

Challenges to academic freedom as a fundamental right

LERU advice paper
April 2023

Executive Summary

The protection of academic freedom has been a key priority for the League of European Research Universities (LERU) since its creation in 2002. In the daily application of this freedom, its legal ins and outs are of fundamental importance. Reason why LERU in 2010 published a legal paper on academic freedom as a fundamental right.

Twelve years later, LERU presents an update of its 2010 paper, since the protection of academic freedom is still not self-evident¹. We have observed that in the last decade new challenges for academic freedom have emerged. Without any ambition of being complete, reference can be made to tensions concerning deplatforming and so-called “cancel culture”, research funding being increasingly focussed on certain topics (thereby implicitly raising hurdles for research in the less “fashionable” or “less lucrative” areas), the complex impact of social media and artificial intelligence on research and education, the intimidation of scholars by activists (from all sides of the political spectrum), the foreign interference in universities and the related knowledge security issues, etc.

Just like in 2010, this paper therefore sets out again the main dimensions and the scope of academic freedom as a fundamental right, specifically taking into account the developments in legislation and jurisprudence of the last decade. It also aims to indicate how European and national policymakers and legislators can and should take measures to effectively protect, facilitate, strengthen and optimise academic freedom. Special attention hereby is paid at the EU level due to the decision of the Court of Justice of the European Union in case C-66/18, *European Commission v. Hungary* (2020). The focus is on public universities or universities accredited by the state (and thus performing a public function which comes with an obligation to respect fundamental rights).

The paper is based on the assumption that academic freedom is of paramount importance for current and future research as well as for teaching at universities, in Europe and worldwide. Academic freedom is not only seen as a goal in itself. It is important especially since it makes it possible for universities to serve the common good of society through searching for and disseminating knowledge and understanding, and through fostering independent thinking and expression in academic staff and students.

Academic freedom can be considered to comprise the following three aspects:

- (a) Far-reaching individual rights to expressive freedoms for members of the academic community (both staff and students) mainly as free enquirers, including the freedom to study, the freedom to teach, the freedom of research and information, the freedom of expression and publication (including the ‘right to err’), and the right to undertake professional activities outside of academic employment;

¹ As illustrated by a.o. the 2022 Free to Think Report of Scholars at Risk: www.scholarsatrisk.org/2022/11/free-to-think-2022-a-global-report-on-academic-freedom/ : the report analyses 391 attacks in 65 countries and territories, between 1 September 2021 and 31 August 2022, underscores the pervasive and urgent problem of attacks on higher education and urges governments, the academic community and civil society to protect at-risk scholars and students and to defend academic freedom.

- (b) Collective or institutional autonomy for the academy in general and/or subsections thereof (universities, faculties, research units, etc.). Said autonomy implies that departments, faculties and universities as a whole have the right (and obligation) to preserve and promote the principles of academic freedom in the conduct of their internal and external affairs, while they are also protected against undue interferences;
- (c) An obligation for the public authorities to respect and protect academic freedom and to take measures in order to ensure an effective enjoyment of this right and to promote it.

These three dimensions of academic freedom are not mutually exclusive, but on the contrary, they reinforce one another. In case of conflict between the individual and the institutional rights, a careful balancing of rights and interests may be needed, in which special consideration is to be given to the former aspects. Institutional autonomy should not be used by higher education institutions as a pretext to limit the individual rights of higher-education teaching personnel. If restrictions on individual academic freedom are unavoidable, they should not go any further than necessary in order to achieve legitimate institutional academic aims, with means being proportionate to these aims. The state's role is to guarantee academic freedom: freedom of any kind is not a spontaneous state of affairs, and in order for academic freedom to exist in any meaningful sense it must be respected, protected, ensured and promoted by the public authorities. A failure to fulfil these obligations amounts to a violation of academic freedom.

Acknowledgements

The lead authors of this paper are Prof. Koen Lemmens (KU Leuven), Prof. Jogchum Vrielink (KU Leuven and UCLouvain Saint-Louis - Bruxelles), Prof. Paul Lemmens (KU Leuven) and Prof. Stephan Parmentier (KU Leuven). A special thanks goes to the colleagues from the LERU network who gave valuable input on this paper (in particular Christine Kaufman and Francis Cherval (University of Zurich), Jessica Almqvist, Vilhelm Persson and Daria Davitti (Lund University), Jurgen Goossens (Utrecht University), Jordi Bonet Perez and Enriqueta Exposito Gomez (University of Barcelona)), and to LERU Secretary-General Prof. Kurt Deketelaere for his support.

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About LERU

LERU was formed in 2002 as an association of research-intensive universities sharing the values of high-quality teaching in an environment of internationally competitive research. The League is committed to: education through awareness of the frontiers of human understanding; the creation of new knowledge through basic research, which is the ultimate source of innovation in society; the promotion of research across a broad front, which creates a unique capacity to reconfigure activities in response to new opportunities and problems. The purpose of the League is to advocate these values, to influence policy in Europe and to develop best practice through mutual exchange of experience.

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LERU publishes its views on research and higher education in several types of publications, including position papers, advice papers, briefing papers and notes.

Advice papers provide targeted, practical and detailed analyses of research and higher education matters. They anticipate developing or respond to ongoing issues of concern across a broad area of policy matters or research topics. Advice papers usually provide concrete recommendations for action to certain stakeholders at European, national or other levels.

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LERU Office

Minderbroedersstraat 8
3000 Leuven, Belgium

info@leru.org
www.leru.org

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