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# **Freedom of Science and Research: Basic Challenges for Human Rights and Institutional Development**

**25 April 2024**



**Vilnius  
University**



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*Presentation at the Roundtable  
“Global Transformations and Sustainable Development:  
Cooperation, Science, Education, Technologies”*

*25 April 2024  
Kharkiv / online*

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# General Insights. Content and Context





## 1966 International Covenant on Economic, Social and Cultural Rights

Para 3, Article 15

*The States Parties to  
the present Covenant  
undertake to respect  
the freedom  
indispensable for  
scientific research and  
creative activity.*



## EU Charter of Fundamental Rights

Article 13

Freedom of the arts and  
sciences

*The arts and scientific  
research shall be free of  
constraint. Academic  
freedom shall be  
respected.*



## European Convention on Human Rights and Fundamental Freedoms

Article 10

*Freedom of expression*

*Everyone has the right to  
freedom of expression.  
This right shall include  
freedom to hold opinions  
and to receive and impart  
information and ideas  
without interference by  
public authority and  
regardless of frontiers.*

<...>

# Freedom of Scientific Research

*“The freedom of scientific research is a constituent part of academic freedom and scientific integrity in Europe, while also having an independent value <...>”*

Annex. Defining the Freedom of Scientific Research. European Parliament resolution of 17 January 2024 with recommendations to the Commission on promotion of the freedom of scientific research in the EU (2023/2184(INL))

# Freedom at Risk?

Reports and surveys indicate (rising) threats to the freedom of science and research, an “erosion of academic freedom” and challenges (posed by authoritarian regimes, new technologies, hybrid threats, military conflicts, *etc.*).

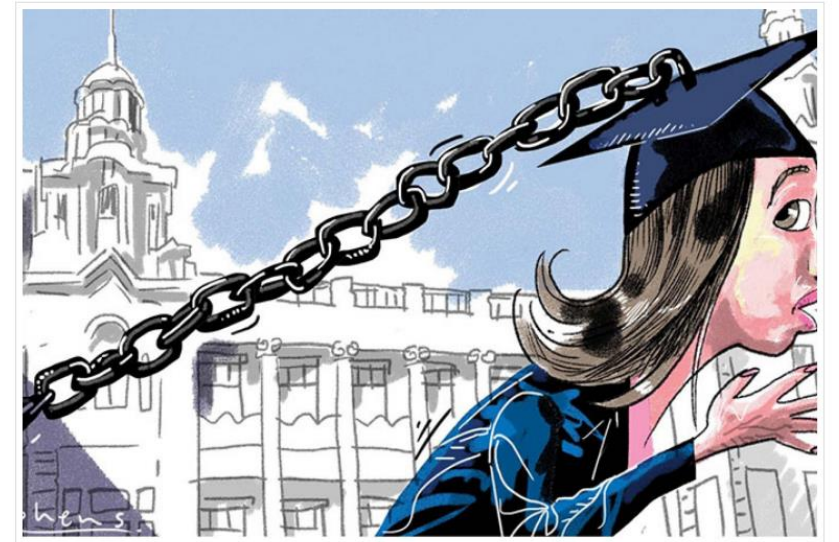


Image source: <https://world.edu/academic-freedom-is-under-threat-around-the-world-heres-how-to-defend-it/>



Image source: <https://www.scholarsatrisk.org/event/freedom-of-research/>



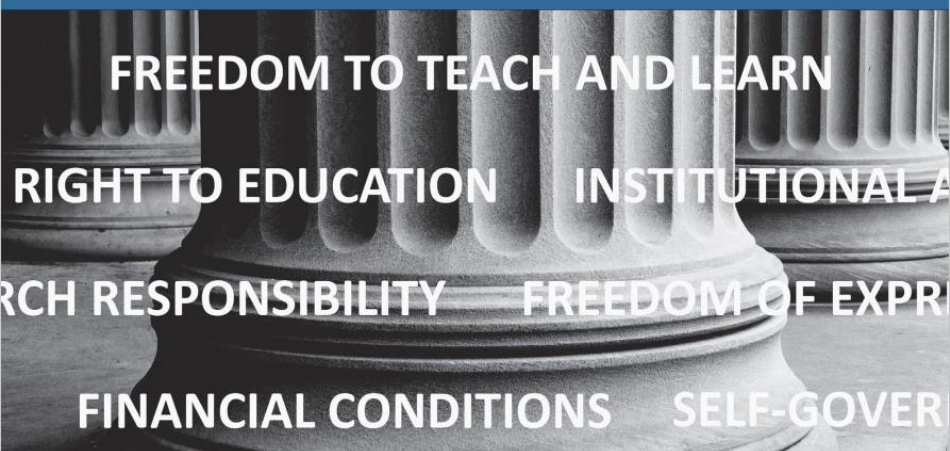
# A Few Key Takeaways from Berlin, 2024

## Human Rights and Academic Freedom in Europe

10<sup>th</sup> Leopoldina “Human Rights and Science” Symposium  
in cooperation with the Norwegian Academy of Science and Letters (DNVA)

Wednesday, 20 March 2024 | 1:00 pm – 6:30 pm

State Representation of Saxony-Anhalt  
Luisenstraße 18 | 10117 Berlin



Meeting of the European academy representatives, Foto: Leopoldina



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# Case Law of International and European Courts (ICJ, ECHR, CJEU)

# International Court of Justice. *Freedom in Times of War*

- Importance of dissemination of truth
- Challenges on freedom of speech

Photo. View of the ICJ courtroom on the opening day of the hearings. Tuesday 6 June 2023  
UN Photo/ICJ-CIJ/Wiebe Kiestra.



31 JANUARY 2024

JUDGMENT

**APPLICATION OF THE INTERNATIONAL CONVENTION FOR THE SUPPRESSION  
OF THE FINANCING OF TERRORISM AND OF THE INTERNATIONAL  
CONVENTION ON THE ELIMINATION OF ALL FORMS OF  
RACIAL DISCRIMINATION**

**(UKRAINE *v.* RUSSIAN FEDERATION)**

*Finds* that the Russian Federation, by the way in which it has implemented its educational system in Crimea after 2014 with regard to school education in the Ukrainian language, has violated its obligations under Articles 2, paragraph 1 (a), and 5 (e) (v) of the International Convention on the Elimination of Racial Discrimination;

IN FAVOUR: *President* Donoghue; *Judges* Tomka, Abraham, Bennouna, Xue, Sebutinde, Bhandari, Salam, Iwasawa, Nolte, Charlesworth, Brant; *Judge ad hoc* Pocar;

AGAINST: *Judge* Yusuf; *Judge ad hoc* Tuzmukhamedov;



# **European Court of Human Rights.**

## ***Academic Responsibility***

### **CASE OF MUSTAFA ERDOĞAN AND OTHERS v. TURKEY**

(Applications nos. 346/04 and 39779/04)

The article published in a quasi-academic quarterly was written by an academic who strongly criticised the constitutional court (decision to dissolve a political party).

Defamation actions brought by the three members of the Constitutional Court had interfered with the applicants' right to freedom of expression.

COURT: violation of Article 10 (the national authorities had not adduced sufficient reasons to show that the interference with the applicants' freedom of expression had been necessary in a democratic society to protect the reputation and rights of others).



# European Court of Human Rights. *Academic Responsibility*

JOINT CONCURRING OPINION OF JUDGES SAJÓ, VUČINIČ AND KÜRIS

*“There is no Chinese wall between science and a democratic society. On the contrary, there can be no democratic society without free science and free scholars. This interrelationship is particularly strong in the context of social sciences and law, where scholarly discourse informs public discourse on public matters including those directly related to government and politics.”*

*“We submit that in determining whether “speech” has an “academic element” it is necessary to establish: (a) whether the person making the speech can be considered an academic; (b) whether that person’s public comments or utterances fall within the sphere of his or her research; and (c) whether that person’s statements amount to conclusions or opinions based on his or her professional expertise and competence.”*

# Court of Justice of the European Union

The Court ruled that Hungarian Law on national higher education deprived the affected organisations of the organisational structure which was necessary for conducting academic research...



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 125/20**

Luxembourg, 6 October 2020

Judgment in Case C-66/18

Commission v Hungary

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**The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law**

In its judgment in *Commission v Hungary (Higher education)* (C-66/18), delivered on 6 October 2020, the Grand Chamber of the Court of Justice upheld the action for failure to fulfil obligations brought against Hungary by the European Commission. The Court held, first, that, by making the exercise, in Hungary, of teaching activities leading to a qualification by higher education institutions situated outside the European Economic Area (EEA) subject to the existence of an international treaty between Hungary and the third country in which the institution concerned has its seat, Hungary has failed to comply with the commitments in relation to national treatment given under the General Agreement on Trade in Services (GATS), concluded within the framework of the World Trade Organisation (WTO).<sup>1</sup> That requirement is also contrary to the provisions of the Charter of Fundamental Rights of the European Union ('the Charter') relating to academic freedom, the freedom to found higher education institutions and the freedom to conduct a business.<sup>2</sup>

Second, the Court held that, by making the exercise, in Hungary, of the activities of foreign higher education institutions, including institutions having their seat in another Member State of the EEA, subject to the condition that they offer higher education in the country in which they have their seat, Hungary has failed to comply with its national treatment commitments under the GATS and with its obligations in respect of the freedom of establishment,<sup>3</sup> the free movement of services<sup>4</sup> and the abovementioned provisions of the Charter.

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# A Case Study: Lithuania



## Article 40

*State and municipal establishments of teaching and education shall be secular. At the request of parents, they shall provide religious instruction.*

*Non-state establishments of teaching and education may be founded according to the procedure established by law. Schools of higher education shall be granted autonomy. The State shall supervise the activities of establishments of teaching and education.*



## Article 42

*Culture, science and research, and teaching shall be free.*

*The State shall support culture and science, and shall take care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects.*

*The law shall protect and defend the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work.*

# Jurisprudence of Lithuania's Constitutional Court

The ruling of 22 December 2011  
on the Law on Science and  
Studies

- Institutional development:  
reorganization
- State support
- Status of higher education  
institutions
- Quality assessment
- Self-governance
- Participation of academic  
community

Source: <https://lrkt.lt/en/court-acts/search/170/ta1116/summary>

Photo: [www.lrkt.lt](http://www.lrkt.lt)





# Jurisprudence of Lithuania's Constitutional Court



*“The development of the academic autonomy has always been predetermined by the understanding that science and teaching may normally exist and induce progress only when they are free and independent. Thus appeared the principle of academic freedom, which expressed the striving to protect the researchers’ and teachers’ freedom of scientific thought and its expression from outward influence”*  
(Ruling of 27 June 1994)

*“The principle of autonomy of institutions of higher education must be coordinated with the principle of responsibility and accountability before society, other constitutional values“* (Ruling of 5 February 2002)

Image Source: [www.lrkt.lt](http://www.lrkt.lt)



# Jurisprudence of Lithuania's Constitutional Court

*“The constitutional concept of the freedom of science and research is very ample, it comprises various aspects of science and research. The constitutional freedom of science and research means, inter alia, that every person has the right to freely decide by himself whether to engage in science and research, including the right to freely choose the sphere of scientific research and methods of investigating particular subjects, to form his scientific world-view.” (Decision of 28 October 2009)*

*“Autonomy of schools of higher education does not mean that the activity of such schools cannot be regulated by the state. Quite to the contrary, this activity, since it is related, inter alia, with the implementation of human rights and freedoms, as well as with the use of funds of the State Budget, must be subject to regulation and supervision” (Decision of 28 October 2009)*

# Concluding Remarks

- Scientific (academic) freedom, lacking precise definition, however, is being challenged in practice (changing societies, new technologies, hybrid threats, authoritarian regimes, governmental interference, *etc.*)
- Freedom of science and research is not an end in itself: it should contribute to the development of the society and progress in general
- In times of challenges and tensions basic principles of academic freedom shall serve as guidelines, facing propaganda and other hybrid threats science shall serve for truth
- Academic freedom shall be based on academic responsibility and protection of human rights
- A due balance of different factors is important (self-governance and State regulation, retaining autonomy and strengthening international cooperation, *etc.*)



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# Thank you!

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