

“Academic Freedom: a universal right at stake!?”, Swiss Academy of Arts and Sciences, Bern, 8 December 2017

**Academic Freedom:
Definitions,
De Jure and
De Facto
Protection**

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Academic Freedom and the University

Academic freedom is considered to be a fundamental requirement for the workings of University communities, both in the European Union and beyond. For example, the Magna Charta Universitatum (which has 802 signatories from 85 countries) declaims: 'Freedom in research and training is the fundamental principle of university life, and governments and universities, each as far as in them lies, must ensure respect for this fundamental requirement.'

Academic Freedom: a 'Cindarella' liberty?

Academic freedom is important for academics, but has little resonance with the public at large, when compared with other more critical liberties like freedom from unlawful imprisonment, or freedom of speech, etc. However, academic freedom, as well as protecting the freedom to teach and research, enables universities to act as 'the critic and conscience of society.' Moreover, in a knowledge economy, academic freedom is vital in enabling the discovery of new knowledge.

Previous Empirical Analyses

Despite its importance, until recently, no comparative analyses of academic freedom, with respect to both *de jure* and *de facto* protection, against common bench-marks had been attempted. Early work by Karran (2007, 2009) adopted a “top down” approach to assess academic freedom in the EU nations, in terms of *compliance, qualified compliance, or non-compliance* with the 1997 UNESCO *Recommendation* in respect to institutional autonomy and governance, academic freedom, and academic tenure.

UNESCO 1997 Recommendation

Nation	Are the institutions legally autonomous?	Is academic freedom protected either in the constitution or in law?	Do the academic staff elect the majority of representatives to decision making bodies?	Does academic tenure exist?
Bulgaria	Compliance	Compliance	Compliance	Compliance
Czech Republic	Compliance	Compliance	Compliance	Compliance
Finland	Compliance	Compliance	Compliance	Compliance
Greece	Compliance	Compliance	Compliance	Compliance
Poland	Compliance	Compliance	Compliance	Compliance
Slovenia	Compliance	Compliance	Compliance	Compliance
Spain	Compliance	Compliance	Compliance	Compliance
Hungary	Compliance	Qualified Compliance	Compliance	Compliance
Ireland	Compliance	Compliance	Qualified Compliance	Compliance
Italy	Compliance	Compliance	Compliance	Qualified Compliance
Latvia	Compliance	Compliance	Compliance	Qualified Compliance
Lithuania	Compliance	Compliance	Compliance	Qualified Compliance
Portugal	Compliance	Qualified Compliance	Compliance	Compliance
Romania	Compliance	Qualified Compliance	Compliance	Compliance
Slovakia	Compliance	Compliance	Compliance	Qualified Compliance
Austria	Compliance	Compliance	Qualified Compliance	Qualified Compliance
Belgium	Compliance	Qualified compliance	Qualified Compliance	Compliance
Estonia	Compliance	Qualified Compliance	Compliance	Qualified Compliance
France	Compliance	Compliance	Non Compliance	Qualified Compliance
Sweden	Compliance	Qualified Compliance	Non Compliance	Compliance
Germany	Compliance	Qualified Compliance	Qualified Compliance	Qualified Compliance
Luxembourg	Compliance	Qualified Compliance	Qualified Compliance	Qualified Compliance
Netherlands	Compliance	Qualified Compliance	Non Compliance	Qualified Compliance
Cyprus	Non Compliance	Qualified compliance	Non Compliance	Compliance
Malta	Compliance	Non Compliance	Qualified Compliance	Non Compliance
Denmark	Non Compliance	Qualified Compliance	Non Compliance	Qualified Compliance
U.K.	Compliance	Non Compliance	Non Compliance	Non Compliance

Previous Empirical Analyses

These “top-down” approaches, although a useful start, did not attempt to “score” international agreements which operated within differing nation states, and also avoided the technical minutiae of national legislation and the operation of such laws within the EU countries. EU funding enabled a detailed “bottom up” examination of the legislation to provide a nuanced, definitive picture, which was previously lacking.

Academic Freedom “Scorecard”

An academic freedom “scorecard” was developed, comprising 37 statements, to assess legal protection in five critical areas:

- freedom to teach and research (20%)**
- institutional autonomy (20%)**
- university governance (20%)**
- employment protection (tenure) (20%)**
- international agreements and the constitution (20%)**

The % level of protection for each EU nation was assessed for each of these dimensions.⁷

Detailed Scorecard Measures

1 Teaching and research - legal and constitutional protection	2 Institutional autonomy - legal and constitutional protection	3 Internal autonomy: Rector's appointment	4 Internal autonomy: internal structures
5 Internal autonomy: state funding	6 Internal autonomy: commissioned research	7 Internal autonomy: staff appointments	8 Internal autonomy: student recruitment
9 Internal autonomy: degree accreditation	10 State regulation of university autonomy	11 Private sector constraints on autonomy	12 Legal provision for self-governance:
13 Operational self-governance: existence of collegial bodies	14 Operational self-governance: composition of collegial bodies	15 Operational self-governance: composition of senate	16 Operational self-governance: strategic decision making
17 Staff power to determine Dean's/Head of Department's credentials	18 Staff power to appoint the Dean/Head of Department	19 Staff power to dismiss the Dean/Head of Department	20 Staff power to determine Rector's credentials
21 Staff power to appoint the Rector	22 Staff power to dismiss the Rector	23 Academic tenure: contract duration de jure protection	24 Academic tenure: contract duration de facto protection
25 Academic tenure: contract termination in <u>h.e.</u> legislation	26 Academic tenure: contract termination in other legislation	27 Academic tenure: provision for academic advancement	28 Constitutional protection for freedom of speech
29 Constitutional protection for academic freedom	30 Legal Reference to institutional autonomy	31 Legal Reference to self-governance	32 Robustness of legal provisions
33 <u>ICCPR</u> free speech provision	34 OP- <u>ICCPR</u> complaints procedure before UN	35 <u>ICESCR</u> right to education provision	36 OP- <u>ICESCR</u> complaints procedure before UN
37 <u>ECHR</u> free speech provision			

De Jure Protection - The Constitution

Nation	Is freedom of speech/expression protected in the Constitution?	Are any elements of academic freedom protected in the Constitution?
Austria	Yes	Yes – research and teaching
Belgium	Yes	Yes – teaching
Bulgaria	Yes	Yes – autonomy and research
Croatia	Yes	Yes – autonomy and research
Cyprus	Yes	Yes – freedom of research and university autonomy
Czech Republic	Yes	No Protection
Denmark	Yes	Yes - freedom of research and artistic creation
Estonia	Yes	No Protection
Finland	Yes	Yes – freedom of research and teaching, university autonomy
France	Yes	No Protection
Germany	Yes	Yes – freedom of research and teaching.
Greece	Yes	Yes – freedom of teaching and research, tenure
Hungary	Yes	Yes – freedom of research and teaching.
Ireland	Yes	No Protection
Italy	Yes	Yes - freedom of research and teaching.
Latvia	Yes	No Protection
Lithuania	Yes	Yes – freedom of research and teaching, university autonomy
Luxembourg	Yes	Yes - academic freedom mentioned specifically
Malta	Yes	No Protection
Netherlands	Yes	No Protection
Poland	Yes	Yes - freedom of research and teaching
Portugal	Yes	Yes - freedom of teaching.
Romania	Yes	Yes – university autonomy
Slovakia	Yes	Yes - freedom of research and teaching
Slovenia	Yes	Yes – freedom of research and university autonomy
Spain	Yes	Yes - academic freedom mentioned specifically
Sweden	Yes	Yes – freedom for research
U.K.	No Protection	No Protection

National Legislation

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	No	No
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	Yes – “The university must protect ... the individual's research freedom”	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”
U.K.	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”	

Academic freedom: research & teaching

Austria	20.0	Cyprus	10.0
Croatia	20.0	Italy	10.0
France	20.0	Netherlands	10.0
Latvia	20.0	Norway	10.0
Lithuania	20.0	Poland	10.0
Slovakia	20.0	Portugal	10.0
Germany	17.5	Denmark	5.0
Bulgaria	15.0	Greece	5.0
Czech Republic	15.0	Hungary	5.0
Finland	15.0	Slovenia	5.0
Ireland	15.0	Sweden	5.0
Luxemburg	15.0	U.K.	5.0
Romania	15.0	Estonia	0.0
Spain	15.0	Malta	0.0
Belgium	10.0	Mean (Std Dev)	11.8 (6.2) ¹¹

Institutional Autonomy

Finland	15.0	Netherlands	9.0
U. K.	13.5	Portugal	9.0
Croatia	13.0	Denmark	9.0
Ireland	12.5	Slovakia	8.5
Austria	12.0	Spain	8.5
Norway	12.0	Belgium	8.5
Lithuania	11.0	Slovenia	8.5
Estonia	10.5	Czech Republic	8.0
Malta	10.5	Romania	8.0
Latvia	10.0	Cyprus	8.0
Poland	9.5	France	7.0
Germany	9.25	Sweden	6.5
Bulgaria	9.0	Greece	4.5
Luxemburg	9.0	Hungary	2.5
Italy	9.0	Mean (Std Dev)	9.3 (2.6) ¹²

Self Governance

Bulgaria	14.5	Italy	8.0
Croatia	14.0	Belgium	7.5
Poland	12.5	Denmark	6.5
Slovakia	12.5	France	6.5
Romania	12.5	Lithuania	6.0
Cyprus	12.5	Malta	6.0
Germany	12.25	Luxemburg	6.0
Spain	12.0	Netherlands	5.5
Portugal	11.5	Estonia	4.5
Slovenia	11.0	Norway	3.5
Czech Republic	11.0	Finland	3.0
Latvia	10.5	Ireland	3.0
Greece	10.5	Sweden	3.0
Austria	9.0	U.K.	0.0
Hungary	9.0	Mean (Std Dev)	8.4 (3.9) ¹³

Tenure: Employment Security

Greece	20.0	Romania	5.5
Norway	18.5	Denmark	5.5
France	15.5	U.K.	5.5
Italy	11.5	Poland	5.0
Spain	11.0	Austria	5.0
Portugal	10.5	Lithuania	5.0
Slovenia	10.5	Croatia	4.5
Ireland	10.5	Luxemburg	3.5
Cyprus	10.0	Netherlands	3.5
Bulgaria	9.5	Latvia	3.0
Belgium	9.25	Finland	3.0
Malta	8.5	Czech Republic	2.0
Sweden	8.5	Slovakia	1.5
Germany	8.0	Estonia	1.5
Hungary	8.0	Mean (Std Dev)	7.7 (4.7) ¹⁴

International Agreements

Spain	20.0	Greece	15.5
Portugal	20.0	Czech Republic	15.5
Italy	19.0	France	14.0
Finland	19.0	Belgium	14.0
Slovakia	18.0	Luxemburg	14.0
Slovenia	17.5	Norway	12.5
Bulgaria	17.5	Cyprus	12.5
Germany	17.5	Romania	12.5
Poland	17.5	Denmark	12.5
Austria	17.5	Netherlands	12.5
Lithuania	17.5	Ireland	11.5
Croatia	17.5	Hungary	11.5
Estonia	17.5	Malta	11.0
Sweden	16.5	U.K	11.0
Latvia	16.5	Mean (Std Dev)	15.5 (2.9) ¹⁵

Overall Country Rankings: De Jure Academic Freedom in Europe

Nation	Total	Academic Freedom in Legislation	Institutional Autonomy in Legislation	Self-Governance in Legislation	Job Security	Constitution & International Agreements
Croatia	69.0	20.0	13.0	14.0	4.5	17.5
Spain	66.5	15.0	8.5	12.0	11.0	20.0
Bulgaria	65.5	15.0	9.0	14.5	9.5	17.5
Germany	64.5	17.5	9.25	12.25	8.0	17.5
Austria	63.5	20.0	12.0	9.0	5.0	17.5
France	63.0	20.0	7.0	6.5	15.5	14.0
Portugal	61.0	10.0	9.0	11.5	10.5	20.0
Slovakia	60.5	20.0	8.5	12.5	1.5	18.0
Latvia	60.0	20.0	10.0	10.5	3.0	16.5
Lithuania	59.5	20.0	11.0	6.0	5.0	17.5
Italy	57.5	10.0	9.0	8.0	11.5	19.0
Greece	55.5	5.0	4.5	10.5	20.0	15.5
Finland	55.0	15.0	15.0	3.0	3.0	19.0
Poland	54.5	10.0	9.5	12.5	5.0	17.5
Romania	53.5	15.0	8.0	12.5	5.5	12.5
Cyprus	53.0	10.0	8.0	12.5	10.0	12.5
Ireland	52.5	15.0	12.5	3.0	10.5	11.5
Slovenia	52.5	5.0	8.5	11.0	10.5	17.5
Czech Republic	51.5	15.0	8.0	11.0	2.0	15.5
Belgium	49.25	10.0	8.5	7.5	9.25	14.0
Luxemburg	47.5	15.0	9.0	6.0	3.5	14.0
Netherlands	44.0	10.0	9.0	5.5	3.5	12.5
Sweden	39.5	5.0	6.5	3.0	8.5	16.5
Denmark	38.5	5.0	9.0	6.5	5.5	12.5
Hungary	36.0	5.0	2.5	9.0	8.0	11.5
Malta	36.0	0.0	10.5	6.0	8.5	11.0
U.K.	35.0	5.0	13.5	0.0	5.5	11.0
Estonia	34.0	0.0	10.5	4.5	1.5	17.5
Mean (St Dev)	52.8 (10.5)	11.9 (6.3)	9.3 (2.6)	8.6 (3.9)	7.3 (4.3)	15.6 (2.9)

De Jure Protection: Summary Scorecard

Croatia	69.0	Romania	53.5
Spain	66.5	Cyprus	53.0
Bulgaria	65.5	Ireland	52.5
Germany	64.5	Slovenia	52.5
Austria	63.5	Czech Republic	51.5
France	63.0	Belgium	49.25
Portugal	61.0	Luxemburg	47.5
Slovakia	60.5	Netherlands	44.0
Latvia	60.0	Sweden	39.5
Lithuania	59.5	Denmark	38.5
Italy	57.5	Hungary	36.0
Norway	56.5	Malta	36.0
Greece	55.5	U.K.	35.0
Finland	55.0	Estonia	34.0
Poland	54.5	Mean (Std Dev)	52.9 (10.3)¹⁷


De Jure Results: Summary

- No nation comes near to full compliance on all the measures
- The mean score for all EU states is relatively low - just over 50%.
- The variation between nations is high and ranges from 34-69% (SD = 10.5)
- The mean scores for the five dimensions show considerable variation.
- The lowest average score is for academic tenure, there are now only a few EU nations in which job security is fully protected

De Facto Protection


The study of *de jure* protection has been accompanied by a study of the *de facto* realities of academic freedom in Europe's universities. So far the survey has 5641 responses, which means that the results are likely to be statistically valid. The aim is to combine the *de jure* and *de facto* measures to produce a composite index for academic freedom. The following few tables show some results of the survey.

I have an adequate working knowledge of the concept of academic freedom


Response	
Strongly Agree	11.1
Agree	37.3
Neither Agree nor Disagree	24.0
Disagree	21.7
Strongly Disagree	6.1

NB Figures may not sum to %, owing to rounding to one decimal place


Knowledge of national legal/constitutional protection for academic freedom

(%)	
Constitution only	8.7
Specific Laws	18.2
Constitution & Laws	14.1
No protection exists	5.1
I don't know	54.0


To what extent do you think academic freedom is protected in your university?

Response (%)	
Generally Low Level of Protection	17.4
Average Level of Protection	43.1
Generally High Level of Protection	39.5


Has the protection of academic freedom in your university altered in recent years?

Response (%)	
Greatly Diminished	11.7
Diminished	33.0
Unchanged	24.4
Increased	5.0
Greatly Increased	0.6
I Don't Know	25.3


Individual academic freedom for teaching has declined in my institution in recent years

Response (%)	
Strongly Agree	6.6
Agree	20.7
Neither Agree nor Disagree	33.6
Disagree	30.0
Strongly Disagree	9.1


My individual academic freedom for research has declined in recent years

Response (%)	
Strongly Agree	7.2
Agree	24.2
Neither Agree nor Disagree	32.0
Disagree	27.8
Strongly Disagree	8.8


My institution's autonomy has declined in recent years

Response (%)	
Strongly Agree	11.9
Agree	31.6
Neither Agree nor Disagree	32.0
Disagree	19.4
Strongly Disagree	5.1


The role of academic staff in governance at my university has declined in recent years

Response (%)	
Strongly Agree	16.0
Agree	26.8
Neither Agree nor Disagree	32.9
Disagree	18.9
Strongly Disagree	5.4


Employment protection (i.e. tenure) for academic staff in my university has declined in recent years

Response (%)	
Strongly Agree	24.2
Agree	29.8
Neither Agree nor Disagree	23.9
Disagree	17.4
Strongly Disagree	4.6


Does your university, in which you work, have an official policy document on academic freedom?

Response (%)	
No	23.6
Yes	14.8
I Don't Know	61.7


My university has provided me with an adequate introduction to the concept of academic freedom

Response (%)	
Strongly Agree	2.6
Agree	11.8
Neither Agree nor Disagree	23.5
Disagree	33.8
Strongly Disagree	28.4


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

Response (%)	
Strongly Agree	25.4
Agree	49.4
Neither Agree nor Disagree	17.8
Disagree	5.9
Strongly Disagree	1.5


Because of your academic views have you been subjected to bullying by academic colleagues?

Response (%)	
Yes	15.5
No	84.5

Because of your academic views have you been subjected to psychological pressure by someone in your institution?

Response (%)	
Yes	16.3
No	83.7

Because of your academic views have you ever practised self censorship?

Response (%)	
Yes	21.1
No	78.9

De Facto Results Summary

- Half of respondents had an adequate knowledge of academic freedom, but didn't know if there was an official document
- Most thought academic freedom for teaching and learning had not declined, but protection for tenure had declined.
- 15% were subjected to bullying because of their academic views
- 16% were subjected to psychological pressure because of their academic views
- 1 academic in 5, because of their academic views, had practised self censorship

Academic Freedom: Possible Trends

- 1. *Employment Rights*:** tenure has been weakened, and short term contracts are on the rise.
- 2. *Governance*:** greater managerialism is undermining academic governance
- 3. *Need for Research Impact*:** leads to short term projects, concentration of research income, writing papers not books, and undermines the value of teaching.
- 4. *Students as “Customers”*:** altering students’ and parents’ expectations - h.e. is now a “product”
- 5. *Rationale for h.e.*:** emphasis on economic value of h.e. for both students and society, negation of the personal, intellectual and cultural values of h.e.³⁶

Academic Freedom Index: Next Steps

- The study reveals the *de jure* and the *de facto* protection varies between nation states - in some nations, a low level of *de jure* protection is mitigated by a high level of *de facto* protection.
- The next stage of the research will try to marry the *de jure* and the *de facto* results to produce a single unified Index for Academic Freedom

Thank you for listening! 😊

**If you would like a copy of this presentation, or copies of articles and papers on academic freedom, then please contact me by email:
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