**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** | **Commissioner for Human Rights of Poland** |

**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.

**Answer:**

*Academic freedom, although not directly mentioned by the Polish legislator, is protected under Article 73 of* [*the Constitution of the Republic of Poland*](https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm) *which 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”. An important guarantee of academic freedom is the autonomy of the institutions of higher education, which is also ensured in the Polish Constitution (see Article 70 sec. 5 of the Constitution - “The autonomy of the institutions of higher education shall be ensured in accordance with principles specified by statute”). In the light of jurisprudence of the Constitutional Tribunal of Poland, the Constitution protects the autonomy of both public and private universities (see: judgment of the Constitutional Tribunal from 28/04/2009, K 27/07).*

*Moreover, according to Polish law, the basis of the system of higher education and science is the freedom of teaching, artistic creation, research and publication of its results as well as the autonomy of higher education institutions (art. 3.1. of the act of 20 July 2018 –* *The Law on Higher Education and Science).*

*In 2021, legal changes (the so-called “academic freedom package”) were introduced. The legislator’s declared aim for introducing these changes was to strengthen freedom of speech at Polish universities. As a result, a provision was added to the Act of 20 July 2018 – The Law on Higher Education and Science stating that "Expressing religious, ideological or philosophical beliefs does not constitute a disciplinary offense", and other provisions regarding the disciplinary responsibility of academic teachers were revised.* *The Ombudsman at the time have criticized these legal changes.*

*Similary to numerous other freedoms guaranteed under the Polish Constitution, academic freedom can be limited as long as the requirements established in art. 31 s. 3 of the Constitution are met. This provision states that “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”. For example, in Polish statutory law, the freedom to conduct scientific research is limited by the provisions governing experiments. This issue is regulated by the Act of December 5, 1996 on the Professions of Doctor and Dentist.*

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

**Answer:**

*The Polish Constitution guarantees freedom of scientific research to all, regardless of their level of education as long as their activity can be described as scientific.*

*The literature indicates that freedom to conduct scientific research is available to all whose activities meet certain criteria. Although there is no legal definition of scientific research, it can be understood as “a process that begins with identifying a research problem and hypotheses, analyzing available literature, observing practices, selecting research methods, and carrying out the research process, including measurements, data collection, analysis, and generalization. (…) Not all knowledge or research conducted by a researcher is scientific in nature, and characteristics of scientific research include generality, originality, objectivity, validity, accuracy, communicability, orderliness, and usefulness” (M. Królikowski, K. Szczucki [in:] M. Safjan, L.. Bosek (ed.), Constitution of the Republic of Poland. Volume I. Commentary on ART. 1–86, Warsaw 2016).*

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?

**Answer:**

*Although academic freedom and university autonomy are generally well respected in Poland, there are occasional incidents of unwanted interference. For example, in 2019, the* [*Ministry of Justice announced that he would sue scientists*](https://oko.press/ministerstwo-sprawiedliwosci-zapowiada-pozew-dla-krakowskich-karnistow-za-krytyke-zmian-w-kodeksie) *from the Jagiellonian University who criticized changes to the Penal Code. However, the lawsuit was ultimately not filed. Another noteworthy example is the case of* [*two professors who have been waiting for several years to be awarded the title of professor*](https://bip.brpo.gov.pl/pl/content/dlaczego-michal-bilewicz-czeka-na-tytul-profesora-odpowiedz-kprp) *by the president, which may raise doubts about the transparency of the procedure.*

*On a more structural note, the Commissioner believes that there is an urgent need to* [*implement anti-violence procedures at universities*](https://bip.brpo.gov.pl/pl/content/jak-wyglada-systemowe-przeciwdzialanie-mobbingowi-i-molestowaniu-na-uczelniach-rzecznik)*. Incidents of interpersonal conflicts, unequal treatment, and mobbing that the Commissioner has been informed of amount to infringements of academic freedom.*

*As mentioned before, the Commissioner’s concerns in terms of protecting academic freedom arise from regulations added in 2021 to the Law on Higher Education and Science (the so-called academic freedom package).*

**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.

**Answer:**

* *Higher education:*

*Polish law guarantees universities institutional, didactic, scientific, and financial autonomy. Institutional autonomy includes adopting the statute, appointing and dismissing university bodies, and defining human resources policy. Didactic and scientific autonomy means that the university has the freedom to conduct scientific research and define its mission independently, as well as set up degree courses. Financial autonomy ensures universities have the necessary resources and the ability to manage them independently.*

*The right to hire and dismiss employees is directly related to the freedom to conduct scientific research and its reliability. This allows universities to employ people with the appropriate knowledge and skills and verify the quality of their work.*

*The autonomy of higher education institutions is guaranteed by law, but, as mentioned before, it is not absolute. However, the legislator cannot introduce regulations that violate the essence of the autonomy of higher education institutions. This would include organizational solutions that prevent the effective implementation of public tasks and functions, particularly the development of scientific or artistic work.*

*Regarding the question of restrictions on police or military personnel entering educational institutions, it is worth mentioning that pursuant to Art. 50 of the Law on Higher Education and Science, the rector shall maintain order and safety on the premises of the higher education institution. Moreover, public services responsible for maintaining public order and internal security may enter the premises of the higher education institution: (1) at the rector’s request; (2) without the rector’s request - in case of a direct threat to human life or health or in the event of a natural disaster. In the case referred to in point 2, the services shall immediately notify the rector of the entry into the premises of the higher education institution.*

* *Schools and other educational institutions:*

*Schools and other educational institutions have a certain scope of self-governance. It manifests itself by the school’s right to adopt its own statute and the activity of school organs, such as the pedagogical council, the parents’ council and the student self-government.*

*The constitutive powers of the pedagogical council include approving the work plans of the school after receiving the opinion of the school council, adopting resolutions on the results of classification and promotion of students, adopting resolutions on pedagogical experiments in the school, after the school council and the parents' council have given their opinions on their projects, determining the organization of professional development of teachers, adopting resolutions in cases of removal from the list of students, determining the manner of using the results of pedagogical supervision in order to improve the work of the school.*

*The pedagogical council prepares a draft of the school’s statute or its amendments and presents it to the school council for adoption. It may request the dismissal of a teacher from the position of director or from any other managerial position in a school or institution.*

*The powers of the parents' council include adopting, in agreement with the pedagogical council, the educational and preventive program of the school, giving an opinion on the program and schedule for improving the efficiency of education or upbringing of the school, giving an opinion on the draft financial plan submitted by the school principal.*

*The student self-government may present motions and opinions to the school council, the pedagogical council and the director on all matters of the school, in particular on the implementation of the fundamental rights of students.*

*The parents' council may apply to the principal and other bodies of the school, the authority in charge of the school and the authority in charge of educational supervision with motions and opinions in all matters of the school.*

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

**Answer:**

* [*Code of Ethics for Researchers adopted by the Polish Academy of Sciences*](https://instytucja.pan.pl/images/2020/kodeks/Kodeks_Etyki_Pracownika_Naukowego_Wydanie_III_na_stron%C4%99.pdf)
* [*Code “Good Practices In Higher Schools” adopted by the Conference of Rectors of Polish Academic Schools*](https://www.uj.edu.pl/documents/10172/84597185/kodeks-dobre-praktyki.pdf/424e7a5f-2c2a-4128-9916-56855dcf71b4)
* [*The National Science Center's Code of Research Integrity*](https://www.ncn.gov.pl/userfiles/file/konkursy_ogloszone_2016-06-15/sonatabis6-zal8.pdf)
* *Examples of Codes of Ethics adopted by different universities:* [*example 1 (University of Gdańsk)*](https://bip.ug.edu.pl/sites/default/files/nodes/akty_normatywne/97954/files/kodekt_etyki_nauczyciela_akademickiego_ug_tj.pdf)*,* [*example 2 (Jagiellonian University)*](https://www.uj.edu.pl/documents/10172/84597185/akademicki-kodeks-wartosci.pdf/3bff64b6-8507-410c-82c5-264a10f3841a)*,* [*example 3 (University of Białystok)*](https://bip.uwb.edu.pl/uwb/kodeks-etyki-pracownika/7937,Kodeksu-etyki-pracownika-naukowego.html)

**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?

**Answer:**

*The main source of funding for universities is the state budget, which allocates funds for higher education and science, including scholarships, minister's awards, and university investments. The Law on Higher Education and Science guarantees that the financial resources for higher education and science cannot be lower than the previous year and are indexed annually.*

*In addition to the state budget, universities may receive funds from other sources, such as structural funds, scientific activities, and local government budgets.*

*Private universities receive subsidies for student financial support and creating conditions for persons with disabilities to participate in education and research.*

*Detailed rules for financing higher education and science are specified in section XII of the Law on Higher Education and Science.*

*Special entities, such as the National Science Center and the National Center for Research and Development, which are publicly funded, organize competitions of applications for research funding. Relevant acts specify, among other things, the rules for financing research projects and the procedure for appealing against negative decisions.*

*The allocation of public funds for science and higher education is overseen by the Supreme Audit Office.* [*In 2023, the Office published a report revealing numerous irregularities*](https://www.nik.gov.pl/aktualnosci/konkursy-ncbr.html) *in the process of preparing and organizing a funding competition conducted by the National Center for Research and Development, as well as in the project selection stage. The report found that the Center did not adhere to the competition rules and its own internal regulations, resulting in the approval of a project that should have been rejected due to exceeding the established limit of EUR 20 million. The identified irregularities also suggest the presence of corruption-generating mechanisms within the Center[[1]](#footnote-1).*

*The Ombudsman occasionally receives complaints about the organization of research funding competitions, but these complaints do not indicate a systemic problem.*

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.

**Answer:**

*The Ombudsman has not received any complaints indicating that commercial entities and sponsors pose a threat to academic freedom. The problem of potential unwanted interference in research is at least to some extent addressed in codes of ethics or other regulations adopted by research entities.*

*In addition, in Poland, there are specific regulations on conducting medical experiments or clinical trials, which include additional provisions aimed at preventing conflicts of interest (see the the Act of March 9, 2023 on clinical trials on medicinal products for human use and the the Act on the Professions of Doctor and Dentist).*

**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?

**Answer:**

*Video monitoring at Polish universities and schools should be conducted in compliance with GDPR regulations.*

*The Ombudsman, acting within his competences, monitors the principles of processing personal data of students and teachers. For instance,* [*the Ombudsman requested information from the Minister of Education and Science*](https://bip.brpo.gov.pl/pl/content/rpo-szkoly-monitoring-mein-odpowiedz) *regarding the results of video monitoring inspections in Polish schools. The Minister responded by stating that video monitoring ensures the safety of students and employees and is carried out in accordance with the law. In the Minister’s opinion, the irregularities found during school inspections regarding the functioning of monitoring were incidental.*

*Additionally, the Ombudsman intervenes in individual cases where applicants report potential violations of their rights. For example, the Ombudsman addressed a case concerning the installation of video surveillance in school toilets at a high school. The Ombudsman requested explanations from the High School Principal, emphasizing the importance of respecting the right to privacy and personal data protection by school authorities.*

*In addition, in the context of processing personal data of students and teachers, it is important to note that in Poland, there is a National Educational Network, a program by the Ministry of Digitization that provides schools with fast, free, and secure Internet. All interested institutions can participate in this network. As part of this network, a system for monitoring online behavior was implemented, allowing for the detection of students' emotions and intentions based on transmitted images, videos, and messages. The system aims to identify threats and enable a response when a child is at risk of harm by analyzing the content viewed by children and their internet activity.*

*However, the operation of this system involves significant intrusion into the private lives of Internet users (students and teachers). Therefore, the Commissioner for Human Rights monitors the use of this system.* [*Information obtained by the Commissioner for Human Rights*](https://bip.brpo.gov.pl/pl/content/rpo-uczniowie-ose-monitoring-mc-mein-mein-odpowiedz) *indicates that this system monitors access to potentially harmful content without identifying the user, thus not infringing on the right to privacy and personal data protection.*

**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?

**Answer:**

*The information on the legal framework for academic freedom is provided above. In practice, the Ombudsman very rarely receives complaints about violations of this freedom.*

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?

**Answer:**

*The Minister of Education coordinates and implements the educational policy of the state and cooperates in this regard with the provincial governors and other bodies and organizational units competent for the operation of the educational system. The administration of education and the running of schools are decentralized.*

*Education in pre-school, primary and secondary schools is based on the core curriculum (podstawa programowa) which is compulsory sets of educational objectives and learning content, including skills, described in the form of general and specific requirements for knowledge and skills that a student should have at the end of a specific educational stage, as well as educational and preventive tasks of the school. The requirements are important for the establishment of criteria for school grades and examination requirements. Core curricula have to be respected by each school, but school curricula are determined at the school level. Teachers are free to follow curricula chosen or developed by them independently and approved by the school principal. The curriculum proposed by the teacher should be based on the core curriculum and adjusted to the needs and abilities of the students.*

*Teachers in Poland have to implement the core curriculum, but enjoy freedom of choice of teaching methods. They have the right to freely apply such methods of education as they consider most appropriate from among those recognized by modern pedagogical science, and to choose from among the textbooks and other teaching aids approved for school use. (Article 12, Act of January 26, 1982 Teachers' Charter). The rules regarding the approval of textbooks are outlined in the Regulation of the Minister of National Education of October 3, 2019 on admitting textbooks for school use.*

*The school principal decides on class profiles and classes at extended level. She/he is obliged to organize for students additional activities, which are not mandatory and are not subject to evaluation.*

*There is a list of mandatory readings that all students at a given level need to know (mostly literary classics) and a list of supplementary readings to be selected by the teacher. There are no specific books or materials that have been banned by the authorities, but generally it is illegal to propagate totalitarian regimes or use hate speech, so books with such themes or books which are not appropriate for children should not be in school libraries.*

*At universities, the choice of textbooks used by students during courses is determined freely by the lecturers.*

**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.

1. See also the Supreme Audit Office [report on financing higher education in Poland from 2021](https://www.nik.gov.pl/kontrole/P/20/026/KNO/)and the [report on financing research from 2020](https://www.nik.gov.pl/aktualnosci/finansowanie-badan-podstawowych.html). [↑](#footnote-ref-1)