Mapping Article 13

Academic and Scientific Freedom under the EU Charter

Edited by:
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focus
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ON MATTERS CONSTITUTIONAL

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Content

Vasiliki Kosta

Setting the Scene

Academic and Scientific Freedom in Article 13 of the EU Charter of Fundamental Rights

Academic freedom and freedom of scientific research are enshrined in Article 13 of the EU Charter of Fundamental Rights. For the longest time, however, this Charter article received practically no or very little attention in both scholarship and EU institutional and jurisprudential practice. Inattentiveness on academic freedom was also prevalent in the European Higher Education Area for a long time, but this changed since the mid 2010s,[1] and in 2021 a Working Group on Fundamental Values was set up.[2] By contrast, the Council of Europe has been the more active international forum on the topic (and earlier in time), where explicit initiatives on academic freedom have been intensifying over the years.[3] In the EU, it was the "Lex CEU" circumstances and the subsequent 2020 ECJ judgment in *Commission v. Hungary* (C-66/18) finding a violation of Article 13 of the EU Charter of Fundamental Rights (CFR, Charter) that put the spotlight firmly on academic freedom.

Judicial pronouncements and philosophical questions

Commission v. Hungary amounted to the first – and so far, only – judicial pronouncement of this EU fundamental right. As mentioned and elaborated on in more detail elsewhere,[4] the Court clarified that Article 13 CFR goes beyond freedom of expression and that the second sentence of this provision ("academic freedom shall be respected") is justiciable. It recognised that academic freedom in Article 13 CFR comprises (at least) three dimensions: an individual dimension linked to expressive freedoms; an institutional dimension, including a guarantee that universities cannot be deprived of their organisational structures; and an obligation resting on the state to protect higher education institutions from threats to their

autonomy coming from any source. However, much remains unknown as to the further content of Article 13 CFR. Furthermore, the Court did not elaborate in this case what the underlying philosophical rationale of Article 13 CFR is, although the further development of this Article's scope will also be dependent on that. There are several philosophical justifications of academic freedom, and they can be grouped into three basic categories. Firstly, the most conventional justification is the seeking and discovery of truth (with John Stewart Mill often being cited as a classic authority) and the advancement of knowledge. Secondly, arguments from democracy (see e.g. Concurring Opinion, *Mustafa Erdogan v. Others*[5] with reference to Recommendation CM/Rec(2012)7 of the Committee of Ministers of the Council of Europe on the responsibility of public authorities for academic freedom and institutional autonomy, where these concepts are characterised as "essential values" of higher education, which "serve the common good of democratic societies"). Further sub-arguments are applicable here, and some are discussed in this edited volume in relation to the enforcement of EU values.[6] Thirdly, arguments from autonomy. Those have been articulated in theories relating to general freedom of expression, but are also linked to academic freedom (see e.g. Dworkin's work[7]). To be sure, these justifications can be, and often are, also invoked in a combined form. Further inquiry into whether and how academic freedom needs to be enabled and realised as part of a justificatory theory of academic freedom is warranted. Work is underway on conceptualising academic freedom in EU law,[8] and the contributions presented here highlight – through their respective contexts – just how urgent it is to reflect deeper on this issue, which has also important practical implications.

The role of EU institutions

The CEU affair also coincides with increased activity, awareness or acknowledgment of academic and scientific freedom on the side of the EU institutions.[9] This includes the European Parliament (e.g. The EP STOA Forum on Academic Freedom, and the European Parliament Resolution of 17 January 2024 with recommendations to the Commission on promotion of the freedom of scientific research in the EU,[10] *inter alia* requesting the Commission to submit a proposal for an act on the freedom of scientific research), and the European Commission (an earlier example is the 2022 Commission Communication on a European Strategy for Universities, which states that "[e]nsuring academic freedom in higher education institutions is at the core of all higher education policies developed at EU level, as well as in the Bologna Process"[11]). The Council of Ministers has become active, too. In the wake of geopolitical tensions it issued a Recommendation on enhancing research security in 2024, which opens its very first recital with the statement "[o]peness, international cooperation, and academic freedom are the core of world-class research innovation"[12]. That, however, triggers the question of how the Council and other EU institutions understand the relationship between academic and scientific freedom on the one hand and security on the other, as elaborated in this edited volume;[13] but also, its relationship with economic growth and innovation. Here, again, an evaluation of such a relationship requires reflection on foundational questions of academic and scientific freedom. Most importantly, as already pointed out elsewhere,[14] inspired by German constitutional law,[15] and further discussed in this edited volume,[16] a functional or instru-

mental view of science, i.e. one that views science as being in essence at the service of economic and political ends, can be called into question by Article 13 CFR. This Article 13 CFR dimension should also be taken into account in ongoing discussions and legislative processes around the next Horizon Europe Framework Programme[17] and its relationship to the European Competitiveness Fund[18].

Academic freedom on campus

The recent unprecedented attacks on academic freedom in the U.S. have been another important catalyst for catapulting academic freedom from niche topic into the mainstream also on this side of the Atlantic.[19] This is the case not least because of the potential implications of these attacks for the global scientific system – its impact on structures for international research collaborations and student exchanges, as well as scientific output.[20]

Attacks on higher education institutions in the U.S. already intensified in 2024, in the context of widespread campus protests over the war in Gaza. The American Association of University Professors (AAUP) condemned politicians,[21] powerful university donors and interests groups as well as institutional university leaders succumbing to pressure exercised by the former on universities. The issue was clearly seen here as an attack on the principles of shared governance, academic freedom, as well as university autonomy and independence. Student protests emerged very quickly also across Europe, facing varied responses.[22] The academic freedom standard contained in the Charter has not received attention in this context so far, and this may not be surprising given the necessity of the situation

having to be within the scope of EU law per Article 51(1) CFR for that standard to be applicable in the first place. More principled questions relating to academic freedom remain, however, in this context, such as: the applicability and interaction between this and other fundamental rights; the extent to which the campus context is determinative in this regard; the different actors involved (students, faculty, administration) with potentially conflicting rights and interests, including different dimensions of academic freedom; how the aims of the protests should weigh in (e.g. a demand for universities to divest as an intra-university matter); and the purpose of universities – as places of public reason and pluralist dialogue,[23] or other (narrower) purposes. Some of these issues are raised in this edited volume,[24] and this latter point also needs adressing when considering the distinct issue of academic freedom and the handling of outside (non-academic) speakers on campus and the so-called de-platforming phenomenon.[25]

The potential of the moment

Academic freedom attacks reached extraordinary levels in the U.S. from January 2025, as noted by Scholars at Risk,[26] and the European Commission responded in April of this year announcing that "Europe has a historical responsibility to defend academic freedom" "[a]s the birthplace of Enlightenment and the Scientific Revolution"[27]. Driven also by ambitions to keep "Europe at the forefront" of science, the Commission proposed several measures, including financial incentives, to enhance Europe's pull factor for U.S. (and other international) scientists. A month later, Commission President Von der Leyen announced first elements of the "Choose Europe for Science" strategy at La

Sorbonne.[28] The first one being that "science in Europe remains open and free" and stating: "We want to enshrine freedom of scientific research into law in a new European Research Area Act. Because as threats rise across the world, Europe will not compromise on its principles. Europe must remain the home of academic and scientific freedom." The first impetus for such legislative activity came earlier, with the European Parliament initiative playing a significant role, and discussed elsewhere,[29] also in relation to the latter's potential implications for the principle of conferral. Conferral is implicated given the limited scope of action of the EU in the field of education – unlike research – but at the same time, research and research-based educational activities are interdependent and this needs to be considered for an effective protection of the freedom of scientific research. For the time being, we must await and see the extent to which and how the EU legislature might flesh out the freedom of scientific research as contained in Article 13 CFR in secondary legislation. If this will materialise, it will be not only an important step towards establishing more detail on the content on freedom of scientific research as one guarantee contained in Article 13 CFR, but it could also have powerful potential for triggering the scope of application of the Charter in domestic situations in its entirety, including the second sentence of Article 13 CFR on academic freedom.

This question of applicability of the Charter at Member State level is important, especially in light of the finding of the European Parliament Academic Freedom Monitor 2024 *de facto* study that "the state of *de facto* academic freedom across the EU continues to erode"[30]. The monitor found within its scope that "systematic and structural infringements of academic freedom occur only in Hungary", and ongoing problems and lessons from

this country are further discussed in this edited volume.[31] At the same time, the monitor also pointed to academic freedom threats in most other EU Member States. Next to *Commission v. Hungary*, there is one more CJEU judgment touching on a potential academic freedom interference emanating from the national level, namely, *Boriss Cilevičs* (C-391/20) concerning language reforms in Latvia. While the Court did not engage with Article 13 CFR, the Advocate General raised it in his Opinion.[32] The academic freedom lens unveils a complicated picture entangling linguistic minority rights, the right to education, and different dimensions of academic freedom.[33]

This edited volume highlights that next to the Member State level, it is also important to look at the EU level. We have noted that considerations related to the new geopolitical landscape; security; the rise of illiberal and authoritarian trends within and outside of the EU and boosting economic growth and innovation in the EU (and occurring at a time when the new Horizon Europe Programme is being negotiated) have increased science-related initiatives. But there are also older persisting themes with academic freedom implications, which are under-investigated: Open Access and the protection of intellectual property is one of those, and analysed in this edited volume;[34] commercialisation is another.[35] The developments are many and rapid, and need to be assessed against the Article 13 CFR-standard whose content is work-in-progress in judicial and policy practice as well as academic work. This edited volume seeks to shed light on all of this and stimulate much needed further reflection.

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Christina Angelopoulos

Twists and Turns

Navigating a Reconciliation between Academic Freedom, Copyright and Open Science

In the name of academic freedom, copyright in scientific works is entrusted to their researcher-authors. However, academics are strongly incentivised to publish their works in proprietary subscription journals, access to which universities and other research institutions are obliged to pay. Where research and access are publicly funded, the result is a controversial transfer of public funds to private publishers. The Open Access movement attempts to push back by encouraging or requiring researchers to release copyright in their works openly. While this has given rise to objections based on academic freedom, whether Open Access is compatible with academic freedom is a question that should be approached via a principled examination of the purpose and scope that freedom.

Academic freedom and copyright: A relationship…

Copyright law grants exclusive rights that govern how literary and artistic works are exploited – for example, when and where they are published, uploaded onto a website or re-used by others. This protection also covers scientific works, such as the scholarly publications produced by scientists as part of their research, whether in the hard sciences, the social sciences or the humanities.

The general rule is that the creator of a work – the researcher who authors the scientific article – is the first owner of copyright in that work. Even where the law would otherwise grant copyright to the employer, universities often refrain from claiming copyright in the research output of their academic staff, leaving the management of licensing and assignments in scholarly works to researcher-authors.[1] This is what is some-

times termed "the academic exception" and it is understood to flow from academic freedom. As the late Bill Cornish explained:

> *"The search for knowledge and truth – by thought, by discussion, by teaching – was the object of institutions which traced their origins to the groves of Academe. In such endeavour, the professor claimed the right to free and independent judgment [...] Academic freedom meant the liberty to choose the subjects to research and the means of pursuing them; it meant the freedom to decide when to make the fruits of that research public and how (if at all) to exploit them [...]"*[2]

In his book on academic freedom, Eric Barendt agreed:

> *"It would be incompatible with individual academic freedom to allow the university to claim copyright, for that would give it the right to determine when and where academic work is published, or indeed to prevent publication altogether."*[3]

Author-owned copyright in scholarly works is thus generally agreed to be a necessary ingredient of the balm of free scientific inquiry, academic autonomy, the freedom to disseminate knowledge and the informed exchange of ideas that science needs to thrive.

...of twists...

There is, however, a fly in this ointment: For the purposes of career progression and to build and maintain a professional reputation, academics are strongly motivated to publish their articles in peer-reviewed journals.[4] Historically, these have been

run by commercial publishers who require copyright assignments or exclusive licences over scientific articles – almost always without financial compensation for the author. In the pre-digital world, this exchange was understood to be, if not fair, then inevitable: How else could scientific knowledge be disseminated but by printing on paper, arranging into series and distributing to libraries with journal subscriptions?[5] These journals need not perhaps have been run for profit – but the costs were invisible to researchers, who instead relied on librarians to spend somebody else's money to make sure they had access to the journals they needed.

The advent of digital technologies presented an alternative: Electronic publishing could allow researchers to access each other's works at the touch of a button. But when academic publishers moved online, they continued to demand copyright, now to allow them to enclose scientific articles within proprietary databases protected by paywalls.

In this way, the revolutionary power of the internet for knowledge dissemination revived old questions about the commercialisation of science. Rather than enabling openness and academic collegiality, copyright began to be seen as undermining academic freedom – placing stumbling blocks and toll booths along a path to truth and progress that could otherwise be free. And while in most countries copyright does recognise exceptions and limitations for the benefit of research and the operation of libraries, these provisions are usually narrow – and completely inadequate for ensuring access to scientific publications.

The problem is particularly acute for scientific research that is publicly funded – whether via the employment of researchers at universities that receive government funding or via project-

targeted funding from national, international or charitable funders. Because the institutions obliged to purchase access to publisher-controlled proprietary journals and databases for their researchers are also often publicly funded, the result is an appropriation of public investment by private companies.[6]

The problem has been exacerbated by the so-called "serials crisis", i.e. the rising subscription costs to publications with shockingly large profit margins.[7] In this context, it began to be argued, publishers are not only gatekeeping scientific literature against the scientists who produce and consume it – but also against the public who funds it for the purpose of scientific progress.

...and turns...

A solution was proposed in Open Access (OA), a movement that strives for free online access to academic works.[8] In its strongest form, OA goes beyond eliminating economic barriers to access ("gratis" OA) to allowing unrestricted re-use of works ("libre" OA). To this end, OA principles attempt to harness copyright for the benefit of science, by requiring that scholars grant to all users free, irrevocable, worldwide licenses (such as the popular Creative Commons (CC) licenses) to use their works. In this way, copyright and academic freedom could again be reconciled.

Its attractions being obvious – at least to those who foot the bill for scientific research – the push for OA grew. To realise OA in peer-reviewed articles, libraries and archives started encouraging researchers to employ "rights retention strategies" – that is, to refuse to give away their copyright to publishers so that they can instead make them accessible to all users.

Eventually, universities began adopting institutional rights retention strategies that default to OA licensing and deposits for the work of employee-researchers (such as the archetypical "Harvard model"[9]).

Research funders also started imposing "OA mandates" on the recipients of their funding. For example, the Plan S initiative launched by the international funders' consortium cOAlition S requires that scientific publications that result from its members' grants must be published in OA.

International organisations have followed suit. The European Commission, after declaring that all scientific publications resulting from public funding should be made openly available,[10] launched an OA platform for EU-funded research.[11] UNESCO has also thrown its weight behind Open Science.[12]

At the state level, a number of European countries have embedded OA into law by adopting "Secondary Publication Rights" (SPRs) that allow the authors of scientific publications to make their articles freely available to the public ever after signing away their copyright.[13] Other countries have adopted secondary publication obligations.[14]

…and strange surprises…

In the meantime, however, objections arose. Critics asserted that, instead of reinforcing academic freedom, OA mandates undermine it. In effect, they amount to a "confiscation strategy" that takes copyright ownership away from authors and transfers it to, not publishers this time, but the general public, leaving only the single right of attribution.[15]

The details of mandates are hotly contested. Libre OA is one bone of contention:[16] If an academic article is released with no rights reserved, it is pointed out, authors cannot stop objectionable re-uses,[17] such as offensive recontextualisations, inept translations or for-profit exploitation without a cut.

The choice between "Green OA" (that requires the self-archiving of pre-prints by researchers in repositories) and "Gold OA" (that involves publication in an OA journals) is also controversial. Both have downsides, with Green generally being acceptable to publishers only if an embargo period is applied and Gold only if an Article Processing Fee (APC) is paid by the researcher. Arguments can be made that both options impinge on scientists' freedom to decide when and where to publish.[18]

Researchers can of course choose to forgo publication in venues that impose such restrictions.[19] But this has been said to limit artificially their ability to choose the most suitable outlet for their work, with detrimental effects on the impact of their work and on their reputation and career prospects. Aside from the *positive* academic freedom to publish where one wants, obligations to deposit works in repositories could be argued to impinge upon the *negative* academic freedom not to publish where one does not wish to. Researchers can refuse funding that comes with OA strings attached – but this too would introduce distortions into a system which ought to operate on the basis of scientific quality.[20] In the case of SPRs, the concern has been expressed that the scientific communities of entire countries could be disadvantaged against their foreign competitors. Institutional requirements that scientists make use of SPRs have also been met with opposition.[21]

Even where funders cover APCs, it is argued that the ultimate result will be a scientific publishing landscape that prices

out less well-resourced researchers from academic freedom[22] – while allowing commercial interests to co-opt OA for profit.[23] Concerns have also been expressed that, by shifting publishers' incentives towards collecting APCs rather than attracting subscriptions by selling quality work, OA weakens safeguards against bad science – a core function of academic freedom.[24] The advent of AI has increased such worries.[25]

More generally, the suggestion that academia should serve the public interest is viewed with suspicion.[26] This seemingly unsympathetic view should be contextualised in an increasing sense that scientists are being pushed into serving a bottom line rather than the spirit of inquiry. That universities, external funders and, perhaps worst of all, states should purport to determine the public interest and use it to impose requirements on academics puts backs up further.[27] OA mandates, the complaint is, imply a kind of ownership over academic work that contradicts the academic exception and the academic freedom that underlies it.

Navigating a reconciliation

These arguments should be taken seriously. As Cornish and Barendt indicate, academic freedom is generally understood to include the right of academics to decide when and where work is published. UNESCO agrees,[28] as does the American Association of University Professors[29] and League of European Research Universities (LERU)[30]. It is essential for the integrity of science that researchers are not pushed into publishing work they do not think is ready, forced to suppress or delay publishing work that they deem is finalised or required to publish in venues that will not reach the right audience.

To decide on the compatibility of OA with academic freedom, we must understand what academic freedom is. All authorities agree that academic freedom is hard to define. Equally, there is consensus on some basic parameters: that academic freedom protects both individual scholars and academic institutions; that it may clash with other rights (e.g., intellectual property), as well as the academic freedom of others (e.g., a researcher's with his employer's); and that it must navigate those clashes, so that it is not absolute.

Beyond this, what shines through the literature is that academic freedom is founded on the special role that universities play in our society as places where ideas can be explored freely. These origins tether academic freedom to academic *responsibility*, so that academic freedom emerges as the freedom to fulfil that responsibility. Academic freedom has never allowed the publication of research with no regard for quality controls and adherence to professional standards. Barendt, again:

> *"The case for academic freedom [...] is that it is the particular responsibility of members of a university faculty to engage in critical enquiry and publish their conclusions [...]."*[31]

Grappling with other modern challenges for academic freedom, Ronald Dworkin concluded that:

> *"In no other occupation is it so plainly and evidently the responsibility of professionals to find and tell and teach the truth as they see it. Scholars exist for that, and only for that."*[32]

Academics are entrusted with the freedom to pursue their science in the name of the truth. If they have a duty to the truth,

there is a strong argument that they have a duty to reveal it to all.

Importantly, OA does not seek to prohibit publication in any outlet – including subscription journals. It is the conditions set by such journals to the purchase of their services that excludes parallel publication in OA.

Further details need determining: Does academic freedom require that researchers maintain their copyright? Is libre OA compatible with academic freedom? What about APCs? Embargoes? Answers should be sought in a principled interrogation of the purpose and scope of academic freedom.

In an era of cynicism and mounting distrust in the mainstream scientific establishment, the instinct is to stick to what you know works: peer-review undertaken by prestigious journals. One wonders however how the public can be asked to trust a system that so blithely mismanages the funding with which it has been entrusted – and does so against the foundational mandates of the academic endeavour.

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Olga Ceran

Hitting the Mark?

Academic Freedom and the Enforcement of EU Values

October 6th 2020 marked an important milestone for academic freedom protection in the EU. On this day, the European Court of Justice delivered its judgment in the so-called *Lex CEU* case (C-66/18), the only case to date to discuss academic freedom. Arising from infringement proceedings against Hungary over its new higher education law, the judgment clarified that Article 13 CFR protects both the individual and institutional dimensions of academic freedom – and confirmed that EU law can be meaningfully mobilised for their protection. While democratic backsliding was clearly "at the heart of this case"[1], only 35 of the judgment's impressive 244 paragraphs discuss fundamental rights and none democracy or the rule of law.[2] Developments surrounding the case nevertheless showed what scholars have long argued: that academic freedom intertwines with democracy and the rule of law.[3] However, despite considerable attention paid to the EU's action for safeguarding the two EU values (Article 2 TEU), academic freedom has not been methodically discussed in this context – despite its protection consistently seen as insufficient and requiring a new legislative framework.[4] Five years after the *Lex CEU* judgment, it is thus time for a systematic – and holistic – approach to academic freedom in EU law, treating it also (but not exclusively) as a democratic value. This can have potential consequences for its integration into the EU's rule of law toolbox.

Academic freedom, democracy, and the rule of law

Academic freedom is often justified in reference to its service to democracy. Three strands of such arguments for its protection can be identified in the broader literature: (1) academia's role in civic education and the development of "a democratic citizen";[5]

(2) its truth-verifying function in the marketplace of ideas;[6] and (3) its position as a watchdog,[7] similar to the media or courts.[8] While EU law has not yet explicitly engaged with the normative weight of this justification, it does align with many pronouncements of EU policy and some jurisprudence of the European Court of Human Rights, relevant for EU law in light of Article 52(3) CFR.[9] Further, the European Commission's Legal Service – albeit not acting in an official capacity – mentioned Article 13 CFR among provisions expressing the EU value of democracy.[10] It can be argued, therefore, that the democratic justification for academic freedom is embedded in Article 13 CFR – though this may rest on the epistemological justification (the pursuit of truth) and intertwine with other possible interests underpinning the freedom.[11] On the other hand, the links between academic freedom and the rule of law are less direct. While both can be seen as partially underpinned by similar concerns (checks on power), the rule of law in EU law is often conceptualised more narrowly,[12] and – in the context of the EU Charter as such – primarily in reference to Articles 47 and 48 (the right to an effective remedy and to a fair trial, and the right to defence). Neither primary nor secondary law offers clear grounds for establishing a straightforward relationship between academic freedom and the rule of law. Nonetheless, many have argued that the rule of law assumes adherence to the other values outlined in Article 2 of the TEU,[13] with academic freedom falling within the scope of the provision as one of human rights and freedoms.[14] Academic freedom, however, arguably holds a distinct position within this broader category because it takes on a special role in democratic governance and accountability mechanisms. This explains why violations of academic freedom may at times overlap with rule of law violations – best illus-

trated by the case of Hungarian higher education institutions being placed under the management of "public interest trusts", raising concerns over lacking institutional autonomy and reduced legal accountability simultaneously.[15] Whether this relationship is recognised conceptually or only at a factual level, it nevertheless makes these different values mutually reinforcing and opens new interpretative pathways for academic freedom protection in the context of the EU's toolbox for democracy and the rule of law.

The EU's value protection toolkit

The EU's toolbox to protect its foundational values encompasses a range of preventive, enforcement, and corrective instruments – some tailored to these specific threats, others more general. Many of these instruments indirectly contribute to academic freedom by supporting broader safeguards, such as judicial independence. However, if academic freedom is understood in reference to its democratic justification, it could be treated as interdependent with other democratic values and more directly "mainstreamed" within the existing mechanisms, with implications for how the EU's toolbox is used and interpreted.

Firstly, soft law tools available in the Rule of Law Toolbox – particularly the Rule of Law Reports – provide for systemic reporting and dialogue activities unknown to any of the academic freedom soft law documents.[16] However, the reports have not so far meaningfully addressed academic freedom – even though its democratic rationale closely mirrors that of media freedom, which features prominently in the reports. This is why several stakeholders have advocated for an explicit inclu-

sion of academic freedom in the Rule of Law Report.[17] While substantial revisions of the reports' methodology may be unlikely to happen in the nearest future, it is nevertheless notable that the 2025 Rule of Law Report introduced a new Single Market dimension,[18] suggesting that an academic freedom dimension may also be conceivable down the line. Simultaneously, the current thematic areas of the Rule of Law Report – such as media freedom or institutional checks and balances – already allow for a more explicit discussion of certain dimensions of academic freedom, e.g. in reference to the implementation of the Anti-SLAPP Directive,[19] applicable to academics, or the autonomy of academic authorities. The remaining gaps could be addressed by new monitoring proposals for the European Research Area and the European Higher Education Area, which should be complementary in nature.[20]

Second, infringement proceedings are one of the classical tools of EU law enforcement. They were launched in reference to Article 13 CFR only once, in the so-called *Lex CEU* case. As already mentioned, the CJEU found a violation of academic freedom in circumstances clearly arising from Hungary's democratic backsliding. This broader context also triggered numerous other proceedings against Hungary. Nevertheless, enforcing democracy or the rule of law through infringement proceedings has long been seen as inadequate, as many structural issues cannot easily be framed as violations of individual Charter rights or other Treaty provisions.[21] At the same time, this is not equally the case for Article 13 CFR that includes an institutional dimension, capable of encompassing many such issues. Despite the limited scope of application of the Charter, academic freedom protection can be grounded in various strands of EU law, such as – next to "traditional" free movement provisions – public

procurement or competition law.[22] Existing discussions about measures available in these fields as rule of law tools may also provide inspiration for academic freedom action.[23] Further, it has been argued that Article 2 TEU could be enforced autonomously beyond a direct link with EU competences[24] or in "mutual amplification" with a specific provision.[25] While these suggestions have not yet been authoritatively accepted, the connection between academic freedom and EU values could help address the limited scope of application of the Charter in the context of academic freedom protection. Their relationship could also be leveraged for "systemic" infringement proceedings, combining various violations resulting from a pattern of unlawful behaviour.[26] There are therefore different ways in which the protection of academic freedom, democracy, or the rule of law can be mutually reinforcing in this context.

Thirdly, Article 7 TEU sets out a three-dimensional enforcement procedure for cases where there is a (risk of) "serious and persistent breach" of values by a Member State. The difficulties in its application, owed to the political nature of the provision, are widely known. Nevertheless, because of its relationship to Article 2 TEU values, it can be mobilised for the protection of academic freedom. Academic freedom was one of the reasons behind the European Parliament's calls on the Council to trigger Article 7(1) TEU against Hungary in 2018[27] and 2022[28], but no sanctions were ever imposed under Article 7(3) TEU. However, as the provision extends beyond the scope of application of the Charter, it allows to circumvent the known constraints of Article 13 CFR enforcement. Academic freedom's relationship to Article 2 TEU values can also be considered in the assessment of the "seriousness" of the breach. Given the wide range of sanctions that can be imposed under Article 7 TEU, it could – should

political will ever arise – be strategically triggered for a complementary protection of different rights and values.

Lastly, funding plays an increasing role in the enforcement of both EU values and fundamental rights, including academic freedom.[29] In recent years, conditionality measures in the academic context have been applied due to essentially the same circumstances under both the Common Provisions Regulations, in reference to Article 13 of the Charter, and the Rule of Law Conditionality Regulation, referencing broader rule of law concerns.[30] This occasionally overlapping – and thus mutually reinforcing – relationship can inform the interpretation of the relevant instruments, partially applying to different funds. For example, "proper functioning of effective and transparent financial management and accountability system" under the Rule of Law Conditionality Regulation can be interpreted in light of funding accountability principles embodied in academic freedom soft law such as the UNESCO Recommendation concerning the Status of Higher Education Teaching Personnel.[31] This also helps to overcome the limited scope of application of the Charter, as all situations covered by the Regulation fall within the scope of EU law. Simultaneously, conditionality measures are the most controversial aspect of the action for the protection of EU values and fundamental rights. In most EU Member States, academia is predominantly publicly funded, making financial support a key factor in both strengthening and weakening the sector. Academic freedom debates and soft law instruments have highlighted how funding cuts can undermine autonomy and further push academia towards alliances with illiberal regimes.[32] The picture is further complicated by the complex and context-dependent interplay of institutional and individual considerations. While the role of EU funding in this context

should not be overstated – nor the application of conditionality measures to academia dismissed – the EU's supranational framework may nonetheless open new avenues for supporting the sector, including through targeted funding. At the same time, general conditionality mechanisms may not always be best suited to accommodate the context, including also its cross-border dimension and the EU's own research and education objectives. Specific academic freedom conditionality or a complementary „solidarity mechanism to support European researchers"[33] could therefore be explored further, potentially allowing to better address the varying situations of different (institutional and individual) academic freedom rights-holders. Such proposals could also help bridge the protection of democratic values with the epistemic foundations of academic freedom – both essential to academia's democratic mission.

Toward a more systematic and holistic engagement

This brief discussion highlights that academic freedom has not been overlooked in the EU's efforts to protect democracy and the rule of law. However, a more systematic engagement with its democratic justification in EU law could elevate it to a more strategic role, both in its own right and as part of the EU's broader action for the protection of Article 2 TEU values. This would place academic freedom along other rights explicitly recognised in EU action as having rule of law or democracy-related implications, e.g. media freedom. At the same time, admittedly, framing academic freedom solely in terms of its service to democracy risks distorting its normative content, since it is arguably academia's epistemological mission that underpins much of the democratic contribution it can make.

Therefore, a comprehensive conceptualisation of academic freedom in EU law requires a holistic, contextual approach. This task remains as urgent as it was five years ago, with an action for annulment alleging a violation of Article 13 CFR in relation to conditionality measures pending at the CJEU (*Debreceni Egyetem v. Council*, T-115/23), new legislative proposals under discussion,[34] and various academic freedom challenges growing across the Union.[35]

This contribution summarises selected key points of my article 'The Democratic Justification of Academic Freedom in EU Law: Article 13 of the EU Charter, the Rule of Law Toolbox, and the Scope for EU Action' (European Constitutional Law Review (2025)). An earlier version of these ideas appeared in Olga Ceran, 'EU Values and the EU's Rule of Law Action: What Place for Academic Freedom?', TRAFO – Blog for Transregional Research, 17 October 2024.

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András L. Pap

The Hungarian Roadmap

Eight Lessons on Academic Freedom From a Hungarian Perspective

The Hungarian play script of infringements on academic freedom under the Orbán-regime provides useful junctures on how academic freedom can be both captured and conceptualised. I speak from first-hand experience. As I have chronicled before,[1] I was fired from one university for political reasons; laid off from another after it was forced into exile;[2] and have been working at an institution that has been renamed five times, reorganised, and put under continuous existential pressure since 2010.[3]

Threats to academics and academic freedom in Hungary are mild compared with China,[4] Turkey,[5] or Brazil[6]: We have not witnessed physical atrocities, incarceration, deportation, the withdrawal of travel documents or even large-scale firing. Still, five years after the *Lex CEU* (C-66/18) case, it is safe to say that academic freedom is systematically being violated in Hungary.[7] Its roadmap has at least eight lessons to offer.

Number 1: Step by step

First, and most broadly, the Hungarian case shows that hybrid autocracies do not necessarily infringe upon fundamental rights and individual freedoms blatantly or directly.[8] Instead, they pursue cultural hegemony incrementally by tightening control over academic institutions as part of their broader illiberal strategy. We should thus pay attention to detail and take note of how seemingly small steps may lead to systematic change.

The Hungarian government gauged academic freedom in all of its three dimensions: teaching, research, and publishing. It transformed[9] an entire web of independent research institutions operating under the auspices of the Hungarian Academy of Sciences into a government-controlled entity.[10] It took over

national science and culture funds.[11] It allowed government agencies to refuse to provide data to NGOs[12] and levy excessive charges for public data requests.[13] It censored publications and academic events.[14] Its affiliated media orchestrated smear campaigns[15] to intimidate government critics.[16] It cut and divested programs from state-funded institutions. It forced the Central European University (CEU) into exile, and semi-privatised the vast majority of the higher educational sector. Within a few years, the ratio of students studying in traditional state-owned institutions dropped from 87% to 22%, and more than twenty universities were remodeled,[17] leaving only four in state ownership. As a result of the "model change", as the government coins it, university employees lost their civil servant status, reducing job security and making academic staff more vulnerable to dismissal.[18] The European Commission stated that these structural changes seriously threaten the right to academic freedom enshrined in Article 13 of the Charter of Fundamental Rights. These newly formed public interest asset management foundations are exposed to the direct or indirect influence of the executive branch, which is incompatible with academic freedom. After unsuccessful negotiations the EU precluded these universities from participating in EU-funded academic networks such as Horizon Europe and Erasmus+.[19]

Number 2: Public education is important

A second lesson from the Hungarian academic freedom saga is the need to monitor developments in public education as closely as those in higher education and research. Alongside developments in higher education and research, the Orbán-government centralised the entire public education curriculum,

adopting a mandatory, ideologically biased framework which only allows very little flexibility.[20] The measures abolished the textbook market and schools no longer have the opportunity to implement pedagogical strategies adjusted to students. It also attacked the institutional framework of primary and secondary education by changing the legal status of education workers, triggering years of protests, rallies and strikes.[21] The new law introduced a novel disciplinary regime involving the suspension of salary payments and potential sanctions including dismissal if teachers openly criticise the education system. Finally, it took over schools previously run by local governments and instituted sweeping reforms regarding school administration appointments. While the Charter protects academic freedom (Article 14) and the right to education (Article 13 I) separately, the Hungarian case shows how deeply interconnected they are in practice. Restrictions on one form of education will usually occur alongside restrictions on the other.

Number 3: Diversified infrastructure builds resilience

As a third lesson, the Hungarian-case highlights the importance of independent national public research institutions in supporting academic freedom. The volatility of universities can be counterbalanced by a more diversified and thus more resilient academic infrastructure. Debates over the recent transfer of four Hungarian research centres revealed that systematic basic research and the stewardship of cultural heritage are often better anchored in a national academy of sciences than in public universities, whose priorities and stakeholders differ.[22] Universities devote significant resources to teaching, with research and knowledge production often framed as complementary to

instruction and funding. In most countries, national science funds – or their equivalents – are the primary custodians of national scientific research, providing grants on a meritocratic, individual, and often ad-hoc basis. The choice of which fields receive support tends to follow the shifting preferences of donor bodies, contemporary priorities, and the perceived industrial or market potential of science. By contrast, institutions such as the Hungarian Academy of Sciences are rooted in the 19th-century logic of nation-building. They are not only charged with advancing diversified, cutting-edge research, but also with safeguarding national academic archives and sustaining basic research in areas that may lack immediate market value yet preserve cultural heritage over the long term. Such institutions thus provide an essential counterweight to short-termism in higher education and research policy.

Number 4: Academic freedom requires access to justice

The fourth point accentuates the role of access to judicial remedies for violations of academic freedom. The ECJ-judgment in the *Lex CEU* case – though neither a game changer nor exempt from criticism[23] – points to the importance of multilevel constitutionalism,[24] providing additional layers of judicial review over potentially captured courts.[25] Seemingly unrelated questions of judicial procedure can likewise have direct implications for academic freedom. Recent reforms to Hungarian civil procedure law, which removed earlier caps on representation fees, have opened the door to a broader acceptance of market-based legal costs.[26] As a result, public authorities are no longer represented by civil servants, but increasingly by expensive, government-aligned law firms. As a result, victims of academic freedom

violations risk incurring heavy debts if their claims are unsuccessful. This has already happened to several teachers who were dismissed for participating in protests. So, for academic freedom to function as a fully justiciable right, procedural conditions of access to justice must also be safeguarded. Excessive financial risks are particularly chilling for academic freedom because, as in many strategic litigation cases, petitioners often seek more than reinstatement after dismissal: They pursue the symbolic vindication of academic freedom as a principle. Precisely because such claims derive their force from their expressive and precedent-setting value, they are especially vulnerable to procedural disincentives, with the threat of heavy financial liability likely to deter their pursuit.

Number 5: Victims can be perpetrators too

As a fifth lesson, illiberal regimes often weaken academic freedom not only by repressing universities but also by co-opting parts of the sector through selective funding. In Hungary, the Orbán government simultaneously starves independent universities while showering regime-friendly institutions with resources, turning parts of academia into willing collaborators in its illiberal project. On the one hand, chronic underfunding and dismally low public pay scales leave many universities and scholars vulnerable: In 2024, under the public pay scale,[27] full professors earned around €1,900 per month and assistant professors about €950 – sometimes less, once adjusted for inflation, than the salaries of kindergarten teachers. On the other hand, massive subsidies and structural incentives are channelled to government-aligned institutions, often through the privatisation of universities into nominally public foundations,

thereby distorting the academic labour market and consolidating political control.[28] Crucially, these transfers typically required formal endorsement by university senates, creating the appearance of academic self-governance. In one striking case,[29] the rector-elect of Eötvös University – the country's largest but severely underfunded public university – initiated the annexation of 1,200 former Academy of Sciences researchers to an already overstretched faculty of 5,000, without clear long-term financial guarantees.[30] The incentives were obvious: financial benefits and the threat of further cuts if the transfer were resisted. Similar pressures have pushed research universities toward "model change", even at the cost of losing access to EU grants. Yet for those that complied, budgets often doubled or even quadrupled, and salaries rose significantly. Striking examples include the University of Tokaj – funded with nearly €2 billion for just a few hundred students and staff – Ludovika University, Pallasz Athéné (later János Neumann) University, and above all, Mathias Corvinus Collegium, which received €1.3 billion, which is more than the entire annual budget of the Hungarian higher education sector.[31] So, what emerges from systemic underfunding and selective generosity is a dynamic where institutions adapt to survive, yet in doing so help entrench the very political order that undermines their autonomy.

Number 6: Authoritarian populism harms "the people"

Sixth, the Hungarian case shows that populists rarely serve the actual needs and interests of the "people", in our case stakeholders in academic life. Most Hungarian students and faculty have been excluded from Erasmus-programs, and research

grants have been cut off. For 34 institutions, including 21 universities, this meant losing over 60 million euros under Horizon Europe alone,[32] and the freezing of Erasmus+ projects affected 182,000 students.[33] This, of course, fits the illiberal government logic well: Without EU funds, research and learning is limited to what the government subsidises and controls. At the same time, the government promotes selective internationalisation. The so-called illiberal axis manifests in academia, too. While the Hungarian government has closed its borders to asylum seekers and refugees, dismantled humanitarian protections, and cultivated a hostile public discourse around migration, it simultaneously promotes selective migration pathways that serve its strategic and economic goals. It has welcomed international students, particularly those arriving through the state-sponsored Stipendium Hungaricum program, aimed at strengthening partnerships beyond the European Union, particularly with countries in the Global South. Countries such as Syria, Pakistan, Iran, Iraq, Palestine, Nigeria, and Ethiopia are especially well represented among the participants.[34] In this way, academic mobility is not abandoned but reengineered: Hungarian students and faculty are cut off from European opportunities, while international exchanges are redirected to serve the regime's geopolitical ambitions and reinforce its illiberal project.

Number 7: The costs of repression are more than legal

Seventh, about damages: Academics under illiberal regimes face a spectrum of external and internal pressures that erode both individual well-being and institutional integrity. Psychologically, they may endure harassment, intimidation, and tax raids.

Existentially, they face blocked career advancement, layoffs, and exclusion from travel grants or other subsidies. Institutionally, they confront threats to the accreditation of programs, departments, or even entire universities. Internal pressures, meanwhile, often result in self-censorship. The consequences are manifold: Bureaucratic harassment drains time and energy, institutional uncertainty paralyses planning, grant applications, and recruitment, and chronic stress diminishes the quality of both teaching and research. Many of these harms can be legally framed as infringements of academic freedom: The freedom to research and the autonomy of institutions are core pillars of that right. Yet not all costs are reducible to legal violations. Being an academic is a profession with long-term investment and a gradual development of profiles and identities. Losing one's particular appointment may be a reasonable risk in the academic job market but being ostracised systematically puts academics in great peril.

Also, infringement on academic freedom disproportionally targets junior faculty and, usually, women, and in a country like Hungary, further accelerates the widening of the gap between the central and periphery, and has a devastating effect on national (local, regional) academia and science.

Number 8: Solidarity and resistance

A final, eighth caveat: Illiberal regimes will weaponise the principle of *divide et impera*. In Hungary, the reorganisation of the Academy of Sciences' research network delivered a potentially fatal blow by pitting the STEM disciplines against the social sciences, humanities, and the arts (SHAPE). Humanities and social sciences were relegated to a financially struggling

university – feared to be facing its death sentence – while the former were promised substantial funding increases. This strategy fractured solidarity and stifled meaningful resistance.

Institutional freedom and autonomy are ultimately operationalised by individuals, and it comes down to personal freedom and autonomy. Being an academic in illiberal regimes thus not only comes with existential threats, but also with heightened responsibilities, and occasionally tauntingly hard choices – such as deciding whether to fight for academic freedom from within institutions already compromised by illiberal capture.

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Etienne Hanelt

Castles of Illiberal Thought

The Rise and Role of Government-Organised Non-Governmental Organisations in Academic Contexts

On the hills of Buda, across a momentous construction pit, a new campus for Matthias Corvinus Collegium (MCC), an Orbán-linked "think tank" and academy for nurturing illiberal elites, is currently being built.

Internationally, the MCC is still little known. In 2023, the mayor of Tübingen, Boris Palmer, was in the news for accepting an invitation of the German-Hungarian Institute at MCC in Budapest, apparently because an advisor had confused MCC with Corvinus University.[1] But MCC not only finds itself in Budapest, it spreads over 35 locations: in Hungary, across the Carpathian basin, and even to Brussels. On 17 September 2025, it published a piece titled "Professors of Propaganda: How EU funding corrupts academia"[2]. This "report" targets the Jean Monnet programme of the EU and individually named chairholders in the fields of law and politics and accuses them of being propagandists of the EU. So, perhaps it is time to have a closer look at MCC.

Political scientists speak of "three pillars"[3] on which authoritarian regimes rest: legitimation in the eye of the public, repression of the opposition, and co-optation of elites. MCC is both in the legitimation and in the co-optation game. And it is not alone. This chapter explains how and why it matters for academic freedom in Hungary and beyond.

The rise of the GONGOs

MCC is one of many, albeit one of the most important, Government-Organised Non-Governmental Organisations (GONGOs), functioning as an illiberal academy and think tank. It is, in many ways, both complementary and juxtaposed to pressure on academic freedom at Hungarian universities and research insti-

tutes that András L. Pap has described in his chapter. The expert-coded Academic Freedom Index of the Varieties of Democracy Project (V-Dem), shows the gradual decline of academic freedom from 0.95 to 0.3 over the last 15 years. Even the European Union found the foundation-universities to be so problematic that they have banned them from partaking in Horizon Europe funding calls and the Erasmus mobility scheme. [4]

Specifically, this was done under the Conditionality Regulation (Regulation (EU, Euratom) 2020/2092) based on Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. Despite changes to Hungary's regulatory framework in light of the Commission's concerns, the changes were assessed as leaving too many loopholes for senior politicians to sit on foundation boards. Thus, the implementing decision barred specifically the EU from entering new legal commitments with "public interest trusts" in Hungary (Art. 2(2) Council Implementing Decision), which affected both outgoing Erasmus mobility and grants under the Horizon Europe programmes. Ironically, the absence of supranational funding made Hungarian research institutions even more dependent on state support.

In a recent paper, Coman et al. have explored four functions of illiberal "think tanks" in Hungary and Poland.[5] They argue that these mediate and act as brokers between political elites, the media, intellectuals and even online troll networks (mediator function); they build international connections between European and American actors (builder function); they spread and disseminate illiberal ideas in their respective country (disseminator function); and they legitimise illiberal projects by

way of using cultural capital such as academic credentials (legitimiser function). Thus, "researchers" working for GONGOs appear frequently as "experts" on state television, where they legitimise the government's policies. For a lay audience, it is often difficult to judge expertise. Comparing Hungary and Poland, Coman et al. point out that the Hungarian GONGOs were better connected internationally compared to their Polish counterparts.

GONGOs retain the image of independent institutes, but are actually closely linked to the state. Take MCC: Balázs Orbán – the Prime Minister's Political Director and one of his closest advisors – has since 2020 been the chairman of its board of trustees. After Balázs Orbán took an interest in MCC, the institution grew and became the beneficiary of a transfer of shares in the state-owned companies MOL – a petrol giant – and Gedeon Richter – a pharmaceutical company – in 2021. The shares transferred were worth €1.3 billion. As the New York Times noted, this was nearly one per cent of Hungary's GDP.[6] Le Monde, meanwhile, pointed out that this single transaction surpassed the 2019 budget of all 27 of Hungary's public higher education institutions.[7]

With this endowment, MCC can fund many activities. Founded in 1996 through large philanthropic donations,[8] MCC was an academy; a place of study for talented and ambitious students besides their university education. Students attended seminars and lectures at MCC and received stipends and lodging in Budapest. In recent years, MCC has extended. It still provides extra-curricular programmes to university students, but also university preparation courses and programmes for pupils in high and middle school and for pupils of the Roma minority. It funds PhDs, publication fees, and runs leadership programmes

in Transylvania, Transcarpathia, and for women. It also provides scholarships, including for students studying at the ESMT Business School in Berlin.[9]

On top of this, MCC has in recent years opened "research centres". These span areas that are of special interest to the far-right government: the Institute For Hungarian Unity, the Youth Research Institute, Climate Policy Institute, Migration Research Institute, Learning Institute and the German-Hungarian Institute. "Experts" from these institutes are often invited in Hungarian public television to present, elaborate and support the government's positions.

MCC is large, but it is not alone. Other major players are the Centre for Fundamental Rights, the Danube Institute and the Századvég Foundation, which are also parts of the illiberal GONGO space. The Batthyány Layos Foundation acts as an intermediary for state funding, which it directs to other GONGOs.[10]

In a country in which already meagre academic salaries have been eaten up by the highest inflation in Europe over the last years, the deal offered by GONGOs is sweet, even if it comes with a bitter aftertaste. One paper from 2024 puts the typical salary of a senior, full-time law professor in Hungary at €14,000.[11] In contrast, MCC runs together with the Hungary Foundation the Budapest fellowship scheme that pay "junior fellows" (i.e. those without a PhD) $36,000 on top of housing and moving benefits and "senior fellows" considerably more. This fellowship is specifically targeted at US citizens. One wrote about his experience in the Guardian, describing the expectations set by MCC and how little academic freedom he enjoyed whilst working there.[12] Thus, good salaries, stipends, and opportunities are one way in which GONGOs co-opt elites and those

who would like to become elites. MCC has become an elite training centre for Fidesz.

Fighting battles of ideas abroad

In 2022, MCC opened a subsidiary in Brussels. MCC Brussels functions like a think tank, publishing short reports and policy papers, and organising events with stakeholders. It fulfills the mediator, builder and legitimiser functions described above. Through these, Orbán builds soft power in the EU, and builds spaces to connect the far right across Europe. Like its parent organisation, MCC Brussels is lavishly funded. In the transparency register of the EU, MCC Brussels reported an income of over €6.3 million through grants from its parent organisation Mathias Corvinus Collegium Alapítvány in 2024. Another acquisition was the Vienna-based "Modul University", which MCC acquired in 2022. Reported plans for a London-branch have not yet materialised.[13]

Other organisations are spreading internationally, too. The Center for Fundamental Rights has in 2024 opened a branch in Madrid. This office is supposed to "gather new allies … [and] shape and display a realist image of Hungary"[14] abroad. From its activities, it is clear that it not only connects Hungary to the Iberian peninsula, but also to right-wing forces in Latin America. The Center for Fundamental Rights is best known for organising the Conservative Political Action Conference (CPAC) Hungary, which has become a magnet for transatlantic right-wing networking. The Danube Institute established close links to the American Heritage Foundation, which prepared the "Project 2025" report.[15]

Yet the GONGOs no longer stay among themselves. "Researchers" from Hungarian GONGOs can sometimes be spotted at large, international conferences, where they present legitimating narratives veiled as "research papers". How hard it is to spot them even for expert audiences is something that surprised me when experiencing this whilst attending a leading European political science conference a while ago. For academics it is time for a reckoning, as they need to find a way to deal with "fake research" by illiberal mercenaries. Academic ideals mandate engaging with challenging ideas, but what if these ideas are funded by an authoritarian state? The first step to finding the answer is recognising GONGOs for what they are: not independent research institutions, but extended arms of their illiberal government, where "researchers" enjoy little academic freedom themselves. The academic space should think hard and fast if it wants to cooperate with such institutions.

Despite the smoke screen generated by MCC, "professors of propaganda" is a fitting title for its own staff. Academic freedom has been significantly curtailed in recent years, albeit in Hungary, not the EU at large. The Hungarian government has done this both through pressure on academic institutions on the one hand and the creation and expansion of the illiberal GONGO space on the other. This provides ways of co-opting academic elites who are drawn by over-average salaries, who then legitimise the illiberal regime using their academic credentials and halo of "expertise". Missing legal means to address the threat of GONGOs on EU level, a strong stance of the academic community is needed. The academic community should be clear in not helping mainstream illiberal GONGOs.

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As Open as Necessary?

Research Security, Academic Freedom and the Geopolitics of Science

Vetting international students and researchers, screening funding sources and collaborations or restricting fields with dual-use potential – in a world of intensified geopolitical tensions and fierce competition over technological leadership, science and research have moved to the very heart of national security concerns. Within the EU, "research security" has become a key pillar of the broader strategic autonomy agenda,[1] with the Council having adopted a recommendation on the topic.[2] The term covers measures to protect scientific activities from misuse and undue influence by third parties, whether states or non-state actors, such as scientific espionage, IP theft, cyberattacks, and dual-use challenges (see para. (18)(1) for the definition and paras. (18)(2)-(7) for related definitions). National governments are also moving: The Netherlands, for example, has tabled a bill that creates a legal basis for screening researchers and Master's students working with "sensitive knowledge".[3]

While the goal behind this "securitisation" is to protect scientific research against external threats – as such a legitimate aim – this attempt paradoxically creates new risks by subjecting research to political control measures. The "research security" narrative furthermore illustrates how closely research today is tied to state security agendas and market-driven innovation logics, subordinating it to political and economic ends. This also risks undermining the autonomy of scientific research.

Against this backdrop, I ask what securitisation means for the interpretation of Article 13 of the EU Charter of Fundamental Rights (CFR). My argument is that academic freedom and the autonomy of science require protection not only against direct state interference, but also against the more subtle colonisation of research by political and economic systems.

The proliferation of "research security" in Europe

Among the measures numerous European universities, research funders and governments have begun to introduce around the topic of research security,[4] the mentioned draft EU recommendation on enhancing research security is the most encompassing. Its background is a changed geopolitical environment, as becomes clear from the text (para. 2). Addressing "hostile economic actions, cyber and critical infrastructure attacks, foreign interference and disinformation", the document highlights the particular vulnerability of the research and innovation sector, where there is the risk that rivalling countries might "use emerging and disruptive technologies to boost their political, economic, and military positions[.]" (on p. 1). Addressing hostile economic actions, cyber and critical-infrastructure attacks, foreign interference and disinformation, the Recommendation highlights the particular vulnerability of the research and innovation sectors, where competing states may seek to exploit emerging and disruptive technologies in order to strengthen their political, economic and military positions (see in particular paras. (4) and (5) of the Recommendation).

Against this background, the draft sets out principles for "responsible internationalisation", asking Member States to pay particular attention to certain technologies that are identified as particularly critical at EU level: advanced semiconductors, AI, quantum technologies, and biotechnologies.[5] Concretely, it invites governments to adopt a coherent set of policy actions (Rec. 2); create a support structure or service (Rec. 4); strengthen export-control and sanctions compliance, including for intangible technology transfers (Rec. 10); and share tools for

tackling foreign interference via the EU one-stop platform (Rec. 11). It also calls on research funders to make research security part of the grant application process and to subject "projects that raise concerns" to proportionate risk appraisal (Rec. 14 (a)-(b)). Research-performing organisations are asked to build internal procedures, including physical and virtual compartmentalisation for sensitive labs, data, and infrastructures (Rec. 15(h)). At EU level, the text suggests options such as an European Centre of Expertise on Research Security (Rec. 18).

Open Science meets the security state

While motivated by the goal to protect research taking place in Europe, today's research security agenda sits uneasily with long-standing ideals of science. For generations, science has been portrayed as a universal public good, knowing no borders and thriving on the widest possible sharing of knowledge. This ethos was famously captured by sociologist Robert K. Merton, who described the scientific ethos in terms of norms such as universalism and communalism.[6] In his words, "secrecy is the antithesis of this norm; full and open communication its enactment." (p. 274) From this perspective, attempts to fence off research findings, whether for private gain or national advantage, stand in tension with science's own self-understanding.

Of course, these values have always been ideals more than realities. Merton wrote his essay about the normative structure of science during WWII, when science was deeply entangled with war efforts. In a time when there was public debate about whether science should serve the state, the market, or remain autonomous, Merton sought to clarify what makes science distinctive as a social institution.

The current developments also strongly evoke Cold War-era logics, when security-led priorities dominated research. In the U.S. in particular, a government–industry–university Big Science complex emerged, mobilising research for national defense purposes. To stay ahead in the race, governments ring-fenced science via classification/compartmentalisation, vetting, export controls, and counter-espionage.[7] Washington even weaponised and politicised freedom of research itself – touting it as proof of Western science's superiority vis-à-vis Soviet Lysenkoism.[8]

The close entanglement of science with national interests – military, economic, and political – is therefore nothing new. What does seem different today, however, is the extent to which values like freedom and openness have become embedded in the scientific self-understanding, in a research landscape where collaborations typically span entire continents. Merton's norm of communalism finds its contemporary expression in the concept of Open Science: The idea that the potential of the internet should be leveraged to make research, from data and code to publications, broadly accessible, at least when publicly funded. Open Science is now firmly anchored in European science policy and has become part of its standard vocabulary. The current draft recommendation also affirms the commitment to openness, but in light of the new geopolitical realities, it introduces a modification: Research should be "as open as possible, and as closed as necessary" (Rec. 1(b)).

The politics of openness

On paper, the EU document acknowledges that research security stands in tension with other recognised values and principles,

above all academic freedom and Open Science (the term academic freedom is mentioned 15 times in the Recommendation). It also concedes that the internationalisation of science has advanced further than ever before and is now part of the very DNA of contemporary research.

At the same time, however, the commitment to openness and freedom reflects a strikingly instrumental logic. These values are to be protected not as ends in themselves, but because they are believed to drive scientific progress and deliver tangible – and often marketable – outcomes, thus ultimately serving political and economic agendas. The research security narrative thus evidences the extent to which the presence of political and commercial interests is normalised today in science policy. Openness and academic freedom are justified because they deliver innovation and competitiveness – "world-class research and innovation" (Recital 1) – not because of their intrinsic value.

Considering the backdrop of the current geopolitical pressures, this may not sound alarming, even reasonable to some. But what makes this framing problematic is that it forms part of a broader economisation and politicisation of research in times of the "managerial university" and an increasing dependence on private sector funding (see on the latter, for example, the 2024 *Academic Freedom Monitor* report by the European Parliament[9]). A recent study by the Royal Netherlands Academy of Arts and Sciences underscores this point, with funding requirements from both government and industry cited as key sources of constraint.[10] As the Academy observed: "Good science requires freedom: research produces the best knowledge – independent and trustworthy – when it is free from outside interference." The emerging discourse on "research security" risks not only

reflecting these trends but also reinforcing them by giving them a new sense of urgency.

Research security under Article 13 CFR

How should this development be assessed in light of the EU's constitutional guarantees? Article 13 CFR enshrines the freedom of the arts and sciences, yet it has so far played only a marginal role in the Court's jurisprudence and remains underdeveloped. As the introductory chapter to this edited volume already noted, the judgment in *Commission v. Hungary* (C-66/18) nevertheless marks a turning point.

In that case, the ECJ recognised that academic freedom under Article 13 CFR comprises at least three dimensions. First, an individual dimension, which protects the freedom to research and teach, freedom of expression and action, and the freedom to disseminate knowledge and truth without restriction (para. 225). Second, an institutional dimension, namely the autonomy of universities, which the Court regards as a necessary precondition for individual freedoms (para. 227). Third, the Court pointed to positive obligations, requiring states to protect higher education institutions "from threats to their autonomy coming from any source" (para. 227).

Applied to the draft recommendation on research security, this framework makes clear that "hard" measures such as restricting collaborations, screening funding sources, or vetting international students raise concerns under both the individual and institutional dimensions. Needless to say, there is a real danger that the security narrative, under the guise of protection, bears potential for authoritarian abuse and measures to control and censor academic activities. For similar reasons, the above-

mentioned Dutch "knowledge security" bill already prompted reactions from the academic community. The Dutch Royal Academy in the already cited report considers the bill a limitation of academic freedom, and a consortium of ten research institutions in a joint statement expresses its concern that the law will "worsen the research climate in the Netherlands"[11]. Any such measures will thus have to meet the strict necessity and proportionality requirements of Article 52 CFR. Institutional autonomy also demands that universities must play a decisive role in shaping and applying security measures.

The third dimension is also relevant for the present debate, however. As argued above, the draft recommendation reflects an increasingly instrumental conception of science, valued primarily for the economic and political benefits it delivers. While this may not amount to a direct restriction of academic freedom, I submit that it risks subtly, yet profoundly eroding the autonomy of science as an independent sphere of society. *Commission v. Hungary* can and should be interpreted as leaving room for understanding the instrumentalisation of science as a "threat coming from any source" against which states are obliged to provide protection.

Conclusion

The emerging EU research security agenda thus provides a response to a genuine concern with espionage, interference and misuse. But it also carries the danger of restricting the freedom and autonomy of research – on the one hand, by introducing control measures and restrictions, and on the other by presenting openness, collaboration and even academic freedom as values to be safeguarded only insofar as they deliver political or

commercial benefits. This sits uneasily with the vision of science as an autonomous field and with the guarantees enshrined in Article 13 CFR.

Seen from this perspective, the challenge is not simply to strike the right balance between openness, freedom and security. Academic freedom also requires positive commitments to uphold science as a public good. One important aspect in this is stable and predictable funding that is not tied exclusively to short-term political or economic objectives. As the Dutch Royal Academy puts it, what is needed is room for "'unfettered' research, motivated by the scientist's curiosity" alone. This thus means defending the idea that the value of science lies not only in producing useful innovations, but also in the intrinsic pursuit of knowledge. If the freedom of science is protected only when it serves external ends, then it ceases to be freedom at all.

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Stefaan van der Jeught

Academic Freedom of Language

The Boriss Cilevičs Judgment and Linguistic Minorities

The freedom to teach, conduct research, and study is inextricably linked to language, which shapes how knowledge is produced and contested. Therefore, a legal framework that regulates academic language affects academic freedom. Yet, Article 13 of the Charter of Fundamental Rights of the European Union, while establishing that freedom, does not refer to any linguistic rights. This prompts the question of whether academic freedom encompasses the right to choose the language in which to exercise it. The answer is complicated and requires a distinction to be made between its two dimensions: institutional and individual.

In the institutional dimension, States enjoy broad discretion – academic freedom does not oblige them to establish or fund universities in minority languages, though they must in principle allow for the establishment of privately funded institutions which may teach in minority (or other) languages, subject to conditions such as quality standards or general national linguistic requirements. By contrast, in its individual dimension – research and publication – academic freedom includes the right to use any language.

The institutional right to teach in other languages

The *Boriss Cilevičs* judgment (C-391/20) is the sole instance to date in which the European Court of Justice (ECJ) has had the opportunity to assess the linguistic aspects of university education. Unfortunately, the legal scope of this judgment is rather limited, insofar as the ECJ did not evaluate academic freedom *per se*. Instead, it limited its review to the compatibility of Latvian law with the EU internal market freedom of establishment (Article 49 TFEU).

The facts of the case are as follows. In 2018, the Latvian legislature adopted a law which made Latvian the mandatory and exclusive language of instruction in all higher education institutions, with the exception of two, where English could be used. In certain circumscribed instances, Latvian law also permitted the use of an alternative (EU) language of instruction, for instance within the context of European or international cooperation.

Members of the opposition in the Latvian parliament challenged this linguistic regime in the Latvian Constitutional Court. They argued that the new language law violated the right to education and restricted the autonomy of privately funded (Russian-language) universities, as well as the academic freedom of their teaching staff and students. Furthermore, they alleged that EU law had been breached (the freedom of establishment (Article 49 TFEU), the free movement of services (Article 56 TFEU), as well as the freedom to conduct a business (Article 16 of the Charter).

As the Latvian Constitutional Court stated in its final judgment on this matter, the language law must be contextualised within the broader historical backdrop of the forced Russification of Latvia during the Soviet occupation, and the subsequent repercussions thereof. As a result, a significant proportion of the Latvian population still lacks adequate proficiency in Latvian, a situation that has been identified as a pressing concern and the underlying reason for the Latvian language law.[1]

The Constitutional Court assessed the constitutionality of the language law in relation to the constitutional rights to education and academic freedom. It ruled that the particular requirement to offer study programmes exclusively in Latvian violated the Constitution insofar as these provisions pertained

to *private* higher education institutions, their teaching staff and students.[2] Consequently, the provisions pertaining to privately funded universities were annulled. It is indeed crucial to recall that the issue pertained exclusively to *privately* funded (in practice, Russian-speaking) universities. The question of the validity of the new language law for publicly funded universities was not raised by any of the parties involved.

Notwithstanding the Constitutional Court's resolution of the dispute, preliminary questions regarding the aforementioned EU law were nevertheless referred to the ECJ. The rationale behind this decision was that the language law had been in effect prior to its annulment, and therefore, had possibly impacted the universities concerned.

In its judgment, the ECJ is relatively concise in its discussion of the case's substance. The Court limits its assessment to the freedom of establishment (paras. 54-57) and finds that the language law at issue forms an obstacle for educational institutions from other EU Member States. Indeed, these institutions are compelled to bear additional costs in the form of hiring personnel proficient in Latvian (paras. 63-64).

Regarding the justification for that restriction, the Court reiterates its previous case law that EU law does not preclude the pursuit of a policy aimed at protecting and promoting one or more official languages of a Member State,[3] that the Union respects its rich cultural and linguistic diversity (referring to Article 3(3), fourth subparagraph, TEU and Article 22 of the Charter), as well as the national identity of its Member States (Article 4(2) TEU), which includes the protection of the official language of an EU Member State.[4] The Court also reiterates the importance of education for the achievement of such a language policy.[5]

The Court finds that the language requirement for higher education is both appropriate and coherent: The law promotes the use of Latvian by the entire population and ensures that Latvian is also used in university-level education (para. 74). Moreover, the language law is considered proportionate, with certain exceptions being permitted for teaching in other EU languages.

In summary, the judgment confirms the significant discretion of Member States to regulate language use in higher education. It is evident that, in principle, an exclusive language policy for higher education in the official language is compatible with the freedom of establishment under EU law.

The elephant in the room

In his opinion (para. 112), Advocate General Emiliou explicitly emphasises the importance of the Russian language as a minority language in Latvia.[6] It is the elephant in the room that the ECJ carefully avoids to mention in its judgment. The Advocate General's position on the matter is that the prohibition on privately funded higher education institutions holding courses in Russian has a significant impact on the language rights of the minority (para. 113). It is unfortunate that the Court did not assess that aspect of the case.

This can be explained by recalling the observation that the ECJ evaluates the language law from the vantage point of the internal market and not from the perspective of constitutional principles such as academic freedom. This is because the Latvian Constitutional Court had previously examined the issue in relation to the right to education (Article 112 of the Latvian Constitution) and the right to academic freedom (Article 113 of

the Latvian Constitution) in its judgment of 11 June 2020, declaring the language regulations unconstitutional as to privately funded universities.

It is also noteworthy that, while the ECJ acknowledges that the issue brought before it concerns privately funded universities (paras. 28, 35, 37), it does not explore the relevance of that aspect of the case.

The crucial distinction

In the Latvian Constitutional Court's judgment of 11 June 2020,[7] which was confirmed in its judgment of 9 February 2023 (following the ECJ judgment),[8] the language regulation for State-funded universities was not contested. It was evidently taken for granted that Latvian legislation could stipulate the language of instruction in State-funded universities.

In its review of the language regime as to privately funded universities, the Constitutional Court acknowledges that it is a legitimate objective to strengthen the role of Latvian in higher education. Nevertheless, the Court finds that more lenient measures were conceivable, including a comprehensive quality assessment of the instruction provided in all private institutions of higher education. In a similar manner, allowing the use of other languages in certain branches of science or studies would impose fewer restrictions on the autonomy and academic freedom of institutions of higher education.

Why is this distinction on the basis of the funding of universities so crucial? It is widely accepted that States retain the prerogative to establish a linguistic regime within their administration, judicial system, and public educational institutions, as evidenced in the *Ballantyne* case[9] (1993) before the UN Human

Rights Committee. There appears to be an absence of any principle in international law that grants linguistic minorities a right to (*publicly* funded) university education in their own language. States are under no active obligation with regard to (linguistic) minorities in this respect (see, for instance the lenient wording with regard to State obligations in Article 10(2) of the Framework Convention for the Protection of National Minorities).

In the private sphere, however, the freedom of language, which is inextricably linked to the freedom of expression, must be protected (see, in this regard, Article 27 of the UN International Covenant on Civil and Political Rights). The line that must not be crossed, appears to be exclusivity: The use of other languages must be tolerated alongside the official one (see the aforementioned *Ballantyne* case).

In this regard, it can be contended that the establishment of privately funded universities should be permitted under the academic freedom of language, as implicitly confirmed by the judgment of the Latvian Constitutional Court. The ECJ's judgment provides an additional argument, as it states that:

> *"[L]egislation of a Member State which would require, with no exceptions, that higher education courses of study be provided in the official language of that Member State would exceed what is necessary and proportionate [...]. In actual fact, such legislation would lead to the outright imposition of the use of that language in all higher education courses, to the exclusion of any other language and without taking account of reasons that may justify different higher education courses of study being offered in other languages."*

In any event, it is the prerogative of the State to mandate minimum educational standards for private institutions teaching in a minority language and to require them to provide their instruction partly in the official State language(s).

Research and publications

The *Cilevičs* judgment of the ECJ does not address this aspect of academic freedom. An examination of French constitutional case law, however, reveals an apparent alignment with the aforementioned distinction between the public and the private sphere. In the context of the comprehensive Law on the Use of the French Language (the so-called *Toubon* Law, Law No. 94-665) in France, which mandates the use of French in various scenarios, the French Conseil Constitutionnel, in a judgment dated 29 July 1994, determined that the exclusive use of the French language in private domains could not be made compulsory.[10]

It held that, as to the core of the private domain, the freedom of thought and expression must be preserved (it should be noted that the French Constitution does not explicitly safeguard academic freedom). Consequently, the requirement for university researchers to publish all their works in French, or to use a designated terminology approved by language committees (to counter the so-called *franglais*), was deemed unconstitutional.

In a similar manner, the *Toubon* Law imposes a broad obligation on events, seminars or conventions organised in France by either natural persons or corporate bodies of French nationality. It stipulates that all participants are entitled to express themselves in French. Furthermore, all documents distributed to participants must be made available in French. However, such

documents may also include translations in one or more foreign languages. Exemption is granted for events, seminars and conventions exclusively organised for foreign visitors or designed to promote France's foreign trade. In its judgment, the Conseil constitutionnel validated these obligations, as the provisions do not, as such, exclude the use of other languages than French. This further demonstrates the extensive discretion States are afforded in this domain.

To summarise, the law as it currently stands does not oblige States to either establish or fund universities in minority languages. However, in principle, they must tolerate the establishment of privately funded institutions that may teach in minority (or other) languages. By contrast, academic freedom includes the right to use any language in its individual dimensions of research and publications.

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Accent on the Language of Instruction

Exploring the Linguistic Dimension of Article 13 EU Charter of Fundamental Rights

Language of instruction in European higher education is becoming an increasingly contested issue. Typically analysed in reference to the protection of linguistic minorities, language policies are now at the centre of debates on internationalisation of higher education and the rise of English-language instruction across non-English-speaking Member States. Although these developments have been widely debated in many education-related research fields, little attention has been paid to the question whether language policies – be it mandating or restricting foreign languages – can infringe upon academic freedom as a legal right. At the same time, the question has been already raised in EU law. In the case *Boriss Cilevičs and Others* (C-391/20), the Advocate General suggested that Latvian law limiting heavily the use of foreign languages in higher education "restricts the academic freedom of teachers (set out in Article 13 of the Charter)"[1] (para. 109). However, the Court of Justice (ECJ) did not discuss the matter. Therefore, while the ECJ judgment seems to leave Member States a significant discretion to regulate language in higher education,[2] the broader conceptual question about the scope of the linguistic dimension of Article 13 CFR – if any – remains. Without offering straight-forward answers, this chapter explores briefly what interpretative guidance regarding the language of instruction can be found in other international and national legal systems (see also Article 52 CFR on the interpretation of EU fundamental rights) and what kind of questions remain open. It then brings these insights together to preliminarily discuss how they may feed into possible interpretations of EU law.

More than a theoretical puzzle

Academic freedom has many dimensions, and many of these can be linked to language. This chapter focuses on one dimension in particular: the language of instruction in higher education. Academic freedom in instruction (teaching) is generally taken to extend to both substantive content and pedagogical method, with language arguably belonging to either category, frequently in a discipline-dependent manner. While some argue that methods warrant more limited protection than content (Finn 2020[3]; see also Macfarlane 2021[4]), there is strikingly no legal or philosophical scholarship that addresses the linguistic dimension of academic freedom explicitly or attempts to conceptualise it. This leaves many questions about its scope open. Nonetheless, national court cases and ongoing regulatory debates have highlighted various kinds of situations in which language measures – driven by different actors and motivations – can have an impact on academic freedom.

The dynamics are easiest to see in concrete disputes and controversies, and three brief examples suffice: In Italy, Politecnico di Milano sought to convert all its graduate programmes to English-language instruction as part of an internationalisation strategy, with some staff challenging the institutional measure in court as a violation of their individual academic freedom (see Galetta 2021[5] for an English summary of the case). The Latvian law restricting foreign-language instruction in universities (with exceptions), leading to the ECJ judgment mentioned above, raised concerns about both the institutional and the individual dimension of academic freedom[6] – intertwining, moreover, with issues of protection of linguistic rights of the

Russian minority.[7] In the Netherlands, the government has recently proposed stricter limits on English-taught programmes to strengthen Dutch as the language of academia and, according to some reports,[8] to better control the inflow of foreign students – with some seeing the move as problematic from the perspective of institutional autonomy.[9] Despite their diversity, the cases show that language rules engage a complex bundle of rights, interests, and duties: the right to education, minority protection, the state's linguistic identity, and, as many have and continue to argue, academic freedom. This underscores that what might appear to be a marginal theoretical puzzle has very concrete applications. Anticipating further legal disputes, it is timely to explore – beyond the existing case law of the ECJ – how academic freedom as protected by Article 13 CFR may bear on language regulation in Europe's universities.

Academic freedom and language across jurisdictions

Little authoritative pronouncements on Article 13 CFR exist in EU law. The provision does not explicitly refer to any linguistic aspects of academic freedom. In *Commission v. Hungary* (C-66/18), the only judgment on Article 13 CFR to date, the Court of Justice confirmed that the freedom encompasses both an individual and an institutional dimension, as well as an obligation of the Member States to protect it. However, given the nature of the case, the judgment does not touch upon language either. While language in higher education is at the centre of *Boriss Cilevičs and Others*, academic freedom of teachers has been only briefly touched upon by the Advocate General and has not been authoritatively discussed by the Court. This may have to do with the fact that the Latvian Constitutional

Court had previously assessed the case from the perspective of academic freedom,[10] but perhaps also with a rather wide-spread silence of authoritative sources on this issue.

The right to education, often seen as the "home" of academic freedom in international law, also covers higher education.[11] However, the right to higher education remains one of the under-theorised aspects of the relevant provisions (Kotzmann 2018[12], p. 17). Language issues are often seen in light of the requirements of minority protection[13] and/or discussed in the context of obstacles to access education (Kotzmann 2018[14], p. 40), with no international provision requiring the states to actively provide public higher education in minority languages.[15] Freedom of language is protected as part of freedom of speech but does not grant a right to use any language in public institutions.[16] On the other hand, while academic freedom has been increasingly recognised as inherent in the right to education,[17] it has not been (to my best knowledge) discussed under the international legal framework together with issues of the language of instruction so far. Similarly, the European Convention on Human Rights and the existing case law of the European Court of Human Rights do not provide clear normative guidance. Academic freedom is protected under Article 10 ECHR (freedom of expression), a provision that grants protection to the language of expression in some contexts as well (e.g, *Şükran Aydın and Others v. Turkey*).[18] At the same time, while academic freedom possibly "transcends the scope of Article 10 in certain areas" (e.g., *Mustafa Erdoğan and Others v. Turkey*[19]), it has so far been discussed only in reference to the substance of professors' speech, with no cases giving rise to linguistic considerations. Higher education is protected in the Convention system under

the right to education (e.g., *Leyla Şahin v. Turkey*[20], paras. 134-142), and the latter generally includes a right to be educated in (one of) the national languages, albeit not necessarily in a language of one's choice (*Belgian Linguistic Case*[21]*; Valiullina and Others v. Latvia*[22]). However, none of the case law on the linguistic aspects of education deals with higher education (indirectly: *İrfan Temel and Others v. Turkey*[23] on students' suspension following a request to introduce optional Kurdish classes). Additionally, the Court of Human Rights has previously recognised that states may have different types of obligations in reference to different levels of education (*Ponomaryovi v. Bulgaria*[24]), leaving open the question whether the particular nature of higher education may modify some of the language requirements in education as well.

Depite this rather fragmented and often ambiguous normative framework, academic freedom soft law may provide some interpretative points of reference in cases involving language measures. The UNESCO Recommendation concerning the Status of Higher-Education Teaching Personnel[25] – previously referenced by the ECJ in *Commission v. Hungary* – is the leading soft law instrument on academic freedom, detailing duties and rights for institutions, teachers, and public authorities. For example, "teaching personnel have the right to teach without any interference, subject to accepted professional principles including professional responsibility and intellectual rigour with regard to standards and methods of teaching" and "should play a significant role in determining the curriculum" (para. 28). However, they are also expected to "teach students *effectively*" (para. 34(a), emphasis added). Institutions should be autonomous, including in their academic work, in a way "consistent with systems of public accountability" (para. 17). This is

understood broadly and inclusive of, e.g., the quality of their teaching or effective support of fundamental human rights (para. 22). While the Recommendation does not define issues of "standards", "quality" or "effectiveness" of teaching, all can be argued to intersect (at least in some dimensions) with the language of instruction. Therefore, in principle, the use of foreign languages in higher education could be seen as covered by academic freedom in both the individual and institutional dimension, including in public higher education – at least to the extent it affects its quality, effectiveness, and so on. Moreover, any freedom or autonomy granted in this regard will be qualified by requirements of individual professional responsibilities, educational standards, or institutional missions. This can find some support in the (admittedly limited) national constitutional jurisprudence on the language of instruction and academic freedom, e.g. in Latvia (at least in reference to private institutions[26]) or in Italy (at least in reference to institutional measures in the case of Politecnico di Milano[27]). However, the scope of rights recognised for different rights-holders (students, academic staff, institutions) across these cases does not seem to be the same – partly because the facts differ, but perhaps also due to deeper doctrinal differences. The Recommendation further emphasises that both institutions and individuals must respect general human rights, and therefore their freedoms must be reconciled with any linguistic obligations that flow from the right to education or minority protection more broadly. While balancing of different interests may be context-dependent and the operationalisation of such broad concepts difficult, some interpretative inspiration can be found in comparative constitutional research, relevant for EU law in light of Article 52 CFR.[28]

Preliminary thoughts on the linguistic dimension

While hardly conclusive, the discussion above suggests that there are good reasons for the recognition of the linguistic dimension of academic freedom, including in reference to Article 13 CFR. Such freedom could arguably extend beyond the individual freedom of teachers (as suggested by the Advocate General in *Cilevičs*) or private institutions only (as encompassed by the *Cilevičs* judgment).[29] Even if this broader scope of academic freedom is conceptually accepted, the freedom is hardly unlimited. The proportionality stage of the analysis will raise complex questions about the relationships between different rights, interests, and objectives – which may legitimately pull into different directions. This notwithstanding, there are interesting questions concerning the interpretation of Article 13 CFR that rest on the (legal) nature of the EU. For example, Article 165 TFEU sets out that EU action should develop the European dimension in education "particularly through the teaching and dissemination of the languages of the Member States". How – if at all – could this objective relate to the interpretation of Article 13 CFR, be it in general or in the context of particular strands of EU action? Further, how would the linguistic dimension of Article 13 CFR relate to Article 22 CFR (linguistic diversity) or 14 CFR (the right to education)? This constellation of provisions was raised in *Cilevičs*. It can be noted that the Advocate General argued that Article 14 encompasses a choice of "a more intensive use of foreign languages in higher education" – whatever this may mean in practice. Could the linguistic dimension of Article 13 CFR intersect with questions of student mobility and discrimination in access to higher

education, matters on which a significant body of ECJ case law exists? The EU will, of course, not be competent to prescribe uniform language rules in education through legislation (due to its limited competence in the field, see Articles 6(e) and 165 TFEU). That said, it can be preliminarily concluded that Article 13 CFR (alone or in combination with other Charter provisions) could set binding obligations for at least some of such issues – even if academic freedom will at times need to give way to other considerations.

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Kirsten Roberts Lyer

Academic Freedom as a Human Right

Academic Freedom in Europe

Attempts by the U.S. administration in 2025 to tie federal funding to an ideologically driven "Compact for Academic Excellence" have sent shockwaves through universities, raising alarms about political steering of curricula and governance. These developments are not isolated: They echo tactics increasingly used worldwide, including within the EU, where subtle regulatory and financial pressures are reshaping the academic landscape. To counter this erosion, the EU must treat academic freedom not as a sectoral issue, but as a fundamental right under Article 13 of the Charter of Fundamental Rights (CFR), embedding clear guardrails in governance, funding, and legal protection.

Threats to academic freedom

New attempts by the U.S. administration to tie preferential federal funding to an ideologically motivated "Compact for Academic Excellence" have jolted universities and prompted warnings about direct political steering of curricula, governance and campus speech.[1] Whatever one makes of these proposals on their own terms, they are a vivid reminder for Europe that academic freedom is rarely lost in a single dramatic moment; it is eroded by the steady accumulation of incentives, conditions and governance tweaks.

The U.S. is not an outlier. The government's actions mirror the type of legal and administrative pressures faced by academia in many countries, including within the EU. This pressure also cannot be viewed in isolation from widespread threats to democratic institutions and civil society and increasing efforts to silence voices that do not align with government narratives.

Politically driven closures of study programmes and research activities in some fields,[2] as well as serious restrictions on the freedom of expression of academics have been documented in the EU and Council of Europe Member States by the Academic Freedom Index[3] and NGOs such as Scholars at Risk[4]. Their findings from around the world show that academic freedom faces threats not only from political interference to university autonomy, but also that individual scholars face threats and intimidation for their work. These global developments matter for Europe because they amplify domestic tactics already visible in some Member States.

The EU has one of the few supranational rights provisions that directly reference academic freedom and, although its wording is compact, it provides a legal foothold the Union can use. Article 13 CFR provides: "The arts and scientific research shall be free of constraint. Academic freedom shall be respected." Taken together with the wider context of shrinking civic space,[5] Article 13 CFR highlights the Union's capacity, and responsibility, to embed concrete guardrails in governance, funding and legal protection across the Union.

Under pressure

In many parts of Europe, indirect political interference is reshaping the conditions of academic work. The European Parliament's Academic Freedom Monitor maps structural and legal trends in Member States,[6] including governance and funding changes. Scholars at Risk and other NGOs document incident-level (*de facto*) attacks on scholars and institutions. These monitoring efforts point to recurrent risk clusters: (i) undue restrictions on institutional autonomy, including gover-

nance reforms that shift power from academic bodies to boards with governmental influence; (ii) erosion of academic self-governance, via top-down appointments or ministerial vetoes over hiring and curricula; (iii) worsening working conditions, with precarity that deters "controversial" research;[7] and (iv) instrumentalised public funding, where selective grants and targeted cuts reward conformity and punish dissent. A further pattern is the lack of consultation in higher-education law-making, excluding academics and students from reform processes.

Closure or "restructurings" can be used to hollow out fields considered sensitive by governments. Hungary's removal of gender studies from the accredited list and related programme closures are well documented.[8] Disciplinary actions against outspoken staff, and reputational or legal campaigns, which are often SLAPP-style, are designed to chill publication and public engagement. Even when no single measure looks egregious, the accumulation chills campus climate. Researchers avoid "risky" questions, curricula narrow, and talent exits.[9] The loss is society's: fewer independent voices in public debate and less evidence in policy. Monitoring by the European Parliament finds slow, uneven EU-wide erosion; with precarity, governance reforms, and security-policy spillovers among today's main drivers.[10]

A right and a democratic value

Academic freedom is not a privilege of scholars; it is increasingly recognised as a human right and a democratic safeguard. As emphasised in the Council of Europe's recent policy brief "Academic Freedom: Human Rights Perspective" it "protects

processes that support evidence-based inquiry and policymaking that inform the decisions that affect people's lives. Without it, democracy is at risk"[11]. In a democratic society, academic freedom ensures access to reliable information on complex or disputed issues, protects against manipulation, historical distortion, and scientific and cultural bias.

While there is no universally agreed definition, there is a growing consensus on the parameters of academic freedom as a right. In her 2024 report, the UN Special Rapporteur on the Right to Education stated: "Academic freedom is 'the human right to acquire, develop, transmit, apply, and engage with a diversity of knowledge and ideas through research, teaching, learning, and discourse'."[12] Further, she endorsed the Principles for Implementing the Right to Academic Freedom which provide in Principle 3 that "[t]he protection, promotion, and enjoyment of academic freedom require the autonomy of academic, research, and teaching institutions".[13]

This emerging international understanding has not yet been matched by comparable legal development within the EU. Article 13 CFR has received markedly limited elaboration and its scope and limits remain unclear (Ceran 2025[14], see also Kosta 2020[15]). Most notably, it was referred to by the Court of Justice in the *European Commission v. Hungary* judgment (C-66/18); the Court read Article 13 CFR as protecting both individual and institutional dimensions of academic freedom (autonomy). However, while the Court found a separate breach of Article 13 CFR, this could only occur because of the applicability of the General Agreement on Trade in Services (GATS) and internal market law, which triggered the application of the Charter (per Art. 51(1)). Although the ECHR has no stand-alone "academic freedom" clause, Strasbourg has long protected academic

freedom under Article 10 (freedom of expression): The Court has held that it includes the right of academics to criticise their institutions and to disseminate knowledge (e.g., *Sorguç v. Turkey*[16]), and has underlined the role of university autonomy in safeguarding expression (*Kharlamov v. Russia*[17], *Erdoğan and Others v. Turkey*[18]).

Four functions of academic freedom illustrate why its protection matters for democracy and rights in practice. First, it safeguards the independence of knowledge production from political or economic capture. Second, it enables pluralism of viewpoints in teaching and research, which underpins democratic debate. Third, it ensures reliable evidence to inform policymaking and judicial decision-making. Fourth, it cultivates resilience against disinformation, historical distortion, and authoritarian narratives. Each function connects academic freedom to other Charter rights; freedom of expression and information (Article 11), education (Article 14), cultural, religious and linguistic diversity (Article 22), showing why Article 13 CFR cannot be read in isolation (see Ceran 2025 above).

There are a growing range of initiatives across Europe that aim to define, monitor and promote academic freedom. Examples include the Council of Europe's Academic Freedom in Action Project, the European Parliament's Academic Freedom Monitor.[19] The European Higher Education Area (EHEA) has reiterated that academic freedom is a core Bologna value first in the Rome Communiqué (2020)[20] and again in the Tirana Communiqué (2024)[21] calling for the protection of institutional autonomy and the rights of staff and students. At EU level, Directive (EU) 2024/1069 (the Anti-SLAPP Directive) provides minimum procedural shields against abusive cross-border litigation; protections that matter directly for scholars, editors, and

universities facing retaliatory suits. Recent EU-level measures such as the Commission's ERA Action 6 (linking a new academic-freedom monitoring mechanism with initiatives on research security),[22] Parliament's January 2024 resolution promoting a permanent fellowship for researchers at risk,[23] and the Council's May 2024 Recommendation on research security (which stresses that any security measures must promote and defend academic freedom and institutional autonomy),[24] add further layers to this picture.

Together these efforts form a nascent European acquis on academic freedom, but one that remains fragmented; some instruments are rights-based, others are risk-based. To avoid parallel or securitised standards, the Union needs a coherent, human-rights-centred framework under Article 13 CFR that treats academic freedom as an integral Charter right rather than a by-product of research-security policy. That coherence, grounded in human-rights law rather than sectoral regulation, is what the next phase of EU action on academic freedom must deliver.

From recognition to implementation

The EU should adopt a whole-of-Union, rights-based approach to academic freedom, strengthening its recognition and implementation through binding provisions at EU and Member-State level.

As noted in the EP Monitor Report on academic freedom there is a "scarcity of authoritative sources on the scope and nature of [Article 13 CFR] in EU law, its key dimensions could be further clarified"[25]. Academic freedom may be derived from Article 13 CFR, but it sits at the crossroads of Charter rights,

education and research competences, media and defamation law, anti-SLAPP initiatives, and foreign-interference regimes. The Commission could request a non-binding Opinion from the EU's Fundamental Rights Agency (FRA) to clarify Article 13's individual (research/teaching/speech) and institutional (autonomy/governance) dimensions, and propose operational standards for autonomy, governance, due process for discipline, fair hiring, and protection against retaliation. The FRA, and the Council of Europe, and other rights-focussed bodies must be in the discussion to help harmonise the EU understanding of academic freedom so it isn't narrowed by the institutions or Member States to freedom of scientific research or reduced to merely an issue of freedom of expression.[26] Efforts are also needed to connect the academic freedom initiatives across Europe.

EU programmes already reference academic freedom. Defining workable safeguards and proportionate, due-process conditionality – what compliance looks like, how allegations are assessed, and what remedial steps follow – can align incentives without turning funding into a blunt weapon. Commission guidelines, programme conditionality in Horizon Europe/Erasmus+, should define compliance criteria, and integrate academic freedom into the Rule of Law cycle so that "respect for academic freedom" has both content and consequences.

It is also important to take a human rights perspective in order to mainstream academic freedom within wider civic space and rule-of-law debates, and surface under-reported threats: SLAPPs against scholars; transnational repression by foreign states on European campuses;[27] exclusion of academics and students from policymaking. Public authorities, funders and

universities can frame these as fundamental-rights issues – not least to counter anti-science narratives.

Recognising academic freedom as a core fundamental right is essential to Europe's resistance to democratic backsliding and keeping knowledge independent and accessible. Without coordinated EU engagement, and a coherent human rights focus, Article 13 CFR risks remaining a promise. With these steps, the Union can help ensure academic freedom is a lived right in the EU legal order.

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Kriszta Kovács, Julian Leonhard

Speaking Out on Campus

The University as a Platform for Free Speech or Academic Discourse?

Campus protests have been testing European universities. The demonstrations at Freie Universität Berlin highlighted the tension between seeing universities as open spaces for free speech and regarding them primarily as institutions dedicated to academic discourse. German courts have leaned toward the latter approach, whereas EU law provides a broader scope for academic freedom while still tying it to academic contexts. Although the upcoming European Research Area Act does not appear to address this issue, guidance from EU law could help universities strike a better balance between protecting the right to protest and safeguarding academic freedom.

Protests at FU Berlin

Pro-Palestinian protests took place in Spring 2024 at Freie Universität Berlin (FU). Shortly after, four people received deportation orders from the Landesamt für Einwanderung (LEA, Berlin Immigration Office). Their only common was participation in the protests at the FU campus, which involved serious property damage.[1] Each deportation order cited Germany's national pledge to defend Israel – its *Staatsräson*[2] (*raison d'état*) – as justification, framing the behaviour of the activists as indirect support for Hamas and its affiliated organisations. Notably, the orders did not mention that the protests were directed against Israel's warfare in Gaza, nor that both the International Court of Justice and the International Criminal Court had already issued strong criticism of Israel at the time.[3]

All four protesters filed urgent motions for interim measures, alongside appeals challenging the legality of the orders.[4] The Verwaltungsgericht Berlin (VG Berlin, Berlin Administrative Court) granted a suspension of the deportation

orders until the conclusion of the main proceedings, reasoning that the LEA should have sought information from the public prosecutor's office on the ongoing cases against the protesters before issuing deportation orders.[5] By failing to do so, the LEA neglected its duty to investigate. (Later, it was reported that all four protesters ultimately won their cases, though the main proceedings appear to remain pending.[6])

German courts approached the matter as a question of freedom of movement in an EU law sense, rather than one of free speech or academic freedom. One reason may have been that three of the four protesters were EU citizens, which led the courts to rely on the guidance of the Court of Justice of the EU (ECJ) when assessing whether the protesters' conduct in another EU Member State posed a present and serious threat to an important social interest.[7] Another reason may have been that none of the protesters were enrolled at FU at the time.[8] Nevertheless, these cases raise important questions about whether, and to what extent, peaceful campus protests are protected under national and supranational (EU and ECHR) law.

Protecting speech on campus

Broadly speaking, there are two main theoretical approaches to protecting speech on campus. The first holds that academic freedom standards govern teaching and research, while the general right to free speech protects broader public discourse on campus (see, e.g., Whittington[9], Cole[10]). As the seminal Kalven Committee Report of the University of Chicago put it, the university is the home of critics; its obligation is to provide a forum for the most serious and candid discussion of public issues.[11] To preserve these conditions, the university should

remain neutral: It cannot take collective action on public issues without endangering its existence and effectiveness. This institutional neutrality complements the fullest freedom for faculty and students as individuals to participate in political action and social protest. Since a broad commitment to free speech is essential to a university's identity, content-based regulations should not apply to campus premises. Applying this approach to the FU protest, a peaceful pro-Palestinian demonstration should have been permitted on campus and protected as free speech.

The other theoretical view argues that uninhibited free speech on campus can undermine academic practices, and that universities should instead prioritise their epistemic mission – the pursuit and dissemination of truth – over serving as venues for all forms of speech (see, e.g., Simpson[12]). According to this view, speech must be utterly free in the classroom, but need not be equally free in other campus spaces (see, e.g., Tribe[13]). A campus-wide free speech culture, as Simpson contends, may dilute the intellectual rigour required to prepare students as informed citizens. From this perspective, campus events should be vetted against academic standards, allowing even content-based restrictions. Protests or discussions would not be permitted if they failed to align with the university's intellectual mission. In the context of the FU protest, a peaceful pro-Palestinian protest on campus would only be allowed if it conformed to the university's educational mission by contributing to rational, evidence-based, and pluralistic dialogue on critical social issues.[14] Academic freedom does not extend to wholly unrelated political issues or to disruptions of teaching.

The German understanding

German jurisprudence subscribes to the second theoretical approach. The German Federal Constitutional Court has confirmed that participation of students in academic discourse – such as in a seminar or lecture – is covered by academic freedom under Article 5(3) of the Basic Law (BL), according to which "arts, sciences, research and teaching shall be free".[15] However, these judgments, along with lower court decisions indicate that students' academic freedom of expression – protected under Article 5(3) BL rather than the general right to freedom of expression under Article 5(1) BL – does not extend to general political issues.[16] It is limited to the topics of academic discussion or issues of university policy, and it may be further restricted by academic freedom understood as the faculty's professional freedom (see, e.g. Gärditz[17], Ogorek[18]). Political expression by students and faculty is instead protected under Article 5(1) BL. Yet given the courts' understanding of the university's mission, the lecturers' freedom to teach, and the university's duty to protect it, the latter interest usually prevails when conflicts arise.

German jurisprudence also recognises that freedom of assembly protects the right to choose the location of a protest (see, e.g., Zimmermann[19]). Still, it is widely accepted that this right does not extend to places that, under the circumstances of the case and at the time of the assembly, are not publicly accessible and that do not function as public forums (see, e.g., Dirscherl[20]). Accordingly, courts – supported by literature such as Braun and Kniesel[21] – have distinguished between different types of university property: Protests are permitted on fore-

courts and lawns, but not in lecture halls or corridors within university buildings. In the courts' view, the former provide a public space for communication, whereas the latter are reserved for university members for academic and teaching purposes.[22]

Thus, the German understanding of campus speech suggests that academic freedom is essential for the pursuit of knowledge but does not require uninhibited free speech across the entire campus. But does this understanding comply with EU law?

Platforms for academic discourse

Article 13 of the EU Charter of Fundamental Rights (Charter) codifies, for the first time within the European context, the freedom of scientific research and academic freedom. It stipulates: "The arts and scientific research shall be free of constraint. Academic freedom shall be respected." The ECJ gave effect to Article 13 with its judgment in *Commission v. Hungary* (C-66/18).

What does this mean for campus speech? Article 52(3) of the Charter requires that Charter rights corresponding to those in the European Convention on Human Rights (ECHR) must have the same meaning or, at the very least, the same scope as those given by the Strasbourg Court. Since academic freedom in ECHR jurisprudence is protected under the free expression clause of Article 10,[23] academic freedom in EU law likewise guarantees, among other things, the right of academics to express controversial or unpopular ideas on matters of public concern within their expertise, without fear of repercussion. Opinions not based on sustained or completed research may still be free speech, but not academic freedom. This distinction is relevant when scholars or students protest on campus.

The ECJ has incorporated this understanding of free speech in the academic context into EU law, but it has not stopped there. The ECJ interprets Article 13 more broadly by referring to AG Kokott's opinion, which emphasises that "the university serves as a platform for academic discourse and a network and infrastructure for teaching staff, students, and donors" (para. 146).[24] Thus, even under EU law, campus speech is conditioned by academic freedom. Universities are platforms for academic discourses, but they are not obliged to provide platforms for all types of speech.

A fifth freedom

The European Parliament recently adopted two resolutions addressing concerns about academic freedom. In 2023, the EP called on the EU to respect and promote academic freedom as well as the freedom to conduct scientific research and teach (amendment to Article 3 TEU).[25] It also suggested amending the Treaty on the Functioning of the European Union (TFEU) to include these freedoms as objectives of the EU (amendment to Article 179(1) TFEU) and proposed creating a shared competence for education (amendment to Article 4(2)(kc) TFEU).

In 2024, the European Parliament urged the Commission to propose a legally binding act at the EU level.[26] The Commission is currently preparing the European Research Area Act. However, the scope of this secondary legislation appears limited: It focuses exclusively on the freedom of scientific research and on establishing a "fifth freedom" – the free movement of research and knowledge. It does not seem to provide guidance on how to interpret and protect academic freedom, nor does it define the role of universities.[27]

To the extent possible within competence constraints, addressing these issues through EU law would be beneficial, as there are no clear legal precedents in Europe on how universities should respond to protests on their premises. This lack of clarity often leaves universities struggling to make the right decisions.

Future EU actions in the field could draw on the approach implicitly adopted by the German courts and the ECJ: treating the university as a platform for academic discourse. This idea has roots in Europe, unlike the one articulated in the Kalven Report, which views the university as a home of critics and a forum for discussion of all public issues.

Introducing clear legal standards in the shared European academic space would help ensure that students can participate in lawful protests without fear, and that academics can openly express their views on those protests – and on the political events that trigger them – without fear of repercussions,[28] whether by exercising their right to academic freedom or their right to free speech.

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