

GERMAN STUDY PROGRAM ACCREDITATION AT DEAD END?

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EXTENDED ABSTRACT

The Bologna Process, with its comprehensive change in study structures all over Europe, was the starting point for a detailed quality assessment in which accreditation as an external quality assurance method plays a major role. Under the guise of safeguarding the quality, year by year German universities spend enormous sums of money for quality assurance, especially for the accreditation of the universities' bachelor and master programs. Universities feel impelled to develop curricula for study programs based on the guidelines of the accreditation agencies to get a successful accreditation. But is the system of accreditation really necessary and helpful to improve the quality of study programs at universities? And furthermore, is it in conformity with the German Law?

The paper offers a closer look at the development of accreditation as a quality assurance system. Furthermore, the accreditation system in Germany is described by using the example of the accreditation of civil engineering programs. In the fourth part, the legal basis of accreditation under German law is analyzed. Among other things the violation of basic rights by the accreditation processes, especially the university professors' Freedom of Free Teaching, enshrined in the Freedom of Sciences, is discussed.

The conclusion of these analyses is that the German system of accreditation is not reasonable. Furthermore, in the authors' opinion, it has no legal basis under the German Law in force and does not meet the requirements of Article 5.3 sentence 1 Basic Law of the Federal Republic of Germany, in which the Freedom of Sciences is fixed. This would mean that there is no legitimate obligation under German law to bring the universities' bachelor and master programs under the accreditation process at this point in time. Due to a constitutional complaint of a German university, the German Federal Constitutional Court is currently involved with the question of whether the system of accreditation is in conformity with the German Constitutional Law or not. The importance of the decision is obvious: if the Court decides that accreditation is unconstitutional, it allows German universities to be much more independent in developing curricula for civil engineering programs without conforming to the guidelines given by the accreditation agencies. This would be important in relation to European competition for the best students. Thus, the result of the decision may have an influence on the European idea of common standards and procedures for accreditation.

KEYWORDS

Bologna Process, Accreditation, Freedom of Teaching, Civil Engineering Programs

1. INTRODUCTION

The Bologna Process was the beginning of a comprehensive change within the higher education systems in most of the European countries. The starting point for this development was the Bologna Declaration in 1999, whose objectives were permeability, higher transparency and acceptance of university degrees across Europe. Year by year accreditation of bachelor's and master's programs at German universities commits a virtually inconceivable amount of human and financial resources creating a plethora of jobs and spending tens of thousands of Euros. Of course, universities will only be able to survive in a globalized educational market if teaching and research quality are on a high level. But fees for a single bachelor's or master's program accreditation in Germany can be between 10.000 to 15.000 Euros. For the accreditation of all courses of study, costs of a total of 400.000 to 500.000 Euros may incur for larger universities which must be paid from the universities' budgets. And this money is much-needed by universities for the improvement of teaching and equipment. So the question is if the accreditation is in conformity with the German Law. The paper will offer a look at the development of the accreditation system and its implementation in Europe. Furthermore, the accreditation system in Germany will be introduced and the legal basis under German Law is discussed. The aim of this paper is to show that the current accreditation practice in Germany is neither necessary nor reasonable and has no legal basis under the German constitutional right.

2. ACCREDITATION AS A QUALITY ASSURANCE SYSTEM

2.1 The origin of accreditation as a quality assurance system in Europe

Accreditation (derived from the Latin verb *accredere* meaning to give credibility) as a quality assurance system was developed in USA. In the United States, higher education institutions and their study programs are not under state regulation and supervision. This is why universities seek certification of the high quality of their education by private non-profit accreditation agencies. It is important to know that in the hotly contested US-American education market quality is decisive. However, accreditation is no must-have for the US-American Universities, but can be a winning argument in the competition for paying students.

The starting point for accreditation done in Germany was the reorganization of the European Higher Education Area based on the Bologna Process. When the Bologna Process was started in the 1990s, the ministers of education of 29 European countries committed themselves to save and improve the quality of university education. The targets of the European Bologna Process included quality assurance for higher education by accrediting the courses of study. The idea behind this is to guarantee that degrees are mutually equivalent so that programs of study offered by universities meet standards in terms of quality.

2.2 Types of accreditation

There are two different types of accreditation. On the one hand the program accreditation and on the other hand the system accreditation. Program accreditation means the individual check of each single course of study offered by a university including curriculum, qualification of lecturers, teaching equipment, relevance for the labor market, gender mainstreaming and so on. The universities must submit a detailed and comprehensive report for every program. It takes a lot of time of preparation and wastes plenty of material. In Germany, program accreditation of one course of study costs between 10.000 and 15.000 Euros. For a cluster procedure, which means the

accreditation of two or more courses of study at the same time and at the same accreditation agency, universities may get a package price. On the other hand, system accreditation does not examine each course of study offered by a university. Rather, the agency examines the quality management of the university. Currently, the program accreditation is dominating, because system accreditation is much more complex and much more work for the universities. But more and more criticism is expressed that the accreditation system is absurd, expensive and only intends only to keep the university staff busy instead of making a contribution to the improvement of the teaching quality.

3. THE GERMAN ACCREDITATION SYSTEM

To realize the aims of the Bologna Process in Germany, bachelor and master courses were introduced permanently at almost all universities in 2002. As a consequence, already 82 % of the former courses of study at German universities have been replaced by bachelor's and master's courses. Currently, 2.482 bachelor's courses and 1.462 master's courses are offered by universities of applied sciences as well as 3.366 bachelor's courses and 3.824 master's courses by universities in Germany [Standing Conference of the Rectors of all German Universities 2011]. It is planned to bring all programs under the accreditation process. However, it is important to know that the German higher education system differs fundamentally from the US-American system, where accreditation was developed. In Germany, universities are still under state regulation and supervision.

3.1 The structure of the German accreditation system

It should be pointed out that universities in Germany are accredited by private agencies which in turn are accredited by the Accreditation Council of the Foundation for the Accreditation of Study Programs in Germany [German Accreditation Council 2011]. The accreditation agencies operate as non-profit organizations which are financed through membership fees as well as through higher education institutions for accreditation services provided. The agencies are contracted by the accreditation council which – as the central decision-making body of the foundation – defines the basic requirements of the process. The Accreditation Council has its legal basis in the Act for Establishment of a Foundation for the Accreditation of Study Courses in Germany, which is state law of the German federal state of Nordrhein-Westfalen. Currently, 10 agencies are registered. Some of them specialize in certain fields, for example in the accreditation of engineering programs or social and health care sciences. The accreditation agencies have the mission to organize the quality assurance system for study programs and teaching by accrediting study programs. In this connection they check whether the course of study satisfies the requirements set up by the Resolutions of the Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States in Germany [Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States in Germany 2010] and Standing Conference of the Rectors of all German Universities [Standing Conference of the Rectors of all German Universities 2007]. Such requirements can be specific combinations of subjects in specific curricula, physical equipment and personal resources, internationalization and the graduates' preparation for the labor market. By so-called standards, the program that is applying for accreditation will be compared with a presumed ideal program. The agencies argue that standards are important to create transparency, to define points of intersection and to ascertain compliance with legal regulations [ACQUIN 2009].

Using a degree program's declared objective as a starting point, the accreditation agencies examine the coherence and consistency of the concept, the coherence of implementation as well as the competence and capacity of the degree program. That

means applying universities have to write a self-evaluation report freely on the basis of the accreditation guidelines, which is intended to clarify the quality profile of the degree program and the strengths and weaknesses of the individual elements. Thus, the following questions must be asked:

- Have valid degree program objectives been defined?
- Is the degree program as a whole, together with the individual degree course modules, a suitable means to reach the objectives of the degree program?
- Is a consistent implementation of the degree program concept assured?
- Are the target definitions, the course concept that is built upon them, and the degree to which it is implemented checked?
- Does iteration take place in order to eliminate errors and assure optimization at all process stages? [ACQUIN 2009]

The higher education institution is asked to describe to what extent these aspects of the guidelines were considered in building up the curriculum, in accordance with the different institutional circumstances, intentions and possibilities. Alternatively, they are asked to justify why the degree program diverges in substance from the given advices.

3.2 Process of German accreditation

The accreditation process consists of several stages and is based on the peer review principle. When a higher education institution submits an application for a study program accreditation to an agency they have chosen, the relevant agency deploys an evaluation group (peer group) whose composition must be a reflection not just of the special focus of the study program but also of its specific profile. Thus, each peer group includes representatives of universities, such as professors and students, and representatives of the profession. The evaluation of the study program is carried out in accordance with the given Criteria for the Accreditation of Study Programs by the Accreditation Council and, as a rule, includes an on-site inspection of the higher education institution by the peers. After sending the self-evaluation report to the agency, the audit will take place at the university. While meeting, peers and representatives of the university discuss the program. In some cases, peers also want to have a look at some bachelor's or master's theses. Also students can be interviewed and laboratories can be visited.

On the basis of the assessment report drawn up by the peer group and in accordance with the decision regulations provided by the Accreditation Council, the responsible Accreditation Commission decides either to grant accreditation for the relevant study program, to grant accreditation under certain conditions, to abandon the process or to reject accreditation. If a study program has successfully undergone the accreditation process, it is awarded accreditation for a limited period (usually 5 years), with or without conditions, and carries the Quality Seal of the Foundation for the duration of this period. In some federal states of Germany, accreditation is a precondition for state approval.

3.3 Accreditation of the Civil Engineering Bachelor's/Master's Program at HTWK Leipzig

The specifications of the private accreditation agencies concerning the curricula are not only problematic in a constitutional sense. Unfortunately, instead of learning from other higher education systems, the accreditation system has been adopted without any critical reflection. The requirements in terms of "soft skills" (meaning social competence, foreign languages, interdisciplinary subjects and knowledge of business management) cause problems to any six- or seven-semester's bachelor curriculum that has already been compressed down from an eight- or ten-semester's German "Diplom" curriculum. Beyond

this, times for practical training courses and studying abroad have to be radically reduced to guarantee that the course content can be taught in the prescribed time. In spite of all this, universities must guarantee the graduates' employability. In 2007, the Department of Civil Engineering and Architecture at the Leipzig University of Applied Sciences (HTWK Leipzig) had to bring the civil engineering bachelor's and master's program under accreditation. One department employee spent nearly one year in preparing all necessary documents and information starting with human resources and teaching equipment to program objectives and course concepts. During the accreditation process, the department had to give reasons for the course contents and even change the name of a master's specialization. The decision to grant accreditation without conditions was made in 2009, two years later. Moreover, the agency advised the Department of Civil Engineering and Architecture to inform the peers about all major changes in study structure, study content or resources. In that case, the agency has to examine the program again, of course with additional fees.

4. ACCREDITATION AND GERMAN LAW

It has to be said that accreditation in Germany is constitutionally controversial. A reason for that is the comprehensive examination of the study programs based on detailed specifications of private accreditation organizations and other requirements without the effect of a parliament's act. The problem is that the detailed examination increasingly interferes with the Freedom of Sciences, seen as unity of research and teaching, protected by the German Constitution. Due to a constitutional complaint of a German university, currently, the German Federal Constitutional Court is involved with the question whether the system of accreditation is in conformity with the German Constitutional Law or not [Administrative Court Arnsberg 2010]. The court has to decide if the accreditation with its current methods infringes the constitutionally guaranteed Professor's Freedom of Free Teaching.

4.1 Freedom of Sciences

In Article 5.3 sentence 1 of Basic Law of the Federal Republic of Germany as well as in the constitutional law of the federal states of Germany, the Freedom of Sciences is fixed as the most important basic right of universities and scientists in Germany. The Freedom of Sciences originates from the Middle Ages and was guaranteed in the universities' charters [Rüegg 2004]. Everyone operating scientifically is assured of the Freedom of Teaching and the Freedom of Research without governmental control and influence. Every scientific activity is protected, provided it is considered as a serious and methodical attempt of finding the truth [German Federal Constitutional Court 1978]. The Freedom of Teaching allows the lecturers to define the content and method of their courses, especially the topic, form (lectures, seminars, practical and non-practical exercises), structure and duration [Fehling 2004]. Any exertion of influence on the method or content of the courses violates the individual basic right of the lecturer. This basic right was meant to avoid any governmental influence, for example the decision about relevant or non-relevant research or teaching. Also, universities as institutions are protected by Article 5.3 sentence 1 of Basic Law of the Federal Republic of Germany, which guarantees the autonomy of universities in academic terms of teaching and research.

This constitutionally guaranteed liberty is enforceable and can only be confined by other basic rights, for example the right to live as expressed in Article 2.2 of Basic Law of the Federal Republic of Germany. Such a confine needs to be authorized by an act of parliament. Binding provisions or guidelines by accreditation agencies, the Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States in Germany and the Standing Conference of the Rectors of all German Universities, as

described in paragraph 3, are no acts of parliament and thus do not meet the requirements [Quapp 2011].

4.2 Infringement of the Freedom of Sciences

During the process of accreditation, the agencies do not only control the program's concept, but also the educational equipment, such as lecture rooms and labs, as well as human resources. Additionally, the program's relevance for the labor market, self-development support for students, stimulation of student's interest in interdisciplinary fields and gender mainstreaming are checked. The examination of these aspects as well as the assessment of a lecturer's competence and didactic concept violates the Freedom of Teaching. But the most significant infringement is the obligation to modularize the bachelor's and master's programs. That means the curricula have to be structured in modules according to the guidelines of the Bologna Declaration. Modularization means the combination of lectures and seminars with similar program contents in thematic units. Each module will be completed by one or more examination. Modules must have 4 to 10 ECTS (Credit Points in the European Credit Transfer and Accumulation System). One Credit Point corresponds to 30 student's work hours. That means in fact that the lecturer has no longer the possibility to decide about the duration of courses. Moreover, the accreditation agencies give advice concerning the curriculum's content. So, the guidelines of one of the leading accreditation agencies for engineering programs, mathematics, informatics and sciences requires 10% of the curriculum to be interdisciplinary courses and 15% to 20% to be subject-specific basics. At worst, universities will be recommended re-naming modules or whole programs.

As described before, the Freedom of Teaching can be delimited by other basic rights, such as the student's occupational freedom enshrined in Article 12.1 of Basic Law of the Federal Republic of Germany. However, that article only allows the student's free choice of courses of study and university. It does not give the students the right to demand special course contents or modularization. Also, Article 23 of Basic Law of the Federal Republic of Germany, which contains a national objective to encourage a Unified Europe, is only an abstract declaration of intent. That's why it cannot be a legitimation for violating basic rights.

Even if it is argued that the Freedom of Teaching is delimited by another basic right, there is no act of parliament which authorizes a confinement of the Freedom of Teaching. The Act for Establishment of a Foundation for the Accreditation of Study Courses in Germany was set up by state law of one federal state and that is why it cannot have any kind of effect for the other 15 German federal states. Also, the Federal States University Acts cannot be a legal basis for delimiting the Freedom of Teaching, because in most of the university acts of the Federal States the system of accreditation is only mentioned and not described in detail. In other university acts, accreditation is not mentioned at all. Further, the Criteria for the Accreditation of Study Programs by the Accreditation Council, the requirements set up by the Resolutions of the Standing Conference of the Ministers of Education and Cultural Affairs of the Federal States in Germany and the Standing Conference of the Rectors of all German Universities are not binding because they are no acts of parliament. That means that there is no obligation for universities to bring their course of study under accreditation at all.

In recent years there have always been governmental attempts to undermine the Freedom of Sciences. But it is an alarming development that non-governmental agencies and organizations try the same without any legal basis. The Freedom of Sciences can be called an endangered basic right by now [Quapp, 2010].

Due to the accreditation guidelines and requirements, interdisciplinary courses, social competences, management training and a fixed semester's work load had to be implemented in the curricula with the consequence that the time for subject-specific contents and practical training had to be reduced. The German Accreditation Council, which accredits in turn the accreditation agencies, granted two big agencies the accreditation seal only under the condition that they respect the professors' Freedom of Teaching and their decisions about course content. So now the agencies have to clarify that their requirements for curricula are not binding for the universities. Further, there shall be no need for universities to give reasons if they do not meet the curricula standards set by the agencies. But this sanction against the agencies must be interpreted against the background of the expected Constitutional Court's decision. Thus, the Accreditation Council tries to hold on the system of accreditation as a quality assurance method.

5. CONCLUSION

The paper concludes that accreditation is not a suitable mean to assure the quality of study programs. Program accreditation infringes the basic rights of the lecturers at universities, especially the Freedom of Teaching, and thus has no legal basis under the German law.

Even though there is an interest in harmonizing European higher education by means of accreditation, it will not improve academic mobility. Accreditation will only cause the loss of national uniqueness in higher education and a downgrading of Germany's quality level in this sphere. Now, some years after the replacement of the former "Diplom" program by the bachelor/master programs and the implementation of the accreditation system, Industry complains about the loss of the graduates' qualification. But this problem cannot be solved by means of program accreditation.

The German universities' resistance against the system of program accreditation becomes stronger. This is also a result of the latest announcement of accreditation agencies to reject accreditation certificates to programs which grant students, according to their choice, either a Bachelor's/Master's degree or a "Diplom" degree. So the German Association of University Professors and Lecturers claims the end of the "accreditation nonsense" and the implementation of a modern and self-governed quality management system at universities [German Association of University Professors and Lecturers 2011]. In Germany, which has one of the most highly-valued higher education systems, it is mortifying to have no confidence in the professors' and lecturers' teaching quality. A university's reputation guarantees the high quality of the study courses it offers. It is better to use the financial and human resources to improve the quality and not to finance private non-profit organizations such as the accreditation agencies. One of the German top managers once said: "Quality must be produced; it cannot be reached by quality assurance".

The importance of the Constitutional Court's decision is obvious: if the court decides that accreditation is unconstitutional, this would allow German universities to be much more independent in developing curricula for civil engineering programs without following the guidelines given by the accreditation agencies. That will make it much more difficult to implement a unified European accreditation system. Thus, the result of the decision may have a huge influence on the European idea of common standards and procedures for accreditation. If the accreditation guidelines violate the lecturers' basic right to create study programs in Germany, the improvement of comparability of study courses will be pretty difficult or even impossible. Quite recently, representatives of European national accreditation agencies met in Split/Croatia to establish the society for "Central and

Eastern European Network of Quality Assurance Agencies in Higher Education e.V.". Their aim is to support the development of a unified European Higher Education Area. It also demonstrates once again the attempts to harmonize higher education at the national and European level. If the German Federal Constitutional Court decides that accreditation with its current practices is not in conformity with German law, it will influence the ambitious efforts to harmonize the courses of study at European universities by means of accreditation. Then, unified European quality assessment will only be a toothless tiger. Without binding guidelines universities will decide on their own about the curricula. Maybe in other European countries the legal development will be the same. As a result, harmonization by binding accreditation requirements will be no longer a mean to create a unified European Higher Education Area. European universities should rather try to reduce the administrative barriers for foreign students and to implement the European idea at higher education institutions. But it cannot be reached under duress. It has to come from the universities' ambition to improve academic mobility. Until then, permeability, higher transparency and acceptance of university degrees across Europe will remain a great dream.

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