



Academic Freedom Monitor 2024

Overview of *de jure*
academic freedom
protection

STUDY

Panel for the Future of Science and Technology



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Academic Freedom Monitor 2024

Overview of *de jure* academic freedom protection

Academic freedom is widely recognised as a fundamental value of contemporary higher education and research, and is often presented as a prerequisite for well-functioning democratic societies. However, in recent years, major concerns have been expressed by various stakeholders about the state of academic freedom in the European Union. The European Parliament launched an annual EP Academic Freedom Monitor in 2022, to help improve the promotion and protection of academic freedom in the European Union. This report presents one of the two studies conducted in the 2024 edition.

This study firstly provides an overview of the constitutional legal provisions of academic freedom across all EU Member States. Secondly, it provides an in-depth analysis of the legal protection of academic freedom in four EU Member States. Thirdly, it explores the Union's scope of action on academic freedom protection at EU level.

On the basis of both studies, this report proposes EU-level policy options for possible legislative and non-legislative initiatives to support academic freedom in the EU.

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Executive summary

This study has a three-fold aim: firstly, to provide an overview of the constitutional legal provisions of academic freedom across all Member States. Secondly, to provide an in-depth analysis of the legal protection of academic freedom in four EU Member States at constitutional level: Germany, Greece, The Netherlands and Poland (case studies). Thirdly, to reflect on the Union's scope of action on academic freedom protection at EU level.

The overview of the constitutional legal provisions is an updated, synthesised overview of existing data. It shows that most Member States' constitutions protect elements of the 'union model' definition of academic freedom conceptualised in previous EP Academic Freedom Monitors, although they rarely use the concept of 'academic freedom' as an object of protection explicitly. When used, such protection is typically granted within a specific educational context. Several Member States do not have explicit provisions on scientific or academic freedom in their constitutional law, although academic freedom or elements thereof might be protected under other provisions, particularly on freedom of expression and/or the right to education.

The case studies, while limited to an analysis of constitutional protection of academic freedom within the scope of this report, highlight two issues: firstly, the need for an in-depth analysis of various legal sources (constitutional provisions, existing court jurisprudence, and other authoritative sources) in order to understand academic freedom protection within a legal system; secondly, some questions that need to be answered regarding the scope and nature of academic freedom as an EU fundamental right, as protected in Article 13 of the EU Charter of Fundamental Rights (CFR). In any case, further research is warranted, also in light of the fact that the constitutional tradition of the Member States will have to inform the Article 13 CFR standard, in line with Article 52(4) CFR.

The fifth chapter of the report explores the Union's scope of action on academic freedom. It discusses the EU's shared competence in research, with an explicit mandate to adopt measures necessary to establish the European Research Area. It notes the potential of other fields of EU law, notably Internal Market law, to implicate academic freedom protection.

All EU action, whether within the existing legal frameworks or aimed at adopting new ones, will have to comply with the Article 13 CFR standard. Given the scarcity of authoritative sources on the scope and nature of this freedom in EU law, its key dimensions could be further clarified, also with reference to the constitutional traditions common to the Member States, as noted above. Such work should be differentiated from work on legislative definitions of academic freedom, and from attempts to define academic freedom for monitoring or other purposes.

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1. Introduction

This study has a threefold aim: firstly, to provide an overview of the constitutional legal provisions of academic freedom across all Member States (chapter 3). Secondly, to provide an in-depth analysis of the legal protection of academic freedom in four EU Member States at constitutional level: Germany, Greece, The Netherlands and Poland (chapter 4). Thirdly, to reflect on the Union's scope of action on academic freedom protection on the EU level (chapter 5).

The choice has been made to include in-depth case studies considering the necessity to understand the specificities of a given legal system in quite some detail in order to assess academic freedom protection. The case studies showcase how much established constitutional law there is beyond the (more or less short) pronouncements in the texts of the respective constitutions – even if academic freedom is not expressly provided for in a constitution.

The choice has been made to analyse only *constitutional* law in the four national jurisdictions. However, it should be noted that legal protection of academic freedom can find its basis in different sources of law. The different sources of law remain in hierarchical relationships, with those at the lower levels of hierarchy being subject to (having to be compliant with) those at a higher level. The legal systems of Member States differ in regard to the exact types and/or hierarchy of sources of law. However, a Member State's constitution is usually the most authoritative source of rules on the state powers. Supranational law needs also to be taken into account when discussing the protection of academic freedom in national constitutional laws as it is often relevant for the interpretation of domestic legal provisions. The analysis of the *de jure* academic freedom – the state of its legal protection – might therefore cover different levels of a legal system. To understand in full detail how a given Member State shapes and protects academic freedom, one needs to analyse all types of relevant legal sources. Such an analysis is time-consuming and requires a detailed knowledge of various areas of national laws. Moreover, ordinary legislation and other types of legal acts at the lower levels of hierarchy are relatively easy to change, depending on political will, and might often be challenged in case they are perceived to violate the constitutions. In light of this, it is the constitutions that typically set out the fundamental understanding of academic freedom – or equivalent rights – in a given jurisdiction. Additionally, it is the *constitutional* traditions common to the Member States that shall influence the interpretation of fundamental rights included in the EU Charter (Article 52(4) CFR).

The choice has been made for the specific four case studies – and not more than these – given the objectives of this study to be achieved in a determined time period and importantly, corresponding to the language skills and legal expertise of the authors. The four national jurisdictions in this case study are jurisdictions that are also studied within the NWO research project AFITE¹. This study relies on some of the materials provided by national experts for the AFITE project.

In terms of methodology, the selection of these national jurisdictions has been made to account for diverse legal traditions within the EU, representativeness of legal systems that are of particular interest to academic freedom protection, and geographical representation.²

¹ NWO (Dutch Research Council) Vidi AFITE project, led by Dr. Vasiliki Kosta: 'The EU fundamental right to freedom of the arts and sciences: exploring the limits on the commercialisation of academia' www.universiteitleiden.nl/en/law/institute-of-public-law/europa-institute/research/afite#project-description

² For a more detailed discussion of the selection of the national jurisdictions and the methodology of the case studies see Section 4.1.

The in-depth case studies, when viewed in comparative context, also unveil fundamental challenges and tensions relative to academic freedom, as well as ways to solve these. Such an account can be especially useful when seeking to inform the further fleshing out of academic freedom at EU level.

Finally, any action on academic freedom at EU level will have to be in line with the principle of conferral that governs the limits of EU competences. It is for this reason the last part of this study is devoted to this topic.

2. Key Findings and Joint Policy Options

2.1. Key Findings: Overview of Constitutional Provisions

National constitutions of EU Member States rarely use the concept of 'academic freedom' as an object of protection explicitly. At the same time, many other constitutional provisions can be perceived to be functionally equivalent to academic freedom protection. Most constitutions protect, for example, 'freedom of scientific research' or 'freedom of science' (e.g. Germany, Poland, Portugal, Greece), typically understood as broader and applicable to everyone engaged in scientific activities, often including teaching.

Several Member States do not have explicit provisions on scientific or academic freedom in their constitutional law (e.g. Belgium, Ireland, the Netherlands). However, academic freedom or elements thereof might be protected under other provisions, in particular on freedom of expression and/or right to education. This has been recognized authoritatively by the constitutional courts in some of these countries (e.g. Belgium).

While constitutions are not replaced or amended frequently, one can observe that new constitutional developments relevant for academic freedom protection already have taken place or are currently discussed in some Member States. For example, in July 2023, a new constitution entered into force in Luxembourg. It includes also provisions on freedom of education and freedom of scientific research, relevant in the context of academic freedom protection. In Sweden, several academic unions and associations have been advocating for a more explicit inclusion of academic freedom in the Swedish constitutional acts to complement freedom of research.

While an overview of constitutional provisions can constitute a starting point of the discussion on the constitutional traditions common to the EU Member States, a comprehensive understanding of the scope of academic freedom protection in each Member State requires in-depth legal expertise on a given legal system. It must take account of the interplay of different constitutional provisions, the existing court jurisprudence, and other authoritative sources. All constitutional provisions should therefore always be interpreted in their broader legal context. Examples of such analyses can be found in chapter 4 of this report.

2.2. Key Findings: Case Studies

The constitutional traditions common to the Member States shall influence the interpretation of fundamental rights enshrined in the EU Charter of Fundamental Rights (Article 52(4) of the Charter), including its Article 13 (on academic freedom). The in-depth analysis of the constitutional traditions of four EU Member States highlights some of the questions about the scope and nature of academic freedom as an EU fundamental right that might need to be answered.

The analysis of the in-depth case studies on Germany, Greece, the Netherlands, and Poland reveals that these jurisdictions share some commonalities in a broad sense, but some differences with important implications remain. Among the analysed jurisdictions, only Greece uses the concept of 'academic freedom' applicable within the university context specifically. The Greek constitution protects also 'freedom of science'. The latter is the concept recognized in the German constitution. The Polish constitution similarly talks about 'freedom of scientific research' as an object of protection. Protection granted under these provisions generally extends to everyone engaged in scientific research and/or teaching. All analysed jurisdictions protect not only individuals, but also institutions – be it under the general provisions (Germany) or based on separate provisions devoted to them (Greece and Poland). However, the exact scope of protection in the different jurisdictions might differ in some respects. The analysis shows that the use of a particular constitutional concept (or the lack thereof) is not decisive for determining the scope of protection.

"Academic freedom" is not embedded in Dutch constitutional law and does not have a direct functional equivalent. However, certain dimensions thereof can be protected under other constitutional provisions, e.g. freedom of expression. Higher education institutions are considered to be protected under the general provisions on the right to education. Due to the largely unwritten character of academic freedom, its enforceability, nature and scope might be contested and are currently under discussion.

In all the jurisdictions, the position of students as academic or scientific freedom rights-holders remains relatively under-discussed. The exact nature of rights and freedoms granted to them is yet to be clarified. Further, a significant variation can be observed regarding the question whether academic freedom gives rise to positive obligations (duty to act, see 'Glossary'), e.g. the provision of sufficient resources. While all analysed jurisdictions recognize academic freedom (or its equivalents) as a negative freedom that imposes on the state a duty to refrain from unjustified interference, positive obligations have not been unanimously accepted everywhere.

In all analysed jurisdictions, academic or scientific freedoms are not unlimited. Such limits emanate in particular from the constitutions themselves and concern the protection of constitutional rights and freedoms of others. In Germany and Greece, the constitutions mention additionally that certain elements of such freedoms do not exempt anyone from allegiance to the constitution.

2.3. Key Findings: The Union's Scope of Action

While the EU has only a supplementary competence in education and harmonisation of the Member States' laws and regulations is excluded (Art. 165(4) TFEU), it has become active by adopting supporting measures and has participated in intergovernmental processes outside the EU legal framework (the Bologna Process; the Lisbon Recognition Convention). When the Union acts, also in the context of education, it is bound by the EU Charter of Fundamental Rights, including its Article 13.

Other (than education) EU competences can have an impact on national education laws and policies, and notably the rules of the EU Internal Market given that privately funded (unlike publicly funded) education can be qualified as a 'service' within the meaning of the Treaties and situations involving the free movement of services or the freedom of establishment can implicate academic freedom (e.g. *Commission v Hungary*;³ *Cilevičs* based on the Advocate General Opinion).⁴ As a corollary, legislative action could be adopted in these fields, provided the necessary conditions for having recourse to the possible legal bases are fulfilled.

The EU has a shared competence in research and a mandate and legal basis to establish measures necessary for the implementation of the European research area. When having recourse to this legal basis it will have to comply with the principle of proportionality and subsidiarity.

2.4. Joint Policy Options

The joint policy options presented in this report are developed on the basis of the two EP Academic Freedom Monitor studies 'Analysis of de facto state of Academic Freedom in the EU – country overview', and 'Overview of de jure Academic Freedom protection', conducted in 2024 at the request of the Panel for the Future of Science and Technology (STOA). The joint policy options take into account the results of both studies, and are presented both in this report and the report of the study 'Analysis of de facto state of Academic Freedom in the EU – country overview', which is published separately.

³ Case C-66/18 *European Commission v Hungary* [2020] ECLI:EU:C:2020:792.

⁴ Case C- 391/20 *Boriss Cilevičs and Others* [2022] ECLI:EU:C:2022:166, Opinion of AG Emiliou.

Policy option 1: Exploring further the scope and nature of academic freedom as an EU fundamental right

All EU actions, including those proposed in the policy options below, will have to comply with the Article 13 CFR standard of academic freedom. Given the scarcity of authoritative sources on the scope and nature of this freedom in EU law, its key dimensions could be further clarified. Such work should be differentiated from work on legislative definitions of academic freedom as well as from attempts to define academic freedom for monitoring or other purposes.

The constitutional traditions common to the EU Member States will have to inform the EU standard based on Article 52(4) CFR of the Charter referring to those traditions. The four in-depth case studies conducted in the de jure report might provide a point of reference for future research. The analysis of the de jure protection of academic freedom across the EU Member States may be a source of inspiration for identifying key challenges to academic freedom in national constitutional law debates that should be addressed also in EU law. It might also inform debates about future normative proposals, highlighting effective solutions to such challenges that have already emerged in national jurisdictions.

Policy option 2: Strengthening existing European legal frameworks for promoting and protecting academic freedom

Strengthened legal protection of academic freedom at European level can be expected to support academics, students, and academic organisations in their internal and external academic activities, while laying down the basic dimensions of academic freedom that EU Member State governments and other governance bodies should uphold within the applicable legal frameworks. New proposals on the promotion and protection of academic freedom could explore different strands of EU competences (education, research, internal market).

In order to determine which further steps might be appropriate and effective, an evaluation of all follow-up actions undertaken in response to the EP resolution of 17 January 2024 on the promotion of the freedom of scientific research in the EU would be essential. Furthermore, all initiatives at the EU level must be appropriately coordinated. In addition, appropriate attention could be given to the potential avenues to promote and protect (aspects of) academic freedom under the already existing legal framework. Any legislative attempts at an EU definition of academic freedom should remain sensitive to the evolving nature and context-dependency of academic freedom challenges.

Policy option 3: Enhancing the awareness of definitions and interpretations of academic freedom

For making valid cross-country comparisons of the state of play of academic freedom in the EU Member States it is important to identify common interpretations across the EU of its key dimensions and the conditions under which it is to be exercised as optimally as possible. The case studies of the de jure report show the variance of academic freedom definitions at national constitutional level, while the de facto report shows varieties among EU Member States in recent academic freedom trends. However, further work needs to be conducted in this regard. Such work can highlight issues that can be interpreted as a challenge to academic freedom and with respect to which EU-level action could be considered. Additionally, it is essential that the EP Monitor contributes to raising awareness at European universities, colleges, and research institutes among individual staff members and students of the importance of academic freedom for their professional activities, including the practical implications.

Policy option 4: Developing of the EP Academic Freedom Monitor

The current format of the EP Academic Freedom Monitor needs further development and expansion in its role as a European Parliament tool for ambitions to come to fruition. At the current stage, the EP Monitor cannot cover all relevant themes and aspects due to the limitations of existing data and

the specific definitions and methodology employed in the present studies. Specific aspects that have been identified in the current studies that need more attention include:

- Academic freedom for students, in terms of freedom to study and students' role in research and institutional governance and its relationship with other fundamental rights, such as the right to education. Such an expansion implies that the EP Monitor would more adequately cover the overall relation of academic freedom to teaching and student learning. It would also reflect the growing importance for higher education of the Erasmus+ programme, and the strategy of the European Commission with respect to the future of higher education in Europe.
- The academic freedom of doctoral students, early career researchers, and non-tenured academic staff as well as researchers from underrepresented groups, who have a precarious position in the academic system. They might be more vulnerable to infringements of academic freedom, especially if they are threatened with career restrictions. Valid data that is focused specifically on this group is hardly available at the current time.
- Data concerning self-censorship and victimization effects, which at this stage are insufficiently covered in existing academic freedom monitoring and measurement activities.
- The introduction of transparent and effective guidelines and regulations for the intensifying involvement of the private sector in the governance, organization and funding of academic activities.
- Possible infringements on academic freedom due to EU and national policies and regulations with respect to security risks and the international security situation, and related restrictions on public funding of research, academic publishing of research results, and international academic collaboration and exchange.
- The understanding(s) of positive obligations inherent in academic freedom protection, which seem to vary significantly across the EU and at this stage remain relatively under-discussed.

Policy option 5: Better integration of academic freedom into EU higher education, research, development and innovation

The EU has established, through a range of initiatives, a key role in research and education, academic exchange and other academic activities in Europe. These initiatives are complementary to the backbone of national and regional higher education and research policies and programmes. Given their impact it is highly appropriate that the Horizon Europe Regulation states that 'the Programme should promote the respect of academic freedom in all countries benefiting from its funds' (Recital 72), while under the Erasmus+ programme 'it should be ensured that academic freedom is respected by the countries receiving funds' (Recital 64). However, although these recitals might support the interpretation of the regulations, there is no authoritative guidance as to how to understand them in the context of the programmes. It can be recommended to embed academic freedom more strongly in the enacting terms of the legal instruments in question, but their implementation would crucially depend on policy option 1 (see above) seeking a sharpened understanding of what the Article 13 CFR standard entails.

The requirements for institutional policies, procedures and support structures to safeguard academic freedom could be strengthened as a condition for obtaining EU research and/or education funding. However, any such conditions need to remain sensitive to the diversity of national frameworks.

Policy option 6: Conducting meta-analysis of academic freedom data

Meta-analysis of academic freedom data in Europe could be stimulated by creating an Academic Freedom Clearinghouse. Furthermore, the EU Fundamental Rights Agency could initiate work on the state of academic freedom, within the Agency's current mandate.

Policy option 7: Enhancing the knowledge basis and deepening understanding

Understanding of different dimensions of academic freedom and its protection can be strengthened, for example, through pan-European surveys of academics, leaders, and authorities, further studies on the relationship between legal protections and practice, and dedicated EU-funded research projects under Horizon Europe or FP10.

3. Overview of constitutional provisions on academic freedom protection in EU countries

KEY FINDINGS

- National constitutions of EU Member States rarely use the concept of 'academic freedom' as an object of protection explicitly. At the same time, many other constitutional provisions can be perceived to be functionally equivalent to academic freedom protection. Most constitutions protect, for example, 'freedom of scientific research' or 'freedom of science' (e.g. Germany, Poland, Portugal, Greece), typically understood as broader and applicable to everyone engaged in scientific activities, often including teaching.
- Several Member States do not have explicit provisions on scientific or academic freedom in their constitutional law (e.g. Belgium, Ireland, the Netherlands). However, academic freedom or elements thereof might be protected under other provisions, in particular on freedom of expression and/or right to education. This has been recognized authoritatively by the constitutional courts in some of these countries (e.g. Belgium).
- While constitutions are not replaced or amended frequently, one can observe that new constitutional developments relevant for academic freedom protection already have taken place or are currently discussed in some Member States. For example, in July 2023, a new constitution entered into force in Luxembourg. It includes also provisions on freedom of education and freedom of scientific research, relevant in the context of academic freedom protection. In Sweden, several academic unions and associations have been advocating for a more explicit inclusion of academic freedom in the Swedish constitutional acts to complement freedom of research.
- While an overview of constitutional provisions can constitute a starting point of the discussion on the constitutional traditions common to the EU Member States, a comprehensive understanding of the scope of academic freedom protection in each Member State requires in-depth legal expertise on a given legal system. It must take account of the interplay of different constitutional provisions, the existing court jurisprudence, and other authoritative sources. All constitutional provisions should therefore always be interpreted in their broader legal context. Examples of such analyses can be found in chapter 4 of this report.

3.1. Methodology

This part of the study provides an overview of the constitutional provisions on academic freedom protection in all EU Member States. The scope of the overview is determined in reference to the 'onion model' conceptualised in previous EP publications.⁵ This means that the overview includes provisions that directly touch upon the core or supporting elements of academic freedom as discussed therein.⁶ The core elements of academic freedom include freedom of teaching, freedom of research, freedom to study, (academic) free expression, and self-governance. Supporting elements of academic freedom are taken to encompass employment security and institutional autonomy.⁷ However, it needs to be emphasised that this theoretical model does not need to correspond to the *legal* concept(s) of academic freedom or its equivalents – be it in national, EU, or international laws. Different laws have their own terminology and conceptual frameworks, and these provide reference points for legally binding rights and obligations. In this part of the study, the 'onion

⁵ Gergely Kováts and Zoltan Rónay, 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' (European Parliament (STOA) 2023) 12
<[https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740228/EPRS_STU\(2023\)740228_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740228/EPRS_STU(2023)740228_EN.pdf)>
accessed 28 March 2023.

⁶ *ibid.*

⁷ For a more detailed description of these elements see *ibid* 11–15.

model' is treated only as a starting point of the analysis and indicates its scope. It should be therefore understood purely functionally rather than normatively. Policy recommendations presented in this report, insofar they pertain to legal measures, will necessarily take the EU legal framework as the main and only point of reference (see also Section 3.2.3 below).

This study acknowledges the first analysis of 'academic freedom and its protection in the law of European states' conducted by Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua.⁸ That publication ranks the constitutions and other legal provisions of EU Member States based on the extent to which they implement the criteria of the 1997 UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel. It was previously summarised and critically discussed in the STOA publication on 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' by Gergely Kováts and Zoltan Rónay.⁹ The current study, however, should not be seen as an updated version of the previous study by Klaus Beiter, Terence Karran and Kwadwo Appiagyei-Atua. It not only takes a different point of reference – as both the Member States and the EU operate with its own normative standards – but also does not aim at ranking the Member States. It rather presents the texts and highlights the diversity of the provisions, concepts, and ways of framing academic freedom in the constitutions of the Member States.

The overview builds on and synthesizes the already existing data on constitutional provisions protecting academic freedom collected in The Global Mapping of Regulatory Frameworks on Academic Freedom,¹⁰ in the *Constitute* database,¹¹ and in other English-language secondary sources (in particular scholarly literature and/or information gathered by international organisations or academic associations).¹² This includes relevant data discussed in the previous STOA publications on academic freedom.¹³ The available data sources rely on various conceptualisations of 'academic

⁸ Klaus D. Beiter, Terence Karran and Kwadwo Appiagyei-Atua, 'Academic Freedom and Its Protection in the Law of European States' (2016) 3 *European Journal of Comparative Law and Governance* 254.

⁹ Kováts and Rónay, 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' (n 5).

¹⁰ Milica Popović, Sophie Bisping and Dmitry Dubrovsky, 'Global Mapping of Regulatory Frameworks on Academic Freedom' (*CEU*) <<https://elkana.ceu.edu/global-mapping-regulatory-frameworks>> accessed 28 September 2024; for a discussion of the mapping see Dmitry Dubrovsky, 'Academic Freedom in the European Higher Education Area – Preliminary Observations' in Milica Popović, Dmitry Dubrovsky and Maryna Lakhno (eds), *Academic Freedom in a Post-Pandemic World* (OSUN Global Observatory on Academic Freedom 2023) 19 <<https://elkana.ceu.edu/sites/elkana.ceu.edu/files/attachment/basicpage/391/goacademicfreedominapostpandemicworld2023final0822.pdf>> accessed 5 August 2024..

¹¹ As already observed in Janika Spannagel, 'Introducing Academic Freedom in Constitutions: A New Global Dataset, 1789–2022' (2024) 23 *European Political Science* 421 <<https://doi.org/10.1057/s41304-023-00446-5>> accessed 28 September 2024, the coding in Comparative Constitutions Project – on which the *Constitute* database builds on – is not always consistent. It reflects an understanding of academic freedom that is at times quite broad, and at times quite narrow (eg including provisions on freedom of education without specific references to higher education or excluding provisions on university autonomy or scientific freedom). To provide for the fullest possible picture, this study surveys therefore two types of tags: 'right to academic freedom' and a 'reference to science'. The first tag is described as 'allow[ing] scholars to pursue their research agenda without undue interference from the state. This is usually understood to also include freedom to teach and publish'. The second tag 'may include prioritization of investment in scientific research, or mandate state support for science and innovation'. Provisions identified via the latter are not always relevant for academic freedom, with only provisions pertaining to the scope of academic freedom and/or positive obligations of the state in the scientific activities retained in the overview. The selection made in this regard will be made explicit in respective sections..

¹² These include eg the University Autonomy Scorecard of the European University Association, the state-mandated inputs submitted to the 'Call for contributions: academic freedom and freedom of expression in educational institutions' issued by the Special Rapporteur on the right to education in April 2024, the Advice Paper on 'Challenges to Academic Freedom as a Fundamental Right' published by the League of European Research Universities (LERU) in 2023 (Jogchum Vrielink and others, 'Challenges to Academic Freedom as a Fundamental Right' (League of European Research Universities 2023) LERU Advice Paper www.leru.org/publications/challenges-to-academic-freedom-as-a-fundamental-right) and previous publications of the European Parliament. The scholarly literature surveyed includes various English-language publications focusing either on all or selected EU Member States.

¹³ Peter Maassen and others, 'State of Play of Academic Freedom in the EU Member States: Overview of de Facto Trends and Developments' (Panel for the Future of Science and Technology (STOA), European Parliament 2023)

freedom', some of which depart from the 'onion model' discussed above, but are included in reference to the model as much as possible. This data is then cross-checked and verified by the authors of this study in reference to constitutional legal texts currently in force in each respective Member State to account for any subsequent amendments, as identified in *World Constitutions Illustrated* and/or *Constitute* databases.¹⁴ Any differences between information provided by different sources – sometimes resulting also from their different conceptualisations of 'academic freedom' – are made explicit (where relevant) in the respective sections.

This overview does not aim at an exhaustive analysis of the meaning of academic freedom and the scope of its protection in constitutional laws of EU Member States. It should rather be consulted as a starting point of such analysis. A comprehensive understanding of the scope of academic freedom protection requires in any case legal expertise on a given legal system and an in-depth analysis, taking account of the existing jurisprudence and the interplay of different constitutional provisions. (The added value – and at the same time necessity – of this type of in-depth analysis is illustrated by the case studies discussed in chapter 4 of this study.) Even where explicit provisions on academic freedom (or a variation thereof) are lacking in a given Member State, its protection might still be derived from other constitutional provisions and hence guaranteed constitutionally. Two types of national constitutional provisions specifically deserve here a separate remark: freedom of expression and the right to education. These rights, which are often taken to ground academic freedom in international law (where explicit provisions are lacking),¹⁵ might also be relevant for academic freedom protection in some of the Member States. It must be noted that all EU Member States protect freedom of expression in their constitutional law.¹⁶ However, provisions on freedom of expression – as a more general right perceived as different from academic freedom¹⁷ – are included in the overview only insofar they make a direct reference to academics and/or are directly listed as relevant in other sources. The general constitutional provisions on the right to education are similarly included only insofar they make an explicit reference to freedom of teaching/study/education and/or are directly listed as relevant in secondary sources.¹⁸ This allows to limit the scope of the study and preserve its focus. However, the lack of such provisions in the overview of a given EU Member State does in no way suggest that they have not been or cannot be used to protect (elements of) academic freedom therein. Further, the constitutional provisions on academic freedom might not explicitly discuss its legitimate limitations, which may result from separate limitation clauses in constitutions and/or be elaborated on in the jurisprudence of constitutional courts. Because of that, all provisions should always be interpreted in their broader legal context. The overview references both original constitutional texts and their official English-language versions, as provided in official law reports or on the websites of state authorities.¹⁹ Where an official

[www.europarl.europa.eu/stoa/en/document/EPRS_STU\(2023\)740231](http://www.europarl.europa.eu/stoa/en/document/EPRS_STU(2023)740231) accessed 5 April 2023; Peter Maassen and others, 'EP Academic Freedom Monitor 2023' (Panel for the Future of Science and Technology (STOA), European Parliament 2024)

<[https://www.europarl.europa.eu/RegData/etudes/STUD/2024/757798/EPRS_STU\(2024\)757798_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2024/757798/EPRS_STU(2024)757798_EN.pdf)>.

¹⁴ 'World Constitutions Illustrated' (*HeinOnline*) <<https://home.heinonline.org/content/world-constitutions-illustrated/>> accessed 28 September 2024.

¹⁵ See the discussion below in Section 3.2.

¹⁶ See, e.g. Beiter, Karran and Appiagyei-Atua (n 8) 297–298. According to the authors, assigning scores to the various provisions, there are 4 countries that provide for an insufficient protection of free speech in this context: Greece (1 out of 2 points in this category), Hungary (0 points), Romania (1 point), and Ireland (1 point).

¹⁷ Kováts and Rónay, 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' (n 5) 17–18.

¹⁸ Beiter, Karran and Appiagyei-Atua, 'Academic Freedom and Its Protection in the Law of European States' (n 8) 284 similarly do not take such provisions into account and observe that '[f]ull-fledged provisions on the right to education are found in only some European constitutions'.

¹⁹ As law is a field heavily reliant on language, the use of English-language sources is always marked by limitations. Concepts in one language cannot generally be fully represented in another language and translations pose an interpretative challenge. However, as a common (meta-)language is necessary for any comparative work, this study collects the relevant information identified in reference to such selected meta-concepts and provides a starting point for further work that can engage with such similarities and differences in more detail.

English-language version of a given constitutional text is not available, be it in general or in reference to most recent amendments of the constitution (e.g. in Austria or Luxembourg), the analysis relies on translations available via the *Constitute* website, the authors' own analysis and translation (where the necessary language skills are available), and/or courtesy of other legal experts. The source of translation is indicated for each respective passage.

3.2. International and regional legal sources applicable in national law of the EU Member States

There are multiple supranational legal frameworks applicable in the national laws of the EU Member State that protect (parts of) academic freedom. The relationship between international law and national law is often complex and the exact status of international law across EU Member States varies, with potential implications for citizens' ability to rely on it. International law, even if binding on a given Member State, should therefore not be by default considered part of its *constitutional* legal framework, but some EU Member State ascribe a constitutional or quasi-constitutional status to its (all or selected) sources.²⁰ EU law can be seen as having a *sui generis* status, for example, as it enjoys primacy over national law, including constitutional law.²¹ Notwithstanding the exact status of a given supranational legal source, such law is often relevant for the interpretation of domestic legal provisions and should therefore be considered also when discussing the protection of academic freedom in national constitutional laws.

3.2.1. International law

No binding instrument of international law provides explicit protection of academic freedom. However, academic freedom (or aspects thereof) can be construed as being encompassed by the following provisions:²²

- Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (the right to science);
- Article 13 of the International Covenant on Civil and Political Rights (ICCPR) (right to education);
- Article 19 ICCPR (freedom of expression).

It can be noted that all 27 EU Member States have ratified the ICCPR and the ICESCR of 1966 as well as the Optional Protocol to the ICCPR of 1976. The Optional Protocol to the ICESCR of 2008 has been ratified by Belgium, Finland, France, Germany, Italy, Luxembourg, Portugal, Slovakia, and Spain.²³ Both Optional Protocols set out (similar) systems by which individuals or groups can

²⁰ Notwithstanding the legal obligations assumed by states internationally, the exact domestic status of international law – including its applicability to individuals – is determined by each legal system independently. For example, Austria has granted to the ECHR the status of fully equivalent and directly applicable federal constitutional law.

²¹ See, eg Case 11-70 *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECLI:EU:C:1970:114. It must be noted, however, that the absolute conception of primacy in the jurisprudence of the CJEU has not always been uncritically accepted by national courts. See, for example, the analysis in Niels Petersen and Konstantin Chatziathanasiou, 'Primacy's Twilight? On the Legal Consequences of the Ruling of the Federal Constitutional Court of 5 May 2020 for the Primacy of EU Law' (the European Parliament's Committee on Citizens' Rights and Constitutional Affairs 2021) <[www.europarl.europa.eu/RegData/etudes/STUD/2021/692276/IPOL_STU\(2021\)692276_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2021/692276/IPOL_STU(2021)692276_EN.pdf)> accessed 28 September 2024.

²² For a detailed analysis see Klaus D Beiter, Terence Karran and Kwadwo Appiagyei-Atua, 'Yearning to Belong: Finding a "Home" for the Right to Academic Freedom in the U.N. Human Rights Covenants' (2016) 11 *Intercultural Human Rights Law Review* 107.

²³ The following Member States have signed the 2008 Protocol: Ireland, Cyprus Netherlands, Slovenia.

complain to competent committees about alleged violations of their human rights covered by the Covenants.

There are also various sources of international soft (non-binding) law that touch upon academic freedom. The most authoritative source defining academic freedom on the international level is the UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel (Doc 29 C/Res 11 (11 Nov 1997)). The Recommendation covers matters such as individual academic freedom, institutional autonomy, academic self-governance and job security. The Recommendation influences interpretation of the binding international law and might support also national or European decision-makers in their interpretations of relevant legal provisions, as illustrated e.g. by the judgment of the Court of Justice of the European Union in the case *Commission v Hungary* (see Section 3.2.3 below), the only CJEU pronouncement on academic freedom.²⁴

3.2.2. The European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is also an international legal instrument, but of regional character. All EU Member States are parties to this Convention. The Convention does not contain any explicit provisions on academic freedom protection, nor do any of the Protocols to the Convention. However, the European Court of Human Rights – a judicial body adjudicating on individual cases regarding states' compliance with the ECHR – has derived such protection from Article 10 ECHR on freedom of expression.²⁵

The ECHR has a special status in EU law. This status derives explicitly from Article 52(3) of the EU Charter of Fundamental Rights that provides: 'In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection'. This is also illustrated by the judgment of the Court of Justice of the European Union in the case *Commission v Hungary* (see below),²⁶ which references judgments of the European Court of Human Rights but provides for a wider scope of protection (explicitly including the institutional dimension of academic freedom, so far not yet recognized under the ECHR).

3.2.3. European Union Law

Academic freedom in EU law is explicitly protected by Article 13 of the EU Charter of Fundamental Rights (CFR), one of the foundational acts of the EU. The provision reads: 'The arts and scientific research shall be free of constraint. Academic freedom shall be respected'. The scope of application of the EU Charter is limited in line with Article 51(1) CFR. The Charter is addressed to EU institutions and to the Member States only when they act within the scope of Union law. It cannot extend the EU's competences. The EU has a shared competence in relation to research (Article 4 TFEU), and a supporting competence in relation to education (Article 6 TFEU), with harmonisation in the latter field explicitly prohibited by Article 165(4) TFEU.²⁷

The meaning and scope of Article 13 CFR has not been widely discussed in the literature. However, Article 52 CFR provides some guidance regarding its interpretation. Next to the special place assigned to the ECHR by Article 52(3) CFR, mentioned above, the Charter provides that fundamental rights, as they result from the constitutional traditions common to the Member States,

²⁴ *Commission v Hungary*, (N 3).

²⁵ See, for example, the brief overview in Kriszta Kovács, 'Academic Freedom in Europe: Limitations and Judicial Remedies' [2024] *Global Constitutionalism* 1 <<https://doi.org/10.1017/S2045381724000091>> 6-13..

²⁶ *Commission v Hungary* (N 3).

²⁷ See the analysis in Section 5 of this study.

shall be interpreted in harmony with those traditions (Article 52(4) CFR). This methodological feature of EU law is what makes the analysis conducted in this report relevant for EU legal action. Further, the provision has been once before interpreted by the Court of Justice of the European Union in the case *Commission v Hungary*,²⁸ the only CJEU judgment on academic freedom. The CJEU stated that academic freedom in EU law encompasses both an individual and an institutional dimension of academic freedom, as well as the corresponding duties of the Member States to protect them.²⁹ The judgment nevertheless still leaves many questions about the scope of the freedom and its limits open.

Article 13 CFR is the only legally binding provision on academic freedom in the EU. No secondary legislation on the topic exists. However, both the Erasmus+ and the Horizon Europe Regulations make a reference to academic freedom in their recitals (Recital 64 and 72 respectively). The consequences of these recitals for the implementation of the regulations remain unclear but have been recently investigated, in the context of the Horizon Europe, in a study commissioned by the European Parliament.³⁰ The European Parliament has also called on the Commission to initiate a legislative proposal on the promotion of the freedom of scientific research in the EU, presenting its own recommendations as to the content of the proposal.³¹

There are also other non-binding initiatives on academic and/or scientific freedom driven by EU institutions, e.g. the Bonn Declaration on Freedom of Scientific Research adopted at the Ministerial Conference on the European Research Area on 20 October 2020 in Bonn.

3.3. National constitutional provisions on academic freedom protection

3.3.1. Austria

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies Article 81c of the Federal Constitutional Law (on public universities and their autonomy) as relevant for academic freedom protection, similarly tagged in the *Constitute* database as pertaining to 'the right to academic freedom'.³² However, as observed in the literature, constitutional provisions in Austria are not codified in one single document and – while the Federal Constitutional Law remains of primary importance – provisions relevant for academic freedom can also be found elsewhere.³³ It is noted

²⁸ *Commission v Hungary* (N 3).

²⁹ For a comment on the case, see Vasiliki Kosta and Darinka Piqani, 'Where Trade and Academic Freedom Meet: *Commission v. Hungary* (LEX CEU)' [2022] *Common Market Law Review* 813.

³⁰ See the reference to the recital in the parliamentary question on the Turkish government's violations of academic freedom and the answer given by the European Commission: David Lega, Christian Ehler and Michael Gahler, 'Parliamentary Question – E-000655/2022' <www.europarl.europa.eu/doceo/document/E-9-2022-000655_EN.html>. See also the STOA Report by Brigida Blasi, 'Horizon Europe: Protecting Academic Freedom. Strengthening and improving the implementation of Recital 72' (European Parliament (STOA) 2024).

³¹ 'European Parliament Resolution of 17 January 2024 with Recommendations to the Commission on Promotion of the Freedom of Scientific Research in the EU (2023/2184(INL))' www.europarl.europa.eu/doceo/document/TA-9-2024-0022_EN.html; see also Vasiliki Kosta and Olga Ceran, 'A Way Forward?: Protecting Academic and Scientific Freedom in the EU' [2024] *Verfassungsblog* <<https://verfassungsblog.de/a-way-forward/>> for a brief comment on the proposals.

³² The Global Mapping identifies also two additional provisions: Article 10(1)(12a) and 10(1)(13) (on the competences of the Federation), and the *Constitute* database identifies Article 10(1)(13) as making a 'reference to science'. Article 10 will however not be included in the overview as it does not set out a substantive framework of academic freedom protection, but rather assigns the competence to act in certain matters pertaining to universities or science.

³³ Magdalena Pöschl, 'Freedom of Research in Austria' in Ivo De Gennaro, Hannes Hofmeister and Ralf Lüfter (eds), *Academic Freedom in the European Context: Legal, Philosophical and Institutional Perspectives* (Springer International Publishing 2022) 152 <https://doi.org/10.1007/978-3-030-86931-1_7> accessed 5 August 2024; see also Enora Bennetot Pruvot, Thomas Estermann and Nino Popkhadze, 'University Autonomy in Europe IV: The

that Article 17 of Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm is the primary source of academic freedom protection. Further, as far as the constitutional guarantees are concerned, paragraph 6 of the Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research sets out also Austria's commitment to applied and basic research.³⁴ A newly added Article 20(5) of the Federal Constitutional Law (on research conducted as a public task) was also identified as potentially relevant and described to 'improve conditions for academic freedom as it enables researchers guaranteed access to publicly funded studies'.³⁵

Federal Constitutional Law³⁶

Original-language version	English-language version
<p>Artikel 81c</p> <p>(1) Die öffentlichen Universitäten sind Stätten freier wissenschaftlicher Forschung, Lehre und Erschließung der Künste. Sie handeln im Rahmen der Gesetze autonom und können Satzungen erlassen. Die Mitglieder universitärer Kollegialorgane sind weisungsfrei.</p> <p>(2) Bundesgesetzlich kann vorgesehen werden, dass die Tätigkeit an der Universität sowie die Mitwirkung in Organen der Universität und der Studierendenvertretung von Personen, die nicht die österreichische Staatsbürgerschaft besitzen, zulässig ist.</p>	<p>Article 81c</p> <p>(1) The public universities are places of free scientific research, tuition and revelation of the Arts. They act autonomously within the framework of the laws and may render statutes. The members of university bodies are not bound by instructions.</p> <p>(2) Federal law may provide that the activity at the university as well as the participation in bodies of the university and the representation of the students by persons not having the Austrian nationality is admissible.</p>
<p>Artikel 20</p> <p>[...]</p> <p>(5) Alle mit Aufgaben der Bundes-, Landes- und Gemeindeverwaltung betrauten Organe haben Studien, Gutachten und Umfragen, die sie in Auftrag gegeben haben, samt deren Kosten in einer für jedermann zugänglichen Art und Weise zu veröffentlichen, solange und soweit</p>	<p>Article 20³⁷</p> <p>[...]</p> <p>(5) All bodies entrusted with federal, state and municipal administration tasks must publish studies, reports and surveys which they have commissioned, together with their costs, in a manner accessible to everyone, unless and to the extent that their confidentiality is required under paragraph 3.</p>

Scorecard 2023' (European University Association 2023) 85 <<https://www.eua.eu/publications/reports/university-autonomy-in-europe-iv-the-scorecard-2023.html>>.

³⁴ For an overview of the constitutional framework of the freedom of scientific research in Austria and a more in-depth discussion on its understanding in the legal practice see Pöschl (n 33).

³⁵ Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13) 130.

³⁶ Official translation available at https://ris.bka.gv.at/Dokumente/Erv/ERV_1930_1/ERV_1930_1.html.

³⁷ Own translation.

deren Geheimhaltung nicht gemäß Abs. 3 geboten ist.

Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm³⁸

<p>Artikel 17</p> <p>Die Wissenschaft und ihre Lehre ist frei.</p> <p>Unterrichts- und Erziehungsanstalten zu gründen und an solchen Unterricht zu ertheilen, ist jeder Staatsbürger berechtigt, der seine Befähigung hiezu in gesetzlicher Weise nachgewiesen hat.</p> <p>Der häusliche Unterricht unterliegt keiner solchen Beschränkung.</p> <p>Für den Religionsunterricht in den Schulen ist von der betreffenden Kirche oder Religionsgesellschaft Sorge zu tragen.</p> <p>Dem Staate steht rücksichtlich des gesammten Unterrichts- und Erziehungswesens das Recht der obersten Leitung und Aufsicht zu.</p>	<p>Article 17</p> <p>Knowledge³⁹ and its teaching are free.</p> <p>Every national who has furnished in legally acceptable manner proof of his qualification has the right to found establishments for instruction and education.</p> <p>Instruction at home is subject to no such restriction.</p> <p>The Church or religious society concerned shall see to religious instruction in schools.</p> <p>The right to supreme direction and supervision over the whole instructional and educational system lies with the state.</p>
<p>Artikel 17a</p> <p>Das künstlerische Schaffen, die Vermittlung von Kunst sowie deren Lehre sind frei.</p>	<p>Art. 17a</p> <p>Artistic creativity as well as the dissemination of art and its teaching shall be free.</p>

Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research (Federal Law Gazette I No. 111/2013, as amended by Federal Law Gazette I No. 82/2019)⁴⁰

<p>§ 6.</p> <p>Die Republik Österreich (Bund, Länder und Gemeinden) bekennt sich zur Bedeutung der Grundlagenforschung und der angewandten Forschung.</p>	<p>§ 6.</p> <p>The Republic of Austria (federal government, federal provinces and municipalities) acknowledges the importance of basic research and applied research.</p>
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³⁸ Official translation available at https://ris.bka.gv.at/Dokumente/ErV/ERV_1867_142/ERV_1867_142.html

³⁹ While the official translation uses the term 'knowledge', it is worth pointing out that the original term 'die Wissenschaft' also translates as 'science'. Compare, for example, the translation of the constitutional provisions in Germany.

⁴⁰ Official translation available at https://www.ris.bka.gv.at/Dokumente/ErV/ERV_2013_1_111/ERV_2013_1_111.html.

3.3.2. Belgium

There are no explicit provisions on the protection of academic freedom or institutional autonomy in the Constitution of Belgium. However, the Global Mapping of Regulatory Frameworks on Academic Freedom identifies Article 19 (freedom of worship and expression), as well as Article 24 (freedom and right to education) of the Belgian constitution as relevant for academic freedom protection.⁴¹ The *Constitute* database identifies only Article 24 as pertaining to 'the right to academic freedom' and no provisions as making a 'reference to science'.

While neither Article 19 nor Article 24 explicitly discuss academic freedom, they have been identified as relevant in reference to a judgment issued by the Belgian Constitutional Court (Arrêt n° 167/2005 du 23 novembre 2005). In this judgment, the Court held that academic freedom constitutes an aspect of freedom of expression (Art. 19) and freedom of education (Art. 24(1)).⁴²

The Constitution of Belgium⁴³

French-language version	Flemish-language version	German-language version	English-language version
<p>Art. 19</p> <p>La liberté des cultes, celle de leur exercice public, ainsi que la liberté de manifester ses opinions en toute matière, sont garanties, sauf la répression des délits commis à l'occasion de l'usage de ces libertés.</p>	<p>Art. 19</p> <p>De vrijheid van eredienst, de vrije openbare uitoefening ervan, alsmede de vrijheid om op elk gebied zijn mening te uiten, zijn gewaarborgd, behoudens bestraffing van de misdrijven die ter gelegenheid van het gebruikmaken van die vrijheden worden gepleegd.</p>	<p>Art. 19</p> <p>Die Freiheit der Kulte, diejenige ihrer öffentlichen Ausübung sowie die Freiheit, zu allem seine Ansichten kundzutun, werden gewährleistet, unbeschadet der Ahndung der bei der Ausübung dieser Freiheiten begangenen Delikte.</p>	<p>Article 19</p> <p>Freedom of worship, its public practice and freedom to demonstrate one's opinions on all matters are guaranteed, but offences committed when this freedom is used may be punished.</p>
<p>Art. 24</p> <p>§ 1. L'enseignement est libre; toute mesure préventive est interdite; la répression des délits n'est réglée que par la loi ou le décret. La communauté assure le libre choix des parents. La</p>	<p>Art. 24</p> <p>§ 1. Het onderwijs is vrij; elke preventieve maatregel is verboden; de bestraffing van de misdrijven wordt alleen door de wet of het decreet geregeld. De gemeenschap waarborgt</p>	<p>Art. 24</p> <p>§ 1 – Das Unterrichtswesen ist frei; jede präventive Maßnahme ist verboten; die Ahndung der Delikte wird nur durch Gesetz oder Dekret geregelt. Die Gemeinschaft</p>	<p>Article 24</p> <p>§ 1. Education is free; any preventive measure is forbidden; the punishment of offences is regulated only by the law or federate law.</p>

⁴¹ Article 11 (non-discrimination in enjoyment of rights and freedoms, including those of ideological and philosophical minorities) was also identified as relevant, but this provision will not be included in the overview as it is applicable to all constitutional rights and freedoms and not specific to academic freedom protection.

⁴² Beiter, Karran and Appiagyei-Atua, 'Yearning to Belong: Finding a "Home" for the Right to Academic Freedom in the U.N. Human Rights Covenants' (n 22) 115; Dubrovsky (n 10) 19; Monika Stachowiak-Kudła, 'Academic Freedom as a Source of Rights' Violations: A European Perspective' (2021) 82 Higher Education 1031, 1033.

⁴³ The Belgian Constitution has three equally authentic language versions: French, Flemish, and German. Official translation available at www.lachambre.be/kvvcr/showpage.cfm?section=/publications/constitution&language=fr&story=constitution.xml

<p>communauté organise un enseignement qui est neutre. La neutralité implique notamment le respect des conceptions philosophiques, idéologiques ou religieuses des parents et des élèves. Les écoles organisées par les pouvoirs publics offrent, jusqu'à la fin de l'obligation scolaire, le choix entre l'enseignement d'une des religions reconnues et celui de la morale non confessionnelle.</p> <p>§ 2. Si une communauté, en tant que pouvoir organisateur, veut déléguer des compétences à un ou plusieurs organes autonomes, elle ne le pourra que par décret adopté à la majorité des deux tiers des suffrages exprimés.</p> <p>§ 3. Chacun a droit à l'enseignement dans le respect des libertés et droits fondamentaux. L'accès à l'enseignement est gratuit jusqu'à la fin de l'obligation scolaire. Tous les élèves soumis à l'obligation scolaire ont droit, à charge de la communauté, à une éducation morale ou religieuse.</p> <p>§ 4. Tous les élèves ou étudiants, parents, membres du personnel et établissements d'enseignement sont égaux devant la loi ou le décret. La loi et le décret prennent en compte les différences objectives, notamment les caractéristiques propres à</p>	<p>de keuzevrijheid van de ouders. De gemeenschap richt neutraal onderwijs in. De neutraliteit houdt onder meer in, de eerbied voor de filosofische, ideologische of godsdienstige opvattingen van de ouders en de leerlingen. De scholen ingericht door openbare besturen bieden, tot het einde van de leerplicht, de keuze aan tussen onderricht in een der erkende godsdiensten en de niet-confessionele zedenleer.</p> <p>§ 2. Zo een gemeenschap als inrichtende macht bevoegdheden wil opdragen aan een of meer autonome organen, kan dit slechts bij decreet, aangenomen met een meerderheid van twee derden van de uitgebrachte stemmen.</p> <p>§ 3. Ieder heeft recht op onderwijs, met eerbiediging van de fundamentele rechten en vrijheden. De toegang tot het onderwijs is kosteloos tot het einde van de leerplicht. Alle leerlingen die leerplichtig zijn, hebben ten laste van de gemeenschap recht op een morele of religieuze opvoeding.</p> <p>§ 4. Alle leerlingen of studenten, ouders, personeelsleden en onderwijsinstellingen zijn gelijk voor de wet of het decreet. De wet en het decreet houden rekening met objectieve verschillen, waaronder de eigen karakteristieken van</p>	<p>gewährleistet die Wahlfreiheit der Eltern. Die Gemeinschaft organisiert ein Unterrichtswesen, das neutral ist. Die Neutralität beinhaltet insbesondere die Achtung der philosophischen, ideologischen oder religiösen Auffassungen der Eltern und Schüler. Die von den öffentlichen Behörden organisierten Schulen bieten bis zum Ende der Schulpflicht die Wahl zwischen dem Unterricht in einer der anerkannten Religionen und demjenigen in nichtkonfessioneller Sittenlehre.</p> <p>§ 2 – Wenn eine Gemeinschaft als Organisationsträger einem oder mehreren autonomen Organen Befugnisse übertragen will, kann dies nur durch ein mit Zweidrittelmehrheit der abgegebenen Stimmen angenommenes Dekret erfolgen.</p> <p>§ 3 – Jeder hat ein Recht auf Unterricht unter Berücksichtigung der Grundfreiheiten und Grundrechte. Der Zugang zum Unterricht ist unentgeltlich bis zum Ende der Schulpflicht. Alle schulpflichtigen Schüler haben zu Lasten der Gemeinschaft ein Recht auf eine moralische oder religiöse Erziehung.</p> <p>§ 4 – Alle Schüler oder Studenten, Eltern, Personalmitglieder und Unterrichtsanstalten sind vor dem Gesetz oder</p>	<p>The community offers free choice to parents.</p> <p>The community organises non-denominational education. This implies in particular the respect of the philosophical, ideological or religious beliefs of parents and pupils.</p> <p>Schools run by the public authorities offer, until the end of compulsory education, the choice between the teaching of one of the recognised religions and non-denominational ethics teaching.</p> <p>§ 2. If a community, in its capacity as an organising authority, wishes to delegate powers to one or several autonomous bodies, it can only do so by federate law adopted by a two-thirds majority of the votes cast.</p> <p>§ 3. Everyone has the right to education with the respect of fundamental rights and freedoms. Access to education is free until the end of compulsory education.</p> <p>All pupils of school age have the right to moral or religious education at the community's expense.</p> <p>§ 4. All pupils or students, parents, teaching staff or institutions are equal before the law or federate law. The law and federate law take into account objective differences, in particular the characteristics of each organising authority that</p>
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chaque pouvoir organisateur, qui justifie un traitement approprié. § 5. L'organisation, la reconnaissance ou le subventionnement de l'en-seignement par la communauté sont réglés par la loi ou le décret.	iedere inrichtende macht, die een aangepaste behandeling verantwoorden. § 5. De inrichting, erkenning of subsidiëring van het onderwijs door de gemeenschap wordt geregeld door de wet of het decreet.	dem Dekret gleich. Das Gesetz und das Dekret berücksichtigen die objektiven Unterschiede, insbesondere die jedem Organisationsträger eigenen Merkmale, die eine angepasste Behandlung rechtfertigen. § 5 – Die Organisation, die Anerkennung oder die Bezuschussung des Unterrichtswesens durch die Gemeinschaft wird durch Gesetz oder Dekret geregelt.	warrant appropriate treatment. § 5. The organisation, the recognition and the subsidising of education by the community are regulated by the law or federate law.
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3.3.3. Bulgaria

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies Article 23 (free development of science, education, and the arts), Article 53(4) (institutional autonomy), as well as Article 54(2) (recognition of artistic, scientific and technological creativity) of the Constitution of the Republic of Bulgaria as relevant for academic freedom protection. The *Constitute* database identifies only Art. 53(4) as pertaining to academic freedom and Articles 23, 29(2) (prohibition of scientific experimentation without written consent), and 54(2) as making a 'reference to science'.

Constitution of the Republic of Bulgaria⁴⁴

Original-language version	English-language version
Чл. 23. Науката, образованието и културата са национални ценности. Държавата създава условия за свободното им развитие и ги подпомага. Тя се грижи за опазване на националното историческо и културно наследство.	Art. 23. The State shall establish conditions conducive to the free development of science, education and the arts, and shall assist that development. It shall organize the conservation of all national monuments of history and culture.
Чл. 29. (1) Никой не може да бъде подлаган на мъчение, на жестоко, безчовечно или унижаващо отношение, както и на насилствена асимилация. (2) Никой не може да бъде подлаган на медицински, научни или други опити без неговото доброволно писмено съгласие.	Art. 29. (1) No one shall be subjected to torture or to cruel, inhuman or degrading treatment, or to forcible assimilation. (2) No one shall be subjected to medical, scientific or other experimentation without his voluntary written consent.
Чл. 53. (1) Всеки има право на образование. (2) Училищното обучение до 16-годишна възраст е задължително. (3) Основното и средното образование в държавните и общинските училища е безплатно.	Art. 53. (1) Everyone shall have the right to education. (2) School attendance up to the age of 16 shall be compulsory. (3) Primary and secondary education in state and municipal schools shall be free. In circumstances

⁴⁴ Official translation available at www.parliament.bg/en/const.

<p>При определени от закона условия образованието във висшите държавни училища е безплатно.</p> <p>(4) Висшите училища се ползват с академична автономия.</p> <p>(5) Граждани и организации могат да създават училища при условия и по ред, определени със закон. Обучението в тях трябва да съответства на държавните изисквания.</p> <p>(6) Държавата насърчава образованието, като създава и финансира училища, подпомага способни ученици и студенти, създава условия за професионално обучение и преквалификация. Тя упражнява контрол върху всички видове и степени училища.</p>	<p>established by law, the higher educational establishments shall provide education free of charge.</p> <p>(4) Higher educational establishments shall enjoy academic autonomy.</p> <p>(5) Citizens and organizations shall be free to found schools in accordance with conditions and procedures established by law. The education they provide shall fit the requirements of the State.</p> <p>(6) The State shall promote education by opening and financing schools, by supporting capable school and university students, and by providing opportunities for occupational training and retraining. It shall exercise control over all kinds and levels of schooling.</p>
<p>Чл. 54.</p> <p>(1) Всеки има право да се ползва от националните и общочовешките културни ценности, както и да развива своята култура в съответствие с етническата си принадлежност, което се признава и гарантира от закона.</p> <p>(2) Свободата на художественото, научното и техническото творчество се признава и гарантира от закона.</p> <p>(3) Изобретателските, авторските и сродните на тях права се закрилят от закона.</p>	<p>Art. 54.</p> <p>(1) Everyone shall have the right to avail himself of the national and universal human cultural values and to develop his own culture in accordance with his ethnic self-identification, which shall be recognized and guaranteed by the law.</p> <p>(2) Artistic, scientific and technological creativity shall be recognized and guaranteed by the law.</p> <p>(3) The State shall protect all inventors' rights, copyrights and related rights.</p>

3.3.4. Croatia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Croatia as relevant for academic freedom protection: Article 68 (freedom of scientific, cultural and artistic creativity). The *Constitute* database identifies only Article 67 as pertaining to 'the right to academic freedom' and Articles 23 (prohibition of scientific experimentation without written consent) and 68 as making a 'reference to science'.

The Constitution of the Republic of Croatia⁴⁵

Original-language version	English-language version
<p>Članak 23.</p> <p>Nitko ne smije biti podvrgnut bilo kakvu obliku zlostavljanja ili, bez svoje privole, liječničkim ili znanstvenim pokusima.</p> <p>Zabranjen je prisilni i obvezatni rad.</p>	<p>Article 23</p> <p>No one may be subjected to any form of ill-treatment or, without his/her consent, to medical or scientific experiments.</p> <p>Forced and compulsory labour shall be forbidden.</p>
<p>Članak 66.</p> <p>Uz uvjete propisane zakonom mogu se osnivati privatne škole i učilišta.</p>	<p>Article 66</p> <p>Subject to the conditions specified by law, the establishment of private schools and</p>

⁴⁵ Official translation available at www.usud.hr/en/the-constitution.

	learning institutions shall be permitted.
<p>Članak 67.</p> <p>Jamči se autonomija sveučilišta.</p> <p>Sveučilište samostalno odlučuje o svom ustrojstvu i djelovanju, u skladu sa zakonom.</p>	<p>Article 67</p> <p>The autonomy of universities shall be guaranteed. Universities shall independently decide on their organisation and operation, in compliance with law.</p>
<p>Članak 68.</p> <p>Jamči se sloboda znanstvenoga, kulturnog i umjetničkog stvaralaštva.</p> <p>Država potiče i pomaže razvitak znanosti, kulture i umjetnosti.</p> <p>Država štiti znanstvena, kulturna i umjetnička dobra kao duhovne narodne vrednote.</p> <p>Jamči se zaštita moralnih i materijalnih prava koja proistječu iz znanstvenoga, kulturnog, umjetničkog, intelektualnog i drugog stvaralaštva.</p> <p>Država potiče i pomaže skrb o tjelesnoj kulturi i sportu.</p>	<p>Article 68</p> <p>The freedom of scientific, cultural and artistic creativity shall be guaranteed.</p> <p>The state shall encourage and support the development of science, culture and the arts.</p> <p>The state shall protect scientific, cultural and artistic assets as national spiritual values.</p> <p>The protection of moral and material rights deriving from scientific, cultural, artistic, intellectual and other creative efforts shall be guaranteed.</p> <p>The state shall encourage and support care for physical culture and sports.</p>

3.3.5. Cyprus

There are no explicit provisions on the protection of academic freedom or institutional autonomy in the Cypriot constitution.⁴⁶ However, the Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Cyprus as relevant for academic freedom protection: Article 19 (freedom of expression). The *Constitute* database does not identify any provisions as pertaining to 'the right to academic freedom' or making a 'reference to science'. Based on expert input, it is arguable that academic freedom and institutional autonomy can be derived from a combined reading of Article 19 and Article 20 of the Cypriot Constitution.

Constitution of the Republic of Cyprus⁴⁷

Original-language version	English-language version
<p>ΑΡΘΡΟΝ 19</p> <p>1. Έκαστος έχει το δικαίωμα ελευθερίας του λόγου και της καθ' οιονδήποτε τρόπον εκφράσεως.</p> <p>2. Το δικαίωμα τούτο περιλαμβάνει την ελευθερίαν της γνώμης, της λήψεως και μεταδόσεως πληροφοριών και ιδεών άνευ επεμβάσεως οιασδήποτε δημοσίας αρχής και ανεξαρτήτως συνόρων.</p>	<p>Article 19</p> <p>1. Every person has the right to freedom of speech and expression in any form.</p> <p>2. This right includes freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.</p>

⁴⁶ See also Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 34) 111.

⁴⁷ Official translation available at www.law.gov.cy/law/law.nsf/constitution-en/constitution-en?OpenDocument.

<p>3. Η ενάσκησης των δικαιωμάτων, περί των η πρώτη και δεύτερα παράγραφος του παρόντος άρθρου, δύναται να υποβληθής εις διατυπώσεις, όρους, περιορισμούς ή ποινάς προδιαγεγραμμένους υπό του νόμου και αναγκαίους μόνον προς το συμφέρον της ασφαλείας της Δημοκρατίας ή της συνταγματικής τάξεως ή της δημοσίας ασφαλείας ή της δημοσίας τάξεως ή της δημοσίας υγιείας ή των δημοσίων ηθών ή προς προστασίαν της υπολήψεως ή των δικαιωμάτων άλλων ή προς παρεμπόδισιν της αποκαλύψεως πληροφοριών ληφθεισών εμπιστευτικώς ή προς διατήρησιν του κύρους και της αμεροληψίας της δικαστικής εξουσίας.</p> <p>4. Η κατάσχεσις εφημερίδων ή άλλων εντύπων δεν επιτρέπεται άνευ εγγράφου αδείας του γενικού εισαγγελέως της Δημοκρατίας, ήτις δέον να επικυρωθή δι' αποφάσεως αρμοδίου δικαστηρίου εντός εβδομήκοντα δύο ωρών το βραδύτερον, εν περιπτώσει δε μη επικυρώσεως αίρεται η κατάσχεσις.</p> <p>5. Ουδέν εκ των διαλαμβανομένων εις το παρόν άρθρον εμποδίζει την Δημοκρατίαν ν' απαιτή την έκδοσιν αδείας ή λειτουργίας επιχειρήσεων ραδιοφωνικών ή κινηματογραφικών ή τηλεοράσεως.</p>	<p>3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.</p> <p>4. Seizure of newspapers or other printed matter is not allowed without the written permission of the Attorney-General of the Republic, which must be confirmed by the decision of a competent court within a period not exceeding seventy-two hours, failing which the seizure shall be lifted.</p> <p>5. Nothing in this Article contained shall prevent the Republic from requiring the licensing of sound and vision broadcasting or cinema enterprises.</p>
<p>ΑΡΘΡΟΝ 20</p> <p>1. Έκαστος έχει το δικαίωμα να εκπαιδεύηται και έκαστον άτομον ή ίδρυμα έχει το δικαίωμα να παρέχη εκπαίδευσιν τηρουμένων των διατυπώσεων, όρων και περιορισμών των επιβαλλομένων υπό του οικείου κοινοτικού νόμου των αναγκών μόνον προς το συμφέρον της ασφαλείας της Δημοκρατίας ή της συνταγματικής τάξεως ή της δημοσίας ασφαλείας ή της δημοσίας τάξεως ή της δημοσίας υγιείας ή των δημοσίων ηθών ή του βαθμού και της ποιότητος της παιδείας ή προς προστασίαν των δικαιωμάτων και ελευθεριών των άλλων, συμπεριλαμβανομένου και του δικαιώματος των γονέων, όπως διασφαλίζωσιν υπέρ των τέκνων αυτών εκπαίδευσιν συνάδουσαν προς τας θρησκευτικές αυτών πεποιθήσεις.</p> <p>[...]</p> <p>4. Μερίμνη της ελληνικής και της τουρκικής Κοινοτικής Συνελεύσεως θα καταστή προσιτή πλην της στοιχειώδους και η περαιτέρω εκπαίδευσις εις</p>	<p>Article 20</p> <p>1. Every person has the right to receive, and every person or institution has the right to give, instruction or education subject to such formalities, conditions or restrictions as are in accordance with the relevant communal law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or the standard and quality of education or for the protection of the rights and liberties of others including the right of the parents to secure for their children such education as is in conformity with their religious convictions.</p> <p>[...]</p> <p>4. Education, other than primary education, shall be made available by the Greek and the Turkish Communal Chambers, in deserving and appropriate cases, on such terms and conditions as may be determined by a relevant communal law.</p>

ενδεικνυμένα και άξια υποστήριξης πρόσωπα, εφ' ους όρους και προϋποθέσεις θα ορίση ο οικείος κοινοτικός νόμος.	
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3.3.6. Czechia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies no provision of the Constitution of the Czech Republic as relevant for academic freedom protection. The *Constitute* database similarly does not identify any provisions as pertaining to 'the right to academic freedom' or making a 'reference to science'. However, constitutional law in Czechia comprises more than one constitutional act. As recognized in the Global Mapping of Regulatory Frameworks on Academic Freedom, the Czech Charter of Fundamental Rights and Freedoms protects freedom of scientific research (Article 15). The available English-language comparative literature on academic freedom includes also some discussion of the relevant constitutional jurisprudence.⁴⁸

Charter of Fundamental Rights and Freedoms⁴⁹

Original-language version	English-language version
Článek 15	Article 15
(1) Svoboda myšlení, svědomía náboženského vyznání je zaručena. Každý má právo změnit své náboženství nebo víru anebo být bez náboženského vyznání.	(1) Freedom of thought, conscience and religious conviction is guaranteed. Everybody has the right to change his or her religion or faith, or to have no religious conviction.
(2) Svoboda vědeckého bádání a umělecké tvorby je zaručena.	(2) Freedom of scientific research and of the arts is guaranteed.
(3) Nikdo nemůže být nucen vykonávat vojenskou službu, pokud je to v rozporu s jeho svědomím nebo s jeho náboženským vyznáním. Podrobnosti stanoví zákon.	(3) Nobody may be forced to perform military service against his or her conscience or religious conviction. Detailed provisions are set by law.

3.3.7. Denmark

Academic freedom is not explicitly included in Danish constitution.⁵⁰ However, the Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitutional Act of Denmark as relevant for academic freedom protection: Article 77 (freedom of expression).⁵¹ The *Constitute* database does not identify any provisions as pertaining to 'the right to academic freedom' or as making a 'reference to science'.

⁴⁸ Stachowiak-Kudła (n 43). 1035–1036, 1038–1039.

⁴⁹ Translation available at www.psp.cz/en/docs/laws/listina.html.

⁵⁰ See also Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 34) 111.

⁵¹ This is confirmed by DM Denmark – Danish Association of Masters and PhDs, 'Input Received by the Special Rapporteur on the Right to Education Following a Call for Contributions "Academic Freedom and Freedom of Expression in Educational Institutions"' <<https://www.ohchr.org/en/calls-for-input/2024/call-contributions-academic-freedom-and-freedom-expression-educational>>.

The Constitutional Act of Denmark⁵²

Original-language version	English-language version
<p>§ 77</p> <p>Enhver er berettiget til på tryk, i skrift og tale at offentliggøre sine tanker, dog under ansvar for domstolene. Censur og andre forebyggende forholdsregler kan ingensinde påny indføres.</p>	<p>§ 77</p> <p>Any person shall be at liberty to publish his ideas in print, in writing and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced.</p>

3.3.8. Estonia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Estonia as relevant for academic freedom protection: Article 38 (freedom of science and art). The *Constitute* database similarly identifies this provision as pertaining to 'the right to academic freedom' and making a 'reference to science', with Article 18 (prohibition of scientific experimentation against one's will) also being mentioned under the latter category.

In the Advice Paper published by the League of European Research Universities, Estonia is mentioned as an example of a constitutional framework adopting a rights approach in its institutional dimension.⁵³ According to the authors of the report, this approach 'sees academic freedom as a right with collective dimensions, belonging to institutions (universities, faculties, etc.) rather than to individuals'.⁵⁴

The Constitution of the Republic of Estonia⁵⁵

Original-language version	English-language version
<p>§ 18.</p> <p>Kedagi ei tohi piinata, julmalt või vääriskust alandavalt kohelda ega karistada.</p> <p>Kedagi ei tohi tema vaba tahte vastaselt allutada meditsiini- ega teaduskatsetele.</p>	<p>§ 18.</p> <p>No one may be subjected to torture or to cruel or degrading treatment or punishment.</p> <p>No one may be subjected to medical or scientific experiments against his or her free will.</p>
<p>§ 38.</p> <p>Teadus ja kunst ning nende õpetused on vabad.</p> <p>Ülikoolid ja teadusasutused on seaduses ettenähtud piires autonoomsed.</p>	<p>§ 38.</p> <p>Science and art and their teachings are free.</p> <p>Universities and research institutions are autonomous within the limits prescribed by the law.</p>

⁵² Official translation available at www.thedanishparliament.dk/-/media/sites/ft/pdf/publikationer/engelske-publikationer-pdf/the_constitutional_act_of_denmark_2018_uk_web.pdf.

⁵³ LE Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁵⁴ *ibid* 9.

⁵⁵ Official translation available at www.riigiteataja.ee/en/eli/521052015001/consolide.

3.3.9. Finland

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies two provisions of the Constitution of Finland as relevant for academic freedom protection: Section 12 (freedom of expression and right of access to information) and Section 16 (educational rights). The *Constitute* database identifies only Section 16 as pertaining both to 'the right to academic freedom' or making a 'reference to science'.

In the Advice Paper published by the League of European Research Universities, Finland is mentioned as an example of a constitutional framework adopting a rights approach in its institutional dimension.⁵⁶ According to the authors of the report, this approach 'sees academic freedom as a right with collective dimensions, belonging to institutions (universities, faculties, etc.) rather than to individuals'.⁵⁷

Constitution of Finland⁵⁸

Original-language version	English-language version
<p>12 §</p> <p>Var och en har yttrandefrihet. Till yttrandefriheten hör rätten att framföra, sprida och ta emot information, åsikter och andra meddelanden utan att någon i förväg hindrar detta. Närmare bestämmelser om yttrandefriheten utfärdas genom lag. Bestämmelser om sådana begränsningar i fråga om bildprogram som är nödvändiga för att skydda barn kan utfärdas genom lag.</p> <p>Handlingar och upptagningar som innehas av myndigheterna är offentliga, om inte offentligheten av tvingande skäl särskilt har begränsats genom lag. Var och en har rätt att ta del av offentliga handlingar och upptagningar.</p>	<p>Section 12</p> <p>Everyone has the freedom of expression. Freedom of expression entails the right to express, disseminate and receive information, opinions and other communications without prior prevention by anyone. More detailed provisions on the exercise of the freedom of expression are laid down by an Act. Provisions on restrictions relating to pictorial programmes that are necessary for the protection of children may be laid down by an Act.</p> <p>Documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act. Everyone has the right of access to public documents and recordings.</p>
<p>16 §</p> <p>Alla har rätt till avgiftsfri grundläggande utbildning. Bestämmelser om läroplikten utfärdas genom lag.</p> <p>Det allmänna skall, enligt vad som närmare bestäms genom lag, säkerställa lika möjligheter för var och en att oavsett medellöshet enligt sin förmåga och sina särskilda behov få även annan än grundläggande utbildning samt utvecklas själv.</p> <p>Vetenskapens, konstens och den högsta utbildningens frihet är tryggad.</p>	<p>Section 16</p> <p>Everyone has the right to basic education free of charge. Provisions on the duty to receive education are laid down by an Act.</p> <p>The public authorities shall, as provided in more detail by an Act, guarantee for everyone equal opportunity to receive other educational services in accordance with their ability and special needs, as well as the opportunity to develop themselves without being prevented by economic hardship.</p>

⁵⁶ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁵⁷ *ibid* 9.

⁵⁸ Official translation available at <https://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>.

The freedom of science, the arts and higher education is guaranteed.

3.3.10. France

Neither the Constitution of France nor the French Declaration of the Rights of Man and of the Citizen of 1789 explicitly protect academic freedom.⁵⁹ Accordingly, the Global Mapping of Regulatory Frameworks on Academic Freedom identifies no provisions as relevant for academic freedom protection, and the *Constitute* database also does not mention any as pertaining to 'the right to academic freedom' or making a 'reference to science'. Despite of this, as observed in the Global Mapping of Regulatory Frameworks on Academic Freedom, the independence of academics was asserted by the French Constitutional Council (Decision No. 83-165 DC of 20 January 1984). The literature discusses the judgment as creating 'an unwritten constitutional principle', but on the other hand also points to a reduction of the scope of this academic independence in the following jurisprudence.⁶⁰

3.3.11. Germany

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Basic Law for the Federal Republic of Germany as relevant for academic freedom protection: Article 5(3) (freedom of expression, arts and sciences). The *Constitute* database also identifies Article 5(3) as pertaining to 'the right to academic freedom' but mentions only Articles 74 and 91b (dealing with the division of competences and joint tasks in the federation) as making a 'reference to science'. Interestingly, Article 5(3) is not labelled as making a 'reference to science', despite setting out what can be described as a *scientific* freedom (see the case study on Germany in chapter 4 of this study). The latter two are not included in the overview as they do not set out a substantive framework of academic freedom protection, but rather assign the competence to act in certain matters pertaining to universities or science.

In the Advice Paper published by the League of European Research Universities, Germany is mentioned implicitly as an example of a constitutional framework adopting a rights approach in its individual dimension.⁶¹ This means that the constitution formulates academic freedom 'either as an abstract or as an individual right, often uniting and specifying a number of expressive freedoms'.⁶²

This constitutional framework will be discussed in depth in chapter 4 of this study.

Basic Law for the Federal Republic of Germany⁶³

Original-language version	English-language version
Artikel 5	Article 5
(1) Jeder hat das Recht, seine Meinung in Wort, Schrift und Bild frei zu äußern und zu verbreiten und sich aus allgemein zugänglichen Quellen	(1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures and to inform himself without

⁵⁹ See also Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 3) 112.

⁶⁰ Olivier Beaud, 'Academic Freedom in France: A Concept Neglected and Liberties Under Threat' in Ivo De Gennaro, Hannes Hofmeister and Ralf Lüfter (eds), *Academic Freedom in the European Context: Legal, Philosophical and Institutional Perspectives* (Springer International Publishing 2022) 219–220 <https://doi.org/10.1007/978-3-030-86931-1_7> accessed 5 August 2024.

⁶¹ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁶² *ibid* 8.

⁶³ Official translation available at www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.

ungehindert zu unterrichten. Die Pressefreiheit und die Freiheit der Berichterstattung durch Rundfunk und Film werden gewährleistet. Eine Zensur findet nicht statt.	hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.
(2) Diese Rechte finden ihre Schranken in den Vorschriften der allgemeinen Gesetze, den gesetzlichen Bestimmungen zum Schutze der Jugend und in dem Recht der persönlichen Ehre.	(2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons and in the right to personal honour.
(3) Kunst und Wissenschaft, Forschung und Lehre sind frei. Die Freiheit der Lehre entbindet nicht von der Treue zur Verfassung.	(3) Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the Constitution.

3.3.12. Greece

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Greek Constitution as relevant for academic freedom protection: Article 16 (education, art, science). The *Constitute* database identifies Article 16(1) as both pertaining to 'the right to academic freedom' and making a 'reference to science'.

In the Advice Paper published by the League of European Research Universities, Greece is mentioned implicitly as an example of a constitutional framework adopting a rights approach in its individual dimension as well as a state obligations approach.⁶⁴ The former signifies that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.⁶⁵ The latter means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but (also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.⁶⁶

The constitutional protection of academic freedom in Greece will be discussed in detail in chapter 4 of this study.

Constitution of Greece⁶⁷

Original-language version	English-language version
<p>Άρθρο 16</p> <p>1. Η τέχνη και η επιστήμη, η έρευνα και η διδασκαλία είναι ελεύθερες· η ανάπτυξη και η προαγωγή τους αποτελεί υποχρέωση του Κράτους. Η ακαδημαϊκή ελευθερία και η ελευθερία της διδασκαλίας δεν απαλλάσσουν από το καθήκον της υπακοής στο Σύνταγμα.</p>	<p>Article 16</p> <p>Art and science, research and teaching shall be free and their development and promotion shall be an obligation of the State. Academic freedom and freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution.</p>

⁶⁴ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12). Greece and Germany are not mentioned directly as examples of such countries in the opening paragraph, but are discussed in the same section in reference to the limitations of academic freedom. Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁶⁵ *ibid* 8.

⁶⁶ *ibid* 9.

⁶⁷ Official translation available at www.hellenicparliament.gr/UserFiles/f3c70a23-7696-49db-9148-f24dce6a27c8/THE%20CONSTITUTION%20OF%20GREECE.pdf.

<p>2. Η παιδεία αποτελεί βασική αποστολή του Κράτους και έχει σκοπό την ηθική, πνευματική, επαγγελματική και φυσική αγωγή των Ελλήνων, την ανάπτυξη της εθνικής και θρησκευτικής συνείδησης και τη διάπλασή τους σε ελεύθερους και υπεύθυνους πολίτες.</p> <p>3. Τα έτη υποχρεωτικής φοίτησης δεν μπορεί να είναι λιγότερα από εννέα.</p> <p>4. Όλοι οι Έλληνες έχουν δικαίωμα δωρεάν παιδείας, σε όλες τις βαθμίδες της, στα κρατικά εκπαιδευτήρια. Το Κράτος ενισχύει τους σπουδαστές που διακρίνονται, καθώς και αυτούς που έχουν ανάγκη από βοήθεια ή ειδική προστασία, ανάλογα με τις ικανότητές τους.</p> <p>5. Η ανώτατη εκπαίδευση παρέχεται αποκλειστικά από ιδρύματα που αποτελούν νομικά πρόσωπα δημοσίου δικαίου με πλήρη αυτοδιοίκηση. Τα ιδρύματα αυτά τελούν υπό την εποπτεία του Κράτους, έχουν δικαίωμα να ενισχύονται οικονομικά από αυτό και λειτουργούν σύμφωνα με τους νόμους που αφορούν τους οργανισμούς τους. Συγχώνευση ή κατάτμηση ανώτατων εκπαιδευτικών ιδρυμάτων μπορεί να γίνει και κατά παρέκκλιση από κάθε αντίθετη διάταξη, όπως νόμος ορίζει.</p> <p>Ειδικός νόμος ορίζει όσα αφορούν τους φοιτητικούς συλλόγους και τη συμμετοχή των σπουδαστών σ' αυτούς.</p> <p>6. Οι καθηγητές των ανώτατων εκπαιδευτικών ιδρυμάτων είναι δημόσιοι λειτουργοί. Το υπόλοιπο διδακτικό προσωπικό τους επιτελεί επίσης δημόσιο λειτούργημα, με τις προϋποθέσεις που νόμος ορίζει. Τα σχετικά με την κατάσταση όλων αυτών των προσώπων καθορίζονται από τους οργανισμούς των οικείων ιδρυμάτων.</p> <p>Οι καθηγητές των ανώτατων εκπαιδευτικών ιδρυμάτων δεν μπορούν να παυθούν προτού λήξει σύμφωνα με το νόμο ο χρόνος υπηρεσίας τους παρά μόνο με τις ουσιαστικές προϋποθέσεις που προβλέπονται στο άρθρο 88 παράγραφος 4 και ύστερα από απόφαση συμβουλίου που αποτελείται κατά πλειοψηφία από ανώτατους δικαστικούς λειτουργούς, όπως νόμος ορίζει.</p> <p>Νόμος ορίζει το όριο της ηλικίας των καθηγητών των ανώτατων εκπαιδευτικών ιδρυμάτων· εωσότου εκδοθεί ο νόμος αυτός οι καθηγητές που</p>	<p>Education constitutes a basic mission for the State and shall aim at the moral, intellectual, professional and physical training of Greeks, the development of national and religious consciousness and at their formation as free and responsible citizens.</p> <p>The number of years of compulsory education shall be no less than nine.</p> <p>All Greeks are entitled to free education on all levels at State educational institutions. The State shall provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities.</p> <p>Education at university level shall be provided exclusively by institutions which are fully self-governed public law legal persons. These institutions shall operate under the supervision of the State and are entitled to financial assistance from it; they shall operate on the basis of statutorily enacted by-laws. Merging or splitting of university level institutions may take place notwithstanding any contrary provisions, as a law shall provide.</p> <p>A special law shall define all matters pertaining to student associations and the participation of students therein.</p> <p>Professors of university level institutions shall be public functionaries. The remaining teaching personnel likewise perform a public function, under the conditions specified by law. The statutes of respective institutions shall define matters relating to the status of all the above.</p> <p>Professors of university level institutions shall not be dismissed prior to the lawful termination of their term of service, except in the cases of the substantive conditions provided by article 88 paragraph 4 and following a decision by a council constituted in its majority of highest judicial functionaries, as specified by law.</p> <p>The retirement age of professors of university level institutions shall be determined by law; until such law is issued, professors on active service shall retire ipso jure at the end of the academic year at which they have reached the age of sixty-seven.</p>
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<p>υπηρετούν αποχωρούν αυτοδικαίως μόλις λήξει το ακαδημαϊκό έτος μέσα στο οποίο συμπληρώνουν το εξηκοστό έβδομο έτος της ηλικίας τους.</p> <p>7. Η επαγγελματική και κάθε άλλη ειδική εκπαίδευση παρέχεται από το Κράτος και με σχολές ανώτερης βαθμίδας για χρονικό διάστημα όχι μεγαλύτερο από τρία χρόνια, όπως προβλέπεται ειδικότερα από το νόμο, που ορίζει και τα επαγγελματικά δικαιώματα όσων αποφοιτούν από τις σχολές αυτές.</p> <p>8. Νόμος ορίζει τις προϋποθέσεις και τους όρους χορήγησης άδειας για την ίδρυση και λειτουργία εκπαιδευτηρίων που δεν ανήκουν στο Κράτος, τα σχετικά με την εποπτεία που ασκείται πάνω σ' αυτά, καθώς και την υπηρεσιακή κατάσταση του διδακτικού προσωπικού τους.</p> <p>Η σύσταση ανώτατων σχολών από ιδιώτες απαγορεύεται.</p> <p>9. Ο αθλητισμός τελεί υπό την προστασία και την ανώτατη εποπτεία του Κράτους.</p> <p>Το Κράτος επιχορηγεί και ελέγχει τις ενώσεις των αθλητικών σωματείων κάθε είδους, όπως νόμος ορίζει. Νόμος ορίζει επίσης τη διάθεση των ενισχύσεων που παρέχονται κάθε φορά στις επιχορηγούμενες ενώσεις σύμφωνα με τον προορισμό τους.</p>	<p>Professional and any other form of special education shall be provided by the State, through schools of a higher level and for a time period not exceeding three years, as specifically provided by law which also defines the professional rights of the graduates of such schools.</p> <p>The conditions and terms for granting a license for the establishment and operation of schools not owned by the State, the supervision of such and the professional status of teaching personnel therein shall be specified by law.</p> <p>The establishment of university level institutions by private persons is prohibited.</p> <p>Athletics shall be under the protection and the ultimate supervision of the State.</p> <p>The State shall make grants to and shall control all types of athletic associations, as specified by law. The use of grants in accordance with the purpose of the associations receiving them shall also be specified by law.</p>
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3.3.13. Hungary

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Hungarian Constitution as relevant for academic freedom protection: Article X (scientific and artistic freedom). The *Constitute* database similarly identifies this provision as both pertaining to 'the right to academic freedom' and making a 'reference to science', adding Article III (prohibition of scientific experimentation without consent as well as eugenics and human cloning) to the latter category.⁶⁸

In the Advice Paper published by the League of European Research Universities, Hungary is mentioned as an example of a constitutional framework adopting a rights approach in its individual dimension.⁶⁹ This means that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.⁷⁰

⁶⁸ The *Constitute* database identifies also Article XXVI (the use of the achievements of science in effective operation of the state) as 'making a reference to science', but this provision does not set out the scope of academic freedom and will therefore not be included in the overview.

⁶⁹ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).n 55).

⁷⁰ *ibid* 8.

Due to a controversial constitutional revision that entered into force in 2012, some literature on academic freedom makes a distinction between pre- and post-2012 provisions and constitutional practice in Hungary.⁷¹ The available English-language comparative literature on academic freedom includes a discussion of the relevant constitutional jurisprudence prior to 2012.⁷²

The Fundamental Law of Hungary⁷³

Original-language version	English-language version
<p>III. cikk</p> <p>(1) Senkit nem lehet kínzásnak, embertelen, megalázó bánásmódnak vagy büntetésnek alávetni, valamint szolgaságban tartani. Tilos az emberkereskedelem.</p> <p>(2) Tilos emberen tájékoztatáson alapuló, önkéntes hozzájárulása nélkül orvosi vagy tudományos kísérletet végezni.</p> <p>(3) Tilos az emberi fajnemesítést célzó gyakorlat, az emberi test és testrészek haszonszerzési célú felhasználása, valamint az emberi egyedmásolás.</p>	<p>Article III</p> <p>(1) No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude. Trafficking in human beings shall be prohibited.</p> <p>(2) It shall be prohibited to perform medical or scientific experiment on human beings without their informed and voluntary consent.</p> <p>(3) Practices aimed at eugenics and the use of the human body or its parts for financial gain, as well as human cloning, shall be prohibited.</p>
<p>X. cikk</p> <p>(1) Magyarország biztosítja a tudományos kutatás és művészeti alkotás szabadságát, továbbá – a lehető legmagasabb szintű tudás megszerzése érdekében – a tanulás, valamint törvényben meghatározott keretek között a tanítás szabadságát.</p> <p>(2) Tudományos igazság kérdésében az állam nem jogosult dönteni, tudományos kutatások értékelésére kizárólag a tudomány művelői jogosultak.</p> <p>(3) Magyarország védi a Magyar Tudományos Akadémia és a Magyar Művészeti Akadémia tudományos és művészeti szabadságát. A felsőoktatási intézmények a kutatás és a tanítás</p>	<p>Article X</p> <p>(1) Hungary shall ensure the freedom of scientific research and artistic creation, the freedom of learning for the acquisition of the highest possible level of knowledge and, within the framework laid down in an Act, the freedom of teaching.</p> <p>(2) The State shall have no right to decide on questions of scientific truth; only scientists shall have the right to evaluate scientific research.</p> <p>(3) Hungary shall protect the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts. Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching; their organization shall be regulated by an</p>

⁷¹ Monika Stachowiak-Kudła and others, 'Academic Freedom as a Defensive Right' (2023) 15 Hague Journal on the Rule of Law 161 <<https://doi.org/10.1007/s40803-022-00188-4>> accessed 9 February 2023. See also the comparison of both frameworks in Gergely Kovács and Zoltan Rónay, 'Academic Freedom in Hungary' (OSUN Global Observatory on Academic Freedom 2021) <https://unipub.lib.uni-corvinus.hu/7220/1/KovacsG_GOAF_Academic_Freedom_in_Hungary_20220218_FINAL.pdf> accessed 19 July 2024; or Petra Lea Lános, 'The State of Academic Freedom in Hungary: The Saga of the Central European University and the Research Network of the Hungarian Academy of Sciences in Light of National and European Guarantees of Academic Freedom' in Margrit Seckelmann and others (eds), *Academic Freedom Under Pressure?* (Springer International Publishing 2021) 63–65.

⁷² Lános (n 71) 63–65; Stachowiak-Kudła and others (n 71) 168, 172, 176, 178–179.

⁷³ Official translation available at <https://njt.hu/jogszabaly/en/2011-4301-02-00>.

tartalmát, módszereit illetően önállóak, szervezeti rendjüket törvény szabályozza. Az állami felsőoktatási intézmények gazdálkodási rendjét törvény keretei között a Kormány határozza meg, gazdálkodásukat a Kormány felügyeli.

Act. The Government shall, within the framework of the Acts, lay down the rules governing the management of public institutes of higher education and shall supervise their management.

3.3.14. Ireland

The Constitution of Ireland does not include any explicit provisions on the protection of academic freedom.⁷⁴ The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Irish Constitution as relevant for academic freedom protection: Article 40(6)(1) (freedom of expression). The *Constitute* database does not identify any provisions as pertaining to 'the right to academic freedom' and making a 'reference to science'.

Constitution of Ireland⁷⁵

Article 40

[...]

(6) 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality: –

i The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of seditious or indecent matter is an offence which shall be punishable in accordance with law.

3.3.15. Italy

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Italian Constitution as relevant for academic freedom protection: Article 33 (freedom of arts, sciences and teaching). The *Constitute* database similarly identifies Article 33 as pertaining to 'the right to academic freedom' and mentions this provision together with Article 9 (promotion of culture and research) as making a 'reference to science'. The available English-language comparative literature includes some discussion of the relevant constitutional jurisprudence.⁷⁶

In the Advice Paper published by the League of European Research Universities, Italy is mentioned as an example of a constitutional framework adopting a state obligations approach.⁷⁷ This means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but

⁷⁴ See also Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 33) 112; Kirsten Roberts Lyer and Elizaveta Potapova, 'Academic Freedom in Ireland' in Katrin Kinzelbach (ed), *Researching Academic Freedom: Guidelines and Sample Case Studies* (FAU University Press 2020).

⁷⁵ The text of the Constitution is available at www.irishstatutebook.ie/eli/cons/en/html.

⁷⁶ Stachowiak-Kudła (n 42) 1035–1036, 1041–1042; see also relevant chapters in Cristina Fraenkel-Haeberle and others (eds), *Academic Freedom Under Pressure? A Comparative Perspective* (Springer 2021) <<https://link.springer.com/eui.idm.oclc.org/book/10.1007/978-3-030-77524-7>> accessed 2 September 2022.

⁷⁷ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

(also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.⁷⁸

Constitution of the Italian Republic⁷⁹

Original-language version	English-language version
<p>Articolo 9</p> <p>La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica.</p> <p>Tutela il paesaggio e il patrimonio storico e artistico della Nazione.</p> <p>Tutela l'ambiente, la biodiversità e gli ecosistemi, anche nell'interesse delle future generazioni. La legge dello Stato disciplina i modi e le forme di tutela degli animali.</p>	<p>Art. 9</p> <p>The Republic shall promote the development of culture and of scientific and technical research.</p> <p>It shall safeguard the natural beauties and the historical and artistic heritage of the Nation.</p> <p>It shall safeguard the environment, biodiversity and ecosystems, also in the interest of future generations. State law shall regulate the methods and means of safeguarding animals.</p>
<p>Articolo 33</p> <p>L'arte e la scienza sono libere e libero ne è l'insegnamento.</p> <p>La Repubblica detta le norme generali sull'istruzione ed istituisce scuole statali per tutti gli ordini e gradi.</p> <p>Enti e privati hanno il diritto di istituire scuole ed istituti di educazione, senza oneri per lo Stato.</p> <p>La legge, nel fissare i diritti e gli obblighi delle scuole non statali che chiedono la parità, deve assicurare ad esse piena libertà e ai loro alunni un trattamento scolastico equipollente a quello degli alunni di scuole statali.</p> <p>E' prescritto un esame di Stato per l'ammissione ai vari ordini e gradi di scuole o per la conclusione di essi e per l'abilitazione all'esercizio professionale.</p> <p>Le istituzioni di alta cultura, università ed accademie, hanno il diritto di darsi ordinamenti autonomi nei limiti stabiliti dalle leggi dello Stato.</p>	<p>Art. 33</p> <p>The arts and sciences are free, as shall be their teaching.</p> <p>The Republic shall lay down general provisions for education and shall establish state schools for all levels and grades.</p> <p>Public and private bodies shall have the right to establish schools and educational institutions at no cost to the State.</p> <p>The law, in establishing the rights and obligations for non-state schools requesting equal status with state schools, shall ensure that they enjoy full liberty and offer their pupils educational conditions equivalent to those afforded to pupils in state schools.</p> <p>A state examination is prescribed for admission to and graduation from the various school levels and grades and to qualify for a profession.</p> <p>Institutions of higher learning, universities and academies, shall have the right to adopt autonomous by-laws within the limits set forth by the laws of the State.</p>

⁷⁸ ibid 9.

⁷⁹ Official translation available at www.senato.it/sites/default/files/media-documents/Costituzione_INGLESE.pdf.

La Repubblica riconosce il valore educativo, sociale e di promozione del benessere psicofisico dell'attività sportiva in tutte le sue forme.

The Republic recognises the educational and social value of sporting activity in all its forms and its role in supporting physical and psychological well-being.

3.3.16. Latvia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Latvia as relevant for academic freedom protection: Article 113 (freedom of the arts and sciences). The *Constitute* database similarly identifies Article 113 as both pertaining to 'the right to academic freedom' and making a 'reference to science'. Some developments in the constitutional jurisprudence concerning academic freedom and institutional autonomy in Latvia are discussed in the EUA University Autonomy Country Profile for Latvia.⁸⁰

In the Advice Paper published by the League of European Research Universities, Latvia is mentioned as an example of a constitutional framework adopting a state obligations approach.⁸¹ This means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but (also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.⁸²

The Constitution of the Republic of Latvia⁸³

Original-language version	English-language version
Art. 113 Valsts atzīst zinātniskās, mākslinieciskās un citādas jaunrades brīvību, kā arī aizsargā autortiesības un patenttiesības.	Article 113 The State shall recognise the freedom of scientific research, artistic and other creative activity, and shall protect copyright and patent rights.

3.3.17. Lithuania

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies two provisions of the Lithuanian constitution as relevant for academic freedom protection: Article 25 (freedom of expression and information) and Article 42 (freedom of science, research, and teaching). The *Constitute* database identifies Articles 25, 40 (institutional autonomy), and 42 as pertaining to 'the right to academic freedom' and mentions Articles 21 (prohibition of scientific experimentation without consent) and 42 as making a 'reference to science'. Some developments in the constitutional jurisprudence concerning institutional autonomy are mentioned in the EUA University Autonomy Country Profile for Lithuania.⁸⁴

⁸⁰ Enora Bennetot Pruvot, Thomas Estermann and Nino Popkhadze, 'University Autonomy in Europe IV: Country Profiles (II)' (European University Association 2023) 42–43 <www.eua.eu/publications/reports/university-autonomy-in-europe-iv-the-scorecard-2023.html>.

⁸¹ Vrielink and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁸² *ibid* 9.

⁸³ Official translation available at www.president.lv/en/constitution-republic-latvia.

⁸⁴ Enora Bennetot Pruvot, Thomas Estermann and Nino Popkhadze, 'University Autonomy in Europe IV: Country Profiles (III)' (European University Association 2023) 51 <www.eua.eu/publications/reports/university-autonomy-in-europe-iv-the-scorecard-2023.html>.

The Constitution of the Republic of Lithuania⁸⁵

Original-language version	English-language version
<p>21 straipsnis</p> <p>Žmogaus asmuo neliečiamas. Žmogaus orumą gina įstatymas.</p> <p>Draudžiama žmogų kankinti, žaloti, žeminti jo orumą, žiauriai su juo elgtis, taip pat nustatyti tokias bausmes.</p> <p>Su žmogumi, be jo žinios ir laisvo sutikimo, negali būti atliekami moksliniai ar medicinos bandymai.</p>	<p>Article 21</p> <p>The human person shall be inviolable. Human dignity shall be protected by law. It shall be prohibited to torture or injure a human being, degrade his dignity, subject him to cruel treatment, or to establish such punishments. No one may be subjected to scientific or medical experimentation without his knowledge and free consent.</p>
<p>25 straipsnis</p> <p>Žmogus turi teisę turėti savo įsitikinimus ir juos laisvai reikšti. Žmogui neturi būti kliudoma ieškoti, gauti ir skleisti informaciją bei idėjas. Laisvė reikšti įsitikinimus, gauti ir skleisti informaciją negali būti ribojama kitaip, kaip tik įstatymu, jei tai būtina apsaugoti žmogaus sveikatai, garbei ir orumui, privačiam gyvenimui, dorovei ar ginti konstitucinei santvarkai. Laisvė reikšti įsitikinimus ir skleisti informaciją nesuderinama su nusikalstamais veiksmais – tautinės, rasinės, religinės ar socialinės neapykantos, prievartos bei diskriminacijos kurstymu, šmeižtu ir dezinformacija. Pilietis turi teisę įstatymo nustatyta tvarka gauti valstybės įstaigų turimą informaciją apie jį.</p>	<p>Article 25</p> <p>Everyone shall have the right to have his own convictions and freely express them. No one must be hindered from seeking, receiving, or imparting information and ideas. The freedom to express convictions, as well as to receive and impart information, may not be limited otherwise than by law when this is necessary to protect human health, honour or dignity, private life, or morals, or to defend the constitutional order. The freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement to national, racial, religious, or social hatred, incitement to violence or to discrimination, as well as defamation and disinformation. Citizens shall have the right to receive, according to the procedure established by law, any information held about them by state institutions.</p>
<p>40 straipsnis</p> <p>Valstybinės ir savivaldybių mokymo ir auklėjimo įstaigos yra pasaulietinės. Jose tėvų pageidavimu mokoma tikybos. Įstatymo nustatyta tvarka gali būti steigiamos nevalstybinės mokymo bei auklėjimo įstaigos. Aukštosios mokykloms suteikiama autonomija. Valstybė prižiūri mokymo ir auklėjimo įstaigų veiklą.</p>	<p>Article 40</p> <p>State and municipal establishments of teaching and education shall be secular. At the request of parents, they shall provide religious instruction. Non-state establishments of teaching and education may be founded according to the procedure established by law. Schools of higher education shall be granted autonomy. The State shall supervise the activities of establishments of teaching and education.</p>

⁸⁵ Official translation available at <https://lrkt.lt/en/about-the-court/legal-information/the-constitution/192>.

42 straipsnis	Article 42
Kultūra, mokslas ir tyrinėjimai bei dėstymas yra laisvi.	Culture, science and research, and teaching shall be free.
Valstybė remia kultūrą ir mokslą, rūpinasi Lietuvos istorijos, meno ir kitų kultūros paminklų bei vertybių apsauga.	The State shall support culture and science, and shall take care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects.
Dvasinius ir materialinius autoriaus interesus, susijusius su mokslo, technikos, kultūros ir meno kūryba, saugo ir gina įstatymas.	The law shall protect and defend the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.

3.3.18. Luxembourg

In 2022, Luxembourg adopted a new constitution that entered into force in July 2023. Data available in the existing academic freedom databases has not been updated to reflect the new legal framework. It is, however, worth noting that the previous Constitution of the Grand Duchy of Luxembourg did not include any explicit provisions on academic freedom.⁸⁶ The new Constitution includes two relevant provisions: Article 33 (freedom of education) and Article 43 (freedom of research).

Constitution of the Grand Duchy of Luxembourg⁸⁷

Luxembourgish-language version	French-language version	German-language version	English-language version
Art. 33	Art. 33	Art. 33	Article 33
(1) All Persoun huet d'Recht op Bildung.	(1) Toute personne a droit à l'éducation.	(1) Jeder Mensch hat das Recht auf Bildung.	(1) Everyone has the right to education.
(2) De Staat organiséiert den Enseignement a garantéiert den Zougang derzou. D'Dauer vun der Schoulpflicht gëtt vum Gesetz festgeluecht. Den öffentlechen Enseignement am	(2) L'État organise l'enseignement et en garantit l'accès. La durée de l'enseignement obligatoire est déterminée par la loi. L'enseignement public fondamental et secondaire est gratuit.	(2) Der Staat organisiert den Unterricht und garantiert den Zugang dazu. Die Dauer der Schulpflicht wird gesetzlich festgelegt. Der öffentliche Fundamental- und Sekundarschulunterricht ist kostenlos.	(2) The State organises education and guarantees access to it. The duration of compulsory education will be regulated by law. Public primary and secondary education is free of charge.

⁸⁶ See Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 33) 113. In reference to the old constitution, the Global Mapping of Regulatory Frameworks on Academic Freedom identified Article 24 (freedom of expression) as relevant for academic freedom protection. The *Constitute* database identified Article 23(4) (right to education) as pertaining to 'the right to academic freedom' and did not mention any provisions as making 'references to science'.

⁸⁷ The Constitution has three language versions (French, Luxembourgish and German). The texts are available at <https://legilux.public.lu/eli/etat/leg/constitution/1868/10/17/n1/consolide/20230701/de>. The English-language version presented here is the author's own translation based on the German-language text.

<p>Fondamental an am Secondaire ass gratis.</p> <p>(3) D'Fräiheet vum Enseignement gëtt ausgeübt am Respekt vun de Wäerter vun enger demokratescher Gesellschaft, déi op de Grundrechter an den ëffentleche Fräiheeten opgebaut ass.</p> <p>D'staatlech Interventioun am privaten Enseignement gëtt vum Gesetz geregelt.</p> <p>(4) All Persoun ass fräi, zu Lëtzebuerg oder am Ausland ze studéieren an ze wielen, wéi eng Universitéit si besicht. D'Konditiounen vun der Unerkennung vun den Diplomer gi vum Gesetz bestëmmt.</p>	<p>(3) La liberté de l'enseignement s'exerce dans le respect des valeurs d'une société démocratique fondée sur les droits fondamentaux et les libertés publiques.</p> <p>L'intervention de l'État dans l'enseignement privé est déterminée par la loi.</p> <p>(4) Toute personne est libre de faire ses études au Luxembourg ou à l'étranger, de fréquenter les universités de son choix. Les conditions de la reconnaissance des diplômes sont déterminées par la loi.</p>	<p>(3) Die Freiheit der Bildung wird im Einklang mit den Werten einer demokratischen Gesellschaft ausgeübt, die auf den Grund- und Freiheitsrechten beruht. Der Eingriff des Staates in das private Bildungswesen wird per Gesetz geregelt.</p> <p>(4) Jedem steht es frei, seine Studien in Luxemburg oder im Ausland zu absolvieren und Universitäten seiner Wahl zu besuchen. Die Bedingungen für die Anerkennung von Diplomen werden per Gesetz festgelegt.</p>	<p>(3) Freedom of education shall be exercised in line with values of a democratic society which is based on fundamental rights and freedoms.</p> <p>The intervention of the State in private education will be regulated by law.</p> <p>(4) Everyone is free to complete their studies in Luxembourg or abroad and to attend universities of their choice. The conditions for the recognition of diplomas will be determined by law.</p>
<p>Art. 43</p> <p>Der Staat fördert die Freiheit der wissenschaftlichen Forschung, die im Einklang mit den Werten einer demokratischen Gesellschaft steht und auf Grundrechten und öffentlichen Freiheiten beruht.</p>	<p>Art. 43</p> <p>L'État promeut la liberté de la recherche scientifique réalisée dans le respect des valeurs d'une société démocratique fondée sur les droits fondamentaux et les libertés publiques.</p>	<p>Art. 43</p> <p>Der Staat fördert die Freiheit der wissenschaftlichen Forschung, die im Einklang mit den Werten einer demokratischen Gesellschaft steht und auf Grundrechten und öffentlichen Freiheiten beruht.</p>	<p>Article 43</p> <p>The State supports the freedom of scientific research, which shall be consistent with the values of a democratic society and based on fundamental rights and public freedoms.</p>

3.3.19. Malta

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of Malta as relevant for academic freedom protection: Article 41 (freedom of expression). The *Constitute* database does not identify any provisions as pertaining to 'the right to academic freedom' but mentions Article 8 (promotion of culture and research) as making a 'reference to science'.

In the Advice Paper published by the League of European Research Universities, Article 8 of the Maltese Constitution is mentioned as an example of a constitutional framework adopting a state

obligations approach.⁸⁸ This means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but (also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.⁸⁹

Constitution of Malta⁹⁰

Maltese-language version	English-language version
<p>Art. 8</p> <p>L-Istat għandu jgħib 'il quddiem l-iżvilupp tal-kultura u tat-tfittix xjentifiku u tekniku.</p>	<p>Article 8</p> <p>The State shall promote the development of culture and scientific and technical research.</p>
<p>Art. 41</p> <p>(1) Hlief bil-kunsens tiegħu stess jew bħala dixxiplina tal-ġenituri, ħadd ma għandu jiġi mfixxkel fit-tgawdija tal-libertà tiegħuta' espressjoni, magħduda libertà li jkollu fehmiet mingħajr indħil, libertà li jirċievi idejiet u tagħrif mingħajr indħil, libertà li jikkomunika idejiet u tagħrif mingħajr indħil (kemm jekk il-komunikazzjoni tkun lill-pubbliku in ġenerali jew lil xi persuna jew klassi ta' persuni) u libertà minn indħil dwar il-korrispondenzatiegħu.</p> <p>(2) Ebda ħaġa li hemm fi jew magħmula skont l-awtorità ta' xiliġi ma għandha titqies li tkun inkonsistenti ma' jew bi ksur tas-subartikolu (1) ta' dan l-artikolu safejn dik il-liġi tagħmel provvediment –</p> <p>(a) li jkun meħtieġ raġonevolment –</p> <p>(i) fl-interess tad-difiża, sigurtà pubblika, ordni pubbliku, moralità jew deċenza pubblika, jew saħħa pubblika; jew</p> <p>(ii) sabiex jiġu protetti r-reputazzjonijiet, drittijiet u libertajiet ta' persuni oħra, jew il-ħajja privatata' persuni li jkollhom x'jaqsmu ma' proċeduri legali, jiġi evitat il-kxif ta' tagħrif riċevut sigriet, tiġi miżmuma l-awtorità u l-indipendenza tal-qrati, jiġu protetti l-privileġġi tal-Parlament, jew jiġu regolati t-telefonu, it-telegrafu, il-posta, ix-xandir bil-wireless, it-televiżjoni jew mezzi oħra ta' komunikazzjoni, esibizzjonijiet pubbliċi jew divertiment pubbliċi; jew</p> <p>(b) li jimponi restrizzjonijiet fuq uffiċjali pubbliċi, u hlief safejn dak il-provvediment jew, skont il-każ, il-ħaġa magħmula skont l-awtorità tiegħu tiġi murijali ma tkun raġonevolment ġustifikabbli f'soċjetà demokratika.</p>	<p>Article 41</p> <p>(1) Except with his own consent or by way of parental discipline, no person shall be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.</p> <p>(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-article (1) of this article to the extent that the law in question makes provision –</p> <p>(a) that is reasonably required –</p> <p>(i) in the interests of defence, public safety, public order, public morality or decency, or public health; or</p> <p>(ii) for the purpose of protecting the reputations, rights and freedoms of other persons, or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, protecting the privileges of Parliament, or regulating telephony, telegraphy, posts, wireless broadcasting, television or other means of communication, public exhibitions or public entertainments; or</p> <p>(b) that imposes restrictions upon public officers, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a</p>

⁸⁸ Vrielink and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁸⁹ ibid 9.

⁹⁰ Text available at <https://legislation.mt/eli/const/eng>.

<p>(3) Kull min ikun residenti f'Malta jista' joħroġ jew jistampagazzetta jew ġurnal pubblikat kull jum jew perjodikament: Iżda jista' jsir provvediment b'liġi – (a) li jipprojbixxi jew jillimita l-ħruġ jew stampar ta' xigazzetta jew ġurnal bħal dak minn persuni taħt il-wieħed u għoxrin senata' età; u (b) li jeħtieġ kull persunali tkun l-editur jew stampatur ta' xi gazzetta jew ġurnal bħal dak li tinforma l-awtorità preskritta b'hekk u dwar l-età tagħha u li żżomm lill-awtorità preskritta informata dwar il-post tar-residenzatagħha.</p> <p>(4) Meta l-pulizija taqbad xi edizzjoni ta' gazzetta bħala li tkun il-mezz li bih reat kriminali jkun ġie magħmul il-pulizija għandha fiżmien erbgħa u għoxrin siegħa mill-qbid iġġib il-qbid għak-konjizzjoni tal-qorti kompetenti u jekk il-qorti ma tkunx sodisfattali jkun hemm prova prima facie ta' dak ir-reat, dik l-edizzjon għandha tiġi mogħtija lura lill-persuna li minn għandha tkun ġiet maqbuda.</p> <p>(5) Hadd ma jkun ipprivat miċ-ċittadinanza tiegħu skont xidisposizzjonijiet magħmula taħt l-artikolu 30 (1) (b) ta' din il-Kostituzzjoni jew mill-kapaċità ġuridika tiegħu minħabba b'is-s l-opinjoni politika tiegħu.</p>	<p>democratic society.</p> <p>(3) Anyone who is resident in Malta may edit or print a newspaper or journal published daily or periodically: Provided that provision may be made by law – (a) prohibiting or restricting the editing or printing of any such newspaper or journal by persons under twenty-one years of age; and (b) requiring any person who is the editor or printer of any such newspaper or journal to inform the prescribed authority to that effect and of his age and to keep the prescribed authority informed of his place of residence.</p> <p>(4) Where the police seize any edition of a newspaper as being the means whereby a criminal offence has been committed they shall within twenty-four hours of the seizure bring the seizure to the notice of the competent court and if the court is not satisfied that there is a prima facie case of such offence, that edition shall be returned to the person from whom it was seized.</p> <p>(5) No person shall be deprived of his citizenship under any provisions made under article 30(1) (b) of this Constitution or of his juridical capacity by reason only of his political opinions.</p>
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3.3.20. The Netherlands

There are no explicit provisions on the protection of academic freedom or institutional autonomy in the Constitution of the Kingdom of the Netherlands.⁹¹ However, the Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Dutch Constitution as relevant for academic freedom protection: Article 7 (freedom of expression). The *Constitute* database identifies Article 23(2) (on education) as pertaining to 'the right to academic freedom' and does not mention any provisions as 'making a reference to science'.

The constitutional protection of academic freedom in the Netherlands will be discussed in detail in chapter 4 of this study.

The Constitution of the Kingdom of the Netherlands⁹²

Original-language version	English-language version
<p>Artikel 7</p> <p>1. Niemand heeft voorafgaand verlof nodig om door de drukpers gedachten of gevoelens te openbaren,</p>	<p>Article 7</p> <p>1. No one shall require prior permission to publish thoughts or opinions through the press, without</p>

⁹¹ See also Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 34) 113.

⁹² Official translation available at www.government.nl/topics/constitution/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands.

<p>behoudens ieders verantwoordelijkheid volgens de wet.</p> <p>2. De wet stelt regels omtrent radio en televisie. Er is geen voorafgaand toezicht op de inhoud van een radio of televisieuitzending.</p> <p>3. Voor het openbaren van gedachten of gevoelens door andere dan in de voorgaande leden genoemde middelen heeft niemand voorafgaand verlof nodig wegens de inhoud daarvan, behoudens ieders verantwoordelijkheid volgens de wet. De wet kan het geven van vertoningen toegankelijk voor personen jonger dan zestien jaar regelen ter bescherming van de goede zeden.</p> <p>4. De voorgaande leden zijn niet van toepassing op het maken van handelsreclame.</p>	<p>prejudice to the responsibility of every person under the law.</p> <p>2. Rules concerning radio and television shall be laid down by Act of Parliament. There shall be no prior supervision of the content of a radio or television broadcast.</p> <p>3. No one shall be required to submit thoughts or opinions for prior approval in order to disseminate them by means other than those mentioned in the preceding paragraphs, without prejudice to the responsibility of every person under the law. The holding of performances open to persons younger than sixteen years of age may be regulated by Act of Parliament in order to protect good morals.</p> <p>4. The preceding paragraphs do not apply to commercial advertising.</p>
<p>Artikel 23</p> <p>1. Het onderwijs is een voorwerp van de aanhoudende zorg der regering.</p> <p>2. Het geven van onderwijs is vrij, behoudens het toezicht van de overheid en, voor wat bij de wet aangewezen vormen van onderwijs betreft, het onderzoek naar de bekwaamheid en de zedelijkheid van hen die onderwijs geven, een en ander bij de wet te regelen.</p> <p>3. Het openbaar onderwijs wordt, met eerbiediging van ieders godsdienst of levensovertuiging, bij de wet geregeld.</p> <p>4. In elke gemeente en in elk van de openbare lichamen, bedoeld in artikel 132a, wordt van overheidswege voldoende openbaar algemeen vormend lager onderwijs gegeven in een genoegzaam aantal openbare scholen. Volgens bij de wet te stellen regels kan afwijking van deze bepaling worden toegelaten, mits tot het ontvangen van zodanig onderwijs gelegenheid wordt gegeven, al dan niet in een openbare school.</p> <p>5. De eisen van deugdelijkheid, aan het geheel of ten dele uit de openbare kas te bekostigen onderwijs te stellen, worden bij de wet geregeld, met inachtneming, voor zover het bijzonder onderwijs betreft, van de vrijheid van richting.</p>	<p>Article 23</p> <p>1. Education shall be the constant concern of the Government.</p> <p>2. All persons shall be free to provide education, without prejudice to the authorities' right of supervision and, with regard to forms of education designated by law, their right to examine the competence and moral integrity of teachers, to be regulated by Act of Parliament.</p> <p>3. Education provided by public authorities shall be regulated by Act of Parliament, paying due respect to everyone's religion or belief.</p> <p>4. The authorities shall ensure that primary education is provided in a sufficient number of public-authority schools in every municipality and in each of the public bodies referred to in Article 132a. Deviations from this provision may be permitted under rules to be established by Act of Parliament on condition that there is opportunity to receive the said form of education, whether in a public-authority school or otherwise.</p> <p>5. The standards required of schools financed either in part or in full from public funds shall be regulated by Act of Parliament, with due regard, in the case of private schools, to the freedom to provide education according to religious or other belief.</p>

<p>6. Deze eisen worden voor het algemeen vormend lager onderwijs zodanig geregeld, dat de deugdelijkheid van het geheel uit de openbare kas bekostigd bijzonder onderwijs en van het openbaar onderwijs evenafdoende wordt gewaarborgd. Bij die regeling wordt met name de vrijheid van het bijzonder onderwijs betreffende de keuze der leermiddelen en de aanstelling der onderwijzers geëerbiedigd.</p> <p>7. Het bijzonder algemeen vormend lager onderwijs, dat aan de bij de wet te stellen voorwaarden voldoet, wordt naar dezelfde maatstaf als het openbaar onderwijs uit de openbare kas bekostigd. De wet stelt de voorwaarden vast, waarop voor het bijzonder algemeen vormend middelbaar en voorbereidend hoger onderwijs bijdragen uit de openbare kas worden verleend.</p> <p>8. De regering doet jaarlijks van de staat van het onderwijs verslag aan de Staten-Generaal.</p>	<p>6. The requirements for primary education shall be such that the standards both of private schools fully financed from public funds and of public-authority schools are fully guaranteed. The relevant provisions shall respect in particular the freedom of private schools to choose their teaching aids and to appoint teachers as they see fit.</p> <p>7. Private primary schools that satisfy the conditions laid down by Act of Parliament shall be financed from public funds according to the same standards as public-authority schools. The conditions under which private secondary education and pre-university education shall receive contributions from public funds shall be laid down by Act of Parliament.</p> <p>8. The Government shall submit annual reports on the state of education to the States General.</p>
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3.3.21. Poland

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Poland as relevant for academic freedom protection: Article 73 (freedom of the arts and sciences). The *Constitute* database identifies Articles 70(5) (institutional autonomy) and 73 as pertaining to 'the right to academic freedom' and Articles 39 (prohibition of scientific experimentation without consent) and 73 as making a 'reference to science'.

In the Advice Paper published by the League of European Research Universities, Poland is mentioned as an example of a constitutional framework adopting a rights approach in its individual dimension.⁹³ This means that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.⁹⁴

The constitutional protection of academic freedom in Poland will be discussed in detail in chapter 4 of this study.

Constitution of the Republic of Poland⁹⁵

Original-language version	English-language version
<p>Art. 39.</p> <p>Nikt nie może być poddany eksperymentom naukowym, w tym medycznym, bez dobrowolnie wyrażonej zgody.</p>	<p>Article 39</p> <p>No one shall be subjected to scientific experimentation, including medical experimentation, without his voluntary consent.</p>

⁹³ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁹⁴ *ibid* 8.

⁹⁵ Official translation available at <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

<p>Art. 70.</p> <p>Każdy ma prawo do nauki. Nauka do 18 roku życia jest obowiązkowa. Sposób wykonywania obowiązku szkolnego określa ustawa.</p> <p>Nauka w szkołach publicznych jest bezpłatna. Ustawa może dopuścić świadczenie niektórych usług edukacyjnych przez publiczne szkoły wyższe za odpłatnością.</p> <p>Rodzice mają wolność wyboru dla swoich dzieci szkół innych niż publiczne. Obywatele i instytucje mają prawo zakładania szkół podstawowych, ponadpodstawowych i wyższych oraz zakładów wychowawczych. Warunki zakładania i działalności szkół niepublicznych oraz udziału władz publicznych w ich finansowaniu, a także zasady nadzoru pedagogicznego nad szkołami i zakładami wychowawczymi, określa ustawa.</p> <p>Władze publiczne zapewniają obywatelom powszechny i równy dostęp do wykształcenia. W tym celu tworzą i wspierają systemy indywidualnej pomocy finansowej i organizacyjnej dla uczniów i studentów. Warunki udzielania pomocy określa ustawa.</p> <p>Zapewnia się autonomię szkół wyższych na zasadach określonych w ustawie.</p>	<p>Article 70</p> <p>Everyone shall have the right to education. Education to 18 years of age shall be compulsory. The manner of fulfilment of schooling obligations shall be specified by statute.</p> <p>Education in public schools shall be without payment. Statutes may allow for payments for certain services provided by public institutions of higher education.</p> <p>Parents shall have the right to choose schools other than public for their children. Citizens and institutions shall have the right to establish primary and secondary schools and institutions of higher education and educational development institutions. The conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute.</p> <p>Public authorities shall ensure universal and equal access to education for citizens. To this end, they shall establish and support systems for individual financial and organizational assistance to pupils and students. The conditions for providing of such assistance shall be specified by statute.</p> <p>The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute.</p>
<p>Art. 73.</p> <p>Każdemu zapewnia się wolność twórczości artystycznej, badań naukowych oraz ogłaszania ich wyników, wolność nauczania, a także wolność korzystania z dóbr kultury.</p>	<p>Article 73</p> <p>The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone.</p>

3.3.22. Portugal

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies three provisions of the Constitution of the Republic of Portugal as relevant for academic freedom protection: Article 42 (freedom of cultural creation), Article 73 (education, culture, and science) and Article 76 (university and access to higher education). The *Constitute* database identifies Articles 76(2) and 77(1) (democratic participation in education) as pertaining to 'the right to academic freedom' and Article 42 and 73(4) as making a 'reference to science'. The available English-language comparative literature on academic freedom focuses mostly on Articles 42 and 43 but includes also some

discussion of the broader relevant constitutional jurisprudence, in particular regarding university autonomy.⁹⁶

In the Advice Paper published by the League of European Research Universities, Portugal is mentioned as an example of a constitutional framework adopting a rights approach in its individual dimension as well as a state obligations approach.⁹⁷ The former signifies that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.⁹⁸ The latter, framed in reference to Article 42 in particular, means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but (also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.⁹⁹

Constitution of the Portuguese Republic¹⁰⁰

Original-language version	English-language version
Artigo 42.º 1. É livre a criação intelectual, artística e científica. 2. Esta liberdade compreende o direito à invenção, produção e divulgação da obra científica, literária ou artística, incluindo a proteção legal dos direitos de autor.	Article 42 1. There shall be freedom of intellectual, artistic and scientific creation. 2. This freedom comprises the right to invent, produce and divulge scientific, literary and artistic work and includes the protection of copyright by law.
Artigo 43.º 1. É garantida a liberdade de aprender e ensinar. 2. O Estado não pode programar a educação e a cultura segundo quaisquer diretrizes filosóficas, estéticas, políticas, ideológicas ou religiosas. 3. O ensino público não será confessional. 4. É garantido o direito de criação de escolas particulares e cooperativas.	Article 43 1. The freedom to learn and to teach is guaranteed. 2. The state may not programme education and culture in accordance with any philosophical, aesthetic, political, ideological or religious directives. 3. Public education shall not be linked to a religious belief. 4. The right to create private and cooperative schools is guaranteed.
Artigo 73.º 1. Todos têm direito à educação e à cultura. 2. O Estado promove a democratização da educação e as demais condições para que a educação, realizada através da escola e de outros meios formativos, contribua para a igualdade de oportunidades, a superação das desigualdades económicas, sociais e culturais, o desenvolvimento	Article 73 1. Everyone has the right to education and culture. 2. The state shall promote the democratisation of education and the other conditions needed for an education conducted at school and via other means of training to contribute to equal opportunities, the overcoming of economic, social and cultural inequalities, the development of the personality and the spirit of tolerance, mutual understanding,

⁹⁶ Stachowiak-Kudła and others (n 71) 169, 172, 176, 180.

⁹⁷ Vrielink and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

⁹⁸ *ibid* 8.

⁹⁹ *ibid* 9.

¹⁰⁰ Official translation available at www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf.

da personalidade e do espírito de tolerância, de compreensão mútua, de solidariedade e de responsabilidade, para o progresso social e para a participação democrática na vida coletiva.

3. O Estado promove a democratização da cultura, incentivando e assegurando o acesso de todos os cidadãos à fruição e criação cultural, em colaboração com os órgãos de comunicação social, as associações e fundações de fins culturais, as coletividades de cultura e recreio, as associações de defesa do património cultural, as organizações de moradores e outros agentes culturais.

4. A criação e a investigação científicas, bem como a inovação tecnológica, são incentivadas e apoiadas pelo Estado, por forma a assegurar a respetiva liberdade e autonomia, o reforço da competitividade e a articulação entre as instituições científicas e as empresas.

Artigo 76.^o

1. O regime de acesso à Universidade e às demais instituições do ensino superior garante a igualdade de oportunidades e a democratização do sistema de ensino, devendo ter em conta as necessidades em quadros qualificados e a elevação do nível educativo, cultural e científico do país.

2. As universidades gozam, nos termos da lei, de autonomia estatutária, científica, pedagógica, administrativa e financeira, sem prejuízo de adequada avaliação da qualidade do ensino.

Artigo 77.^o

1. Os professores e alunos têm o direito de participar na gestão democrática das escolas, nos termos da lei.

2. A lei regula as formas de participação das associações de professores, de alunos, de pais, das comunidades e das instituições de carácter científico na definição da política de ensino.

solidarity and responsibility, to social progress and to democratic participation in collective life.

3. In cooperation with the media, cultural associations and foundations, cultural and recreational groups, cultural heritage associations, residents' organisations and other cultural agents, the state shall promote the democratisation of culture by encouraging and ensuring access by all citizens to cultural enjoyment and creation.

4. The state shall encourage and support scientific research and creation and technological innovation, in such a way as to ensure their freedom and autonomy, strengthen competitiveness and ensure articulation between scientific institutions and enterprises.

Article 76

1. The regime governing access to university and the other higher education institutions shall guarantee equal opportunities in and the democratisation of the education system, and must have due regard to the country's needs for qualified staff and to raising its educational, cultural and scientific level.

2. As laid down by law and without prejudice to an adequate assessment of the quality of education, universities shall enjoy autonomy in drawing up their own by-laws and in scientific, pedagogical, administrative and financial matters.

Article 77.

1. Teachers and students have the right to take part in the democratic management of schools, as laid down by law.

2. The law shall regulate the forms in which associations of teachers, students and parents, communities and institutions of a scientific nature participate in the definition of the education policy.

3.3.23. Romania

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies three provisions of the Constitution of Romania as relevant for academic freedom protection: Article 30 (freedom of expression), Article 31 (right to information) and Article 32 (right to education). The *Constitute* database identifies Article 32(6) as pertaining to 'the right to academic freedom' and Article 135(2)(c) (on economy) as making a 'reference to science'. It can be noted, however, that the available English-language literature as well as the input submitted by the Romanian Ministry of Education in response to the 'Call for contributions: academic freedom and freedom of expression

in educational institutions' issued by the Special Rapporteur on the right to education in April 2024 mention only Article 32 when discussing the constitutional protection of academic freedom.¹⁰¹

The EP Academic Freedom Monitor 2023 discussed some of the recent developments regarding the constitutional protection of academic freedom in Romania. It was noted that a proposed ban on gender studies and activities based on gender critical theories was found unconstitutional by the Constitutional Court of Romania.¹⁰²

The Constitution of Romania¹⁰³

Original-language version	English-language version
<p>Articolul 30</p> <p>(1) Libertatea de exprimare a gândurilor, a opiniilor sau a credințelor și libertatea creațiilor de orice fel, prin viu grai, prin scris, prin imagini, prin sunete sau prin alte mijloace de comunicare în public, sunt inviolabile.</p> <p>(2) Cenzura de orice fel este interzisă.</p> <p>(3) Libertatea presei implică și libertatea de a înființa publicații.</p> <p>(4) Nici o publicație nu poate fi suprimată.</p> <p>(5) Legea poate impune mijloacelor de comunicare în masă obligația de a face publică sursa finanțării.</p> <p>(6) Libertatea de exprimare nu poate prejudicia demnitatea, onoarea, viața particulară a persoanei și nici dreptul la propria imagine.</p> <p>(7) Sunt interzise de lege defăimarea țării și a națiunii, îndemnul la război de agresiune, la ură națională, rasială, de clasă sau religioasă, incitarea la discriminare, la separatism teritorial sau la violență publică, precum și manifestările obscene, contrare bunelor moravuri.</p> <p>(8) Răspunderea civilă pentru informația sau pentru creația adusă la cunoștință publică revine editorului sau realizatorului, autorului, organizatorului manifestării artistice, proprietarului mijlocului de multiplicare, al postului de radio sau de televiziune,</p>	<p>Article 30</p> <p>(1) Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable.</p> <p>(2) Any censorship shall be prohibited.</p> <p>(3) Freedom of the press also involves the free setting up of publications.</p> <p>(4) No publication shall be suppressed.</p> <p>(5) The law may impose upon the mass media the obligation to make public their financing source.</p> <p>(6) Freedom of expression shall not be prejudicial to the dignity, honour, privacy of a person, and to the right to one's own image.</p> <p>(7) Any defamation of the country and the nation, any instigation to a war of aggression, to national, racial, class or religious hatred, any incitement to discrimination, territorial separatism, or public violence, as well as any obscene conduct contrary to morality shall be prohibited by law.</p> <p>(8) Civil liability for any information or creation made public falls upon the publisher or producer, the author, the producer of the artistic performance, the owner of the copying facilities,</p>

¹⁰¹ Camelia Florentina Stoica and Marieta Safta, 'University Autonomy and Academic Freedom – Meaning and Legal Basis' (2013) 2 Perspectives of Business Law 192; Brindusa Gorea, 'Legal Principles and Values in Romanian Academic Life' (2015) 177 Procedia – Social and Behavioral Sciences 392; The Romanian Ministry of Education, 'Input Received by the Special Rapporteur on the Right to Education Following a Call for Contributions "Academic Freedom and Freedom of Expression in Educational Institutions"' <www.ohchr.org/en/calls-for-input/2024/call-contributions-academic-freedom-and-freedom-expression-educational>.

¹⁰² Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13) 183.

¹⁰³ Official translation available at www.presidency.ro/en/the-constitution-of-romania.

în condițiile legii. Delictele de presă se stabilesc prin lege.	radio or television station, under the terms laid down by law. Indictable offences of the press shall be established by law.
<p>Articolul 31</p> <p>(1) Dreptul persoanei de a avea acces la orice informație de interes public nu poate fi îngrădit.</p> <p>(2) Autoritățile publice, potrivit competențelor ce le revin, sunt obligate să asigure informarea corectă a cetățenilor asupra treburilor publice și asupra problemelor de interes personal.</p> <p>(3) Dreptul la informație nu trebuie să prejudicieze măsurile de protecție a tinerilor sau securitatea națională.</p> <p>(4) Mijloacele de informare în masă, publice și private, sunt obligate să asigure informarea corectă a opiniei publice.</p> <p>(5) Serviciile publice de radio și de televiziune sunt autonome. Ele trebuie să garanteze grupurilor sociale și politice importante exercitarea dreptului la antenă. Organizarea acestor servicii și controlul parlamentar asupra activității lor se reglementează prin lege organică.</p>	<p>Article 31</p> <p>(1) A person's right of access to any information of public interest shall not be restricted.</p> <p>(2) The public authorities, according to their competence, shall be bound to provide correct information to the citizens in public affairs and matters of personal interest.</p> <p>(3) The right to information shall not be prejudicial to the measures of protection of young people or national security.</p> <p>(4) Public and private media shall be bound to provide correct information to the public opinion.</p> <p>(5) Public radio and television services shall be autonomous. They must guarantee any important social and political group the exercise of the right to broadcasting time. The organization of these services and the parliamentary control over their activity shall be regulated by an organic law.</p>
<p>Articolul 32</p> <p>(1) Dreptul la învățătură este asigurat prin învățământul general obligatoriu, prin învățământul liceal și prin cel profesional, prin învățământul superior, precum și prin alte forme de instrucție și de perfecționare.</p> <p>(2) Învățământul de toate gradele se desfășoară în limba română. În condițiile legii, învățământul se poate desfășura și într-o limbă de circulație internațională.</p> <p>(3) Dreptul persoanelor aparținând minorităților naționale de a învăța limba lor maternă și dreptul de a putea fi instruite în această limbă sunt garantate; modalitățile de exercitare a acestor drepturi se stabilesc prin lege.</p> <p>(4) Învățământul de stat este gratuit, potrivit legii. Statul acordă burse sociale de studii copiilor și tinerilor proveniți din familii defavorizate și celor instituționalizați, în condițiile legii.</p>	<p>Article 32</p> <p>(1) The right to education is provided by the compulsory general education, by education in high schools and vocational schools, by higher education, as well as other forms of instruction and postgraduate improvement.</p> <p>(2) Education at all levels shall be carried out in Romanian. Education may also be carried out in a foreign language of international use, under the terms laid down by law.</p> <p>(3) The right of persons belonging to national minorities to learn their mother tongue, and their right to be educated in this language are guaranteed; the ways to exercise these rights shall be regulated by law.</p> <p>(4) State education shall be free, according to the law. The State shall grant social scholarships to children or young people coming from</p>

<p>(5) Învățământul de toate gradele se desfășoară în unități de stat, particulare și confesionale, în condițiile legii.</p> <p>(6) Autonomia universitară este garantată.</p> <p>(7) Statul asigură libertatea învățământului religios, potrivit cerințelor specifice fiecărui cult. În școlile de stat, învățământul religios este organizat și garantat prin lege.</p>	<p>disadvantaged families and to those institutionalized, as stipulated by the law.</p> <p>(5) Education at all levels shall take place in state, private, or confessional institutions, according to the law.</p> <p>(6) The autonomy of the Universities is guaranteed.</p> <p>(7) The State shall ensure the freedom of religious education, in accordance with the specific requirements of each religious cult. In public schools, religious education is organized and guaranteed by law.</p>
<p>Articolul 135</p> <p>(1) Economia României este economie de piață, bazată pe libera inițiativă și concurență.</p> <p>(2) Statul trebuie să asigure: libertatea comerțului, protecția concurenței loiale, crearea cadrului favorabil pentru valorificarea tuturor factorilor de producție; protejarea intereselor naționale în activitatea economică, financiară și valutară; stimularea cercetării științifice și tehnologice naționale, a artei și protecția dreptului de autor; exploatarea resurselor naturale, în concordanță cu interesul național; refacerea și ocrotirea mediului înconjurător, precum și menținerea echilibrului ecologic; crearea condițiilor necesare pentru creșterea calității vieții; aplicarea politicilor de dezvoltare regională în concordanță cu obiectivele Uniunii Europene.</p>	<p>Article 135</p> <p>(1) Romania's economy is a free market economy, based on free enterprise and competition.</p> <p>(2) The State must secure:</p> <ul style="list-style-type: none"> a) a free trade, protection of fair competition, provision of a favourable framework in order to stimulate and capitalize every factor of production; b) protection of national interests in economic, financial and currency activity; c) stimulation of national scientific and technological research, arts, and protection of copyright; d) exploitation of natural resources, in conformity with national interests; e) environmental protection and recovery, as well as preservation of the ecological balance; f) creation of all necessary conditions so as to increase the quality of life; g) implementation of regional development policies in compliance with the objectives of the European Union.

3.3.24. Slovakia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Slovak Republic as relevant for academic freedom protection: Article 43 (freedom of scientific research and artistic expression).¹⁰⁴ The *Constitute* database does not identify any provisions as pertaining to 'the right to academic freedom' but mentions Article 43(1) as making a 'reference to science'.¹⁰⁵ Article 43 is also the provision referenced by the Slovak National Centre

¹⁰⁴ The Global Mapping identifies also Article 156 as relevant, but this provision will not be included in the overview as it is a transitional provision concerning academic appointments.

¹⁰⁵ Several other provisions are also mentioned as making a 'reference to science', but they concern (in)compatibility of public offices with other – including scientific – activities.

for Human Rights in its response to the 'Call for contributions: academic freedom and freedom of expression in educational institutions' issued by the Special Rapporteur on the right to education in April 2024.¹⁰⁶

In the Advice Paper published by the League of European Research Universities, Slovakia is mentioned as an example of a constitutional framework adopting a rights approach in its individual dimension as well as a state obligations approach.¹⁰⁷ The former signifies that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.¹⁰⁸ The latter means that academic freedom is formulated 'not (only) in terms of a right of individuals or institutions, but (also) in terms of an obligation of the state. The obligation is one of respecting, safeguarding and promoting that freedom'.¹⁰⁹

Constitution of the Slovak Republic¹¹⁰

Original-language version	English-language version
<p>Čl. 43</p> <p>(1) Sloboda vedeckého bádania a umenia sa zaručuje. Práva na výsledky tvorivej duševnej činnosti chráni zákon.</p> <p>(2) Právo prístupu ku kultúrnemu bohatstvu sa zaručuje za podmienok ustanovených zákonom.</p>	<p>Article 43</p> <p>(1) Freedom of scientific research and freedom of artistic expression shall be guaranteed. Intellectual property rights shall be protected by a law.</p> <p>(2) The right to access to cultural heritage shall be guaranteed under the terms laid down by a law.</p>

3.3.25. Slovenia

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies one provision of the Constitution of the Republic of Slovenia as relevant for academic freedom protection: Article 59 (freedom of sciences and the arts).¹¹¹ The *Constitute* database identifies only Article 58 (autonomy of universities and other institutions of higher education) as pertaining to 'the right to academic freedom' but mentions Article 59 and Article 18 (prohibition of scientific experimentation) as making a 'reference to science'.¹¹²

¹⁰⁶ The Slovak National Centre for Human Rights, 'Input Received by the Special Rapporteur on the Right to Education Following a Call for Contributions "Academic Freedom and Freedom of Expression in Educational Institutions"' < www.ohchr.org/en/calls-for-input/2024/call-contributions-academic-freedom-and-freedom-expression-educational>.

¹⁰⁷ Vrielink and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

¹⁰⁸ *ibid* 8.

¹⁰⁹ *ibid* 9.

¹¹⁰ Official translation available at www.prezident.sk/upload-files/46422.pdf.

¹¹¹ The Global Mapping identifies also Article 156 as relevant, but this provision will not be included in the overview as it is a transitional provision concerning academic appointments.

¹¹² The *Constitute* database identifies also Articles 60 (intellectual property rights) and 64 (special rights of the autochthonous Italian and Hungarian national communities, including the right to develop scientific and research activities) as making a 'reference to science'. They are not included in the overview as they do not set out the scope of academic freedom.

Constitution of the Republic of Slovenia¹¹³

Original-language version	English-language version
<p>18. člen</p> <p>Nihče ne sme biti podvržen mučenju, nečloveškemu ali ponižujočem kaznovanju ali ravnanju. Na človeku je prepovedano delati medicinske ali druge znanstvene poskuse brez njegove svobodne privolitve.</p>	<p>Article 18</p> <p>No one may be subjected to torture or to inhuman or degrading punishment or treatment. The conducting of medical or other scientific experiments on any person without his free consent is prohibited.</p>
<p>58. člen</p> <p>Državne univerze in državne visoke šole so avtonomne.</p> <p>Način njihovega financiranja ureja zakon.</p>	<p>Article 58</p> <p>State universities and state institutions of higher education shall be autonomous.</p> <p>The manner of their financing shall be regulated by law.</p>
<p>59. člen</p> <p>Zagotovljena je svoboda znanstvenega in umetniškega ustvarjanja.</p>	<p>Article 59</p> <p>The freedom of scientific and artistic endeavour shall be guaranteed.</p>
<p>57. člen</p> <p>Izobraževanje je svobodno.</p> <p>[...]</p> <p>Država ustvarja možnosti, da si državljani lahko pridobijo ustrezno izobrazbo.</p>	<p>Article 57.</p> <p>Freedom of education shall be guaranteed.</p> <p>[...]</p> <p>The state shall create the opportunities for citizens to obtain a proper education.</p>

3.3.26. Spain

The Global Mapping of Regulatory Frameworks on Academic Freedom identifies two provisions of the Spanish Constitution as relevant for academic freedom protection: Section 20 (freedom of expression, academic freedom, etc.) and Section 27 (right to education). The *Constitute* database identifies only Section 20(1)(b) as pertaining to 'the right to academic freedom' and mentions Section 44(2) as making a 'reference to science'. The available English-language comparative literature on academic freedom focuses mostly on Articles 20(1)(c) and 27(1) and includes some discussion of the broader relevant constitutional jurisprudence.¹¹⁴

In the Advice Paper published by the League of European Research Universities, Spain is mentioned as an example of a constitutional framework adopting a rights approach in its individual dimension.¹¹⁵

¹¹³ Official translation available at www.us-rs.si/legal-basis/constitution/?lang=en.

¹¹⁴ Stachowiak-Kudła and others (n 71) 169–173, 177, 180–181; Stachowiak-Kudła (n 42) 1034–1035, 1042–1043.

¹¹⁵ Vrieling and others, 'Challenges to Academic Freedom as a Fundamental Right' (n 12).

This means that the constitution formulates academic freedom 'as an individual right, often uniting and specifying a number of expressive freedoms'.¹¹⁶

Spanish Constitution¹¹⁷

Original-language version	English-language version
<p>Artículo 20</p> <p>1. Se reconocen y protegen los derechos:</p> <p>a) A expresar y difundir libremente los pensamientos, ideas y opiniones mediante la palabra, el escrito o cualquier otro medio de reproducción.</p> <p>b) A la producción y creación literaria, artística, científica y técnica.</p> <p>c) A la libertad de cátedra.</p> <p>d) A comunicar o recibir libremente información veraz por cualquier medio de difusión. La ley regulará el derecho a la cláusula de conciencia y al secreto profesional en el ejercicio de estas libertades.</p> <p>2. El ejercicio de estos derechos no puede restringirse mediante ningún tipo de censura previa.</p> <p>3. La ley regulará la organización y el control parlamentario de los medios de comunicación social dependientes del Estado o de cualquier ente público y garantizará el acceso a dichos medios de los grupos sociales y políticos significativos, respetando el pluralismo de la sociedad y de las diversas lenguas de España.</p> <p>4. Estas libertades tienen su límite en el respeto a los derechos reconocidos en este Título, en los preceptos de las leyes que lo desarrollan y, especialmente, en el derecho al honor, a la intimidad, a la propia imagen y a la protección de la juventud y de la infancia.</p> <p>5. Sólo podrá acordarse el secuestro de publicaciones, grabaciones y otros medios de información en virtud de resolución judicial.</p>	<p>Section 20</p> <p>(1) The following rights are recognized and protected:</p> <p>a) the right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction;</p> <p>b) the right to literary, artistic, scientific and technical production and creation;</p> <p>c) the right to academic freedom;</p> <p>d) the right to freely communicate or receive truthful information by any means of dissemination whatsoever. The law shall regulate the right to the clause of conscience and professional secrecy in the exercise of these freedoms.</p> <p>(2) The exercise of these rights may not be restricted by any form of prior censorship.</p> <p>(3) The law shall regulate the organization and parliamentary control of the mass communication means under the control of the State or any public agency and shall guarantee access to such means by the significant social and political groups, respecting the pluralism of society and of the various languages of Spain.</p> <p>(4) These freedoms are limited by respect for the rights recognized in this Part, by the legal provisions implementing it, and especially by the right to honour, to privacy, to the own image and to the protection of youth and childhood.</p> <p>(5) The seizure of publications, recordings and other means of information may only be carried out by means of a court order.</p>
Artículo 27	Section 27

¹¹⁶ *ibid* 8.

¹¹⁷ Official translation available at www.senado.es/web/conocers Senado/normas/constitucion/detalleconstitucioncompleta/index.html?lang=en.

1. Todos tienen el derecho a la educación. Se reconoce la libertad de enseñanza.	(1) Everyone has the right to education. Freedom of teaching is recognized.
2. La educación tendrá por objeto el pleno desarrollo de la personalidad humana en el respeto a los principios democráticos de convivencia y a los derechos y libertades fundamentales.	(2) Education shall aim at the full development of human personality with due respect for the democratic principles of coexistence and for basic rights and freedoms.
3. Los poderes públicos garantizan el derecho que asiste a los padres para que sus hijos reciban la formación religiosa y moral que esté de acuerdo con sus propias convicciones.	(3) The public authorities guarantee the right of parents to ensure that their children receive religious and moral instruction in accordance with their own convictions.
4. La enseñanza básica es obligatoria y gratuita.	(4) Elementary education is compulsory and free.
5. Los poderes públicos garantizan el derecho de todos a la educación, mediante una programación general de la enseñanza, con participación efectiva de todos los sectores afectados y la creación de centros docentes.	(5) The public authorities guarantee the right of all to education, through general education programming, with the effective participation of all sectors concerned and the setting-up of educational centres.
6. Se reconoce a las personas físicas y jurídicas la libertad de creación de centros docentes, dentro del respeto a los principios constitucionales.	(6) The right of individuals and legal entities to set up educational centres is recognized, provided they respect constitutional principles.
7. Los profesores, los padres y, en su caso, los alumnos intervendrán en el control y gestión de todos los centros sostenidos por la Administración con fondos públicos, en los términos que la ley establezca.	(7) Teachers, parents and, when appropriate, pupils shall participate in the control and management of all centres supported by the Administration out of public funds, under the terms established by the law.
8. Los poderes públicos inspeccionarán y homologarán el sistema educativo para garantizar el cumplimiento de las leyes.	(8) The public authorities shall inspect and standardize the educational system in order to ensure compliance with the laws.
9. Los poderes públicos ayudarán a los centros docentes que reúnan los requisitos que la ley establezca.	(9) The public authorities shall help the educational centres which meet the requirements established by the law.
10. Se reconoce la autonomía de las Universidades, en los términos que la ley establezca.	(10) The autonomy of Universities is recognized, under the terms established by the law.
Artículo 44	Section 44
1. Los poderes públicos promoverán y tutelarán el acceso a la cultura, a la que todos tienen derecho.	(1) The public authorities shall promote and watch over access to culture, to which all are entitled.

2. Los poderes públicos promoverán la ciencia y la investigación científica y técnica en beneficio del interés general.

(2) The public authorities shall promote science and scientific and technical research for the benefit of the general interest.

3.3.27. Sweden

Sweden has four fundamental laws which together make up the Constitution: the Instrument of Government, the Act of Succession, the Freedom of the Press Act and the Fundamental Law on Freedom of Expression. Both the Global Mapping of Regulatory Frameworks on Academic Freedom and the *Constitute* database discuss only the first one. The Global Mapping of Regulatory Frameworks on Academic Freedom identifies several provisions of Chapter 2 of the Swedish Instrument of Government as relevant for academic freedom protection: Article 1 (freedom of opinion), Article 18 (education and research), Article 23 (freedom of expression), and Article 25 (special restrictions). The *Constitute* database does not mention any provisions as pertaining to 'the right to academic freedom' or making a 'reference to science'. Additionally, insofar freedom of expression is seen as relevant for the protection of academic freedom,¹¹⁸ the Fundamental Law on Freedom of Expression can be perceived part of the protection framework as well.

In recent years, several academic unions and associations have advocated for a more explicit inclusion of academic freedom in the Swedish Instrument of Government.¹¹⁹

The Instrument of Government¹²⁰

Original-language version	English-language version
2 kap. 1 §	Chapter 2 Art. 1.
Var och en är gentemot det allmänna tillförsäkrad	Everyone shall be guaranteed the following rights and freedoms in his or her relations with the public institutions:
1. yttrandefrihet: frihet att i tal, skrift eller bild eller på annat sätt meddela upplysningar samt uttrycka tankar, åsikter och känslor,	1. freedom of expression: that is, the freedom to communicate information and express thoughts, opinions and sentiments, whether orally, pictorially, in writing, or in any other way;
2. informationsfrihet: frihet att inhämta och ta emot upplysningar samt att i övrigt ta del av andras yttranden,	2. freedom of information: that is, the freedom to procure and receive information and otherwise acquaint oneself with the utterances of others;
3. mötesfrihet: frihet att anordna och delta i sammankomster för upplysning, meningsyttring eller annat liknande syfte eller för framförande av konstnärligt verk,	3. freedom of assembly: that is, the freedom to organise or attend meetings for the purposes of information or the expression of opinion or for any other similar purpose, or for the purpose of presenting artistic work;
4. demonstrationsfrihet: frihet att anordna och delta i demonstrationer på allmän plats,	
5. föreningsfrihet: frihet att sammansluta sig med andra för allmänna eller enskilda syften, och	

¹¹⁸ See also the discussion in Section 3.1.

¹¹⁹ See, for example: Pruvot, Estermann and Popkhadze, 'University Autonomy in Europe IV: The Scorecard 2023' (n 33) 89; Ulrika Herstedt, 'SFS, SUHF and SULF Demand Constitutional Protection for the Freedom of Higher Education' (SULF, 29 November 2022) <<https://sulf.se/en/news-en/sfs-suhf-and-sulf-demand-constitutional-protection-for-the-freedom-of-higher-education/>> accessed 28 September 2024.

¹²⁰ Official translation available at www.riksdagen.se/globalassets/05.-sa-fungerar-riksdagen/demokrati/the-instrument-of-government-2023-eng.pdf.

<p>6. religionsfrihet: frihet att ensam eller tillsammans med andra utöva sin religion.</p> <p>I fråga om tryckfriheten och motsvarande frihet att yttra sig i ljudradio, television och i vissa liknande överföringar, offentliga uppspelningar ur en databas samt filmer, videogram, ljudupptagningar och andra tekniska upptagningar gäller tryckfrihetsförordningen och yttrandefrihetsgrundlagen.</p> <p>I tryckfrihetsförordningen finns också bestämmelser om rätt att ta del av allmänna handlingar.</p>	<p>4. freedom to demonstrate: that is, the freedom to organise or take part in demonstrations in a public place;</p> <p>5. freedom of association: that is, the freedom to associate with others for public or private purposes; and</p> <p>6. freedom of worship: that is, the freedom to practise one's religion alone or in the company of others.</p> <p>The provisions of the Freedom of the Press Act and the Fundamental Law on Freedom of Expression shall apply concerning the freedom of the press and the corresponding freedom of expression on sound radio, television and certain similar transmissions, as well as in films, video recordings, sound recordings and other technical recordings. The Freedom of the Press Act also contains provisions concerning the right of access to official documents.</p>
<p>2 kap. 18 §</p> <p>Alla barn som omfattas av den allmänna skolplikten har rätt till kostnadsfri grundläggande utbildning i allmän skola. Det allmänna ska svara också för att högre utbildning finns.</p> <p>Forskningens frihet är skyddad enligt bestämmelser som meddelas i lag.</p>	<p>Chapter 2 Art. 18.</p> <p>All children covered by compulsory schooling shall be entitled to a free basic education in the public education system. The public institutions shall be responsible also for the provision of higher education.</p> <p>The freedom of research is protected according to rules laid down in law.</p>
<p>2 kap. 23 §</p> <p>Yttrandefriheten och informationsfriheten får begränsas med hänsyn till rikets säkerhet, folkförsörjningen, allmän ordning och säkerhet, enskildas anseende, privatlivets helgd eller förebyggandet och beivrandet av brott. Vidare får friheten att yttra sig i näringsverksamhet begränsas. I övrigt får begränsningar av yttrandefriheten och informationsfriheten göras endast om särskilt viktiga skäl föranleder det.</p> <p>Vid bedömandet av vilka begränsningar som får göras med stöd av första stycket ska särskilt beaktas vikten av vidaste möjliga yttrandefrihet och informationsfrihet i politiska, religiösa, fackliga, vetenskapliga och kulturella angelägenheter.</p>	<p>Chapter 2 Art. 23.</p> <p>Freedom of expression and freedom of information may be restricted with regard to national security, the national supply of goods, public order and public safety, the good repute of the individual, the sanctity of private life, and the prevention and prosecution of crime. Freedom of expression may also be restricted in business activities. Freedom of expression and freedom of information may otherwise be restricted only where particularly important grounds so warrant.</p> <p>In judging what restrictions may be introduced in accordance with paragraph one, particular attention shall be paid to the importance of the widest possible freedom of expression and freedom of information in political, religious, professional, scientific and cultural matters.</p>

<p>Att meddela föreskrifter som utan avseende på yttrandens innehåll närmare reglerar ett visst sätt att sprida eller ta emot yttranden anses inte som en begränsning av yttrandefriheten och informationsfriheten.</p>	<p>The adoption of provisions which regulate in more detail a particular manner of disseminating or receiving information, without regard to its content, shall not be deemed a restriction of the freedom of expression or the freedom of information.</p>
<p>2 kap. 25 §</p> <p>För andra än svenska medborgare här i riket får särskilda begränsningar göras genom lag i fråga om följande fri- och rättigheter: [...] 9. skyddet för forskningens frihet (18 § andra stycket), och [...]</p> <p>På sådana föreskrifter om särskilda begränsningar som avses i första stycket ska 22 § första stycket, andra stycket första meningen samt tredje stycket tillämpas.</p>	<p>Chapter 2 Art. 25.</p> <p>For foreign nationals within the country, special restrictions may be introduced to the following rights and freedoms: [...] 9. the right to freedom of research (Article 18, paragraph two); and [...]</p> <p>The provisions of Article 22, paragraph one, paragraph two, sentence one and paragraph three shall apply with respect to the special restrictions referred to in paragraph one.</p>

4. Case Studies

KEY FINDINGS

- The constitutional traditions common to the Member States shall influence the interpretation of fundamental rights enshrined in the EU Charter of Fundamental Rights (Article 52(4) of the Charter), including its Article 13 (on academic freedom). The in-depth analysis of the constitutional traditions of four EU Member States highlights some of the questions about the scope and nature of academic freedom as an EU fundamental right that might need to be answered.
- The analysis of the in-depth case studies on Germany, Greece, the Netherlands, and Poland reveals that these jurisdictions share some commonalities in a broad sense, but some differences with important implications remain.
- Among the analysed jurisdictions, only Greece uses the concept of 'academic freedom' applicable within the university context specifically.
- The Greek constitution protects also 'freedom of science'. The latter is the concept recognized in the German constitution. The Polish constitution similarly talks about 'freedom of scientific research' as an object of protection. Protection granted under these provisions generally extends to everyone engaged in scientific research and/or teaching. All analysed jurisdictions protect not only individuals, but also institutions – be it under the general provisions (Germany) or based on separate provisions devoted to them (Greece and Poland). However, the exact scope of protection in the different jurisdictions might differ in some respects. The analysis shows that the use of a particular constitutional concept (or the lack thereof) is not decisive for determining the scope of protection.
- "Academic freedom" is not embedded in Dutch constitutional law and does not have a direct functional equivalent. However, certain dimensions thereof can be protected under other constitutional provisions, e.g. freedom of expression. Higher education institutions are considered to be protected under the general provisions on the right to education. Due to the largely unwritten character of academic freedom, its enforceability, nature and scope might be contested and are currently under discussion.
- In all the jurisdictions, the position of students as academic or scientific freedom rights-holders remains relatively under-discussed. The exact nature of rights and freedoms granted to them is yet to be clarified. Further, a significant variation can be observed regarding the question whether academic freedom gives rise to positive obligations, e.g. the provision of sufficient resources. While all analysed jurisdictions recognize academic freedom (or its equivalents) as a negative freedom that imposes on the state a duty to refrain from unjustified interference, positive obligations have not been unanimously accepted everywhere.
- In all analysed jurisdictions, academic or scientific freedoms are not unlimited. Such limits emanate in particular from the constitutions themselves and concern the protection of constitutional rights and freedoms of others. In Germany and Greece, the constitutions mention additionally that certain elements of such freedoms do not exempt anyone from allegiance to the constitution.

4.1. Methodological introduction

This part of the study provides for a more in-depth analysis of the legal protection of academic freedom in four EU Member States. In reference to this analysis and considering the limits of action deriving from the EU legal order, the study will then explore the potential scope of action at the EU level.

4.1.1. Selection of the Member States

The selection of the Member States for the more in-depth analysis takes into account the diverse legal traditions within the EU, ensuring sufficient representativeness as well as inclusion of the legal systems which are of particular interest for the analysis of academic freedom protection. The following four EU Member States will be analysed: Germany, Greece, the Netherlands, and Poland. The selection includes two EU founding members, one 'old' EU Member State, and one 'new' EU Member State. It is also geographically diverse, encompassing countries located in the East, West, North and South of the European Union. Additionally, the selection is justified in reference to the different natures of the constitutional entrenchment of academic freedom. Germany is a federal system where freedom of research and teaching enjoys an explicit and strong constitutional protection. Greece, a civil law system with incidental and diffuse judicial control of constitutionality, explicitly protects constitutionally freedom of teaching and research in a detailed provision. The Constitution of the Netherlands does not provide for explicit constitutional protection of academic freedom, with legal practice having to rely rather on secondary legislation and international law. The Polish Constitution explicitly protects academic freedom, with the particular historical context influencing its understanding. At the same time, the choice encompasses Member States that place both above as well as below the EU average in the Academic Freedom Index, as indicated by the EP Academic Freedom Monitor 2023¹²¹.

4.1.2. Methodology and structure of the case studies

The methodology proposed for this analysis is two-fold. First, in line with the doctrinal method of legal research (see 'Glossary'), academic freedom in the constitutional law of each of the Member States will be analysed in its own right, as a separate case study. Second, the protection offered by constitutional laws of these four Member States will be briefly discussed in a comparative manner. The study will draw attention to the differences and similarities regarding the scope and understanding of different elements of academic freedom in different jurisdictions, as well as to open questions that remain. In line with Article 52(4) of the EU Charter of Fundamental Rights, this is particularly relevant for the understanding of academic freedom in EU law and, consequently, might inform the debates and future action on the EU level.

For the sake of systematization and comparison, each case study is structured in the following way:

1. Background
2. Material scope of the right
3. Right holders (personal scope of the right)
4. Duty bearers
5. The nature and function of the right
6. Interferences, limits and examples of prohibitions or violations
7. Relationship with other constitutional rights
8. Notable recent developments or debates

Despite this unified structure, it needs to be remembered that national constitutional laws are governed by its own doctrines, structures, and rationales. Different types of information (case law, legal literature, etc.) are also differently available for different jurisdictions, resulting in analyses of varying length and/or depth.¹²²

¹²¹ Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13).

¹²² One of the challenges identified in comparative constitutional research is the danger of conflating normative claims and positive claims. See Vicki C Jackson, 'Methodological Challenges in Comparative Constitutional Law' (2010) 28 Penn State International Law Review 319: 'there is a fairly strong tendency in both judicial opinions and in theoretical literature to confound and mix up and conflate normative claims about what the Constitution should be understood to mean, and positive claims about what the courts are now doing or what the Constitution does require'. The analysis

4.2. Case Studies

4.2.1. Germany

Background

The equivalent of academic freedom in German constitutional law can be found in Article 5(3) of the German Basic Law (GG) that reads: 'Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the Constitution'. The provision itself already reveals that German constitutional law does not know the notion of academic freedom as it is typically understood in the English-language discourses, including in the 'onion model' discussed in the previous STOA studies.¹²³ Indeed, the literature recognizes that the concept of 'academic freedom' is not fully suitable to capture the meaning of *Wissenschaftsfreiheit* – a 'scientific freedom', as it is labelled in the German legal doctrine, that encompasses the relevant freedoms of Article 5(3) GG.¹²⁴ Compliance with the Constitution is monitored by the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG). The Court has the authority to review legislative acts and to decide upon individual constitutional complaints. Ordinary courts can also seek a decision of the Federal Constitutional Court on whether a provision of statutory law violates the Constitution.¹²⁵

This meaning of Article 5(3) GG has been widely discussed in the German legal literature and has been a subject of a rich body of jurisprudence of the Federal Constitutional Court.¹²⁶ Therefore, many questions about the scope and nature of protection afforded under Article 5(3) GG has been authoritatively answered. The constitutional doctrine on scientific freedom is strongly rooted in the Humboldtian ideas of the unity of research and teaching as well as the idea that science best serves the society when governed by its own rationales, free from pressures of social utility and political expediency. Due to its long history and the nature of developments over the years,¹²⁷ the doctrine has developed with a close focus on the institution of a university and might be less easily applicable to other contexts, e.g. industry research. Therefore, some questions remain open, in particular concerning new structures and developments in the scientific and academic fields. The following sections discuss therefore in detail the protection afforded under Article 5(3) GG, as authoritatively recognized by the Constitutional Court, but also some of the suggestions put forward by legal experts on its interpretations in these new contexts.

One important feature of the German legal landscape is the state's federal structure. It needs to be noted that constitutional law of states (*Bundesländer*) might complement Art. 5(3) of the German Basic Law (of general application to the whole federal state). Commentators observe that relevant provisions, formulated in various ways, are included in many of the constitutions of the *Bundesländer*. They are interpreted in parallel to Article 5(3) GG and, from a procedural perspective, open a way to a constitutional control on the state level.¹²⁸ However, their closer analysis remains outside of the scope of this report.

is sensitive to such differences and diverging opinions which have been made explicit, insofar possible, throughout the text.

¹²³ Gergely Kováts and Zoltan Rónay, 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' (n 5).

¹²⁴ Eric Barendt, *Academic Freedom and the Law: A Comparative Study* (Hart Publishing 2010) 119.

¹²⁵ For an overview of the German legal system, see also Helge Dedek and Martin J Schermaier, 'German Law' in Jan M Smits and others (eds), *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing 2023).

¹²⁶ Article 5(3) GG has featured in judgments of other German courts as well, but – due to the focus of this report on the authoritatively accepted constitutional protection – they will not be extensively covered below.

¹²⁷ See, for example, an overview in Klaus Ferdinand Gärditz, 'GG Art. 5 Abs. 3' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz. Kommentar* (CH Beck 2024) paras 1–14; or, in English: Barendt (n 124) 120–123.

¹²⁸ Gärditz (n 127) paras 35–42.

Material scope of the right

The first sentence of Article 5(3) GG reads: 'Arts and sciences, research and teaching shall be free'. It encapsulates three relevant elements of the material scope of protection of 'Wissenschaftsfreiheit' in German law: (1) science; (2) research; and (3) teaching.

The term 'science' remains of utmost importance for the interpretation of the whole Article 5(3) GG. It is understood (as is its German original – '*Wissenschaft*') as encompassing all research fields, including not only 'hard' sciences (as is often the case with the English-language term 'science') but also e.g. humanities and social sciences.¹²⁹ In principle, what constitutes 'science' under this provision is 'all scientific activity that on the basis of its content and form is to be seen as a serious, systemic endeavour to discover what is true'.¹³⁰ 'Science' is considered to be an umbrella term encompassing the two other (but closely related) terms used in Article 5(3) GG, research and teaching.¹³¹ From this perspective, 'science' is generally agreed not to be an independent object of protection, but rather a qualifying component for the two remaining elements of the provision.¹³²

The scientific nature of an activity is judged based on both subjective and objective elements, in reference to standards of a given discipline – one's subjective conviction as to a scientific nature of an enterprise is not considered sufficient to fall under Article 5(3) GG.¹³³ Activities that are not characterised as scientific, e.g. pseudo-science, are not protected. What is characterised as (pseudo-)scientific might, however, be to some extent context-dependent, with the literature discussing different elements that might play a role with such qualifications.¹³⁴ At the same time, however, 'truth' in a material sense is not a qualifying element of a scientific activity – results thereof might be proven wrong, but what qualifies it as scientific is its procedural (methodological) dimension, understood as a truth-seeking mission.¹³⁵ Nevertheless, gross negligence or intentional distortion, e.g. data falsification, will not enjoy the protection of Article 5(3) GG.¹³⁶ At the same time, commentators observe that the scientific character of an activity is not in principle eradicated by additional motivations, e.g. to obtain profits from patents or book sales, as long as its main features discussed above remain present.¹³⁷

Research can be defined as 'all activity devoted to the discovery of new knowledge, conducted methodologically and systematically, and with its conclusions open to examination'.¹³⁸ It encompasses also applied research, but not a mere application of already existing knowledge.¹³⁹ What is protected is the choice of research questions, methods, the undertaking of a research project, as well as the dissemination of the results.¹⁴⁰ This is considered by the literature to cover also preparatory and supportive activities, as long as they remain in a close relationship with the main research.¹⁴¹ Research in the sense of Article 5(3) GG is also not limited to specific themes or fields, in line with the definition of '*Wissenschaft*' discussed above. Some commentators suggest, therefore, that military research, for example, might also be encompassed by Article 5(3) GG.¹⁴²

¹²⁹ Barendt (n 124) 118.

¹³⁰ See *ibid* 125–126, translating the text of the so-called *Hochschulurteil* [BVerfGE 35, 79].

¹³¹ BVerfGE 35, 79.

¹³² Gärditz (n 127) 50.

¹³³ *ibid* 52, 76.

¹³⁴ *ibid* 59 ff.

¹³⁵ *ibid* 64–69.

¹³⁶ *ibid* 83–89.

¹³⁷ *ibid* 91.

¹³⁸ Barendt (n 124) 126–127 translating the text of the so-called *Hochschulurteil* [BVerfGE 35, 79].

¹³⁹ Hans D Jarass, 'GG Art. 5 [Kommunikationsfreiheiten Sowie Kunst- Und Wissenschaftsfreiheit]' in HD Jarass and B Pieroth (eds), *Grundgesetz für die Bundesrepublik Deutschland* (CH Beck, 2022) para 137.

¹⁴⁰ BVerfGE 35, 79/113.

¹⁴¹ Jarass (n 139) para 138.

¹⁴² Gärditz (n 127) para 108.

The last element of Article 5(3) GG, teaching, should also be understood in the context of the whole provision. Freedom of teaching is therefore protected when the teaching is based on scientific research or, in other words, results from a research activity.¹⁴³ This does not necessarily presuppose that teaching must be based on the teacher's own research activities, but it must be sufficiently research-based.¹⁴⁴ In this context, it is not only the activity of sharing the knowledge that is protected, but also decisions about the content, form, or methods of teaching enterprise at the university, including the modes of examination.¹⁴⁵ At the same time, the literature generally accepts that teaching, to be protected, does not need to take place within the context of a higher education institution, as long as it meets the substantive requirements discussed here.¹⁴⁶ The dominant view excludes the application of Article 5(3) to the school context (lower levels of education), as schools are considered not to meet such requirements.¹⁴⁷

A general 'freedom of learning' or 'freedom to study', included in the core elements of academic freedom in the 'onion model', are generally considered not to be encompassed by Article 5(3) GG. Some have observed that German students have traditionally enjoyed a rather wide freedom to, for example, choose their courses, but this is 'not a matter of constitutional right'.¹⁴⁸ According to others, such a right may be derived from other constitutional provisions, for example Article 12(1) GG on professional freedoms (see the section on the relationship with other constitutional rights).¹⁴⁹ This does not mean that students cannot be holders of *any* rights under Article 5(3) GG, but rather that these rights are shaped within the material scope of this provision discussed above (see also the section on right-holders below).¹⁵⁰ The Constitutional Court has also recognized that students are not in the same position as pupils in lower levels of education and should be treated as independent members of the academic community.¹⁵¹

Right holders (personal scope of the right)

Generally, the '*Wissenschaftsfreiheit*' is a freedom ascribed to everyone engaged in a scientific activity (research or teaching, in the sense outlined above) independently (on one's own account). This applies in particular to university teachers who are representatives of the scientific profession. However, the freedom is not limited to university staff. It does not depend on formal qualifications, albeit formal qualifications might be considered as a qualifying factor when assessing the applicability of Article 5(3) GG in a specific case.¹⁵² In the higher education context, also students or other scientific personnel might derive rights from '*Wissenschaftsfreiheit*' if they are engaged in an independent scientific activity, for example students writing their theses.¹⁵³ However, higher education personnel who is not undertaking independent activities will not be able to raise any 'Article 5(3) GG claims, e.g. student tutors following instructions of an academic supervisor. This is also said to apply to purely support activities, such as e.g. a lab technician cleaning the equipment, or – according to some authors – scientific managers or administrators.¹⁵⁴ Importantly, the nature

¹⁴³ Barendt (n 124) 127. BVerfGE 35, 79 [112], Jarass (n 150) para 139.

¹⁴⁴ Gärditz (n 127) paras 51, 118–119.

¹⁴⁵ BVerfGE 55, 37; BVerfGE 61, 260/279.

¹⁴⁶ Gärditz (n 127) para 116.

¹⁴⁷ Barendt (n 124) 127; Jarass (n 150) para 139.

¹⁴⁸ Barendt (n 124) 128.

¹⁴⁹ Gärditz (n 127) para 122.

¹⁵⁰ BVerfGE 35, 79.

¹⁵¹ *ibid*; see also Barendt (n 124) 128.

¹⁵² Gärditz (n 127) para 60.

¹⁵³ Jarass (n 139) para 140.

¹⁵⁴ Gärditz (n 127) 137–138.

and scope of the rights ascribed to different rights holders might be functionally differentiated, e.g. regarding self-governance rights for different university actors.¹⁵⁵

Not only individuals, but also institutions (legal persons) can be rights holders of '*Wissenschaftsfreiheit*',¹⁵⁶ as long as they provide organisational structures for scientific activities. This concerns in particular both private and public higher education institutions, but also other research institutes.¹⁵⁷ Interestingly, also faculties or other academic units can be rights holders under Art. 5(3) GG if they are sufficiently autonomous (in an organisational sense) to exercise their collective will.¹⁵⁸ The literature suggests that Art. 5(3) GG rights could also be granted to other types of organisations, e.g. museums or foundations, depending on their exact mission and organisation of their work.¹⁵⁹ In this institutional context, the doctrine accepts that what is decisive is not an institution's name, but rather whether its function, organisation, and resources are managed in a way as to sustain autonomous scientific activities.¹⁶⁰ Private companies generally cannot meet those functional requirements.¹⁶¹ Schools of lower levels of education, on the other hand, are not considered to be '*Wissenschaftsfreiheit*' rights holders as they do not undertake teaching in the sense covered by Article 5(3) GG.

Duty bearers

Multiple subjects are duty bearers under Article 5(3) GG. The state and its bodies are the main duty-bearer in relationship with institutions and individuals. Further, public institutions also bear duties towards individuals within them, e.g. professors or students. Professors can also be duty-bearers vis-à-vis their scientific staff; in that constellation they take on the role of the state.¹⁶² The nature of duties resulting from Article 5(3) GG is closely related to the nature and function of the '*Wissenschaftsfreiheit*' as such – recognized not only as a negative freedom, but also as giving rise to positive obligations (see the section of the nature and function of the right below/above).

It is generally accepted that private institutions are not duty bearers under Article 5(3) GG directly. However, in line with constitutional principles of German law, scientific freedom can have indirect horizontal effect on private law relationships as well, influencing the interpretation of relevant rights and duties in such contexts.¹⁶³

The nature and function of the right

An individual 'negative' right

Scientific freedom protects individuals who are, or wish to be, engaged in scientific activities against unjustified interferences by the state.¹⁶⁴ Examples of interferences include interferences in the choice of topic, methods of research, the dissemination of results and restrictions on teaching (see in more detail above the section on the 'material scope of the right'). As institutions are also rights

¹⁵⁵ BVerfGE 54, 363. See also Kerstin von der Decken, 'GG Art. 5' in Bruno Schmidt-Bleibtreu (ed), *GG Kommentar zum Grundgesetz* (15. Auflage, Carl Heymanns Verlag 2022) para 380 ff.

¹⁵⁶ This is generally considered to be based on Article 19(3) GG which stipulates that '[t]he basic rights shall also apply to domestic legal persons to the extent that the nature of such rights permits'.

¹⁵⁷ BVerfGE 85, 360. Barendt (n 124) 150.

¹⁵⁸ Von der Decken (n 155) para 262; Gärditz (n 127) paras 132–134. BVerfGE 15, 256.

¹⁵⁹ Gärditz (n 127) para 135; see also Barendt (n 124) 156–157 on funders of research or publishers.

¹⁶⁰ Jarass (n 139) para 141.

¹⁶¹ Gärditz (n 127) para 136; see also Barendt (n 124) on the position of researchers in non-university settings.

¹⁶² Dieter Grimm, 'Wissenschaftsfreiheit als Funktionsgrundrecht', in D Grimm and others, *Wissenschaftsfreiheit in Deutschland – drei rechtswissenschaftliche Perspektiven (Wissenschaftspolitik im Dialog 14/2021, Eine Schriftenreihe der Berlin-Brandenburgischen Akademie der Wissenschaften, BBAW 2021)*, 17, at 23.

¹⁶³ Barendt (n 124) 133.

¹⁶⁴ BVerfGE 35, 79 = NJW 1973, 1176 (1186). See also Gärditz (n 127) para 48, commenting on this 'negative' dimension of the right.

holders (see the section on 'Rights holders' above), they can also rely on this right against unjustified interferences by the state.

State obligations and corresponding individual rights

The 'objective dimension' of fundamental rights is well-recognised in German Constitutional law. This means that fundamental rights are not only 'subjective' rights of the individuals directed against the state. They are also "legal expressions of values deemed by the society to be material to the political and social order and as such, objective legal principles of the highest rank."¹⁶⁵ Specifically, the objective dimension of Art. 5(3) GG, i.e. this provision also including an objective value of constitutional weight, has played in practice, and in particular in the judgments of the German Federal Constitutional Court, a more prominent role than the individual 'negative' dimension of this right. From this objective dimension follow both state obligations and corresponding individual rights. It requires that "the state, which sees itself as a cultural state, is committed to the idea of a free science and its participation in its realisation and obliges it to act positively in accordance with this, i.e. to protect and promote this guarantee of freedom by preventing it from being undermined."¹⁶⁶

A more concrete obligation following from this is that the state ensures that the University is functional, independent and organised according to standards that are adequate for science ("*wissenschaftsadäquat*").

Art. 5(3) GG also "grants to those engaged in academic activity a share in public resources and in the organisation of academic life."¹⁶⁷ It follows from the state obligations that an individual right holder has a "right to state measures including organisational measures, which are indispensable for the protection of his or her freedom, which is secured by fundamental rights, because they make free scientific activity possible in the first place."¹⁶⁸ The principle of self-governance of Universities is ensured, and can be departed from only in the most exceptional circumstances, which arguably results from the case law of the German Federal Constitutional Court.¹⁶⁹ This then can also translate into a right of an Art. 5(3)GG right-holder.

For the publicly funded scientific establishment organisational measures must be taken which are appropriate".¹⁷⁰ It is noteworthy that the state enjoys discretion in fulfilling this task,¹⁷¹ and there is no given organisational system that follows from the constitutional norm.¹⁷²

Next to the provision of organisational measures, and in order to ensure functional institutions, such state obligations also include the provision of financial means,¹⁷³ including the basic resources necessary for conducting science,¹⁷⁴ and other means. Furthermore, there rests an obligation on the

¹⁶⁵ Dieter Grimm, 'The Role of Fundamental Rights After Sixty-Five Years of Constitutional Jurisprudence in Germany' (2015) 13 International Journal of Constitutional Law 9, 22 discussing the *Lüth* judgment of the German Constitutional Court (BVerfG 7, 198 (1958)), where this was first set out and from which follows also the (indirect) horizontal effect of fundamental rights.

¹⁶⁶ BVerfGE 35, 79 [113] = NJW 1973, 1176 (1177), [own translation].

¹⁶⁷ BVerfGE 1BvR 911/00, 1BvR 927/00, 928/00, (155); BVerfGE 35, 79 (115), [official translation].

¹⁶⁸ BVerfGE 111, 333 [353] = JuS 2005, 642 (644), [own translation].

¹⁶⁹ See the discussion in Gärditz (n 127) para 239 as to whether one can understand the BVerfG as having unequivocally recognised this principle, with reference to case BVerfG 111, 333 [356].

¹⁷⁰ BVerfG 35, 79 [114] = NJW 1973, 1176 (1177), [own translation].

¹⁷¹ BVerfG 66, 155 [177]; 93, 85 [95] as cited and discussed in H Hofman and HG Henneke (eds), *GG Kommentar zum Grundgesetz* (Carl Heymanns Verlag, 16th edn, Wolters Kluwer 2025), para. 51; Gärditz (n 127), para 210, pointing out that this is the case "as long as the core of scientific activity remains reserved for the self-determination of individual scientists" [own translation].

¹⁷² BVerfG 35, 79 [115], as cited in Hofman and Henneke (n 171).

¹⁷³ Hofmann and Henneke (n 171) para 51.

¹⁷⁴ Gärditz (n 127) para 261 with reference to BVerfG 43, 242 (285) and BVerfG 127, 87 (125).

state to establish procedural safeguards in decision-making procedures that relate to the individual freedom of teaching and research,¹⁷⁵ and "a right to a distribution of available resources at the University that is objective, function-oriented and free of arbitrariness".¹⁷⁶

The state also has a duty to protect scientists and scientific institutions against violations of their scientific freedoms by third parties (see also the section on 'Duty bearers' above).¹⁷⁷

Interferences, limits and examples of prohibitions or violations

Interferences

"Any state influence on the process of gaining and communicating scientific knowledge" emanating from a duty bearer amounts to an interference with Art. 5(3) GG.¹⁷⁸ "Objects of such influence can be both individual scientists and scientific institutions such as the university",¹⁷⁹ which enjoy autonomy.¹⁸⁰ At the same time, institutions might be interfering with the rights of individuals; in case of a conflict between the individual rights of a Professor and those of the university the individual rights of a university Professor carry more weight than those of the university under Art. 5(3) GG.¹⁸¹ The fundamental right gives "University professors over and above their general status as civil servants [...] extensive independence in the exercise of their profession."¹⁸² There might also be horizontal conflicts between university professors.

Limits

'Freedom of the sciences' (*Wissenschaftsfreiheit*) is an unconditionally protected basic right but there are still permissible limitations. These are to be found for one in the '*Treueklausele*'. The second sentence of Art. 5(3) GG reads that "the freedom of teaching shall not release any person from allegiance to the constitution." Commentators have pointed out that the case law of the Federal German Constitutional Court does not give clear indications as to what this sentence means and how it should be interpreted, nor is there agreement in the literature on this point.¹⁸³ It is suggested that this sentence provides an opening for intervention in cases where there is an abuse of the freedom of teaching against the free democratic basic order.¹⁸⁴ The other limits emanate from the Constitution ('*verfassungsimmanente Schranken*'). These can concern restrictions that benefit the freedom of research and teaching, such as, for example, "measures for the quality assurance of academic teaching that meet academic standards [and thus] serve to ensure that the universities fulfil their tasks."¹⁸⁵ There can also be justified restrictions resulting from the protection of other fundamental rights of other scientists or third parties.¹⁸⁶ Examples include the right to health, the right to life,¹⁸⁷ religious freedom etc.

¹⁷⁵ Gärditz (n 127) para 262.

¹⁷⁶ Gärditz (n 127) para 262 [own translation], with reference to, *inter alia*, BVerwGE 52, 339 (348).

¹⁷⁷ Jarass (n 139) para 145a.

¹⁷⁸ BVerfG, 47, 327/367, as cited in Jarass (n 150) para 142.

¹⁷⁹ Jarass (n 139) para 142 [own translation].

¹⁸⁰ BVerfGE 111, 333/354, as cited in Jarass (n 139) para 143.

¹⁸¹ BVerwGE 102, 304/309 as cited and discussed by Jarass (n 139) para 153.

¹⁸² BVerwGE 61, 200/206, as cited in Jarass, (n 130) para 154, [own translation].

¹⁸³ Hofmann and Henneke (n 171) para 54, and literature cited therein.

¹⁸⁴ Hofmann and Hanneke, (n 171) para 54.

¹⁸⁵ BVerfG 1 BvL 8/10, (58).

¹⁸⁶ Hofmann and Henneke (n 171) para 55.

¹⁸⁷ Hans-Heinrich Trute, '„...the nature is the ultimate bioterrorist" Wissenschaftsfreiheit in Zeiten eines entgrenzten Sicherheitsdiskurses' 2 Ordnung der Wissenschaft 99, 107, discussing the relevance of the state's duty to protect also in reference to Art. 20a GG on the state's duty to protect the natural foundations of life and animals.

Examples of prohibitions or violations

An example of a prohibition concerning university professors is that they do not have the authority to issue instructions ('*Weisungskompetenzen*') to each other, as noted in the literature.¹⁸⁸ It results also from case law that powers held by management of a scientific establishment must not lead to direct interferences with "the guaranteed freedom of academic initiative as well as choice and implementation of scientific research of university professors."¹⁸⁹ An example of interferences with the rights of universities, whose autonomy shall as far as possible be guaranteed, concerns accreditation. This form of interference is considered to be a particularly serious one;¹⁹⁰ therefore the basic requirements have to be set out in a formal law, which, it has been argued, was not the case with the Bologna declaration.¹⁹¹

Relationship with other constitutional rights

There is a commonality to be found when comparing freedom of the sciences with the freedom of the arts: both are said "to protect a critical counter-public and ensure the epistemic openness of society",¹⁹² but the two rights are also said to show marked differences; namely, that science follows rules of a particular rationality and is strongly institutionalized as it is coupled to a scientific discourse,¹⁹³ while the freedom of the arts protects the irrational expression of the individual and the free development of creativity.¹⁹⁴ Scientific communication falling within the scope of Art. 5(3) GG is also said to be different from general expressive statements protected under Art. 5(1) GG "as the justification for scientific statements is based on a specific rationality that flows from scientific expertise."¹⁹⁵ Art. 5(3) GG is *lex specialis* (the more specific law) to Art. 5(1) and (2) GG when it comes to scientific communications and also to the right to the free development of one's personality (protected under Art. 2(1) and Art. 1(1)GG) to the extent that this relates to such development in the context of research and teaching.

Notable recent developments or debates

Most of the recent controversies involving academic freedom in Germany arose against the background of the war in Gaza and in (direct or indirect) reference to opinions expressed on the topic by some of the members of the academic community.¹⁹⁶ Several of the controversies have reached ordinary courts.¹⁹⁷ Some might eventually reach also the Constitutional Court, as – according to the commentators – they engage questions about the scope and nature of *Wissenschaftsfreiheit* as a constitutional freedom. For example, against the background of student encampments and protests, commentators have drawn attention to the potential conflict between the freedom of assembly (protest) and scientific freedoms.¹⁹⁸ Further, as authorities raise ideas to

¹⁸⁸ Jarass (n 139) para 154.

¹⁸⁹ Jarass (n 139) para 154, citing BVerfGE 57, 70/94 f; Fehling BK 110 (own translation).

¹⁹⁰ Jarass (n 139) para 151, with reference to BVerfGE 141, 143 RN 50ff, V Coelln FH 115.

¹⁹¹ Jarass (n 139) para 151, with reference to BVerfGE 141, 143, Rn. 59.

¹⁹² Gärditz (n 127) para 30.

¹⁹³ Gärditz (n 127) para 30.

¹⁹⁴ Gärditz (n 127) para 30.

¹⁹⁵ Gärditz (n 127) para 31.

¹⁹⁶ See also the other part of the EP Academic Freedom Monitor 2024: 'Analysis of the de facto state of academic freedom in the EU – country overview', written by Peter Maassen, Jens Jungblut, Dennis Martinsen, and Veslemøy Øvrebø.

¹⁹⁷ 'Israelfeindliche Posts: Max-Planck-Gesellschaft durfte Wissenschaftler kündigen' (*Beck-Aktuell*) <<https://rsw.beck.de/aktuell/daily/meldung/detail/arb-g-halle-1Ca37824-israel-max-planck-kuendigung>> accessed 15 December 2024.

¹⁹⁸ Noah Zimmermann, 'Studierendenproteste im Versammlungsrecht' (*VerfBlog*, 24 May 2024) <<https://verfassungsblog.de/studierendenproteste-im-versammlungsrecht/>> accessed 30 May 2024.

couple state funding with the intended fight against anti-Semitism, legal scholars have discussed under which conditions such actions can (or cannot) be constitutionally justified.¹⁹⁹

4.2.2. Greece²⁰⁰

Introduction

As it emerges from Part I of this study, Greece has a strikingly (also in a comparative context) detailed constitutional provision on academic freedom. Art. 16 of the Greek Constitution ("GC") titled 'education, arts, and sciences' comprises nine paragraphs. Art. 16 (1) GC provides in its first sentence the freedom of science, research, and teaching next to the freedom of the arts. Art. 16(1) GC also explicitly refers to the term 'academic freedom' (ακαδημαϊκή ελευθερία) in the second sentence. Art. 16 GC regulates matters of education at all levels and, provides for institutional and organisational aspects of academic freedom, including the status of higher education teaching personnel.²⁰¹

This provision has remained unaltered since the adoption of the Greek Constitution in 1975, though its potential revision is being discussed, also in the context of the recent debates on the recognition of secondary establishments of foreign Universities,²⁰² with a view to amending the prohibition of private Universities. The process for constitutional revision is expected to be kicked off (within the framework of a broader constitutional revision) in 2025.²⁰³

In the Greek system, constitutionality control of statutes is conducted by all courts (civil, criminal and administrative) of all levels, to the extent necessary for deciding a case.²⁰⁴ Provisions of statutes that are held to be unconstitutional "cannot be applied in a specific case before the Court".²⁰⁵ The Greek system of constitutional judicial review is characterised as "diffuse, incidental and concrete".²⁰⁶ However, the Greek Council of State (CoS), the Supreme Administrative Court of Greece, has been likened to a constitutional court given the concentration of judicial review there.²⁰⁷

¹⁹⁹ Kai Ambos, Cengiz Barskanmaz, Günter Frankenberg, Matthias Goldmann, Anna Katharina Mangold, Nora Markard, Ralf Michaels, Jerzy Montag, Tim Wihl 'Antidiskriminierungsklauseln im Zuwendungs- und Förderungsrecht: Rechtliche Überlegungen' (VerfBlog, 16 May 2024) <<https://verfassungsblog.de/antidiskriminierungsklauseln-im-zuwendungs-und-forderungsrecht/>> accessed on 30 October 2024; Ali Ighreiz and others, 'Resolution auf Kosten der Grundrechte: Warum die Bundestagsresolution zum Schutz jüdischen Lebens die Meinungs-, Kunst- und Wissenschaftsfreiheit bedroht' (VerfBlog, 13 November 2024) <<https://verfassungsblog.de/antisemitismus-resolution-grundrechte/>> accessed on 12 December 2024.

²⁰⁰ This section is largely based on the more detailed works of Lina Papadapoulou and Spyridon Vlachopoulos as further indicated in the referencing. L Papadapoulou, 'Greece' in Vasiliki Kosta (ed), *Academic Freedom: Constructing its Content For EU Law*, (Cambridge University Press, forthcoming), draft on file with the authors, page references correspond to the draft version; Σπύρος Βλαχόπουλος, Άρθρο 16: Παιδεία, τέχνη, επιστήμη σε: Σπύρος Βλαχόπουλος, Ξενοφών Κοντιάδης, Γιάννης Τασόπουλος, Σύναγμα: Κατ' άρθρο ερμηνεία, (2023) (Spyridon Vlachopoulos, 'Article 16: education, arts, science' in Spyridon Vlachopoulos, Ksenofon Kontiadis, Giannis Tasopoulos, *Constitution – interpretation by article (2023)* [own translation of title]), available in Greek at: www.syntagmawatch.gr/my-constitution/arthro-16/.

²⁰¹ For the full text of Art. 16 GG see above at 35.

²⁰² See discussion below on 'notable recent developments or debates'.

²⁰³ As reported in the Press, see eg www.esos.gr/arthra/83658/k-mitsotakis-2025-tha-xekinisei-i-anatheorisi-toy-syntagmatos-kai-toy-arthroy-16-gia-ta, and other fora, eg: <https://daily.nb.org/arthrografia/borei-na-einai-tolmiri-kai-synainetiki-i-anamenomeni-pebti-anatheorisi-tou-syntagmatos/>

²⁰⁴ See Julia Iliopoulos-Strangas and Stylianos-Ioannis G. Koutnatzis, 'Greece' in Allan R Brewer-Carías (ed), *Constitutional Courts as Positive Legislators* (Cambridge University Press, 2017) 539, 544.

²⁰⁵ *ibid* 545.

²⁰⁶ *ibid* 544, with reference to further literature.

²⁰⁷ *ibid* 546. The reasons given for that are "the availability of legal remedies against judicial decisions, the lower courts' standard practice of following the pronouncements of the high courts, and the constitutionally based option for individuals to directly challenge executive acts before the Council of State."

Material scope of the right

The term 'academic freedom' is understood to encompass the freedom of science, research and teaching but specifically as relating to the context of higher education institutions.²⁰⁸ Science is considered the more general concept here, which includes research and teaching.²⁰⁹ The literature notes that the context of higher education institutions does not relate to the physical place of universities, instead it includes the communication of scientific views and opinions outside the premisses of the University (such as in the media or in public gatherings). In other words, what can be termed 'extra-mural expression'²¹⁰ is also covered by academic freedom in the Greek context, according to Greek literature.

In relation to scientific freedom and the meaning of the term 'science', academic commentary has suggested that the German Constitutional Court's definition can serve as a useful starting point also for the Greek legal order.²¹¹ Science can accordingly be understood as "all activity that on the basis of its content and form is to be seen as a serious, systemic endeavour to discover what is true."²¹² The production as well as the dissemination of scientific work is protected. 'Scientific freedom' protects choice of topic, methods and results achieved.²¹³

Regarding freedom of research, the definition of the term 'research' results from academic writings, which includes slight variations and levels of detail. As an example, the work of Manesis is cited, defining it as follows: "mental and technical activities that aim, in a systematic and evidential way, to acquire new knowledge".²¹⁴

Similarly, the same author is cited to define freedom of teaching as: "the communication and methodical transmission, in a documented and pedagogical way, of the results of the research either orally (in lessons, lectures, tutorials, exercises, lectures) or in writing (in writings, theses, studies, 'notes' and other publications) especially for the training of new scientists."²¹⁵ According to a majority view in the academic literature, freedom of teaching [as an emanation of freedom of science?] is applicable only to teaching in higher education, and not in primary or secondary education.²¹⁶

Right holders (personal scope of the right)

According to the case law of the Greek Council of State, academic freedom "constitutes an individual right of the university researcher or teacher, which is exercised as an organized activity within the framework of the higher educational institutions."²¹⁷

From this follows unequivocally that university teachers and researchers are rights holders of academic freedom. Academic commentators have however remarked that the group of rights holders is larger encompassing all those that exercise teaching and research activities in the context

²⁰⁸ Papadoulou, 'Greece' (n 200) 4, with reference to Council of State Plenary 519/2015, para 14.

²⁰⁹ Vlachopoulos (n 200) 22.

²¹⁰ Joghum Vrielink and others, 'Academic Freedom as a Fundamental Right', (LERU Advice Paper No. 6, League of European Research Universities, 2010).

²¹¹ Vlachopoulos (n 200) 15 – 16, with reference to BVerfGE 35, 79 [113], and pointing to further references in Μαντζούφας, *Η ακαδημαϊκή ελευθερία - Οργανωτική και διαδικαστική θεώρηση - Το συνταγματικό πλαίσιο της εξέλιξης των πανεπιστημιακών* (1997) (PG Mantzoufas, *Academic Freedom – Organisational and Procedural Development* (1997)), p. 151 [own translation].

²¹² See discussion above on Germany, 52, fn 78.

²¹³ Vlachopoulos (n 200) 16.

²¹⁴ Α. Μάνεσης, 'Η συνταγματική προστασία της ακαδημαϊκής ελευθερίας' σε του ιδίου *Συνταγματική θεωρία και πράξη* (εκδ. Σάκκουλας, Θεσσαλονίκη 1980) (A. Manesis, 'Constitutional protection of academic freedom' in A. Manesis (ed) *Constitutional theory and practice* (Thessaloniki, Sakkoulas 1980)) [own translation of title], p. 674 [676] as cited in Vlachopoulos (n 200) 22.

²¹⁵ Manesis (n 214), as cited in Vlachopoulos (n 200).

²¹⁶ Vlachopoulos (n 200) 23, also noting some minority view authors who consider freedom of teaching to be applicable to all levels of education.

²¹⁷ Council of State Plenary 519/2015, §14, as cited in Papadoulou, 'Greece' (n 200) 4.

of the university, irrespective of what precise relationship they have to the university (e.g. even those invited to give a lecture enjoy academic freedom).²¹⁸

Art. 16(6) GC, recognises professors of university level institutions as public functionaries (as opposed to 'public servants'). Case law of the Council of State has recognised that professors "enjoy special personal and functional independence".²¹⁹ "The remaining teaching personnel" is also expressly recognised as "likewise perform[ing] a public function, under the conditions specified by law." This status distinguishes professors and other higher education teaching personnel from teachers at primary and secondary schools.²²⁰

According to the literature students are also rights holders of academic freedom, "to the extent that characterises their mission and institutional role within the university community."²²¹ While Art. 16(4) GC provides that "a special law shall define all matters pertaining to student associations and the participation of students therein" students or their representatives are not deemed to have a constitutional right to participate in the administration of higher education institutions.²²²

Notably, the right holders of the broader scientific freedom (beyond the university context) under Art. 16 are not the same as the right holders of academic freedom: in case of the former, the holders of the right are "all natural and legal persons who carry out scientific activity, i.e. also including foreigners and legal persons under private law".²²³ The prohibition of private universities does therefore not extend to private research institutions.²²⁴

Higher education institutions are also right holders of corollary duties by the state (e.g. higher education institutions "are entitled to financial assistance" from the state per Art. 16(5) GC (see below on 'The nature and function of the right')).

Duty bearers

The state and its bodies are the main duty-bearers in relationship with individuals and institutions.

The state has furthermore an obligation to 'promote and develop' art and science, research and teaching per Art. 16(1) GC and according to Art. 16(2) GC education constitutes a basic mission of the State. The obligations of the state in science, research and teaching (as applicable to the higher education sector for our purposes) include to respect and protect this freedom "but also to take positive measures for their development and promotion, ensuring to scientists the necessary (spaces, materials, laboratories, financial support, libraries, etc.)."²²⁵ Relatedly, the Council of State has also held that "the faculty members of the HEI have, directly deriving from article 16 of the Constitution, an individual right to claim from the state the assurance of the relevant prerequisites of logistical infrastructure as integral elements of academic freedom and as necessary conditions of the constitutionally enshrined mission of the researchers".²²⁶ Based on Art. 16(4) GC "all Greeks have the right to free education, at all levels, in state schools" which has been interpreted as including higher education, although not including postgraduate courses,²²⁷ but with caveats on how high those can be. The corollary is that the state has the duty to provide education for free. This leads to a system in Greece where Universities cannot ask for any tuition or registration fees, however low, and the state provides all books for free to all students at all levels of education, including

²¹⁸ Vlachopoulos (n 200) 26, fn 59.

²¹⁹ Papadopoulou, 'Greece' (n 200) 13 with reference to CoS 1291/2003, para 6.

²²⁰ Papadoloulou *ibid.*

²²¹ Vlachopoulos (n 200) 26.

²²² Papadopoulou, 'Greece' (n 200) 15.

²²³ Vlachopoulos (n 200) 17.

²²⁴ Council of State 1043/198 as discussed in Vlachopoulos (n 200) 18, fn 36.

²²⁵ Papadopoulou, 'Greece' (n 200) 19.

²²⁶ Vlachopoulos (n 200), citing CoS 4009/2000.

²²⁷ CoS Plenary 2411/2012, as cited in Papadopoulou, 'Greece' (n 200) 18.

universities. The state has also an obligation under Art. 16(4) GC "to provide financial assistance to those who distinguish themselves, as well as to students in need of assistance or special protection, in accordance with their abilities", which includes the provision of scholarship and other benefits in kind.²²⁸

The nature and function of the right

Next to an individual subjective and negative right (see discussion above), which protects a right holder from unjustified interferences, Art. 16 GC provides also for "an objectified protection of 'science', as a guarantee of an institution [Sarafianos 2017: 395, ar. per. 45] given that 'the free development of science' constitutes a 'fundamental purpose of the state'".²²⁹ Art. 16 GC provides further institutional guarantees, including the universities' organisation as 'legal persons of public law' based on Art 16(5) GC ("Education at university level shall be provided exclusively by institutions which are fully self-governed public law legal persons."), *full* self-governance, and as a corollary, state supervision. All of which shall be at the service of freedom of science. Some authors consider that these institutional guarantees translate into individual subjective rights²³⁰ whereas others see them as incorporating a dual role²³¹ as an individual right but also an (one may say 'objective' – if one compares it to the Germany context above) institutional guarantee.

The principle of full self-governance has been interpreted as meaning that higher education institutions "decide on their own affairs with their own bodies, which they themselves choose."²³² "These bodies are determined by the common legislator, but they are made up of persons who are in charge of or participate...in the realisation of their educational and research mission".²³³ Self-governance also includes financial independence even though the state has also the duty and HEIs the corollary right to financial assistance by the state, per Art.16(5) GC.

Interferences, limits and examples of prohibitions or violations

According to Art 16(1), second sentence: "academic freedom and freedom of teaching shall not exempt anyone from his duty of allegiance to the Constitution." This is the only explicit limitation of academic freedom and freedom of teaching. It does "not set limits to scientific research and does not exclude criticism in a proper scientific method"²³⁴ but can for example impose limitations in teaching (such as the prohibition of hate speech).

For scientific freedom, including the academic freedom manifestation of it, this right can find its legitimate limitations (after a balancing of interests) only in the (fundamental rights of the) Constitution itself.²³⁵

An example of a prohibition is that the governing council of a hospital (not a University body) cannot limit the clinical didactic or research activity of a University hospital doctor assigned to them by a University body.²³⁶ In the context of self-governance "it is unconstitutional to entrust the decision-making authority of matching department, for the realization of any internal transfers, to the Council of Higher University Education (SAEP), which could judge the scientific correctness of the decisions of the General Assemblies of the university departments, because in the composition of the body this also includes persons lacking the relevant scientific qualifications."²³⁷

²²⁸ Papadopoulou, 'Greece' (n 200), 17.

²²⁹ Cos Plenary 4741/2014, sk. 11, as cited in Papadopoulou, 'Greece' (n 200) 18.

²³⁰ Papadopoulou, 'Greece' (n 200) 20, with reference to Venizelos (1982: 179).

²³¹ Papadopoulou, 'Greece' (n 200) 20, with reference to Chrysogonos (2024: 520).

²³² CoS 405/84 in Papadopoulou, 'Greece' (n 200) 20.

²³³ CoS 519/2015 and other decisions cited in Papadopoulou, 'Greece' (n 200) 21.

²³⁴ Papadopoulou, 'Greece' (n 200) 15.

²³⁵ See Vlachopoulos (n 200) and Papadopoulou, 'Greece' (n 200).

²³⁶ CoS, 2478/2000 discussed in Vlachopoulos (n 200), 27.

²³⁷ Papadopoulou, 'Greece' (n 200) 21.

Relationship with other constitutional rights

Freedom of the arts and sciences are said to be directly connected concepts as special manifestations of the broader concept of intellectual freedom.²³⁸ It has been noted that the intellectual freedoms enshrined in Art. 16 GrC "are – also – specific manifestations of the mother right of free development of personality, in the individual's specialised pursuits of art, science, education (general, scientific, and professional) and sport."²³⁹

Notable recent developments or debates

Law 5094/2024 titled 'Strengthening the Public University – framework for the operation of non-profit branches of foreign University'²⁴⁰ was published on 13 March 2024. According to this law secondary establishments (branches) of foreign higher education institutions that are recognised in their country as academic can operate and are given legal status as "Legal Entities of University Education". For degrees awarded by these University branches to be recognised as "academic" (and not merely as professional qualifications) they need to be certified by the National Authority for Higher Education (ETHAAE). Heated public debates accompanied by scholarly debates surrounded adoption of this Law. Strong critique was voiced, including "by the majority of constitutional lawyers who insist that it is contrary to the Constitution."²⁴¹ The academic debates also discussed the role of EU law in this context, including questions about whether Art. 16 GrC is in tension with EU law, and more specifically the internal market freedoms, and whether Art. 16 GrC can be interpreted in accordance with EU law.²⁴²

²³⁸ Vlachopoulos (n 200) 15, para 13.

²³⁹ Λίνα Παπαδοπούλου σε: Ευ. Βενιζέλος (διεύθ.), Το Ελληνικό Σύνταγμα, Κατ' άρθρο ερμηνεία, Τόμος Ι (Άρθρα 1-25), εκδόσεις Σάκκουλα 2025, σ. 303 επ., 736, 741 – 742 (Lina Papadopoulou, 'Article 16' in Eleftherios Venizelos (ed), *The Greek Constitution – Interpretation by Article (Articles 1-25)*, vol I (Sakkula Publications 2025) 303ff, 736, 741 – 742) [own translation of title].

²⁴⁰ 'Ενίσχυση του Δημόσιου Πανεπιστημίου - Πλαίσιο λειτουργίας μη κερδοσκοπικών παραρτημάτων ξένων πανεπιστημίων και άλλες διατάξεις', ΝΟΜΟΣ ΥΠ' ΑΡΙΘΜ. 5094, ΕΦΗΜΕΡΙΔΑ ΤΗΣ ΚΥΒΕΡΝΗΣΕΩΣ, Τεύχος Α' 39/13.03.2024. 'Strengthening the Public University - Framework for the operation of non-profit branches of foreign universities' Public electronic consultation on the draft law of the Ministry of Education, Religious Affairs and Sports (Ministry of Education, Religious Affairs and Sports, 13 March 2024).

See also '14.4 National reforms in higher education' (Eurydice, 13 December 2024) <https://eurydice.eacea.ec.europa.eu/national-education-systems/greece/national-reforms-higher-education#:~:text=The%20purpose%20of%20Law%205094,constitutional%20purpose%20of%20higher%20education>

²⁴¹ Papadopoulou, 'Greece' (n 200) 11. See also the critical stance of the following constitutional law scholars: Α. Δερβιτσιώτης, Γ. Δρόσος, Α. Καϊδατζής, Ι. Καμτσίδου, Ξ. Κοντιάδης, Π. Μαντζούφας, Γ. Σωτηρέλης, Κ. Χρυσόγονος, 'Οκτώ καθηγητές Συνταγματικού Δικαίου κρίνουν αντισυνταγματικές τις διατάξεις για τα ιδιωτικά Πανεπιστήμια'. Α. Dervisiotis and others, 'Eight Professors of Constitutional Law consider the provisions on private Universities unconstitutional' [own translation of title], available at <www.constitutionalism.gr/okto-kathigites-sintagmatikou-dikaioi-krinoynti-antisintagmatikes-tis-diataxeis-gia-ta-idiotika-panepistimia/>.

²⁴² See eg: Β. Σκουρή/Ευ. Βενιζέλος, 'Η σύμφωνη με το ενωσιακό δίκαιο ερμηνεία του άρθρου 16 παρ. 5 και 8 του Συντάγματος και τα περιθώρια ανάληψης νομοθετικών πρωτοβουλιών στο πεδίο της μη κρατικής ανώτατης εκπαίδευσης', (Εκδόσεις Σάκκουλα, 2024). V Skouris, E Venizelos, 'The interpretation of Art. 15 para. 5 and 8 of the Constitution in accordance with EU law and the scope for legislative initiatives in the field of non-state higher education' (Sakkoula, 2024) [own translation of title]; Αντώνης Μεταξάς, 'Μη κρατικά ΑΕΙ και ενωσιακό δίκαιο: Μεταξύ πραγματικότητας και προσχήματος'. Α Metaxas, 'Non-state higher education institutions and EU Law, between reality and pretence' [own translation of title], available at: www.constitutionalism.gr/mi-kratuka-aei-kai-enosiako-dikaio/#_ftn1; Ν. Αλιβιζάτος, 'Δεν ατίκειται στο Σύνταγμα η λειτουργία παραρτημάτων ξένων πανεπιστημίων στην Ελλάδα' NoB 72(2024)/1, 45. ΓΝΩΜΟΔΟΤΗΣΗ. Ν Αλιβιζάτος, 'The operation of branches of foreign universities in Greece is not contrary to the Constitution', OPINION, NoB 72(2024)/1, 45 [own translation of title]; Κ. Γιαννακόπουλος, 'Το άρθρο 16 του Συντάγματος στη δίνη του νεοφεουδαρχικού συνταγματισμού' NoB 72(2024)/1, 61. Κ Giannakopoulos, 'Article 16 of the Constitution in the vortex of neo-feudal constitutionalism' [own translation of title] NoB 72(2024)/1, 61.

4.2.3. The Netherlands²⁴³

Background

There are no explicit provisions on the protection of academic freedom or institutional autonomy in the Constitution of the Kingdom of the Netherlands.²⁴⁴ Some aspects of academic freedom are protected by Article 7 of the Constitution (freedom of expression). The relevance of Article 23(2) of the Constitution (on education), identified as pertaining to academic freedom in some databases, remains unclear as the provision is generally not explicitly discussed as a source of academic freedom rights.²⁴⁵ Scholars and stakeholders argued that academic freedom is therefore best understood as an 'umbrella concept' that encompasses several different norms.²⁴⁶ The extent to which they are enforceable in courts differs.²⁴⁷ Importantly, as the Netherlands has a partly monist system (Articles 93 and 94 of the Constitution) – with national courts able to apply both written and unwritten international law directly – a significant part of the 'core' of enforceable academic freedom rights can be located in international law. The 'core' of enforceable academic freedom rights can therefore be located in freedom of expression (Article 7 of the Constitution, Article 10 ECHR, Article 19 ICCPR), Article 13 of the EU Charter of Fundamental Rights (within the scope of EU law, see also Section 4), and secondary law provisions such as copyright law.²⁴⁸ Several other non-enforceable legal provisions might also be relevant for academic freedom protection.²⁴⁹ This concerns in particular academic freedom as the principle of university governance established in secondary legislation, the only explicit legal provision on academic freedom in Dutch law (Article 1.6 of the Higher Education and Scientific Research Act).²⁵⁰

The Dutch Constitution does not allow for the courts to review the constitutionality of statutes (Art. 120). However, courts should not apply statutes in case they are contrary to international treaties binding the Netherlands. A court of high authority is the Hoge Raad der Nederlanden (the Supreme Court) – a court of cassation that assesses the correct application of law in a given case. Legal doctrine plays an important role in the development of Dutch law as well.²⁵¹ Considering these features of the jurisdiction, a closer look beyond the Constitution *sensu stricto* is necessary to reconstruct the content of academic freedom in the Dutch 'constitutional tradition' to obtain a full picture able to inform European debates.

Material scope of the right

While academic freedom is not mentioned directly in the Constitution, it is reflected (to various extents) in different provisions of national and international law. The scarce regulation of academic freedom in Dutch law has been recognized by national stakeholders as both an opportunity – as it

²⁴³ This Section is based on the chapter by Joris Groen, 'Academic Freedom in the Netherlands: A Legal Exploration' in Vasiliki Kosta (ed), *Academic freedom* (Cambridge University Press forthcoming), draft on file with the authors, page references correspond to the draft version.

²⁴⁴ See Peter Maassen and others, 'State of Play of Academic Freedom in the EU Member States: Overview of de Facto Trends and Developments' (n 13) para 3.22; see the remarks in Janka Stoker, Carel Stolker and Berteke Waaldijk, 'Powerful and Vulnerable. Academic Freedom in Practice' (University of Amsterdam 2023) 37.

²⁴⁵ While no commentator mentions this provision as explicitly relevant for academic freedom, it does feature implicitly in some of the discussions. See, for example, Groen (n 243) s 5.

²⁴⁶ *ibid* s 2; see also Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW, 'Academische vrijheid in Nederland. Een begripsanalyse en richtsnoer' (Koninklijke Nederlandse Akademie van Wetenschappen 2021) s 2.1 <<https://knaw.nl/publicaties/academische-vrijheid-nederland>>.

²⁴⁷ Groen (n 243) s 2.

²⁴⁸ *ibid*; see also Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 2.1.

²⁴⁹ Eg Article 15.3 ICESCR (freedom indispensable for scientific research), The 1997 UNESCO/ILO Recommendation, The 2017 UNESCO Recommendation on Science and Scientific Researchers. See Groen (n 243) s 2; see also Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 2.1.

²⁵⁰ Groen (n 243) ss 2, 4.

²⁵¹ For an overview of the Dutch system, see also Jan M Smits, 'The Netherlands' in Jan M Smits and others (eds), *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing 2023).

allows the university community 'to give substance to the ideals of academic freedom' – and as a disadvantage, as the 'largely unwritten character' of academic freedom might blur its meaning and obstruct its protection.²⁵²

First, various dimensions of academic freedom are protected by provisions on freedom of expression (Article 7 of the Constitution, Article 10 ECHR, Article 19 ICCPR). Under these provisions, academic freedom is an enforceable individual right.²⁵³ The most extensive protection is said to be granted under Article 10 ECHR. The European Court of Human Rights has previously granted protection under Article 10 ECHR also to individual academics, interpreting restrictions on their free expression (permitted under Article 10(2)) restrictively (see the section on 'Interferences, limits, and examples of violations' below).²⁵⁴ The Court conceptualises the freedom in the following terms:

"academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction (see Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe). It is therefore consistent with the Court's case-law to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings (see *Aksu v. Turkey* [GC], cited above, § 71). This freedom, however, is not restricted to academic or scientific research, but also extends to the academics' freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof."²⁵⁵

Article 7 of the Dutch Constitution also explicitly prohibits, under any conditions, a priori censorship of any publications – this finds application to scholarly publications as well.²⁵⁶ While academic freedom as an 'umbrella concept' differs from freedom of expression,²⁵⁷ several core dimensions of academic activities can be protected under the freedom of expression provisions. Article 13 of the EU Charter of Fundamental Rights, within the scope of EU law, protects further both the individual as well as the institutional dimension of academic freedom (institutional autonomy) and imposes the duty on Member States to protect them (see Section 3.2.3).

Second, this enforceable individual right is further operationalised by, or can be interpreted in light of, secondary laws. It has been pointed out that academics are not restricted in their free expression under secondary laws the same way as other public officials, despite being funded predominantly by the state.²⁵⁸ Copyright law can also be perceived as protecting some dimensions of academic freedoms.²⁵⁹ However, the most important provision of secondary law is Article 1.6 of the Higher Education and Scientific Research Act, the only explicit legal pronouncement on academic freedom, that states: 'At institutions of higher education and academic hospitals academic freedom shall be

²⁵² Stoker, Stolker and Waaldijk (n 244) 37.

²⁵³ Groen (n 243) s 6.1.

²⁵⁴ See the overview in Kovács (n 25) 1, 6–13.

²⁵⁵ *Mustafa Erdoğan and Others v Turkey* [2014] ECHR Applications Nos. 346/04 and 39779/04 [40].

²⁵⁶ Groen (n 243) s 6.1.

²⁵⁷ Stoker, Stolker and Waaldijk (n 244) 54–55.

²⁵⁸ Groen (n 243) s 6.2.

²⁵⁹ *ibid* s 2.

observed'.²⁶⁰ The Explanatory Memorandum to Article 1.6 of the Higher Education and Scientific Research Act explains how the freedom was conceptualised by its drafters in the following terms:

"We see academic freedom as a right that is closely related to freedom of opinion and expression and is specifically aimed at the position of individual teachers and researchers as well as students. Essentially, it is about their freedom to teach, conduct research and receive education respectively. They have the freedom to follow their own scientific and scholarly views and not be dependent on certain political, philosophical or scientific theories. Only if this condition is met can science flourish and the independent and critical thinking required for it be developed. Academic freedom thus has three aspects: freedom in teaching, freedom in practising research and freedom in receiving education."²⁶¹

In the report from the Royal Academy of Arts and Science (KNAW Report, not a legal source), academic freedom is further defined as 'the principle that staff of academic institutions is free to conduct their scientific research, publish its findings, and teach'.²⁶² Academic freedom is said to be functionally tied to the position of an individual, e.g. the job of the academic (see also the section on 'Right holders' below).²⁶³ Such a freedom encompasses the following elements:

- choice of the research topics, questions, and methods,
- access to information sources,
- publishing or disseminating research information at conferences, lectures, in other research fora,
- choice of research partners and collaborators,
- choice of the design and content of academic teaching.²⁶⁴

Less attention is typically given to the students' freedoms. As stated in the Explanatory Memorandum to Article 1.6 of the Higher Education and Scientific Research Act, they enjoy the freedom to 'receive education'. It has been said that this includes 'the freedom to study subjects they wish to explore', 'to engage in the conversation with their teachers about assumptions in the teaching [...] without being intimidated', and 'from interference [...] by national governments and providers of scholarships and visas'.²⁶⁵

Third, academic freedom is also perceived as distinguishable from but closely intertwined with institutional autonomy.²⁶⁶ Institutional autonomy is also protected, within the scope of EU law, by Article 13 CFR (see Sections 3.2.3 and 5). In Dutch debates, it is understood to encompass two dimensions: (1) institutional autonomy versus the government and (2) 'the internal organisation of the university', which can be perceived as self-governance within the university on core teaching and research matters.²⁶⁷ Commentators suggest that – as a matter of constitutional law regarding education – the state can interfere with the university sphere only to a limited degree and universities are free to act autonomously, unless a legal norm states otherwise.²⁶⁸ The scope of

²⁶⁰ Translation of the full provision following that proposed by Stoker, Stolker and Waaldijk (n 244) 37.

²⁶¹ As referenced in *ibid* 38.

²⁶² Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 2.1; as referenced in Groen (n 243) s 4.

²⁶³ Groen (n 243) s 4.

²⁶⁴ Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 2.1; see also Groen (n 243) s 4.

²⁶⁵ Stoker, Stolker and Waaldijk (n 244) 52–54.

²⁶⁶ *ibid* 39; Groen (n 243) s 5.

²⁶⁷ Stoker, Stolker and Waaldijk (n 244) 39; Groen (n 243) s 5.

²⁶⁸ Groen (n 243) s 5.

legitimate interference might differ in respect of private and public institutions (see the section on 'Right holders' below). Examples of obligations imposed on the university sector concern matters such as quality control (accreditation), funding and its allocation, or degree requirements.²⁶⁹

There are also several areas of law and practice where the scope of academic freedom rights remains less clear. These concern, for example, employment relationships²⁷⁰ or the influence of external funders on research conducted at public institutions.²⁷¹ In any case, however, it is recognized that academic freedom and institutional autonomy can only be properly promoted and protected in reference to respective duties imposed on relevant authorities and institutions (see the section on 'Duty bearers' below).²⁷²

Right holders (personal scope of the right)

As academic freedom is reflected in different provisions of national and international law, the personal scope of the rights might differ under different provisions. Generally, freedom of expression is granted to everyone. The European Court of Human Rights qualified when such expression might be considered to have an academic character under 10 ECHR. This concerns professional academics, albeit – when they also hold other (non-academic) offices – the Court might consider in which capacity they are making use of their freedom of expression.²⁷³ According to the Explanatory Memorandum to Article 1.6 of the Higher Education and Scientific Research Act, academic freedom is granted to 'individual teachers and researchers as well as students' within the context of institutions mentioned therein.²⁷⁴ The provision concerns institutions of higher education (regular universities as well as universities of applied sciences)²⁷⁵ and academic hospitals. The norms of secondary law set out a framework for organisation of such institutions. They are always binding on public institutions. Private institutions might not be bound by all the provisions to the same extent, but often will be if they want to obtain public funding.²⁷⁶

Duty bearers

Commentators recognize that academic freedom and institutional autonomy can only be properly promoted and protected in reference to respective duties imposed on relevant authorities and institutions.²⁷⁷ The nature and binding force of these duties is not, however, entirely clear nor equal (see also the section on 'The nature and function of the right' below). Similarly as above, they might look differently under different provisions.

The relevance of Article 1.6 of the Higher Education and Scientific Research Act as a source of academic freedom duties is also perceived in different ways by different commentators. Some see it as imposing duties on institutions in relationship to individuals only,²⁷⁸ while others consider it relevant also in the relationships between institutions and public (governmental) authorities.²⁷⁹

²⁶⁹ *ibid.*

²⁷⁰ Stoker, Stoker and Waaldijk (n 244) 47; Groen (n 243) s 6.2.

²⁷¹ The Young Academy, 'Space to Think. An analysis of structural threats to academic freedom and integrity' (2023) s 3.1 <www.dejongeakademie.nl/en/publications/2495737.aspx?t=Space-to-Think-An-analysis-of-structural-threats-to-academic-freedom-and-integrity>; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 260) s 4.2.

²⁷² Stoker, Stoker and Waaldijk (n 244) 38.

²⁷³ Kovács (n 25) 11–12.

²⁷⁴ As referenced in Stoker, Stoker and Waaldijk (n 244) 38.

²⁷⁵ *ibid.* 37, fn 33.

²⁷⁶ Groen (n 243) s 5; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 3.1.

²⁷⁷ Stoker, Stoker and Waaldijk (n 244) 38, 49.

²⁷⁸ Groen (n 243) s 3.2.

²⁷⁹ Stoker, Stoker and Waaldijk (n 244) 49; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 3.1.

Some commentators discuss the duties within the broader context of 'responsibilities' for academic freedom that might be located at different levels:

- The duties of care of government and politics
- The duty of care of the board and managers
- The duty of care among colleagues
- The position of students
- The position of clients (commissioners) and subsidisers.²⁸⁰

In light of the considerations introduced above, the duty of care of academic staff (colleagues) might be perceived predominantly in reference to ethical obligations under various codes of conducts.²⁸¹ This applies also to the responsibilities of students, albeit their scope is different and determined in reference to their position within the community.²⁸² The broader society, including in particular commissioners and subsidisers of research, are also said to be obliged to respect academic freedom in their engagement with academic actors, but this obligation does not seem to be explicitly seen as a *legally enforceable one*.²⁸³

The nature and function of the right

To the extent that (different elements of) academic freedom find(s) protection in the Dutch legal order via different 'other' rights protected at national constitutional (and secondary law) level, at the international/regional level and in the EU Charter of Fundamental Rights (within its scope of application), the nature and function of the different elements of academic freedom need to be established separately across these sources. Academic freedom as protected in its individual dimension via freedom of expression through Art. 7 of the Dutch Constitution, Art. 10 ECHR or Art. 19 ICCPR is an individual enforceable right. This is equally true for the individual dimension of academic freedom in Art. 13 of the EU Charter of Fundamental Rights. Furthermore, justiciability of the institutional dimension of academic freedom as protected in Art. 13 of the Charter has been established in CJEU case law.²⁸⁴

CJEU case law has also recognised the existence of positive obligations in relation to academic freedom.²⁸⁵ Article 15 of the ICESCR, providing for the right to science under international law, has both a negative and a positive dimension²⁸⁶ and encompasses positive obligations. However, as noted by Groen, this provision cannot be enforced by courts, it does not have self-executing character.²⁸⁷

The Stoker report (not a legal source),²⁸⁸ sees Art. 1.6 of the Higher Education and Scientific Research Act (a secondary law provision, see above) as being significant "primarily for the relationship between the institution and various governmental bodies and politics." In relying on the KNAW report (equally not a legal source as noted above),²⁸⁹ it identifies in relation to Art. 1.6 WHW both a "restraining role"²⁹⁰ and a positive or "active and facilitating role".²⁹¹ The latter entails a duty (of care) to "create necessary framework conditions to enable academic freedom. Academic

²⁸⁰ Stoker, Stolker and Waaldijk (n 244) 49.

²⁸¹ *ibid* 51–52; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 3.3.

²⁸² Stoker, Stolker and Waaldijk (n 244) 52–54.

²⁸³ *ibid* 54; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) s 3.4.

²⁸⁴ *Commission v Hungary* (n 3)

²⁸⁵ *ibid*.

²⁸⁶ Klaus Beiter, 'Where Have All the Scientific and Academic Freedoms Gone? The Right to Enjoy the Benefits of Scientific Progress and its Applications' (2019) 52(2) *Israel Law Review* 233, 251ff.

²⁸⁷ Groen (n 243) 3.

²⁸⁸ Stoker, Stolker and Waaldijk (n 244) 49.

²⁸⁹ Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246).

²⁹⁰ Stoker, Stolker and Waaldijk (n 244) 50.

²⁹¹ Stoker, Stolker and Waaldijk (n 244) 50.

freedom benefits from a stable and reliable institutional context, without unwanted dependencies and with sufficient continuity. In its facilitating role too, the government has a responsibility to guarantee academic freedom and maintain unbounded research and education to a sufficient extent."²⁹² The KNAW report also identifies as resting on the Universities a (negative) duty to respect academic freedom but also a (positive) duty "to protect scientists at their institution from coercion and pressure by government, funders and colleagues."²⁹³ The Stoker report further seeks academic freedom as applying also horizontally between academics (see above duty of care among colleagues). It also sees a certain freedom for students derived which is said to come with "a certain responsibility", mainly through student participation in University governance.²⁹⁴

The report of the Young Academy makes a distinction between positive and negative academic freedom, based on philosophical accounts,²⁹⁵ rather than using these terms in the legal technical sense. Negative academic freedom is defined here as "the right of scientists to do their research without constraint or pressure" whereas positive academic freedom as "the right of scientists to determine the direction and aims of their research and to pursue these regardless of their alignment with policy or industry priorities."²⁹⁶ Just as the KNAW report and the Stoker report, the DJA report of the Young Academy is not a legal source.

Interferences, limits and examples of prohibitions or violations

The different sources of academic freedom protection provide also for possibilities of derogation or limitation. In that sense, academic freedom as understood in the Dutch legal system is not an absolute right. Under the EU Charter of Fundamental Rights academic freedom, any limitation (to Art. 13 CFR) has to be in line with Art. 52(1) CFR, meaning that a limitation must be provided for by law, respect the essence of this right/freedom and comply with the principle of proportionality. The latter implies that a limitation has to be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others. Art. 10 ECHR can also be subject to limitations. Following a somewhat similar structure, an interference with academic freedom under the ECHR must be prescribed by law, pursue a legitimate aim as listed in Art. 10(2)²⁹⁷ ECHR and be necessary in a democratic society.²⁹⁸ Under Art. 19 of the ICCPR has also a roughly similar structure requiring that a limitation shall be provided by law and shall be necessary for a list of legitimate grounds of derogation.²⁹⁹

The KNAW report points out that academic freedom finds limitations in the relevant professional norms and values, and notably the Dutch Code of Conduct for Research Integrity, which is based on the five principles honesty, due care, transparency, independence and responsibility,³⁰⁰ that cannot be departed from in the name of academic freedom. Academic freedom also finds limitations in the

²⁹² Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) as cited in Stoker, Stolker and Waaldijk (n 2), 50.

²⁹³ Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) as cited in Stoker, Stolker and Waaldijk (n 244), 51.

²⁹⁴ Stoker, Stolker and Waaldijk (n 285), 53.

²⁹⁵ The Young Academy (n 271) 10, with reference to Isaiah Berlin's account in his *Two concepts of liberty* (American University, 1958).

²⁹⁶ *ibid.*

²⁹⁷ The grounds listed therein are: national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

²⁹⁸ For a concrete application of these principles by the European Court of Human Rights see eg *Case of Mustafa Erdogan and Others v. Turkey*, Applications nos. 346/04 and 39779/04.

²⁹⁹ The grounds are: (a) respect of the rights or reputations of others; (b) national security or of public order (ordre public), or of public health or morals.

³⁰⁰ Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) 26, with reference to 'Nederlandse gedragcode wetenschappelijke integriteit', available *inter alia* at https://storage.knaw.nl/2023-02/Nederlandse-gedragcode-wetenschappelijke-integriteit_2018.pdf

requirements imposed by (ordinary/secondary) law relating to higher education institutions, and notably the Higher Education Act.³⁰¹

Relationship with other constitutional rights

The KNAW report lists³⁰² a series of fundamental rights (from the international law sphere) that academic freedom is closely related to. Next to freedom of expression, the relevance of freedom of movement (Art. 12 ICCPR) is mentioned, for example for field work and conference attendance; the relevance of freedom of association and assembly (Arts. 21–22 ICCPR) for the organisation of conference and academic/scientific associations; the freedom to enjoy the benefits of scientific progress and its applications (ICESCR Art. 15(1)(b)), intellectual property rights (ICESCR Art. 15(1)(c)).

Notable recent developments or debates

One recent example of litigation where an academic claimed violation of academic freedom is the high-profile Täuber case.³⁰³ At stake was a dispute between Dr. Täuber and her employer the University of Groningen (RUG's Economics and Business Administration faculty) involving a deteriorating employment relationship and leading finally to the termination of the employment contract. Dr. Täuber published an article in an academic journal in which she was critical of equal opportunity schemes, such as that in which she participated in at Groningen University, as being in fact detrimental to female academics. The professors at Dr. Täuber's department felt that this publication, including in its form, involved defamatory effects. Täuber argued that her dismissal was linked to this publication. At first instance and on appeal academic freedom did not play a role in the judgments. The case was subsequently appealed to the Supreme Court with arguments focusing on the academic freedom dimension of the case.³⁰⁴ Another example concerns a case at the University of Amsterdam which eventually resulted in the Stoker Report 2023.³⁰⁵ The case concerned a social science lecturer, Laurens Buijs, claiming limitation of his academic freedom by the claimed 'woke culture' at the university. The university initiated a procedure for a committee to investigate the matter following a whistleblower report made by the lecturer.³⁰⁶ Apart from the substantive finding on the whistleblower report that there were no institutional abuses leading to an acute and fundamental threat to academic freedom and the quality of teaching and research, the Stoker Report gained also prominence for putting forward recommendations to promote academic freedom.

4.2.4. Poland

Background

The Polish Constitution does not use the term of 'academic freedom'. However, this term features in the public discourse and several provisions of the Constitution can be perceived to provide a functionally equivalent protection.³⁰⁷ Article 70(5) on the right of education protects 'the autonomy

³⁰¹ Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246) 26.

³⁰² Commissie voor der Vrijheid van Wetenschapsbeoefening van de KNAW (n 246).

³⁰³ See discussion in Groen (n 243) s 6.2 with reference to cases ECLI:NL:GHARL:2024:152 (court of appeal) and ECLI:NL:RBNNE:2023:854.

³⁰⁴ See the announcement by the law firm representing Dr. Täuber in front of the Supreme Court: Stefan Sagel, 'Dutch Supreme Court Asked to Hear Appeal on Academic Freedom and Dismissal' (*De Brauw*, 15 April 2024) <www.debrauw.com/articles/dutch-supreme-court-asked-to-hear-appeal-on-academic-freedom-and-dismissal>.

³⁰⁵ Stoker, Stolker and Waaldijk (n 144).

³⁰⁶ See discussion in Groen (n 243) 12 and 19; see also 'Stolker committee: 'No institutional abuse, but academic freedom must be guarded' (*UvA* 29 June 2023) <www.uva.nl/shared-content/uva/en/news/news/2023/06/stolker-committee-no-institutional-abuse-but-academic-freedom-must-be-guarded.html>.

³⁰⁷ Łukasz Żukowski and Sylwia Jarosz-Żukowska, 'Wolność badań naukowych i nauczania' in Mariusz Jabłoński (ed), *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym* (E-Wydawnictwo Prawnicza i Ekonomiczna Biblioteka Cyfrowa Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego

of the institutions of higher education' that 'shall be ensured in accordance with principles specified by statute'. Article 73 protects scientific research and its dissemination as well as the freedom to teach. Indeed, the doctrine often considers the two provisions to cumulatively amount to the protection of 'academic freedom'.³⁰⁸ Additionally, Article 39 CRP embodies an explicit limit to some of these rights insofar 'no one shall be subjected to scientific experimentation [...] without his voluntary consent'. It has been recognized in this context that any legal acts of a lower rank – if they were to define 'academic freedom' in national law – must respect the understandings and levels of protection set by the constitutional provisions for relevant rights and freedoms.³⁰⁹ The Polish Constitution foresees constitutional review, conducted by the Constitutional Tribunal (*Trybunał Konstytucyjny*). It takes place via different procedures and covers also individual constitutional complaints. Ordinary courts are obliged to refer a question on constitutionality of laws, if it emerges, to the Constitutional Tribunal. Legal doctrine also plays an important role in the development of Polish law.³¹⁰

Material scope of the right

The rights and freedoms protected by Articles 70(5) and 73 can be divided in three categories, discussed respectively below: (1) freedom of scientific research and its dissemination, (2) freedom of teaching, and (3) institutional autonomy.

Freedom of scientific research and its dissemination

Article 73 CRP protects first the freedom of scientific research and the freedom of dissemination of its results. 'Research' is not defined by the Constitution. It has been generally understood broadly as an activity aimed at 'describing reality in a systematic and theoretically ordered way and making objectively verifiable findings, in particular based on the criterion of truth'.³¹¹ Importantly, statements once considered true might be falsified in the process of scientific development, and honest mistakes do not lead to research being excluded from the protection under Article 73.³¹² Research can therefore be generally qualified according to the methodological principles of various research disciplines.³¹³

Article 73 CRP covers, in general, 'the freedom to choose the research subject, the research method and the [form of] presentation of the findings made'.³¹⁴ The freedom of scientific research covers also access to information relevant for the research subject³¹⁵ or, as suggested by the commentators, the freedom to collaborate with research partners.³¹⁶ The Constitutional Tribunal has also clarified when Article 73 does not apply. This concerns, for example, claims of financial character,³¹⁷ claims for employment stability or academic appointments,³¹⁸ or claims regarding granting of academic

2014) 717 <<https://repozytorium.uni.wroc.pl/dlibra/publication/53071/edition/53684>>. For the meaning of the term 'academic freedom' in the English-language sources, see Section 3.1 on Methodology.

³⁰⁸ *ibid.*

³⁰⁹ Ewa Łętowska, 'Fałszywe paradoksy ochrony wolności nauki' [2021] *Nauka* 87, 94.

³¹⁰ For an overview of the Polish legal system see Michał Gondek, 'Poland' in Jan M Smits and others (eds), *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing 2023).

³¹¹ Leszek Garlicki and Marta Derlatka, 'Art. 73' in Leszek Garlicki and Marek Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II, wyd. II* (Wydawnictwo Sejmowe 2016) s 8; see also Żukowski and Jarosz-Żukowska (n 307) 716; Monika Florczak-Wątor, 'Art. 73' in Piotr Tuleja (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II* (LEX 2021) s 3.

³¹² Wojciech Brzozowski, 'I. Konstytucyjna Wolność Badań Naukowych i Ogłaszania Ich Wyników' in Aleksander Jakubowski and Aleksandra Wiktorowska (eds), *Prawo nauki. Zagadnienia wybrane* (Lexis Nexis 2014) s I.2.

³¹³ Łętowska (n 309) 90.

³¹⁴ *Judgment of the Constitutional Tribunal of 12 April 2012 (SK 30/10)* OTK-A 2012, nr 4, poz 39.

³¹⁵ *Judgment of the Constitutional Tribunal of 11 May 2007 (K 2/07)* OTK-A 2007, nr 5, poz 48.

³¹⁶ Żukowski and Jarosz-Żukowska (n 307) 723.

³¹⁷ *Judgment of the Constitutional Tribunal of 7 February 2006 (SK 45/04)* OTK-A 2006, nr 2, poz 15.

³¹⁸ *Judgment of the Constitutional Tribunal of 28 April 2009 (K 27/07)* OTK ZU 4A/2009, poz 54.

titles.³¹⁹ This is because the Constitutional Tribunal considers that scientific research is not dependent on having an academic title or being hired in a specific academic institution (see also the section on 'Rights holders' below). The commentators have, however, pointed out that this view might call for a revision in some circumstances, considering e.g. that access to research grants might be impossible for individuals without an institutional affiliation or that there might be a minimum level of financing below which effective research becomes impossible.³²⁰ However, such questions are not settled in the doctrine as it stands now (see also the section on 'The nature and function of the right' below).³²¹

Freedom of teaching

Freedom of teaching is supposed to protect systematic sharing of knowledge with other people. It requires therefore a degree of organisation, as opposed to the freedom of dissemination of scientific results as such.³²² To be protected, the knowledge has to have a scientific character, which differentiates this freedom further from the freedoms of moral and religious teaching covered by Article 53 of the Constitution.³²³ Based on the formulation of Article 73, it has been debated whether the provision applies to all kinds of teaching, or only to teaching done within the educational system, or – further – whether inclusion of the freedom together with the research freedom suggests that freedom of teaching under Article 73 applies only to higher education (see also the section on 'Rights holders' below).³²⁴ The dominant view seems to accept that the scope of the right should be interpreted broadly and protect all forms of teaching of a scientific character, including for example also popular science teaching activities.³²⁵ The literature observes nevertheless that the freedom of teaching taking place within the education system should be interpreted in light of Article 70 of the Constitution (the right to education).³²⁶ The freedom covers the freedom to choose the content and method of the teaching as well as the presentation of the teaching materials, including also the freedom to acquire information, or to choose teaching materials, text books, etc.³²⁷ However, it has been said that this does not prevent public authorities from setting requirements for educational programs and/or the teaching personnel, also in higher education.³²⁸

Institutional autonomy

The main purpose of institutional autonomy of higher education institutions, protected by Article 70(5), is to functionally guarantee the individual freedoms covered by Article 73,³²⁹ and the right to education (Article 70(1)).³³⁰ Scholarship has mentioned various elements of such autonomy that can broadly be classified into four dimensions: regulatory, scientific, organisational, and financial.³³¹ The regulatory dimension means that higher education institutions are entitled to issue their own internal legal acts, such as institutional statutes or recruitment rules, within the limits set out by the general statutes.³³² The scientific dimension concerns the autonomy in research and educational matters, so the realisation of Article 70 and 73 rights.³³³ The organisational dimension implies autonomy in

³¹⁹ *Judgment of the Constitutional Tribunal of 12 April 2012 (SK 30/10)* (n 272).

³²⁰ Brzozowski (n 312) s I.3 and I.4.

³²¹ See also Łętowska (n 309) 100.

³²² Garlicki and Derlatka (n 311) s 13.

³²³ *ibid.*

³²⁴ Żukowski and Jarosz-Żukowska (n 307) 737–738.

³²⁵ *ibid.*

³²⁶ Garlicki and Derlatka (n 311) s 13.

³²⁷ *ibid.*; Żukowski and Jarosz-Żukowska (n 307) 736–737.

³²⁸ Garlicki and Derlatka (n 311) s 13.

³²⁹ *Judgment of the Constitutional Tribunal of 7 February 2006* (n 317).

³³⁰ Krzywoń (n 330) s II.3.

³³¹ *ibid.*

³³² *Judgment of the Constitutional Tribunal of 8 November 2000 (SK 18/99)* OTK ZU nr 7/2000, poz 258.

³³³ See also Monika Florczak-Wątor, 'Art. 70' in Piotr Tuleja (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, wyd. II (LEX 2021) s 7.

choosing organisational structures of the institutions and selecting members of the governing bodies, but also disciplinary proceedings or hiring policies. In the context of the organizational dimension of institutional autonomy, also students are recognized as independent members of the academic community, having e.g. the right to participate in the elections of academic bodies.³³⁴ The financial dimension of institutional autonomy includes matters such as autonomous asset management, decisions about funding applications for external funding sources, or charging fees for certain educational services.³³⁵ Further, the institutional autonomy of higher education institutions should be interpreted in light of the other paragraphs of Article 70: Article 70(2) insofar '[s]tatutes may allow for payments for certain services provided by public institutions of higher education' and Article 70(3) insofar '[t]he conditions for establishing and operating non-public schools, the participation of public authorities in their financing, as well as the principles of educational supervision of such schools and educational development institutions, shall be specified by statute'.³³⁶ Therefore, the autonomy – in any of its dimensions – does not presuppose that institutions are completely unconstrained in their decisions, as they are obliged to respect other constitutional rights and comply with the rules set out by the statutes (see also the sections on 'Duty bearers' and 'Interferences, limits, and examples of violations').³³⁷

Right holders (personal scope of the right)

Freedoms covered by Article 73 CRP are ascribed to everyone engaged in relevant activities (teaching or research, as discussed above), including foreigners.³³⁸ The freedoms are not directly associated with scientific or academic professions or with the institutional frameworks of universities or other research institutes.³³⁹ However, the freedoms are particularly relevant for academic staff and in such a context their exercise is intertwined with particular responsibility for conducting their teaching and research activities to the highest possible standard.³⁴⁰

Article 70(5) on institutional autonomy applies both to public and private institutions of higher education, but – due to the latter structural independence from the state – it is associated with the public education system first and foremost.³⁴¹ It is said that different values underly the two sectors, as the function of public institutions is broader and of a different character than those of private institutions.³⁴² The doctrine seems to accept therefore that the degree of autonomy can be differentiated depending on the different kinds of institutions, but does not necessarily agree on the determining factors in this regard.³⁴³ While institutions cannot exercise Article 73 rights directly, the provision might indirectly play a role in the interpretation of Art. 70(5).³⁴⁴ However, some commentators argue for the inclusion of institutions as subjects of Article 73 as well, not only due to the increasing significance of the organisational dimension of research, but also due to the gap in protection resulting from the fact that only higher education institutions – and not other research bodies – are protected under Article 70(5).³⁴⁵ Simultaneously, institutional autonomy under Article

³³⁴ *Judgment of the Constitutional Tribunal of 5 October 2005 (SK 39/05)* OTK-A 2005, nr 9, poz 99.

³³⁵ Michał Bartoszewicz, 'Art. 70' in Monika Haczowska (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (LexisNexis 2014) s 7, referencing P Winczorek (Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r., Warszawa 2000, p 170).

³³⁶ See also Krzywoń (n 330) s II.5.

³³⁷ Florczak-Wątor, 'Art. 70' (n 333) s 7; Krzywoń (n 330) s II.3.

³³⁸ Brzozowski (n 312) s I.4.

³³⁹ *Judgment of the Constitutional Tribunal of 28 April 2009* (n 318).

³⁴⁰ *ibid.*

³⁴¹ Leszek Garlicki and Marta Derlatka, 'Art. 70' in Leszek Garlicki and Marek Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II, wyd. II* (Wydawnictwo Sejmowe 2016) s 21; Krzywoń (n 330) s II.4.

³⁴² Krzywoń (n 330) s II.4.

³⁴³ Garlicki and Derlatka (n 341) s 21; Krzywoń (n 330) s II.5; see also *Judgment of the Constitutional Tribunal of 28 April 2009* (n 318).

³⁴⁴ Garlicki and Derlatka (n 311) s 10.

³⁴⁵ Brzozowski (n 312) s I.4.

70(5) is unique to higher education and does not apply to lower levels of schooling,³⁴⁶ and – at least according to some authors – other types of scientific institutions.³⁴⁷

Duty bearers

Different subjects are duty bearers under Articles 70(5) and 73 CRP respectively. Public authorities are the duty-bearers in relationship to institutions under Article 70(5) CRP.³⁴⁸ In relationship to individuals, Article 73 CRP imposes duties on both public authorities and public institutions.³⁴⁹ The scope of the duties imposed on the institutions in relationship to individuals within them is determined also in reference to the scope of their institutional autonomy under Article 70(5).³⁵⁰ The nature of duties resulting from the Constitution is closely related to the nature and function of the freedoms as such (see the section on 'The nature and function of the right' below). What remains an open question is the possibility of horizontal application (between private parties) of Article 73. The horizontal application has been denied by some commentators,³⁵¹ but others claim that it is not excluded, albeit should be interpreted narrowly.³⁵²

The nature and function of the right

The use of the term 'freedom' in Article 73 of the Constitution has been generally interpreted as presupposing a negative nature of rights granted by this provision (see 'Glossary'). This means that it protects individuals against unjustified interferences that make scientific research or its dissemination impossible or harder.³⁵³ Most authors note that the Constitution does not explicitly formulate positive obligations of public authorities regarding research or researchers. This is in contrast to the provisions of former constitutions and is therefore perceived as an intentional omission of the drafters of the current Constitution.³⁵⁴ However, some commentators consider this strict distinction between 'freedoms' and 'rights' to be not only inconsistent in the Constitution itself, but also anachronistic in reference to i.a. the jurisprudence of the ECtHR on positive obligations more broadly, and argue for the possibility of deriving such obligations of the state also under Article 73.³⁵⁵ For example, it has been suggested that such obligations could concern transparent and impartial career advancement procedures or active measures against scientific dishonesty – in any case introduced only in close cooperation with the research communities.³⁵⁶

The main purpose of institutional autonomy of higher education institutions, protected by Article 70(5) of the Constitution, is – according to the Constitutional Court – to functionally guarantee the relevant individual freedoms covered by Article 73.³⁵⁷ Autonomy of the institution is not therefore a goal in itself.³⁵⁸ Importantly, Article 70(5) is phrased as a duty of the state and therefore clearly imposes positive obligations.³⁵⁹ It seems to be accepted by most commentators that the freedom is justiciable and institutions can legally demand respect and protection of such autonomy.³⁶⁰

³⁴⁶ Garlicki and Derlatka (n 341) s 21.

³⁴⁷ Krzywoń (n 330) s II.4.

³⁴⁸ Garlicki and Derlatka (n 341) s 22.

³⁴⁹ *ibid* s 11.

³⁵⁰ *ibid*.

³⁵¹ *Eg ibid*.

³⁵² *Eg* Brzozowski (n 312) s I.5.

³⁵³ *Eg* Garlicki and Derlatka (n 311) s 11.

³⁵⁴ *ibid*.

³⁵⁵ Brzozowski (n 312) s I.3; see also Florczak-Wątor, 'Art. 73' (n 311).

³⁵⁶ Brzozowski (n 312) s I.3.

³⁵⁷ *Judgment of the Constitutional Tribunal of 7 February 2006* (n 317).

³⁵⁸ Bartoszewicz (n 335) s 7.

³⁵⁹ *Eg* Łętowska (n 309) 93.

³⁶⁰ Krzywoń (n 330) s II.4, II.6.

Interferences, limits and examples of prohibitions or violations

Scientific freedoms under Article 73 of the Constitution are not absolute. Commentators recognized two types of limits imposed upon them: (1) internal limits resulting from the nature of scientific activity itself, and (2) external limits resulting from the need to protect other rights and freedoms.³⁶¹ Internal limits are based on ethical and methodological research ethos.³⁶² These include, for example, exclusion of data falsification or fake authorship from the protection of Article 73. Such limits can be perceived as limits of the material scope of the right as such (see 'Material scope of the right').³⁶³ The Constitutional Tribunal has previously asserted that freedoms protected by Article 73 are tied to a particular responsibility of academic employees and institutions of higher education for providing education and conducting research at the highest possible level.³⁶⁴ While no specific external limits are included in the provision itself, the freedoms can also be limited based on Article 31(3) of the Constitution that states: 'Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights'.³⁶⁵ The provision requires that any limitations are proportionate to the aim pursued.³⁶⁶ Article 73 remains also explicitly limited by Article 39 of the Constitution that prohibits scientific experimentation on a person without their voluntary consent. Importantly, this provision does not introduce a general prohibition of scientific experimentation on humans, but rather introduces an important requirement for such research – once met, the research will enjoy the protection under Article 73 on general terms.³⁶⁷

Freedom of teaching can also be limited in circumstances set out in Article 31(3) of the Constitution. This freedom must be considered in light of the needs of the recipients of the knowledge, and therefore – where relevant – should be interpreted in light of Article 70 (right to education).³⁶⁸

Institutional autonomy under Article 70(5) is also not absolute, as clear from the provision itself. The Constitution grants the legislator the right to outline its limits in a statute. However, any such regulation must respect the conditions set out in Article 31(3) of the Constitution. For example, autonomy can find its limits in the constitutional rights guaranteed for trade unions under Article 59 of the Constitution³⁶⁹ or in the constitutional principle of equality (Article 32(1)).³⁷⁰

Based on Article 233(1) of the Constitution, the freedoms protected under Article 73 or institutional autonomy under Article 70(5) can be further limited in times of martial law and states of emergency.

A few cases concerning the rights and freedoms in question have been considered by the Constitutional Tribunal and can be references as examples. In some of them, the Constitutional Tribunal held that certain matters, such as the stability of employment or granting of academic titles, lie outside of the scope of application of Article 73 (see the section on 'Material scope of the right' above). However, in reference to other constitutional provisions, the Tribunal held it as constitution-conform to limit the possibility of academic teachers being employed in several positions at different universities or to leave the choice of the form of employment (a labour contract or an academic

³⁶¹ Żukowski and Jarosz-Żukowska (n 307) 727.

³⁶² *ibid.*

³⁶³ *ibid.* 728.

³⁶⁴ *Judgment of the Constitutional Tribunal of 28 April 2009* (n 318).

³⁶⁵ Brzozowski (n 327) s I.6; Żukowski and Jarosz-Żukowska (n 307) 728.

³⁶⁶ Eg Łętowska (n 309) 91; Garlicki and Derlatka (n 311) s 12.

³⁶⁷ Monika Florczak-Wątor, 'Art. 39' in Piotr Tuleja (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz*, wyd. II (LEX 2021).

³⁶⁸ Garlicki and Derlatka (n 311) s 13; Żukowski and Jarosz-Żukowska (n 307) 738–740.

³⁶⁹ *Judgment of the Constitutional Tribunal of 28 April 2009* (n 322).

³⁷⁰ Krzywoń (n 346) s II.5.

appointment) to autonomous decisions of the institutions.³⁷¹ The Tribunal considered also whether it is proportionate to subject access to specific historical archives for research purposes to the requirement of presenting a recommendation of an academic professional working in a specific field, as opposed to an unconstrained access granted to these professionals as such. The Tribunal noted that Article 73 applies to all people conducting research, not only professionals (see also the section on 'Right holders' above), but the requirement is a proportionate limitation of the freedom, taking account of the need to protect the privacy of others and guarantee the genuine character of the requests.³⁷² Relevant remarks might at times be found also in judgments concerned with other constitutional provisions.³⁷³

Relationship with other constitutional rights

Freedom of scientific research and freedom of teaching are included in the same provision of the Constitution as the freedom of artistic creation and the right to enjoy the products of culture. The drafters recognized that all these freedoms concern creative activities, however the doctrine consistently notes that – despite this broad similarity – their connections are rather loose as each freedom is characterised by significantly different features.³⁷⁴ Article 73 is nevertheless related to many other constitutional provisions. This concerns, for example, Article 54 (freedom of expression and prohibition of censorship), Article 61 (the right to obtain information on the activities of public authorities) or Article 74(3) (the right to be informed of the quality of the environment and its protection).³⁷⁵ Insofar the scientific activity is performed in a professional way, it also benefits from the protection of the freedom to choose and pursue an occupation (Article 65(1) of the Constitution).³⁷⁶ As discussed above (see the section on 'Interferences, limits, and examples of violations'), Article 73 remains explicitly limited by Article 39 that prohibits scientific experimentation without one's voluntary consent.

Institutional autonomy, expressed in Article 70(5) of the Constitution, is closely related with freedom of research and teaching from Article 73. As already noted, it is also inherently tied to the right to education, expressed in Article 70 as such (see also 'material scope of the right'). Further, it is shaped by other constitutional provisions, such trade union rights or the principle of equality.³⁷⁷

Notable recent developments or debates³⁷⁸

One can name several recent developments that raise, according to national commentators, constitutional questions. The first one concerns the so-called "Academic Freedom Package", a legal amendment of the higher education legislation introduced with the objective to better protect academic freedom.³⁷⁹ The amendment has been said to negate the constitutional distinction between the scientific freedom (subject to methodological rules of the scientific processes) and the general freedom of speech (free of such constraints), and to 'relativize the paradigm of truth'.³⁸⁰ Second, concerns were raised about the use of strategic lawsuits against academics involved in

³⁷¹ *Judgment of the Constitutional Tribunal of 28 April 2009* (n 318).

³⁷² *Judgment of the Constitutional Tribunal of 25 November 2008* (K 5/08) OTK-A 2008, nr 9, poz 159.

³⁷³ *Eg Judgment of the Constitutional Tribunal of 25 July 2013* (SK 61/12) OTK-A 2013, nr 6, poz 84.

³⁷⁴ Brzozowski (n 312) s I.2.

³⁷⁵ *Eg ibid*; Żukowski and Jarosz-Żukowska (n 307) 727.

³⁷⁶ Brzozowski (n 312) s I.2.

³⁷⁷ Krzywoń (n 330) s II.5.

³⁷⁸ This Section takes as a starting point the chapter by Adam Bodnar and Dominika Kuna, 'Legal protection of academic freedom and its philosophical underpinnings in Poland' as submitted to the editor for publication in V Kosta (ed), *Academic Freedom: Constructing its Content For EU Law* (Cambridge University Press, forthcoming).

³⁷⁹ See also Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13) 175.

³⁸⁰ Łętowska (n 309) 94–95.

certain strands of research.³⁸¹ While ordinary courts have so far upheld academic freedom of academics involved in the publicised cases, such lawsuits – in particular when combined with other systemic issues – 'play an important role in the process of dismantling the rule of law and the weakening of constitutional rights and freedoms'.³⁸² The third debate stemmed from a public announcement of the former Minister of Education and Science that he would cut funding to the Institute of Philosophy and Sociology of the Polish Academy of Sciences, following an interview given by one of its employees.³⁸³ A letter of support for the Institute and its professor, signed by more than 2700 researchers, directly alleged that the Minister's actions 'undermine the freedom of scientific research guaranteed by Article 73 of the Polish Constitution'.³⁸⁴ While not without hurdles, the Institute did eventually receive the funding.³⁸⁵ This notwithstanding, both strategic lawsuits and the use of funding against academic freedom have been identified as a new challenge for the protection of academic freedom as a constitutional right, potentially calling for a revision of the existing doctrine and/or practices as they do not fit easily into the narrow understanding of academic freedom as a negative freedom.³⁸⁶

4.2.5. Comparative remarks

Part II of this study has discussed in more depth the legal protection of academic freedom (understood functionally) in four EU Member States. The discussion reveals that these jurisdictions share some commonalities in a broad sense, but some differences – with important implications – remain. The following paragraphs discuss these commonalities and differences in simplified terms, while encouraging the reader to consult the respective chapters on each jurisdiction for a more detailed account of the national doctrines.

One important observation emerging from the analysis concerns the fact that constitutional concepts used are not decisive for determining whether national constitutional law protects (the equivalent of) academic freedom nor for determining the scope of such protection. Constitutions of Germany, Greece, and Poland mention science, research, and/or teaching as objects of protection of a separate constitutional provision. However, their natures and/or scopes of protection are not the same. Only Greece differentiates scientific freedom from academic freedom (applicable within the university context specifically). Both Poland and Greece have a separate constitutional provision protecting higher education institutions (operating with concepts of 'institutional autonomy' and 'self-governance' respectively), lacking in the German *Grundgesetz*. Nevertheless, institutional protection is granted also by the German constitutional law, derived from the general Article 5(3) GG protecting science, research, and teaching. 'Academic freedom' is not embedded in Dutch constitutional law and does not have a direct functional equivalent. However, certain dimensions thereof can be protected under other constitutional provisions, e.g. freedom of expression. The Dutch literature observes that the 'largely unwritten character' of academic freedom might blur its meaning and obstruct its protection,³⁸⁷ with its enforceability, nature and scope currently under discussion.

³⁸¹ For an overview, see Adam Bodnar and Aleksandra Gliszczyńska-Grabias, 'Strategic Lawsuits against Public Participation (SLAPPs), the Governance of Historical Memory in the Rule of Law Crisis, and the EU Anti-SLAPP Directive' (2023) 19 European Constitutional Law Review 642.

³⁸² *ibid* 662.

³⁸³ For an overview, see Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13) 176–177.

³⁸⁴ 'Protest w sprawie ataku na Prof. Barbarę Engelking' <https://docs.google.com/forms/d/e/1FAIpQLSdPYuTE9ViB_SU_p8H5k6YYnB_B9hBfaLbQbYiSthNdgd0QQOg/viewform?fbclid=IwAR3fsM0EdQedGtTUZFBdjXwl_b8eluVXG2ok8zZ4-O4OkCvGI4p-h_YCPi4> accessed 30 November 2024. See also Bodnar and Kuna (n 378).

³⁸⁵ For an overview, see Maassen and others, 'EP Academic Freedom Monitor 2023' (n 13) 176–177.

³⁸⁶ Łętowska (n 309) 99–100.

³⁸⁷ Stoker, Stolker and Waaldijk (n 244) 37.

Where national constitutions in Germany, Greece, and Poland mention the protection of scientific research, there are significant overlaps in how this is understood. Such protection generally is granted to everyone – not only employees of academic institutions – involved in such scientific activities. The scientific nature of research or teaching is similarly determined in light of the methodological requirements of the scientific process, with the freedom of teaching seen in the broader context of the provisions. Because of that, the freedom is not inherently tied to the academic sector. An equivalent freedom is not expressed in Dutch constitutional law and Article 15(3) of the ICESCR (freedom indispensable for scientific research) is not considered to be legally enforceable. Some differences can however be observed regarding who can be the holder of such rights. In Germany, the protection extends to individuals, institutions or even smaller academic units. In Poland and Greece, the 'scientific freedom' is generally seen as an individual right, with separate provisions protecting institutions. However, in Poland these provisions cover explicitly only higher education institutions, which opens the question whether other type of institutions (e.g. research institutes) are also protected – or, alternatively, under which provisions. Further, only Greece recognizes constitutionally a separate 'academic freedom' applicable within the universities, and so does the Dutch higher education law. Nevertheless, also in Germany and Poland the special status of higher education staff is generally recognized and might influence the interpretation of the broader provisions on scientific freedoms. National laws might also differentiate regarding the scope of protection granted to different subjects, and to different categories of academic staff or institutions more specifically, with lines drawn in different ways in different jurisdictions (and depending also on the organisation of the higher education system).

Some open questions remain also regarding the position of students as academic/scientific freedom rights-holders. Under scientific freedoms, students are generally subjects of protection insofar they are involved in materially relevant research or teaching activities. In Greece, they are further rights-holders of academic freedom (as a specific freedom) 'to the extent that characterises their mission and institutional role within the university community'.³⁸⁸ However, none of the jurisdictions authoritatively recognizes a general 'freedom of learning' or 'freedom of study' – seen as part of 'academic freedom' under the 'onion model' – as part of the scientific or academic freedoms. Elements of such freedoms might, however, be protected by these or other provisions, e.g. the right to education (Poland) or the right to choose a profession (Germany). In Poland, students' right to participate in the governance of higher education institutions has been further derived from institutional autonomy, but this right has not been explicitly deemed to have a constitutional nature in Greece and the matter has been left open in Germany, despite students being perceived as independent members of the university community in these jurisdictions as well. Dutch higher education law sees students as academic rights-holders within the context of their institutions, but the nature of these rights has not been authoritatively clarified.

One further difference of far-reaching importance is the approach of different jurisdictions to the question of positive obligations imposed on the state, e.g. regarding provision of sufficient resources or adequate organisational frameworks. Such obligations have been generally accepted in Germany and Greece. In Poland, they are recognized in reference to institutional autonomy, but their existence – discussed by some scholars – has not yet been authoritatively clarified for the individual scientific freedoms under Article 73 of the Constitution. The picture is even less clear in the Netherlands, where academic freedom protection is derived from various provisions of national and international law and in many dimensions rests on secondary legislation only. This issue seems to intertwine with broader questions about the mission of the higher education or scientific sectors and their relationships with the state. These remain unexplored on both national and European level, but might have implications for the scope and nature of rights granted to different rights-holders.

³⁸⁸ Vlachopoulos, (n 200) 26.

Importantly, in all analysed jurisdictions, academic or scientific freedoms are not unlimited, albeit the exact nature of justifiable limitations might vary. Such limits emanate in particular from the constitutions themselves and concern the protection of constitutional rights and freedoms of others. In Germany and Greece, the constitutions mention additionally that certain elements of such freedoms do not exempt anyone from allegiance to the constitution (freedom of teaching in Germany, academic freedom in Greece). Nevertheless, the relevant provisions in the two constitutions might not be understood in the exact same way.³⁸⁹

Without aiming to be exhaustive, the analysis highlights what questions about the scope and nature of academic freedom in EU law might need to be answered in the future. This concerns first the understanding of academic freedom as a fundamental right. It is worth pointing out that Article 13 of the EU Charter of Fundamental Rights includes two sentences: 'The arts and scientific research shall be free of constraint', and 'Academic freedom shall be respected'. Further, it includes other potentially relevant provisions, such as Article 14 on the right of education. The discussion on the common constitutional traditions, mandated by Article 52(4) of the Charter, might help to clarify the meaning of and relationships between these different rights and freedoms. Second, this analysis might also inform debates about future normative proposals, highlighting the most fundamental challenges and tensions – as well as the solutions found to address them – that have already emerged in national jurisdictions. While the analysis in itself does not offer clear suggestions on the best normative choices to be made, it showcases the interplay of different legal features of the national legal systems that factor into the meaning and scope of protection offered.

³⁸⁹ Papadopoulou, 'Greece' (n 200) 15.

5. The Union's scope of action on academic freedom

KEY FINDINGS

- While the EU has only a supplementary competence in education and harmonisation of the Member States' laws and regulations is excluded (Art. 165(4) TFEU), it has become active by adopting supporting measures and has participated in intergovernmental processes outside the EU legal framework (the Bologna Process; the Lisbon Recognition Convention). When the Union acts, also in the context of education, it is bound by the EU Charter of Fundamental Rights, including its Article 13 (on academic freedom).
- Other (than education) EU competences can have an impact on national education laws and policies, and notably the rules of the EU Internal Market given that privately funded (unlike publicly funded) education can be qualified as a 'service' within the meaning of the Treaties and situations involving the free movement of services or the freedom of establishment can implicate academic freedom (e.g. *Commission v Hungary* [C-66/18]; *Cilevičs* [C-391/20] based on the Advocate General Opinion). As a corollary, legislative action could be adopted in these fields, provided the necessary conditions for having recourse to the possible legal bases are fulfilled.
- The EU has a shared competence in research and a mandate and legal basis to establish measures necessary for the implementation of the European research area. When having recourse to this legal basis it will have to comply with the principle of proportionality and subsidiarity.

5.1. Competence

The text below provides an overview on the question of competences. Article 6 TFEU sets out a supporting EU competence in relation to education, with harmonisation explicitly prohibited by Article 165(4) TFEU, and Article 4 TFEU a shared competence in relation to research.

5.1.1. Education

Competence in education based on the EU's supporting powers

The EU has a competence in education based on Art. 165 TFEU. The nature of this competence is such that the Union can only carry out "actions to support, coordinate or supplement the actions of the Member States" (Art. 6(e) TFEU). The Union shall take incentive measures to achieve a series of objectives listed in Art. 165 TFEU, but the harmonisation of the laws and regulations of the Member States is excluded (per Art. 165(4) TFEU).

The first paragraph of Art. 165 TFEU sets out both an obligation for a certain type of action and the obligation to respect national powers: The Union "shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action" but at the same time it has to "fully respect[...] the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity." Art. 165(2) TFEU contains further specific aims in relation to education. Union action shall thus be aimed at:

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- developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,
 - encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,
 - promoting cooperation between educational establishments,
-

-
- developing exchanges of information and experience on issues common to the education systems of the Member States,
 - encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,
 - encouraging the development of distance education,
 - ..."
-

As has been noted in academic literature,³⁹⁰ while the EU has limited powers here, it can and has an impact on the national level in the field of education, such as through funding measures. Funding programmes 'can exert a great deal of power over domestic authorities, which may feel compelled to modify their cultural agendas in order to gain access to Community financial resources'.³⁹¹

It has also been noted that the EU has adopted a number of supporting measures,³⁹² and participated via the intergovernmental process in European integration in the context of the Council of Europe, and more specifically in the Bologna process and in the Lisbon Recognition Convention.

Commentators have noted that EU action in education has often been taken in the form of the 'open method of coordination', at times described as 'soft law'. It is 'a form of intergovernmental policy-making that does not result in binding EU legislative measures and it does not require EU countries to introduce or amend their laws'.³⁹³ It can entail acts such as 'guidelines, indicators, best practice, and monitoring and evaluation'.³⁹⁴ Research provisions of the Treaty have been said to be among those that 'allude most clearly' to the open method of coordination, but the method can also be grounded in Article 165(1) TFEU on education, and it has in fact often been used in this field.³⁹⁵ It is at times asserted that the open method of coordination 'takes place in areas which fall within the competence of EU countries, such as [...] education'.³⁹⁶ However, many commentators have argued that despite its use in such areas, the open method of coordination should respect the principle of conferral.³⁹⁷ The legal character of its outputs – be it of hard or soft nature – has also been questioned.³⁹⁸

³⁹⁰ Eg Sacha Garben, 'Article 165 TFEU', in Manuel Kellerbauer, Marcus Klammert, Jonathan Tomkins (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford Academic Books, Oxford University Press 2019) 1424, 1426ff.

³⁹¹ Evangelia Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies* (Brill 2007) 37, fn 40 <<https://brill.com/display/title/14576>> accessed 5 December 2024.

³⁹² Garben, (n 390) lists the European Credit Transfer System for Higher Education (ECTS); Europass, the European Qualifications Framework and the Diploma Supplement.

³⁹³ 'Open Method of Coordination' (*EUR-Lex*) <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html> accessed 5 December 2024.

³⁹⁴ Manuel Kellerbauer, Marcus Klammert and Jonathan Tomkin, 'Article 6 TFEU' in Manuel Kellerbauer, Marcus Klammert and Jonathan Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary* (2nd edn, Oxford University Press 2024) para 11 <<https://academic.oup.com/book/58863/chapter/492282525>> accessed 5 December 2024.

³⁹⁵ Bruno de Witte, 'The Place of the OMC in the System of EU Competences and Sources of Law' (2018) 3 *European Papers – A Journal on Law and Integration* 207, 208 <www.europeanpapers.eu/en/e-journal/place-omc-in-system-of-eu-competences-and-sources-law> accessed 13 September 2022.

³⁹⁶ 'Open Method of Coordination' (n 393).

³⁹⁷ Eg De Witte (n 395).

³⁹⁸ *ibid.*

When the EU acts (in the context of education) in whatever form it is bound by the EU Charter of Fundamental Rights. The Charter binds the EU in all of its activities (Art. 51(1) CFR), also when an EU institution acts outside the legal framework of the EU.³⁹⁹ The Charter includes the obligation to respect the rights contained therein, including academic freedom, and it also includes a mainstreaming obligation in the sense of a "public sector duty to promote compliance with fundamental rights obligations [here academic freedom obligations] as derived from the Charter".⁴⁰⁰

Competence in education based on the EU's internal market powers

Another route of EU impact on education at national level is indirect, namely, via its actions in other policy areas, and notably via the law of the internal market (and more specifically the application of the rules on free movement of services and the freedom of establishment), including the relevant case law of the Court of Justice of the EU. The logic of EU Internal Market law then also foresees that the EU legislator can take legislative action within this field. It must be noted however that based on established case law publicly funded education falls outside the scope of free movement of services and establishment in the sense that such courses do not qualify as a 'service' for the purposes of the free movement rules of the EU internal market.⁴⁰¹ This is different for privately funded education.⁴⁰² As held by the Court of Justice "courses offered by certain establishments forming part of a system of public education and financed, entirely or mainly, by public funds are excluded from the definition of services within the meaning of article Article 50 EC [now Article 57 TFEU] (...). However, courses given by educational establishments essentially financed by private funds, notably by students and their parents, constitute services within the meaning of Article 50 EC [now Article 57 TFEU], since the aim of those establishments is to offer a service for remuneration. It is not necessary, in that respect, for that private financing to be provided principally by the pupils or their parents. Article 50 of the Treaty does not require that the service be paid for by those for whom it is performed."⁴⁰³

The application of the EU fundamental freedoms (Art. 49 TFEU on freedom of establishment and Art. 16 of the Services Directive)⁴⁰⁴ was a route (next to the WTO provisions) by which the situation in case *Commission v. Hungary (Lex CEU)*⁴⁰⁵ came within the scope of EU Law.⁴⁰⁶ This was also the reason that Article 13 of the EU Charter was triggered (as it is applicable only within the scope of EU law) which mandates respect for academic freedom.⁴⁰⁷ The case demonstrates the long-established position that the EU applicable standard of fundamental rights, here academic freedom protection (per Art. 13 of the EU Charter), will be applicable to situations that fall within the scope of EU law in adjudication. Another area of 'negative' internal market integration with an impact on

³⁹⁹ C-8/15 P to C-10/15 P *Ledra Advertising Ltd and Others v European Commission and European Central Bank* [2016] ECLI:EU:C:2016:701; see discussion in Vasiliki Kosta, NWO Vidi grant proposal 'The EU Fundamental Right to 'freedom of the arts and sciences': exploring the limits on the commercialisation of academia' (2020), 5 <<https://scholarlypublications.universiteitleiden.nl/handle/1887/3656689>>

⁴⁰⁰ Vasiliki Kosta, 'Fundamental Rights Mainstreaming in the EU' in Ippolito and others (ed), *The EU and the Proliferation of Integration Principles under the Lisbon Treaty* (Routledge 2018).

⁴⁰¹ Case 263/86 *Humbel* [1988] EU:C:1988:451.

⁴⁰² C-76/05 *Schwarz* [2007] EU:C:2007:492.

⁴⁰³ *ibid*, summary of the judgment, para 1, paras 39 – 40 of the judgment.

⁴⁰⁴ Directive 2006/123/EC of the European Parliament and of the Council on services in the internal market, O.J. 2006, L 376/36 (Services Directive).

⁴⁰⁵ *Commission v Hungary* (n 3).

⁴⁰⁶ The case involved amendments to Hungarian Higher Education Act 2011 which imposed new restriction on higher education institutions and in practice resulted in the move of Central European University from Budapest to Vienna. For a detailed analysis see V Kosta and D Piqani (n 29).

⁴⁰⁷ C-391/20 *Boriss Cilevičs and Others* [2022] EU:C:2022:638, national language policy in higher education came within the scope of EU law via the application of the internal market freedoms. While the Advocate General invoked academic freedom, the Court did not take that argument into account in its reasoning.

national level education policies is the field of student mobility which entails equal treatment of mobile EU students as regards access to education and tuition fees charged.⁴⁰⁸

The Treaties contain legal bases for legislative action in the field of freedom of establishment, such as Art. 53(1) TFEU regarding the mutual recognition of diplomas, certificates and other evidence of formal qualification but also "for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons." It has been noted in academic literature that unlike professional recognition, academic recognition of diplomas is an area where there is no EU legislation⁴⁰⁹ and that "[a]cademic recognition is often deemed beyond the EU's legislative powers, only subject to potential 'incentive measures' on the basis of Article 165 TFEU. Although the merits of this distinction could be challenged."⁴¹⁰ As regards the liberalisation of specific services Art. 59 TFEU may be further relevant, although paragraph 2 notes that "priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods."

The idea that action on academic freedom could be potentially taken based on an internal market legal basis has already been articulated.⁴¹¹

What is more generally true in EU internal market law is that the EU legislature has a competence, based on the internal market, to harmonise national laws in pursuit of market building and market correcting ends where there is a variation of national rules causing obstacles to trade integration, even if the obstacles to trade are lawful.⁴¹² In theory, recourse to Article 114 TFEU as a legislative competence for the promotion of non-market values such as fundamental rights (including academic freedom protection) is possible, provided a series of conditions are fulfilled, which can be summarised in the following way:

"First, there must be (excessively) different levels of [academic freedom] protection at the domestic level, which are liable to put the unity and therefore the establishment and functioning of the internal market at risk or distort competition (precondition for harmonisation). Second, in order to prevent such a risk, harmonising measures can be adopted which need to remove these obstacles to trade in effect (and thus improve the conditions for the establishment and functioning of the internal market). Third, harmonising measures may aim at preventing future obstacles to trade resulting from the divergent development of national law; but, such emergence must be likely and the measure in question must be designed to prevent them."⁴¹³

⁴⁰⁸ C-293/83 *Françoise Gravier v City of Liège* [1985] ECLI:EU:C:1985:69 and subsequent case law.

⁴⁰⁹ See 'Recognition of academic diplomas' (*Your Europe*) <https://europa.eu/youreurope/citizens/education/university/recognition/index_en.htm#:~:text=There%20is%20no%20automatic%20EU,further%20course%20of%20study%20there>

⁴¹⁰ Garben (n 390) 1428.

⁴¹¹ Eg K Deketelaere, 'It's time to create the European Knowledge Area' (*Research Professional News* 12 September 2024) available at <www.researchprofessionalnews.com/rr-news-europe-views-of-europe-2024-9-it-s-time-to-create-the-european-knowledge-area/>.

⁴¹² Vasiliki Kosta, *Fundamental Rights in EU Internal Market Legislation* (Hart 2015) Chapter 1, 5. With reference to Stephen Weatherill, 'The Internal Market' in Steve Peers and Angela Waard (eds), *The EU Charter of Fundamental Rights: Politics, Law and Policy* (Hart Publishing 2004).

⁴¹³ Kosta (n 412) Chapter 2, 30.

Where an Art. 114 TFEU based legal act "has already removed any obstacles to trade in the area that it harmonises, the (...) [EU can] adapt(...) that act to any change in circumstances of development of knowledge (...)." ⁴¹⁴

However, it must be noted that Art. 114 TFEU is to be used 'save where otherwise provided in the Treaties'. This means that an available more specific legal basis (*lex specialis*) takes precedence over Art. 114 (1) TFEU (e.g. Art. 62 TFEU for services). Furthermore, according to Art. 114(2) TFEU the legal basis spelled out in Art. 114(1) TFEU does not apply to "fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons". In these areas recourse can be had to Art. 115 TFEU, based on which directives can be adopted "for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market" under the unanimity requirement.

5.1.2. Research

The EU has a competence in research which it shares with the Member States. As stated in Art. 4(3) TEU "in the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs." Art. 179(1) TFEU makes the establishment of the European research Area (ERA) mandatory: "the Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties." According to Article 181(1) TFEU "the Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policy and Union policy are mutually consistent. Paragraph two of the same provision also sets out the role of the Commission which "may take any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed."

Art. 182(5) TFEU provides a legal basis for legislative action "as a complement to the activities planned in the multiannual framework programme", and based on which it "shall establish the measures necessary for the implementation of the European research area." A briefing of the European Parliament Research Service from 2016 has noted that the European Parliament "has repeatedly requested and the Commission has suggested making use of Article 182(5) for adopting legislation to implement the ERA concept. However, this article has not been used so far due to opposition from the Council." ⁴¹⁵

In January 2024, the European Parliament adopted a 'resolution with recommendations to the Commission on promotion of the freedom of scientific research in the EU'. ⁴¹⁶ Among others, it requested the Commission to submit a proposal for an act on the freedom of scientific research on the basis of Art. 182(5) TFEU and Art. 179(1) TFEU. ⁴¹⁷

⁴¹⁴ C-58/08 *Vodafone* [2010] EU:C:2010:321, para 34; C-491/01 *British American Tobacco* [2002] EU:C:2002:741, paras 77 & 78.

⁴¹⁵ V Reillon, 'Research in the European Treaties' (Briefing, European Parliamentary Research Service, March 2016) 1, 8.

⁴¹⁶ 'Promotion of the freedom of scientific research in the EU' [2023/2184\(INL\)](#) (Legislative Observatory, European Parliament, 2023).

⁴¹⁷ For a discussion of this proposal also in light of (tensions with) the principle of conferral given the interdependency between research and education see Kosta and Ceran (n 31).

5.2. Exercise of Competence

EU actions – including harmonisation – can vary in their form, scope and intensity.⁴¹⁸ They might be exhaustive, encompassing the entirety of a given issue, or partial, dealing only with some of its aspects. They might also provide for 'maximum harmonisation', imposing fixed rules on Member States, or 'minimum harmonisation', allowing for more discretion.⁴¹⁹ Decisions on the form, scope and intensity of a measure are influenced not only by the matter in question, but also by the two principles on the exercise of EU competences set out in Article 5 TEU: subsidiarity (Article 5(3) TEU) and proportionality (Article 5(4) TEU).

Subsidiarity, applying to areas of non-exclusive competences (such as research) determines whether the EU competence can be used. In principle, the EU can 'act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level'. The necessity of the EU's action is a complex legal concept, but it is not to be denied – among others – only because an intergovernmental cooperation between Member States already takes place.⁴²⁰ This might be kept in mind in light of, for example, the parallel works on academic freedom taking place within the Council of Europe. The added value of the EU's intervention is further to be assessed quantitatively and qualitatively, also in reference to EU objectives and values.⁴²¹ Proportionality determines the extent to which the EU competence might be used, as 'the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties'. Thus, it concerns both the substance of an action and its form (e.g. whether it takes the form of a directive or a recommendation), that need to meet the criteria of suitability, necessity, and proportionality *stricto sensu*.⁴²² The two principles do overlap in some dimensions,⁴²³ but also maintain a distinct role.⁴²⁴ The detailed discussion of subsidiarity and proportionality is beyond the scope of this report, but they will have implications for the determination of the exact content and form of any EU action on academic freedom.

⁴¹⁸ Eg Marcus Klamert, 'What We Talk About When We Talk About Harmonisation' (2015) 17 *Cambridge Yearbook of European Legal Studies* 360, 362.

⁴¹⁹ *ibid.*

⁴²⁰ Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin, 'Article 5 TEU' in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and Charter of Fundamental Rights: A Commentary* (2nd edn, Oxford University Press 2024) para 28 <<https://academic.oup.com/book/58863/chapter/492270538>> accessed 5 December 2024.

⁴²¹ *ibid.* 29.

⁴²² *ibid.* 36, 40.

⁴²³ For a brief overview see 'Division of Competences within the European Union (*EUR-Lex*)' <<https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html>> accessed 5 December 2024; Kellerbauer, Klamert and Tomkin, 'Article 5 TEU' (n 420). See also Ian Cooper, 'The Watchdogs of Subsidiarity: National Parliaments and the Logic of Arguing in the EU*' (2006) 44 *Journal of Common Market Studies* 281; Stephen Weatherill, 'The Limits of Legislative Harmonization Ten Years after Tobacco Advertising: How the Court's Case Law Has Become a "Drafting Guide"' (2011) 12 *German Law Journal* 827; Robert Schütze, 'Subsidiarity After Lisbon: Reinforcing the Safeguards of Federalism?' (2009) 68 *The Cambridge Law Journal* 525 arguing, from different perspectives, for benefits of coupling the subsidiarity and proportionality analysis.

⁴²⁴ Vasiliki Kosta, 'The Principle of Proportionality in EU Law: An Interest-Based Taxonomy' in Joana Mendes (ed), *Executive Discretion and the Limits of Law* (Oxford University Press 2019).

6. Conclusion

Chapter 3 of this study comprises an overview of the constitutional legal provisions on academic freedom protection across the EU Member States, with reference to the 'union model' as conceptualised in previous EP studies.⁴²⁵ This overview is an updated synthesis of previously existing data, thus aiming to provide an updated knowledge basis. It results that most Member States' Constitutions do protect elements of the 'union model' definition of academic freedom conceptualised in previous EP publications, although they rarely use the concept of 'academic freedom' as an object of protection explicitly. Several Member States do not have explicit provisions on scientific or academic freedom in their constitutional law, although academic freedom or elements thereof might be protected under other provisions, in particular on freedom of expression and/or the right to education. However, there are limits as to the kind of insights that can be gained from overviews such as the one provided in chapter 3. The 'union model' and other theoretical models do not need to correspond to the *legal* concept(s) of academic freedom or its equivalents in national law, which are also different from other (theoretical, professional) definitions existing at the national or supranational level. To gain comprehensive insights into academic freedom protection, the interplay of different constitutional provisions, existing court jurisprudence, and other authoritative sources needs to be taken into account.

Chapter 4 of this study providing four in-depth case studies (Germany, Greece, The Netherlands, Poland) demonstrates this point. Even though, within the limited space in this report, these case studies only sketched out constitutional protection and omitted an analysis of all relevant sources at secondary law level. At the same time, these case studies also highlight some of the questions about the scope and nature of academic freedom as an EU fundamental right that might need to be answered. The constitutional traditions common to the EU Member States will have to inform the EU standard based on Article 52(4) CFR of the Charter referring to those traditions. The four in-depth case studies conducted in the *de jure* report might provide a point of reference for future research. The analysis of the *de jure* protection of academic freedom across the EU Member States may be a source of inspiration for identifying key challenges to academic freedom in national constitutional law debates that should be addressed also in EU law. It might also inform debates about future normative proposals, highlighting effective solutions to such challenges that have already emerged in national jurisdictions.

Chapter 5 of this study explored the Union's scope of action on academic freedom. It noted the supplementary nature of the EU's competence in education, with harmonisation of Member States' laws and regulations being excluded, while important 'supporting measures' have been adopted. It also noted the EU's shared competence in research with an explicit mandate to adopt measures necessary for the establishment of the European research area, and the potential of other fields of EU law, and notably Internal Market law, to implicate academic freedom protection.

All of EU action, whether within existing legal frameworks or aimed at adopting new ones, including that taken specifically to protect and promote academic freedom, will have to comply with the Art. 13 CFR standard of academic freedom. Given the scarcity of authoritative sources on the scope and nature of this freedom in EU law, its key dimensions could be further clarified, with reference to the constitutional traditions common to the Member States, as noted above. Such work should be differentiated from work on legislative definitions of academic freedom as well as from attempts to define academic freedom for monitoring or other purposes.

A combined reading of this *de jure* report and the *de facto* report of the EP Academic Freedom Monitor 2024 resulted in reflections for policy options which have been compiled in the STOA

⁴²⁵ See Section 3.1. above.

Options Brief – Academic Freedom Monitor 2024. The policy options can also be found in Section 2.4 of this report.

7. Glossary

Case law: see **jurisprudence**

De facto academic freedom: reflects the state of academic freedom in reality, in an empirical sense⁴²⁶

De jure academic freedom: represents the state of legal protection of academic freedom⁴²⁷

Horizontal application/effect: application of fundamental rights between private parties of a legal dispute; as the state is the primary duty-bearer in respect of fundamental rights obligations (vertical relationship between the state and private parties), it concerns the question whether private parties can be bound to such obligations as well (horizontal relationship between private parties)

Jurisdiction: a Member State (or another area) where a particular set of laws applies

Jurisprudence: a collection of cases (of a particular court or in a particular jurisdiction) and principles established therein

Legal doctrine: 'product' of 'a systematic exposition of the principles, rules and concepts governing a particular legal field or institution and analyses [of] the relationship between these principles, rules and concepts with a view to solving unclarities and gaps in the existing law'⁴²⁸

Material scope of right/freedom: the scope of a right or freedom that determines specific situations covered by this right or freedom

Negative right/freedom: requires the duty-bearer (usually the state) to refrain from interference, as not to prevent the rights-holder from exercising relevant actions available to them; compare to **positive right/freedom**

Personal scope of right/freedom: the scope of a right or freedom that determines who is covered by (or can derive claims from) this right or freedom

Positive right/freedom: requires the duty-bearer (usually the state) to act in a certain way to realise the right or freedom – to make their exercise possible for the rights-holders, e.g. by allocating a sufficient amount of resources or ensuring transparent procedures; **compare to negative right/freedom**

⁴²⁶ See also Kováts and Rónay, 'How Academic Freedom Is Monitored – Overview of Methods and Procedures' (n 5) 31.

⁴²⁷ See also *ibid.*

⁴²⁸ Jan M Smits, 'What is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research' in Rob van Gestel, Hans-W. Micklitz & Edward L. Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Maastricht European Private Law Institute Working Paper No. 2015/06, Cambridge University Press 2017), available at SSRN: <https://ssrn.com/abstract=2644088> or <http://dx.doi.org/10.2139/ssrn.2644088>.

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Bonn Declaration on Freedom of Scientific Research adopted at the Ministerial Conference on the European Research Area on 20 October 2020 in Bonn

Academic freedom is widely recognised as a fundamental value of contemporary higher education and research, and is often presented as a prerequisite for well-functioning democratic societies. However, in recent years, major concerns have been expressed by various stakeholders about the state of academic freedom in the European Union. The European Parliament launched an annual EP Academic Freedom Monitor in 2022, to help improve the promotion and protection of academic freedom in the European Union. This report presents one of the two studies conducted in the 2024 edition.

This study firstly provides an overview of the constitutional legal provisions of academic freedom across all EU Member States. Secondly, it provides an in-depth analysis of the legal protection of academic freedom in four EU Member States. Thirdly, it explores the Union's scope of action on academic freedom protection at EU level.

On the basis of both studies, this report proposes EU-level policy options for possible legislative and non-legislative initiatives to support academic freedom in the EU.

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