**Mandate of the Special Rapporteur on the right to education**

**ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION**

**IN EDUCATIONAL INSTITUTIONS**

**Call for CONTRIBUTIONs**

For her upcoming report to the Human Rights Council to be presented in June 2024, the United Nations Special Rapporteur on the right to education, Ms. Farida Shaheed, will consider academic freedom and freedom of expression in educational institutions.

The report will build on previous work achieved by other United Nations human rights mechanisms on the topic, particularly the Special Rapporteur in the field of cultural rights, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Committee on Economic, Social and Cultural Rights. While recognizing that there is no single, exclusive international human rights framework for the subject, Ms. Shaheed will consider academic freedom through the right to education framework. More precisely, the report intends to consider academic freedom as part of the entitlement to receive and provide quality education, at all levels of education.

The Special Rapporteur intends to take stock of setbacks and progress both under international human rights law and in domestic legislation and practice with respect to defining academic freedom, ensuring its enjoyment by all relevant actors and protecting it from attacks and interferences.

The report will examine existing legal frameworks and normative content of academic freedom as a human right. It will consider subjects and duty bearers of this right. It will also analyze, from a human rights perspective, direct and indirect attacks on and interferences with respect to academic freedom of staff and students, including through commercialization, online surveillance, funding, conditions of work and studies and other pertinent issues.

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| --- | --- |
| **Name of the country/entity submitting information** | **Germany** |

**Questions**

**General framework**

*1. How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.*

Article 5 paragraph 3 of the German constitution explicitly guarantees academic freedom: "Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution." Prior experiences with authoritarian state developments, above all with National Socialism as well as during the German Empire and the Weimar Republic, were the reason for including the freedom of academic research [Wissenschaftsfreiheit] among the fundamental rights of the German constitution (Demirovic 2021).

This report describes a situation in Germany's academic field created by a web of formal and informal resolutions, measures, definitions and guidelines as they relate to critiques of the state of Israel that are all legally non-binding in nature and yet create concrete pressures amounting to censorship and attempts of expelling national and international academics from participating in Germany's academic activities. Despite being “non-legally binding,” their de facto influence on the policy and practice of academic institutions has contributed to violations of academic freedom, as we would like to document herewith. Similar to the findings of the Special Rapporteur on contemporary forms of racism, we observe that it is precisely the “soft law” status of these guidelines, resolutions and working definitions that effectively help to undermine academic freedom, without offering any remedy or means to legally challenge such violations. (sec 75, [A/77/512: Combating glorification of Nazism, neo - Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume | OHCHR](https://www.ohchr.org/en/documents/thematic-reports/a77512-combating-glorification-nazism-neo-nazism-and-other-practices))

For example, the German Bundestag resolution 2019 [*Countering the BDS Movement – Fighting Antisemitism*](https://dserver.bundestag.de/btd/19/101/1910191.pdf) was examined by German Parliament's own [Academic Research Service [Wissenschaftlicher Dienst] and assessed](https://www.bundestag.de/resource/blob/814894/cf6a69d010a1cc9b4a18e5f859a9bd42/WD-3-288-20-pdf-data.pdf) not only as being legally non-binding but also unconstitutional if put into a law. Yet, the resolution is still used in state discourse as reference for how to deal with antisemitism, Israel and Palestine. Moreover, the Federal Administrative Court of Germany has declared that BDS can be publicly discussed and public space (such as universities or schools) cannot be withdrawn for such discussions, as it is protected by Article 5 of the Constitution ([BVerwG 8 C 35.20, Urteil vom 20. Januar 2022 | Bundesverwaltungsgericht](https://www.bverwg.de/de/200122U8C35.20.0)). Similarly, the European Court of Human Rights 2020 stated that activist action in favour of boycotting products from Israel have to be protected under freedom of expression [BALDASSI ET AUTRES c. FRANCE (coe.int)](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-202756%22]}).

Still, the German rectors conference (HRK) has passed – and at no point in time revised – a resolution that any discussion of BDS, including the international and national legal, social, political and cultural aspects involving BDS, are not to be granted space in a German university. [Kein Platz für Antisemitismus - Hochschulrektorenkonferenz (hrk.de)](https://www.hrk.de/positionen/beschluss/detail/kein-platz-fuer-antisemitismus/)

The effects of these resolutions and measures and of how they are being instituted and enacted can be described in terms of a re-authoritarianization, anti-democratization of scientific authorities and university administrations and committees which prevent young researchers from pursuing an academic career, denying or withdrawing teaching options or shunning established colleagues, discrediting them, and contributing to the destruction of their civil existence.

This is achieved through attempts to enforce mandatory guidelines to counter antisemitism that in effect prevent and sanction any criticism of Israeli state and military politics, while also, at the same time, creating a climate of discrediting of de- and postcolonial critique tout court. Arguably, they also are not encouraging deep engagements with an understanding of antisemitism in its historical and current formations and thus have only very limited use in helping to combat antisemitism. Scholars who publicly criticize Israeli state policies or have, in the past, declared their solidarity with such criticism, are disinvited and silenced, and experience pressure and oppression by university administrations. Across the country, students and faculty expressing solidarity with Palestinian people or criticizing acts of the Israeli government have reported to have been threatened with firing and disciplinary procedures by their universities; events have been canceled and student organizations have been branded as antisemitic. See attached list 31), 18), 19)

These (often informal and vague) processes and their effects are currently being understood in their systematic dimension by scholars forming informal information exchange networks and volunteering to collect data on lists such as the [archive of silence](https://www.theleftberlin.com/archive-of-silence/). Because of the disciplining character of university institutions many of these instances are not reported officially. Yet, there are many stories of university administrations at many universities putting pressure on scholars, and students, too. There are, we are convinced, many more instances of pressure and oppression that have not been shared yet. We compiled the cases we were able to find, concentrating on those publicly reported. The attached list is a working document, as new cases could be added each day.

The German federal ministry of culture (Kultusministerkonferenz, KMK) has advised universities to employ the IHRA working definitions. Meanwhile, legal assessments are being published that warn of legal problems surrounding regulative attempts by political institutions and university administrations. Particularly the endorsement of the IHRA definition of antisemitism as a legally binding definition has been problematized (Ambos et al 2023; Neumann 2023; critical reply to Neumann 2023: Majetschak/Cemel 2023). According to the UN Special Rapporteur on contemporary forms of racism: "The International Holocaust Remembrance Alliance working definition is largely instrumentalized on the basis of the 11 “contemporary examples of antisemitism” attached to it, 7 of which relate to the State of Israel. Some of the examples are being invoked and leveraged to suppress human rights and fundamental freedoms [such as academic freedom] (sec 74, [A/77/512: Combating glorification of Nazism, neo - Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance - Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume | OHCHR](https://www.ohchr.org/en/documents/thematic-reports/a77512-combating-glorification-nazism-neo-nazism-and-other-practices)). The "chilling effects" of the IHRA working definition on German academic freedom and right to education can be witnessed in the attached list, including termination of teaching contracts with teaching assistants (FU Berlin, as documented, HU Berlin not documented).

To sum up: German academic and governmental administrations are trying to push through institutional measures that entail considerable risks for freedom of academic research and academic excellence, for international cooperation and Germany's academic reputation, and for universities' autonomy and interactions amongst colleagues. **Thus on these grounds, we claim that the freedom of expression in academic and educational institutions (for schools, article 7 German constitution, see below) is currently being eroded.**

*2. Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.*

As mentioned above, academic staff, teachers, and students are entitled to academic freedom according to German constitution (Grundgesetz). Note, however, that their teaching needs to adhere to the norms of the German constitution: "The freedom of teaching shall not release any person from allegiance to the constitution." (GG Art. 5 (3)) Art. 5, para. 3 GG applies to academics only, not to school teachers and school students per se, except if they engage in academic writing. This entails everything that can be regarded as a serious attempt to determine the truth in terms of content and form. In this case it is protected by academic freedom, i.e. also minority opinions, erroneous research approaches, unconventional, unfruitful, erratic hypotheses, theories and positions (see Federal Constitutional Court Decision, BVerfGE 90, 1 (13).)

*3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?*

Since Hamas' attack in South Israel and the IDF's military action in Gaza, and in light of how the discussions of this (possibly genocidal) violence are effecting discourses, politics and lives in Germany, specific measures are in the process of being recommended to German universities that are officially propagated as countering antisemitism. They usually are conceptually anchored in the IHRA definition of anti-semitism, and have therefore been criticized for example as supporting a conflation of any criticism of Israeli state politics with antisemitism, thus effectively disabling any discussion, let alone form of criticism of Israeli state politics.

For example, the [*Action Plan against Antisemitism and Hostility towards Israel*](https://www.kmk.org/fileadmin/pdf/PresseUndAktuelles/2023/2023_12_07-KMK-Aktionsplan-gegen-Antisemitismus-Israelfeindlichkeit.pdf) [Aktionsplan gegen Antisemitismus und Israelfeindlichkeit] of the [*Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany* (KMK)](https://www.kmk.org/aktuelles/artikelansicht/aktionsplan-gegen-antisemitismus-und-israelfeindlichkeit-verabschiedet.html#:~:text=Der%20gemeinsame%20Aktionsplan%20von%2016,Antisemitismusbeauftragte%20an%20den%20Hochschulen%20ein.) from Dec 8, 2023 states:

"Universities are not lawless spaces. Relevant misconduct must be consistently pursued, punished and prevented (effective case management). The campus must not be a place for events and groups with antisemitic or anti-Israel positions [antisemitische oder israelfeindliche Positionen]. We support the universities in pursuing antisemitic incidents, reporting them to the police and also punishing them within the scope of their own jurisdiction."

While the IHRA working definition might be useful as a monitoring tool for antisemitism, legal experts consider it problematic as a regulatory instrument: due to its openness, it cannot guarantee legal certainty and leads to unpredictability in administrative practices. One of its co-authors, Kenneth Stern, has repeatedly pointed this out and denounced the instrumentalization of the IHRA working definition, for example as "campus hate speech code." The definition, as well as the vague term "hostility towards Israel," could be used in practice to justify far-reaching restrictions especially at the expense of Jewish students and academics who moved to Germany from Israel and who do not agree with the policies of their current government. It is precisely these people who would have to reckon with repression on German campuses as part of the action plan.

There are numerous examples of how this is effecting freedom of academic research and teaching: see the attached list, also for cases before the 7th of October 2023.

**Autonomy of educational institutions**

*4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.*

The measures of the [Action Plan](https://www.kmk.org/aktuelles/artikelansicht/aktionsplan-gegen-antisemitismus-und-israelfeindlichkeit-verabschiedet.html) of the [*Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (KMK)*](https://www.kmk.org/aktuelles/artikelansicht/aktionsplan-gegen-antisemitismus-und-israelfeindlichkeit-verabschiedet.html#:~:text=Der%20gemeinsame%20Aktionsplan%20von%2016,Antisemitismusbeauftragte%20an%20den%20Hochschulen%20ein.), already introduced above, suggest review procedures, reporting structures, and cooperations with security authorities that are intended to intervene in research, teaching, administration, and staff selection. They are incompatible with the idea of universities as places of polyvocal exchange. The action plan promotes politics of regulation and securization that contradict the principle of university autonomy.

*5. Please provide examples of institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors.*

**Funding**

*6. How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?*

The public sector provides approx. 30 per cent of all spending on research and development in Germany. Thus Germany is one of the nations worldwide whose governments invest the most in R&D – both in absolute terms and as a percentage of GDP. The Federal Government and the Länder continue to finance funding organizations such as the German Academic Exchange Service (DAAD), the world’s largest funding organization for the international exchange of students and researchers, and the Deutsche Forschungsgemeinschaft (DFG), [whose main task is the selection and funding of the best research projects by scientists and scholars at higher education and public research institutions in Germany](https://www.research-in-germany.org/en/research-landscape/why-germany/research-funding-system.html).

Thus, particularly in an academic landscape characterized by third-party funding, requirements expressed in the KMK recommendations (mentioned above) to make the IHRA working definition of anti-semitism the basis of funding policies and organizational and administrative procedures has considerable impact on research projects and funding decisions. As a result, prestigious and successful programs for the promotion of international research cooperations (DAAD, Alexander von Humboldt Foundation, Philipp Schwartz Initiative, Minerva programs, DFG) currently experience considerable restrictions. The effects are already being felt in social science and cultural studies subjects such as research on antisemitism, Jewish studies, Holocaust studies, large parts of area studies, archaeology, and studies on migration and refugees. Natural science subjects as well will be affected as will be energy and climate research, parts of informatics and engineering studies or global health research, particularly where collaborations and facilities are maintained abroad.

7. Which rules and regulations protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education? Please explain how conflicts of interest that may arise are addressed.

**Surveillance**

*8. Please explain whether and the extent to which academic staff and students, at all levels of education, are subject to surveillance by public authorities, for example through on-site cameras or online scrutiny. Has this led to undue restrictions to academic freedom and freedom of expression in educational institutions?*

Researchers, teachers, professors, and students have reported that they are subject to online scrutiny. Intellectual professionals report that they face repercussions in form of cancellations or interrogations by officials and by police, regarding posts made on the social media platforms X and Instagram. Members of cultural institutions report that it has become standard procedure to monitor social media participation particularly in case of planned invitations addressing intellectuals and artists from the MENA region, but also from the Global South and North America, and especially if colleagues have a focus on decolonial theories and critiques. There are reports of lists being made in cultural institutions of Palestinian artists and academics. See attached list 20), 21), 22), 28)

Researchers report anonymously that university administrators call them in for meetings to clarify their political positions after signing public letters from researchers and academics that criticize the Israeli military operations in Gaza. In at least one case the researcher was "advised" to remove their signature if they did not want to face professional repercussions. In other (also still anonymous) cases, colleagues were asked to leave their institutional affiliations out when they sign petitions and/or open letters.

This level of surveillance of online activity is a threat to freedom of expression in educational institutions and academic freedom.

We are observing a recurring pattern: individual academics are personally singled out and aggressively branded by the media, simply because of their post- and decolonial approaches in research and teaching, and/or because they have publicly supported statements that are interpreted and scandalized as anti-semitic by the respective authors. However, what has been "uncovered" in each case is in no way a matter of legally dubious activities and articulations. Nonetheless, the colleagues exposed in this way receive no support from their institutions, although these are obliged by law to protect academic freedom. This has created a climate of fear and intimidation at universities.

**Freedom of expression in teaching and access to books**

*9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining “neutral” or forwarding a particular perspective, e.g. on religious and political matters?*

As indicated above all academic staff, teachers, students are entitled to academic freedom. But progressively, scholars and teachers are reporting of growing self-censorship amidst an atmosphere of fear and confusion.

With regards to the described example of the Action Plan against Antisemitism and Hostility towards Israel [Aktionsplan gegen Antisemitismus und Israelfeindlichkeit] of the Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (KMK) on Dec 8, 2023, some of the proposed KMK measures are incompatible with the constitutionally granted principle of freedom of research and teaching (Art. 5 Para. 3 GG).

While academic research and teaching must neither endorse or propagate, nor downplay antisemitic speech and action, the KMK's commitment to an unclear definition of antisemitism (IHRA working definition) and the narrowing down to an undefined term such as "hostility towards Israel" is accompanied by considerable uncertainties and restrictions. **This applies in particular and directly to teaching and research on antisemitism, on the history and present of Israel or the MENA region, but also to peace and conflict research, to geography, theories on racism, international relations or legal studies, to name but a few. Furthermore, it applies indirectly to any scholarly work using post- and decolonial theories as frameworks - independently from the subject area.**

Definitions of antisemitism are themselves the subject of academic research and debate. To prescribe a specific definition would amount to restricting academic work on a subject as complex and historically evolved as antisemitism. Scholars who want to comparatively discuss different and controversial theories and perspectives in teaching and research could find themselves suspected of antisemitism. This can have consequences for courses, literature lists, research topics, collaborative research projects and publication projects.

Forcing researchers to adhere to a politically determined definition also raises legal concerns. Prescribing state answers to research questions contradicts the core of the constitutionally protected freedom of research. According to the values of German Basic Law, science is an area of autonomous responsibility. Particularly in an academic landscape characterized by third-party funding, such a requirement can have a considerable impact on research projects and funding decisions.

With regards to teaching this also impacts the academic material teachers can select and teach without the risk of institutional and/or public scrutiny. Especially adjunct teachers who are employed on precarious term appointments (Lehraufträge) that are subject to renewable every semester are vulnerable to such scrutiny, as well as professors who are on tenure track.

*10. Please explain the extent to which teachers and professors at different education levels can chose school manuals and other books/resources for teaching, and the reasons for any restriction in this regard. Have any specific books/materials been banned, including from school libraries, and alternatively is some material mandatory? If so, why?*

At universities, we are increasingly seeing cases in which professors and lecturers are coming under massive pressure because they use the writings of globally respected and canonized scholars such as Edward Said or productions by internationally respected cultural figures such as the Israeli film director Avi Moghrabi in their teaching. In these cases, too, the impulse often comes from outside the institution and/or is anonymous - however, the colleagues attacked do not receive protection or support from the institution, but on the contrary have to justify themselves and are also exposed to mistrust and suspicion internally.

The situation in mainstream schools is equally worrying, as teachers tend to take on the Israeli-Palestinian conflict from only one side or silencing it, leaving the pupils alone with their perceptions of the conflict. Teachers are encouraged to do so i.e. by decisions of local school administrations to ban any symbols that indicate solidarity with Palestinians on school ground. The Senate of Education in Berlin even encourages calling the police on school students. [Aufruf an die Senatorin für Bildung, Jugend und Familie Berlin « Berlin Muslim Feminists (wordpress.com)](https://berlinmuslima.wordpress.com/2023/10/19/aufruf-an-die-senatorin-fur-bildung-jugend-und-familie-berlin/), [Du willst deine Rechte als Schüler\*innen kennen? Was kannst du machen, wenn du in rassistischen oder problematischen Situationen… | Instagram](https://www.instagram.com/kifaya.schule/p/Cyk9e_jIxUu/?img_index=1)

Thus, we express our worries that freedom of expressions of opinion, including political statements by teachers in state schools, constitutionally protected by Art. 5 I 1 Hs. 1 GG, Annex "Freedom of expression and personal rights" is currently not guaranteed.

Teachers in most schools receive little support in dealing with the tensions that this conflict creates in today's pluralistic classroom and of which they themselves are a part, for example when they externalize anti-semitism and attribute it to Muslim students, putting the latter under general suspicion. In teacher training materials offered by education authorities and trade unions since the recent outbreak of the conflict in October 2023, the one-sidedness of partisanship continues and offers almost exclusively advice on how to deal with anti-semitism. The situation in Palestine and how to deal with the anti-muslim racism that exists in schools and – as anti-semitism – is currently increasing remains largely unthematized. This works against the prohibition of discrimination in the school system regulated by Art. 2 II ICESCR and Art. 14 ECHR, whereby in particular discrimination on grounds of gender (see also Art. 10 CEDAW), race (see also Art. 5 e), origin, religion, political or other opinion, property or disability (cf. Art. 24 II lit. a and b UN CRPD) are prohibited. This opens the door to violence in schools. In October 2023, shortly after the outbreak of the war in Palestine, a teacher punched a fourteen year old pupil in the face at a school in Berlin for displaying a Palestinian flag in the schoolyard. We attach to this report the anonymized English translation of a letter written about the same time by a mother to the head teachers of her children's primary school. We share the concern expressed in this letter that the denial of space for solidarity and mourning and the stigmatization of a significant part of the student body contradicts the principles of equal treatment and thus poses a fundamental threat to democracy in the present and in the future.

Literature:

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Ambos, Kai, Barskanmaz, Cengiz, Bönnemann, Maxim, Fischer-Lescano, Andreas, Goldmann, Matthias, Mangold, Anna Katharina, Markard, Nora, Michaels, Ralf, Montag, Jerzy, Steinbeis, Maximilian, Tabbara, Tarik, Wihl, Tim; Zechlin, Lothar 2023: *Die Implementation der IHRA-Arbeitsdefinition Antisemitismus ins deutsche Recht – eine rechtliche Beurteilung, VerfBlog,* 2023/12/18, https://verfassungsblog.de/die-implementation-der-ihra-arbeitsdefinition-antisemitismus-ins-deutsche-recht-eine-rechtliche-beurteilung/, DOI: [10.59704/e07cea2f878741c5](https://dx.doi.org/10.59704/e07cea2f878741c5).

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Majetschak, Louise; Cemel, Liza: *IHRA-Definition als „Diskursverengung“?: Replik auf "Clara Neumann", VerfBlog,* 2023/12/15, https://verfassungsblog.de/ihra-definition-als-diskursverengung/, DOI: [10.59704/fd7cb126999cef06](https://dx.doi.org/10.59704/fd7cb126999cef06)..

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** hrc-sr-education@un.org, using the email title: “Contribution: Academic freedom”.

Please select and answer the questions most relevant for your agency. Kindly limit your responses to **3,000 words** and attach annexes where necessary. To facilitate their consideration, please send responses in a Word document, and in English, French, or Spanish. **Please clearly specify the entity making the contribution on the document itself and add paragraph numbers**.

All inputs received will be posted on the OHCHR website. Please indicate if you have any objections regarding to your reply being posted on the OHCHR website.