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Threats to academic freedom and autonomy of higher education institutions in Europe

Report[1]
Committee on Culture, Science, Education and Media
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Summary

Academic freedom and institutional autonomy are essential components of a democratic society. These values are under multiple threats today, ranging from the criminalisation of researchers, scholars and students to the commodification of higher education and sometimes questionable financing of higher education institutions.

Some member States rank among the lowest in the world in terms of guaranteeing academic freedom and institutional autonomy. Governments must therefore make sure to strengthen their protection when devising post-Covid-19 national higher education policies and regulatory frameworks.

Regrettably academic freedom and institutional autonomy remain largely undefined concepts; this results in low awareness levels among the academic staff of their rights and hampers the possibility to sanction violations. Therefore, the ministers of the European Higher Education Area are called upon to adopt a conceptual reference on these fundamental values, and to put their advocacy and the monitoring of their implementation on top of their agenda 2021-2024. Furthermore, the Committee of Ministers should assess the feasibility of drafting a binding instrument that could set up a proper international framework of assistance, monitoring and assessment of the protection of academic freedom and institutional autonomy in the member States.

1. Reference to committee: Doc. 14365, Reference 4324 of 13 October 2017.

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A. Draft resolution[2]

1. Academic freedom and institutional autonomy of higher education institutions are not only crucial for the quality of education and research; they are essential components of democratic societies. Yet these values are under multiple threats today, ranging from the criminalisation of researchers, scholars and students to the commodification of higher education and commercialisation of knowledge, which are increasingly damaging the quality of education and research and distancing higher education from the wider civic democratic and societal purposes.

2. The Parliamentary Assembly deplores that some of the Council of Europe member States figure at the very bottom of the recently published Academic Freedom Index (AFI) list, which confirms the urgency of setting up a proper international framework of assistance, monitoring, assessment and sanctioning mechanisms to protect academic freedom and integrity across the continent. The fundamental values of higher education apply to all member States, without exception.

3. The Covid-19 pandemic has demonstrated to what extent academic freedom helps research and dissemination of reliable information in global sanitary crisis. This pandemic should in no way serve as pretext for any further infringements on academic freedom and institutional autonomy of higher education institutions. The post-Covid-19 world will require more than ever democratic civic universities dedicated to producing knowledge and developing competences that serve the society responsibly and responsively.

4. The Assembly regrets that, notwithstanding two decades of serious discussions on academic freedom and integrity, to this day, declarative statements have not translated as yet into internationally agreed definition or conceptual reference on academic freedom. This explains in part the low awareness among the academic community of their rights and helps put a blind eye to institutions and countries that fail to guarantee core values and protect students and scholars. It therefore welcomes the intention of the forthcoming Conference of Ministers of the European Higher Education Area (EHEA) in November 2020 to adopt a common definition and encourages the ministers to devise appropriate benchmarks that would enable systemic monitoring and assessment.

5. The Assembly recalls the Committee of Ministers Recommendation CM/Rec(2012)7 on the responsibility of public authorities for academic freedom and institutional autonomy, which clearly stipulates that public authorities have the obligation to protect academic freedom and institutional autonomy, and that they must refrain from any action that would endanger or impinge on them. The existence of laws does not automatically guarantee their implementation. The Assembly is concerned that, in the absence of regularly monitored data and of a legally binding international agreement, the various forms of abuses go on unhindered and unsanctioned. It considers that there is a true need for a European Convention on the Protection of Academic Freedom and Institutional Autonomy together with its information gathering, monitoring and assistance instruments.

6. The Assembly expresses concern over the increasing external funding and commodification of higher education, which undermine the idea of higher education as a public good and public responsibility. The external financers' commercial and political interests may subvert the focus of research towards increased profits and revenue flows for the companies that sponsor such research, and set limits to the freedom to publish the research results. Universities being icons of intellectual accomplishments of States, they have a major role in preserving cultural and linguistic heritage. National authorities must therefore live up to allocating adequate State funding of higher education in order to reduce the risks arising from external financing.

7. Academic freedom and autonomy are not properly taken into account in any university rankings today, making some higher educational institutions of countries with the lowest scores of AFI appear to excel. Future rankings must duly take academic freedom data and available indexes into account. Excellence cannot be based on stifled questions, political conformism and the closing of minds.

8. Finally, the Assembly commends the various initiatives that different international bodies such as the Council of Europe, the EHEA/Bologna Process or UNESCO are currently undertaking in view of developing new monitoring mechanisms of the implementation of academic values in higher education institutions. It encourages them to bring all the different existing frameworks together and to pull their respective strengths and resources in order to avoid duplication of effort, maximise value-added of the research and enhance the chances for broad policy development and implementation. In this respect, the Assembly welcomes the 2019

2. Draft resolution adopted by the committee on 25 September 2020.

Declaration of the Global Forum on Academic Freedom, Institutional Autonomy and the Future of Democracy and urges the academic communities, higher education leaders, public authorities, the ministries of the EHEA and other stakeholders to adhere to its recommendations.

9. In light of the above, the Assembly calls upon the governments of member and observer States:

9.1. to ensure that the protection of academic freedom and institutional autonomy is enshrined in national legislation, and that the relevant legal provisions are put into practice; to refrain from undertaking any undue action that could endanger or impinge on academic freedom and institutional autonomy, and establish the frameworks that make their practice possible;

9.2. to devise new post-Covid-19 national higher education policies and regulatory frameworks that take due account of the principles of academic freedom and institutional autonomy, in line with the Committee of Ministers Recommendation CM/Rec(2012)7 on the responsibility of public authorities for academic freedom and institutional autonomy;

9.3. to provide adequate public funding for higher education and research, in line with established national priorities, thus enabling institutions to maintain their independence as far as possible; to enhance transparency within the regulatory mechanisms for higher education funding and provide clear provisions for impeding any possible menace to academic freedom and autonomy through financing schemes, whether the sources are public or private.

10. In particular, the Assembly appeals to the Governments of Azerbaijan, Hungary, the Russian Federation and Turkey, which are ranking lowest within the AFI, to take immediate action to reverse the recently adopted legislation and/or practices that limit the respect of principles of academic freedom and institutional autonomy.

11. The Assembly calls upon the relevant stakeholders, including international organisations, national authorities, academic professional associations, universities and funders, to integrate the assessment of academic freedom into their review processes, institutional partnerships as well as ranking and financial support mechanisms.

12. The Assembly welcomes the intended reaffirmation by the Ministers responsible for higher education of the EHEA of their commitment to promoting and protecting the fundamental values in the entire EHEA through intensified political dialogue and co-operation, and to this end, urges them:

12.1. to adopt, at their next meeting, the definition of academic freedom as submitted to them by the Bologna Follow-up Group (BFUG);

12.2. to place the development of a proper framework for the enhancement of the fundamental values of the EHEA, including clear benchmarks against which the level of (and changes to) academic freedom could be measured and a strategy for advocacy and monitoring policy implementation of academic freedom and institutional autonomy, on the top of their agenda for 2021-2024;

12.3. to seriously address the threats to academic freedom and institutional autonomy and consider measures towards the governments showing continued disrespect or unwillingness to take reasonable steps to improve the situation.

13. Finally, national parliaments and international parliamentary bodies have also a role to play in identifying relative increases or decreases in respect for academic freedom among State partners and providing a framework for regular evaluation, dialogue and reform. The Assembly calls on national MPs and relevant parliamentary committees of its member States to remain vigilant as regards to significant deficiencies or decreases in respect of university values, and to undertake inquiries into the causes and develop appropriate policy remedies when necessary.

B. Draft recommendation[3]

1. The Parliamentary Assembly refers to its Resolution … (2020) "Threats to academic freedom and autonomy of higher education institutions in Europe", and recalls that democratic education, particularly democratic higher education, is a prerequisite for fair, inclusive and sustainable democratic societies. Higher education must play a key role in helping to shape the post-Covid-19 world towards a stronger commitment to human rights, democracy, the rule of law, social justice, inclusion and equity; and to reshape itself to respect the core values of academic freedom and integrity, institutional autonomy and accountability, as well as societal responsibility. Higher education institutions must re-invigorate their function as societal actors for the public good. In this context, the Council of Europe Reference Framework of Competences of Democratic Culture is more than ever of pertinence.

2. The Assembly welcomes the continuing commitment by the Council of Europe to the issues of academic freedom and institutional autonomy as expressed in the Declaration of the Global Forum on Academic Freedom, Institutional Autonomy and the Future of Democracy held in June 2019 in Strasbourg.

3. The Assembly remains concerned, however, over the multiplication of negative actions in some member States violating or undermining academic freedom and institutional autonomy. The Council of Europe must not turn a blind eye to any abuse of human rights and academic values in its member States. The responsible States should be made accountable and be asked to revoke their controversial or discriminatory legislation and reverse their actions that do not respect the values of the organisation they belong to.

4. The Assembly is convinced that stronger action is needed on the part of the Council of Europe and its member States to address academic freedom and autonomy of higher education institutions. The Organisation is well positioned to provide the necessary guidance and support, in close co-operation and co-ordination with other relevant European and international institutions and organisations.

5. In light of the above, the Assembly recommends that the Committee of Ministers:

5.1. adhere to the use of the definition of academic freedom to be adopted by the Ministers of the European Higher Education Area (EHEA) in November 2020;

5.2. in close co-operation with the Bologna Follow-up Group (BFUG) and other relevant stakeholders, uphold the development of the EHEA framework for the enhancement of the fundamental values of higher education, and within this context, entrust the Steering Committee for Education Policy and Practice with:

5.2.1. carrying out an empirical study on the state of affairs and awareness of scholars, researchers, university staff and students all over the Council of Europe and EHEA member States of their academic freedom;

5.2.2. drawing up an action plan on policy advice and awareness raising in order to harmonise the sometimes contrasting policies made by nations and individual institutions in the name of academic freedom;

5.2.3. carrying out a study on the effectiveness of constitutional provisions and the implementation of legislative frameworks that are meant to protect academic freedom and institutional autonomy in member States, and make policy recommendations upon this study;

5.2.4. assessing the need for and feasibility of a developing binding instrument on academic freedom and institutional autonomy.

3. Draft recommendation adopted by the committee on 25 September 2020.

C. Explanatory memorandum by Mr Koloman Brenner, rapporteur

1. Introduction

1. Over the past few years, academic freedom and institutional autonomy have come under increasing pressure in many countries. Many scholars and policymakers believe that Europe is living through a crisis of these values.

2. The initial motion[4] in June 2017 was triggered, on the one hand, by the growing commercialisation of higher education resulting in a constant competition between universities for teachers, students and funding, and the risk of financing decisions being used as a tool to quell dissenting voices. On the other hand, it was incited by alarming developments in some Council of Europe member States.

3. Today, in almost all European countries, academic freedom and institutional autonomy are subject to various threats, yet they are of different intensity. This report will mostly focus on the everyday aspects of academic freedom and institutional autonomy. However, it will also look at several situations in which academic freedom and institutional autonomy are in particular danger and threatened for political reasons.

4. In addition, in the recent few months, academic freedom has come face to face with new hurdles emerging from the Covid-19 pandemic, in the situation where online education is increasingly becoming a new norm. The impact of the Covid-19 crisis on academic freedom will also be tackled in this report.

5. I am grateful to Professor Terence Karran, Director of Research at the School of Education, University of Lincoln, United Kingdom, whose expertise and study on academic freedom in the European Union member States (hereafter the "EU study") provides many of the arguments and the empirical background information for this report.[5] I am also thankful to Mr Máté László Botos, Head of the Committee on Humanities of the Hungarian Rectors´ Conference, Mr Liviu Matei, Provost of the Central European University, Budapest; and Mr Tony Gallagher, Acting Dean of Research, Faculty of Arts, Humanities and Social Sciences, Queen's University Belfast, United Kingdom, for all their inputs.

6. Today, given the alarming developments in some member States as well as the global trends and the sanitary crisis affecting the sphere of education worldwide, I find it particularly important to reaffirm our commitments to our own Council of Europe's principles and the principles supported by other universal and regional educational agreements: UNESCO Recommendation,[6] International Association of Universities Statement[7] and the Magna Charta Universitatum.[8]

2. Why academic freedom and institutional autonomy matter today

7. There are several reasons why academic freedom and institutional autonomy are important. They are fundamental, on the one hand, to furthering research, the pursuit of truth, research collaboration and the quality of higher education; and, on the other hand, they are essential to democratic societies. As highlighted in the preamble of the Declaration of the Global Forum on Academic Freedom, Institutional Autonomy and the Future of Democracy held last year in Strasbourg (hereafter the Global Forum), the future of democracy is at risk in the absence of academic freedom and institutional autonomy, just as it is when the press, media or civil society organisations are weakened and compromised.[9]

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4. "Threats to academic freedom and institutional autonomy", motion for a resolution tabled by Katrin Jakobsdottir (Iceland, UEL) and other members of the Parliamentary Assembly.
5. Professor Karran gathered the data on the state of academic freedom in the majority of EU States via an on-line survey, conducted following a research funded by an EU Marie Curie Intra-European Fellowship. The total number of responses to this survey exceeded 4 500. For further information on the data set, see document AS/Cult/Inf (2019) 06 of the Committee on Culture, Science, Education and Media of the Assembly, as well as 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, p. 29f, 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.
6. http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html.
7. https://iau-aiu.net/IMG/pdf/academic_freedom_policy_statement.pdf.
8. www.magna-charta.org/resources/files/the-magna-charta/english.
9. https://rm.coe.int/global-forum-declaration-global-forum-final-21-06-19-003-/16809523e5.

8. Academic freedom is not a privilege but a necessary condition for higher education institutions to be able to fulfil their public function to disseminate knowledge and education. It derives from the right to education, but is also intimately linked with freedom of thought, freedom of opinion and freedom of expression. New knowledge cannot easily be developed if established dogmas cannot be questioned. The quality of education and research therefore depends on academic freedom and institutional autonomy. These are in fact two sides of the same coin. It is difficult to imagine academic freedom in a non-autonomous university. On the other hand, institutional autonomy, as a set of freedoms of the institution, is a necessary but not a sufficient condition for academic freedom.

9. The principle of institutional autonomy encompasses the right of the higher education institution to determine its organisation and administrative structures, to decide on priorities, manage budget, hire personnel and admit students etc. As underlined in the Declaration of the Global Forum, institutional autonomy is often understood through the prism of the legal relationship between higher education institutions and public authorities. Institutions cannot be autonomous unless public authorities allow them to be so, but legal provision alone can guarantee neither the pursuit of knowledge nor democracy, since both depend upon open democratic values, attitudes and behaviours. Any limitations on institutional autonomy must be based on essential educational or legal needs (such as those reflected in accreditation requirements or non-discrimination laws), not on political grounds.[10]

3. The concept of academic freedom: the challenge of defining it

10. The modern development of the doctrine of academic freedom is largely derived from the nineteenth century German concepts of "Lehrfreiheit" and "Lernfreiheit'[11]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 hallmark of the research university, initially in the European States and the USA and subsequently across the globe.

11. Despite the primacy of the European States in the establishment of higher education institutions, and the development and refinement of the concept of academic freedom within them, there is no agreed definition of academic freedom to date. The empirical research of the EU study shows that this problem is compounded by a general level of ignorance among academic staff.

12. The right of academic freedom has been largely ignored by individual academics (most of whom have scant knowledge of the concept), by institutions (most have an academic freedom institutional statement, but, owing to the lack of any Europe-wide guidelines, 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 marketisation of university functions.

13. This lack of a common conceptual reference can have unwanted consequences. For example, when the European Commission sued the Government of Hungary for infringement of academic freedom in the case of the modified Higher Education Law of Hungary, the Hungarian Government contested that it could not be sued for the infringement of academic freedom because there existed no legal reference for it.[12] There is no basis to make a case for academic freedom under the European legislation. The case is still pending at the European Court of Justice, but it cannot be judged by its merits.[13]

14. 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,[14] the Council for Development of Social Science Research in Africa (CODESRIA),[15]the Magna Charta Observatory,[16] UNESCO,[17]and the World University Service.[18] Most of these worthy declarations encourage and exhort higher education institutions, in general terms, to respect academic freedom.

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10. https://rm.coe.int/global-forum-declaration-global-forum-final-21-06-19-003-/16809523e5, paragraph 7.
11. Goldstein S., (1976) "The Asserted Constitutional Right of Public School Teachers to Determine What They Teach", *University of Pennsylvania Law Review*, 124(6): 1293.
12. The case had to be transformed into a case about the right to deliver commercial services rather than the right to academic freedom. When the first hearing took place in June 2019, the point about academic freedom was made and the case remained nominally about academic freedom.
13. On 6 October 2020, the case resulted in a landmark judgment by the Court of Justice of the European Union (C-66/18), which ruled that the Hungarian law amending the 2017 Law on higher education ("lex CEU") violates Hungary's commitments under the World Trade Organization, and infringes the provisions of the Charter of Fundamental Rights of the European Union relating to academic freedom.
14. Parliamentary Assembly Recommendation 1762 (2006) "Academic freedom and university autonomy".

15. 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 (using a checklist encompassing the different elements of academic freedom) would make it possible to show how the level of protection in individual countries has altered over time, or what the average score was for a group of countries.[19]

16. In attempting to move towards a common definition, our expert Dr Karran suggests that the following essential elements need to be sewn together to create an instrument which enables comparative evaluations:

17. First, academic freedom is a professional freedom granted to individual academics, selected for their subject knowledge and professional competence, so that they are entitled: to 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 to undertake research to create new knowledge, freely disseminated to their students and the wider academic community.

18. Second, despite national variations, academic freedom has two substantive and three supportive elements.

19. 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.

20. 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 fails 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.

21. 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 people, from among their number and beyond, 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 is 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.

22. Furthermore, 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 authorities, governments, national and international organisations, religious foundations, national and international NGOs, and private companies.

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15. CODESRIA (1990) Declaration on "Academic Freedom and Social Responsibility of Academics".
16. Magna Charta Observatory (1988) Magna Charta Universitatum.
17. UNESCO (1997) Recommendation on the "Status of Higher Education Teaching Personnel".
18. World University Service (1988), Lima Declaration on "Academic Freedom and the Autonomy of Institutions of Higher Education".
19. Karran's paper (Karran T., (2009) "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.

23. It is necessary for academic freedom to have these three supportive elements interacting together. Each in its own right is insufficient for academic freedom to flourish. 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.

24. I have been glad to learn while finalising this memorandum that the Bologna Follow-up Group (BFUG) is currently preparing a definition on academic freedom to be submitted to the forthcoming Conference of Ministers of the European Higher Education Area (EHEA) in November 2020[20], The draft definition is not available as yet and I hope that the drafting group could take into consideration the above elements in order to produce a concise, unambiguous and unanimous statement of meaning, to be used in carrying forward EHEA's future work to protect and enhance academic freedom among its member States. Once adopted, the Council of Europe should adhere to the use of this definition.

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

25. Academic staff are unlikely to defend their academic freedom if their knowledge of related rights is limited. The recent EU study highlights 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 higher education institutions have been negligent in their duties of informing the academic community as to their legal and constitutional rights.

26. In this respect, the Council of Europe should consider a programme of action to work with member States to develop and disseminate authoritative materials for academic staff detailing the rights linked to academic freedom within each nation.

27. 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 as scholars (as opposed to consumers) is rarely, if ever, discussed.

28. In most European countries, students have representatives on the relevant governing bodies of their institutions and the European Students' Union (ESU) is very active in European policy debates, both in the EHEA and the EU context. The EHEA together with the ESU could establish a research agenda, and thereby clarify and strengthen the academic freedom rights of both staff and students, and to work on producing and disseminating a students' academic freedom rights Charta, for use among member States.

5. External and State funding of higher education research

29. 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.

30. On the one hand, external funding helps to boost research capacity and provides higher education institutions with the opportunity to perform larger and more complex research assignments. On the other hand, "politically" initiated research and commercial interests can compete with independent research and prioritise research satisfying the financer's needs. As a result, the balance between freedom of research, society's needs, and commercial interests risk the danger of being skewed. Research intended to provide a knowledge base for political decisions, business development and measures with consequences for individuals or groups of people demands the researcher's integrity and independence, as well as the validity and reliability of the research results. It is clearly necessary to increase State funding allocated to higher education in order to reduce the risks arising from the involvement of external sponsors.

31. The majority of respondents in the EU study 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.

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20. The draft Communiqué of the EHEA Ministerial Conference can be found at: http://www.ehea.info/page-BFUG-meeting-71.

32. Academic researchers believe that there should be transparency with respect to the sources of funding for commissioned research and the conditions for such funding (namely limits on the freedom to publish research results), and that the proportion of representatives on universities' boards coming from business and industry should be reduced. However, there is no evidence of withdrawing research funding and equipment.

33. The Council of Europe 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 its member States to enjoy academic freedom in their pursuit of fundamental research.

6. Censorship and self-censorship in academia

34. 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, 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.

35. Academic freedom is designed to protect individual scholars, even against the institutions where they serve,[21] as well against other academics.

36. 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.

37. According to the EU study, 21% of respondents practised self-censorship. This relatively 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.

38. 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.

39. Evidence shows that even in the absence of direct pressure on academia, the political and ideological climate in a country can cause unconscious and conscious self-censorship among academics. For instance, a political science scholar may choose more "appropriate" and "safe" terms to describe a political phenomenon instead of pursuing the truth, which is the very purpose of science.[22] Becoming a usual part of day-to-day professional practice, self-censorship hinders the development of science.

40. Apart from that, self-censorship can be a consequence of professional ethics within the higher education environment "typified by the tolerance of others' opinions and beliefs, and freedom of expression".[23] The issue of self-censorship can be solved by ensuring non-interference of the State in the topics, methods and hypotheses researched and discussed in the universities, ensuring the general freedom of expression (and non-persecution for expression) and creating the political climate in a country that would foster discussion and pursuit of the truth.

41. The research into academic freedom in the EU member States has revealed that 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; 15.5% of respondents reported being bullied by other academic staff. This indicates how important it is for staff to be aware of their

21. Daughtrey W., (1990) "The legal nature of academic freedom in United States colleges and universities", *University of Richmond Law Review*, 25: 270.
22. https://republic.ru/posts/91827.
23. University and College Union (2017). "Academic Freedom in the UK: Legal and Normative Protection in a Comparative Context" (p.80).

academic freedom rights, and for proper processes and protocols to be established within universities to deal with this problem. The Council of Europe should address it through dissemination of information on academic freedom rights, as enshrined in constitutions and legislative frameworks.

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

42. The rise of the neo-liberal global knowledge economy, within which higher education is seen as a 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.[24]

43. The role of higher education institutions in the new knowledge economy has created a critical shift in the dominant model of higher education provision. Under the "traditional" view of higher education, students acquire knowledge via an active collaborative teaching and learning relationship with academic staff. In contrast, the commodified view sees higher 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.

44. In such a consumerist system, students base their decisions about their higher education on how it will contribute to their future employment and career prospects, and not on whether they find it intrinsically interesting.[25] Hence 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 Process[26]) which extends beyond meeting national needs, to attracting international students in increasing numbers.

45. As a result, governments have become motivated to expand the supply of higher education from serving a minority class elite to a majority national provision, and beyond to international "markets" in other countries. In consequence, "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."[27]

46. The adoption of neo-liberal policies in higher education undermines the idea of higher 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 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.[28]

47. The results from the EU survey show that the overwhelming majority of university staff are very concerned about the commodification 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.

48. 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.

49. Latest research from the Cross-Border Education Research Team[29] 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 programmes, substantially on site

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24. See for example Altbach P., Reisberg L., and Rumbley L., (2009) *Trends in Global Higher Education: Tracking an Academic Revolution*, Paris: UNESCO.
25. 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.
26. Štech S., (2011) "The Bologna Process as a New Public Management Tool in Higher Education", *Journal of Pedagogy*, 2(2): 263-282.
27. Abeles T., (1998) "The academy in a wired world", *Futures,* 30(7): 307.
28. 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.

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).

50. 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.

51. Universities are icons of the intellectual accomplishments of States, and act as repositories and custodians of artefacts of cultural and historical importance. Clearly, private universities, seeking to enter markets in EU member 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. The General Agreement on Trade in Services (GATS)[30] 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."[31]

52. 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; therefore, the Council of Europe should consider conducting a meta-analysis of existing research, in order to inform future policy in this area.

53. Under the aegis of the GATS, the commodification of higher education has accompanied a growth in both the number of suppliers of trans-national education and higher education institutions establishing campuses outside their home nation. The Council of Europe should examine the possible threat posed by such developments to individual universities and higher education systems, especially in small European States.

8. Domestic and international protection of academic freedom and institutional autonomy

54. Academic freedom and institutional autonomy require absence of interference by public authorities, yet neither academic freedom nor institutional autonomy can be a reality unless public authorities ensure this.[32] It means that public authorities have an obligation to guarantee these two principles, but at the same time must refrain from undertaking any action that would endanger or impinge on them.

8.1. Domestic protection

55. In the majority of Council of Europe member States, some form of constitutional or legal protection for academic freedom is provided. The 27 EU member States have constitutional protection for freedom of speech or expression. Of the 20 non-EU member States, 13 provide protection for freedom of speech/ expression, without conditions. Five of these States (Armenia, Iceland, Montenegro, Republic of Moldova, Turkey) provide constitutional protection but with conditions. The situation is not clear for San Marino and the United Kingdom does not have a constitution.

56. As well as protecting freedom of speech, the constitutions of many EU countries also provide direct protection for academic freedom: 9 offer no constitutional protection for academic freedom, 11 provide protection for teaching, 15 provide protection for research, and 8 provide protection for institutional autonomy. Concerning the 20 non-EU member States: 8 provide no constitutional protection, 5 provide protection for teaching and for autonomy, and 4 provide protection for academic freedom generically.

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29. See http://cbert.org/resources-data/branch-campus/.
30. GATS, www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm.
31. Collins, C., (2007) "A General Agreement on Higher Education: GATS, globalization, and imperialism", *Research in Comparative and International Education*, 2(4): 294.
32. "Academic Freedom and Institutional Autonomy – What Role in and for the EHEA?", Background document for the thematic session at the meeting of the Bologna Follow-Up Group, Bratislava, 8-9 December 2016.

57. Domestic legal protection for academic freedom in European higher education institutions is also provided by means of specific higher education legislation. As examples: in Spain, academic freedom is mentioned in the constitution but the legislation gives further protection for the individual functions of teaching and research; Bulgaria and the Slovak Republic offer specific protection for teaching and research activities in law, along with direct protection via their constitutions. 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.

58. It is evident that the *de jure* protection alone does not guarantee *de facto* academic freedom and institutional autonomy. Just because a constitution stipulates that academic freedom is protected does not mean that the academic staff or students are not intimidated in practice. Therefore, I tend to agree with those who say that it does not really matter whether academic freedom and institutional autonomy are inscribed in the constitution of States; what is more important is those States' commitment to the academic principles and values of debate and solid independent research and analysis for the good of the society.

8.2. International protection

59. In addition to national legal safeguards, protection also occurs at supranational level. Various international or regional treaties protect the rights to education, to scientific research, to freedom of thought and to freedom of expression, but no treaty refers directly to the protection of academic freedom. The EU Charter of Fundamental Rights states nevertheless that "The arts and scientific research shall be free of constraint. Academic freedom shall be respected".[33] This Charter was incorporated into the 2008 EU Revision Treaty.[34]

60. The basic standard for academic freedom and institutional autonomy is the Magna Charta Universitatum (1988), which is signed by over 800 universities around the globe. 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. Another European actor, the European University Association (EUA), has great influence in defining, operationalising, measuring and promoting the principle of university autonomy, but has been relatively silent on the matters of academic freedom.

8.2.1. UNESCO

61. The most detailed international protection for academic freedom is available via the UNESCO *Recommendation concerning the Status of Higher-Education Teaching Personnel*.[35] According to this instrument: "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".[36] It further notes that "Autonomy should not be used by higher education institutions as a pretext to limit the rights of higher education teaching personnel provided for in this recommendation or in other international standards"[37].

62. 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 as the information is solely supplied by member States, its monitoring body meets only every three years (therefore resolutions of complaints may take many years) and it only assesses the veracity of individual complaints yet does not deliver general comments to comprehensively interpret the substantive provisions of the Recommendation.

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33. European Union (2000), *Charter of Fundamental Rights of the European Union*, 18th December 2000, p. 11.
34. 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.
35. This recommendation was adopted by the UNESCO General Conference in November 1997, after extensive consultation with academic and legal experts, NGOs, the International Labour Organisation, and member States. It is well-embedded in other international regulations.
36. UNESCO (1997), Records of the General Conference, Twenty-ninth Session Paris, 21 October to 12 November 1997, *Volume 1 Resolutions,* Paris: UNESCO, p. 26.
37. Idem, paragraph 28, p. 20.

8.2.2. Council of Europe

63. The Council of Europe has long recognised the need to address the threats to academic freedom and the autonomy of higher education institutions in Europe. From the legal point of view, the case-law of the European Court of Human Rights is relatively limited. However, its various institutions have endeavoured for long years to promote and defend both academic freedom and autonomy.

64. In 2012, the Committee of Ministers adopted a Recommendation to member States on the responsibility of public authorities for academic freedom and institutional autonomy.[38] The Recommendation points to academic freedom and institutional autonomy as intrinsic values of higher education which are essential to the overarching values and goals of the Council of Europe – democracy, human rights and the rule of law. Additionally, it underscores the responsibility of public authorities in promoting institutional autonomy and academic freedom as essential features of their national education systems as well as in European higher education, and as values underlying the EHEA.[39]

65. In June 2019, the Council of Europe in collaboration with the International Consortium for Higher Education, Civic Responsibility and Democracy, the Organization of American States, the Magna Charta Observatory and the International Association of Universities organised a Global Forum on "Academic Freedom, Institutional Autonomy and the Future of Democracy" in Strasbourg[40]. Its final declaration called on the Council of Europe and other international institutions and organisations to make academic freedom and institutional autonomy key elements of their work, through normative standards as well as policy; and to address violations of academic freedom and institutional autonomy within their member States at a political level, including within the EHEA, as well as through their educational programmes and projects. It further urged the next ministerial meeting of the EHEA to recommit to upholding academic freedom and institutional autonomy as part of the foundation on which the EHEA is built and to include the gathering of information on the respect for academic freedom and institutional autonomy in the Bologna Process Implementation Reports.[41]

8.2.3. The European Higher Education Area (EHEA)

66. In 1999, through the Bologna Declaration, 29 countries expressed their willingness to commit to enhance the competitiveness of the EHEA, emphasising the need to further the independence and autonomy of all higher education institutions: "This is of the highest importance, given that Universities' independence and autonomy ensure that higher education and research systems continuously adapt to changing needs, society's demands and advances in scientific knowledge".[42]

67. The EHEA 2015 Yerevan Communiqué made a commitment through ministers to "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."[43] This was further strengthened in the 2018 Paris Communiqué where Ministers made a strong commitment to promoting and protecting fundamental values throughout the EHEA: "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."[44] Conceding that these fundamental values have been challenged in recent years in some EHEA countries, the European Ministers of Higher Education mandated the BFUG Task Force to develop proposals for more effective future reporting. As a first welcome step, this Task Force is now in the process of developing a draft definition of academic freedom, to be submitted to the 2020 EFEA Ministerial Conference. However, the Bologna Process still has a major challenge ahead in developing this work.

9. Handling the infringements of academic freedom in Council of Europe member States

68. Contexts of infringements and restrictions on academic freedom come in many shapes and forms, ranging from armed conflict and post-conflict, to the non-protection by the State, or even criminalisation of researchers and scholars by the State, not to mention the economic, social or ideological pressures that

38. https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805ca6f8.
39. Ibid., appendix (paragraph 1).
40. www.coe.int/en/web/education/globalforum.
41. https://rm.coe.int/global-forum-declaration-global-forum-final-21-06-19-003-/16809523e5.
42. 1999 Bologna Declaration, www.ehea.info/page-ministerial-conference-bologna-1999.
43. www.ehea.info/page-ministerial-conference-yerevan-2015.
44. www.ehea.info/media.ehea.info/file/2018_Paris/77/1/EHEAParis2018_Communique_final_952771.pdf.

weigh on the universities. When dictatorial governments take over a country, one of the first things they would usually do is to mute academics. However, other situations may be more counterintuitive. Thus, academic freedom can develop in situations of armed conflict in unexpected spheres, but be under various pressures in a democratic context, when economic pressures are exerted, or groups hostile to certain areas of research, such as gender, evolution or migration, get the upper hand.

69. At State level, infringements may include higher education laws, which limit the autonomy of higher education institutions, politically motivated fiscal restrictions and the criminalisation of professional organisations. Moreover, the passivity of the State in certain contexts can be complicit in threats since the State does not actively and explicitly protect threatened researchers. At university level, they can mean classroom surveillance through recordings or informants, political control of budget allocations, search committees, and student bodies, as well as restricted access to academic literature or the confiscation of research materials. Finally, at the individual level, they comprise loss of position, political imprisonment, or forced exile.[45] Again, the lack of an agreed definition and a legally binding instrument impede the sanctioning of any violation or infringement.

70. Research reveals that those higher education institutions which best protect academic freedom also occupy the highest positions in world universities' rankings[46]. By a paradox, university rankings measure only research quality in natural sciences but not the quality of institutions as such, including their commitment to academic freedom. Therefore, quite often universities in countries that extensively violate academic freedom do not experience negative effects to their international reputation as a consequence. In a way, these rankings make it not only tolerable but – at times – even rewarding to repress the freedom of scholars and students. Such reverse incentive structures should be of great concern to the international academic community.[47]

71. Systematic cross-country data about violations of academic freedom is grossly missing, which prevents researchers and practitioners from studying these phenomena in more depth. Until very recently, the existing university indexes have not included a measure for academic freedom. Existing data typically cover the tip of the iceberg: higher education laws that do not sufficiently protect university autonomy; and the problem's darkest corner, the imprisonment of scholars, killings and forced disappearances.[48]

72. For many years, the Scholars at Risk Network has published an Academic Freedom Monitor, which identifies, assesses, tracks and verifies incidents posing a potential threat to academic freedom under six different headings. However, events data has critical limitations; it is unfit to paint a representative and comprehensive picture of global restrictions.

73. Finally, there can be a lot of variation in the degree and type of infringements on academic freedom within a country itself. Be it between different institutions: private or public, rural or urban, historically critical of the government or not; or between subject areas: natural sciences or social sciences, established fields of study or newer ones. Looking at examples of authoritarian governments: typically, the social sciences are under stricter control by the State. In contrast, natural sciences are more easily exposed to the influence of corporate money. It is important therefore to assess the integrity of the academic community as a whole, and it would be dangerous to excuse or relativise the infringements on some subjects by the freedom of others.[49]

74. On 26 March 2020, the Global Public Policy Institute (GPPi), the Friedrich-Alexander-Universität Erlangen-Nürnberg (FAU), the Scholars at Risk Network, and the V-Dem Institute issued a new Academic Freedom Index (AFI) that introduces a brand-new, global time-series dataset based on expert assessments involving 1,810 scholars from around the world. This new Academic Freedom Index is composed of five expert-coded indicators that capture key elements in the *de facto* realisation of academic freedom: (1) freedom to research and teach; (2) freedom of academic exchange and dissemination; (3) institutional autonomy; (4) campus integrity; and (5) freedom of academic and cultural expression. In the dataset, the index is complemented by some additional, factual indicators, assessing States' *de jure* commitments to academic freedom at (6) constitutional and (7) international levels, as well as (8) whether universities have ever existed in a given country. In total, this rich dataset includes more than 110 000 observation points.

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45. Kinzelbach K., "Assessing Academic Freedom: Infringements and Their Severity", proceedings of the 12th Forum on the Internationalization of Sciences and Humanities, Berlin, 11-12 November 2018, p. 12.
46. Karran T. and Mallinson L., "Academic Freedom and World-Class Universities: A Virtuous Circle?", Higher Education Policy 2019.
47. Spannagel J., "Judging Universities by How Free They Are", Global Pubic Policy Institute, June 2019, www.gppi.net/2019/06/26/judging-universities-by-how-free-they-are.
48. Kinzelbach K., "Assessing Academic Freedom: Infringements and Their Severity", p 13.
49. Spannagel J., op.cit.

75. This new AFI assesses academic freedom in 144 countries and territories on the score scale from 0 to 1. Of the Council of Europe member States, the five top-ranking countries are Portugal (0,971), Latvia (0,964), Germany (0,964), Estonia (0,957) and Austria (0,948). Of the EU member States, Hungary fares the lowest with a score of 0,662. At the very bottom of the global list, Russia ranks (0,364, 113th), Turkey (0,097, 135th) and Azerbaijan (0,086, 137th). This is most timely information for the present report, which puts the criticism voiced during our hearings, often refuted by members representing the lowest faring countries, into a balanced perspective. The individual cases of the lowest ranking member States are dealt with in the appendix to this report. The list of infringements in those countries is far from being complete; however, it serves to ring the alarm bells of the seriousness of the problem in some member States, which should be addressed first and foremost by the concerned States themselves and by the international bodies such as the Council of Europe, UNESCO, EHEA/BFUG, EUA and others.

10. The impact of the Covid-19 pandemic on academic freedom

76. As this report is being finalised, the global community has been facing months of sanitary crisis provoked by the Covid-19. The pandemic has impacted both students and higher education institutions, posing complex and unprecedented challenges, requiring higher education to become more flexible and adaptable while rethinking how it approaches educational delivery and recruitment.

77. Academics, both inside and outside of universities, are playing a vital role in addressing the epidemiological, economic, political, social and cultural dimensions of the response to the crisis. At the initial stage, deliberate interference with the dissemination of data and deliberate distortion of information, appears to have contributed to delayed and disorderly responses. In countries with greater degrees of academic freedom and freedom of expression, researchers and medical experts have been more effectively disseminating reliable information[50]. The situation demonstrates how important the co-operation and transparency among scientists and academics is for finding effective solutions to the pandemic. As recently noted by the BFUG Working Group on Monitoring, the protection of fundamental societal and academic values is currently a condition for finding a path to live and interact together in the future[51].

78. The crisis has brought a variety of issues to the foreground. These range from new (online) forms of teaching and learning, which must be quality assured, and fully recognised cross-border mobility, to guaranteeing adequate safety measures for reopening institutions, while assuring equity and equal opportunities for all, and in particular for the most vulnerable groups of students[52]. All these issues are affecting policy development and funding of higher education, and go from short-term contingency planning to the discussions about the future model of international higher education.

79. While the outbreak of the pandemic has been in many ways disruptive to the entire higher education sector, aggravated by having to implement the ever-changing government regulations and recommendations, it has also been a catalyst for lasting and positive change, encouraging creativity and innovation. Higher education institutions have had to adapt overnight to new requirements; incorporating online learning into existing courses, creating new online courses, and adopting new online platforms and processes to support these sudden changes. Most notably, the outbreak has accelerated the development of institutions' online learning capabilities and altered the way institutions communicate their capabilities and reputations to students[53].

80. There is a broad agreement amongst academics that online can replace and complement parts of the regular lectures and lead to improvements in student performance. At the same time, there is an appreciation that in-person interaction is an invaluable and irreplaceable component of teaching and learning. Universities realise that online education is not an "off the shelf" process. Online education goes far beyond the digitalisation of on-campus material and activities. Instead, it requires careful planning and a substantial investment of resources[54].

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50. Kinzelbach K., Saliba I. et al, "Free Universities: Putting the Academic Freedom Index Into Action", Scholars at Risk Network and Global Public Policy Institute report, March 2020.
51. WG1 on Monitoring – Bologna Process Implementation Report, BFUG Meeting LXXI, June 2020.
52. BFUG_HR_UA_71_8_Parallel sessions COVID-19, background paper on the implications of COVID-19 for the Bologna Process.
53. "What Opportunities and Challenges does Online Learning Present to the Admissions Office During COVID-19 and Beyond", QS Publications, July 2020.
54. Tsiligkiris V., "Towards a Global Delivery Model for International Higher Education", *University World News*, 21 August 2020.

81. Furthermore, among all other challenges, it should be at all cost guaranteed that the new forms of digitalisation of higher education do not lead to new infringements of academic freedom and institutional autonomy. With entire institutions online, a digital record of class discussions and a bureaucracy already in place to punish individuals for their views, the potential negative impact on free and open dialogue, and, in turn, student learning, emotional well-being, maturation and cognitive gain, is immense. Political opportunists can easily exploit this permanent, decontextualised record against their opponents.

82. A highly interactive classroom should not be the space where every student utterance is achieved on a college-run server, regardless of how supposedly secure that server might be. Students and professors alike need concrete, credible guarantees that the virtual classroom does not become like Twitter, where a statement can go viral, ruin one's career, and exist on a permanent record.[55]

83. In this context, as university campuses reopen, it is not only important for universities to learn from each other and share their ideas and insights for how to deliver education in a safe and effective manner, but also to reinforce the competences for democratic culture in the digital environment. There is a further need to update free speech policies to reflect the digital nature in the age of pandemic.

11. Final remarks and ways forward

84. The constitutional and legal *de jure* protection for academic freedom varies considerably across the Council of Europe member States, as does the level of *de facto* normative protection. Moreover, there is no agreed conceptual basis or international law protecting academic freedom. Abuses of *de facto* academic freedom do occur, despite legal protection. Furthermore, there is a considerable lack of knowledge by academics of their academic freedom rights.

85. Two important conclusions emanate from this report:

– 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 Council of Europe member States and beyond are very slow in operation and frequently ineffectual in outcome.

86. 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.

87. Policymakers in the Council of Europe and the EHEA/ Bologna Process are therefore considering setting up a new monitoring mechanism to better protect academic freedom across the region. This project could succeed through joint multifaceted co-operation with all key stakeholders, including the academic and student communities, drawing on the strengths of different participating organisations, and complementing their work with other empirical studies such as the Academic Freedom Index, the latter providing a new relevant global assessment tool.

88. The Council of Europe could contribute to this process at least with three of its strengths as a key standard-setting organisation in Europe and beyond:

89. First, it should intensify its information gathering role, relying on its national expertise and networks. 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 member States, which the Council of Europe could extend to include all its own and EHEA States. In this way, it would be possible to create a "barometer" of academic freedom in Europe, which could be easily updated annually, by making incremental changes in light of changes to legislation.

90. Second, the Council of Europe should liaise with member States 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.

55. Poliakoff M., "What Will Covid-19 Mean For Academic Freedom", *Forbes*, 21 April 2020.

91. Third, the Council of Europe has a long-standing role and expertise in treaty implementation monitoring. Its lead role should be used to determine, within the work of the Steering Committee for Education Policy and Practice (CDPPE), 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 member States of the Council of Europe.

92. With respect to *de jure* protection, the CDPPE should be encouraged to assist the Council of Europe to draft a Convention on academic freedom or alternatively consider drafting an additional protocol on academic freedom to the European Convention on Human Rights (ETS No. 5). With respect to the protection of de facto academic freedom, the intention would be to:

– monitor violations of academic freedom in the member States of the Council of Europe;

– make recommendations to the Committee of Ministers on restorative action;

– develop support materials for use in different nations and provide workshops and seminars.

93. I find it apposite and fitting that the Council of Europe member States should take a determined and pro-active lead in defending academic freedom. Moreover, 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 will be respected (and probably emulated) in the wider world.

94. Finally, international parliamentary bodies also have a role to play in helping national parliaments improve the quality and competitiveness of higher education in their countries. If significant deficiencies occur, national parliaments should assume their oversight role and undertake inquiries into the cause or causes of infringements and develop appropriate policy remedies. A parliamentary dimension should therefore not be ignored in this process. This report is specifically meant to contribute to the discussions of the EHEA Ministerial Conference in Rome on 18-20 November 2020. However, the Parliamentary Assembly itself should have a more permanent monitoring role by including academic freedom and autonomy in the systematic periodic monitoring process of the obligations and commitments of member States even prior to the Organisation adopting a legal instrument in this regard, and, in particular, include the situation of academic freedom and autonomy within the ongoing preparation of reports on Azerbaijan, Hungary, the Russian Federation and Turkey.

Appendix – Violations of academic freedom and institutional autonomy in the Council of Europe member States

1. The below contains examples of countries falling behind in the protection of academic freedom and institutional autonomy.

Hungary

2. The decline of academic freedom in Hungary started with the legislative amendments to the higher education law, known as "Lex CEU", which targeted the Central European University (CEU), a George Soros funded private university accredited in the USA[56].On 6 October 2017, the Venice Commission released its final opinion regarding "Lex CEU", stating that the legislation is basically compatible with the standard European practice but the requirements laid out in the law were evaluated as "highly problematic" for foreign universities operating in Hungary.[57] It acknowledged that, "in the absence of unified European norms or models in the field, it belongs to the Hungarian State to establish, and periodically review, the most appropriate regulatory framework applicable to foreign universities on its territory, and to seek to improve this framework. Also, it is up to the Hungarian authorities to assess when and whether this framework needs to be updated and adapted to new challenges". However, it noted that, out of the 24 foreign universities operating in Hungary, the CEU seemed to be the only university that would seriously be affected by the law. This suggests that the Hungarian Government was not positioning against foreign universities locating in Hungary per se, but had an issue with the CEU, which played into the government's campaign for the parliamentary elections in 2018.

3. And yet, the Hungarian Government hindering the activity of CEU in the country is not the only case. The Hungarian Academy of Sciences has recently basically lost its research institutes. Many Hungarian researchers have left the country because of the restrictions of academic freedom.[58] The government is pursuing a neoliberal approach to science and it is questioning the importance of the humanities and the number of university places for humanist subjects have been reduced. Gender studies have been removed from the list of approved master's programs by a government decree. It is no longer possible to introduce new courses; and it is practically impossible to have joint programmes with universities outside Hungary. Courses are recognised only if they were on a list published every two years by the ministry. Universities have been merged or shut down on the whims of the minister. The ownership of seven public universities has been transferred to private foundations, the board members of which are appointed by the minister without the inclusion of academic leadership in the board[5960].The chancellors of universities are now appointed by the government. The Academy of Sciences is also under political control; its independence is no longer guaranteed, its budget for 2019 was cut and the payment of 50% of the budget depends on compliance with certain conditions.[61]

Russian Federation

4. The Russian Federation is another country of numerous infringements, including an attack on gender studies.[62] The license of the St. Petersburg-based European University (EUSP) was revoked in 2016[63] after a prominent politician had submitted a serious of complaints against the institution, including against its gender studies[64]. Two hundred students who were enrolled to EUSP were offered to continue pursuing degrees at other universities.[65] Because of the absence of a license, for more than one year the university had the status of research institute and was not allowed either to enrol new students or to conduct teaching activities. In August 2018, the University was granted a new license and continued its teaching activities.

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56. The CEU has taught students from the broader Central and East European region since 1991. It has been highly esteemed for its programmes in the social sciences and law.
57. www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)022-e.
58. Presentation of Professor Liviu Matei, Provost of the Central European University, at the committee meeting on 3 October 2019.
59. I have submitted amendments to the respective laws that would have granted university senates *ex officio* membership in the board, which have all been rejected by the Hungarian Parliament.
60. This transfer has triggered protests among the academic community, the most mediatised of which has been the case of the University of Theatre and Film Arts in Budapest (SZFE) where the university senate and leadership have resigned, citing the loss of autonomy and «all essential powers» in their explanation.
61. Presentation of Mr Máté László Botos, Head of the Committee on Humanities of the Hungarian Rectors´ Conference at the committee meeting on 12 December 2018.
62. This is due to the growing role of the Russian Orthodox Church of the Moscow Patriarchate, especially with the constant attempts to increase the "spirituality" of education with the help of "Orthodox culture".
63. https://eu.spb.ru/en/news?filter_57=whats_up_with_eusp.

5. Another victim of this policy of the Federal Service for Supervision in Education and Science was Shaninka – The Moscow School of Economic and Social Sciences, whose accreditation was withdrawn for reasons entirely contrived.[66]

6. All in all, independent scientific and professional organisations began to suffer especially after the introduction of the so-called law on "foreign agents", which has triggered ideological control over science. On 13 July 2019, the Russian Ministry of Education and Science issued new rules obliging Russian academics working at institutions under the ministry to seek approval for any meetings with foreigners. The rules call for Russian institutions to notify the ministry five days in advance of such meetings, a minimum of two Russian academics to be present during meetings, and Russian participants to file a written report that includes passport scans of their foreign interlocutors.[67]

7. Scholars at Risk has also highlighted other infringements such as banning certain research topics and the broader notion of control over the academic world. Another example is the restructuring of the institutes of the Russian Academy of Sciences, as a result of which some institutes were merged in an artificial way. A more complicated case is that of accusing scientists of espionage and treason. One of the latest examples is a lawsuit against Vladimir Goluber, a researcher at the All-Russian Scientific Research Institute of Experimental Physics, who was accused of disclosing secret information during a conference in Prague, whereas all data presented in his report were available in the public domain before his speech.[68]

8. Even though institutional autonomy is legally guaranteed in Russian Federation, this usually implies a very narrow scope of independent decision-making as regards its own development and future. If the university misses the political target, it risks facing a wide range of organisational difficulties, from financial to the loss of an educational license or accreditation.[69]

9. All protests, both political and civil, are fraught with job losses, or even criminal prosecutions, which are simplified by the new amendments to the law on rallies, marches and demonstrations. However, not only protests against low wages and high workloads lead to layoffs; for example, the protest of the dean of the Moscow State Timiryazev Academy (Russian State Agrarian University) against the building development on the academy's experimental fields, led to his dismissal, and to sending his supportive students to the police; the latter clearly intimidated the students who had organised pickets to protest against the dismissal of the dean.[70]

10. Finally, the Russia Federation uses international education to advance a certain political agenda. With this aim it not only supports higher education programmes in post-Soviet States but also actively exerts influence in unrecognised States; in fact, a Tskhinvali University in South Ossetia, a Russian-occupied region of Georgia, functions as a Russian institution. Currently, the Donetsk university in the self-proclaimed Donetsk People's Republic in Eastern Ukraine has Russian accreditation, and the Russia Federation continues to be the only country that recognises diplomas issued by Donetsk and Luhansk universities, both of which are located in occupied Eastern Ukraine[71], not to mention the universities in Crimea.

Turkey

11. In Turkey, a great number of assaults on academic freedom and institution autonomy happened based on emergency decrees issued after the failed coup attempt in summer 2016. As of August 2017, over 7000 higher education personnel have been dismissed from their positions and been banned from travel abroad.[72]

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64. The university has granted Master and PhD degrees in social science and humanities since 1994. EUSP officials and media sources suggest that Vitaly Milonov, a prominent politician, triggered the proceedings in June 2016 when he submitted a series of complaints against EUSP, including one objecting to its gender studies courses on the grounds that they were "disgusting", "fake studies" and possibly "illegal". These complaints led to an investigation alleging numerous technical violations, such as the absence of a faculty gym and the failure to display anti-alcohol leaflets.
65. www.kommersant.ru/doc/3712224.
66. Dubrovskiy D., "Academic Freedom in Russia: Between the Scylla of Conservatism and the Charybdis of Neoliberalism", 5 March 2018.
67. "Russia: Rules for Academic Meetings Undermine Freedom and Scholarship", Freedom House press release, 14 August 2019.
68. Potapova E., "Who is to Blame for the Lack of Academic Freedom in Russia?", 28 May 2019.
69. Idem.
70. Dubrovskiy D., ibid.
71. Dubrovskiy D., "Academic Rights in Russia and the Internationalization of Higher Education", American Association of University Professors.
72. Scholars at Risk, Free to Think 2017: "Anti-democratic trends driving increased attacks on higher education worldwide", p. 15.

294 students have been expelled from their Turkish universities while studying abroad whereas over 60,000 students have been affected by State-ordered university closings. At least 990 scholars, staff, and students have been detained or arrested, often without any procedural rules or prior careful investigation.[73] In addition, 15 private universities have been closed and hundreds of academics and students detained by the Turkish authorities.[74]

12. According to the Human Rights Watch, dismissal of a large number of academics under emergency decrees included no evidence of alleged wrongdoing, no individualised justifications and no clearly identified reasons for their dismissal.[75] These dismissals have left many courses without instructors, research projects have been disrupted or abandoned, and students have lost advisers to oversee their theses and instruction. The authorities are also prosecuting student activists. They have arbitrarily confiscated passports of Turkish scholars and cancelled the foreign work permit of non-Turkish scholars due to their endorsement of the "Academics for Peace" petition calling to end the violence in South-East Turkey[76].

13. In a 2018 judgment of the European Court of Human Rights (*Kula v. Turkey),* lodged by a professor at the University of Mersin who had been given a disciplinary sanction for having participated in a TV programme without his superiors' authorisation, the Court held that the sanction amounted to an interference with his right to freedom of expression (violation of Article 10) and no reason had been given for the decision to impose the sanction.

14. Despite the above judgment having influenced two landmark rulings by the Turkish Constitutional Court in 2019 concerning nine academicians signatories of the "Academics for Peace"[77], overall these actions of mass firings of academics without due process and officials interfering with academic research on controversial topics have created a climate of fear and self-censorship, and are breaching Turkey's obligations under human rights law to respect and protect academic freedom and freedom of expression.[78]

15. On 17 April 2020, "The Law Foreseeing Amendments to the Law on Higher Education and Some Laws", which had been dismissed by Turkey's Supreme Court in 2019, was voted back into effect, allowing the Council of Higher Education to lay off academics for conducting propaganda for terrorist organisation. The concept of "propagating a terrorist organisation" is the most commonly used tool to limit freedom of speech in Turkey. This new law clearly goes against the principles of academic freedom and reinforces the repressive and prohibitive work environment.

Azerbaijan

16. The authorities in Azerbaijan have long curtailed academic freedom. Recent incidents echo events in Turkey, as 50 Turkish professors of the University have seen their jobs terminated for alleged ties with the Fethullah Gülen movement.

17. Endangered Scholars Worldwide has expressed serious concern about the arbitrary detention of students, scholars, and journalists in response to their peaceful exercise of the rights to academic freedom, free expression, and free association.[79]

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73. Scholars at Risk, ibid., p.12.
74. www.universityworldnews.com/article.php?story=20170930043350133.
75. Human Rights Watch: www.hrw.org/news/2018/05/14/turkey-government-targeting-academics.
76. On 29 June 2020, Tuna Altınel, mathematician at Lyon-1 University in France since 1996 and a signatory to the Academics for Peace letter, informed the Turkish public that despite his acquittal of all charges in January 2020, the Turkish authorities have not yet reauthorised his passport. On 12 April 2019, his passport was cancelled and legal charges based on the Anti-Terror Law were filed against him. After the Constitutional Court's landmark decision in July 2019, he was acquitted of all charges in January 2020 without any travel restriction imposed. Endangered Scholars Worldwide condemns this arbitrary confiscation of Altınel's and many other Peace scholars' passports, and the restriction of their fundamental rights and freedoms. They call for the immediate release of their passports and reinstatement of constitutionally and internationally protected rights and freedoms.
77. In a letter to the rapporteur, dated on 7 February 2020, Kamil Aydın, Member of the Turkish Delegation to the Assembly, referred to two cases where the Constitutional Court's decisions have had the intention of improving the state of academic freedom in the country. On 10 April 2019, a judgment annulled the provision stipulating that academics should be held liable for all the acts listed in Law no. 657 (on public employees), assessing that universities have scientific and administrative autonomy and have different status from other public authorities. The Constitutional Court also annulled the provision granting authorisation to the President of the Council of Higher Education to open direct investigation against faculty members. On 26 July 2019, the Constitutional Court found a violation of freedom of expression safeguarded by the Constitution in the application of ten signatory academics. It assessed that the declaration should be considered within the scope of academic freedom, taking into account that nearly 2 200 academics signed it.
78. www.hrw.org/news/2018/05/14/turkey-government-targeting-academics.

18. On 1 June 2020, six students protesting against tuition fees in public universities and wishing to hand over their petition to the Minister, were arrested within the Ministry of Education and taken to custody. Five were later released, but the leader of the student organisation Rüstem İsmayilbeyli, an 18-year old journalism student at Baku University, was imprisoned.[80]

19. The ongoing tensions and government pressure over any voice of dissent in Azerbaijan have a profoundly unsettling effect on academic freedom and represent a grave threat to higher education on an international scale.

Romania[81]

20. Romania has an issue with minority higher education in Hungarian, which is applied in a restricted manner without providing technical tuition in Hungarian. Therefore, Hungary has no other choice but to accommodate this need by establishing private universities.

21. The Law of National Education adopted in 2011 provides that education for national minorities takes place in multicultural and multilingual higher education institutions, where dedicated sections/lines should be established, which should be organised into departments. Despite the continuous requests from teachers and students alike, Hungarian departments have not been established at the Medical and Pharmaceutical University of Târgu Mures.[82] The university management neglects to ensure the operating conditions of Hungarian education which led in 2020 to the reduction of enrolment number from 200 to 120 medical students per year.

22. The well-functioning independent Hungarian examinations were banned in 2019, Hungarian teachers being forced to translate all exam items from Romanian language, and also to use Romanian bibliography. These provisions are completely contrary to the European Charter for Regional or Minority Languages (ETS No. 148) ratified by Romania in 2008.

79. www.endangeredscholarsworldwide.net/post/18-year-old-student-imprisoned-in-azerbaijan-for-demanding-free-education.

80. Some sources contend that he has been tortured in custody and has gone on hunger strike demanding to be released and cleared of all charges.

81. According to the Academic Freedom Index, Romania figures 22nd of the 23 EU countries observed in this survey. The below information was received during the rapporteur's visit to Romania on 26-27 November 2019.

82. The University of Târgu Mures was established in 1945 by Romanian royal decree as a fully Hungarian higher education institute, in order to meet the need of the national minority living here. Through decades of transformations, the proportion of Hungarian students and staff is now below 20%. Only theoretical classes are allowed in Hungarian, all practical activities - which account for more than two thirds of total education time - are compulsory in Romanian language.