Opinion on the Report regarding Academic Freedom and Freedom of Expression in Educational Institutions

#  General overview on academic freedom in Poland

Academic freedom and freedom of expression are essential principles for safeguarding the pursuit of knowledge and fostering a democratic society. Academic freedom in Poland is protected by both constitutional and statutory provisions. The Constitution of the Republic of Poland[[1]](#footnote-1), adopted in 1997, guarantees the right to freedom of scientific research and teaching[[2]](#footnote-2). This right is further elaborated upon in the Act of 20 July, 2018 – Law on higher education and science[[3]](#footnote-3), which states that universities and other higher education institutions have the right to autonomy in scientific research.

##  1.1 Law on higher education and science

The Law on higher education and science[[4]](#footnote-4) (hereinafter: HES or Act) is the main law governing higher education in Poland. It was enacted on July 20, 2018, and replaced the previous act of 2005.

The HES defines higher education institutions (hereinafter: HEIs)[[5]](#footnote-5) as establishments providing degree-level education. HEIs can be public or private, and they can be universities or other types of higher education institutions. The HES sets out the requirements for establishing and running an HEIs. It also sets out the rights and responsibilities of HEIs, their staff, and their students. The Act establishes the National Center for Higher Education Quality Assessment[[6]](#footnote-6) (hereinafter: NCHEA), which is responsible for assessing the quality of HEIs in Poland. The NCHEA also publishes league tables of Polish HEIs. The Act has been amended several times since it was enacted. The most recent amendment was in 2021[[7]](#footnote-7). Here are some of the key provisions of the HES:

* Autonomy of HEIs: HEIs have a high degree of autonomy, which means that they are free to manage their own affairs without undue interference from the government. This includes the right to set their own curricula, hire and fire their own staff, and determine their own admissions policies.
* Quality assurance: The Act establishes the NCHEA, which is responsible for assessing the quality of HEIs in Poland. The NCHEA also publishes league tables of Polish HEIs.
* Funding: HEIs in Poland are funded by a combination of government funding and tuition fees. The government provides basic funding to all HEIs, but additional funding is available for HEIs that meet certain performance criteria. Tuition fees are also charged to students, but the level of tuition fees varies depending on the type of HEI and the program of study.
* Student rights: Students have a number of rights under the Act, including the right to participate in the governance of their HEIs, the right to freedom of expression, and the right to fair treatment from their HEIs.

## 1.2 The National Agency for Academic Exchange

The National Agency for Academic Exchange (hereinafter: NAWA) is a public body responsible for supporting international academic exchange and cooperation between Polish and foreign higher education institutions, research institutions and other organizations involved in science, education and culture. NAWA has been established by an Act of 7 July, 2017 – on National Agency for Academic Exchange[[8]](#footnote-8), and here are some of the key provisions governing this entity:

* Establishment of the NAWA: The law establishes the NAWA as a public body with legal personality and financial independence.
* Tasks of the NAWA: The NAWA is responsible for supporting international academic exchange and cooperation between Polish and foreign higher education institutions, research institutions and other organizations involved in science, education and culture.
* Powers of the NAWA: The NAWA has a wide range of powers, including the power to:
	+ grant funding for international academic exchange activities
	+ organize international conferences and workshops
	+ provide information and advice on international academic exchange
	+ promote Polish science and culture abroad
* Application for funding: The law sets out the procedures for applying for funding from the NAWA. Applicants must submit a detailed proposal that outlines the objectives of the project, the budget, and the timeline. The NAWA will then assess the proposal and decide whether to grant funding.
* Funding: The NAWA can provide funding for a variety of projects, including:
	+ scholarships for Polish students to study abroad
	+ grants for Polish researchers to conduct research abroad
	+ funding for Polish institutions to collaborate with foreign institutions
* Monitoring and evaluation: The law requires the NAWA to monitor and evaluate its activities. The NAWA must also publish an annual report on its activities.

# Limitations and restrictions on academic freedom

Despite the constitutional guarantees, freedom of science is not absolute and it is a subject to limitations under the conditions indicated in Article 31 (3)[[9]](#footnote-9) of the Constitution.

# Equality in academic freedom

Academic staff, teachers, and students are all entitled to academic freedom in Poland. Academic freedom is the right to pursue knowledge and express ideas without fear of censorship or reprisal. The freedoms set forth in Article 73 of the Constitution of Poland, including the academic freedom, are universal in nature, and their exercise is not subject to any conditions. Their addressees are not exclusively citizens. Only the freedom to teach can depend on the of prerequisites – in terms of education, which applies primarily to teaching in all types of school in the educational system. Nevertheless, there are no legal obstacles to, for instance, a foreigner teaching his language in Poland.

The HES and the Act on the National Agency for Academic Quality Assessment[[10]](#footnote-10) also guarantee academic freedom. These laws state that universities must respect the freedom of scientific research and the freedom of teaching. They also state that universities and the National Agency cannot interfere in the scientific research or teaching conducted by their members, unless such interference is justified by the need to ensure the proper functioning of universities and to protect the rights and interests of their members. The level of education does not affect the right to academic freedom. Academic freedom is guaranteed to all students, regardless of their level of education. However, the specific expression of academic freedom may vary depending on the level of education. For example, elementary school students may not be able to engage in the same level of debate as college students.

In this regard, it is worth to mention the recent amendment of the HES, which strengthened the protection of the freedom to present views and results of scientific research. In the added Article 275 (1a) of the Law on Higher Education and Sciene, it was explicitly indicated that it does not constitute a disciplinary offense to express religious, philosophical or worldview beliefs[[11]](#footnote-11).

## Autonomy and self-governance

Educational institutions in Poland have the following powers:

* Set their own curricula
* Hire and fire their own faculty and staff
* Admit and expel students
* Establish their own internal rules and regulations
* Manage their own finances.

This autonomy allows educational institutions to tailor their programs to the needs of their students and to operate in a way that is consistent with their own values and goals.

Educational institutions in Poland are self-governing in the sense that they are governed by their own governing bodies. These governing bodies are typically composed of representatives of the faculty, staff, students, and the local community. The governing bodies are responsible for making decisions on a wide range of issues, including academic affairs, financial matters, and campus life.

**Restrictions on Police or Military Personnel Entering Educational Institutions**

There are restrictions on police or military personnel entering educational institutions. These restrictions are designed to protect the autonomy and self-governance of educational institutions and to ensure that the rights of students, faculty, and staff are respected. The following are some of the restrictions on police or military personnel entering educational institutions:

* Police or military personnel may only enter an educational institution with the permission of the institution's governing body.
* Police or military personnel may only enter an educational institution if they have a valid reason, such as to investigate a crime or to protect public safety.
* Police or military personnel must identify themselves to the institution's staff and must explain the reason for their presence.
* Police or military personnel must comply with the institution's rules and regulations.

These restrictions are designed to ensure that the presence of police or military personnel on campus does not disrupt the educational process or infringe on the rights of students, faculty, and staff.

# Institutional guidelines/codes of conduct developed to ensure respect for academic freedom, including from external public or private actors:

**The Statute of the University of Warsaw**

The Statue of the University of Warsaw[[12]](#footnote-12) outlines the university's commitment to upholding academic freedom and protecting its staff and students from external interference. The code states that all members of the university community have the right to engage in free and open inquiry, to express their opinions without fear of reprisal, and to pursue their research interests without interference.

**The Statue of the Jagiellonian University**

The Statue of the Jagiellonian University[[13]](#footnote-13) provides detailed guidance on the principles and practices of academic freedom at the university. The statue outlines the rights and responsibilities of all members of the university community, including faculty, staff, and students. The guidelines also address specific issues such as plagiarism, copyright infringement, and the use of confidential information.

In addition to institutional guidelines and codes of conduct, there are also a number of international agreements and conventions that protect academic freedom. One of them is The UNESCO Declaration on the Fundamental Principles of Teaching and Education[[14]](#footnote-14) which also affirms the importance of academic freedom, stating that teachers and students have the right to freedom of thought, conscience and religion, and the right, without discrimination of any kind, to freedom of expression; as well as the right to explore all avenues of knowledge and to express freely their opinions and beliefs within the academic community.

# Funding

In Poland, funding for research, including from external public and private actors, is regulated by a variety of laws and regulations. The main law that governs research funding is the HES. This law establishes the National Centre for Research and Development[[15]](#footnote-15) (hereinafter: NCBR) as the main agency responsible for awarding research funding in Poland. The NCBR is a government agency that provides funding for research projects in a variety of fields, including science, technology, humanities, and social sciences.

The NCBR's funding process is designed to be transparent and open to all researchers. The agency publishes calls for proposals on its website, and all researchers are eligible to apply. The proposals are evaluated by panels of experts, and the NCBR makes funding decisions based on the merit of the proposals. The NCBR also has a number of policies in place to protect academic freedom, such as:

* A requirement that all research projects be conducted in a manner that respects academic freedom and human rights.
* A mechanism for researchers to appeal funding decisions that they believe are unfair or unjustified.
* A commitment to promoting open access to research results.

In addition to the NCBR, there are a number of other public and private organizations that provide funding for research in Poland. These organizations include universities, research institutes, and foundations. The funding processes of these organizations vary, but they generally follow similar principles of transparency and respect for academic freedom. Overall, the funding process for research in Poland is relatively transparent and open to all researchers. There are also a number of safeguards in place to protect academic freedom. As a result, researchers in Poland have a high degree of autonomy in their research activities. Here are some specific examples of how funding for research in Poland is regulated:

* The HES requires all universities to have a research strategy that outlines their research priorities.
* The NCBR's funding guidelines require all proposals to include a section on how the research will respect academic freedom.
* The NCBR has an ethics committee that reviews all proposals to ensure that they do not involve human subjects research or animal testing.

In Poland, there are a number of rules and regulations that protect academic freedom from interferences by commercial actors and financial sponsors, at different tiers of education. The HES states that universities have the autonomy to determine their own educational programs and research agendas, and that academics have the freedom to teach, research, and publish without fear of reprisal. At the institutional level, many universities in Poland have adopted their own policies and procedures for protecting academic freedom. These policies typically include provisions for:

* Disclosure of conflicts of interest: Academics are required to disclose any potential conflicts of interest to their institutions.
* Review of external funding: All external funding proposals must be reviewed by the institution to ensure that they do not interfere with academic freedom.
* Protection against retaliation: Academics who speak out against commercial interests or financial sponsors are protected against retaliation from their institutions.

In addition to these formal protections, there are also a number of informal mechanisms that help to protect academic freedom. These mechanisms include for example the university culture.

# Surveillance

In Poland, academic staff and students at all levels of education are subject to surveillance by public authorities to some extent. This surveillance can be conducted through a variety of methods, including on-site cameras, online scrutiny, and data collection.

* On-site cameras are a common form of surveillance in Polish educational institutions. These cameras are often installed in hallways, classrooms, and other public areas. The use of on-site cameras is generally justified by the need to protect students and staff from crime and to deter vandalism.
* Online scrutiny is another form of surveillance that is used to monitor the online activities of academic staff and students. This scrutiny can include monitoring social media activity, email correspondence, and web browsing history. The use of online scrutiny is often justified by the need to protect the institution's reputation and to prevent the spread of illegal or harmful content.
* Data collection is another way in which academic staff and students are subject to surveillance by public authorities. This data collection can include collecting information about students' academic performance, attendance, and disciplinary records.

# Freedom of expression in teaching and access to books

Teachers and professors in Poland do enjoy a great degree of freedom of expression in their own teaching, but there are some limitations imposed. These limitations are typically designed to ensure that teaching is objective, unbiased, and respectful of all students. **At the university level,** the HES states that academics have the freedom to teach, research, and publish without fear of reprisal. However, the act also states that universities have the right to establish their own pedagogical principles. This means that universities can set guidelines for what teachers can and cannot teach, and they can also provide guidance on how to teach in a way that is objective and unbiased. **In practice,** most universities in Poland have policies that require teachers to remain neutral on controversial topics, such as religion and politics. However, teachers are still allowed to discuss controversial topics in a way that is objective and respectful of all viewpoints.

The extent to which teachers and professors at different education levels can choose school manuals and other books/resources for teaching varies depending on the level of education.

At the university level, teachers have a great deal of flexibility in choosing the materials they use for teaching. Universities typically have a core curriculum that outlines the major topics that must be covered in each course, but teachers are free to choose the specific books and materials that they use to teach these topics. This flexibility allows teachers to tailor their teaching to the needs of their students and to use materials that they are familiar with and believe are effective.

At the primary and secondary school level, there is more control over the materials that are used for teaching. The Ministry of Education sets the national curriculum, which outlines the topics that must be covered in each subject at each grade level. Schools are required to follow the national curriculum, and they must use materials that are approved by the Ministry of Education. This control is designed to ensure that all students in Poland receive a high-quality education that meets national standards.

However, there is still some flexibility for teachers at the primary and secondary school level to choose the specific materials that they use to teach the national curriculum. They can choose from a variety of textbooks, online resources, and other teaching materials. They can also adapt materials to meet the needs of their students.

1. Constitution of the Republic of Poland of April 2, 1997. [↑](#footnote-ref-1)
2. Article 73 states: “The freedom of artistic creation and scientific research as well as dissemination of the fruits thereof, the freedom to teach and to enjoy the products of culture, shall be ensured to everyone”. [↑](#footnote-ref-2)
3. #  Act of 20 July, 2018 – Law on higher education and science.

 [↑](#footnote-ref-3)
4. Ibidem. [↑](#footnote-ref-4)
5. Article 7, Act of 20 July, 2018 – Law on higher education and science. [↑](#footnote-ref-5)
6. Ibidem. [↑](#footnote-ref-6)
7. Act of 17 November, 2021 amending the Act - Law on higher education and science and some other acts. [↑](#footnote-ref-7)
8. Act of 7 July, 2017 – on National Agency of Academic Exchange. [↑](#footnote-ref-8)
9. Article 31 (3) states: “Any limitation upon the exercise of constitutional freedoms and rights may be imposed only by statute, and only when, necessary in a democratic state for the protection of its security or public order, or to protect the natural environment, health or public morals, or the freedoms and rights of other persons. Such limitations shall not violate the essence of freedoms and rights”. [↑](#footnote-ref-9)
10. Regulations of the Polish National Agency for Academic Exchange Programme. [↑](#footnote-ref-10)
11. Law of 1 October, 2021 on amending the Act – Law on higher education and science and the Law on special support instruments in connection with the spread of the SARS-CoV-2 virus. [↑](#footnote-ref-11)
12. Resolution no 443 of 26 June, 2019 of the Senate of the University of Warsaw. [↑](#footnote-ref-12)
13. Resolution no 42/VI/2007 of 27 June, 2007 of the Senate of the Jagiellonian University. [↑](#footnote-ref-13)
14. The UNESCO Declaration on the Fundamental Principles of Teaching and Education, 28 November 1978. [↑](#footnote-ref-14)
15. Act of 27 August 2009 – on Public Finance. [↑](#footnote-ref-15)