**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** | **Portugal**  **Federação Nacional da Educação - FNE** |

**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.**

In Portugal, academic freedom is legally framed within the Basic Law of the Educational System (Law No. 46/86, of October 14), establishing the right to freedom of learning and teaching. However, article 43 of the Portuguese Constitution refers to the right to freedom of learning and teaching, guaranteeing academic freedom, including freedom of teaching, research, and scientific, literary, and artistic expression and creation, without censorship or authorization. Regarding possible limitations or restrictions, it is essential to highlight that academic freedom in Portugal is not absolute and is subject to certain restrictions, such as respecting ethical principles and maintaining harmonious relationships with the governing bodies of the educational institution. Furthermore, academic freedom must also observe the limits the law imposes, for example, when protecting other fundamental rights or complying with educational rules and regulations. As for relevant judicial practice, issues related to academic freedom are typically considered in the context of educational legislation and applicable constitutional provisions. Portuguese courts have the role of ensuring that academic freedom is respected but also of assessing potential conflicts with other fundamental rights or legal regulations.

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

In the Portuguese context, academic freedom is granted to all individuals involved in the educational process, including academic staff, teachers, and students at various levels of education. The Basic Law of the Educational System and the Constitution ensure this freedom, allowing unrestricted teaching, research, and expression without interference from educational authorities. It is worth noting, however, that the extent of this freedom may vary depending on the level of education. Different regulations and educational practices may result in varying autonomy and academic freedom for teachers and students.

**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?**

In Portugal, there are several challenges related to academic freedom. These challenges involve ensuring the independence of educational institutions, maintaining freedom of expression while fulfilling academic responsibilities, and managing conflicts between institutional autonomy and government oversight. It is also essential to strike a balance between academic freedom and the regulatory obligations of educational institutions, particularly in areas such as research and curriculum development. Regarding gaps in the legal framework, there may be uncertainties in specific regulations, particularly regarding the boundaries of academic freedom and institutional governance. Additionally, there might be a lack of detailed provisions that clearly define the limits and scope of academic freedom, especially when integrating it with the institutional framework and addressing potential conflicts with other legal requirements.

**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.**

In Portugal, educational institutions at different tiers of education enjoy varying degrees of autonomy and self-governance. This autonomy encompasses the capacity of educational institutions to make decisions regarding academic matters, staff management, and administrative affairs within the confines of legal and regulatory frameworks. Autonomy and self-governance entail the ability of educational institutions to manage their internal affairs, set academic curricula, establish teaching methodologies, and make administrative decisions independently. This allows for a degree of independence and self-regulation within the educational system. Regarding restrictions on police or military personnel entering educational institutions, general rules are in place to regulate and limit their access. These rules typically aim to preserve educational environments' peaceful and non-militarized nature. Restrictions usually prohibit the entry of police or military personnel into educational institutions without prior authorization, and such access is generally limited to exceptional circumstances, such as emergencies or specific official duties.

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

In Portugal, educational institutions often develop specific guidelines and codes of conduct to ensure and uphold academic freedom, safeguarding it from potential infringements by external public or private entities. These guidelines typically encompass provisions that protect the freedom of teaching and research, ensure non-interference in academic activities, and establish mechanisms to address potential violations of academic freedom. These institutional guidelines could include provisions that outline the rights and responsibilities of faculty members, students, and administrative staff concerning academic freedom. They may also delineate protocols for addressing external influences on research topics, teaching methodologies, and intellectual discourse within the academic setting. Moreover, such guidelines often establish procedures for addressing conflicts of interest, protecting intellectual property, and managing external partnerships to ensure that academic freedom is respected and maintained. These codes of conduct serve as a means to promote a conducive academic environment while safeguarding against undue influence from external 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?**

In Portugal, funding for research and educational activities is typically regulated through a transparent and accountable process. Various entities, such as governmental organizations, research councils, and educational institutions, oversee allocating and distributing funds for research and academic pursuits. These entities often operate within established legal and regulatory frameworks that outline the criteria and procedures for fund distribution. Transparent criteria, including competitive evaluation processes, peer review, and assessment of the scholarly merit and potential societal impact of proposed research projects, generally guide the funding allocation process. This transparency helps ensure that the allocation of funds is based on merit and contributes to advancing knowledge and educational quality.

Furthermore, to safeguard academic freedom, guarantees are often put in place to ensure that funding processes remain independent from undue external influence. This independence is reinforced by ensuring that the assessment and allocation of funds are based on academic excellence, scientific rigor, and societal benefit rather than on non-academic considerations. Such measures help uphold the principles of academic freedom and promote the pursuit of knowledge and research integrity within the educational and research community.

**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.**

In Portugal, rules and regulations are in place across different tiers of education to protect academic freedom from interference by commercial actors and financial sponsors. These regulations often encompass legal provisions, ethical guidelines, and institutional policies to safeguard academic freedom and integrity. To address conflicts of interest that may arise, educational institutions often establish clear protocols and mechanisms designed to manage and mitigate such conflicts. These measures typically include disclosure requirements for potential conflicts of interest, establishing independent review committees, and implementing transparent decision-making processes. Additionally, there are often guidelines in place that govern the solicitation and acceptance of external funding and partnerships to ensure that they align with the academic mission and values of the institution. By implementing these measures, educational institutions seek to maintain the independence and integrity of academic activities, research, and teaching and to address potential conflicts of interest to uphold academic freedom and the public trust in education and research**.**

**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?**

Academic staff and students' privacy and freedom in Portugal are highly valued and protected. Public authorities do not engage in widespread surveillance through on-site cameras or online monitoring. The legal framework and institutional practices prioritize safeguarding privacy and academic freedom within educational institutions. Although specific security measures may be in place to ensure the safety and well-being of individuals, they are implemented with utmost consideration for individual rights and academic freedom.

**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?**

In Portugal, teachers and professors at all levels of education generally enjoy freedom of expression in their teaching. They are granted the autonomy to express their viewpoints and present educational material within the bounds of educational objectives and professional ethics. However, this freedom of expression is not without boundaries. While educators are encouraged to foster critical thinking and provide diverse perspectives, they are expected to do so in a manner that upholds the principles of pluralism, respect for others, and the pursuit of knowledge. There may be limitations imposed on the expression of personal religious or political views, particularly if such expressions could compromise the educational environment or infringe upon the rights and beliefs of students. When controversial topics are addressed, educators are typically encouraged to present balanced perspectives and promote dialogue that respects the diversity of views within the educational setting. Educators must often remain neutral when discussing sensitive matters and approach such topics with sensitivity and objectivity, aiming to foster respectful dialogue and learning. By doing so, educators can create a supportive environment where students are encouraged to think critically, engage with varying viewpoints, and develop informed perspectives.

**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?**

In Portugal, teachers and professors at various education levels have a degree of autonomy in selecting school manuals, books, and other resources for teaching. Educational guidelines and curriculum frameworks guide this autonomy, allowing educators to choose materials suitable for their teaching objectives, pedagogical approaches, and the needs of their students. Considerations of educational relevance, age-appropriateness, accuracy, and alignment with curricular standards typically influence the selection of resources. While there is a degree of freedom in selecting teaching materials, certain restrictions may exist to ensure that the educational resources uphold the principles of pluralism, non-discrimination, and respect for fundamental rights. Educators are generally expected to select materials that promote critical thinking, inclusivity, and the values enshrined in educational frameworks. There may also be oversight to ensure that the chosen materials align with the educational goals of fostering civic responsibility and respect for diverse perspectives.

Regarding banned materials, while there have been instances of controversial books or materials being challenged or restricted, these cases are relatively rare. Such actions are typically taken based on concerns about the appropriateness of content for a particular age group, adherence to educational guidelines, or compliance with principles of non-discrimination and respect for fundamental rights. At the same time, certain materials may be deemed mandatory, such as official textbooks that align with curriculum standards. The compulsory nature of these materials is designed to provide a common educational foundation, ensure consistency in learning objectives, and facilitate assessment processes. By utilizing specific materials, educational institutions can ensure that students are exposed to content that supports their learning outcomes and contributes to their educational development.

**How to submit information**

Submissions should be sent electronically no later than **2 February 2024 to** [hrc-sr-education@un.org](mailto: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.

**FNE – Federação Nacional da Educação (**[**secretariado@fne.pt**](mailto:secretariado@fne.pt)**)**

**José Luís Abrantes - Deputy Secretary General**

**Portugal**

**P.S:** No objections regarding this reply being posted on the OHCHR website.

Portugal, 2 nd February 2024