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COMMITTEE ON CULTURE, SCIENCE, EDUCATION AND MEDIA

Threats to academic freedom and autonomy of universities in Europe

Rapporteur: Mr Koloman Brenner, NR

Expert report

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*'Without such freedom there would have been no Shakespeare,
no Goethe, no Newton, no Faraday, no Pasteur, and no Lister.'*
(Albert Einstein, speech given at the Royal Albert Hall, London, U.K., 5th October 1933)

1. Introduction

1. This report has been prepared as an expert contribution to the preparation of a report under the same title by the Committee on Culture, Science, Education and Media of the Parliamentary Assembly of the Council of Europe (rapporteur Mr Koloman Brenner). It expands several issues already touched upon in the rapporteur's introductory memorandum [AS/Cult (2018) 37], making extended use of relevant academic literature and data on academic freedom in the EU states.³

2. Academic Freedom: the need for clarity

2. The modern development of the doctrine of academic freedom is largely derived from the nineteenth century German concepts of *Lehrfreiheit* and *Lernfreiheit*⁴ which are associated with the reforms at the University of Berlin by Wilhelm von Humboldt, which subsequently provided the template for the development of academic freedom, and the hall-mark of the research university, initially in the European states and the USA and subsequently across the globe.

3. Despite the primacy of the European States in the establishment of universities, and the development and refinement of the concept of academic freedom within them, there is **no agreed definition of academic freedom within the universities of the nations of the EU**, or the (more broadly based) Council of Europe. This problem is compounded by a general level of ignorance among academic staff, as to the *de jure* academic

¹ Document declassified by the Committee on 25 September 2020.

² All opinions expressed in this text are those of the author and do not necessarily reflect the views of the Council of Europe.

³ This data was gathered by the author via an on-line survey, created following research funded by an EU Marie Curie Intra-European Fellowship. The total number of responses to this survey exceeded 4500. A sample of this size is sufficiently large to provide an accurate snap-shot of the state of academic freedom in the majority of EU states. For further information on the data set, see Karran, T., Mallinson, L., (2017) *Academic Freedom in the U.K.: Legal and Normative Protection in a Comparative Context Report for the University and College Union*, London: UCU, p.29f. [Available at: https://www.ucu.org.uk/media/8614/Academic-Freedom-in-the-UK-Legal-and-Normative-Protection-in-a-Comparative-Context-Report-for-UCU-Terence-Karran-and-Lucy-Mallinson-May-17/pdf/ucu_academicfreedomstudy_report_may17.pdf Accessed 21st July 2019]

⁴ Goldstein, S., (1976) "The Asserted Constitutional Right of Public School Teachers to Determine What They Teach", *University of Pennsylvania Law Review*, 124(6): 1293.

freedom rights assigned to them in constitutional and national legislation, and in relation to internal institutional provisions protecting *de facto* normative academic freedom.

4. **Academic freedom continues to be a commonly used but misunderstood concept.** ‘... only a minority of academics bother to explain what the concept of academic freedom means to them or even know what the concept really is.’⁵

5. This absence of sustained debate has taken place against a backdrop of a revolution in the size and scope of universities’ activities. The decline of manufacturing industries and the rise of the knowledge economy has transformed the size, status and function of universities – in many European cities, the local university (now morphed into a ‘univer-city’⁶) has usurped old industries to become the largest employer, whose success is essential to the socio-economic well-being of the urban centres in which they are located, and university admission rates now account for the majority of 18-21 year olds.

6. Hence within the universities of Europe, despite the huge growth in the scope and scale of their operations in recent decades, **the right of academic freedom has become a neglected, rather than a protected, concept, and has been largely ignored by individual academics** (most of whom have scant knowledge of the concept), **by universities** (although most pay lip service by having an academic freedom institutional statement, owing to the lack of any European wide guide-lines, these vary considerably in length, comprehensiveness and accuracy) **and by government ministers and departments** (who have often viewed academic freedom as an impediment to the marketization of university functions).

2. Need for a common definition

7. In the absence of consensus at European level, as to the characteristics and functions of academic freedom, the last 30 years has seen declarations on academic freedom created by a diverse array of international organisations including the Council of Europe,⁷ CODESRIA,⁸ the Magna Charta Observatory,⁹ UNESCO,¹⁰ and the World University Service.¹¹ Most of these worthy declarations encourage and exhort universities, in general terms, to respect academic freedom.

8. However, such laudatory definitions are rarely sufficiently detailed to enable the operationalisation of a benchmark against which the level of (and changes to) academic freedom could be measured. Such an interval measured benchmark (utilising a checklist encompassing the different elements of academic freedom), would make it possible to show how the level of protection in individual nations has altered over time, or what the average score was for a group of nations.¹² To be fit for the purpose of monitoring and measuring academic freedom, any definition needs to be sufficiently comprehensive, to cover all elements of academic freedom, but not so technically and legalistically detailed, such that universities and their academic staff are unable to utilise it, to assess the health of academic freedom within their institutions.

9. In attempting a common definition (drawing on the above declarations and other relevant documents), the following essential elements highlighted in the box below, need to be sewn together to enable comparative evaluations rather than creating a philosophically sophisticated, epistemological validated instrument. These elements are presented for comment, discussion and refinement, by the Committee on Culture, Science, Education and Media, and other interested bodies.

⁵ Moens, G., (1991) “Academic freedom: An eroded concept”. *Bulletin of the Australian Society of Legal Philosophy*, 16: 58.

⁶ See for example, Johnson, G., (2014) “Cambridge: From Medieval Market Town to Univer-City”, in (ed.) A. Teo, *Univer-Cities: Strategic View of the Future: From Berkeley and Cambridge to Singapore and Rising Asia: Vol. II*, Singapore: World Scientific Publishing, pp. 205-230.

⁷ Council of Europe (2006) *Recommendation 1762: Academic Freedom and University Autonomy* [Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileID=17469&lang=en> Accessed 21st July 2019].

⁸ CODESRIA (1990) *Declaration on Academic Freedom and Social Responsibility of Academics* [Available at: <https://www.codesria.org/spip.php?article351> , Accessed 21st July 2019].

⁹ Magna Charta Observatory (1988) *Magna Charta Universitatum*, [Available at: <http://www.magna-charta.org/resources/files/the-magna-charta/english> Accessed 21st July 2019].

¹⁰ UNESCO: (1997) *Recommendation on the Status of Higher Education Teaching Personnel* [Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000113234.page=2> Accessed 21st July 2029].

¹¹ World University Service (1988) *Lima Declaration on Academic Freedom and the Autonomy of Institutions of Higher Education* [Available at: <https://www.wusgermany.de/sites/wusgermany.de/files/userfiles/WUS-Internationales/wus-lima-englisch.pdf> Accessed 21st July 2019].

¹² Karran’s paper [Karran, T., (2009a) “Academic Freedom in Europe: Time for a *Magna Charta*?”, *Higher Education Policy*, 22(2): 170-185] probably comes nearest to a bespoke definition of academic freedom, tailored specifically for the European states.

Academic freedom is an essential pre-requisite, both for the successful running of universities, and for the proper functioning of academic staff who work within them. It is a professional freedom granted to individual academics in respect to their primary functions of teaching and research.

Despite national variations, academic freedom can be seen to have **two substantive** and **three supportive elements**. The **substantive elements** are: the freedom to teach and the freedom to research. The **freedom to teach** habitually includes the right to freely determine what shall be taught; how it shall be taught; who shall be allowed to study; who shall teach; how students' learning may be assessed and graded and who shall receive academic awards. The **freedom to research** normally includes the right to determine (without duress) what shall (or shall not) be researched; how it shall be researched; who shall research, with whom and for what purpose research shall be pursued; the methods by which, and avenues through which, research findings shall be disseminated.

The **supportive elements** are: tenure, shared governance and autonomy (both individual and institutional). **Tenure** requires that academic staff with the requisite high level of competence in research and teaching (as adjudged by a stringent and rigorous appraisal by their peers of their performance during a probationary period) are given protection from dismissal for the professional views that they express. Additionally, where staff fail to meet minimum levels of competence or professional standards of conduct in their teaching and research, tenure may be revoked. To obtain tenure, it is incumbent upon the probationer to demonstrate competence; for its revocation, it is incumbent upon the institution to demonstrate due cause. To uphold the integrity of academic freedom, faculty members must be just as willing and empowered to recommend the revocation of tenure and the dismissal of a faculty member for a just cause, as they are to recommend the granting of tenure for staff that meet the necessarily high probationary standards.

To guarantee academic freedom, in terms of **shared governance**, academic staff must: have an equal right to voice their opinions on their institution's educational policies and priorities without the imposition or threat of punitive action, and fulfil their collegial obligations in a professional manner; have the determinant voice and a prominent role in university decision-making processes; be able to appoint, from among their number and beyond, people into positions of managerial authority, and hold them to periodic account, by agreed democratic processes.

Governance processes will differ with national and institutional variations in the decision-making structures of universities, but the expectation will be that executive decisions will, perforce, require the support of the majority of academic staff. Hence, protocols must exist to ensure that the voices of the academic staff are *primus inter pares*, yet guard against filibustering, policy gridlock and professorial oligarchy.

Individual autonomy requires that academics can act as free agents in exercising their academic freedom rights, with respect to their professional activities of teaching, research and shared governance without interference by internal or external individuals or bodies. **Institutional autonomy** requires that universities, acting as corporate bodies and via a process of shared governance, are able to make decisions concerning their strategic academic priorities and day to day functions of teaching and research, without interference from extra-mural entities and individuals, including local, national and international governments, religious foundations, national and international NGOs, and private companies. When institutional autonomy is compromised, and external bodies determine universities' policies, the exercise of individual autonomy in shared governance is circumscribed and academic freedom nullified.

These three supportive elements acting in tandem are necessary for academic freedom, but each in its own right is insufficient for academic freedom to flourish. Hence, single elements are less individually important than the fact that they mesh together. Thus, where one of the mutually supportive elements falters, it necessarily undermines the other two, and thereby weakens substantive academic freedom for research and teaching. For example, if tenure is lacking, then academics may not be able to enjoy autonomy or participate in shared governance and make objective decisions on (inter alia) institutional research priorities or subject teaching methods, for fear of losing their jobs.

10. ***Recommendation 1: The Council of Europe should consider the proposed definition of academic freedom, in order to produce a concise, unambiguous and unanimous statement of meaning, to be***

used in carrying forward the Council's future work to protect and enhance academic freedom among member states of the Council of Europe.

3. Raising awareness of academic freedom rights among staff and students

11. Clearly, academic staff are unlikely to fight for their academic freedom rights, if their knowledge of such rights is limited. In a study of academic freedom in the EU states, undertaken by the author utilising EU funding, respondents indicated the extent of their agreement or disagreement on a five point Likert scale ("disagree strongly", "disagree", "neither agree nor disagree", "agree", "strongly agree") to a series of questions/statements concerning their awareness of their academic freedom rights. These Likert scale responses have been truncated into three categories thus, "disagree strongly" + "disagree", "neither agree nor disagree", "agree" + "strongly agree", and the results for the largest category are given below (full details of the responses are in Table 1 to Table 7 in Appendix 2).

- *Table 1*: "Do you know the position regarding the constitutional and legal protection for academic freedom in your country?" ("I don't know" = 54%).
- *Table 2*: "I have an adequate working knowledge of the constitutional/legislative protection for academic freedom in my nation" ("disagree" and "strongly disagree" = 50.1%)
- *Table 3*: "I would welcome additional information on the constitutional/legislative protection for academic freedom in my nation" ("agree" and "strongly agree" = 74.8%)
- *Table 4*: "Does your university have an official academic freedom document?" ("I don't know" = 61.7%)
- *Table 5*: "My university has supplied me with an adequate introduction to the concept of academic freedom" ("disagree" and "strongly disagree" = 62.2%)
- *Table 6*: "Universities should organise academic freedom readings and discussions for staff" ("agree" and "strongly agree" = 74.4%).
- *Table 7*: "Can complaints of violations of academic freedom in your university be directed to a specific grievance body?" ("I don't know" = 52.4%)

12. In essence, this empirical work shows clearly the level of ignorance among academics within the EU states as to their academic freedom rights, and a consequent desire by these staff for further information. The data also suggests that universities have been negligent in their duties of informing academic staff as to their legal and constitutional rights.

13. As already highlighted in the rapporteur's introductory paper, there is also a concern about students' rights and freedoms. Academic freedom for staff is debated, within the media and also in academic journals, but students' academic freedom is rarely, if ever, discussed.

14. In one of the few studies dedicated to the topic, Macfarlane¹³ applied the distinction developed by Sen,¹⁴ between positive and negative rights, to understand students' academic freedom. Macfarlane argues that, until recently, students' academic freedom has been concentrated mainly on their negative rights, which he defines as the freedom from interference from other individuals or entities. Furthermore, he considers that issues of students being denied their freedom of thought and expression, because academic staff have sought to either indoctrinate students or politicise the curriculum, have taken over debates on students' academic freedom. Of more importance, he avers, are students' positive or (what Sen calls), substantive freedoms and their capability sets. Consequently, Macfarlane argues that students' academic freedom must be reframed, viewing it from a capability approach.

15. Building on Macfarlane's work, research by Erin Nordal (one-time Vice-Chairperson of the European Students' Union) focussed explicitly on students' academic freedom in Europe. She concluded that 'the lack of a solid definition appears to be contributing to ... a major threat to students' academic freedom, ... existing policy on the European level is either insufficiently, incorrectly or simply not implemented at the national level ... as the EU increases in activity in the field of higher education, creating a consistent definition of students' academic freedoms and rights will be especially important ... Tools for evaluating the status of students' academic freedom across Europe must also be developed.'¹⁵

¹³ Macfarlane, B., (2012) "Re-framing student academic freedom: A capability perspective," *Higher Education*, 63(6): 719–732; (2016) *Freedom to Learn: The Threat to Student Academic Freedom and Why it Needs to be Reclaimed*, London: Routledge

¹⁴ Sen, A., (1999). *Development as freedom*. Oxford: Oxford University Press.

¹⁵ Nordal, E., (2016) *Students' academic freedom in Europe: A means to an end or an end in itself?* Master of Philosophy in Higher Education, Department of Education, Faculty of Educational Sciences, University of Oslo, p.70.

16. In the past, students had a major input into the running of the university – indeed, in the very first university at Bologna, as Grendler points out: ‘the Bolognese student associations exercised powers of which students everywhere dream: they appointed, paid, and dismissed the professors.’¹⁶ Similar levels of student involvement still exist – in the running of universities in Latin America, for example, but are largely absent from European Universities. However, there is a strong case to be made for greater student involvement. Monypenny, for example, makes the point that universities must be communities ‘in which ideas can develop, be exchanged, tested, and discarded, in which the unorthodox is given a hearing and in which the inhibitions against the new and the strange are at a minimum. Such a community cannot be a community of teachers only, since the most important product of teachers is their students. Their students can have the advantage of the characteristic experience of the community, of free intellectual innovation and exchange, only by participating in it.’¹⁷ Nordal’s work revealed the absence of both a coherent definition of student’s academic freedom, and the tools necessary to monitor it.

17. However, the same argument could have been made about **academic freedom for staff**, until recently. The identified elements of academic freedom for staff (freedom for teaching and learning, autonomy, self-governance, and tenure) could be re-examined through a student lens, in order to start to codify students’ academic freedom rights. For example, the ability to determine how students should be assessed, is an element of staff academic freedom. Research by Leach et al. argues that although ‘traditionally teachers ... decide what is to be assessed, how it will be assessed and what criteria will be used. ... There is a growing recognition that adult learners have a legitimate role in an assessment partnership.’¹⁸

18. Similarly, it is accepted that academic staff should participate in university self-governance, hence there is a strong argument for a similar (yet less significant) role for students in this process. Joint working by the Council (initially via the Committee on Culture, Science, Education and Media) with the European Students Union could establish a research agenda, and thereby clarify and strengthen the academic freedom rights of both staff and students.

19. ***Recommendation 2: The Council should consider a programme of action, to work with member states to develop and disseminate authoritative materials for academic staff detailing academic freedom rights within each nation.***

20. ***Recommendation 3: The Council should liaise with the European Students Union, to work on producing and disseminating a students’ academic freedom rights Charta, for use among member States.***

4. External and state funding of higher education research

21. There is a growing concern regarding **increased external funding for university research and the possibility that external commercial interests** might subvert the focus of research towards increased profits and revenue flows for the companies who sponsor such research. As before, results from the author’s study of academic freedom in the universities of the EU states, have been used to explore these issues. Respondents indicated the extent of their agreement or disagreement to the following questions/statements concerning academic freedom for research (full details are in Table 8 to Table 16 in the Statistical Appendix):

- *Table 8:* “Individual academic freedom for research is very important to me.” (“agree” and “strongly agree” = 97.5%)
- *Table 9:* “Academic freedom for research has declined in my institution in recent years.” (“disagree” and “strongly disagree” = 36.6)
- *Table 10:* “The quality of research in my discipline has declined over the last decade.” (“disagree” and “strongly disagree” = 48.5%)

22. These responses demonstrate that academic freedom for research is of overwhelming importance to academic staff in Europe’s universities, and that they do not believe that freedom for research has declined in recent years (in fact only 7% “strongly agreed” with this statement). Moreover, despite continuing pressures from both university management and higher education government ministers for greater research productivity,

¹⁶ Grendler, P., (2002) *The universities of the Italian Renaissance*, Baltimore, Md.; London: Johns Hopkins University Press, p.6.

¹⁷ Monypenny, P., (1963) “Toward A Standard for Student Academic Freedom”, *Law and Contemporary Problems*, 28(3): 633.

¹⁸ Leach., L., Neutze, G., Zepke, N., (2001) “Assessment and Empowerment: some critical questions,” *Assessment & Evaluation in Higher Education*, 26(4): 293.

nearly half of respondents did not believe that the quality of research has declined, although circa 25% did think that quality had declined of research had declined.

- *Table 11*: “Having to apply for research funding for particular projects prevents me from selecting the research topics ‘my academic instinct’ tells me are the topics on which my research should focus” (“agree” and “strongly agree” = 53.6%)
- *Table 12*: “The research funding system focuses on the short-term results of social benefit, at the expense of elementary research promoting long-term knowledge” (“agree” and “strongly agree” = 66.3%)
- *Table 13*: “The research funding system does not allow sufficient time to properly complete research on a topic” (“agree” and “strongly agree” = 68.5%).

23. The majority of respondents thought that their national research funding systems stopped them from exercising their academic freedom to determine what topics they should research, and made them focus on short-term socially focused applied research projects, rather than address more fundamental research questions. Additionally, they agreed that the existing research funding system denied them the time to complete their research thoroughly.

24. These responses endorse what little empirical research has been undertaken on academic freedom for research.

- *Table 14*: “Public Universities should be obliged to reveal all commissioned research and clearly identify the sources of funding” (“agree” and “strongly agree” = 85.3%).
- *Table 15*: “There should be fewer representatives from industry and business on the boards of Public Universities” (“agree” and “strongly agree” = 49.5%).
- *Table 16*: “Because of your academic views have you been subjected to/threatened with removal of research funding/facilities/equipment?” (“No” = 92.7%).

25. Questions on commissioned research and the composition of the boards of Public Universities were prompted by the implementation of New Public Management techniques in many EU states. In Sweden, for example, the 2002 Higher Education Ordinance specifies that the University Board has 14 members, plus the chair, including the Vice Chancellor, and three staff and three students’ representatives. The remaining nominated members are drawn from outside academia, notably the private sector, and appointed for their business experience and expertise, rather than their knowledge of higher education.

26. As Musiał points out ‘the representation of the external stakeholders in Swedish universities has been strengthened to the extent that the academics employed at the institution may have very little say with respect to its management.’¹⁹ Summarising policy changes in Swedish higher education, Beach refers to ‘a shift away from academic values and areas that were once a major cornerstone of the university, but which have become increasingly marginal when measured in budget turnover.’²⁰

27. The responses suggest that academic researchers believe that there should be transparency with respect to the sources of funding for commissioned research, that the proportion of representatives on Universities’ boards coming from business and industry should be reduced, but little evidence of withdrawing research funding and equipment. These responses suggest that academic freedom for research, although under pressure, is still in relatively robust health.

28. In essence, this empirical work shows that academics regard freedom for research to be very important and believe that the national funding systems have altered the focus of research towards projects designed to provide short term social benefits, and away from areas of more fundamental research importance. In order to mitigate the impacts of such changes, respondents believe **that there should be greater transparency with respect the provision of funds for commissioned research**, and that the composition of University Boards should be changed to reduce the input from business and industry.

29. ***Recommendation 4: The Council may wish to examine the transparency of commissioned research, the effectiveness of national research funding schemes and the impact of university management systems on the ability of university staff in the nations of the Council of Europe to enjoy academic freedom in their pursuit of fundamental research.***

¹⁹ Musiał, K., (2010) “Redefining External Stakeholders in Nordic Higher Education”, *Tertiary Education and Management*, 16(1): 55.

²⁰ Beach, D., (2013) “Changing higher education: converging policy-packages and experiences of changing academic work in Sweden”, *Journal of Education Policy*, 28(4): 521.

5. Self-censorship in academia

30. Addressing **censorship** (either self-imposed, or by others) in academia is problematic. First, censorship is often surreptitious and covert, and hence difficult to assess. Second, as has been shown, most academics lack an understanding of the extent of academic freedom and may under/overestimate their powers of expression under the national laws relating to freedom of speech and academic freedom. Academic freedom is a professional freedom granted to a few, selected for their subject knowledge and professional competence, to firstly: express their informed opinions on subjects in which they have accredited expertise, to a group of students chosen on the basis of academic criteria, in order to educate them; and secondly: to undertake research to create new knowledge, freely disseminated to their students and the wider academic community. Consequently, Daughtrey argues that 'academic freedom is designed to protect individual scholars, even against the institutions where they serve.'²¹ Moreover, this protection extends beyond other academics, as Menand makes clear: 'Academic freedom not only protects sociology professors from the interference of trustees and public officials in the exercise of their jobs as teachers and scholars; it protects them from physics professors as well.'²²

31. By contrast, freedom of speech is a generic freedom granted to all, to express their opinions and beliefs by whatever method they deem appropriate, on any subject that they may choose, to all other people, but for no particular purpose. Hence academics have the right to express opinions outside of the university, but must ensure that, when they are expressing such opinions in the public domain, they are speaking as individuals, rather than university employees. There are no moral or legal justifications for giving academics greater freedoms of speech than are enjoyed by other individuals in the public domain, when they are expressing opinions outside of their subject expertise, or outside the university.

32. As before, results from the author's study of academic freedom in the universities of the EU, were used to explore the extent of self-censorship. Respondents indicated the extent of their agreement or disagreement to the following questions/statements concerning self-censorship (full details are in Table 17 to Table 30 in the Statistical Appendix).

- *Table 17*: "Have you ever practised self-censorship?" ("No" = 78.9%)
- *Table 18*: "There should be specific legal protection for AF, beyond that existing for free speech" ("agree" and "strongly agree" = 67.9%)
- *Table 19*: "Academic Freedom covers comments by academics beyond the confines of their field of specialisation, to cover broader issues" ("agree" and "strongly agree" = 69.7%)

33. In answer to the question "Have you ever practised self-censorship?", 21% (i.e. 1 respondent in every 5) answered in the affirmative. This very high figure may relate to a lack of information among academics as to their rights of freedom of expression and academic freedom. For example, 68% agreed that there should be legal protection for academic freedom, which extends beyond the right of freedom of speech. Similarly, the same proportion of academics thought academic freedom also applies to comments made by academics, outside of their expertise.

34. In fact, most commonly agreed definitions of the concept of academic freedom, consider it to be a specific professional liberty, which may be exercised outside of the university, but does not extend to include subjects beyond those in which academics have professional expertise – a Professor of Engineering may have specific beliefs relating to links between IQ and gender or ethnicity, but he cannot use the protection of academic freedom to disseminate such views to a class of engineering students.

- *Table 20*: "Because of your academic views have you been subjected to (threatened with) psychological pressure by state authorities?" ("No" = 98.0)
- *Table 21*: "Because of your academic views have you been subjected to (threatened with) psychological pressure by someone within your institutions?" ("No" = 83.7%)
- *Table 22*: "Have you been pressured to amend/not to publish or to change/not present an academic talk by the state authorities?" ("No" = 98.9%)
- *Table 23*: "Have you been pressured to amend/not to publish or to change/not present an academic talk by someone within your institution?" ("No" = 91.6%)

²¹ Daughtrey, W., (1990) "The legal nature of academic freedom in United States colleges and universities", *University of Richmond Law Review*, 25: 270.

²² Menand, L., (1996) "The limits of academic freedom", in *The future of academic freedom*, ed. L. Menand, Chicago: University of Chicago Press, p.17.

35. When universities have institutional autonomy, it is usually the case that state authorities do not have the authority to apply pressure on academics. However, the growing importance of the higher education sector to the emerging knowledge economy, and the increasing use of New Public Management techniques in universities, have raised concerns about the negation of academic freedom, and the constraint of free discourse about controversial issues, by both university and state authorities. However, as can be seen above, the application of psychological pressure by state authorities, in order to prevent academics from publishing or disseminating their work is very rare in the EU countries (typically, 2% or less of respondents mentioned this). However, respondents reported that these pressures were utilised by someone within their universities much more frequently – 16% of respondents reported being subjected to psychological pressure by other staff in their universities. Clearly, it is possible that psychological pressure was applied by respondents' universities because of requests by state authorities.

- *Table 24*: “Have you been subjected to (the threat of) disciplinary action by your institution for academic views you expressed in your teaching” (“No” = 95.7%)
- *Table 25*: “Have you been subjected to (the threat of) disciplinary action by your institution for academic views you expressed in a research publication” (“No” = 96.6%)
- *Table 26*: “Have you been subjected to (the threat of) disciplinary action by your institution for academic views you expressed in a non-public forum within your higher education institution?” (“No” = 93.4%)
- *Table 27*: “Have you been subjected to (the threat of) disciplinary action by your institution for academic views you expressed in a public forum outside your higher education institution?” (“No” = 95.8%)

36. **Self-censorship** can be imposed by means of threats by academics on other academic staff, in terms of their teaching and research activities, but also with reference to their dissemination of their views in the university, but outside the classroom, for example, in the pursuance of duties relating to university governance. However, the responses show that the occurrence of threats which result from academic utterance, with respect to teaching or research dissemination (two major aspects of academic freedom), is very low. Threats appear most likely to occur following academic views expressed within the institution, in non-public bodies such as Senate or Academic Board, suggesting that academic shared governance (another major supportive element of academic freedom) may be more contentious, than freedom for teaching or research, but even then, such occurrences affect only 1 person in 12 (8%) of the academic community. Generally, the formal or informal use, or threat, of disciplinary action in order to secure self-censorship and silence is very rare indeed in the EU member States – typically they are experienced by circa 5% of respondents.

- *Table 28*: “Because of your academic views have you been subjected to (threatened with) the denial of promotion?” (“No” = 89.0%)
- *Table 29*: “Because of your academic views have you been subjected to (threatened with) being given different/fewer/additional teaching or research duties?” (“No” = 89.8%)
- *Table 30*: “Because of your academic views have you been subjected to (threatened with) bullying by academic colleagues?” (“No” = 84.5%)

37. However, there are more subtle, **less visible methods of securing compliance and self-censorship**. For example, 11% of respondents had been either subjected to, or threatened with the denial of promotion, which may have specific deleterious effects on the academic careers of those affected – in some EU nations the denial of promotion may constitute a denial of tenure for the person affected. A similar proportion of respondents also reported being assigned different academic duties, either as a punishment for some transgression, or in order to secure compliance or silence. However, 15.5% of respondents (1 person in 6) reported being bullied by other academic staff. The proportion of staff reporting such bullying indicates how important it is for staff to be aware of their academic freedom rights, and for proper processes and protocols to be established within universities to deal with this problem.

38. In terms of both definition and every-day practicalities, **academic freedom is clearly part of a wider set of complementary human rights, with an evident link between academic freedom and freedom of speech**: as Connolly observes, ‘academic freedom is a kind of cousin of freedom of speech.’²³ However as Olivas rightly points out, ‘the concepts of free speech and academic freedom are symmetrical and overlapping, not synonymous.’²⁴ Thus, the presence of freedom of speech does not guarantee academic freedom, but makes its protection more likely. Similarly, where academic freedom is subject to constraint, it is likely that other more general rights, such as freedom of expression, are also likely to be suppressed.

²³ Connolly, J., (2000) “The academy’s freedom, the academy’s burden”, *Thought & Action*, 16(1): 71.

²⁴ Olivas, M., (1993) “Reflections of professorial academic freedom: Second thoughts on the third ‘essential freedom’”, *Stanford Law Review*, 45(6): 1838.

39. However, the research has revealed that, with respect to respondents' experiences bullying, psychological pressure and self-censorship are all too commonplace within higher education institutions that are supposed to encourage their staff to pursue teaching and learning within an academic environment typified by the tolerance of others' opinion and beliefs, and freedom of expression. Such activities by government authorities are rare, more usually academics undertake self-censorship in response to pressures applied by other academics.

40. ***Recommendation 5:*** A survey of the experiences of academic staff in the universities of Europe reveals that self-censorship, bullying and psychological pressure are more common than should be the case in universities. ***The Council needs to seriously consider how this evident problem can be addressed at national and institutional level within the EU states, through dissemination of information on academic freedom rights, as enshrined in constitutions and legislative frameworks.***

6. Academic freedom under neoliberal trends and the marketisation of education

41. The rise of the neo-liberal global knowledge economy, within which higher education is seen as catalyst for national success, and the consequent massification of university provision across all continents, have been defining features of the late 20th and early 21st centuries.²⁵ Hence, as Altbach observes, 'Universities are the source of ideas and their very essence as knowledge-based institutions may have a profound impact on societies going through difficult periods of transformation ... In short, the university is, in many ways, the quintessential institution of the new knowledge-based society of the 21st century.'²⁶

42. The role of universities in the new knowledge economy has created a critical shift in the dominant model of higher education provision. Under the "traditional" view of university education, students acquire knowledge via an active collaborative teaching and learning relationship with academic staff. In contrast, the "marketised" view sees university education as a monetised private good, in which students invest their own human capital, so as to reap high financial rewards, and in which academic staff fulfil a passive enabling role, while the university is more concerned with maximising cash, than delivering learning.

43. In such a consumerist system, students base their decisions about their university education on how it will contribute to their future employment and career prospects, and not on whether they find it intrinsically interesting.²⁷ Hence university students' "customer" motivations and "market" expectations are critical, within the context of the global knowledge economy and the contemporary massification and marketisation of higher education, to the achievement of the aspirations of the EU states (collectively and individually) to create a standardised market for higher education provision (via the Bologna Protocols²⁸) which extends beyond meeting national needs, to attracting international students in increasing numbers.

44. As a result, governments have become motivated to expand the supply of university education from serving a minority class elite to a majority national provision, and beyond to international "markets" in other countries. In consequence, as Abeles starkly observes, 'higher education is now in the global, competitive, marketplace. It is now a client-driven environment where individuals are able to choose what they wish to acquire rather than accepting the dictates of institutions.'²⁹ Such developments have generated conflicting concerns being voiced by the two major stakeholder groups within the academy. First, senior university management, harbouring a belief that market mechanisms can ensure quality and efficiency, and are essential pre-requisites for *Managing Successful Universities*.³⁰ Second, academic staff declaiming that 'the ideas of marketization are corrupting the university as an embodiment of public goods,'³¹ decrying the steady erosion of their professional autonomy and academic freedom,³² and asserting that 'the erosion of these freedoms in academe is merely a reflection of a constitutional crisis in the larger society.'³³

²⁵ See for example Altbach, P., Reisberg, L., and Rumbley, L., (2009) *Trends in Global Higher Education: Tracking an Academic Revolution*, Paris: UNESCO.

²⁶ Altbach, P., (1992) "Higher education, democracy, and development: Implications for Newly Industrialized Countries", *Interchange*, 23: 143f.

²⁷ Naidoo, R., and Jamieson, I., (2005) "Empowering participants or corroding learning? Towards a research agenda on the impact of student consumerism in higher education", *Journal of Education Policy*, 20(3): 267-281.

²⁸ Štech, S., (2011) "The Bologna Process as a New Public Management Tool in Higher Education", *Journal of Pedagogy*, 2(2): 263-282.

²⁹ Abeles, T., (1998) "The academy in a wired world", *Futures*, 30(7): 307.

³⁰ Shattock, M., (2010) *Managing Successful Universities*, Maidenhead: OU/SRHE.

³¹ Barnett, R., (2011) "The Marketised University: Defending the Indefensible", in Molesworth, M., Scullion, R., Nixon, E., (eds.) *The Marketization of Higher Education and the Student as Consumer*, New York: Routledge, p. 39.

³² Karran, T., and Mallinson, L., (2017) *Academic Freedom in the UK: Legal and Normative Protection in a Comparative Context- Report for the University and College Union*, London: UCU, mimeo.

³³ Pritchard, R., (1998). "Academic freedom and Autonomy in the United Kingdom and Germany," *Minerva*, 36(2): 123.

45. The adoption of neo-liberal policies in higher education undermines the idea of university education as a public good and replaces it with that of a private commodity. The assumption behind this switch is that 'educational choice' (by prospective students and their families) is a key mechanism for promoting competition between universities and for raising standards. However, the success of this policy, and whatever quality and productivity gains may have accrued from this new competition, may be undermined if, as Molesworth et al.³⁴ contend, the inculcation of a consumer identity among university students has created a passive approach to learning, in which students place more emphasis on their consumer rights, rather than their academic responsibilities, and on getting a degree, rather than the transformative process of being a learner.

46. Research into the adoption of the **"student as customer" model** by Tomlinson³⁵ revealed that some UK higher education fee paying students were 'inclined to view themselves as "paying customers" and perceived the consumer position to be both legitimate and something that contemporary learners should embrace.' Similarly, Nixon et al.'s qualitative analysis found that the notion of HE as 'a commercial transaction between the university as service provider and the student as the already omniscient consumer was viewed as natural and self-obvious.' Furthermore, they argue that 'intensifying marketization heightens the potential for consumer satisfactions and frustrations in higher education that are profoundly narcissistic in character, and that this may lie at the root of the damage to learning inflicted by marketization.'³⁶

47. As before, results from the author's study of academic freedom in the EU states, have been used to explore these issues. Respondents indicated the extent of their agreement to questions/statements concerning the commercialisation of higher education, and its impact on their employment status (full details are in Table 31 to Table 38 in the Statistical Appendix):

- *Table 31*: "The commercialisation of higher education is of great concern to me" ("Agree/Strongly Agree" = 66.6%)
- *Table 32*: "The commercialisation of higher education has increased in recent years" ("Agree/Strongly Agree" = 71.7%)
- *Table 33*: "The marketing of their products and services should constitute a central activity of public higher education institutions" ("Disagree/Strongly Disagree" = 56.6%)

48. The results from the EU survey on academic freedom show categorically that the overwhelming majority of university staff are very concerned about the commercialisation of higher education, and believe that it has increased in recent years. Conversely, nearly 60% of respondents disagreed that marketing of their products and services should be a central activity of public universities.

- *Table 34*: "Are you in a tenure track position?" ("No" = 72.4%)
- *Table 35*: "Nature of current contract" ("Permanent" = 64.3%)
- *Table 36*: "Nature of current contract" ("Full time" = 83.6%)

49. Additionally, the increased use of temporary and short-term contracts to try to improve research productivity makes it difficult for Early Career Researchers to build a coherent research profile and undermines the morale of established senior academic staff. The EU survey shows that although 80% of respondents had full time contracts, with 60% in permanent employment, nearly three quarters were casualised labour, and lacked the job security of a tenured position.

- *Table 37*: "What is the level of protection for academic freedom in your home state?" ("Categories 4+5+6 Average Level of Protection" = 43.1%)
- *Table 38*: "Has the protection for academic freedom in your country altered in recent years?" "Categories 1+2+3 Diminished/Greatly Diminished" = 44.7%)

50. Not surprisingly, in the new neo-liberal environment in which higher education now operates, and in which New Public Management techniques³⁷ are the rule rather than the exception, academic freedom has suffered as a consequence. As can be seen, when asked to determine the level of protection for academic

³⁴ Molesworth, M., Nixon, E., and Scullion, R., (2009) "Having, being and higher education: the marketisation of the university and the transformation of the student into consumer", *Teaching in Higher Education*, 14(3): 277-287.

³⁵ Tomlinson, M., (2017) "Student perceptions of themselves as 'consumers' of higher education", *British Journal of Sociology of Education*, 38(4): 457.

³⁶ Nixon, E., Scullion, R., and Hearn, R., (2018). "Her majesty the student: marketised higher education and the narcissistic (dis)satisfactions of the student-consumer", *Studies in Higher Education*, 43(6): 928, 933.

³⁷ For an introduction to New Publication Management in higher education, see Deem, R., (2011) "New managerialism and higher education: the management of performances and cultures in universities in the United Kingdom", *International Studies in Sociology of Education*, 8(1): 47-70.

freedom in their universities (using a nine-point Likert scale), 43% of the respondents described it as “average”; more tellingly, perhaps, about the same proportion thought that the level of protection had “diminished”, or “greatly diminished” in recent years.

51. Much of the debate on **the impact of the marketisation within higher education** has focused on the impact on individual academic freedom. However, the impact of an open market for higher education on the autonomy and well-being of individual universities, and national university systems, also needs to be considered.

52. Latest research from the Cross-Border Education Research Team³⁸ reveals that in 2017, there were over 300 International Branch Campuses, which are owned, at least in part, by a foreign higher education provider, operate in the provider’s name and deliver entire academic programs, substantially on site outside the provider’s home country, leading to a degree awarded by the foreign education provider. Of these campuses, 109 were operated by USA higher education providers, in 40 different nation states (including 12 EU nations). For example, Schiller International University is an American private, for-profit university whose main campus and headquarters are in Largo, Florida, but which has campuses in Paris, Madrid, and Heidelberg, through which it offers Associate, Bachelor, and Master’s degrees, all taught in English. If Microsoft and Harvard decided to pool resources, and set up joint private, not-for-profit university campuses offering face to face, and distance education taught in English, in (say) the cities of Athens, Barcelona, and Copenhagen, the huge resources that they could utilise for such a university would obviously affect the status and viability of the government funded universities in those cities.

53. When examining **the international marketisation of higher education**, it is worth considering that many of the most distinguished European universities (Bologna, Oxford, Paris) were, from the first instance, “global” institutions, attracting scholars and students from across the medieval western world. Interestingly, Moens notes that, in these first universities, ‘students were free to move from one place to another to sample academic offerings [and] ... this understanding of a student’s right to academic freedom enjoys a revival in the European Community where students are encouraged to seek part of their education in a Member State of which they are not nationals.’³⁹ However, in addition to teaching and learning, since their establishment, such universities have **had major responsibilities for preserving and maintaining the cultural heritage of the nation**.

54. By teaching and research, universities both safeguard and facilitate the transmission of a nation’s language, literature, visual, musical and performing arts, and aid their continuing development. Universities are icons of the intellectual accomplishments of states, and act as repositories and custodians of artefacts of cultural and historical importance. For example, the Sibelius Academy in Helsinki is tasked with teaching musicianship to the highest level, in order to ensure that Sibelius’s legacy is maintained, and his compositions continue to be played and enjoyed by audiences, in Finland and beyond.

55. Similarly, all universities have libraries, some possessing rare manuscripts and important documents, and many have museums and art galleries, theatres and concert halls, historic and listed buildings, parks and botanical gardens, some of which are of national, if not international, significance. For example, a report on *Universities and Communities*,⁴⁰ commissioned by the UK’s Committee of University Vice Chancellors and Principals, revealed that of the 300 collections of cultural artefacts in the UK, designated as of “national distinction”, 76 were in universities.

56. Clearly, private universities, seeking to enter markets in EU nation states, would have no interest in assuming such broader responsibilities, and may ignore national laws and norms regarding the academic freedom of institutions, or individuals. Collins makes the point that the General Agreement on Trade in Services has the possibility of “undermining local universities and colleges by creating provisions for foreign supply that does not meet local needs”, such that “though a country can maintain their public education system within GATS, the system could still be overwhelmed and undermined by progressive liberalization and an influx of foreign providers.”⁴¹

57. **Recommendation 6:** The marketisation of higher education, its consequence switch from being a public service to a private commodity, and the introduction of New Public Management in universities is starting to

³⁸ See <http://cbert.org/resources-data/branch-campus/>.

³⁹ Moens, G., (1991) “Academic freedom: An eroded concept,” *Bulletin of the Australian Society of Legal Philosophy*, 16: 59.

⁴⁰ Goddard, J., Charles, D., Pike, A., Potts, G. & Bradley, D. (1994) *Universities and Communities*, London: CVC.

⁴¹ Collins, C., (2007) “A General Agreement on Higher Education: GATS, globalization, and imperialism,” *Research in Comparative and International Education*, 2(4): 294.

undermine the traditional motivation to learn, and the Humboldtian teaching relationship between staff and students. Students paying high tuition fees now have an expectation that, because they have “bought” their education, they deserve a “good” degree, irrespective as to the effort that have expended. This trend has been accompanied by a decline in academic freedom and the casualisation of academic labour. **Little empirical work has been done on the impact of marketisation, so the Council should consider conducting a meta-analysis of existing research, in order to inform future policy in this area.**

58. ***Recommendation 7:*** Under the aegis of the General Agreement on Trade in Services (GATS),⁴² the marketisation of higher education has accompanied a growth in both the number of suppliers of trans-national education and universities establishing campuses outside their home nation. ***The Council should examine the possible threat posed by such developments to individual universities and higher education systems, especially in small European states (e.g. Luxembourg).***

7. Domestic and international protection for academic freedom

59. In the majority of states in the EU and the wider Council of Europe area, some form of constitutional or legal protection for academic freedom is provided. Table 39 shows the protection for freedom of speech in the states of the EU and the Council of Europe. Of the 28 EU member States, all have constitutional protection for freedom of speech or expression, apart from the UK. Of the additional 20 states which are in the Council of Europe but not the EU, 13 provide protection for freedom of speech/expression, without conditions. However, five Council of Europe states (Armenia, Iceland, Moldova, Montenegro, Turkey) provide constitutional protection but with conditions (the situation was unclear with respect to the Republic of San Marino). As well as protecting freedom of speech, the constitutions of many nations in the EU also provide direct protection for academic freedom. Of the 28 EU states, nine offer no constitutional protection for academic freedom, eleven provide protection for teaching, fifteen provide protection for research, and eight provide protection for autonomy. The situation is similar in the Council of Europe states outside the EU. Of these 20 non-EU member States, seven provide no constitutional protection, five provide protection for teaching and for autonomy, and four provide protection for academic freedom generically.

60. However, domestic legal protection for academic freedom in European universities is also provided by means of specific higher education legislation. Table 40 in the statistical appendices shows that two nations – Estonia and Malta – have no protection for academic freedom for teaching and research in the national legislation. By contrast, in Spain academic freedom is mentioned in the constitution and the legislation gives further protection for the individual functions of teaching and research, which further strengthens the legal protection for academic freedom. Nine nations offer specific protection for research. Both Bulgaria and Slovakia offer specific protection for teaching and research activities in law, along with direct protection via their constitutions. Five nations offer discrete protection for academic freedom in teaching. Belgium and Croatia are unusual, as they offer protection in law, but refer back to their Constitutions, as superior legal instruments for the protection for academic freedom. Sweden is unusual, as it provides legal protection for research but has no mention of academic freedom for teaching in the Constitution or the law.

61. As has been seen, the importance of academic freedom to universities in Europe has been recognised in the majority of the national constitutions and legislations of the individual EU countries, and in some Council of Europe states outside the EU. In addition to these national legal safeguards, protection also occurs at supra national level. Hence, the E.U. *Charter of Fundamental Rights*, includes the declaration that ‘The arts and scientific research shall be free of constraint. Academic freedom shall be respected,’⁴³ and was incorporated into the 2008 E.U. Revision Treaty.⁴⁴ Similarly, at the Assembly debate on 30th June 2006, the 47 members of the Council of Europe approved a *Recommendation on Academic Freedom and University Autonomy* and exhorted the Council’s Committee of Ministers to ‘strengthen its work on academic freedom and university autonomy as a fundamental requirement of any democratic society.’⁴⁵ The Magna Charta Observatory offers guidance and support to universities wishing to sign the Charta, but it has limited effect, as it can only request voluntary adherence by signatory institutions, and it probably lacks the capability and resources to monitor individual universities’ activities (through, for example, regular surveys) and hold them to account, or to recommend changes to national legislation.

⁴² GATS, see https://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm.

⁴³ European Union (2000) *Charter of Fundamental Rights of the European Union*, 18th December 2000, p. 11.

⁴⁴ European Union (2008) Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union *Official Journal of the European Union Volume 51*, 2008/C 115/01, Luxembourg: Office for Official Publications of the E.U., p. 337.

⁴⁵ Council of Europe (2006) *Recommendation 1762: Academic Freedom and University Autonomy*, 30th June 2006.

62. The most detailed international protection for academic freedom is available via the UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel*, which was adopted by the UNESCO General Conference in November 1997, after extensive consultation with academic and legal experts, NGOs (including the International Labour Organisation), and member states. The Recommendation, affirmed that ‘the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom ... the open communication of findings, hypotheses and opinions lies at the very heart of higher education and provides the strongest guarantee of the accuracy and objectivity of scholarship and research,’⁴⁶ and is well-embedded in other international regulations - as Beiter points out ‘in its preamble the *Recommendation* refers to article 26 of the Universal Declaration of Human Rights ... article 13(2)(c) of the International Covenant on Economic, Social and Cultural Rights, to the Convention against Discrimination in Education, (and) to the UNESCO/International Labour Organisation Recommendation concerning the status of teachers.’⁴⁷

63. Although the 1997 *Recommendation* is sufficiently comprehensive to protect academic freedom, in practice the reporting and assessment mechanisms used by UNESCO to examine abuses of academic freedom, have not been fit for purpose. First, paragraph 75 of the Recommendation required the Director-General to prepare a comprehensive report on the world situation with regard to academic freedom on the basis of the information supplied by member States. More than 20 years later, this work, which could have developed an academic freedom “barometer” against which nations could be judged, is incomplete. Second, the CEART, which is responsible for monitoring the UNESCO *Recommendations*, meets only every three years, and the reporting process requires NGOs to submit complaints to CEART, which then requests national governments to respond, and assesses the responses in the light of further feedback from the complainant. Given the infrequency of meetings, resolutions of complaints can take many years. Clearly, to be efficacious, the 1997 *Recommendation* requires the commitment of greater resources by UNESCO to ensure more effective monitoring, and in a time efficient fashion. Third, CEART assesses the veracity of individual complaints but does not deliver general comments to comprehensively interpret the substantive provisions of the *Recommendation*. Hence the CEART can determine whether remedial actions may be necessary, but it does not provide support materials to facilitate such actions, or engage directly in more effective promotional activities concerning academic freedom.

64. The Council of Europe has recognised the need to address ‘Threats to academic freedom and the autonomy of universities in Europe.’ Similarly, the European Higher Education Area (EHEA) Ministerial Communiqué, issued in Paris in 2018, acknowledged the importance of fundamental values to the EHEA by stating: ‘Academic freedom and integrity, institutional autonomy, participation of students and staff in higher education governance, and public responsibility for and of higher education form the backbone of the EHEA.’⁴⁸ Conceding that these fundamental values have been challenged in recent years in some EHEA countries, the European Ministers of Higher Education **mandated a Task Force to develop proposals for more effective future reporting**. Hence any work undertaken by the Council of Europe in this area would have additional value added for the European Union, and vice versa.

65. That both such important bodies have chosen to reflect on academic freedom is probably not coincidental. However, as this paper has shown, much work has already been undertaken on examining the *de jure* constitutional/legislative protection and creating research instruments to measure the *de facto* normative protection for academic freedom in the EU states, which could be extended to include all Council of Europe states. In this way, it would be possible **to create a “barometer” of academic freedom in Europe. Once established, such an index could be easily updated annually, by making incremental changes in the light of changes to legislation. Furthermore, such additional research would provide an impetus to UNESCO and other bodies for realising Altbach’s aspiration that ‘with more data, it would be possible to create a “world academic freedom barometer” as is done for human rights, corruption, and other issues.**⁴⁹

⁴⁶ UNESCO (1997) Records of the General Conference, Twenty-ninth Session Paris, 21 October to 12 November 1997, *Volume 1 Resolutions*, Paris: UNESCO, p. 26.

⁴⁷ Beiter, K., (2005) *The Protection of the Right to Education by International Law*, Leiden/Boston: Martinus Nijhoff Publishers, p. 278.

⁴⁸See: http://www.ehea.info/media.ehea.info/file/2018_Paris/77/1/EHEAParis2018_Communique_final_952771.pdf

⁴⁹ Altbach, P., (2001) “Academic freedom: international challenges and realities,” *Higher Education*, 41(1/2): 210.

8. Conclusive remarks

66. The constitutional and legal *de jure* protection for academic freedom varies considerably across the EU nation states, as does the level of *de facto* normative protection; moreover, there is no international law protecting academic freedom. However, the survey data suggests that there are abuses of *de facto* academic freedom, despite legal protection, owing to a lack of knowledge by academics, of their academic freedom rights.

67. ***Recommendation 7: The Council of Europe should be asked to liaise with member nations to request information on legal protection for academic freedom in individual nations, to create a directory of academic rights in Europe, with the aim of disseminating legal advice and better information for all academics, to enable them to protect their academic freedom rights.***

68. This analysis of the contemporary situation of academic freedom in Europe reveals two important facts: first, that there are severe deficiencies in the *de jure* protection for academic freedom, which are compounded by a high level of *de facto* abuse of academic freedom, which goes unchallenged, as few academics are aware of their legal academic freedom rights. Second, that the formal procedures of the organisations tasked with dealing with abuses of academic freedom within the nations of the Council of Europe (and beyond) are very slow in operation and frequently ineffectual in outcome. It is not the purpose of the Council of Europe to make good the deficiencies of the current UNESCO monitoring system, which appears to be unfit for purpose. Moreover, it is uncertain whether a rejuvenated version of the UNESCO monitoring system would meet the specific requirements of the Council of Europe.

69. However, the genesis of the university, as a concept and an institution, originally occurred in Europe; furthermore, the right of academic freedom was first fought for, and won, within Europe's nascent universities, and went on to become a defining characteristic of universities worldwide. It is, therefore, apposite and fitting that the nations of the Council of Europe should take a determined and pro-active lead in defending this freedom, which they both created and have nurtured. Moreover, given the prominence of the European nations within world affairs, and the contribution of their universities to the international higher education domain, it is likely that any policy initiative undertaken by the Council of Europe to protect academic freedom will have global credibility and political resonance, and is likely to be respected (and probably emulated) in the wider world.

70. ***Recommendation 8: The relevant bodies of the Council of Europe should set up a Working Group (with an agreed timetable) to determine what remit, responsibilities, organisational structure and operational system would be most appropriate and effective, in order to create a body to (inter alia) monitor abuses of de jure and de facto academic freedom, and achieve speedy restitution of academic freedom, when abuses occur, within the universities of the nations of the Council of Europe. With respect to de jure protection, such a body would assist the organisation to draft a Council of Europe Convention on Academic Freedom or alternatively consider drafting an additional protocol on academic freedom to the European Convention on Human Rights. With respect to the protection of de facto academic freedom, the intention would be to: monitor violations of academic freedom in the nations of the Council of Europe; make recommendations to the Committee of Ministers on restorative action; develop support materials for use in different nations; provide workshops and seminars on academic freedom.***

71. I hope that the Committee (and the Council of Europe) will be able to take this important work forward via a strong evidenced based policy in a timely fashion. The report is designed to be part of a process of policy evolution by the Committee and the wider Council of Europe, and the author would be willing to participate further in this process of deliberation, if the Committee feels that this would be beneficial for the organisation's work, with the aim of ensuring that academic freedom continues to thrive, unhindered, and is consequently enjoyed by staff and students in Europe's universities for the foreseeable future.

Terence Karran

August 15th 2019

Appendix – Statistical tables

Table 1: I Do you know the position of the constitutional and legal protection for academic freedom in your country?

Responses	%
Yes	54.0
I don't know	46.0
All (n=4682)	100

Table 2: I have an adequate working knowledge of the constitutional/legislative protection for academic freedom in my nation

Responses	%
Agree/Strongly Agree	26.0
Neither Agree or Disagree	23.9
Disagree/Strongly Disagree	50.1
All (n=4685)	100

Table 3: I would welcome additional information on the constitutional/legislative protection for academic freedom in my nation

Responses	%
Agree/Strongly Agree	74.8
Neither Agree or Disagree	17.8
Disagree/Strongly Disagree	7.4
All (n=4677)	100

Table 4: Does your university have an official academic freedom document?

Responses	%
Yes	14.8
No	23.6
I don't know	61.7
All (n=4700)	100

Table 5: "My university has supplied me with an adequate introduction to the concept of academic freedom"

Responses	%
Agree/Strongly Agree	14.4
Neither Agree or Disagree	23.5
Disagree/Strongly Disagree	62.2
All (n=4694)	100

Table 6: "Universities should organise academic freedom readings and discussions for staff"

Responses	%
Agree/Strongly Agree	74.4
Neither Agree or Disagree	19.2
Disagree/Strongly Disagree	6.4
All (n=4700)	100

Table 7: Can complaints of violations of academic freedom in your university be directed to a specific grievance body?

Responses	%
Yes	31.8
No	15.8
I don't know	52.4
All (n=4706)	100

Table 8: "Individual academic freedom for research is very important to me"

Responses	%
Agree/Strongly Agree	97.5
Neither Agree or Disagree	2.1
Disagree/Strongly Disagree	0.4
All (n=4579)	100

Table 9: "Academic freedom for research has declined in my institution in recent years"

Responses	%
Agree/Strongly Agree	31.4
Neither Agree or Disagree	32.0
Disagree/Strongly Disagree	36.6
All (n=4576)	100

Table 10: "The quality of research in my discipline has declined over the last decade"

Responses	%
Agree/Strongly Agree	24.6
Neither Agree or Disagree	26.9
Disagree/Strongly Disagree	48.5
All (n=4625)	100

Table 11: "Having to apply for research funding for particular projects prevents me from selecting the research topics "my academic instinct" tells me are the topics on which my research should focus"

Responses	%
Agree/Strongly Agree	53.6
Neither Agree or Disagree	27.9
Disagree/Strongly Disagree	18.5
All (n=4645)	100

Table 12: "The research funding system focuses on the short-term results of social benefit, at the expense of elementary research promoting long-term knowledge"

Responses	%
Agree/Strongly Agree	66.3
Neither Agree or Disagree	23.7
Disagree/Strongly Disagree	10.0
All (n=4635)	100

Table 13: “The research funding system does not allow sufficient time to properly complete research on a topic”

Responses	%
Agree/Strongly Agree	68.5
Neither Agree or Disagree	22.6
Disagree/Strongly Disagree	8.9
All (n=4647)	100

Table 14: “Public Universities should be obliged to reveal all commissioned research and clearly identify the sources of funding”

Responses	%
Agree/Strongly Agree	85.3
Neither Agree or Disagree	11.6
Disagree/Strongly Disagree	3.1
All (n=4642)	100

Table 15: “There should be fewer representatives from industry and business on the boards of Public Universities”

Responses	%
Agree/Strongly Agree	49.5
Neither Agree or Disagree	33.8
Disagree/Strongly Disagree	16.8
All (n=4658)	100

Table 16: “Because of your academic views have you been subjected to/threatened with removal of research funding/facilities/equipment?”

Responses	%
Yes	7.3
No	92.7
All (n=4601)	100

Table 17: "Have you ever practised self-censorship?"

Responses	%
Yes	21.1
No	78.9
All (n=4465)	100

Table 18: "There should be specific legal protection for AF, beyond that existing for free speech"

Responses	%
Agree/Strongly Agree	67.9
Neither Agree or Disagree	26.1
Disagree/Strongly Disagree	6.0
All (n=4666)	100

Table 19: "Academic Freedom covers comments by academics beyond the confines of their field of specialisation, to cover broader issues"

Responses	%
Agree/Strongly Agree	69.7
Neither Agree or Disagree	23.3
Disagree/Strongly Disagree	7.0
All (n=4645)	100

Table 20: "Because of your academic views have you been subjected to (threatened with) psychological pressure by state authorities?"

Responses	%
Yes	2.0
No	98.0
All (n=4599)	100

Table 21: “Because of your academic views have you been subjected to (threatened with) psychological pressure by someone within your institutions?”

Responses	%
Yes	16.3
No	83.7
All (n=4599)	100

Table 22: “Have you been pressured to amend/not to publish or to change/not present an academic talk by the state authorities?”

Responses	%
Yes	1.1
No	98.9
All (n=4581)	100

Table 23: “Have you been pressured to amend/not to publish or to change/not present an academic talk by someone within your institution?”

Responses	%
Yes	8.4
No	91.6
All (n=4565)	100

Table 24: “Have you been subjected to (the threat of) disciplinary action for academic views you expressed in your teaching”

Responses	%
Yes	4.3
No	95.7
All (n=4635)	100

Table 25: “Have you been subjected to (the threat of) disciplinary action for academic views you expressed in a research publication”

Responses	%
Yes	3.4
No	96.6
All (n=4635)	100

Table 26: “Have you been subjected to (the threat of) disciplinary action for academic views you expressed in a non-public forum within your higher education institution?”

Responses	%
Yes	6.6
No	93.4
All (n=4629)	100

Table 27: “Have you been subjected to (the threat of) disciplinary action for academic views you expressed in a -public forum outside your higher education institution?”

Responses	%
Yes	4.2
No	95.8
All (n=4621)	100

Table 28: “Because of your academic views Have you been subjected to (threatened with) the denial of promotion?”

Responses	%
Yes	11.0
No	89.0
All (n=4622)	100

Table 29: “Because of your academic views have you been subjected to (threatened with) being given different/fewer/additional teaching or research duties?”

Responses	%
Yes	10.2
No	89.8
All (n=4619)	100

Table 30: “Because of your academic views have you been subjected to (threatened with) bullying by academic colleagues?”

Responses	%
Yes	15.5
No	84.5
All (n=4601)	100

Table 31: “The commercialisation of higher education is of great concern to me”

Responses	%
Agree/Strongly Agree	66.6
Neither Agree or Disagree	18.8
Disagree/Strongly Disagree	14.7
All (n=4560)	100

Table 32: “The commercialisation of higher education has increased in recent years”

Responses	%
Agree/Strongly Agree	71.7
Neither Agree or Disagree	20.6
Disagree/Strongly Disagree	7.7
All (n=4567)	100

Table 33: “The marketing of their products and services should constitute a central activity of public higher education institutions”

Responses	%
Agree/Strongly Agree	15.2
Neither Agree or Disagree	28.1
Disagree/Strongly Disagree	56.6
All (n=4682)	100

Table 34: “Are you in a tenure track position?”

Responses	%
No	72.4
Yes	27.6
All (n=3440)	100

Table 35: "Nature of current contract"

Responses	%
Permanent contract	64.3
Fixed Term contract	29.6
Other	6.1
All (n=4597)	100

Table 36: "Nature of current contract"

Responses	%
Full time	83.6
Part time	11.7
Other	4.7
All (n=4597)	100

Table 37: "What is the level of protection for academic freedom in your home state?"

Responses	%
1 Very Low Level of Protection	4.2
2	5.4
3	7.8
4	8.1
5=Average Level of Protection	21.9
6	13.1
7	19.0
8	13.7
9=Very High Level of Protection	6.8
All (n=4668)	100

Table 38: “Has the protection for academic freedom in your country altered in recent years?”

Responses	%
I don't know/cannot say	25.3
Protection for academic freedom has greatly diminished	11.7
Protection for academic freedom has diminished	33.0
Protection for academic freedom has remained unchanged	24.4
Protection for academic freedom has increased	5.0
Protection for academic freedom has greatly increased	0.6
All (n=4698)	100

Table 39: Constitutional Protection for freedom of speech and academic freedom in CoE States.

Nation	Status	Is there Constitutional protection for freedom of speech/ expression?	Are any elements of academic freedom protected in the Constitution?
Albania	CoE	Yes	Yes - autonomy and academic freedom
Andorra	CoE	Yes	Yes – freedom for teaching
Armenia	CoE	Yes, but with restrictions (state security, public order, health and morals)	Yes - self-governance and academic and research freedom.
Austria	EU	Yes	Yes – research and teaching
Azerbaijan	CoE	Yes	No protection
Belgium	EU	Yes	No protection
Bosnia & Herzegovina	CoE	Yes	No protection
Bulgaria	EU	Yes	Yes – autonomy and research
Croatia	EU	Yes	Yes – autonomy and research
Cyprus	EU	Yes	No protection
Czech Republic	EU	Yes	Yes - freedom of scholarly research
Denmark	EU	Yes	No
Estonia	EU	Yes	Yes – academic freedom and autonomy
Finland	EU	Yes	Yes – freedom of research and teaching, university autonomy
France	EU	Yes	No Protection
Georgia	CoE	Yes	No Protection
Germany	EU	Yes	Yes – freedom of research and teaching.
Greece	EU	Yes	Yes – freedom of teaching and research, tenure, autonomy
Hungary	EU	Yes	Yes – autonomy and freedom of research and teaching.
Iceland	CoE	Yes, but with restrictions (public order, state security, health and morals)	No protection
Ireland	EU	Yes	No protection
Italy	EU	Yes	Yes - freedom of research and teaching, autonomy
Latvia	EU	Yes	Yes – freedom of scientific research,
Liechtenstein	CoE	Yes	No protection
Lithuania	EU	Yes	Yes – freedom of research and teaching, university autonomy
Luxembourg	EU	Yes	No
Malta	EU	Yes	No protection
Moldova	CoE	Yes (but with restrictions instigation to sedition, war of aggression, national, racial or religious hatred)	Yes – autonomy
Monaco	CoE	Yes	No protection
Montenegro	CoE	Yes (but with restrictions public morality, the security of state)	Yes – autonomy and academic freedom
Netherlands	EU	Yes	No protection
North Macedonia	CoE	Yes	Yes – autonomy and academic freedom
Norway	CoE	Yes	No protection
Poland	EU	Yes	Yes - freedom of research and teaching, autonomy
Portugal	EU	Yes	Yes - freedom of teaching, research autonomy.
Romania	EU	Yes	Yes – university autonomy

Russian Federation	CoE	Yes	Yes – freedom of research and teaching
San Marino	CoE	Not Available	Not Available
Serbia	CoE	Yes	Yes – autonomy and scientific creativity
Slovakia	EU	Yes	Yes - freedom of research and teaching
Slovenia	EU	Yes	Yes – freedom of teaching and research and university autonomy
Spain	EU	Yes	Yes - academic freedom mentioned specifically, autonomy
Sweden	EU	No	Yes – freedom for research
Switzerland	CoE	Yes	Yes – academic freedom for teaching and research
Turkey	CoE	Yes (but with restrictions for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary)	Yes (but with restrictions on activities against the existence and independence of the State, and against the integrity and indivisibility of the nation and the country.)
Ukraine	CoE	Yes	Yes – freedom of scientific creativity.
United Kingdom	EU	No Protection	No Protection

Table 40: Legislative protection for academic freedom for teaching and research in the EU States

Nation	Is freedom to teach protected in legislation?	Is freedom to research protected in legislation?
Austria	Yes – “freedom of sciences and their teaching and freedom of scientific and artistic activity, the dissemination of the arts and their teaching;... freedom of study”	
Belgium	Yes – “members of a higher education institution shall enjoy academic freedom”	Yes – “researchers must, ... enjoy a very wide freedom to carry out research”
Bulgaria	Yes – “academic staff ... have the right to: develop and teach the study content of their discipline freely”	Yes – “academic staff ... have the right: freely to conduct, ... scientific research and to publish the results”
Croatia	Yes – “Academic freedom is enjoyed by all members of the academic community”	
Cyprus	Yes – “the advancement of science, knowledge, learning and education by teaching and research and in particular the safeguarding of academic freedom”	
Czech Republic	Yes – “freedom of teaching, ... openness to different scientific and scholarly views”	Yes – “freedom of scholarly, scientific, research activities as well as publication of the results”
Denmark	No	Yes - The university must defend ... the freedom of research”
Estonia	No	No
Finland	Yes – “At the universities there is freedom of research, art and teaching”	
France	Yes – “lecturers, teachers and researchers enjoy full independence ... in the exercise of their functions of teaching and their research activities”	
Germany	Yes – “Freedom of art and science and of research, teaching and study”	
Greece	Yes – “In Universities, academic freedom in research and teaching ... shall be safeguarded.”	
Hungary	Yes – “lecturers ... shall be entitled to the right to perform educational activities in accordance with their world view, ideology and values”	
Ireland	Yes – “academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university”	
Italy	Yes – “the freedom of teaching for teachers”	Yes - “the freedom of research of professors”
Latvia	Yes – “Institutions of higher education shall guarantee the academic freedom of academic staff”	Yes - “The freedom of studies, research work and artistic creation shall be ensured”
Lithuania	Yes – “higher education shall be based on ... academic freedom and autonomy”	Yes – “Research shall be based on ... freedom of creation and research”
Luxembourg	Yes - “In the exercise of their teaching and research duties, members of the University shall enjoy academic freedom”	
Malta	No	No
Netherlands	Yes – “academic freedom: the institutions’ academic freedom is respected.”	
Poland	Yes – “Higher education institutions shall be governed by the principles of academic freedom in teaching, scientific research”	
Portugal	Yes - “autonomy ... affording both teachers and students intellectual freedom in teaching and learning processes”.	Yes - In higher education institutions the freedom of research is ensured
Romania	Yes – “The academic freedom of the members of the university community is guaranteed. ... they have the freedom of teaching, research and creation”	
Slovakia	Yes – “academic freedoms and academic rights shall be guaranteed (b) freedom of teaching”	Yes – “academic freedoms and academic rights shall be guaranteed (a) freedom of scientific investigation, research,
Slovenia	Yes – “higher education teachers ... independently develop those areas of science, art ... and care for the transfer of this knowledge.”	Yes - “A university shall ... ensure the following: freedom of research, artistic production and knowledge mediation”,
Spain	Yes – “Teaching is duty of teachers ... which they exercise with academic freedom”	Yes – “Freedom of research in universities is recognised and guaranteed.”
Sweden	No	Yes – “research issues may be freely selected; ... and research results may be freely published”
United Kingdom	Yes - “to ensure that academic staff have freedom within the law to question and test received wisdom, and to put forward new ideas and controversial or unpopular opinions”	

