Academic Freedom, the Republic and "Islamo-Leftism"

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The government in France is currentlyreforming the organization of the university system. On 28 October and in response to the killing of history teacher Samuel Paty, the Senate has introduced a new, contentious, problematic and authoritarian provision. It reads: "Academic freedom is exercised having regard to the values of the Republic." This provision is unconstitutional, dangerous and not capable of achieving its supposed goal.

Cancel cultures

What does this provision mean? I would like to stress that it is not the result of pressures coming from civil society or even from the political world but rather reflects inner academic tensions and the attempts of one part of academics to capture the State in order to ban whole branches of research. Some academics have pushed, successfully, to start a McCarthyist witch hunt against research they deem islamo-leftist.

Why? It is no coincidence that the provision was introduced after the minister for education, Jean-Michel Blanquer, a conservative law professor, criticized in the media the "islamo-leftism" inside the university. In other words, this provision is nothing but a neoconservative attempt to rid the university of whole areas of research. It is also in line with the rising critique of the right against human rights. What did Jean-Michel Blanquer say? After the horrible killing of history teacher Samuel Paty, beheaded in the name of religion, the minister for Education was interviewed and established a link between this event and the "devastation" that "islamo-leftism" is causing at universities. Some academics would even be guilty of "intellectual complicity with terrorism", he said in an interview on radio and in Parliament. On Twitter, Marion Maréchal Le Pen, an extreme-right politician, praised the amendment as giving credit to "her analyses on the dangers of left intersectional ideologies inside Universities".

A group of conservative academics supported the minister saying: "Indigenist, racialist, decolonial" ideologies (coming from US campuses) are present in universities, breeding hatred toward the 'White' and France; and a sometimes violent activism takes on those who dare defy the anti-western and multicultural doxa". They called on the minister to take measures in order to detect the "islamist drifts" inside universities, to "clearly take a position against the ideologies underlying them" and to create a body in charge of detecting cases that are harmful to the republican principles.

This provision is the result of State capture by a minority of academics who are sometimes silenced because they are in a minority. Some are even intimidated on social media. But instead of fighting this precise fight they are actually fighting back by trying to silence their opponents. They are not proposing to set up a body in charge of defending every view inside universities, that could take steps, and even legal ones, to defend academics threatened or silenced. No, they are proposing to set up a body in charge of policing one set of ideas.

This provision is clearly a scandal. It is dangerous because it is vague. Academic freedom is already limited by criminal provisions in place to combat negationism for instance. As one major French academic association, *Qualité de la science française* (QSF), argues these values cannot be defined and could be used by ill-meaning governments to silence academics.

An attack on the last free space

Legally, this provision is dead on arrival. The independence and free speech of academics is constitutionally protected. The French Constitutional Court held that "teaching and research functions not only allow but require (…) that the free expression and independence of staff be guaranteed". Further, the Court adds that the independance of university professors is a constitutional principle (83-165 DC du 20 janvier 1984). Academic freedom is therefore based in the Constitution. Another constitutional argument should be added. The provision as it stands is meant to be the basis of prosecution. It is a constitutional principle that criminal offenses should be precise in order to prevent arbitrariness. Parliament should thus define crimes and penalties in a precise and clear manner (n° 2004-500 DC). The reference to the "values of the Republic" cannot meet this requirement.

The ECtHR, too, would certainly also object to the provision, as the decision *Kula v Turkey* shows. In that decision, the ECtHR very clearly held that: "essentially to the exercise by the applicant of his right to freely express his views as an academic during a television programme organised outside his city of residence. In the Court's view, this issue unquestionably concerns his academic freedom, which should guarantee freedom of expression and of action, freedom to disseminate informationand freedom to 'conduct research and distribute knowledge and truth without restriction'." It is noteworthy that the Court was wary of the chilling effect sanctions could have on the free speech of academics, which is precisely the effect the provision is meant to have in France: "The Court thus considers that, however minimal the sanction (a reprimand) imposed on the applicant for taking part in a television programme outside his city of residence without the authorisation of his supervisors, it was liable to have an impact on the exercise of his freedom of expression and even to have a chilling effect in that regard." Both French Constitutional Law and the ECtHR thus oppose such a provision.

Politically, if this government wants to fight terrorism, this is probably the worst way to achieve this goal. This provision does not address this issue, as a recent platform signed by hundreds of academics, rightly highlighted.

The provision is not final, as the draft statute is still being discussed in Parliament but it shows that the attacks on academic freedoms are not restricted to Hungary or Turkey. Even in a country that boasts itself of its vibrant intellectual atmosphere, a government that was elected on a liberal agenda is attacking academic freedom as never before.

However, this outrageous legislative proposal needs to be understood in the context of developments that have been going on for a while. The amendment is only one example of the shrinking French public space with states of emergency coming one after the other and now being complemented by the current situation. This text is therefore an attack on the last free space there is in this country, one of the last remaining countervailing powers. It also comes at a time when the consensus on the importance of human rights is being attacked even by a former Secretary General of the French Constitutional Council and Honorary member of the *Conseil d'Etat*, Jean-Éric Schoettl. In an interview he said that:

> *"For forty years or so, higher legal norms (Constitution, treaties and above all case law of the supreme courts) in the area of fundamental rights have increasingly tightened the margin of action of the public authorities. Thus, the daring ideas launched in the public debate to fight Islamism (internment of the most dangerous suspected terrorists, for example), or to contain the pressure of migrants (such as migratory quotas) come up against the wall of fundamental rights (…). For public authorities, the alternative is in fact the following: either stay within the limits of the rule of law as it is currently defined by texts of superior value and the jurisprudence of national and European supreme courts (…); or prepare to 'turn the table around' by amending the Constitution and unilaterally denouncing, renegotiating or suspending some of our European commitments in the name of the best interests of the country."*

There are many signs that the French academic, administrative and political elites are ready to abandon the core of the rule of law. Now fundamental rights, in France, need to be defended. Indeed, they are on trial.

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