools is conditional on previous attainment of secondary education. As such, higher vocational schools go beyond the framework of Article 33 (2) of the Charter of Fundamental Rights and Freedoms stipulating the [unconditional – author’s note] right of citizens to free education at elementary and secondary schools*. The Constitutional Court further stated that the right to free education at universities, under which education at higher vocational schools could possibly fall¹³, is also conditional on the capacity of society. If society lacks the capacity to provide free education at higher vocational schools, its non-provision cannot be regarded as unconstitutional.

Potential introduction of tuition fees or registration fees¹⁴ at public universities should be understood in the context of the above view of the Constitutional Court,

¹² It should be noted here that university education does not include lifelong learning under Section 60 of the Act and education in an internationally recognised course under Section 60a of the Act.

¹³ In recent years, education provided by higher vocational schools and universities has become known under the collective term “tertiary education”.

¹⁴ Registration fees make registration for the next stage of studies (typically a semester or academic year) conditional on a fee paid for registration.

which emphasises the role of the *capacity of society*. Both terms have recently been subject to lively contention in the Czech Republic, particularly at political level: registration fees as a political step achievable by amending the existing Higher Education Act, tuition fees as the subject of broader discussion following after the preparation of the new Higher Education Act [cf. 11].

The author does not comment on advisability of introduction of such payments; nevertheless, from the legal viewpoint, she agrees with the view that non-provision of free university education is not unconstitutional if society is no longer capable of providing it for free. The more, it is not unconstitutional, in her opinion, to provide *partly free* education, i.e. education for a payment which does not correspond to the actual costs but only to their part.

Today, the Charter of Fundamental Rights and Freedoms permits [5, Art. 33(3)], and the Higher Education Act creates grounds for, the provision of university education in exchange for payment at *private universities*. These schools are not, in contrast to public and State universities, funded primarily from public sources and must obtain means for educational activities independently. To this end, as already suggested, they have the right to collect tuition fees [16].

In reality, public universities are also entitled to make educational activities subject to payment. However, this activity in itself must not lead to obtaining Czech university education. Public universities may provide paid education in the form of *lifelong learning programmes* [6, Sec. 60] and *education in an internationally recognised course* [6, Sec. 60a]. Another type of education in exchange for payment was introduced into legislation only in response to the practice where public universities began to provide university education on the basis of accreditation from foreign universities (i.e. foreign university education)¹⁵.

The former type – lifelong learning – allows for independent provision of individual courses as well as education in courses analogous to study programmes. The Act does not rule out that subjects completed within a lifelong learning course could be recognised in subsequent studies in an accredited study programme (i.e. standard university studies).

Verifying the right to free education at universities

The constitutional right to free university education could not be exercised without the existence of public universities. Given the principle of legality¹⁶, its limits could not be applied without a mechanism of verifying compliance with the conditions for granting the right to free university education. This mechanism is the admission process.

The conditions of the admission process are the basic tool employed within this mechanism [6, Sec. 49(5)]. They are announced by a public university not later than 4 months before the end of the deadline for submitting applications. To be legal, the conditions must be approved by the academic senate. By means of these conditions,

¹⁵ Typically in programmes leading to the attainment of MBA and LLM degrees [13].

¹⁶ The executive bodies of public administration can do only what the law permits (prescribes), under set conditions and in the manner anticipated by law.

the university specifies its understanding of the requirements for the applicant's ability and the capacity of society, while respecting legal criteria. In addition, general requirements for the applicant's ability are set out in the Higher Education Act through the requirement for previous completed education.

The Act stipulates that admission to bachelor's study or master's study (other than follow-up master's study) is conditional (in other than art fields) on the attainment of full secondary education (passing the school-leaving examination). Attainment of (at least) the bachelor's degree is a general precondition for admission to a follow-up master's study programme. Admission to doctoral studies is conditional on the attainment of master's education. These conditions stipulated by law are general and, as such, they apply in the admission process at any Czech university.

In addition, a university may also establish special *ability-related* conditions for admission that pertain to certain knowledge, ability, talents or academic performance during previous studies [6, Sec. 49(1)]. These conditions are established by each university independently of governmental policies, social demand or any other external factors. To the extent that legal limits are respected, the determination of the requirements for the abilities of the admitted students falls fully within the autonomous competence of public universities (in the legal sense); forming an independent opinion on what the students admitted for a particular study field should know or be capable of doing can be regarded as a manifestation of the academic freedom of the particular university (faculty).

The constitutionally stipulated *ability of a particular citizen*, which the law translates into particular knowledge, abilities or talents or academic performance during previous studies, is usually verified by an entrance examination. The examination yields an order of candidates which also enables the university to verify whether the capacity limits can be met (capability of society). However, as indicated below, universities are in fact not so independent in establishing capacity limits.

As described above, the law sets out only minimum requirements for the ability of a particular citizen (demands for the attained level of education) as a precondition for access to free university education. Other (ability) requirements are established within the autonomous competence of a given university. Potential determination of the maximum number of students to be admitted also falls within their autonomous competence. Thus, in accordance with the law, it is the particular university that gives these two constitutional limits a specific form, if we disregard the requirement for a previous level of education.

In reality, in determining the maximum number of students to be admitted, as reflexion of the constitutional condition concerning the *capacity of society*¹⁷, universities base their considerations on political decisions of public authorities – the government, who decides on the budget of Ministry of education, youth and sports, and the Ministry, who decides on budget of universities. Universities, consequently, are supposed to negotiate student numbers with the Ministry [21, p. 44]. So the amount of money universities receive from the State budget in a given year is indeed a political decision. Similarly, the decision on the criteria for allocating these funds is no less political.

¹⁷ This condition implies, that the Czech Republic (the society of the Czech citizens) is not capable to assure the free higher education for everyone. Its (financial) resource is limited.

The government strategy has been rather variable in this respect over the recent years. In simple terms, it has evolved as follows: in the late 1990s, the left-wing governments intended to massively increase the numbers of university students; universities were therefore funded based on student numbers, with emphasis on newly admitted students. The State was willing to pay for all students, regardless of the overall number. The motive was particularly to increase the proportion of university graduates in the population to the EU average as the Czech Republic's figure was and still is considerably lower. With this policy, universities in the Czech Republic considerably increased student numbers. Doing this was economically reasonable. This indirectly led to expansion of newly built teaching facilities – university campuses. After 2006, with a change in political representation (the rise of a right-wing government), the State began to regulate student numbers as it was no longer willing to pay universities for more students than they already had. Subsequently, the amount expended by the State on one student was reduced and new criteria for funding were introduced (scientific output of the institution, number of graduates). [19]

The existing method of funding motivates universities to reduce the overall numbers of students, whether by decreasing the numbers of students for which the State is willing to pay them or by further reducing the amount paid for one student. Universities obviously must respond to this situation. However, as bodies executing public authority, they cannot effectively regulate student numbers other than through the admission process. They can no longer withdraw the right to study from a student to whom the right has already been granted in the past, other than on grounds of failure to perform the study curriculum or on grounds of unlawful conduct.

Thus, the right to free education exercised by universities is conditional; however, once granted, it can no longer be withdrawn other than by the student's fault. It is therefore only in the admission process that public universities can apply a political decision following from the constitutionally anticipated *capacity of society*.

Conclusions

1. The right to free education is implemented by institutions established and funded by the State; in university education, this primarily includes institutions called public universities. Access to free university education in the Czech Republic is conditional on the particular citizen's ability and the capacity of society, which mostly means financial abilities of the State.

2. On the basis of its own autonomous discretion, the university may also establish other ability-related conditions for admission to study that pertain to certain knowledge, abilities, talents or academic performance during previous studies. It is also entitled to autonomously establish the maximum numbers of applicants to be admitted, although this particular decision is fundamentally influenced by the expected financial means from the State budget.

3. While the Czech Charter of Fundamental Rights and Freedoms expressly grants the right to free university education only to *citizens*, i. e. presently by nature, the citizens of the European Union, the Higher Education Act in no way limits the right by nationality and does not even create grounds for the Czech public universities

themselves to regulate the free nature of education. Therefore the right to free university education (in public universities) in the Czech language is open to nationals of all countries insofar as they can demonstrate in the admission process that they have attained the relevant level of previous education¹⁸, comply with the special ability preconditions established by the university and the result of their entrance examination places them within the limit for the number of admitted students.

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¹⁸ It should be noted that, with the exception of the countries with which the Czech Republic has concluded *recognition conventions* (as far as the author is aware, this is true of Slovakia, Poland and Hungary), according to which university diplomas issued in a contracting state are automatically considered equivalent with the diplomas issued in another contracting state, the proofs of relevant education issued under the laws of another country must be subject to the equivalence recognition process under Section 108 et seq. of the Schools Act [7] or under Section 89 et seq. of the Higher Education Act [6].

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Teisė į universitetinį išsilavinimą Čekijos Respublikoje

Anotacija

Straipsnyje aptariamas teisės į universitetinį išsilavinimą įgyvendinimas Čekijos Respublikoje. Teisė į universitetinį išsilavinimą įgyvendina valstybės įsteigtos ir jos finansuojamos institucijos – visų pirma valstybiniai universitetai. Konstitucijoje apibrėžta galimybė gauti nemokamą universitetinį išsilavinimą Čekijos Respublikoje priklauso nuo paties piliečio gebėjimų, kurie vertinami priimant pilietį į konkretų universitetą. Aukštojo mokslo įstatyme taip pat numatyti ankstesnio pasiekto išsilavinimo reikalavimai. Savo nuožiūra universitetai taip pat gali nurodyti kitas su stojančiojo gebėjimais susijusias priėmimo sąlygas. Universitetai turi autonominę teisę nuspręsti maksimalų priimamų studijuoti asmenų skaičių. Remiantis Čekijos konstitucija, galima siekti ir mokamo išsilavinimo. Mokamas išsilavinimas teikiamas privačiuose universitetuose, nors įstatymu leidžiama, kad ir valstybiniuose universitetuose gali būti teikiamas privatus išsilavinimas rengiant tarptautiniu mastu pripažįstamus kursus. Juos baigus gaunamas universitetinis išsilavinimas pagal kitos šalies įstatymus arba išėjus mokymosi visą gyvenimą programas.

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Straipsnis įteiktas redakcijai 2012 m. sausio mėn.; recenzuotas; parengtas spaudai 2012 m. kovo mėn.