

# LAW ON THE UNIVERSITIES IN CATALONIA. A SPECIFIC REGULATORY FRAMEWORK FOR THE UNIVERSITIES IN THE CATALAN UNIVERSITY SYSTEM

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Law 1/2003 of 19 February on the Universities in Catalonia (Llei d'Universitats de Catalunya, LUC). is the first law to be adopted by the Parliament of Catalonia that in general terms incorporates the different aspects of competence as regards the universities. The authoress, who actively contributed to the drawing up of the draft bill, analyses the contents of the law and explains how lawmakers have endeavoured to capture the perceptions of Catalan society and in particular of the academic community to design a model appropriate to the realities and needs of Catalan universities.

The article refers to the concept of university system, which brings together the different universities established in Catalonia and those set up or recognised by the Catalan Parliament in the future; it explains the new concept of the university community that is being integrated in a participative way on a European level, with special mention of the Catalan model for teaching and research personnel on contract from the universities and the instruments for inter-university mobility, co-operation and collaboration; it underlines the importance of the actions of students and former alumni, and the areas established by the Law in which they can participate, together with their rights and duties; it refers to the Catalan language as a sign of identity of the Catalan universities'; it explains the development of the Catalan University Quality Assurance Agency which has taken on important functions concerning teaching staff and the assessment of university academic activities; and, lastly, it points out the main new developments in the Inter-university Council of Catalonia, the main body for university co-ordination, and in the structure of the Social Councils in order for these to continue performing the important role of representing society as a whole in the universities.

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“Over and above excelling and distinguishing themselves, it is the contribution made by the Catalan universities and Catalan culture to the spiritual heritage of humanity that reflect the true spirit of our nation”.

*Bill for the Statute of Autonomy for the Catalan Universities, 1918.*

## **1. Law 1/2003 of 19 February on the Universities in Catalonia. The full exercising of competence of the Generalitat de Catalunya and Catalan university autonomy.**

Law 1/2003 of 19 February on the Universities in Catalonia (LUC) was adopted by the Plenary Assembly of the Parliament of Catalonia and came into effect on 20 February 2003 on publication in the Official Gazette of the Generalitat de Catalunya (DOGC no. 3826). The Law consists of a preamble, 165 articles, 12 supplementary provisions, 7 temporary provisions, 1 derogatory provision and 3 end provisions.

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### **Law 1/2003 is the first law to be adopted by the Parliament of Catalonia that in general terms incorporates the different aspects of competence as regards the universities.**

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Law 1/2003 is the first law to be adopted by the Parliament of Catalonia that in general terms incorporates the different aspects of competence as regards the universities. The capacity to legislate over the universities emanates from article 15 of the Estatut d'Autonomia de Catalunya (EAC) (Statute of Self-Government for

Catalonia), which recognises the full jurisdiction of the Generalitat de Catalunya (Government of Catalonia) to regulate and administer education throughout Catalonia on all levels and in all forms, means and areas within the scope of its competence, without prejudice to article 27 of the Spanish Constitution and Constitutional Laws which, pursuant to the first section of article 81 of the same, elaborate on this matter; the faculties attributed to the Spanish State according to section 1, number 30 of article 149 of the Spanish Constitution, and the high level of necessary inspection to ensure compliance and guarantee.

In making specific reference to the full jurisdiction of the Generalitat de Catalunya in education, the wording of article 15 (EAC) thereby makes a distinction between this and its exclusive jurisdiction recognised in articles 9 and 12 (EAC). It also distinguishes it from the Generalitat de Catalunya's competence in legislative and executive functions in the instruments systematised in article 10 (EAC) and clearly covers spheres that are more extensive than the mere execution of State legislation in matters laid down in article 11 (EAC). This is the only area in which the Generalitat de Catalunya is attributed full jurisdiction.

The bill for the Estatut de Sau (Sau Statute), which was adopted by the Legislative Assembly of the Parliament of Catalonia, initially attributed exclusive competence to the Generalitat de Catalunya in matters of education<sup>1</sup>. According to the wording that was finally adopted after a highly interesting debate in the session on 13 August 1978<sup>2</sup>, the exclusive competence initially attributed to the Generalitat de Catalunya was finally defined as full competence, as currently laid down in article 15 (EAC), even though this term had never been used before in either the Spanish Constitution or the Statute and was without precedent in current doctrine at that time.

<sup>1</sup> According to the wording of Article 16 of the draft bill for the Statute of Autonomy for Catalonia and even before, in the first draft, the Generalitat de Catalunya (Government of Catalonia) was attributed exclusive competence in matters of education.

<sup>2</sup> Debate between the Comisión Constitucional (Constitutional Commission) and the Delegació de l'Assemblea de Parlamentaris de Catalunya (Delegation of the Legislative Assembly of the Parliament of Catalonia), on the grounds of the drafting of the article regarding education proposed by the Legislative Assembly of the Parliament of Catalonia.

This first stage of the statutory provision for education, together with the express reference made to the Spanish Constitution by the extensive wording of article 15 of the Statute, in particular article 27 that recognises the fundamental right to education and the freedom of education, and article 81, which orders the development of fundamental rights and civil liberty by means of constitutional laws, meant that any definition of the limits of full competence in education would be a complex issue. In conceptual terms, this competence has turned out to be a changeable, evolutionary process, at times wide-ranging and at others very limited, pursuant to the regulations contained in the different constitutional laws that have followed one after another<sup>3</sup> and the definitions contained in the numerous doctrines issued by the Tribunal Constitucional (Spanish Constitutional Court), all of which were a consequence of the high level of dispute over competence resulting from the very laws themselves and their statutory enactment. Ultimately, however, full competence has drawn progressively closer to the development of legislative and executive functions more than any other type of statutory jurisdiction recognised in the Generalitat de Catalunya.

The scope of education, and in particular that of education as an assembly of systems and methods used to instruct and educate and therefore to also put people's right to education into effect, has been a subject of special interest throughout history. The enormous importance of the educational model that regulates and is applied by society has a highly significant influence on both its structure and the process of social, cultural, political and economic evolution and is the principal reason why education is one of the most important stumbling blocks and highly controversial elements in the configuration and adoption of constitutional texts. This is why there is extensive mediation and numerous proposals and amendments to articles on education that bring together the different tenden-

cies and ideologies, as occurred in the debates concerning article 27 of the Spanish Constitution and also article 15 of the Statute of Autonomy for Catalonia and the unavoidably long sessions of procedure and approval of particular constitutional laws on the same subject, the most recent examples being Organic Law 6/2001 of 21 December on the Universities and Organic Law 10/2002 of 23 December on Quality in Education.

Within this context, the fact that the process of interpretation and enactment of article 15 (EAC) has been ambiguous, troublesome and one of constant change and instability is understandable, together with the ongoing developments that have occurred, with the application of the article at times being subject to serious constraints from actions by the Spanish State. At a time when the regulatory competence of the Autonomous Regional Communities was being reduced to a minimum, pursuant to the ruling of the Spanish Tribunal Constitucional 5/1981 in resolution of an appeal against the unconstitutionality of Organic Law 5/1980 of 19 June on the Statute of School Institutions (LOECE), which was contested by the Catalan and Basque Socialist parliamentary groups, together with ruling 77/1985 passed by the Spanish Tribunal Constitucional in resolution of the prior appeal by the Coalición Democrática against the unconstitutionality in connection with approval of the definitive project for Organic Law 8/1985 of 3 July regulating the right to education (LODE), the scope of regulatory competence of the Autonomous Regional Communities was being reduced to such a degree that in practice they had very little possibility of legislating over most of the aspects that constituted competence in the area of education due to the fact that the Spanish Tribunal Constitucional had accepted that the competence of the Spanish State to lay down the basic regulations for enactment of article 27 (EC) empowered the Spanish State to adopt statutory regulations that

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<sup>3</sup> Organic Law 5/1980 of 19 June on the Statute of School Institutions; Organic Law 11/1983 of 25 August on university reform; Organic Law 8/1985 of 3 July, that regulated the right to education; Organic Law 1/1990 of 3 October on the general planning of the education system, Organic Law 9/1995 of 20 November on the participation, evaluation and governing of teaching institutions, and the most recently adopted Organic Law 6/2001 of 21 December on Universities and Organic Law 10/2002 of 23 December on Quality in Education.

were mandatory for the Autonomous Regional Communities and were exempt from modification by them. This reduced the scope of autonomous regulation to the mere approval of rules of procedure enacting basic regulations of the Spanish State.

Subsequently, in Ruling 137/1986, which was issued following the contesting by the Spanish State of the Basque Parliament's Law 15/1983 of 27 July, whereby the Euskal Ikastolen Erakundea was created, the Spanish Tribunal Constitucional substantively modified its previous doctrine in recognising the competence of the Autonomous Regional Community to legislate. The aforementioned ruling thereby became one of the maximal points of reference for the recognition and structuring of the regulatory competence of the Autonomous Regional Communities. The concept of basic regulation came to be defined as broad outlines or essential criteria, thus contradicting the characteristic regulatory nature of a regulation, which expresses in concrete terms the scope of regulation. The Spanish Tribunal Constitucional called for the express collaboration of both constitutional and ordinary law to proceed with the regulation of the area of education and in this way definitively opened the way to autonomous legislation.

Once the initial doctrinal dissertation concerning the effective scope of autonomous legislative competence had been transcended, along with the consolidation of the interpretation whereby full competence enables the Generalitat de Catalunya by law to adopt its own Parliament and specific policies regarding education within the framework of the Constitution and the entire body of constitutional principles applicable to the subject, the university community in Catalonia began to call insistently for its own universities law. This demand, which was made right from the time of approval of the Statute

of Autonomy and more particularly once the transfer of services relating to universities<sup>4</sup> from the Spanish Government to the Generalitat de Catalunya had become effective, gained momentum particularly when Parliament adopted legislation relating to the universities.

The origins of the LUC thus go back to the demands made over a long period of time by Catalan institutions, the different bodies and groups in the university community and society in general. For the very first time, the Catalan University System is now regulated by legislation that brings together the core elements of a model that is adapted to the particular needs and characteristics of Catalan universities. Only sectorial laws on specific aspects had been hitherto adopted, such as Law 26/1984 of 19 December on university co-ordination and the setting up of social councils and much later Law 15/1998 of 28 December on the Consell Interuniversitari de Catalunya (Inter-university Council of Catalonia) and Law 16/1998 of 28 December on the social councils in the public universities in Catalonia. All of these laws conform for the most part to the current framework of co-ordination, co-operation and participation between the universities, society and the educational authorities, which the new law respects and reinforces.

The LUC will need to be developed, interpreted and applied with the utmost respect for the university autonomy recognised in article 27.10 (EC), which the Spanish Tribunal Constitucional has closely associated with academic freedom and therefore the freedom of teaching, research and studies.

The Catalan Law establishes full recognition university autonomy, which is constitutionally recognised, as being the main fundamental provision, which assumes that each university is trustee of the general interest for high-

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<sup>4</sup>Put into effect by Royal Decree 305/1985 of 6 February on the transfer of competence of governmental services with regard to the universities from the Spanish Government to the Government of Catalonia (BOE no. 62 of 13 March 1985).

er education and assumes the full freedom to organise and operate in a self-governing capacity and complies with the duty of rendering account to society in the terms laid down by the law<sup>5</sup>.

### **1.1. Development of the Catalan University. Confidence in democracy and progress**

The preamble of the LUC gives an account of the names and events that have marked the history of Catalonia and its universities, as well as the long history of the Catalan universities which date back many centuries. The beginnings of the Catalan university date from the Estudi General de Lleida (Lleida General College), established by King Jaume I in 1300 and run on the principle of university autonomy and the universality of knowledge. Later on between 1533 and 1645, general colleges or universities were established in Barcelona, Girona, Tarragona, Vic, Solsona and Tortosa. However, it was from the mid 18th century, following the closure of the original universities in 1714 at the end of the Spanish War of Succession and the abolition of all Catalan institutions, that modern and practical educational activities began to receive support from the Junta de Comerç in the city of Barcelona. The restoration of the University of Barcelona in 1837 made an important contribution to university development and led to the advent of outstanding intellectuals and professors in different areas of knowledge, including Milà i Fontanals, Duran i Bas, Ramon y Cajal and August Pi i Sunyer.

The important work of the Institut d'Estudis Catalans (Institute of Catalan Studies), which has supported higher education and research in and on Catalonia from the time when it was founded, is recognised in the introduction of the law. Express mention is also made of the internal university reform within the universities them-

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selves, a movement that also put the Catalan political autonomy movement back on course, which generated a series of ideals embodied in the Congressos Universitaris de Catalunya (Catalan University Congresses) held in 1903 and 1918. These have since continued to form part of the heritage of the Catalan University System through the establishment of the core values of good university practice based on the principles of autonomy, freedom of speech, pedagogical renewal, the quality of university education and social and cultural commitment to Catalan society. The preamble also refers to the important step forward made with the setting up of the Universitat Autònoma de Barcelona in what was a new concept for the modern university, with rectors such as Jaume Serra Hunter o Pere Bosch i Gimpera. Mention is also made of an estatut d'autonomia propi (statute of self-government) proclaimed in 1933 during the period of office of Pompeu Fabra as president of the Patronat (board of trustees), which remained in force until 1939 (including interruptions), as a result of which the regulation of non-tenured teaching staff (one of the main features of the LUC), the inclusion of students in governing bodies and the renewal of study programmes all stand out.

The fundamental role of the universities during the Franco dictatorship as a platform for democratic and peaceful

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<sup>5</sup> STC 26/1987 analysed the scope and conceptualisation of university autonomy, which was subsequently included in other rulings. The make-up of university autonomy as a fundamental right or institutional safeguard was resolved by the Tribunal Constitucional to the effect that, in spite of it being a fundamental right, there is no specific or complete separation between the two considerations and that fundamental rights recognised in the Constitution also frequently constitute institutional guarantees.

calls for freedom and as an affirmation of the functioning of society is also given special mention in the preamble. This includes the importance of the activities of the Sindicat Democràtic d'Estudiants (Democratic Students Union) of the University of Barcelona, with the events of the “caputxinada” at the Sarrià convent, where the Manifesto for Democracy in the University was presented and, subsequently, the 1975 Bellaterra Manifesto, which laid the foundations for renovation of the Catalan universities and contributed to the process of political and social transition towards democracy in Spain. The 3rd Catalan University Congress was held in 1978 with the intention of seeking an alternative university policy within the context of the recently established democracy. The Consell Interuniversitari de Catalunya (Inter-university Council of Catalonia) was also established that same year as a co-ordinating authority between the universities and went on to become a forum for open and permanent reflection that continues to serve as a key co-ordinating element in the Catalan University System.

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**The preamble of the Law describes the long university tradition in Catalonia and points out the substantive change brought about by the progressive consolidation of the current university system in Catalonia.**

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The preamble of the Law thereby describes the long university tradition in Catalonia and points out the substantive change brought about by the progressive consolidation of the scientific and democratic nature of the current university system in Catalonia. It also comments on its extensive geographical distribution as a result of the setting up and recognition of universities throughout Catalonia, which has significantly contributed to stimulating the areas and municipalities where the universities and

university facilities are located. Recognition of the Universitat Oberta de Catalunya (UOC) (Catalan Open University), which offers distance education with the guarantee of best quality education and technology, was also important and the UOC has come to serve as an international point of reference. The universities in Catalonia have likewise enhanced their relations with universities in other parts of the world where Catalan is spoken through the Xarxa d'Universitats (Universities Network), which is organised by the Institute Joan Lluís Vives. The LUC, which has inherited a long and extensive university tradition, vindicates the claim to Catalan political autonomy as the inspiration for the setting up of an appropriate framework for higher education and seeks to contribute to the setting up of a Universal and particularly Europeanised university system by enhancing the contribution made by Catalan universities to university education as a whole.

The preamble describes the momentum that followed the adoption of Law 26/1984 on university co-ordination, which established the social councils and adapted the Consell Interuniversitari de Catalunya (Inter-university Council), which had been in existence since 1978, to the new situation at that time, to comply during the initial stage with the important task of university co-ordination at a time when the Generalitat de Catalunya was still lacking any effective powers in matters of education. The Law seeks to incorporate, with the necessary adaptations, the Catalan regulations that followed on from the adoption of Laws 15/1998 and 16/1998 on the Consell Interuniversitari de Catalunya and the social councils, respectively, by progressively contributing to the ongoing open debate in Catalonia on the model of university to be followed, a matter that is controversial in important aspects regarding the role of society in the universities and the form of representation in the universities that society is to have.

The preamble ultimately sets the Law within the context of the idea of democratic university, following the break with the centralist Spanish university system with the

approval of the 1978 Spanish Constitution that expressly laid down university autonomy in point 10 of article 27 and started by establishing the university model laid out in the previous Organic Law 11/1983 of 25 August on university reform (LRU), which considered the university not as the exclusive heritage of the members of the university community but as a public service attributable to the general interests of society as a whole.

Prior to the LUC, there was no broad framework with a legal basis in Catalonia to regulate, amongst other things, a policy providing for teaching staff from the Catalan Autonomous Regional Community in the Catalan universities, an issue that has long been considered to be essential although Organic Law 6/2001 of 21 December on the Universities does recognise the competence of the Autonomous Regional Communities to regulate the legal status of teaching staff contracted for university positions, in spite of certain limitations in its contents<sup>6</sup>.

Within this historical and legal context, and with the clear intention of giving a new, 21st century impetus to the universities, the Law makes a clear commitment to Europe and for this reason it is clearly expressed in the beginning articles that the aim is to plan the Catalan University System within the context of the European area of higher education. This fundamental and essential declaration is made specific in a series of fundamental principles that are detailed throughout the Law and that can be summarised as:

- a) The full recognition of university autonomy.
- b) The universality of knowledge and scientific method.
- c) The promotion of research, development and technological innovation.
- d) Improvement in the quality of teaching and the contribution to life-long learning.
- e) The promotion and assessment of overall quality.

- f) Commitment to the public interest and the participation of society.
- g) University co-ordination that respects geographical diversity and balance and that progresses towards the full integration of the Catalan universities in the European area of higher education.
- h) The principle of equal opportunity to university admission and tenure.
- i) The co-ordination of actions in order to achieve the full integration and promotion of the Catalan universities in Europe and worldwide.

## **1.2. The threefold distribution of competence with regard to the universities.**

The system for distributing competence, which devolves upon the Spanish State, the Generalitat de Catalunya and the universities themselves, needs to be specific distinguished and, at the same time, requires the involvement of all three authorities in the different regulatory and executive areas in respect of university issues, each one in accordance with the effective scope of its own competence. In this way, a superposition of the following occurs:

- a) University autonomy, which is recognised in the Constitution and established by law.
- b) Exercising of the exclusive competence that the Constitution attributes to the Spanish State in sections 18 and 30 of the first point in article 149 in connection with article 27, whereby it is entrusted to watch over the equality of all citizens in the exercising of the right to education, establish the bases of the legal arrangements and regulate the conditions of eligibility, awarding and official approval of academic and professional qualifications.
- c) Exercising of the competence of the Generalitat de Catalunya recognised in articles 15 and 9.7 of its Statute of Autonomy.

<sup>6</sup>The regulation of teaching staff and contracted researchers was one of the issues that was most discussed and claimed by the Government of Catalonia, as well as being the central issue of the bilateral negotiations with the Spanish State over the LOU.

The difficulty that arises with the constant redefinition of areas of joint competence between the three authorities and the expansive and centralist ideas of the Spanish State in the defining of the foundations for education has generated a large number of appeals and constitutional disputes relating to the universities, many of which have already been resolved by the Tribunal Constitucional following the adoption of the LRU, which was revised in Ruling 26/1987 on 27 February<sup>7</sup>. The frequent tension and claims of jurisdiction made in connection with the passing and development of the LOU, which will undoubtedly serve as a new milestone for constitutional doctrine as applied to the universities in the 21st century, are still however to be resolved.

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**The Catalan Universities Law has endeavoured to make a broad interpretation of the competence of the Generalitat de Catalunya through the regulation of important aspects such as university teaching staff and researchers.**

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Within this legal and doctrinal framework, the Catalan Universities Law (LUC) has endeavoured to make a broad interpretation of the competence of the Generalitat de Catalunya through the regulation of important aspects such as university teaching staff and researchers, and also in the adaptation of the legal status of the Agència per a la Qualitat del Sistema Universitari de Catalunya by attributing it with important functions over the universities and especially contracted teaching personnel and researchers.

## **2. The essential core structure of the Catalan Universities Law: the Catalan University System**

The concept of university system used in the Law identifies and provides for the Catalan model as a whole while distinguishing it from other state or autonomous university systems. The comprehensiveness of the Catalan University System, which is made up of the different universities in the Catalan system together with universities in other systems, enables the essential features of planning to be applied in the same way to all universities in Catalonia. This unified way of dealing with the model, which invests it with authority, should neither adversely affect nor detract from university autonomy, which devolves upon each individual university, and this is patently clear in article 4, note a) (LUC). The universities in the system can specialise and develop their distinctive features through their exercising of autonomy and in their individual university policy. Moreover, in its appraisal of the system's diversity, the Law states that university planning needs to be based on specialisation and diversification within the context of inter-university co-operation and that, in accordance with article 116, this must be a criterion to be followed in the development of university programmes. The Spanish Tribunal Constitucional has declared that university autonomy devolves upon each particular university and not to the university system as a whole, according to the literal meaning of article 27.10 EC. For this reason, each one can adopt the decisions that it considers appropriate and these do not necessarily have to coincide with those adopted by other universities.

### **2.1. The universities that make up the Catalan University System.**

The Law is explicit in its declaration that the Catalan University System consists of the public and private uni-

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<sup>7</sup>The regulations laid down by the Spanish State have also led to rulings of great interest, such as the SSTC 162/1987, 146/1989, 235/1991, 82/1994, 131/1996 and 188/2001, amongst others. Mention must also be made of the presentation of various appeals of unconstitutionality on the adopting of the controversial LOU against certain of its provisions. (BOE no. 112 of 10 May 2002).

versities that are currently established in Catalonia and which appear in article 2. These are the University of Barcelona, the Universitat Autònoma de Barcelona (UAB) (Autonomous University of Barcelona), the Universitat Polytechnica de Catalunya (Polytechnic University of Catalonia) (UPC), the Pompeu Fabra University, the University of Lleida, the University of Girona, the Rovira and Virgili University, Ramon Llull University, the Catalan Open University (Universitat Oberta de Catalunya, UOC), the University of Vic, and the Universitat Internacional de Catalunya (International University of Catalonia). Universities set up or recognised by Parliament in the future will also form part of the Catalan University System.

This definition of the composition of the Catalan University System does not include:

- a) The Universidad Nacional de Educación a Distancia (National Distance Learning University, UNED), a Spanish state university that provides university distance education throughout the whole of Spain,
- b) The Universidad Internacional Menéndez Pelayo, an autonomous body under the Spanish Ministry of Education, Culture and Sport, which basically organises post-graduate education.
- c) Universities set up in Catalonia on the initiative of the Catholic Church and that, pursuant to supplementary provision no. 4 of the LOU, do not need parliamentary laws to be recognised,

- d) Universities set up or recognised through the application of article 4 of the LOU, note b), by law by the Spanish Parliament (Cortes Generales), at the proposal of the Government, in accordance with the Governing Council of the Autonomous Regional Community of the region in which they are established.

Article 4 of the LOU in fact authorises the Spanish Government to support the universities on a nation-wide basis and although this article has been legally disputed, as recorded in the procedural dossier of the draft, it was endorsed unaltered<sup>8</sup>. Supplementary provision no. 1 of the LOU reserves for the Parliament (Cortes Generales) and Spanish Government the jurisdiction that the Law attributes,

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### **The concept of university system used in the Law identifies and provides for the Catalan model as a whole while distinguishing it from other state or autonomous university systems.**

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respectively to the legislative Assembly and the Governing Council of the Autonomous Regional Communities, with regard to the universities established or recognised by Spanish parliamentary law in accordance with article 4, and in view of the special characteristics and the scope of the activity of the UNED and the Universidad Menéndez Pelayo.

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<sup>8</sup> This competence reserved for the Spanish State in article 4 of the LOU could be considered to be unconstitutional on the following grounds, amongst others:

- a) The establishment and recognition of universities constitutes an executive action that as such, by virtue of the distribution of competence in the matter, should correspond to the Autonomous Regional Communities, which have received and assumed the transfer of competences in matters of universities in their entirety.
- b) Competence is not available as the Tribunal Constitucional has repeatedly stated and therefore the requirement of the corresponding Autonomous Community's prior agreement is insufficient.
- c) The Spanish State has regulatory competences with regard to official qualifications and the promulgation of basic regulations that extend on article 27 EC (article 149.1.30 EC), neither of which has an influence in this matter.
- d) The LRU that provided for this possibility in the second end provision attributes the Spanish State as having exclusive competence to guarantee the right to education as long as the Autonomous Regional Communities do not assume competence in this matter.

A previous constitutional pronouncement exists on this matter, given that articles 5.1, b) and 58.1, b) of the repealed LRU, were the object of an appeal of unconstitutionality by the Basque Country on the consideration that they infringe its full powers in education (article 18 EAPB). The Spanish Tribunal Constitucional declared that the authority reserved for the Spanish State does not exclude that of the Autonomous Regional Community by virtue of its Statute of Autonomy. Nevertheless, and taking into consideration that change in constitutional doctrine does occur, article 4.1 b) and the first supplementary provision of the LOU have again been subject to revision by the Tribunal Constitucional in different appeals of unconstitutionality.

Law 1/2003 recognises the leading role befitting the Catalan Parliament concerning new universities set up in Catalonia and accordingly article 101.2 establishes that in order for universities to be established or recognised, as laid down in article 4.1, b) of the LOU, the accord of the Executive Council of the Generalitat de Catalunya must be ratified by Parliament. The Catalan Law thereby restores Parliament with its ultimate decision-making

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## The mission of teaching is to ensure quality university training through recognised professional competence and innovative and effective methodologies

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capacity over the universities in Catalonia, in spite of the fact that the LOU imitates the LRU in continuing to reserve university establishment and recognition as a matter to be legislated over by the Spanish Parliament (Cortes Generales). Application of this article, where appropriate, will undoubtedly be the subject of debate and special attention.

### 2.2. Objectives of the Catalan University System. The mission of teaching, research and study activities.

Law 1/2003 provides for the fundamental objectives that are to be respected and sought after by all universities in the Catalan University System. These objectives also single out and adapt the functions of university institutions to the Catalan system:

a) The founding, transmission and dissemination of culture and scientific, humanistic, technical and profes-

sional knowledge, together with preparation and training for professional practice.

- b) The encouragement of critical thinking, the culture of freedom and pluralism, and the transmission of civic and social values characteristic of a democratic society.
- c) Enrichment of the intellectual, cultural and scientific heritage of Catalonia with the object of overall social and economic progress and sustained development.
- d) The active use of the Catalan language in all areas of knowledge and their contribution to the process of normalising the use of Catalan in all scientific, cultural and social contexts.

These objectives as applied to academic activity are reflected in articles 7, 18 and 20 of the Law. It thereby states that the mission of university study programmes is to prepare and train students on an all-round basis that contributes to the development of each individual's personality and the training of university students who are creative and committed to their professions, as well as scientific progress and the future of Catalan society. The mission of teaching is to ensure quality university training through recognised professional competence and innovative and effective methodologies. The mission of research consists in giving impetus to advances in knowledge with training, research and technological innovation and ensuring that new knowledge and technologies are made available to society through the implementation of appropriate transfer mechanisms. The learning of value systems within a university context and the enhancement of student abilities are considered in article 5 an integral part of the overall process of a student's educational and training experience and for this reason the universities need to stimulate and support initiatives that are complementary to official education that lead to the transmission of the values of freedom, responsibility, social co-existence, solidarity, participation and full citizenship.

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<sup>9</sup>Brussels, 21.11.2001 COM (2001) 681 in fine.

The European Commission white paper on Europe and Youth: a New Impetus<sup>9</sup> considers that formal learning, structured around educational objectives that lead to a qualification or certificate, and non-formal education, which may not necessarily lead to any qualification but that is structured and intentional, need to be complemented. In the consultation process carried out during the preparation of the white paper, young European university students showed that they want more awareness to the realities of present-day life with more flexibility and less rigidity on the part of all concerned in the process of higher education. The need for life-long education and training in all fields has demonstrated in recent years that the necessary competence can only be acquired through learning in contexts that are formal, non-formal as well as informal and for this reason one of the recommendations of the Commission is to promote non-formal education as an integral part of the learning process and education, a recommendation that is also laid down in the Catalan Universities Law.

Young people and youth associations that defend the idea of a Europe based on the principles of peace, prosperity and democracy have shown that they are interested in an education in value systems. It is obvious to all that the clear affirmation of an area of rights and freedoms is much more necessary today than that of an economic ideal for Europe and their wish for more active participation in European integration and the defence of fundamental values and human rights is stated in the proposals included in the Commission's White Paper<sup>10</sup>.

Given its importance in terms of the objectives of the Catalan University System to firmly establish its identity, pursuant to article 3 EAC, the declaration that Catalan is

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## **Catalan is the first language in Catalan universities and is therefore the language of normal use in university activities needs to be underlined**

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the first language in Catalan universities and is therefore the language of normal use in university activities needs to be underlined.

The use of the two official languages is determined by Law 1/1998 of 7 January on official language policy, and the Govern (Executive Council) of the Generalitat de Catalunya (Government of Catalonia) and the universities, within the framework of this law and the scope of their respective jurisdiction, have to promote the knowledge and use of the Catalan language in all areas of university activity and enable all members of the university community to learn Catalan. Article 6.4 of the LUC establishes that teaching staff, apart from visiting and analogous cases, must have a sufficient knowledge of both official languages in accordance with the requirements of their academic work. The Executive Council of the Generalitat de Catalunya, pursuant to the prevailing regulation and through the Consell Interuniversitari de Catalunya, is to subsequently guarantee that such appropriate knowledge is specified on appointment and assessment selection processes, as well as ensuring that appointment and the incorporation of new members into the university community does not alter the normal use of language in teaching activities and the process of language normalisation in the universities. Note is made of the drafting of article 6 and particularly section 4,

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<sup>10</sup> Chapter 5, "A Europe based on values", from the White Paper on Youth, seeks the opening of Europe to the rest of the world; the defence of essential values; tackling racism and xenophobia; the participation of young people; mobility, the main asset of European integration and voluntary service as a response to young people's needs.

<sup>11</sup> The final draft of the provision resulted from the agreement between CIU and ERC on the amendments made by the ERC political party to the LUC. There is an interesting report on the regulation of language training and university teaching staff in Catalonia, dated 20 march 2002 by Jordi Dalmases and Eva Pons (UB), which was endorsed by the vice-rectors in charge of language policy in the Catalan public universities.

which has been given special attention by the universities and different political groups<sup>11</sup>.

Article 9.3 of Law 1/1998 of 7 January on official language policy attributes the universities with competence to regulate the use of the Catalan language within the scope of their jurisdiction, pursuant to the first section of the article. Furthermore, article 22 lays down that teaching staff and students have the right to express themselves in each case, either orally or in writing, in their preferred official language in institutes of higher education and universities. Both the Government of Catalonia and the universities must adopt appropriate measures to safeguard and promote the use of Catalan in all areas of teaching, non-faculty and research activities. Article 24 lays down that teaching staff in centres of university education, except for visiting and other analogous cases, must have sufficient knowledge of both official languages, in accordance with the requirements of their teaching work, and that it is the universities that must establish the relevant mechanisms and provisions in order for this to be complied with.

In the usage made of the legal qualification contained in Law 1/1998, and in the exercising of university autonomy, which amongst other aspects comprises the drawing up of statutes and other infrastatutory regulations, some universities have adopted regulations concerning the use of language. The legal framework concerning the Catalan language has been subject to controversy in the courts and also in the media, which has had a widespread effect. While certain clarifications of a more formal nature have been affected by these rulings, the essential content of the aforementioned regulations and therefore policies relating to the use of language have not been invalidated.

Contrary to what would be desirable and expected of a law on universities in 2001, the LOU made no reference or gave any consideration at all to the official autonomous languages, nor to the ability of university teaching staff or other members of the university community to speak or understand these languages. The diversity and wealth of the existing plurality of languages in the European area of higher education is valued positively and not considered as an obstacle to the mobility of members of the university community if regulated appropriately and in spite of the inevitable expansion and official ratification in favour of those languages that are more extensively used<sup>12</sup>. The signs of identity of a country are the same as those of its universities and form part of its heritage.

The fact that the LOU makes legal reference to the powers of the Autonomous Regional Community and the universities themselves to establish the requirements for language accreditation in the processes of appointment to university teaching posts is particularly useful in relation to civil servant employees, especially considering the highly restrictive nature of the doctrine of the Spanish Tribunal Constitucional as regards the regulatory competence of the Autonomous Regional Communities over teaching staff with tenured posts in the universities. This same recognition should have been given to contracted teaching staff although in this case mediation by the autonomous regional authorities is justified, amongst other reasons, by article 48 of the LOU, which attributes the Autonomous Regional Communities with the authority to establish their own legal status. Due to the lack of any direct regulation and with a view to establishing the necessary legal protection for intervention by the Generalitat de Catalunya and the universities in this matter, one must turn to the body of constitutional principles and also the regulations of

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<sup>12</sup>Cultural and linguistic diversity and the diversity of higher education systems are exponents of democracy and of the richness of the European area of higher education, as was declared by the Conference of Ministers meeting in Prague (2001).

the Spanish State and, above all, of the Autonomous Regional Communities that are applicable.

With regard to the language requirements in the appointment and assessment of university teaching staff, one must bear in mind the ongoing developments in the general doctrine of the Spanish Tribunal Constitucional with regard to appointment to the civil service and the required level of knowledge of the languages of the Autonomous Regional Communities to this end. The Tribunal Constitucional has summarised its doctrine as regards the official status of a language to the effect that a language is understood to be official “when it is a valid means of communication between the citizens and the government; when its official status is affirmed on a territorial basis or, in other words, when it affects all governmental powers based in the territory of the corresponding Autonomous Regional Community; and also when it carries with it a series of language rights, amongst which is the prevailing right of usage that is fully valid and effective (STC 82/1986 of 26 June, amongst others).

Choice of language is a right of individual freedom deriving directly from article 3.2 EC that has both an active side, where one can express oneself in legal contexts and with government authorities, and a passive side, where one is addressed in the chosen language. The safeguarding of both depend, amongst other things, on the specific legal situation of the individual, the level at which he or she is effectively subject to the institution in question, and the degree to which one assumes a real obligation with regard to a particular function. Decisions with regard to these aspects can be made by the universities, which will need to safeguard to the utmost the right to select teaching staff and students from the Autonomous Regional Community. The role of the Consell Interuniversitari de Catalunya in applying the

LUC will be important for it is in this authority where the legal mandate whereby sufficient knowledge of language is a requirement in the processes of appointment and assessment of teaching staff must be guaranteed. It is the Generalitat de Catalunya and the universities that jointly attain this objective and commitment together.

Moreover, the importance of the knowledge of foreign languages appears in article 6.6 of the Law, which lays down that the Generalitat de Catalunya and the universities must set up programmes promoting the knowledge

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## **A knowledge of foreign languages is essential for promoting mobility and exchange**

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of other languages and that they can include the use of these languages in university academic activities as well as offering specific options in degree and foundation courses. A knowledge of foreign languages is essential for promoting mobility and exchange and for this reason young people in Europe call for education in foreign languages that enables them to actively participate in the mobility schemes introduced by the European Union<sup>13</sup>.

Law 1/2003 places joint responsibility of university action on all governmental authorities and expressly states that they must collaborate with the universities to help them achieve their objectives. The government, the universities themselves and society in general must all combine efforts in order for the public university service to be of the highest quality and efficiency with an increasingly broad range of services aimed at a plurality of users and clients in a society that is becoming increasingly complex.

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<sup>13</sup>This is mentioned in the White Paper on Young People by the Commission of the European Community (chap. 2 on education).

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**The government, the universities themselves and society in general must all combine efforts in order for the public university service to be of the highest quality and efficiency**

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**2.3. University teaching and research: institutions and structures**

The Catalan University System as it is legally defined is made up of the universities established or to be established in Catalonia and consequently all university centres, institutions and structures.

The regulation generally applied to the universities and university centres and institutions is contained in article 4.3 of the LOU, which stipulates that, in order to guarantee the quality of teaching and research and the university system as a whole, the Spanish Government is to determine the basic requirements for the setting up and recognition of universities, which will establish the means and appropriate resources in order for the universities to fulfil their functions<sup>14</sup>. During the development of the LRU, the Spanish Government established the regulations for the requirements applicable in university institutes without hardly any leeway for autonomous regulation, which motivated the Generalitat de Catalunya to present a claim of jurisdiction against Royal Decree 557/1991 of 12

April<sup>15</sup>. The new fundamental legal framework must however allow for more freedom in the design of a complementary model for university institutes in the Autonomous Regional Communities and universities that require this, and particular attention will need to be paid to enactment by the Spanish State of article 5.3 of the LOU in order to maintain the widest scope possible for autonomous competence and university autonomy with regard to organisational structure and university institute policy, which is closely linked to policy for studies. Both of these constitute the essential structure of what is made available in the Catalan universities and are the main purpose of the organisation of the system.

The regulation of Law 1/2003 regarding university centres and structures, in support of the essential academic activities of studies, teaching and research, is subsequently linked to the instruments of planning, organisation and funding, namely the Programació Universitària de Catalunya (Catalan University Programme), the Pla d'Inversions Universitàries (University Investment Plan) and the new model for university financing, which has to provide sufficient funding for the universities to carry out their functions with economic and financial autonomy. One important new development of the Law is that, for the very first time, the University Programme is open to the private universities that request to be included, and are thereby represented in the plenary session of the Junta del Consell Interuniversitari (Board of the Inter-university Council). This more open and comprehensive way of handling the

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<sup>14</sup>The wording of this article in the draft of the LOU was much more narrow-minded and established that, as a general rule, the Spanish Government was to determine the minimum requirements for the setting up and recognition of universities, as well as the increase in the number of institutions and subjects at existing universities, bearing in mind both classroom-based and distance learning education. Following the discussions between the different political groups and with the clear opposition of Catalonia, which disagreed with the initial wording of the text on account of what it considered the reductionist treatment given to autonomous powers, as well as university autonomy and the university institutes, the final draft of the article was modified and the basic regulation was reduced to the requirements for the setting up or recognition of universities.

<sup>15</sup>Royal Decree 557/1991 of 12 April on the setting up and recognition of universities and university centres was the object of a claim of competence (no. 1715/1991) raised by the Government of Catalonia, which considered that the aforementioned Royal Decree was not restricted to just establishing the basic regulation of the matter in hand but that it was excessive in terms of regulations. Ruling 131/1996, which concerned the aforementioned claim, was only partially favourable to the Autonomous Regional Community. Despite the narrow margin of action left to the Regional Autonomous Community, the Government of Catalonia adopted Decree 258/1997 of 30 September on regulation of the Catalan university programme and procedures for the setting up and recognition, as well as the reorganisation, of university teaching institutions and academic subject implementation (DOGC no. 2492), and Decree 390/1996 of 2 December on regulation of the affiliation status of higher education teaching institutes and teaching centres to public universities (DOGC no. 2291).

programme corresponds to the actual realities of the university system in Catalonia.

Universities can create their own structures to develop classroom-based and virtual forms of education, aside from the basic structures enumerated in article 7.1 of the LOU<sup>16</sup>. The concept of university campus is also incorporated in the article, which draws on a long academic tradition and is conceived as either bricks-and-mortar or a virtual space where the different members of the university community can integrate together and co-exist. The objective of inter-university campuses is the sharing of personnel, centres and institutions, structures, educational courses, research and services. The universities need to facilitate the mobility of teaching staff, researchers and students on inter-university campuses, a measure that will help to consolidate the university community that, aside from the unique characteristics of each university, has come to be identified as a whole as the university community of the Catalan University System.

In its reference to the organisation of studies and structures, the Law states the jurisdiction resting with the Generalitat de Catalunya (in order to distinguish this from the jurisdiction reserved for the Spanish State), which is to be exercised by the appropriate department dealing with university matters:

a) The setting up, modification and abolition in public universities of faculties, technical schools or polytechnics of higher education, university schools, university polytechnic schools, university research institutes plus other official forms of education organised in dis-

tance learning centres and structures, at the proposal of the social councils or on the initiative of the department with the agreement of the aforementioned council. A prior mandatory report of the governing body of the university is necessary without exception.

- b) The recognition in private universities of the setting up, modification and abolition of centres referred to in the previous section, at the proposal of the university.
- c) Approval, prior to their setting up or abolition by the Spanish Government, of the establishment of university-dependent centres abroad where recognised classroom-based courses are given. On the contrary, no express attribute of the Generalitat de Catalunya is mentioned concerning the approval of the setting up of distance learning centres. Development of the guidelines will be necessary for this matter to be expressed in concrete terms or, as the case may be, considered to the effect that neither the Spanish State nor the Generalitat de Catalunya have reserved any administrative scope of action as regards this form of studies.
- d) Authorisation of teaching institutions wishing to set up in Catalonia to give any type of education that leads to university higher education non-recognised qualifications, together with the revoking of authorisation<sup>17</sup>.
- e) Affiliation or disassociation of private or public teaching institutions to/from a public university for giving recognised university qualifications, and the integration of higher education institutions into a university as the university's own centres. Action is dependent in all cases on the proposal of the social council, together with a prior mandatory report of the governing body of the university.

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<sup>16</sup> Contrary to what was laid down by Law 26/1984 of 19 December in its time, the universities can create other structures to develop class-based or virtual forms of education that lead to recognised qualifications without any administrative involvement of the Government of Catalonia. Article 12 of Law 26/1984 of 19 December on university co-ordination and the setting up of social councils established that other educational and research centres (not regulated as basic structures under the LRU) were set up by decree by the Executive Council (Consell Executiu) at the proposal of the respective social council, with the structure, form and conditions of funding also having to be approved by the decree.

<sup>17</sup> This authorisation requires a favourable preliminary report from the Agència per a la Qualitat del Sistema Universitari de Catalunya, in accordance with the standards of quality established by the Agency for this type of centre (article 113.2 LUC).

The framework for research and support for university research in the LUC is organised in two main blocks, the first of which consists of research centres where university research activities are mainly carried out, together with departments and research groups (article 22) whereas the second is made up of university research institutes (article 23) as defined in the LOU. These institutes can either belong to the university itself or be inter-university centres if shared by more than one. Research institutes can also affiliate to public universities to acquire the condition of university institute. The setting up, modification, abolition, affiliation or disassociation of university research institutes is the responsibility of the appropriate department of the Generalitat de Catalunya that deals with the subject of universities and acts at the proposal of the university social council or on its own initiative and, in any case, with a prior mandatory report of the university governing body. Governmental intervention in university research institutes is more extensive than in other research centres, which is justified by the fact that these institutes organise and develop doctorate programmes.

The Catalan Universities Law, unlike the LOU, encourages the setting up of research centres specialising in different areas of research that can act under any legal status that is appropriate for their objects, that promote the joint participation of the universities with other public or private entities and that provide for maximum freedom in terms of organisation in order to fulfil their objects and enhance their international standing. The promotion, setting up, participation and associating of centres through the corresponding forms of collaboration rest with the university. The classification of the different types of university centre, according to the law, is as follows:

- a) Centres that form part of a university.
- b) Centres where there is the participation of one or more universities and/or other public or private entities by way of agreements or other forms of participation.

- c) Publicly or privately owned centres that associate with a university through the signing of an agreement with the university to this end.

This plurality of legal entails will facilitate the medium-term setting up and consolidation of an important network of research centres involving university participation or that are supported or associated with the universities, which constitute one of the essential elements of the RDI (research, development and innovation) system. The conditions for this new impetus to research being carried out in Catalonia were initiated by an Executive Accord of the Generalitat de Catalunya on 28 September 1999, which gave support to the first large R+D institutions in Catalonia in specific areas where there was a well-established university and/or industrial base. These research institutions comprise large infrastructures and facilities and also train research groups, resulting in a large critical mass of research and technical personnel and the generation of synergies. The first advanced research centres set up according to these parameters were: the Institut Català de Ciències Cardiovasculars (Catalan Institute of Cardiovascular Science), the Centre de Regulació Genòmica (Genome Regulation Centre), the Institut Català d'Investigació Química (Catalan Institute of Chemical Research), the Centre Tecnològic de Telecomunicacions de Catalunya (Catalan Telecommunications Technology Centre), and the Institut de Ciències Fotòniques (Institute of Photon Science).

With reference to the large infrastructures intended primarily for research, this is the first time that the science and technology parks, which in a very open way receive support from the universities and different public administrations and participation from different economic and social sectors, are provided for in legislation (article 24).

The science and technology parks, which are of a university or inter-university nature, are where the research centres of the university itself congregate next to associated enterprises and other institutions. They facilitate

contact and collaboration between the university and enterprises, and dissemination of the results of university research to society; technologically innovative enterprises are established; they boost the culture of quality, research and innovation amongst the institutions in the park and amongst the associated enterprises; and in general they promote and facilitate the entire scope of research. They are in all cases an important stimulus for development.

The science and technology parks permit the joint organisation of management of research and postgraduate course activities and give impetus to university RDI (research, development and innovation) activities. A recent development of co-ordinated action and co-operation between the various parks, which are a particular objective of the Catalan law, includes the setting up of the XpCat Catalan science and technology park network that, under the legal form of an association, brings together an initial total of eleven parks, most of which are linked to universities.

The law also recognises the important work carried out up until now by the universities in the bringing into operation of scientific and technical support services for research and the setting up of centres and structures for the transfer of technology and knowledge. It has also implicated the action of the Generalitat de Catalunya together with the universities in relation to these initiatives in laying down that support programmes must be implemented to give incentive to collaboration between the universities and between the universities, enterprises and society in general, and that the development of new facilities for use by the entire university system must be promoted in order to obtain maximum benefit from this. Article 26 of the LUC specifies that the universities can set up and promote entities, centres and structures and that, within the framework of their own objectives and regulations, they can establish programmes to support co-operation for development orientated towards technology transfer and the transmission of knowledge to

countries and areas of the world where they are needed to bring about improvements and progress.

In order to encourage research, development and innovation in enterprises, supplementary provision 9 of the LUC also commissions the Executive Council of the Generalitat de Catalunya to stimulate and assist enterprises in increasing the means set aside for research, development and innovation, including resources assigned for an enterprise itself, together with resources for co-operation with universities and research centres. The Executive Council is also entrusted with promoting the active participation of enterprises in university research and the European research area.

One final objective of the Law (in article 28) is to encourage the entrepreneurial ability of university research personnel and students with a view to helping the setting up of enterprises and initiatives that are innovative within their particular field of action. This mandate will provide the necessary impetus and recognition for spin-off from university initiatives.

### **3. The Catalan University Community.**

Article 29 of the LUC points out that the Catalan university community comprises the students, teaching and research personnel, university research personnel and administration and services personnel. Teaching and research personnel includes university teaching staff, contracted teaching staff and assistants.

#### **3.1. University teachers and researchers**

The LRU laid down the model that established the legal structure of teaching and lecturing in the Spanish public universities that was uniform for all universities over a period of seventeen years. In its time, the model simplified and adapted the previous model, which was char-

acterised by the disparities of the former teaching system that interfered with the necessary streamlining of the organisation of the teaching profession. This paved the way for the post-constitutional reform of the universities. The LRU did introduce a certain amount of flexibility in allowing for the contracting of teaching staff on the basis of Associate and Visiting Professor, and later on with the figure of the Professor Emeritus. Recruitment was on a public service basis, as was established in supplementary provision no. 20 of Law 30/1984 of 2 August on urgent measures for the reform of the civil service<sup>18</sup>.

The LOU on the other hand established a mixed model for the public system of university teaching whereby the relationship with the university is either as a member of the public service university teaching staff subject to the relevant statutory rules or on a work contract basis according to established procedure. Article 47 thus states that teaching and research personnel in the public universities are to be comprised of public service teaching staff and contracted personnel. Teaching staff have full teaching capabilities without exception and also full research capacity when in possession of a doctorate degree.

**Graph 1**  
**The Catalan University Community**

<b>TEACHING STAFF AND RESEARCH PERSONNEL</b>	<b>Lecturers</b>			<b>Contracted researchers</b>
	<b>Civil Servant</b>	<b>Work Contract</b>		
			<b>Permanent</b>	<b>Temporary</b>
	<ul style="list-style-type: none"> <li>- Associated professor of School</li> <li>- Full professor of School</li> <li>- Associated professor of University</li> <li>- Full professor of University</li> </ul>	<ul style="list-style-type: none"> <li>Assistant professor</li> <li>Full professor</li> </ul>	<ul style="list-style-type: none"> <li>Lecturer</li> <li>Visiting professor</li> <li>Honorary professor</li> <li>Professor Emeritus</li> </ul>	<ul style="list-style-type: none"> <li>Resident researchers</li> <li>Affiliated researchers</li> </ul>
	<ul style="list-style-type: none"> <li>Permanent adjunct professor</li> </ul>	<ul style="list-style-type: none"> <li>Temporary adjunct professor</li> <li>Affiliated professor</li> </ul>		
<b>ADMINISTRATION AND SERVICES PERSONNEL</b>	<b>Civil Servant</b>	<b>Work Contract</b>		
		<b>Permanent</b>	<b>Temporary</b>	
<b>STUDENTS</b>	<b>Students 1st cycle</b>	<b>Students 2nd cycle</b>	<b>Students 3rd cycle</b>	<b>Trainee researchers</b> <ul style="list-style-type: none"> <li>- Doctorate students</li> <li>- Grant holders</li> <li>- Assistants</li> </ul>

Academic research personnel

<sup>18</sup>According to the Law, only foreign associate professors can have permanent contracts under the labour legislation, pursuant to supplementary provision no. 8 of the LRU and supplementary provision no. 5 of Royal Decree 898/1985 of 30 April on the rules covering university teaching staff.

According to article 48, the LOU recognises the competence of the Autonomous Regional Communities to establish the legal status of contracting teaching and research personnel and, on the contrary, sets aside the full regulatory capacity over university teaching bodies for the Spanish State. This clear delimitation and separation of the areas of competence between the Spanish State and the Autonomous Regional Communities and the recognition of a separate sphere of regulation for the latter, has opened the door to regulation by Catalan legislation of a specific type of teaching staff for public universities under the jurisdiction of the Generalitat de Catalunya.

The LOU in fact lays down that the Autonomous Regional Communities, within their jurisdiction and in the framework of their jurisdiction, establish the rules for contracting university teaching and research personnel on a work contract basis in the following forms: assistant, assistant PhD lecturer, adjunct lecturer, non-tenure PhD lecturer, associate professor and visiting professor. It likewise maintains the figure of Professor Emeritus. Although the LOU has given greater relevance to contracted teaching staff than in the previous model, the public service model also continues to be predominant in that it establishes a series of limitations for the group of non-tenure (contracted) teaching and research personnel in relation to tenured posts. The total number of contracted teaching and research personnel is thereby limited to 49% of the total university teaching and research personnel, although this allowance is a notable increase over the percentage allowed by the LRU of contracted teaching personnel, which was no more than 20% in general, or 30% of the total teaching staff in uni-

versity polytechnics. During the drawing up and presentation of the draft bill of the LOU, the Generalitat de Catalunya made a declaration rejecting this numerical limitation. Nevertheless, the arguments of the Autonomous Regional Community were rejected by the Spanish State and the wording of article 48.1, paragraph two of the LOU was left unchanged and included the same terms.

In order to mitigate the limiting effects to the detriment of contracted teaching staff, a third section has been added to article 29 of the Catalan Law which specifies that the limit for contracted teaching and research personnel laid down in article 48 of the LOU is to be calculated on an equivalent basis to the number of full time teaching staff. The introduction of this new element in the evaluation is fully justified if a comparison between teaching staff is objectively based on the actual involvement on a full or part-time basis of teaching staff in university activities as to the number of contracts that the university endorses. The Catalan law makes use of the wording of article 48 of the LOU in that specific elements can be established to facilitate application by whoever ultimately applies the regulation<sup>19</sup>.

The scope of Autonomous regulation will also have to take into account certain other legally imposed limitations that, despite the opposition of the Catalan and Basque nationalist parliamentary groups, remained unaltered following the parliamentary procedure stage of the LOU<sup>20</sup>, as is the case of the limitations to the appointment of contracted teaching staff to positions in certain governmental and representational bodies in universities. This is the case with the positions of rector; dean of the faculty;

<sup>19</sup> The option in the Catalan law has been taken up by other Autonomous Regional Communities, as is the case with Andalusia, which in its draft bill for the law on universities also introduces full time equivalence in the calculation of the percentage figure.

<sup>20</sup> The limitations imposed by the LOU on the eligibility of contracted teaching and research personnel to certain academic or managerial posts was subject to controversy and the presentation of amendments, none of which were considered, in the debates relating to the LOU Project. An amendment was presented by the Catalan parliamentary group concerning the post of head of department, which is regulated under article 25 of the project that unsuccessfully requested to allow for the possibility of contracted PhD teaching staff belonging to the corresponding department to be appointed. Eligibility for the post of rector was also disputed by the members of the Basque Parliamentary Group who requested that the Autonomous Community be competent in regulating the nomination, mandate and termination of appointment of rectors in the universities under its competence. The Basque Parliamentary Group declared that the debate on the figure of rector concerns the particular institutional and social sphere of political autonomy of the Autonomous Regional Communities.

school director and head of department, except for departments in the areas of knowledge referred to in articles 58 and 59 of the LOU<sup>21</sup>, the head of which can either be a non-doctorate tenured member of teaching staff or a contracted teacher. On the contrary, contracted teachers are eligible for the post of university institute director and vice-rector. The participation and representation of contracted teaching and research personnel is also indirectly limited in certain collegiate university bodies, such as the university senate, faculty senate and school senate, given that 51% of the members must be tenured teaching staff; and also in the governing body of the university, given that 30% of the maximum number of 50 members of the university community represented are chosen or designated from deans of faculties, school directors, heads of department and directors of university institutes, which are reserved for tenured teaching staff except for the post of institute director. Contracted teaching staff have no difficulties in participating in department committees, which are made up of all the members with a doctorate degree in the corresponding department, or to represent non-doctorate teaching and research personnel, as laid down by the statutes; they can also participate as members on the advisory board, which is a body established by the LOU to ordinarily advise the rector and the governing body on academic matters.

These limitations, which imply an added difficulty in the full consolidation of the new body of contracted teaching and research personnel for Catalan universities, need to be resolved insofar as this is possible by autonomous legislation and by the university statutes. Law 1/2003 has introduced a series of precepts aimed at putting the status of the two bodies of teaching staff on the same level, the most important being article 43.2, which establishes that, in the exercising of their jurisdiction, the universities are to safeguard the identity of contracted

teaching staff's rights in permanent posts together with those of university teaching staff, while maintaining as a legal precaution that this is without detriment to that established in the basic legislation of the Spanish State. Good practice in development of the Catalan Law and the resolve of the universities to regulate according to the statutes and, in as broad a sense as possible, the scope of the functions and activities of teachers contracted for work as far as university autonomy permits, are the pillars that will truly put the status of the mixed system of teaching staff on an equal basis and on which the policy for university teaching staff will be established in the future. One should also bear in mind the period given over to the corresponding collective negotiation.

On other occasions, the LUC sets a specific equalisation regulation, such as article 12.3, which lays down that doctoral teaching activities given in university departments, centres and institutes is the job of PhDs, and that the director of doctorate programmes approved by each university must be a member of the doctoral teaching staff of the university co-ordinating the programme.

### **3.2. Categories of teaching and research posts contracted by Catalan universities.**

Chapter III of Section Heading II of Law 1/2003 is on university academic personnel, which consists of the tenured university teaching staff and contracted teaching staff, together with resident and affiliated researchers. A new definition for personnel providing academic services to universities has been introduced in Catalonia that respects and complements the definition of university community comprising the teaching and research personnel, students and administration and services personnel. Although this is not expressly defined in the LOU, it is outlined in several of its pre-

<sup>21</sup> The areas of knowledge established by the Spanish Government to be covered by full professors and associate professors of university schools.

<sup>22</sup> Article 20 of the LOU makes reference to the different sectors that make up the university community when it establishes that voting to nominate the rector is to be deliberated on by the different sectors of the university community that include PhD teachers who form part of the university teaching staff, the remaining teaching and research personnel, students and administration and services personnel.

cepts, such as for example article 20 where it refers to the nomination of rector<sup>22</sup>.

The categories of contracted teaching staff in Law 1/2003 are classified according to the permanent or temporary nature of the posts in the university.

Universities can contract the following permanent posts:

- a) Full professor: from those in possession of a doctorate degree and with a consolidated career in teaching and research.
- b) Associate professor: from those in possession of a doctorate degree and with a career in teaching and research of proven ability.

And the following non-permanent posts:

- a) Lecturer: from those in possession of a doctorate degree, to carry out teaching and research during the initial stage of their academic career.
- b) Assistant professor: from recognised experts and specialists who can validate their professional activity outside of the university. Contracted to carry out specific teaching work, they have full teaching capacity within their area of knowledge.
- c) Visiting professor: from teaching staff and researchers with recognised prestige from other universities or research centres. Contracted to carry out specific teaching activities and/or research projects.

- d) Professor Emeritus: from tenured professors from the same or another university who are retired and whose performance has been of outstanding service to the university. They can collaborate in specific teaching and/or research activities.

On a permanent or temporary basis, universities can contract:

Adjunct teaching staff to carry out teaching work to cover the needs of qualified teaching in specific areas of knowledge pursuant to article 51 of the LOU<sup>23</sup>.

Law 1/2003 has also introduced the possibility of contracted teaching staff of retired age continuing to assist with the university on an honorary basis and carrying out academic work in a similar way to tenured teachers, who on retirement can be contracted as professor Emeritus<sup>24</sup>.

Catalan lawmakers wanted the category of contracted university teaching staff to carry special weight, given that, as is mentioned in the preamble, undefined teaching posts such as full professor and associated professor and also permanent adjunct staff are regulated for the first time since the 1930s, taking into consideration that the Generalitat de Catalunya, together with the universities within its competence, only has sufficient leeway to implement a specific Catalan policy relating to this body of teachers<sup>25</sup>. Law 1/2003 thereby envis-

<sup>22</sup> Adjunct teaching staff can carry out teaching activities in areas of knowledge established by the Spanish Government, subject to a report from the Council for University Co-ordination (Consejo de Coordinación Universitaria).

<sup>24</sup> During the parliamentary procedures of the LOU, the Catalan Parliamentary Group sought to extend the possibility of recruitment of retired tenured staff as professor emeritus to contracted teaching staff although their request was again refused. For this reason, the Catalan Law allows contracted teaching staff at retirement age who have rendered an outstanding service to the Catalan University System and at the request of the university to collaborate in an honorary capacity in specific teaching and/or research activities according to terms established in accordance with the general legislation of the social security. It ultimately rests with the universities to ensure that the necessary measures are entered in the corresponding collective bargaining agreement applicable to contracted teaching staff in order to bring about the full effectiveness of this provision.

<sup>25</sup> The preamble of the Law refers to the new model of teaching staff: "A new system for academic careers based on recruitment has been started that can either serve to complement or replace that of the public employee system yet in a way that is no less exacting. For example, the academic career of a PhD may begin with a contract as a post-doctoral researcher in a research centre or university, followed by a maximum of four years as lecturer (doctoral assistant) at the same or another university or department".

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## Teaching posts such as full professor and associated professor and also permanent adjunct staff are regulated for the first time since the 1930s,

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ages regulation that starts by considering the basic character of the posts laid down in the LOU, which is then developed in such a way that amounts to an autonomous model for teaching staff whilst maintaining the essential distinctive features of each academic post.

In order to support the new contractual figures for permanent teaching posts, the second end provision of the LUC instructs the Generalitat de Catalunya to draw up and provide the necessary means for a plan entitled Jaume Serra Húnter, in memory of the former rector of the Universitat de Barcelona who directed the founding of the University Autònoma de Barcelona<sup>26</sup>.

The Law has also pursued the recognition of an exclusive policy for Catalonia regarding researchers, whilst establishing a sub-classification for academic personnel in public universities by making a distinction and separately regulating, on the one hand, both tenured and contracted teaching staff and, on the other, academic research personnel.

### 3.3. Features of the Catalan model for university teaching staff:

- a) The figure of contracted doctoral teaching staff is divided into the categories of full professor and associate professor.

Both observe the appointment requirements laid down by the basic Spanish rules, which consist of accreditation of three years teaching or research activity with preferably post-doctoral research and a favourable external assessment. Law 1/2003 complements these requirements with the additional need to accredit two years of teaching or pre- or post-doctoral research activity, or technology or knowledge transfer in a position of academic disassociation from the convoking university. In the LUC teaching staff model, this latter requirement is considered fulfilled if the entire period of studies and the awarding of the candidate's doctorate qualification correspond to a different university to that offering the post.

- b) Certain contracted teaching staff positions have their own titles in the Catalan University System.

This is the case with contracted teaching staff such as full professor and associate professor, which correspond to the figure of contracted doctoral teaching staff in the LOU, and lecturers, which correspond to adjunct doctoral teaching staff in the LOU, both of which are terms that distinguish these categories in Catalonia. The LUC thereby restores the historical tradition and is in harmony with the age-old claim of the Catalan movement for university reform. The conferral of these categories with their own name has been

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<sup>26</sup>This Plan envisages the setting up of 400 contracts for professor and 800 for associate professor over a period of twelve years, at the approximate rate of 100 contracts (professor or associate professor) per year; 50% of which are to be jointly financed. This additional contribution to the increase referred to below is to be included annually in the budget of the Government of Catalonia from 2003 onwards. Furthermore, Parliament has ordered the allocation of the Government of Catalonia budget assigned to public university funding to be gradually increased over the period 2003-2010 until it reaches a real minimum increase of 30% of the amount budgeted for in 2002.

cause for controversy as certain sectors consider that the term 'professor' should be reserved for tenured teaching staff. However, the LOU has made no express prohibition or reservation in relation to the designation of tenured university teaching staff<sup>27</sup>.

- c) The external assessment and favourable reports that candidates need to certify in order to be contracted by the universities must be made by the Agència per a la Qualitat del Sistema Universitari de Catalunya .

This clarifies and at the same time specifies the two-tier option established by the LOU in establishing that the external assessment of adjunct doctoral teaching staff (article 50) and contracted doctoral teaching staff (article 52), as well as reports in the case of adjunct teaching staff (article 51), can be made by the Agencia Nacional de Evaluación de la Calidad y Acreditación (Spanish Quality Assessment and Accreditation Agency) (ANECA) or by the external assessment body determined according to Autonomous Regional Community law. The Catalan Agency has jurisdiction over the recruitment of teaching and research personnel in universities in the Catalan University System, without prejudice to collaborations established with other external assessment bodies, where applicable.

- d) Candidates for the category of assistant professor must be in possession of research accreditation, while candidates for the category of full professor must possess advanced research accreditation. As the case may require, candidates need a report of their teaching activities in accordance with the procedures and criteria established by the Agència per a la Qualitat del Sistema Universitari de Catalunya with a view to positive assessment as laid down in article 52 of the LOU.

Law 1/2003 deals specifically with external assessment, which is a binding obligation of the LOU for all candidates to certain established contractual categories. Article 47 of the LUC establishes that such accreditation must be issued by the Agència per a la Qualitat Del Sistema Universitari de Catalunya and that the announcement of selection processes requiring candidates to be in possession of accredited

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**The Catalan Agency has jurisdiction over the recruitment of teaching and research personnel in universities in the Catalan University System, without prejudice to collaborations established with other external assessment bodies, where applicable.**

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research must be programmed with sufficient time in advance to allow for calls for proposals to those interested and the processing of the corresponding accreditation. In addition to attributing the Catalan Agency with the aforementioned functions, the Law also takes the Agency's organisational structure into account. The Agency, which by law is structured according to specific commissions according to the functions to be developed, must of necessity have a Lecturer and Adjunct Teaching Staff Commission, whose job is to issue the relevant reports for the recruitment of these two types of teaching post, and a Research Assessment Commission, which basically carries out the functions of issuing research and advanced research accreditations, assessing the

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<sup>27</sup> Contrary to this, the first draft of the LOU bill of 4.5.2001 did establish that only tenured teaching staff, irrespective of their administrative position, that are university full professors or associate professors, and university school full professors or teaching staff, could hold these titles, and also prohibited the use of titles leading to any error or confusión in relation to centres, qualifications or teaching staff. This initial reservation was not finally included in the wording of the LOU.

activities of researchers and assessing the research activities of teaching and research personnel in private universities. In order to ensure that these are technically independent, the Law lays down that assessments made by the Agency must then be endorsed by the respective assessment commissions and that these are ultimately responsible for them.

- e) A sabbatical leave and extended leave of absence scheme for contracted teaching staff is regulated without prejudice to the conditions of the applicable collective bargaining agreement, the principal objective being to promote research and inter-university collaboration.

One of the objects of the legislation is the mobility of teaching staff, especially permanent teaching staff on contract, temporary adjunct doctoral teaching staff and lecturers, and sabbatical leave and extended leave of absence can be requested by teaching staff in the aforementioned categories, according to the classification of article 56 of the LUC that regulates the categories that promote research and inter-university collaboration, as follows:

1. For the development of research programmes or activities in public or private entities that are set up, affiliated or participated in by the university and related with the scientific or technical activities developed by the university.
2. For setting up technology-based enterprises, directly related with the scientific or technical activities developed by the university.
3. For the development of teaching or research programmes/activities in other universities, public or private entities set up or participated in by the universities and other entities with which the university has entered into a collaboration agreement.

Sabbatical leave, with the right to a job or position reserved, can be granted for a period of up to two

years. The university must determine any earnings, when applicable, to be received. Extended leave of absence is granted for a period of up to four years by the university of origin without authorisation of earnings and implies automatic contract suspension.

Pursuant to internal university regulations, permanent teachers on contract are entitled to one sabbatical year every six years of academic activity specifically for training purposes or to collaborate with a university or research centre outside of Catalonia.

Article 57 of the LUC establishes, without prejudice to sabbatical leave and extended leave of absence recognised in the industrial regulations and, where applicable, the applicable collective bargaining agreement, that permanent contracted teaching staff, temporary adjunct teaching staff with a doctoral qualification and lecturers with a minimum one year of service are entitled to one special leave of a period up to a maximum of four years.

With regard to maternity/paternity leave, supplementary provision no. 12 of the LUC lays down that the twelve months following the birth of a child are excluded from the time period restriction of any legally binding contract. Although the wording of the provision does not take account of adoption, this special circumstance also needs to be dealt with. Supplementary provision no. 10 of the LUC lays down that internal university regulations are to establish measures to conciliate the working life and family responsibilities of the members of the university community. These measures have been adopted in line with Law 6/2002 of 25 April approved by Parliament that establishes measures to conciliate working life and family responsibilities. With regard to gender, supplementary provision no. 12 entrusts the universities and the corresponding department of the Generalitat de Catalunya to promote actions leading to equal opportunities for men and women in all areas of university activity.

f) Teacher training and quality assurance, two key elements of the Catalan model for university teaching staff. Article 19 of the LUC takes account of the responsibility of both the Generalitat de Catalunya and the universities to provide university teaching staff throughout their academic lives and particularly during the initial stage of their teaching activities with the possibilities of training in order to assure quality teaching and the updating of their knowledge and skills. Teaching activities are subject to assessment in accordance with the methodology and programmes developed by the Agència per a la Qualitat del Sistema Universitari de Catalunya. The LUC establishes that provision must be made for ongoing training and quality teaching recognition programmes, as well as incentive schemes given by both individual teachers and teams of teachers.

### **3.4. The scope of jurisdiction of the Autonomous Regional Communities with regard to academic research personnel. Resident and affiliated researchers**

Law 1/2003 has introduced a new classification for personnel providing university research services, which comes under academic research personnel and comprises university teaching staff and researchers with a PhD qualification. The functions of research or non-exclusive research are thereby distinguished and specific consideration is given to the personnel involved. The law avoids rigidity in its pronouncement of models for recruitment applicable to research personnel and establishes the possibility for universities to have their own resident research personnel and research personnel from other institutions that are affiliated by way of agreements.

In dealing with the issues concerning research personnel, the Law establishes in article 61.1 that the universities can contract researchers from PhD holders, pursuant to the prevailing regulation, and in article 63 provides for the possibility of appointment for specific jobs or services involving teaching, research, technical or any other type of personnel to develop specific scientific or technical research projects<sup>28</sup>.

At the national level in Spain, there is a two-tier regulation of recruitment for research functions, with the LOU on the one hand that deals with teaching and research personnel contracted by the universities who principally carry out research work and, on the other, Law 13/1986 of 14 April on the promotion and general co-ordination of scientific and technical research that regulates research contracts.

Conversely, the Catalan Law deals with contracted university teaching staff and researchers working in universities and research centres in one sole regulation. The full competence of the Generalitat de Catalunya in education is recognised in article 15 of the EAC and according to article 9.7 EAC it has exclusive competence in research, without prejudice to that stipulated in no. 15 of section 1 of article 149 of the EC, and it is through the exercising of this competence that the Catalan Law regulates specific issues relating to academic research personnel and specifically researchers. In STC 90/1992 of 11 June, the Spanish Tribunal Constitucional declared that the competence of the Generalitat de Catalunya and that of the Spanish State are concurrent and that such concurrence justifies and explains how the Spanish State has competence over co-ordination. By virtue of this power, Law 13/1986 of 14 of April on the promotion and general co-ordination

<sup>28</sup> The inclusion in the Catalan Law of articles 42, 61 and 62, all of which relate to researchers, was discussed during the draft procedures by the Spanish State, which declared that the Catalan lawmakers may have fallen into excessive regulation not dealt with nor covered by the LOU. This criticism was not accepted by the lawmakers of the LUC under protection of article 9.7 EAC and competence deriving from article 149.1.18 EC.

of scientific and technical research (BOE no. 93 of 21 April 2001) was passed. Beyond this specific reservation, it is the Generalitat de Catalunya that exercises full competence.

Law 1/2003 clearly establishes that recruitment of researchers must be made in accordance with the prevailing regulation, which is connected with article 102 relative to the legal status applicable to the universities that takes account, amongst others, of Law 13/1986, which in the wording given to article 17 supplementary provision no. 7 of Law 12/2001 of 9 July on urgent measures for the reform of the labour market to increase employment and improve quality, establishes the following types of research contracts:

- a) Contracts with research, scientific or technical personnel to carry out specific research projects, which are regulated by article 15 a) of the Estatuto de los Trabajadores (labour statute).
- b) Contracts with PhDs for researchers to enter the Spanish science and technology system, which are regulated by article 11.1 of the Estatuto de los Trabajadores, to carry out research activities, programmes or projects that develop, perfect or complete the scientific experience of the contract holders.

The regulation of contracts of resident researchers in article 61 of the Catalan Law may in fact dovetail with type a) above. With regard to resident researchers, section two of article 61 of the LUC details the recruitment of post-doctoral researchers from PhD holders with less than two years service and from a different university to the one offering the contract for a maximum period of five years. Special mention is made of the recruitment of recent PhDs as a form of their recognition and encouragement.

In order for there to be greater collaboration and increased mobility in research work and to make the system as open as possible, recognition has been given

to the title of affiliated researcher. Researchers can be affiliated with the universities, research centres or other public or private bodies by way of agreements or other forms of collaboration to carry out projects on research, development or innovation, as well as the transfer of technology and knowledge. Researchers maintain their work contract with the entity of origin and the applicable legal status is that which prevails for the particular professional category. The affiliation of researchers with universities facilitates recognition of one of the Generalitat de Catalunya's priorities in its policy on research personnel, namely the setting up of the private foundation Institució Catalana de Recerca i Estudis Avançats (Catalan Institution for Research and Advanced Studies) (ICREA) by way of an Accord of the Executive Council of the Generalitat de Catalunya of 27 December 2000. The object of the institution is to provide impetus to, and promote and develop research and scientific, humanistic and technological knowledge in the public interest. In particular, the institution facilitates the progressive consolidation of the body of researchers and scientists established in Catalonia through an active human resources policy that promotes research and through participation in the lines of research carried out in universities, university centres and university research institutes by way of different forms of collaboration. ICREA is given special mention in supplementary provision no. 10 of the Law, which sets out the possibility of agreements between the universities and the Institution whereby researchers are linked to research programmes or projects under the terms of article 62 and, at the same, enabling them to contract researchers affiliated to ICREA or other entities for teaching duties as adjunct, assistant or visiting teaching staff, in accordance with the relevant regulation in each case.

The important task of researcher training is also covered by the law and this is underlined in article 68, which establishes that PhD students, including research fellows and assistants, are regarded as

trainee researchers. Article 12 states that the purpose of PhD studies is to train research personnel in the relevant area of university research as well as professionally and in terms of the business world, and that it is up to the corresponding department of the Generalitat de Catalunya that deals with the universities and the public universities to promote actions aimed at improving their quality and degree of specialisation, at the same time that inter-university co-operation and internationalisation are promoted. The intention of the Law is to make PhD studies available to well-prepared students, regardless of their nationality or origin. Universities must recognise the rights and responsibilities of research fellows in the internal statutes to safeguard their right to appointment and to use university facilities. As a stimulus to the promotion of research, the Law lays down in article 21.3 that the universities and the Generalitat de Catalunya must support, stimulate and aid teaching staff and other research personnel to seek research funding on a competitive basis from both public and private bodies.

### **3.5. The students of the Catalan University System. University admission in the Autonomous Regional Community.**

Chapter II of Section Heading II of the LUC deals with students and certain important issues are highlighted, one of which refers to the model of university admission. Article 1.2 of Organic Law 8/1985 of 3 July, which regulates the right to education, establishes that everybody has the right of admission to levels of higher education according to their aptitudes and vocation, and in no case is this right subject to discrimination on the grounds of income, social standing or place of residence. This right to university study is subject to certain entry requirements plus the offer of a place on a particular study course at a specific institution. The LUC establishes that the principles of public dissemination, equal opportunity, merit and ability must be respected in the admission process to the Catalan public university

system and that, pursuant to the prevailing regulation, student admissions ultimately rest with the university.

The LUC mentions the important work of co-ordinating university entrance carried out by the universities and the Generalitat de Catalunya through the Consell Interuniversitari de Catalunya, which organises entrance examinations for all of the Catalan universities and university institutes as one administrative area. Article 32

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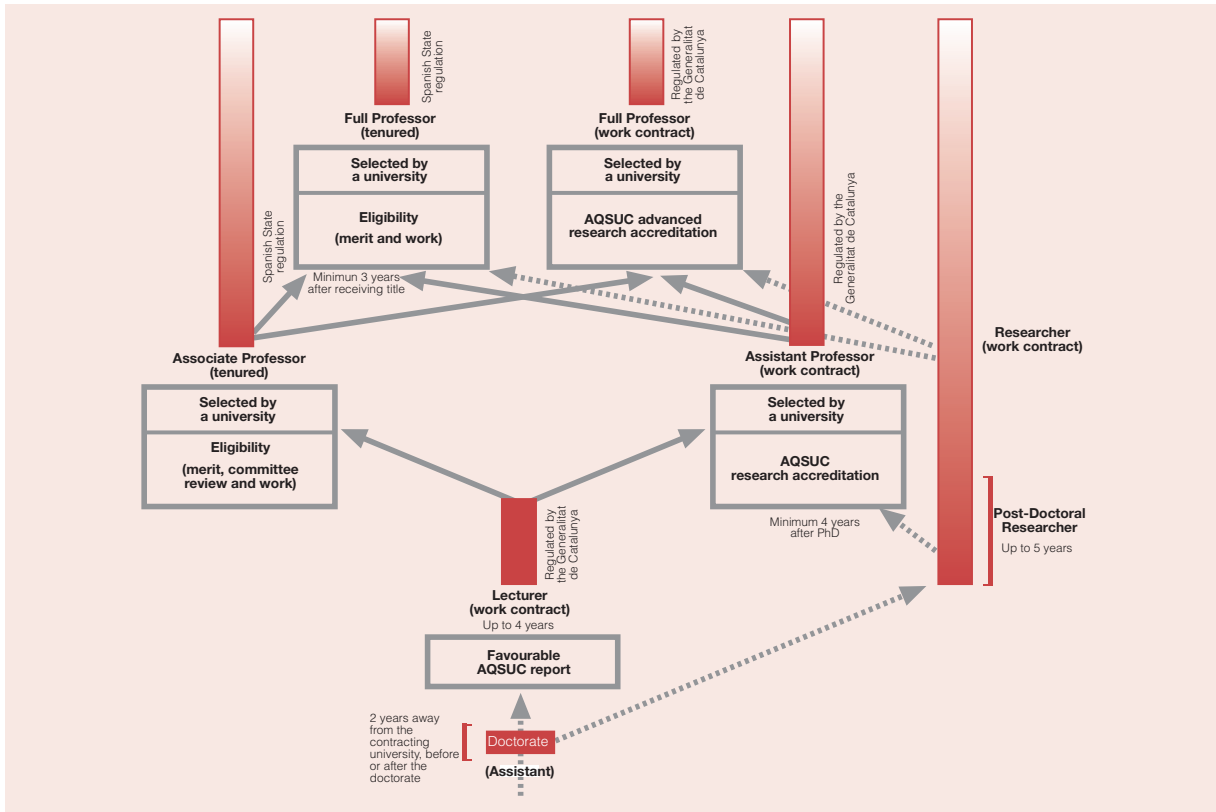
**Everybody has the right of admission to levels of higher education according to their aptitudes and vocation, and in no case is this right subject to discrimination on the grounds of income, social standing or place of residence.**

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entrusts the corresponding department of the Generalitat de Catalunya that deals with the universities to adopt appropriate measures for the universities to act in a co-ordinated way in this important matter in order to safeguard equal opportunities for students. To this end, the LUC stipulates that the Consell Interuniversitari de Catalunya is to provide admission processes to universities that request them, while respecting the autonomy of the universities without exception.

Pursuant to the Law, admissions must take account of the number of available places; the processes must be transparent and objective and, as a general rule, entrance examinations must be corrected anonymously. There is greater detail in this section of the Law than in other chapters that are more general, the purpose being to establish the legal basis for sufficient guarantees so that the rights of students wishing to enter the university system in Catalonia are protected, regardless of the

**Graph 2**  
**Diagram of choices in an academic research career in Catalan universities**



model ultimately adopted to regulate the universities and the Inter-university Council of Catalonia and also regardless of the students' origin.

Admission to university has traditionally been a complex issue and the process in Catalonia is well accepted by the universities, the students themselves and the public interest in general. The recognition given to the co-ordinated admissions system used by the Catalan universities has led to it being studied and used by other Autonomous Regional Communities and ultimately included in the Spanish regulations. Nevertheless, the Spanish regulatory capacity concerning this matter has

been particularly problematic due to insecurity resulting from constant modification; due to its content, which, according to the Generalitat de Catalunya, breaches the prevailing jurisdictional order; and due to the problems of application by the universities that constantly have to adapt entrance exam proceedings in line with regulations laid down by the Spanish State, on occasions without warning.

Article 2, point f) of the LOU includes admission, the status of tenure and verification of students' knowledge under the issue of university autonomy. The Spanish Tribunal Constitucional nevertheless considers that the

setting of limits as regards student admission to university centres is in keeping with the Constitution and recognises that such authorisation of admission is conditioned by the capacity of university centres, and also as a result of the adoption of measures to avoid irregularities in the criteria of admission to higher and university education (STC 26/1987, principle 4, and STC 187/1991 principle 3).

Legal principle 10 of STC 26/1987 declares that, in accordance with the powers 1 and 30 of article 149.1 EC exercised by the Spanish State, the Spanish regulations that cover selection procedures have the exclusive right to establish the conditions or basic rules of selection for university admission and it rests with the Autonomous Regional Communities, who have full competence in education, to expand on these. In the exercising of these powers, the Autonomous Regional Communities must respect the corresponding competence of the universities within their territory by virtue of university autonomy. All three authorities must yet again find sufficient scope within which to exercise their jurisdiction<sup>29</sup>.

Considering that the Generalitat de Catalunya has competence over legislation concerning university admission, which is expressly recognised by the Spanish Tribunal Constitucional, and that university admission falls entirely in the category of university autonomy, necessary scope needs to be created for the Generalitat de Catalunya and the universities under its competence in order to create sufficient autonomy within the basic

model of admission established by the Spanish State, and more specifically in the designing of the most appropriate selection process.

### **3.6. The rights and responsibilities of university students.**

Articles 37 and 38 of the LUC give a brief yet important account of the wording of the rights and responsibilities of university students. Article 46 of the LOU gives an initial outline of the basic rights and responsibilities that begins by pointing out that studies are both a right and a duty of university students, and goes on to detail a series of specific rights that students have under the terms established by legislation<sup>30</sup>. Express recognition is made of social security coverage for students, under the terms and conditions laid down by the prevailing legislation. As far as the regulation of students' responsibilities is concerned, full referral is made to statutory regulation and therefore the scope of action of each university in particular.

In addition to referring to the rights recognised in the LOU, the LUC establishes that the universities in the Catalan University System must guarantee students a series of other minimum rights, namely:

- a) To receive quality education and teaching.
- b) Non-discrimination with regard to birth, sex, sexual orientation, ethnic group or race, beliefs, religion, or any other personal or social circumstance.

<sup>29</sup> For this reason, and on the basis of this constitutional doctrine, the Executive Council of the Generalitat de Catalunya has made two claims of jurisdiction against the Spanish Government, both of which are pending sentence. In claim of jurisdiction no. 137/2000, in connection with Royal Decree 1640/1999 of 22 October, which regulates university entrance exams, the Government of Catalonia considers that the Decree infringes its competence of self organisation (article 9.3 in relation to article 15 EAC). In the claim of jurisdiction no. 2851/2000, in connection with Royal Decree 69/2000 of 21 January, which regulates the selection procedure for university entry of students who fulfill the legal requirements for university admission, the Government of Catalonia considers that certain provisions of the regulation breached the established jurisdictional order.

<sup>30</sup> The rights legally configured in the LOU are: a) study at the university of one's own choice, under the terms established in the legislation; b) equal opportunities and non-discrimination of personal and social circumstances, including disability, university entry, admittance to university centres and institutes and tenure, and the exercising of academic rights; c) guidance and information from the university on the academic activities affecting students; d) publication of the university regulations that regulate the verification of students' knowledge; e) guidance and assistance by lecturers and tutors, as is established; f) representation in the governing and representative bodies of the university, under the terms established in the LOU and the statutes or rules of organisation and procedure; g) the freedom of speech, assembly and association in all areas of the university; h) the safeguarding of their rights by way of appropriate procedures and, where applicable, the action of the university mediator.

- c) To receive information on study programmes and their objectives.
- d) To be objectively assessed according to academic performance.
- e) To exercise the freedom of association, information, speech and the right of assembly on the university campus, in accordance with the conditions of use established by the university.

Article 37 of the LUC also lays down the general principles to be respected in the exercising of the rights, while pointing out that students must exercise their rights with full respect for other people, full recognition of democratic principles and the rights of the other members of the university community, and with respect for collective-use property.

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**Students must exercise their rights with full respect for other people, full recognition of democratic principles and the rights of the other members of the university community, and with respect for collective-use property.**

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Responsibilities that the universities are under obligation to lay down in the corresponding protocols that take form in the statutes, must at the very least be as follows:

- a) Undertake and make use of their studies in a way that is appropriate to their status of university students and in a dedicated way.
- b) Comply with the statutory regulations and other internal university rules.
- c) Co-operate with the university community to contribute towards the achievement of the university's objectives and the improved running of the university.

- d) Assist and participate in governing and representative bodies of the university to which they are elected or designated.

The importance of contributing to student job placement is laid down in the Law in various provisions although it is given special treatment as a general principle in article 39, which establishes that both the corresponding department that deals with universities of the Generalitat de Catalunya and the universities themselves are to provide students with guidance on careers and employment by promoting the meeting and collaboration of students and graduates with representatives from business and industry and social institutions. With this aim in view, and in accordance with the social council of the university, effective actions are to be instigated to promote job placement and the professional employment of graduates.

Details on participation in associations and voluntary service appear in article 40, which entrusts the universities with the instilling of civic ideals in the students and encouraging their solidarity and participation. The institutions in charge of university education must also facilitate, stimulate and provide support for participation in associations as a way of contributing to the consolidation and growth of the social interconnections that form part of university and community life. Associations need a dynamic framework that provides for the participation of students during their life at university. As reinforcement to civic attitudes, both the Generalitat de Catalunya and the universities must promote solidarity and co-operation in students. All of these mandates of the Law appear in the articles referring to students' rights and responsibilities in order to produce the necessary impact for these to be effective and not merely considered as a series of guiding principles for university student activities.

The participation and involvement of students in university life has had repercussions on the LUC, which in a

new development envisages the possibility of universities setting up a former students and friends of the university council as a body of inter-relationship between the university and its former students and ex-alumni and friends' associations, as well as enabling these to participate in the life of the university. Article 100 establishes that the abovementioned council is to be made up of people who belong to the various associations of ex-alumni and friends, together with people who the university establishes are directly linked with it. It is up to each university to internally attribute the functions of the former students and friends council. An important new development is the participation in the university social councils of a former student with a degree from the corresponding university as a representative of Catalan society who is not a member of the university community. The former student is named by the president of the social council on advice from the rector and, where applicable, at the proposal of the former students and friends council, in accordance with article 82 of the LUC. The Law seeks to establish a permanent link with graduates through these measures and establish a positive level for their participation in and influence over the university. In the broad sense of what the public university service is at the present time, today's students are also potential recipients of university services in the future. Lifelong learning, the increasingly important involvement between society and the universities, and the importance of good placement for graduates, amongst others, are all areas in which former students who are committed to their university can play an important role.

### **3.7. The policy for university grants and scholarships**

In relation to university students, article 41 of the LUC, which refers to scholarships and financial support for

university studies, is important in that it establishes the mandate of the corresponding department of the Generalitat de Catalunya that deals with the universities to constitute a policy for grants and loans within the framework of the general system for promoting higher education dealt with in article 45 of the LOU, which guarantees that whoever is in a position to undertake and benefit from university studies shall in no case be excluded on the grounds of economic reasons, and that the general system be adapted to the socio-economic and territorial needs of Catalonia.

The transfer of powers with regard to grants and scholarships to the Generalitat de Catalunya has been one of the main assertions of right with regard to higher education which both the Executive Council of the Generalitat de Catalunya and the Parlament de Catalunya have been demanding for many years. Despite the efforts made and the recent STC 188/2001, which is analysed below, the effective transfer of powers has so far been impossible and there have been numerous obstacles and delays<sup>31</sup>. The Spanish State decided to maintain the regulation and management of the matter totally centralised, especially calls for proposals, and the awarding and payment of grants and scholarships, without prejudice to the collaboration of the universities in management. In the face of this situation, which according to the Generalitat de Catalunya goes against its recognised competence according to article 15 EAC and the body of constitutional principles that cover grant funding, an Acord de la Comissió Mixta de Traspassos (Agreement of the Joint Commission for the Transfer of Powers from the Spanish Government to the Generalitat de Catalunya)<sup>32</sup> was adopted in 1998 on the initiative of the Generalitat de Catalunya, point seven of which contains approval of the Agreement of Principles for carrying out the

<sup>31</sup> The policy for university grants and scholarships financed by the Spanish national budget has been developed through the enforcement of Royal Decree 2298/1983 of 28 July, which regulates the system of grants and other forms of financial support for personalised study (BOE n° 205 of 27 August 1983).

<sup>32</sup> Agreement of the Plenary Assembly of the Joint Commission for the Transfer of Powers envisaged in temporary provision no. 6 of the Estatut d'Autonomia de Catalunya (Statute of Autonomy for Catalonia), held on 23 September 1998.

transfer of power with regard to grants and scholarships for university studies. The contents of this Agreement refer to specific criteria for both government administrations as regards the transfer of authority in this area and make the date of validity of the transfer conditional on the coming into force of the Royal Decrees that modify the prevailing rules and regulations on grants and scholarships for university study. In spite of this Agreement, the Spanish State has still not modified the prevailing rules and regulations.

In defence of its jurisdictional rights over university grants and scholarships, the Executive Council of the Generalitat de Catalunya presented two cumulative claims of jurisdiction<sup>33</sup> against the Orders of the Spanish Ministry of Education and Science announcing general university grants and scholarships for the 1994-1995 and 1997-1998 academic years. Ruling 188/2001 of 20 September resolved the aforementioned claims in partial agreement with the Generalitat de Catalunya<sup>34</sup>.

It should be pointed out that STC 188/2001 of 20 September was accompanied by three dissenting opinions, denoting the difficulties in reaching agreements on this controversial issue<sup>35</sup>.

This ruling was laid down during the parliamentary procedures of the LOU bill and the negotiations that the Catalan Parliamentary Group in the Congreso de los Diputados (Spanish lower parliamentary chamber) had entered into concerning the very matter of university grants and scholarships, amongst others. This fact was decisive in the development of article 45 of the LOU, which was finally approved by the Congreso de los Diputados and recognises that the general system for grants is to be expanded on and implemented by the Autonomous Regional Communities.

The amendment to article 45 of the LOU presented by the Grup Català (coalition of Catalan parliamentary groups in the Spanish Parliament) sets out the motion that the Autonomous Regional Communities expand on and implement the Spanish rules on the matter. The literal wording of this amendment is identical to that of article 45 of the LOU except for the last point, which proclaims the necessary co-operation of the Autonomous Regional Communities in the constituting of systems for information, verification and control, which has been added.

The LUC has thus been drawn up in accordance with the situation subsequent to the aforementioned ruling,

<sup>33</sup> Claims of jurisdiction no. 3386/94 and 4710/97, raised by the Consell Executiu (Executive Council) of the Generalitat de Catalunya (Government of Catalonia) against the Orders of the Spanish Ministerio de Educación y Ciencias of 15 June 1994, and 30 June 1997 respectively, whereby applications for grants and scholarships for university studies were announced.

<sup>34</sup> The ruling declared that the following come under what is considered to be basic policy:

- a) The kinds and amount of awards, given that this is part of the essential conditions for the granting of financial support;
  - b) The economic and academic requirements for eligibility and for obtaining awards, and the income rating system, given that these constitute another central aspect of the regulation of grants;
  - c) The criteria of incompatibility of university grants with other awards or scholarships, as justified in article 149.1.30 EC.
  - d) The criteria of grant revocation in the event of the concealment or falsification of data or incompatibility, together with the obligation of repayment of the amount received and interest in arrears, given that all of these are general regulatory principles applicable throughout Spain.
- The Tribunal Constitucional considers that the following come under the jurisdiction of autonomous competence:
- a) Regulation of the weighted elements used by funding bodies to evaluate grant awards.
  - b) The criteria for which applications can be denied, as the application of these by the award funding bodies is discretionary.
  - c) Expanding on the rules of the Spanish State and all functions of implementation, namely procedures for the management, control and approval of grant applications, and the setting up of the corresponding bodies to carry this out.

<sup>35</sup> The first dissenting opinion was issued by the senior judge Carles Viver i Pi i Sunyer, the contents of which are markedly in favour of autonomy; the second by the senior judge Vicente Conde Martín de Hijas, to which the senior judges Manuel Jiménez de Parga and Fernando Garrido Falla agreed to, which criticised the ruling on the grounds that the claims should have been entirely overruled. This dissenting opinion contains a specific declaration with regard to the doctrinal bearing to be given to article 149.1.1 EC to the effect that it should not be understood to be a rule of competence but as an area, implying the full exclusive competence of the Spanish State.

according to which the transfer of functions and services in this matter to the Generalitat de Catalunya should not be legally disputed again. In this respect, temporary provision no. 4 of the LUC envisages the current situation whereby it is impossible for the Generalitat de Catalunya to fully exercise the jurisdiction recognised by the Spanish Tribunal Constitucional, which has been deferred until transfer becomes effective. Article 41 of the LUC also reflects the option adopted by the Generalitat de Catalunya in relation to the management of grants and points out that the corresponding department dealing with the subject of the universities must constitute, together with the universities themselves and in a co-ordinated way, an efficient and effective system for loans, grants and scholarships for university studies and research. This system is to be set up through the Agència de gestió d'ajuts universitaris i de recerca (University and Research Awards Agency), which was established by Law 7/2001 of 31 March.

#### **4. Objectives of the Catalan University System: the European area of higher education and the mobility of researchers.**

The Sorbonne Agreements (1998), the Bologna Declaration (1999) and the Prague Declaration (2001) laid the referential and programmatic ground work for defining and constructing the European area of higher education by 2010 by establishing the promotion of quality, mobility and exchange, and competitiveness as the key to the European model for higher education. The progressive consolidation of a European university community has given rise to the necessary convergence of the different university systems into a series of essential structures that define the new concept of degree qualifications harmonised within a more general cyclical structure for higher education than during the first cycle (foundation

degree/diploma level), with the object of bringing about extensive training and the development of the necessary skills to deal with the problems and increasing complexity of a world in constant evolution. Specialisation occurs in second cycle studies (undergraduate) in preparation for professional placement while in the third stage (higher education) there is even greater specialisation involving further studies and greater professional involvement or the increased research ability of doctoral students. This new concept of higher education needs to permit credit portability and comparable qualifications, together with the establishment of a series of objective parameters with regard to quality that are measurable, recognised and accepted universally. Furthermore, article 14 of the LUC includes another essential element of the European area for higher education, namely lifelong learning, through the involvement of the Generalitat de Catalunya and the universities in the objective of lifelong university training and knowledge and skills reappraisal.

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**The transfer of powers with regard to grants and scholarships to the Generalitat de Catalunya has been one of the main assertions of right with regard to higher education which both the Executive Council of the Generalitat de Catalunya and the Parlament de Catalunya have been demanding for many years.**

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One of the fundamental principles of Law 1/2003 is the full integration of the universities in the Catalan University System in the European area of higher education and

the promoting of the Catalan universities in Europe and around the world. This premise is made explicit in articles 15 to 17, which contain the features for making this objective effective, together with recommendations for information and the transparency of foundation and degree qualifications, which will need to be accompanied with the European diploma supplement and designed according to the specific nature of the Catalan University System.

University institution qualifications, over which the universities themselves have extensive autonomy as a result of the fact that they are not recognised qualifications, will help to bring about an important advance in terms of progressive and full harmonisation with other European qualification systems if, as is laid down in the LUC, co-ordinated action is provided through the Consell Interuniversitari de Catalunya. Moreover, accreditation by the Agència per a la Qualitat del Sistema Universitari de Catalunya will also be possible, as with recognised degrees. University institution qualifications (a characteristic of the Catalan system unlike the rest of Spain) will be of particular importance in that, pursuant to article 13 of the LUC, they can be awarded by the universities to students who successfully complete the first cycle of recognised two-cycle degree courses.

The Generalitat de Catalunya and the universities are entrusted with giving impetus through the necessary adaptations to implement the new European cycles, the Consell Interuniversitari de Catalunya is made responsible for the co-ordination of the processes of convergence with the qualifications systems in Europe, and a series of new specific measures are established to facilitate the mobility of students and degree holders, which are as follows:

- a) Adapt the types of degree course cycle along the general lines of the European area of higher education.
- b) Adapt qualification denominations.

- c) Establish the ECTS credit system or any other relevant unit adopted in the European area of higher education as the unit of evaluation for courses and study programmes.
- d) Facilitate adaptation of the qualifications system to the European framework.
- e) Bring into line any other adaptations that can be adopted within the context of the European area of higher education.

Within this context, mobility can no longer just be a legal right established for civil servants and it has become a need that safeguards plurality and exchange, enriches the scientific community and promotes university quality. The LUC draws up certain strategic lines and specific instruments to facilitate and, as far as possible, guarantee the mobility of university teaching staff between the universities in the Catalan system and other universities and research centres, especially in Europe. Mobility is sometimes a binding obligation, as with the requirement for candidates to be disassociated from a university offering a place for appointment to certain teaching and research posts contracted by the universities, which in Catalonia is also required of candidates applying to be contracted as full professors or associate professors. On other occasions, mobility is voluntary and measures are established to promote this. This is the case with sabbatical leave and exceptional extended leave of absence established for contracted teaching staff, which presumably will have an important effect on the increase in mobility of university teaching staff and also the fact that sabbatical holders can be automatically and definitively readmitted on request by those concerned in a job in the same category and department or institution of origin. The mobility of university researchers is fully laid down in article 66.2, which involves both the Generalitat de Catalunya and the universities in the co-ordinated setting up of programmes to facilitate the mobility of the universities' own academic personnel.

The Law conceives mobility from two viewpoints; on the one hand, it refers to teaching staff and researchers in the universities in the Catalan University System and, on the other, the integration of teachers and researchers from other systems into the Catalan universities to facilitate the flow of joint efforts between the members of the European university community. It specifies that the system for the recruitment of teaching staff is not subject to conditions or requirements based on nationality. Article 30 of the LUC refers to the objectives of the universities and the Generalitat de Catalunya in relation to the specific policies affecting the university community, which must specify directives and methods aimed at promoting the two aspects of mobility, namely inter-university activity and intercommunication between the members of the university community in Catalonia, and also its full consolidation as an integrative part of the European university community and international scientific community, with the establishment of links for inter-university academic collaboration and the implementation of mobility flows between the members of these communities.

The importance of student mobility is underlined in different articles of Law 1/2003; article 11, for example, recognises that the recognition of qualifications is down to the university, and immediately after establishes that the public universities must co-ordinate the system for the recognition of qualifications and adopt appropriate measures to facilitate credit portability and student mobility within the framework of the Catalan University System and the European area of higher education. Furthermore, the private universities will be able to participate in co-ordinating the system for the qualification recognition and in the adoption of appropriate measures to facilitate credit portability and student mobility. Given the importance of establishing a model for university entry that is acceptable and recognised by other European universities in order to effectively safeguard the mobility of students, article 33 of the law stipulates the obligation to adopt measures to:

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## The Generalitat de Catalunya and the universities are entrusted with giving impetus through the necessary adaptations to implement the new European cycles

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- a) enable students at universities in Catalonia to be able to continue their studies in other European universities. To this end, and pursuant to the prevailing regulation, models of university entrance and tenure that are recognised and accepted by the universities in the European area of higher education need to be promoted.
- b) approve programmes that promote the entry of students originating from outside the Catalan educational system into the universities in the Catalan system, especially in more advanced courses. In order to be able to fully integrate these students into the corresponding study programmes, the Generalitat de Catalunya, through the Consell Interuniversitari de Catalunya (Inter-university Council of Catalonia), is to establish systems that provide them with a sufficient understanding of the Catalan language. It also stipulates that introductory programmes providing practical information about life in Catalonia are also to be run.

Mobility is likewise important in terms of participation and plurality and articles 34 and 35 of the Law recognise the universities' commitment to the world and the important work that they can carry out in bringing progress and improvement to underdeveloped countries. Ways that this is implemented include co-operation programmes that facilitate the admission of students from these countries into Catalan universities and introductory programmes and advisory services for new students, together with social programmes and activities that facilitate their integration into university life and provide them

with a knowledge of Catalonia and an understanding of its language and culture. The universities of the 21st century must be supportive and receptive to the needs of society as a whole and at the same time contribute in an effective way to the objectives of economic development and well being.

Lastly, the Law entrusts the Consell Interuniversitari de Catalunya with the setting up of an Office of the European area of higher education with the object of fostering the full integration of the Catalan universities into the European area of higher education<sup>36</sup>.

## **5. The Agència per a la Qualitat del Sistema Universitari de Catalunya (Catalan University Quality Assurance Agency). Evaluation, accreditation and certification.**

The Agency is defined in article 137 of the LUC as the main instrument for quality promotion and evaluation assigned with the functions, amongst others, of presenting reports concerning the recruitment of lecturers and adjunct teaching staff, and issuing research accreditation required for the post of associate professor and advanced research accreditation required for the post of full professor, according to the model of teaching staff envisaged in the LUC. The Agency is also responsible for evaluating the activities of research personnel and of assessing the personal, teaching ability and operational merits of tenured and contracted teaching and research

personnel which, pursuant to article 72 of the LUC, also affects bonuses.

The explicit recognition of the competence of the Autonomous Regional Communities to have their own authorities for the certification, accreditation and evaluation of university quality and especially of teaching staff is one of the essential and unrenounceable issues raised by the Catalan coalition in the Congreso de los Diputados (Spanish Parliament) in the debates during the parliamentary procedures of the LOU. The basic Law does recognise the possibility of the functions of evaluation, certification and accreditation regulated under article 31 being carried out by the evaluation bodies that the Autonomous Regional Communities establish by law, within the scope of their respective competence, and without prejudice to the functions of other evaluation agencies of the Spanish State or the Autonomous Regional Communities. This declaration recognises and consolidates the action and autonomous impetus given to the promotion, improvement and evaluation of university quality exercised uninterruptedly by the Agència per a la Qualitat del Sistema Universitari de Catalunya<sup>37</sup> since it was set up by Decree 355/1996 of 29 October under the legal form of an inter-administrative consortium. The Agency, in which the Catalan public universities, the UOC and the Generalitat de Catalunya all participate, has been a pioneer in Spain in many aspects and currently forms part of INQAAHE (the international network of agencies for quality in higher education). The new Law lays down the objectives of quality evaluation, certification and improvements to the learning processes in university education in the Catalan

<sup>36</sup>The functions of the Office are laid down in supplementary provision no.4, and are as follows:

- a) To serve as an 'observatory' in Catalonia for the trends in Europe and on an international level in matters of higher education.
- b) To propose measures to adapt the different fields of activity of the universities to the European area of higher education.
- c) To make proposals for adapting study programmes to the European and international model that is structured on cycles.
- d) To foster relations between Catalan university institutions and the rest of Europe.
- e) To provide support for the participation of Catalan universities in European programmes of mobility and co-operation.
- f) The other functions entrusted to it by the Junta del Consell Interuniversitari de Catalunya (Board of the Interuniversity Council of Catalonia).

<sup>37</sup>The actions relative to the promoting of quality assurance in the universities have, on certain occasions, been subject to dispute. The Catalan Government's formulated claim of jurisdiction no. 1051 has still not been resolved by the Spanish Tribunal Constitucional, in relation to articles 3 and 5 of Royal Decree 1947/1995 of 1 December, whereby the Spanish Plan Nacional de Evaluación de la Calidad Universitaria (National University Quality Evaluation Plan) was set up, on the grounds that it breaches the competence of the Generalitat de Catalunya that is recognised by the EC and EAC.

system, the improved analysis of results and proposals for improving the quality of services provided by the Catalan public universities. It also modifies the Agency's legal composition, which takes on the form of a state-run enterprise of the Generalitat de Catalunya with a corporate status, full legal capacity and its own assets, with its activities conforming to private law except for those actions involving evaluation, accreditation and certification or any others that involve the exercising of public jurisdiction, which are subject to public law.

The Agency is formed of a president, a director and a Board of management that consists of various members from the universities themselves, the Generalitat de Catalunya and society, thus ensuring their involvement in the objective of promoting and guaranteeing university quality, pursuant to article 137 of the LUC.

The structure of the Agency, which must act as a separate legal entity with independent technical criteria in order to guarantee the objectivity of its actions, is made up of different commissions to improve the technical and specialised nature of its functions, which include the following permanent commissions: the Comissió d'Avaluació de la Qualitat (the Quality Evaluation Commission), the Comissió de Professorat Lector i Col·laborador (the Lecturer and Adjunct Teaching Staff Commission) and the Comissió d'Avaluació de la Recerca (Research Evaluation Commission), which in turn is subdivided into the commissions for research accreditation and the different commissions for advanced research accreditation in the various subject.

The autonomous Agency must act according to the principles of co-ordination, co-operation and collaboration

and establish the corresponding relations with other autonomous, state or international agencies, and particularly European agencies, that have attributed functions of evaluation, accreditation and certification. As external evaluation agencies and bodies are set up in the different Autonomous Regional Communities, their scope and the degree of recognition given to their actions will need to be constituted, especially in relation to the recruitment of teaching and research personnel.

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**The universities of the 21st century must be supportive and receptive to the needs of society as a whole and at the same time contribute in an effective way to the objectives of economic development and well being.**

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The Catalan Agency and the other autonomous Agencies recognise different levels of joint collaboration that are possible and have established the possibility of recognition of the functions of teaching staff accreditation carried out by the other agencies, according to the specific regulation of each. Article 148 of the LUC establishes that evaluations and accreditation carried out by other evaluation agencies or bodies can be considered by the Catalan Agency. This question obviously needs to be developed so that the same level of quality and exacting nature can be guaranteed for evaluating and applying objective parameters that are recognised in Europe and technically accepted and expressly recognised by the Catalan Agency<sup>38</sup>.

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<sup>38</sup> The different autonomous agencies that have been set up or that are being developed and discussed within their respective spheres, such as the Agencia Andaluza de Evaluación de la Calidad y Acreditación (the Andalusian Quality and Accreditation Evaluation Agency), which is still in the blueprint stage; la Comissió Valenciana d'Acreditació i Evaluació de la Calitat en el Sistema Universitària Valencià (the Valencia University Quality and Accreditation Evaluation Commission) set up by Law 5/2002 of 19 June; the Agencia Canaria de Evaluación de la Calidad y Acreditación Universitaria (the Canary Islands' University Quality and Accreditation Agency), the setting up of which was sought by Law 2/2002 of 27 March and is regulated by Decree 103/2002 of 26 July; the Agencia de Calidad, Acreditación y Prospectiva (Quality, Accreditation and Outlook Agency) of the Universities of Madrid, set up by Law 15/2002 of 27 December, and others, will need to find their own area of jurisdiction. One of the initial difficulties of the autonomous agencies in acting fully within their own university systems will undoubtedly be the urge of the Spanish state agency (ANECA) to expand, which is vested with regulatory functions of evaluation, accreditation and certification on a nation-wide basis.

A claim of jurisdiction has been made with regard to Royal Decree 1052/2002 of 11 October, which regulates the procedure for evaluation and certification by ANECA for the purposes of the contracting of university teaching and research personnel, by the Generalitat de Catalunya, which considers that the Spanish Government lacks the competence to give the ANECA executive functions relating to contracted teaching and research personnel over the universities on a nationwide basis<sup>39</sup>. All of these functions are attributed in Law 1/2003 to the Agència per a la Qualitat del Sistema Universitari de Catalunya.

The Generalitat de Catalunya upholds that evaluation and certification are of an executive nature and an integral part of the full competence of the Generalitat de Catalunya of article 15 EAC with regard to education, without admitting any extension of action by the Spanish state beyond its jurisdictional limits, given that it is not affected by the broad spectrum jurisdictional rights pro the Spanish State laid down in articles 27; 149.1.1, 149.1.18 and 149.1.30 EC. The exercising of these executive functions is not to be duplicated by the Spanish State agency, thereby avoiding unnecessary bureaucracy and having to maintain parallel administrations, given that ordinary educational administration in Catalonia is that of autonomous jurisdiction (SSTC 45/2001 and 79/1992). The Generalitat

de Catalunya is of the opinion that the *raison d'être* of the reference made in articles 50, 51, 52 and 72 of the LOU to ANECA is the existence of universities that come under the scope of competence of the Spanish State, such as the UNED, and that the wording in the LOU given to the aforementioned articles puts certifications and reports on an equal footing in legal and material terms, whether these are carried out by ANECA or by the external assessment bodies established by law in the Autonomous Regional Communities. This equal treatment has been nullified as a result of the reglamentary and unilateral attribution of ANECA with executive activity on a nationwide basis, in spite of the collaboration and co-ordination principles and, in the opinion of the Generalitat de Catalunya, in breach of the constitutional doctrine laid down in ruling 204/2002, legal principle 5, according to which it is an activity that fully corresponds in Catalonia to the Catalan Agency. These and other aspects have been disclosed in the claim for jurisdiction that was presented by the Generalitat de Catalunya in defence of its competence and entered in the Spanish Tribunal Constitucional on 27 February 2003<sup>40</sup>.

In any case, quality is an objective that is intrinsic to university activities and the three bodies with competence, the Spanish State, the Autonomous Regional Communities and the Universities, will need to find a

<sup>39</sup>As explained, articles 1, 3.3, 5.2 and end provision no. 2 of the aforementioned Royal Decree, all of which infringe the recognised competences of the Generalitat de Catalunya, according to the Constitution and its Statute of Autonomy. The aforementioned provisions regulate the intervention of ANECA in the issuing of certificates relative to reports and evaluations required for the recruitment of assistant doctoral teaching staff (in Catalonia, lecturers), contracted PhD teaching staff (in Catalonia, assistant professors and full professors) and adjunct teaching staff, and the controlling of the percentage of private university teaching staff that requires a doctoral degree.

<sup>40</sup>This is not, however, the only issue that the Tribunal Constitucional should resolve in relation to ANECA, given that several appeals on grounds of unconstitutionality against the LOU affect aspects relative to ANECA. The appeal filed by the Socialist, Mixed and Federació d'Esquerra Unida parliamentary groups declares, amongst other issues, and according to the appeal claim, that the functions attributed to ANECA impinge in a relevant way on the exercising of fundamental rights. Evaluation by the Agency is decisive with regard to entering the civil service and equal rights of employment, both for the contracting of teaching staff and establishing the composition of the qualifying commissions. This is also the case in determining the statute of tenured and contracted teaching staff as their earnings are affected, considering that evaluation is a necessary requirement for the assignment of certain bonuses. In the opinion of the appellants, the way that the Agency is dealt with in the LOU alters essential aspects of university autonomy. This and other constitutional pronouncements are needed in order to definitively establish the true scope of action of the autonomous agencies and the impact that the agency of the Spanish State has on the universities in all of Spain.

peaceful way of co-existing together in order to co-participate in this important issue on a basis of institutional trustworthiness which of necessity will need to start from the basis of respect for the body of constitutional principles that are applicable to the matter, and with particular awareness concerning university autonomy.

## **6. University co-ordination and the involvement of society in the universities.**

As mentioned above and in the preamble of the LUC, the regulation contained in Section Heading VI, relative to the Consell Interuniversitari de Catalunya (CIC) (Inter-university Council of Catalonia), which is the co-ordinating body for the Catalan University System, and the consultation and advisory body for the Govern (Executive Council) of the Generalitat de Catalunya with regard to the universities, replaces the hitherto prevailing Law 15/1998 of 28 December, although the current regulation of the CIC in practice contains all of the functions that this co-ordinating body has been exercising since then. The particular features of its structure are:

a) Individual bodies:

- the presidency,
- the vice-presidency
- the general secretary.

b) Collegiate bodies:

- The Conferència General (General Assembly) is the participating and co-ordinating body of the university community that establishes and evaluates the main objectives of the Catalan University System. Representation on the Assembly is broad-based and pluralistic and includes the public and private universities, educational administration authorities and various different social agents and representatives from society in

general.

- The Junta del Consell (Board of Trustees), which functions either as a plenary assembly, includes representatives from the public universities and up to three rectors from private universities that are legally established as non-profit making entities and accept the Catalan University Programme, plus the UOC, or as a Permanent Commission with representation from the public universities and the UOC that deals with aspects that come under its exclusive competence.

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**Quality is an objective that is intrinsic to university activities and the three bodies with competence, will need to find a peaceful way of co-existing together in order to co-participate in this important issue.**

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Given its importance, mention is also made of section 4 of article 122, which establishes that the CIC, through the setting up of specific advisory commissions, must promote the participation of the persons and/or entities that represent social, professional, academic and economic requirements and interests, who, with their authority, activities, knowledge and experience, can contribute to the fulfilling of the functions that it is entrusted with.

Variations in the composition of the social councils, which are an important medium through which society participates in the universities and which also exercise governing functions, constitutes one of the outstanding aspects of the LUC. Chapter 3 on the social councils, under Section Heading III, which is on governance and representation in the public universities, to a large extent

lays down the functions established in the regulation contained in the previous Law 16/1998 of 28 December, and at the same time reduces the composition of this body to make it more flexible and improve its effectiveness. The new regulation reduces the number of members to fifteen while leaving the actual proportion of external and internal university representatives in the composition of the body unchanged<sup>41</sup>.

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**The social councils of the Catalan universities have become a fundamental body that provides a collective impetus for the universities in promoting and making society aware of the universities and the services that they provide.**

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A new development in relation to the social councils is introduced in article 87 of the LUC whereby they can constitute a participative forum for promoting the participation and guidance of individuals, institutions and entities of an associative, civic, cultural, professional, eco-

nomic, occupational, social and territorial nature that, with their authority, activities, knowledge and experience, contribute to the fulfilling of the functions entrusted in this important body.

Given the important work that they have carried out since their establishment by Law 26/1984 on 19 December, the social councils of the Catalan universities have become a fundamental body that provides a collective impetus for the universities in promoting and making society aware of the universities and the services that they provide.

## **7. The Catalan Universities Law: the legal framework and its development, interpretation and application.**

As appears in the wording of the preamble, the LUC originated out of a long process of reflection on the new challenges and goals of the universities on the threshold of the 21st century, which in Catalonia is the consequence of a process of on-going debate in the university community and with society in general. It is also the result of the joint work of many individuals who have directly or indirectly contributed to the consideration and drawing up of the law, at times at points

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<sup>41</sup>The composition of the Social Councils is as follows:

1. Nine members that represent Catalan society, as follows:
  - a) Two people named by the Parliament of Catalonia;
  - b) Three people named by the Executive Council of the Generalitat de Catalunya;
  - c) One person chosen by the local entities in the area or region in which the corresponding university institutes are located, which in the case of the city of Barcelona is the Ajuntament de Barcelona (Barcelona City Council), in accordance with its Municipal Charter;
  - d) One person chosen by the most representative workers' trade union organisations in Catalonia;
  - e) One person chosen by the most important legally established business organisations from the area of influence of each university;
  - f) One former student with a degree from the corresponding university who is not an active member of the university community.
2. Six members of the governing body of the university, as follows:
  - a) The rector;
  - b) The secretary or general secretary;
  - c) Head of administration;
  - d) One student;
  - e) One member of the teaching and research personnel;
  - f) One member of the administration and services personnel.

very widely separated over time as a result of the historical memory of those who have contributed to the ideology of the Catalan university throughout history, which has resulted in many fruitful university conventions, the first of which was held one hundred years ago. This includes convention delegates, academics, idealists, and many concerned and sincere people who, through the ages and especially during times of great difficulty, have maintained the University alive as the motive force for thought and action, and who have defended a status quo for the Catalan university model.

In the drawing up of the LUC, priority was given to dialogue, participation and consensus, especially as a consequence of the work of the commission that was especially set up with the universities to prepare the draft. The numerous proposals, changes and amendments received from all sides, which on the one hand have contributed to the enrichment of the Law, were incorporated into the draft although on occasions in an unsystematic way, which led to the straying of the legal wording of certain aspects from that normally expected of laws and as a result may not as read as would be expected. The LUC is neither a perfect law nor a future safeguard against the difficulties of the new university model that is being created in Europe, and to which the Catalan universities can make a significant contribution. It is a legal framework approved by the Parliament of Catalonia that will need to be expanded on, with care being taken to prevent the legal terrain becoming saturated with rules and regulations that always end up being rigid. Furthermore, it will need to be interpreted according to criteria that are open to the real life situation of the universities at any given time and also applied with sound judgement through the use, where necessary, of the advantages that arise out of inter-university co-ordination and co-operation, and the instruments have been used frequently for some time now in Catalan universities, such as programme contracts. The use that the uni-

versities make of their individual autonomy, in the broadest sense of the word, is likewise the most important element and needs to provide the necessary scope of action for each university to be able to define, adapt and apply at least most of the various aspects of the Law to its own particular university policy, thereby benefiting the diversity, quality and plurality of the system.

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**The use that the universities make of their individual autonomy needs to provide the necessary scope of action for each university to be able to define, adapt and apply at least most of the various aspects of the Law to its own particular university policy.**

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At the time when a law is being drawn up, approved, or even the moment when it comes into effect, it is difficult to know whether it will be good or bad or if it will respond sufficiently and in a satisfactory way to the expectations and needs of the sector being regulated and of the public interest, and it is only the day after it is applied and produces effects that this starts to become known. The Catalan Universities Law has been set in motion and it will require good political, legal and university practice for the model for the Catalan universities to become an appropriate instrument that provides an increasingly better public service with ambitious objectives and that is competitive, open and capable of responding to the new challenges being faced; a university system that conserves the signs of Catalan identity, which fosters all of the universities within it, that becomes integrated in a participative way in Europe and that contributes to the influence of Catalonia and its universities in the world.

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BUTLLETÍ OFICIAL DEL PARLAMENT DE CATALUNYA. Núm. 386, de 4 de febrer de 2003. Publicació de l'informe de la Ponència.

BUTLLETÍ OFICIAL DEL PARLAMENT DE CATALUNYA. Núm. 388, de 4 de febrer de 2003. Text del Dictamen elaborat per la Comissió de Política Cultural.

BUTLLETÍ OFICIAL DEL PARLAMENT DE CATALUNYA. Núm. 394, de 19 de febrer de 2003. Publicació de la Llei d'universitats de Catalunya.

BUTLLETÍ OFICIAL DE LA GENERALITAT DE CATALUNYA. Núm. 3826 de 20 de febrer de 2003. Llei 1/2003, de 19 de febrer, d'universitats de Catalunya.

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### APPEAL AGAINST UNCONSTITUTIONALITY

Contra determinats preceptes de la Llei orgànica 6/2001, de 21 de desembre, d'Universitats promogut per Diputats dels Grups Parlamentaris Socialista, Federal d'Esquerra Unida i Mixt (BOE núm. 112, of 10 May 2002)

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