

Core Values of Academic Freedom in EU and their Compliance with Legal Documents Adopted by the Common European Space and UN

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ABSTRACT: The present research aims at analyzing core values of Academic freedom in EU based on comparing legal documents of each member state with those adopted by the UN and Common European Space. The paper discusses the meaning and values of academic freedom, analyses ways of its protection, reviews the legal documents which include the issue of academic freedom. Based on the purpose of the work empirical, comparative, doctrinal, “Law in Action” vs “Law in Books” research methods are used. The research methodology aims at analyzing legislative basis of the EU member states which are participants of the Bologna Process and study their experience to draw up relevant conclusions. The present work can be an aiding factor towards further studies.

KEYWORDS: Academic Freedom, tenure, governance, Professor, University, Higher education

Introduction

The main purpose of this paper is to study the legal protection of the values of academic freedom in the member states of the European Union, to identify the existing trends, find positive and negative sides and prepare relevant proposals and recommendations

of the best practice for the Republic of Georgia, for further improvement of the issue. Legal protection was based on the examination of constitutions and legislative instruments of member states of the European Union. Based on the purpose of the work, the following research methods are used: Empirical - in order to identify the deficiencies of law in practice and find ways of their improvement; Comparative - to use the Bologna Process principles and its varieties existing in European legislation for a more in-depth review of academic freedom; Doctrinal approach - referring to the opinions and principles in scientific sources; we use the so called "Law in Action" and not a "Law in Books" method for studying how the law operates in the society - how it affects and what benefits the legal reform has for the participants of the education system as well as the society in general and how it protects its interests. The research methodology aims at the following: based on secondary data situational analysis carried out by the Desk Study method (the general list of literature includes a large number of sources, legislative and statutory acts of member of the EU member states, results of international surveys mostly based on T. Karran's work); analyze the legislative basis of the EU member states which are participants of the Bologna Process and study their experience to draw up relevant conclusions.

1. Theoretical Background of the Study: Academic Freedom in Legal Documents Adopted by the Common European Space

The first reports and generally, first information of academic freedom were introduced in the national constitutions of the European states in the XIX and XX centuries, which were later reflected in international recommendations and treaties. On June 19, 1999, the Ministers responsible for the highest education in Europe signed a document known as "Bologna Declaration" in one of the oldest university cities of Italy. By signing this document, the states expressed their common readiness to participate in the formation of a common European area of higher education. Academic freedom, as the value of the Council of Europe activities, was adopted by the Committee of Ministers of 30 March in 2000, which emphasizes the aspects of academic freedom in academic research. The Council of Europe Parliamentary Assembly adopted a recommendation in 2006, according to which "the Committee of Ministers strengthen its work on academic freedom and university autonomy as a fundamental requirement of any democratic society" (Recommendation R (2000) of the Committee of Ministers of 30 March 2000 on the research mission of universities). Although the European Convention on Human Rights does not explicitly establish the principle of academic freedom, the Court has repeatedly raised the issue of its protection under Article

10 of the Convention, which guarantees freedom of expression (European Court of Human Rights, ECHR).

It should be noted that academic freedom is considered the most important element in the Bologna Process. According to the 2001 Declaration of Salamanca (UNESCO 1994), further development of the Bologna process is that European universities have the authority to act in accordance with the principles of self-governance and confirm their accession and association with the Principle of the Magna Charta Universitatum of 1988 (EUA 1988), such as academic freedom. Obviously, when the importance and essence of academic freedom is different among the states, the number of academic personnel or students participating in out of the state activities and generally, mobility is reduced - in this case administrative, academic personnel or students are less willing to study or work at the university where academic freedom is much less protected compared to their own universities.

According to the Magna Charta Universitatum: “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 its respect for this fundamental requirement” (EUA 1988). As noted in Article 13 of the Charter of Fundamental Rights of the European Union, Freedom of the Arts and Sciences, “the arts and scientific research shall be free of constraint. Academic freedom shall be respected” (European Commission 2000). The brief memorandum on this entry suggests that “the right to freedom of opinion and freedom of expression” should be “in relation to Article 1 and may be limited to Article 10 of the European Convention on Human Rights” (Explanations (*) Relating to the Charter of Fundamental rights 2007).

Thus, under Article 13 of the Charter, freedom of art and science is related to freedom of thought (Article 10) and freedom of expression (Article 11). Moreover, the rights listed in Article 13 shall be exercised in the limits of freedom of expression, pursuant to Article 10, paragraph 2 of the European Convention on Human Rights, where Article 1 of the Charter should also be taken into account. The latter includes ethical issues in the field of scientific research. We can conclude that the concept of academic freedom can be interpreted in many ways, in view of the general definition of Article 13 and the explanatory memorandum only in the limited manner.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) grants everyone the freedom of expression and express their opinion, which also includes “freedom ... to seek, to receive and disseminate any information orally, in writing or through the artistic forms of the press and expression”. The enjoyment of these rights imposes a special duty and special responsibility for the person: academic freedom

for respecting the rights and reputation of other persons may be subject to “certain restrictions that must be prescribed by law and necessary”.

Another document adopted by the United Nations - International Covenant on Economic, Social and Cultural Rights (ICESCR 1966) is also important for the study of academic freedom. According to Article 15, the value is recognized as a human right to education and progress: the present Covenant recognizes the right of everyone to enjoy and use the results of scientific progress, “to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production”. Signatory states are obliged, to “Respect freedom, essential for scientific research and creative activities”; “they recognize the benefits deriving from promoting connections and cooperation in the fields of science and arts” (Tomasevski 1999) of UN emphasized, “right to education can only be practiced when academic freedom is available for students and staff”. It is noted: “staff and students in higher education system are especially unprotected from political and other types of pressure, which impedes academic freedom”(The right to education, Art. 13 of ICSCR, § 38).

It can be concluded that committee researchers of ICESCR and ESCR have recognized academic freedom, which has significant importance for education and social progress. UNESCO has mentioned academic freedom many times in one of its missions regarding disseminating education. The most significant result in this regard was 1997 document “Recommendation Concerning the Status of Higher Education Teaching Personnel” (UNESCO 1997a). Recommendation is not of obligatory character, however, it emphasizes the importance of academic freedom and tools to protect it, and link between academic freedom and collegial self-governance, as well. It should be noted, that UNESCO and International Labor Organization (ILO) have collaborated on creating periodical checking system and have enacted an expert mechanism on violation the principles of academic freedom.

The recommendation confirms: “the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education” (ILO/UNESCO 1966 and 1997) and that the best way to exchange conclusions, hypothesis and ideas should be sought in higher education, which ensures... the solid guarantee of the “accuracy and objectivity of scholarship and research”.

Generally, the basic values, which are known to ensure academic freedom are as follows: a) institutional autonomy, which clarifies the inevitability of the quality of self-governance, in order to make effective solutions for a higher educational institution. Along with academic freedom, it includes elaboration of standards and putting them

in practice, governance and the similar issues; b) individual rights and freedoms, which means the right of higher educational institutions' staff to enjoy academic freedom. This shall mean that academic personnel has "Freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies"; c) self-governance and collegiality, which allows academic staff to participate in governing bodies, elect the bodies existing within the university, the right to collective decision making, to determine the higher education policy; and last, d) tenure, which, in itself means a constant and stable position of a professor, i.e. permanent academic contract. Protecting tenure is required, even when systematic or university changes are carried out and "should be granted, after a reasonable period of probation, to those who meet stated objective criteria in teaching, and/or scholarship, and/or research".

As far as we can see, tenure is one of the guarantees for academic freedom. A report of the expert Zaalishvili is very considerable, according to which "there are numerous mechanisms in European education system, similar to the tenure, which create the guarantees of stability for a professor's position" (University Autonomy and Academic Freedom, Tamar Zaalishvili, 2013). We come across some notes about academic freedom in such recent European acts as London Communiqué (2007) – "developing an European Higher Education Area based on institutional autonomy, academic freedom, equal opportunities and democratic principles..."; Budapest-Vienna Declaration on European Higher Education Space (2010) - "recommit to academic freedom as well as autonomy and accountability of higher education institutions"; and Yerevan Communiqué (2015) – "Together we are engaged in ... coordinated reform of our higher education systems. This is based on public responsibility for higher education, academic freedom, institutional autonomy... we will support and protect students and staff in exercising their right to academic freedom and ensure their representation as full partners in the governance of autonomous higher education institutions".

Abovementioned documents do not provide any information about how academic freedom is formed and how can it be protected or developed. There is no information about how much impact the existence of academic freedom has on implementation of Bologna Process, either. Considering this, we believe to carry out deep analysis and research. First of all, we should figure out what are the values and the set of determining criteria for academic freedom that might be of importance for Georgia too.

2. The Values of Academic Freedom

Researchers Berdahl (1990), Menand (1996), Gerber (2001), White (2003), BennichBjorkman (2004), agree, that academic freedom consists of four values. The first is the freedom to teach, which means the freedom to determine the content and the methods of teaching, assessment criteria, and transparent procedures for selecting a lecturer. Second is the freedom of research, which means the freedom to determine the object, methods and purposes of the research – but it should not exceed the ethical limits, freedom to determine the form in which the research will be presented to the public. Third is Self-governance which includes expressing opinions regarding the university governance; participation in decision-making processes within the university; right to appoint or dismiss administrative staff. And the last one, tenure, guarantees some rights regarding workplace protection. It sets specific criteria for assessing academic achievements of a lecturer by the colleagues after completing probation period. It also ensures that academic personnel, who cannot meet minimal competence criteria and standards of professional behavior, will be deprived of tenure.

Most of the European states had neither the term, nor the norm regarding tenure reflected in their basic documents due to this the notion of the term was misinterpreted. Because of this, European states and NGOs decided to widen institutional academic freedom and deriving from this, in 2009 Pragues Declaration, By European University Association (EUA) declared that: “universities need strengthened autonomy to better serve society and specifically to ensure favorable regulatory frameworks which allow university leaders to; design internal structures efficiently, select and train staff, shape academic programs and use financial resources, all of these in line with their specific institutional missions and profiles” (EUA 2009).

3. Research

In this part of the paper we present approaches of EU member states regarding academic freedom within the frames of Bologna Process, through comparative analysis. The subject of our interest was the protection of academic freedom on legislative level, also issues regarding institutional governance, legal regulation on appointing and dismissing a rector, existence of tenure. We aim at assessing what are the approaches and experience in this regard in European higher education institutions, through evaluating the level of relevancy of state regulations to the abovementioned documents, in order to create a decent base through empirical research. It should be noted, that

there has been just one research similar to this in Georgia (the author made a research in Georgia and published in the Georgian Research journal) (Bakaradze 2018) and this work is another attempt to figure out what are the mechanisms implemented in Europe regarding protecting and strengthening academic freedom. Terrence Karran (Karran 2007; Karran 2009; Karran 2013, Karran 2017), Professor of Lincoln University, has works on unified analysis of European context of academic freedom. He is one of the most significant researchers in the field. His recommendations helped us in the analysis of the existing state of the field, so that we can uproot the gaps of Georgian education system through assessing the best practice.

In order to assess the different level of protection in EU member states, constitutions and higher education legislations of these states were studied. We considered it reasonable to analyze the information regarding constitutional protection, also, specific regulations on freedom of speech and academic freedom, institutional governance, tenure and appointing a rector. Seeking the relevant information in the constitutions was not difficult, because of their availability in English, but it was not the same with other acts. Furthermore, laws on education are subject to constant updates and amendments, in order to meet new challenges in the field, which were not completely available for us, either. As Kwiek mentions, “Situation at a state university may be different from the one at a private institution”(Kwiek 2003, 455–476). Because of this, we studied the legislation regulating only state institutions.

We studied constitutionally guaranteed protection at the highest level of protection in the EU member states. Nowadays, no one argues that there is a link between academic freedom and freedom of speech. As Connolly mentions, “there is a close relation between academic freedom and freedom of speech”(Connolly 2000, 69–82). As Dotry describes, “the guarantee of existence of freedom of speech is the basis for the concept of academic freedom”(Daughtrey 1990, 233–271).

Analysis shows, that most of the European states have strong protection mechanisms for academic freedom. In most of the constitutions there is a reference regarding this issue, but still they do not protect any element of academic freedom. Despite the fact that academic freedom may not be constitutionally protected, other national acts will protect the latter. Each EU member state has own specific legislation on higher education, which also mention academic freedom and/or institutional freedom. For example, legislations in Austria, Germany, Hungary, Italy, Ireland and Slovakia – mention freedom to teach and study, Greece additionally discusses tenure, in Finland – institutional governance, in Lithuania and Cyprus – institutional autonomy. In Bulgaria and Croatia only freedom of research and university autonomy is stated. Portuguese legislation guarantees only freedom to teach, Romanian laws mention

university autonomy, while in Sweden there is only right to research specified. In Spain and Luxemburg academic freedom is not limited. It is interesting that Austrian legislation not only protects academic freedom, but it also states that there shall be no pressure used in order to force lecturers participate in academic activities which are against their conscience.

Most of the EU member states have legislation on higher education, where it is prescribed in details how university governance shall be carried out. It is clear, that most of the European states have worked out constitutional and specific legislative protection mechanisms. In Cyprus, Malta and Estonia there is no constitutional protection guaranteed and no specific legislation envisages the latter. Post-soviet countries, which have recently become EU members, pay a lot of attention to academic freedom. It is expressed in their laws on higher education, where they have prescribed this factor (Thorens 2006, 87–110).

According to UNESCO recommendations, academic freedom requires institutional autonomy, which allows universities to make effective decisions. Lecturers of higher educational institutions should be able to participate in governance and elect the majority of academic staff representatives (UNESCO 1997b, 26–36). But according to 1998 research of Anderson D. and Johnson R. (1998), *University Autonomy in Twenty Countries*, institutional autonomy is not a guarantee of academic freedom. Research in the universities of 20 countries has shown that institutional autonomy is not essential, but is one of the conditions for academic freedom.

There are different models of self-governance. In the system where academic staff is involved in governing council, academic freedom is more protected for the professors and generally all teaching staff. When the academic staff is not given the opportunity to participate in the management, the situation is on the contrary. Academic staff, as well as representatives from outside have significant power, but considering that there are other representatives such as administrative staff and students, none of them should have monopoly in decision-making process. For example, in Poland, the senate is the highest decision-making body and the majority of it must be professors and hold PhD degrees. In the Netherlands, the supervisory board, members of which are appointed by the minister, appoints executive board. In some countries, the governance system is difficult and includes 2 or 3 systems at a time. In Portugal, there is a general board, university assembly and administrative board, while in Spain – public board, governing board and university senate. It is clear, that when there is maximum number of academic personnel in a governing board, their position is stronger.

The form of appointing a rector is not mentioned in UNESCO recommendations, according to which “Autonomy should not be used by higher education institutions as a precondition to limit the rights of higher-education teaching personnel”... who “should have the right and opportunity, without discrimination of any kind, according to their abilities, to take part in the governing bodies and to criticize the functioning of higher education institutions, including their own” (UNESCO 1997b, 26–36). In previous times, rector himself appointed or dismissed academic staff, but now academic society is given the right to elect top management without institutional interference from outside. Some countries have also practice to appoint the rector from external circles, and not from the university. Where a rector is appointed and not elected, he/she will be less likely to be interested in protection of the rights of academic staff. For example, in Austria, the university council elects a rector from three candidates nominated by the senate. Similarly, in the Czech Republic, senate approves the budget of a higher educational institution, which is presented by the rector. The senate also monitors the governance of the institution and votes for appointment or a dismissal of a rector. Staff’s active involvement in the university governance is desirable.

UNESCO recommendations, which are created for international use, note: “tenure is one of the most important procedural guarantees for academic freedom” (UNESCO, 1997b 26–36), Byse and Joughin have discovered that tenure is conditioned by the variety of policies, plans and practice and there is no agreement on the either criteria or procedures, which will be able to conclude or terminate permanent contracts (Byse and Joughin 1959). However, in the EU countries, where tenure is awarded to staff after some period and which shall be cancelled, it can be considered as unguaranteed right of a tenured professor.

Some European countries may find it irrelevant to envisage the academic tenure in their labor legislation regarding the dismissal from a workplace. In France and Portugal, academic staff has the same rights, protections and status as public servants and as a result, the same legal protection. In other countries, there some changes are going on regarding tenure contracts. Upon data analyzed, we can conclude, that in EU countries, it is quite difficult to obtain and maintain tenure. Offering unconditional tenure to academic staff is rare and where it is available, there is a special conditional period prior to awarding tenure. In most countries, obtaining tenure is possible through competition and is offered for a limited period of time. For example, in Lithuania, professors are elected for five years, but if they manage to win the third five-year period, then they can hold the position until the age of sixty-five. Similar system is in Croatia, where tenured professors are equal to public employees. In countries, such as Austria, the Czech Republic, Germany, Denmark, Hungary and Poland, tenured

professors are required to become affiliated professors before they sign permanent contracts. Researchers employed in the universities of these countries are less likely to be offered tenure positions. The system of permanent academic contracts is well practiced in France, where academic staff is able to hold permanent position, so called *Maître de Conférences* after obtaining a PhD degree, provided that they are affiliated to a university. In the previous decade, amendments were introduced in legislations, which reflected on staff contracts. In the universities, where probation period for tenure or affiliation based system was practiced, in terms of institutional autonomy started to offer some additional terms in the contracts, this is known as “tenure track” position. In the Netherlands, there is not a special regulation to hold the tenure position and despite the fact, that professors had de-facto right to tenure, the state is changing, as institutional autonomy for the academic staff transfers everything to institutional and individual contracts. Similarly, in Great Britain there is no specific legislation protecting tenure, as the law was enacted to totally abolish the institute of tenure. Researches make it clear, that it will be possible to create some measures based on the comparison of European countries. (Orji and Maekae 2013, 1857 – 7881; McCartney 2015). OECD indicators reveal that in 2015 the participation rate in higher education in Finland was 87 %, in Germany – 91%, in Portugal – 92% (OECD 2007, 7).

Conclusions

It becomes clear in different researches regarding universities, the role of education becomes more and more important in determining the national welfare. Upon comparison of European states, it is noticeable that the level of academic freedom is variable and needs to be strengthened. Through the analysis of legislative base, experience and legislative regulations in EU states, we can conclude, that academic freedom is one of the essential principles of Bologna Process, and however, its meaning and notion varies from country to country. Basic documents of EU recognize, that arts and scientific research is protected. Academic freedom is respected. Legal documents analyzed during the research do not provide any information on how academic freedom is formed and how it can be developed. There is no information on how the existence or inexistence of academic freedom influences implementation of Bologna Process. Academic freedom it is universally recognized, which has significant importance for social progress.

We consider it reasonable, that the countries, discussed in the research, harmonize their education system with universal education space and in this process, academic

freedom is the most significant principle. Despite the fact that there is a tendency of increase of academic freedom, which is also proved in numerous researches, institutional autonomy is still poorly developed. Taking all the above mentioned into consideration, it is desirable for the European states, to implement such system, which ensures high level of protection, in a way that the universities will have wide autonomy in units such as organized structure, selection of academic, invited and administrative staff and most importantly, academic activity.

As we can see, in the constitutions of EU member states this norm does not have relevant support, but if the integration process of new members in the union goes on, we can assume that in the following decade, step-by-step, it will be recognized on constitutional level. This is why it is important that the role of academic freedom should be defined more precisely.

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