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Rethinking Legislation Governing Academic Integrity in the European Context

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This paper argues that legislative intervention rather than deontological rules could be an adequate tool to address academic integrity concerns, particularly in civil law jurisdictions, which is the case in the majority of European countries. The recently enacted Montenegrin law on academic integrity offers a promising foundation for developing such an intervention in the European context, along with suggested improvements drawing upon four years of the implementation experience. Analysis of the law is also conducted with regard to several provisions of the Council of Europe's recently adopted Recommendation on Education Fraud. The paper does not offer a ready-made concept, but its deliberation can serve as an inspiration for governments trying to improve existing rules on academic integrity. A legal approach will be taken in examining the problems and the relevant legislation.

Keywords: academic integrity, law, Montenegro, Council of Europe

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Ponovni razmislek o zakonodaji, ki ureja akademsko integriteto v evropskem kontekstu

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Ta članek zagovarja tezo, da bi bila lahko zakonodajna intervencija namesto deontoloških pravil ustrezno orodje za reševanje vprašanj akademske integritete, zlasti v civilnopravnih jurisdikcijah, kar velja za večino evropskih držav. Pred kratkim sprejeti črnogorski zakon o akademski integriteti ponuja obetavne temelje za razvoj takšnega posega v evropskem kontekstu skupaj s predlaganimi izboljšavami, ki temeljijo na štiriletnih izkušnjah izvajanja. Analiza zakona je opravljena tudi glede na več določb pred kratkim sprejetega priporočila Sveta Evrope o goljufijah v izobraževanju. Članek ne ponuja pripravljenega koncepta, a lahko njegova obravnava služi kot navdih za vlade, ki poskušajo izboljšati obstoječa pravila o akademski integriteti. Pri preučevanju problemov in s tem področjem povezane zakonodaje je bil uporabljen pravni pristop.

Ključne besede: akademska integriteta, pravo, Črna gora, Svet Evrope

Introduction

In the dynamic landscape of modern education, upholding academic integrity has become an imperative task. The ever-evolving nature of scholarly misconduct, coupled with the technological advancements that facilitate it, has brought a need for effective strategies to safeguard the principles of ethical conduct. Among the strategies under consideration, the prospect of enacting legislative interventions at the national level has emerged as a topic of heightened relevance. Not all legal systems are inclined to employ legislative enactment to tackle the problem. Countries normally address academic integrity through institutional regulations or deontology as a set of informal rules that professionals within a particular field adopt in an empirical manner to guide their conduct (Terré, 2004, p. 485). The professional code of ethics may, however, lack legal recognition and therefore be regarded as falling within the realm of morality (Kodama, 2019). Moreover, other legislation exists (e.g., copyright, criminal or civil codes) that can address some important aspects of academic integrity. The question nonetheless arises as to whether such rules are sufficient. Recent studies have found that in plagiarism cases, for example, academic institutions have in many instances failed to protect their authors and readers against plagiarism as well as courts, mostly due to inadequate legislation that is not sensitive towards academic misconduct (Bergadaà, 2021).

Today, academic integrity encompasses a broad spectrum of misconduct that extends beyond its conventional interpretation. More importantly, academic misconduct can inflict substantial harm, affecting not only the institution but broader society as well (Hallak & Poison, 2005). Is it therefore necessary to establish a distinct national legislative domain specifically dedicated to academic integrity? This will depend upon multiple factors. It does, however, seem that the difference between common law and civil law regulatory regimes is the first thing that should be examined. Ultimately, every country has its own unique legal culture, within which such legislation needs to fit.

The present paper examines whether implementing a legislative intervention at the national level would constitute an adequate response to the contemporary challenges to academic integrity. The investigation is particularly attentive to the European legal context, as the majority of countries within Europe adhere to the civil law tradition. In an attempt to model such a legal intervention, the paper is centred around an analysis of Montenegro's recently enacted law on academic integrity.

Theoretical framework

As a research topic, academic integrity has attracted a great deal of attention in recent years. Some authors tend to research possible causes and consequences for violations of academic integrity among academics and students (Bergadaà, 2021), while others direct their attention towards ethics policy and educational approaches to integrity in academia (Bertram Gallant, 2008). Additionally, the issue has been explored across diverse scientific disciplines (Bretag, 2016). Plagiarism, as a prevalent form of academic misconduct, has also received a great deal of attention in the literature (Bergadaà, 2021; Gilmore, 2008; Posner, 2007). When speaking about policies and the regulation of academic integrity, people generally find it easier to relate to relevant discussions in legal science (Sudamantri & Yusuf, 2020).

This legal research focuses on positive law and does not involve empirical effort, such as collecting data about social realities. In the present paper, as is common among legal scholars, an interpretive approach is utilised for conducting descriptive or explanatory research. Although ethical theories have extensively used a normative approach, law science considers the norms of law as part of the social and institutional practice of law (Taekema, 2018). Academic integrity has rarely been studied by normative interpretation of law. A similar approach to investigating research integrity and scientific misconduct from a legal perspective can be found in the report *Promoting Integrity as an Integral Dimension of Excellence in Research* developed by Gonzalez Fuster and Gutwirth (2016). This study analyses the role of law in the existing normative frameworks on research integrity and scientific misconduct in Europe. It argues that the normative frameworks in Europe in this respect are a mixture of legislative and non-legislative mechanisms, and it provides a solid overview of such mechanisms, concluding that "it emerges that the regulation of research integrity and scientific misconduct in Europe leaves open numerous questions regarding the relationship science, ethics and law" (Gonzalez Fuster & Gutwirth, 2016, p. 22). In an attempt to address such questions, the paper discusses civil law and common law systems in the context of academic integrity in order to identify the friendliness of a country's legal environment with regard to introducing specific legislation pertaining to academic integrity. The paper emphasises the Montenegrin law on academic integrity because such legislation is a very uncommon phenomenon, not only in Europe but also beyond. This frames the law as somewhat of an experiment, the preliminary findings of which could offer useful insights for researchers and practitioners seeking improvement in this area. Normative questions of academic integrity in the

Montenegrin law are evaluated against the relevant leading literature and *CM/Rec(2022)18/Recommendation of the Committee of Ministers to Member States on Countering Education Fraud* (Committee of Ministers of the Council of Europe, 2022; hereinafter: the Recommendation) as the only relevant intergovernmental standard available on the matter.

Method

The methodology applied in the present paper consists of an analysis of primary and secondary sources of data. The Montenegrin law on academic integrity and the Council of Europe Recommendation on Education Fraud are the primary sources relevant to the research. Secondary data useful in defining and explaining the terms used in the primary sources are relevant publications such as books, journals, articles, research papers, reports and policy papers. The literature was reviewed through online scholarly databases such as ResearchGate and Semantic Scholar, but also through subject-specific databases. This was followed by scanning the literature through a semi-systematic approach, then applying a narrative review. Given that the paper discusses a wide range of academic integrity topics, the relevant materials were searched by a variety of keywords, using the most relevant ones for separate sections of the paper. When discussing academic integrity principles, for instance, such a keyword would be used. Reports or policy papers on the topic commissioned or sponsored by well-known international or national organisations such as the Council of Europe, the European Commission, UK QAA for Higher Education are *per se* credible sources. Although the number of cases finalised before ethical bodies since the enactment of the law in 2019 – cases that could provide material for empirical research – is not significant, the observations in the reports related to these cases are used to reflect the law implementation challenges. The analysis also builds on the results and achievements of the European Union/Council of Europe projects *Strengthening Integrity and Fighting Corruption in Higher Education in Montenegro* and *Quality Education for All*, which have been enacted since 2016. Within these initiatives, distinguished international experts and national counterparts took part in debating the need for the law and, later, the challenges in its implementation. Their input was extremely valuable for drawing reliable conclusions.

Results and discussion

The road to the Montenegrin law on academic integrity

The Montenegrin higher education system is quite unusual by international standards in that it comprises only one public university, which enrols around 80% of the total student population, and three private universities. Montenegro's small population (c. 620,000) is clearly the underlying demographic cause of this (Hamilton & Smith, 2017). Most of the focus is thus on the state-owned University of Montenegro. As with the majority European countries, Montenegro belongs to the civil law tradition (Boskovic & Vukcevic, 2016). The size of the country's higher education system was one of the key arguments for putting the law into practice.

The academic achievements of politicians and public figures are highly valued in Montenegro and academia is one of the best ways to gain prestige. This has led to cases of alleged plagiarism by university professors and high-profile politicians, as reported by national media. Academic fraud has also involved fake qualifications obtained from uncontrolled bogus universities from the Western Balkan region, cheating in exams, falsified records and grades, ghost-writing and even cases of *vulgar corruption* (Baseline assessment, 2017; Blecic et al., 2020; SEEPPAI, 2017; Selic & Vujovic, 2010). The scene was set for such behaviours by general problems with higher education governance, particularly transparency in financing, quality assurance and ambiguous implementation of the Bologna model (Jørgensen, 2018). Numerous deficiencies were found in safeguarding academic integrity, including weak control of higher education institutions, poor investigative procedures and policies (or a lack thereof), a lack of awareness of the issue as documented by many surveys and watchdog reports, and a tendency to sweep such matters under the rug. At the time, the non-governmental sector appeared to be most proactive in exposing misconduct cases (Popovic et al., 2016).

Two events drove the government's initiative to prepare the law on academic integrity: the publication of the World Bank's *Feasibility Study on the Proposed Tailor-Made System(s) for the Prevention of Plagiarism in Montenegro* and the launch of the Council of Europe/European Union project *Strengthen Integrity and Combat Corruption in Higher Education* 2016–2019. The World Bank study proposed the enactment of a law, while the European project provided expertise during the drafting process, drawing upon materials and norms developed within the Council of Europe's *Platform on Ethics, Transparency and Integrity in Education* (ETINED).

According to an explanatory note to the law, its objective is "the prevention of all forms of academic integrity violations, as well as the promotion of academic and democratic values in higher education" (Explanatory Note, p. 2). In 2019, the Parliament passed the law. The present paper draws lessons from more than four years of the law's implementation.

The nature and title of the law

The law on academic integrity is reactive rather than preventive, meaning that it mostly provides administrative procedures for handling academic integrity breaches. To a limited extent, it codifies rules scattered around various legal acts and tries to establish a national standard for safeguarding academic integrity. Given all its features, the law should be called the *law on safeguarding academic integrity*. The current title (the law on academic integrity) suggests that it only deals with a preventive or educative approach to unethical behaviour, which is not entirely the case.

Brief commentary on the law

Subject matter

Article 1 regulates three segments: academic integrity principles, types of academic integrity violations, and the procedure for safeguarding academic integrity. Substantively, the law covers all types of academic fraud except diploma mills, interpersonal relationships in academia, labour and copyright disputes, or behaviours inclined towards criminal offences, such as sexual harassment, bribery, embezzlement, etc. Procedurally, the law applies to the ethics and disciplinary procedures when dealing with allegations of academic dishonesty.

When it comes to questions regarding to whom the law applies, the provision covered the widest range of individuals holding an academic diploma, not only those who belong to academia. As noted, the few cases of individuals outside academia who resorted to academic dishonesty in order to quickly obtain a prestigious position indicated that the law must apply to them as well.

Definition of academic integrity

The law provides a definition of academic integrity that can be found in a number of ethics documents. As such, integrity should not be the concern of the law, but of the institutional code of ethics. It appears more beneficial to provide an operational definition of its *dark side*, that is, academic misconduct:

> *Academic misconduct is behaviour or action occurring in the field of higher education in learning, teaching, research, conflicts of interest or publishing for all scientific disciplines, intended to deceive and obtain an unfair advantage.*

The suggested definition follows the definition contained in the Recommendation, with the addition of the concept of academic integrity as understood by the Institute of Research and Action on Fraud and Plagiarism in Academia (Bergadaà, 2021) to emphasise a broader understanding of the concept, encompassing learning, teaching and research in academia.

Academic integrity principles

Pursuant to the law, academic integrity is based on the following principles: honesty, objectivity, openness, freedom in teaching and research, and responsibility towards academia and society. The listed principles correspond to the widely accepted international efforts to frame the core values of academic integrity (McCabe & Pavela, 2004).

As confirmed by the implementation practice, a normative approach suggests that, instead of the principles established by the law, the national standard of academic integrity should be based on the following principles:

1. The primacy of institutional autonomy

This well-known principle of higher education is to be reaffirmed in the area of academic integrity. The *QAA Academic Integrity Charter for UK Higher Education* (2020) puts forward the principle of institutional autonomy in the context of safeguarding academic integrity: "As autonomous institutions, UK higher education providers are the first line of defence against academic misconduct" (QAA Academic Integrity Charter, p. 3).

The practical implications of the principle suggest that most of the breaches of academic integrity must be investigated and resolved by the university, and should be framed as follows:

> *Higher education institutions assume responsibility for defining, preventing, investigating and penalising cases of academic fraud, except when such responsibility falls under mandate of the Ethics Committee.*

2. The principle of prevention

"Prevention is a critical line of defense against academic dishonesty" (McCabe & Pavela, 2004, p. 14). The Council of Europe recommends that member states take appropriate measures "to provide information on and raise awareness about the prevention of education fraud" (Committee of Ministers of the Council of Europe, 2022, p. 5). The concretisation of this principle in practice means that universities should be held to the standard of designing clear integrity policies, conducting regular campaigns, introducing text-matching software, and setting up initial and continuous ethics training, as well as courses in academic writing and so forth. Furthermore, institutions need to embrace an important commitment to pursuing integrity values in their own self-evaluation procedures. Hence, the principle should take the following formulation:

> *Learners, researchers and teachers are aware of the mechanisms for the prevention of academic misconduct. Higher education institutions develop a culture of academic integrity and ensure internal quality assurance in this respect.*

3. Fair and equitable academic fraud processes

Member states should ensure "a fair and impartial process for persons and organisations accused of education fraud" (Committee of Ministers of the Council of Europe, 2022, p. 7). In 2021, the UK QAA for Higher Education published advice for its members to support the development of fair and equitable academic misconduct processes. The requirement of a fair process implies that all allegations of academic fraud are investigated and decided on the basis of fair process principles, such as presumption of innocence, as well as many others (Berger & Berger, 1999). Although this procedure has an administrative rather than judicial character, it must nonetheless provide the said guarantees, as confirmed by the European Court of Human Rights, which extended the principles of a fair trial to disciplinary and special proceedings under certain conditions (European Court of Human Rights, 2022). Importantly, in reviewing academic fraud cases, courts tend to defer to the outcome of the university's procedures (Berger & Berger, 1999). The civil law standard of proof is much higher than the common law standard (Clermont & Sherwin, 2002). There is no need to prove the case *beyond a reasonable doubt* at universities in the common law system; the standard of proof for academic misconduct is the *balance of probabilities*, which is much lower than what would be required in a court.

Disciplinary procedures in continental Europe appear to be mixed systems including both standards of proof. Universities, however, are advised to investigate academic misconduct by a balance of probabilities, particularly in cases that are hard to prove (e.g., contract cheating). Using the lower standard of proof could raise the issue of diminishing fair process guarantees. If the accusation of academic fraud is so serious that it threatens to stain the reputation of the accused, greater procedural safeguards should apply (Berger & Berger, 1999).

Special attention should be given to the principle of proportionate sanctioning. It is often the case that students face very rigorous sanctions for cheating in exams, such as long-term suspension or expulsion. On the other hand, experienced professionals, researchers and high-ranking politicians have gained huge benefits from falsified credentials, but when caught, they have received sanctions that barely damage their benefits and reputation. Disproportionate punishment can cause more harm than good, particularly in the case of young people. Experienced students, those pursuing advanced degrees or serial cheaters should be treated with greater rigor than inexperienced undergraduates. These and many other factors that may mitigate the severity of the sanction should be formulated and applied consistently (Council of Europe, 2016). Hence, the law should contain the following provision: *The right to fair and equitable process shall be guaranteed to everyone faced with accusation of academic misconduct.*

4. Protection of privacy and confidentiality

Given that academic misconduct cases are deeply sensitive and can hurt the alleged perpetrator and/or the victim, they must be treated with the greatest confidentiality. The victim or the person who has made the allegation of academic fraud can face retaliation in many ways. On the other hand, allegations can be brought in bad faith, thus damaging the reputation of the falsely accused individual. In order to prevent or reduce such effects, the confidentially and privacy of the proceedings must be ensured (Bassler, 2001). The principle should be balanced when the public interest to disclose information related to academic misconduct without consent prevails over the privacy breach, usually in cases of a grave misconduct. Against this background, it is important that institutions use confidential counselling or mediation services in dealing with delicate cases of alleged misconduct, which often involve complicated and even hostile inter-personal relations. An ombudsperson can perform this role, given that it safeguards students against unfairness, discrimination and poor

service delivery (Behrens, 2017). Therefore, the principle should be spelled out as follows:

> *Allegations of academic misconduct must be treated confidentially and in accordance with data protection regulations, except in cases when public interest requires an alternative approach.*

5. The principle of adapting to the digital and online environment

A great deal has been written about internet and digital technologies providing an environment conducive to academic misconduct, and there are also acute concerns regarding academic integrity within online learning. In the digital age, institutions are compelled to update their policies and processes related to academic integrity both in terms of prevention and punitive approaches (Dawson, 2020). The law should address the issue by spelling out that *policies, procedures and practices in higher education need to be up to date in order to prevent academic misconduct and promote integrity in the digital environment.*

The institutional code of ethics

The provision on the code of ethics seems redundant, as every institution has already adopted such a document. There are, however, two reasons why it is good to include this provision in the law: firstly, the existing codes should be harmonised with the principles of the law; and secondly, new higher education institutions will, as a matter of priority, design a code that is fully harmonised with the law.

Definition of plagiarism and corresponding sanctions

"Plagiarism is listed among the three deadly sins in science along with fabrication and falsification in most international literature on research integrity" (Penders, 2018, p. 29). Hence, the law provides a definition of plagiarism, while a plethora of plagiarism definitions currently exist in the literature. The definition of plagiarism in the law is well suited to the Montenegrin context. European countries can work around the definition provided by the Recommendation: "'Plagiarism' means using work, ideas, content, structures or images without giving appropriate credit or acknowledgment to the original source(s), especially where originality is expected. The term 'plagiarised' applies to the ideas, content, structures or images in question" (Committee of Ministers of the Council of Europe, 2022, p. 5).

The law suggests that plagiarism needs to be committed deliberately to qualify for sanctioning. It only tackles plagiarism of professional or scientific

work, or any ideas or materials developed in academia. Other creations or intellectual property, such as speeches, blogs and writings in media, are not covered by this law. The law provides sanction(s) when plagiarism is established by the competent authority (the Ethics Committee or institutional ethics boards). A single sanction envisaged is declaring plagiarised work revoked, as well as "the revocation of the corresponding grades, awards, titles and ranks" (Article 10). It seems that only a severe form of plagiarism is addressed, while less serious cases of plagiarism are left behind.

Types of plagiarism

Direct plagiarism, self-plagiarism and paraphrasing without reference are common types of plagiarism that are recognised as such in the relevant literature.

Despite its controversial nature, self-plagiarism also amounts to academic fraud. The IPPHEAE survey revealed that "many respondents denied the existence of self-plagiarism, asserting that 'you cannot plagiarise yourself'" (Glendinning, 2016, p. 64). Some authors also deny self-plagiarism as fraud (Callahan, 2014). Institutions need to approach the issue cautiously by setting up detailed criteria when incriminating self-plagiarism, for instance, "when the author fails to develop or improve the previous work" (Santosa & Siaputra, 2016, p. 78).

Fabrication, falsification, contract cheating and quoting out of context

The law also recognises fabrication, falsification, contract cheating and quoting out of context as a standard list of academic integrity violations that can be found in the literature. Fabrication and falsification in scientific research are potentially very harmful to society and tend to incline to criminal behaviour. For example, faked research data may lead to the approval of unsafe drugs or the construction of dangerous buildings. Researchers who are found to have fabricated or falsified data can face severe sanctions, such as loss of funding, termination of employment, or even imprisonment (Resnik, 2014).

Contract cheating is also a serious threat to the quality of higher education around the world (Draper & Newton, 2017). It is very complicated to regulate contract cheating because in addition to "three actors (student, university, third party), it may include many more; a company, regulated by a government, hosted on a website, with advertisers and advertising, a bidding system with multiple writers etc." Things get worse when "every single one of these actors could be in a different country" (Draper & Newton, 2017, p. 7). The law on academic integrity addresses consumers, while legislation specifically targeting

the banning of contract cheating providers should be separate. When contract cheating is investigated, the standard of proof should be on *the balance of probabilities*, as it appears to be very difficult to prove and because this offence is particularly dishonest, fraudulent and deceitful in nature.

Quoting out of context should not be part of the law, as the classification and the practical process for investigating and establishing such misconduct lacks clarity.

The Ethics Committee

The law establishes the Ethics Committee as the highest national authority for monitoring and promoting academic integrity principles. Appointment, dismissal, term and membership of the committee are in line with the administrative tradition in Montenegro. Other countries can use different models, such as an "academic integrity committee, disciplinary committee, ethics committee or research ethics committee" (General Guidelines for Academic Integrity, 2019, p. 23). It is recommended to include students and civil society representatives in the committee in order to achieve greater transparency, to ensure impartiality and to prevent conflicts of interest.

The Ethics Committee's powers

The Ethics Committee is not a typical body for safeguarding integrity in academia. It is a national committee with limited powers: it only investigates cases with an international element, such as when a student, professor or any person with an academic title has published work in foreign journal or defended a PhD or master's thesis abroad. The committee is not an appellant body, as appeals should be dealt with through a general administrative procedure.

The committee's *Charter of Ethics* is in place but has no practical use given that the law itself and the institutional code of ethics sufficiently address all of the relevant issues. However, the committee's *Rules of Procedures* may serve as a powerful operating instrument, as they provide additional procedural arrangements. Based on the activities observed so far, it is evident that the committee should assume a more influential role in upholding academic integrity.

Ethics boards

Established by institutions, ethics boards play a central role in addressing academic misconduct. In civil law systems, academic misconduct procedures are inclined to inquisitorial process requiring a stronger role of ethical and disciplinary bodies and their specialisation and training. In contrast, an adjudicative body in the common law adversarial system serves as an arbiter between two

opposing parties (Clermont & Sherwin, 2002).The law does not mention disciplinary bodies and rules, and the organisation of such bodies is entirely in the hands of the institution. The law may use the term *ethics/disciplinary board* just to acknowledge that disciplinary proceedings are relevant in this respect.

The ethics board's decision-making

The law is self-contradictory because, despite the provision that the decision-making of the ethics board shall be regulated by an act of the institution, it still sets out this procedure. The procedure is nonetheless strictly a matter of the institution's internal regulations.

"The ethics board shall decide the case within six months from the date of submission of the motion for academic integrity violation" (Article 17). This provision is the *raison d'ĕtre* of the law! In the past, universities often swept non-academic behaviour under the carpet. As a result, not a single case was properly investigated until recently. This provision prevents universities from dragging investigations of academic misconduct on until they are cold and forgotten. The six-month time limit is believed to be a reasonable period to complete the process and take a final decision, particularly since there are no international elements involved. However, it is not clear how to sanction the institution if it fails to meet the six-month time limit. The most appropriate solution would be to transfer the case to the Ethics Committee for handling if the six-month time limit is not met. The law mentions a *professional body* as an appeal entity and refers to the Senate as the highest professional body at universities in Montenegro. The Senate decision can be challenged before the Administrative Court. The law outlines the Committee's decision-making procedure. It also establishes the time limit of six months for deciding each case, which may not actually be adequate, as exchanging information with international entities can take much longer than six months. The committee's final decision can be challenged before the Administrative Court.

The ethics statement

The ethics statement is a very common instrument employed by universities, research institutes and journals. It is basically a statement of originality when submitting a thesis/paper. Presumably, it does not apply to undergraduate or secondary research when exploring the work of others, which, by default, must also observe integrity and ethics principles. Given the wording of the article, the ethics statement is concerned with the publication of academic work and promotion to a higher academic rank. It is questionable whether the provision on the ethics statement should be part of the law as an exclusively internal tool.

Originality check

The law suggests that only master's and doctoral theses are subjected to mandatory verification.

An interesting issue was raised during the law drafting process, namely, the *mentor's responsibility* when supervising the development of an academic thesis. The academic community is strongly opposed to explicitly stating the mentor's liability in the case that the thesis does not meet integrity standards, so the paragraph is just a statement of the obvious *the mentor supervises*…. As such, this provision should not constitute part of the law, despite the fact that mentoring is the most powerful tool in preventing non-academic behaviour (Löfström, 2016). Perhaps the most rational suggestion is to acknowledge that *the mentor shall perform his or her supervising duties with a reasonable degree of care (or to a reasonable extent). A reasonable degree of care* is an abstract standard that needs to be concretised by a case law of ethics or other adjudicative bodies. For instance, the academic supervisor is to be held liable and negligent when he or she fails to detect that a student has undertaken verbatim plagiarism from a *Wikipedia* source. On the other hand, the supervisor can hardly be held responsible in the case of good *patchwriting* or skilful modification of a Google translation. By no means can technical solutions to prevent plagiarism replace intensive mentoring, despite the alienation of instructors and students from each other in the digital era (Howard & Jamieson, 2019).

Student cheating

It is not clear why student cheating is singled out in a separate article instead of being defined together with other types of academic integrity violations. Moreover, student cheating is fully handled by the institution, so there is no need to specify its definition in the law.

Sanctioning

The law suggests that penal provisions should constitute part of institutional regulations. However, it fails to define sanctions that can be imposed by the Ethics Committee, which appears to pose a difficulty in practice when a violation is established. By virtue of interpretation, the committee can apply the sanctions outlined in Article 10 concerning plagiarism cases. Nonetheless, revoking work that has been found to be plagiarised seems to be too harsh a sanction for some less serious types of plagiarism.

Other issues discussed in the context of the law

Two issues arose during the law drafting process: *retroactivity* and a *whistle-blower protection*. Civil society advocated for retroactive application of the law to tackle high-profile cases that had remained unresolved in the past. However, this was not possible due to the constitutional principle of non-retroactivity: punishment cannot be imposed for behaviour that took place before the punishment was established. This does not mean that credentials cannot be revoked retroactively when an academic integrity violation is established. Furthermore, alleged academic misconduct that occurred prior to the law entering into force can be addressed by regulations that were in force at the time (e.g., a code of ethics, disciplinary rules, criminal legislation, etc.).

Legal protection of whistle-blowers in Montenegro is ensured by the anti-corruption law. Hence, making the relevant provision in the law would, according to many, create unnecessary duplication of norms. On the other hand, there is a strong argument that whistle-blower protection should have been provided in the law itself, because "in science, where trust in processes and outcomes is vital, whistle-blowing is especially important" (Devine & Reaves, 2016, p. 957). The Recommendation also urges protection of whistle-blowers.

Does a country need a law on academic integrity?

Few countries have decided to resort to legal codes to address ethics issues in higher education. There are several possible reasons for this. Ethics issues are rarely addressed by legal codes, but rather by codes of conduct or honour codes. Furthermore, liability in research may be triggered under civil, criminal and administrative/disciplinary law (Gonzalez Fuster & Gutwirth, 2016). Thanks to the proliferation of American-style education, the importance of academic integrity has never been higher (Cinali, 2016). Most integrity and ethics journals originate from common law countries (Lin et al., 2021). As is well known, common law systems are not inclined to resort to statutes or any other act passed by parliament for achieving policy objectives. Statutes are used only when necessary, and ethics is not likely to fall under this necessity. Scholars from common law systems emphasise preventive and educational approaches to academic misconduct rather than punitive responses (Bertram Gallant, 2008; Carroll & MacDonald, 2006).

Approaches to governance on academic integrity will greatly determine the need for a special law. Here, the distinction between the common law and civil law paradigm may help explain cross-national differences in regulatory

culture. If the country belongs to a civil law regime, there is more room for considering such a law, because this system could be described as more authoritative, rigid and prescriptive, as well as having a strong element of codification in contrast to a common law system. For instance, Scandinavian countries, as typical civil law countries, were among the pioneers in the pursuit of dedicated integrity legislation, often coupled with the establishment of national structures characterised as *quasi-judicial* (Gonzalez & Gutwirth, 2016, p. 7).

These and other differences between the two legal systems, which have often been overlooked by European specialists in the study of academic integrity, entail a need to rethink the current legal mechanisms for addressing academic integrity matters in continental Europe. Relying only on an Anglo-Saxon education style cannot provide all of the answers. Of course, this does not prevent common law countries from adopting such a law, as there is a growing similarity between the two systems in many respects. When it comes to continental Europe, legal pluralism is part of its identity. Contrasts do, however, remain in approaches to academic integrity, which are attributable to the distinct cultural and social identity of each European country. Harmonisation of national higher education in this part of the world is achieved to some extent through the so-called Bologna process, which required very radical structural changes in many institutions (Glendinning, 2016).

Most importantly, each country should decide whether to introduce a dedicated law on academic integrity, considering factors such as country size, the higher education system, the prevalence of academic dishonesty, awareness within the academic community, existing governance approaches, and provisions on ethics in higher education. The decision could be driven by a commitment to enhance good academic practices, clarifying the roles of various stakeholders involved. Integrity might also be seen as part of a broader movement towards transparency in the public sector. Such reforms are usually triggered by a scandal and a desire to rehabilitate the reputation of academia (Drenth & Israel, 2016).

There have been few attempts to develop similar laws (Draft Law on Academic Integrity, Ukraine (2021); The Academic Integrity Bill, India (2021)), but their content suggests covering too many things at once, which will inevitably lead to their unimplementability. Norway enacted a law on ethics and integrity in research (in 2007 and 2017), which governs all research conducted within Norway, encompassing both public and private domains, and introduces a National Commission for the investigation of research misconduct. Its scope is, however, narrower, as it only regulates research misconduct such as falsification, fabrication and plagiarism (Gonzalez Fuster & Gutwirth, 2016, p. 8).

Finally, the Council of Europe encourages European countries "to take all necessary and appropriate action to use existing legislation, guidelines or practices to eradicate education fraud […] They should also consider introducing new legislation or policy measures where required and encourage all education institutions to adopt regulations consistent with that aim" (Committee of Ministers of the Council of Europe, 2022, p. 6).

Conclusion

The answer to the question of whether to resort to the national legislative regulation of academic integrity depends upon multiple factors. If a country belongs to the European civil law tradition, specific legislation could be considered. Ethical and disciplinary rules in academia appeared not to be sufficient in the case of Montenegro, as many cases had not come to a clear resolution in the past. Prior to making the decision to enact such a law, however, it is of outmost importance to avoid overregulation, prepare a detailed analysis of the existing regulatory framework, and demonstrate that there are benefits to legislative intervention in this policy area. The Montenegrin law on academic integrity can be characterised as a positive legal phenomenon, particularly if amended as suggested by the present paper. Guided by the principle of institutional autonomy, it sets only minimum standards in safeguarding academic integrity. Consequently, the law is a rather short legal text (31 Articles), which ensures its effective enforcement. Many observers have commented that the law refers more to publishing and corresponding plagiarism than to academic research and professional misconduct. This is partially true due to the high prevalence of plagiarism among academic misconduct. The Council of Europe offers "a common European approach in countering education fraud and promoting ethics, transparency and integrity in education" (Committee of Ministers of the Council of Europe, 2022, p. 2). Although a soft legal instrument, the Recommendation is an exclusive intergovernmental standard that can assist legislators in rethinking rules governing academic integrity.

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