

■ ***Tuition Fees,***
■ ***University Services***
■ ***& Liability:***

■ ***A View from Austria***

- Josef Leidenfrost
- Vienna, Austria

Austrian Higher Education System

- 18 universities & universities of the arts
(~ 200.000 students)
- more than 100 *Fachhochschule* programmes
(~ 18.000 students)
- 20 teacher training colleges
(~ 5.000 students)
- several professional colleges at tertiary level
- 6 private universities

Austrian Higher Education System II Students & Finances



- ~ 240.000 students (= total for all segments)
- ~ 12 % international students
- state financed system at universities & colleges,
state / regionally - privately financed system at *FHs*
- at present: limited budget autonomy at universities
- at present: tuition fees allocated for special projects at
universities

Tuition Fees in Austria:



- [Higher Education & Research in AT: 2.8 billion € / year]
- tuition fees: (re)introduced as of Winter Term 2001/02, €363,- resp. € 726,- / semester (exemptions!)
- in comparison: private universities in AT charge about € 44.000,- for a full B.A. programme (3 years)
- *Fachhochschulen*: same fees as state universities (exemptions!)
-
- teacher training, medical, vocational colleges: € 0,-

Tuition Fees (at universities) & Services



- AUS starts discussion on value-for-money during students' parliament election campaign 2000/01
- Austrian National Union of Students (AUS): introduces special homepage section for complaints in fall 2000 (operational until May 2001)
- Ministry: takes measures for increasing services and re-launches students' ombudsman in March 2001 (operational since mid90s)
- AUS: supports petition for a referendum in fall 2001 (173.596 signatures; hearing at the parliament)
- Austrian Parliament: discussion and parliamentary queries

Frequently asked questions / reported deficiencies on “university services” (III 01- IX 02):

- | **-financial implications** (*special regulations / exemptions!*)
- | **-social support measures** (*lack of information*)
- | **-admission** (*unclear regulations, execution too strict*)
- | **-study conditions** (*infrastructure problems*)
- | **-studying and working** (*unclear regulations*)
- | **-international and national mobility** (*unclear regulations, execution too strict, differing syllabi*)
- | **-teaching staff** (*waiting time for appointments, no-shows*)
- | **-administrative obstacles** (*unfriendliness, no „consumer“ orientation*)
- | **-student housing** (*unjustified charges, discrimination,...*)

- **Source: Austrian Students' Ombudsman Annual Report 2001/02**

New relationship between institutions and individuals

- Survey in fall 2001 on implications of introduction of tuition fees:
- 73% said they will try to get as much for their money as possible
- 69% said they will reflect upon their rights more carefully
- 62% said they will demand higher quality instruction

Institutional responses:



- growing awareness for "consumer" relationship management, including: timely information, transparency within services, person-to-person communication, early planning of resources
- increasing contacts by / with Directors of Admission Offices resp. Deans of Studies / (Vice) Rectors (for international relations, research, evaluation,...) responsible at the institutions
- special student service centres set up (permanently or at peak times) in Graz: www.kfunigraz.ac.at/4students/; Vienna: www.univie.ac.at/studentpoint/ co-operation set up

Liability: State of the Art



- University students & institution: rights and obligations defined in *UOG 1993 (University Organisation Act)* and in *UniStG 1997 (University Studies Act)*
- university students are not entitled to enrol in specific courses / take exams at specific times
- FH students have clearly defined clauses on mutual rights and obligations with respect to duration / services in their „*Ausbildungsverträge*“ (*Education Contracts*) - suing case not known so far
- cases might go to regular courts; cases might go to Supreme Court for Administrative Law / for Constitutional Law

UG (University Law) 2002



- § 59, Rights of Students: admission; selection of curricula, courses, classes; use of facilities; access to examinations
- § 59, Duties of Students: to notify institution of any status changes; to register / to withdraw in due time; to deliver copies of master's or doctoral thesis
- § 91, Tuition Fees: will go directly to universities (students can " earmark " funds for specific purposes)

Future Prospects: What are the Issues?



- Nick Stanley, University of Hull,
quoted in THE GUARDIAN, Jan 8, 2002:
- "We are rapidly moving towards a consumer model and this is not entirely negative. Previously there was a culture of deference or benevolent paternalism, and higher education institutions were rarely challenged. Students are entitled to demand quality of services and this is good for institutions."

Future prospects 2: What are the issues?



- three (four) distinct "**interest groups**":
students, institutions, teachers, (the public?)
- four **conceptual sources**:
statute law (specific), statute law (general), tort,
contract
- three **ways for enforcing rights**:
visitor of the university (U.K.,...)
ombudsperson (in an increasing number of countries)
courts

Ombudsing in Europe and overseas



- ERASMUS Students' ombudsman ?
 - discussed in Lyon 1997
- ombudsman / vrouw (BE fl)
- mediateur (FR)
- difensore degli studenti / garante (IT)
- defensor universitario (ES)
- visitor (UK)
- University and College Ombuds Association (USA)
- *Studierendenanwalt* (AT)

- ***Source: EAIE Discussion List (spring 2001)***

At the end:

- "The view from the top of the cliff is always better. The sun shines there more brightly. The air is purer. Perspectives and directions are easier to define...
- But when things go wrong, those affected do not find themselves at the top of the cliff - at least not for long. When problems arise in the relationship between educational institution, teacher and student, one does not start at the top of the cliff.
 - One starts at the bottom."
- J. Stephen Kos & Russel McVeagh, *The View from the Bottom of the Cliff*. In: *Australia & New Zealand Journal of Law & Education*, Vol 4 (2), 1999, p. 18

E.A.I.E.-Porto conference 2002

**Session 1.08 about tuition fees, university services and liability : three views from
inside
The Belgian-Flemish perspective**

Synopsis

Introduction

In order to put the discussion in the Flemish Community of Belgium into perspective, it will be necessary to have a small introduction on the different levels of the higher education in the Flemish community and the financing system. Afterwards, I will make a small contribution on the Court decision that has influenced the present legislation on tuition fees, and finally I will try to give some perspective on the options that still remain open, taken into account some general considerations. This should leave enough time for the other speakers and the discussion afterwards.

As a result of my presentation, you will see that it is not customary, even in many cases not allowed, in Belgium to ask elevated tuition fees. In the foreseeable future, this might not be very likely to change.

1) Organisation of the higher education system in Belgium-Flemish Community

I will not go into too much detail, but as you might know, the Belgium state is highly decentralised. The constitution has granted all power to organise the educational system to the three communities in the country. This leaves us with three systems in the country, one applicable for the northern part of the country (Flanders), one applicable for the southern part (French-speaking Community) and a third one applicable to a small group (German-speaking Community) in the eastern part of our country. As the last one does not organise any form of higher education, I will concentrate on the Flemish part of the country and elaborate - where necessary - on the differences in the French speaking part.

In the pre-Bologna-period, our country still knows the existence of three forms of higher education. They can be summarised as follows :

- a) "hogescholen" with a short type form of higher education : one cycle of three years;
- b) "hogescholen" with a longer type of higher education : two cycles of two years each;
- c) universities : two cycles of two years and respectively two or three years (apart from some specific programmes as medicine).

In each of the cases after these two cycles a third stage can be discerned. These programmes are called the advanced programmes ("voortgezette hogeschoolopleiding" or "voortgezette academische opleiding").

There is also an important bias in the content of the programmes. The short-type hogescholen are organising programmes that have a more direct focus on the labour market, while the university programmes clearly (apart from some specific programmes in biomedical disciplines) have a more academic focus. The hogescholen of the longer type are hovering between both of them and it is quite difficult to explain abroad what their specific situation is.

At present a reform of the higher education system is under its way in the Flemish Community. No clear plans are already existing for the French-speaking part of the country. The three types of higher education in the Flemish Community will be reduced to two types :

- a) "hogeschoolopleidingen" : in the context of a hogeschool. Duration : "at least" three years, degree : bachelor.
- b) "academische opleidingen" : in the context of a hogeschool or university. Duration of the first phase : "at least" three years, degree : bachelor; duration of the second phase : "at least" one year. In most university programmes this will amount to two years. Hogescholen can only grant a master if their programme is organised in close cooperation with a university. This should result in a slowly but generally growing interrelationship between the two types of programmes.

We still use the notion "years", as the government is still discussing the introduction of an elaborate credit system. Up till now, each year forms an equivalent of 60 credits (ECTS)-system, but we still do not have a real credit system. You either succeed for the whole of 60 credits in one year, or you fail. Government subsidizing of students

through scholarships is also dependent on whether you take up a whole study programme of 60 credits and whether you make enough progression. The shift to a full-fledged credit system requires other measures in order to prevent students from prolonging their study period and to adapt the study financing systems.

What we should further consider as relevant for our discussion about tuition fees is the further distinction that is made between :

- a) "initial" bachelors and "bachelors after bachelors" for the hogescholen;
- b) "initial" masters and "masters after masters" for the academic programmes.

2) Financing of the higher educational system

The situation of the higher educational system is rather particular in the context of Europe. In most of the countries of the European Community, and anyway all around the world, you have the distinction between state subsidized governmentally controlled institutions of higher education and private institutions of higher education. The latter - generally speaking - have the advantage of less direct government control but in order to attain certain standards, they do not have the luxury of receiving government spending (or at least not to the same extent as the governmentally controlled institutions).

This is not the case in Belgium, neither in Flanders, neither in the French-speaking part of the country. As a result of serious discussions about freedom of opinion and freedom of religion in the nineteenth and twentieth century, it was largely agreed upon that every state citizen has the freedom, not only to choose for a certain type of education, but also to organize certain types of educations according to his or her own ideas. This is still the central element in the Belgian Constitution (article 24 of the Constitution) and is preserved as the cornerstone of our educational system. As a practical result, the state has to provide private organisations with the same amount of money to effectively organise educational programmes as state institutions. This is a far-reaching system, as in principle every citizen could organise his or her own private education institution and ask for government subsidy. In order to make the system workable, a minimum adherence to an institution is asked for (for compulsory education – until the age of 18 – about 15 parents have to agree upon the establishment of a school; for higher education in the meantime it has become a closed system with a limited number of private institutions). I will not enter into detail

about all possible discussions that in recent years have existed about what is to be understood by "the same amount" (as you might know that private institutions are more free to move and to acquire additional funds, but on the other hand they do not always have the same privileges as to payments of salaries to their personnel). Suffice to say that since a law of 1971 in principle the private institutions of higher education receive similar amounts of financing as the state institutions and in general are submitted to the same types of government control on their spending of the budget.

Since 1971 and after the devolution of the powers for education in 1988 to the Communities the same principle has been laid down in the Flemish decree of 1991 (universities) and hogescholen (1994) and is still upheld in the French speaking part of the country.

Of course, as I mentioned above one has to know that for higher education in the meantime it has become a closed system and that full-fledged financing only is realised for the institutions of higher education that are specifically mentioned in the law of decree. Up till now, no other university can organise higher education in the Flemish community. It is even forbidden, so there is certainly no question about financing other private institutions than the ones already mentioned. As the specialists amongst you might notice, this is an interesting case should the GATS-principle once be fully realised : can the Flemish government impede other actors from organising higher education and this not being the case anymore, in what way can these institutions apply for government subsidy?

One element in the newly introduced decree that will reorganise the higher education system according to the Bologna-requirements, might already give us a glimpse of things to come. Apart from the universities and hogescholen explicitly mentioned in the draft version of the decree, article 3,§5 invents a new category of "registered institutions of higher education". If their programmes meet the standards put forward, these programmes can be recognised (= receive accreditation), but in no way will they enter the system of government financing. One can wonder whether such a system that makes a distinction between historically existing private institutions and other private institutions can pass the ordeal of the courts?

For those eager to know more about the way institutions for higher education are financed in the Flemish Community (the system not completely being copied in the French speaking part of the country), let me suffice to say that up till last year in general there was a financing of the institutions on the basis of the number of registered students (with a lot of correction mechanisms). Because for the "voortgezette" programmes (the third phase) there was a large drop-out of students, parking themselves in the view of upcoming employment, the financing was organised on the basis of the number of degrees awarded at the end of the previous academic year. As the number of students at most institutions of higher education was dropping due to the dwindling birth rate, since last year and up till 2004 a fixed budget for each institution is foreseen on an annual basis, making flows in student and degree numbers irrelevant. In the draft version of the new decree implementing the Bologna-declaration, a further fixing of budgets on the same conventional basis is proposed until 2006.

If I may dare to make a prediction for the near future, I think that the Flemish government in 2006 will decide to fix once again the budget provisions for the higher education institutions on a conventional basis, as from 2004-2005 onwards institutions will have new programmes building up according to the Bologna-schemes and old ones running parallel until the year 2011. I wonder what objective basis can be found for financing the institutions in the middle of all this confusion.

3) Tuition fees : a discussion with no clear conclusion up till now

As in principle all existing higher education institutions receive full financial cover for all costs regarding the organisation of their educational programmes, parliament always has been very strongly opposed to institutions, even private ones, asking high tuition fees. As an argument it is always put forward that the entrance to the higher education system has to be organised in such a way that the less privileged should not meet any financial hindrance.

This has led to the present legislation, in fact impeding the universities or hogescholen to ask high tuition fees. This measure has been strengthened furthermore as a result of court rulings. The second highest Court in Belgium has indicated several times that the basic principles for the educational organisation cannot be delegated by the parliament neither to the executive (i.e. Minister), neither to - horror referens - the

institutions themselves. One of the key elements which have to be laid down in the law or decree itself is the amount of the tuition fees. This has in 1993 led to a further elaboration of article 43 of the present decree on the universities in the Flemish Community that fixes the amount for the tuition fees for normal students, the amount for students with financial problems, even the amounts that can be asked from part-time students or students that follow individual courses.

To give you a more concrete idea of what that amounts to : at present the university can only charge 476 Euro for a normal student (79 Euro for a student with financial problems and receiving a grant from the state) if it concerns the main programme of the student, if the student enrolls for a second programme these amounts are lowered to 145 and 55 Euro respectively)

Anyway, as I mentioned earlier on there is a level of higher education which follows after four or five years of study, at present called the "voortgezette academische opleiding", in the future presumably called "master after master". In the context of these sometimes highly specialised programmes, investments are needed that are not always fully covered by the grant the universities receive from the government. As a result of this fact several amendments have been made to the mentioned article 43 for this type of programmes. At some stage, the parliament agreed upon the fact that the universities would be free to charge the tuition fees they deemed necessary as long as a certain amount was not surpassed. This amendment had to be annihilated due to a decision taken by the highest Belgian Court (Arbitragehof, Court ruling 33/92 from May 7, 1992) in a case put forward against the French speaking Community of Belgium and concerning a hogeschool. The court based its ordeal in large part on article 13 of the International Covenant on Economic, Social and Cultural Rights of the United Nations (concluded on the 19 december of 1966, and entered into force for Belgium after the ratification procedure on the 21st of July of 1983). In its article 13.2.c, this covenant states :

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

- (a) primary education shall be compulsory and available free to all;
- (b) secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
- (c) 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;**
- (d) fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) the development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

When this article was interpreted together with article 2.1 of the International Treaty on Economic, Social and Cultural Rights, the highest court made the following observations concerning the higher educational system and the tuition fees :

- a) it concerns a gradual obligation for the signatory states, taking into account the economic possibilities and the budgetary status of each state;
- b) it does not create in itself direct consequences for a citizen, so one cannot ask that tuition fees will be abolished. But what is sure is that the state can not take measures that go the other way around, i.e. making the higher education less free.

The court finally decided that new measures concerning tuition fees should be considered in relation to the situation existing in 1983 and that the covenant resulted in a "stand still"-obligation for the Belgian government. If the amount of the tuition fees were to be raised, this should be in the same relationship to the state of welfare of the normal citizen... Furthermore, the parliament should give more concrete details about the elements that were to be taken into account if a university were to be given the possibility of raising the tuition fees.

This has led to the following situation in the Flemish decree on the universities (article 43,§7) concerning the tuition fees for these "voortgezette academische opleidingen" :

- for certain programmes the tuition fees can be higher than the ones applicable for the regular programmes (see amounts mentioned above) but only if for these programmes one or more of the following elements are applicable :
 - a) the costs for the programma are higher than normal because you have to rely on highly specialised personnel or need to use better equipped labs or similar facilities;
 - b) there is a large amount of extra costs due to field visits or activities "on the spot" in companies etc.;
 - c) entrance is based on expertise on the job and the programme is run together with the industry or private interest groups;
 - d) the programme is internationally oriented.

- even if these criteria are met, there is a ceiling which can not be surpassed and which is the double of the normal state subsidy for a student. This is not applicable for students that reenter higher education after having terminated their regular programmes for at least three years, in which case the ceiling is raised to its utmost level of 24790 Euro;
- the universities have to submit their decisions and their motivations for these higher tuition fees to the government at the latest on March 31 of the academic year preceding the running of the programme.

One can wonder how this measure should be translated in the new model of the bachelor-master-structure. Will we once again differentiate between "initial" masters and "masters after masters"? That it is a problem from a juridical point of view is already illustrated by the fact that the government did not include any proposition in the draft version of the decree implementing the Sorbonne-declaration. Thus far, the government thought it was too risky to make decisions and that there still is plenty of time to decide, because from 2004-2005 onwards only the new bachelor programmes will be implemented. So why bother about the future...

4) Yes, why bother about the future?

Some considerations are not new - I already mentioned them earlier on - or have already been the subject of debate, but let me briefly summarize why more freedom for the establishment of tuition fees is asked for by the universities :

1. more and more education is pendant on the use of new technologies, which require more investment than at present can be guaranteed by the government;
2. more and more there is a tendency to shift from mass-education practices towards a more individualised trajectory and guidance for each student (even under the form of distance education). This requires more staff and input of more sophisticated techniques in itself;
3. it is obvious that even without these elements, government has more and more difficulty to provide for the necessary funds; one can even wonder whether government has not got the task to finance only a basic level of infrastructure and has to guarantee a minimum level of direct subsidy for students that need further assistance but does not have to interfere with the further "extra's" for which as

well the universities have to compete for and the individual students have to look for;

4. will the Belgian system be compatible with the decisions that will be taken in the context of GATS and what will the resulting influx of new competitors have as a result;
5. the Sorbonne-Bologna-process asks for more international curricula. The general feeling is that international students are more demanding and thus further investment is necessary. If one takes into account the fact that the Belgian government in its draft decree also requires that bachelor and master programmes only can be taught in an international language if there is a suitable equivalent in the home language, than one most certainly can foresee extra costs (doubling of the curricula) and why should the Belgian taxpayer pay for the international students?

It is still unclear whether we will go the way of freeing up the level of the tuition fees. What will influence the possible outcome are the following elements that are impeding an evolution in this way :

1. the court decisions earlier on. Will we not have to make a distinction between international students and the home students. The latter will have the benefit of the doubt concerning the international covenant mentioned earlier on. In my view, it is clear that the small distinction between several types of masters and the applicability of the "stand still" procedure will make it very difficult to reconcile both elements;
2. the opposition of student bodies and the trade unions in the Belgian political context cannot be underestimated. Both of them are heavily opposed against the liberalisation of tuition fees, which they consider an anti-democratic measure (even if combined with a system of tuition waivers);
3. more principally, there are those who are heavily against the "commercialisation" of the higher education. The amount of the tuition fee is seen as the epitome of this process. Furthermore, it is clear that higher education will orient itself more and more towards market forces and direct employment purposes, once a high tuition fee is asked from participants. Large groups in the Belgian community still question whether we should go along these lines.

Conclusion

I tried to give you a overview of the element that have led to the fact that in Belgian society, in particular the Flemish Community, the raising of high tuition fees is still very difficult, not to say nearly impossible. I would have liked to have given you more concrete details about the way the further process will go, but unfortunately I fear I will have to leave you in suspense until later E.A.I.E.-conferences. At least, there will be some debate in the Flemish community taking into account the elements I brought forward and hopefully we can learn more from each other in the discussion we will have after these presentations.

Antoon Boon
Staff member rector's office K.U. Leuven

E.A.I.E.-Porto conference 2002 – session 1.08

Tuition fees, university services and liability : the Belgian-Flemish perspective Handout

1) Organisation of the higher education system in Belgium-Flemish Community

In the pre-Bologna-period :

- d) "hogescholen" short type form of higher education : one cycle of three years;
- e) "hogescholen" longer type of higher education : two cycles of two years each;
- f) universities : two cycles of two years and respectively two or three

In each of the cases after these cycles a third stage : the advanced programmes
("voortgezette hogeschoolopleiding" or "voortgezette academische opleiding").

There is also an different bias in the content of the programmes.

Upcoming reform :

- c) "hogeschoolopleidingen" : hogeschool. Duration : "at least" three years, degree : bachelor.
- d) "academische opleidingen" : hogeschool or university. Duration of the first phase : "at least" three years, degree : bachelor; duration of the second phase : "at least" one year.

Further distinction between "initial" bachelors and "bachelors after bachelors" for the hogescholen; "initial" masters and "masters after masters" for the academic programmes.

2) Financing of the higher educational system

Principle : full financing of higher education, even for private institutions.

3) Tuition fees : a discussion with no clear conclusion up till now

Parliament very strongly opposed high tuition fees (e.g. at present the university can only charge 476 Euro for a normal student (79 Euro for a student with financial problems and receiving a grant from the state).

Advanced programmes : investments are needed that are not always fully covered by the grant the universities receive from the government. Higher tuition fees possible, but with certain limits (cf. Arbitragehof, Court ruling 33/92 from May 7, 1992, based on article 13 of the International Covenant on Economic, Social and Cultural Rights of the United Nations. In its article 13.2.c, this covenant states :

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(c) 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;

Translation by highest court :

- c) it concerns a gradual obligation for the signatory states, taking into account the economic possibilities and the budgetary status of each state;
- d) it does not create in itself direct consequences for a citizen, so one cannot ask that tuition fees will be abolished. But what is sure is that the state can not take measures that go the other way around, i.e. making the higher education less free.

Result concerning the tuition fees for these advanced programmes :

- the tuition fees can be higher than the ones applicable for the regular programmes but only if one or more of the following elements are applicable :
 - e) the costs for the programma are higher than normal because you have to rely on highly specialised personnel or need to use better equipped;

- f) there is a large amount of extra costs due to field visits or activities "on the spot" in companies etc.;
 - g) entrance is based on expertise on the job and the programme is run together with the industry or private interest groups;
 - h) the programme is internationally oriented.
- even if these criteria are met, there is a ceiling which can not be surpassed and which is the double of the normal state subsidy for a student. Not applicable for students that reenter higher education after having terminated their regular programmes since at least three years, raised ceiling utmost level of 24790 Euro;
 - the universities have to submit their decisions and motivations to the government at the latest on March 31 preceding the running of the programme.

Translation into new bachelor-master-structure? Government did not include any proposition in the draft version of the decree implementing the Sorbonne-declaration.

4) Why bother about the future?

- 6. more and more education is pendant on the use of new technologies;
- 7. more and more there is a tendency to shift from mass-education practices towards a more individualised trajectory and guidance for each;
- 8. obvious that government has growing difficulty to provide for necessary funds;
- 9. will the Belgian system be compatible with GATS;
- 10. the Sorbonne-Bologna-process asks for more international curricula. The general feeling is that international students are more demanding and thus further investment is necessary. If one takes into account the fact that the Belgian government in its draft decree also requires that bachelor and master programmes only can be taught in an international language if there is a suitable equivalent in the home language, than one most certainly can foresee extra costs (doubling of the curricula) and why should the Belgian taxpayer pay for the international students?

What will influence the possible outcome :

- 4. the court decisions earlier on. "Stand still";
- 5. the opposition of student bodies and the trade unions;
- 6. opposition against the "commercialisation" of the higher education.

Conclusion

It is not customary, even in many cases not allowed, in Belgium to ask elevated tuition fees. In the foreseeable future, this might not be very likely to change.

Antoon Boon
Staff member rector's office K.U. Leuven

Naamsestraat 22

3000 LEUVEN
tel. + 32 16 324074
fax + 32 16 324188
e-mail : toon.boon@rec.kuleuven.ac.be