**Submission for the thematic report of the UN Special Rapporteur on the right to education on academic freedom and freedom of expression in educational institutions**

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**Academic Freedom**

*Higher Education Institutions*

Article 27 of the Constitution of Georgia expressly guarantees academic freedom as a component of the right to education.[[1]](#footnote-1) Neither the Constitutional Court nor the common courts provide any judicial interpretation of the concept of academic freedom.

The Higher Education Act defines academic freedom as “the right of academic personnel, scientific personnel and students to independently carry out teaching activities, scientific work and study.”[[2]](#footnote-2) The Act also provides that this freedom may be restricted in very limited, expressly enumerated circumstances.[[3]](#footnote-3) It also provides students, academic, and scientific personnel with corresponding rights to enforce their academic freedom.[[4]](#footnote-4)

Students have freedom of expression and are free not to agree with the ideas that they are offered. They also are entitled to use educational materials available in libraries and elsewhere across the educational establishment.[[5]](#footnote-5) However, these rights, forming part of academic freedom, may be restricted in military educational facilities.[[6]](#footnote-6)

As regards teaching/academic personnel they are entitled to teach and conduct research without interference, and independently determine the contents of syllabi and teaching methods within the scope of educational programs.[[7]](#footnote-7) The academic personnel also enjoy similar guarantees but their freedom to publish research may be restricted if it contains state secrets, or such restriction is envisaged under the terms of the employment contract.[[8]](#footnote-8)

Lectures that spread discriminatory approaches are beyond the scope of academic freedom as guaranteed by the Higher Education Act.[[9]](#footnote-9) The HEI programs are also subject to state accreditation which may entail the analysis of contents of materials used during the teaching process to understand whether they can contribute to the learning outcomes of the program concerned.[[10]](#footnote-10)

*Vocational Education Institutions/Programs*

Vocational Education Act envisages neither a notion of academic freedom nor grounds for its restriction.[[11]](#footnote-11) However, the constitutional guarantee of academic freedom applies to students, and they are entitled to exercise rights as granted by the Higher Education Act as well as the right to use material-technical resources, including the library materials of the educational institution.[[12]](#footnote-12)

The professional colleges are authorized to create professional programs within the framework of the mentioned standards. [[13]](#footnote-13) [[14]](#footnote-14) Teachers can freely choose educational resources as long as they pertain to the learning outcomes.[[15]](#footnote-15) The Act does not expressly provide any limitation on teachers’ speech while teaching.[[16]](#footnote-16)

Some programs are based on framework documents approved by the state.[[17]](#footnote-17) Almost all the components of the program except literature are approved by the government and not by the institution itself.[[18]](#footnote-18)

*General Education System*

In contrast to the higher education system where academic freedom is seen as an independent guarantee, the General Education Act envisages it within the realm of freedom of expression “as long as [academic freedom] does not contravene the aims of National Curriculum.[[19]](#footnote-19)

School textbooks should be approved by the Ministry of Education of Georgia.[[20]](#footnote-20) And the process of approval is strictly regulated.[[21]](#footnote-21) Teachers’ Council, a self-governing body that exists at schools, only has the authority to select textbooks pre-approved by the Ministry.[[22]](#footnote-22)

Furthermore, the school is authorized to prohibit books in the library if it protects minors from age-inappropriate literature.[[23]](#footnote-23) Even though censorship of library materials is prohibited the vagueness of the mentioned provision allows schools to restrict academic freedom. The Office has no data on whether any material has ever been prohibited in school libraries.

Similarly, schools are allowed to restrict teachers’ speech because the Act prohibits the teaching process to be used for proselytism, political or religious indoctrination.[[24]](#footnote-24) Schools are also allowed to introduce neutral, non-discriminatory restrictions during school time or on the premises if there is an imminent threat of spreading obscenity, incitement to ethnic or religious hatred or violence.[[25]](#footnote-25)

**Autonomy of Educational Institutions**

*Higher Education Institutions*

Article 27 of the Constitution provides autonomy as a guarantee only for higher education institutions.[[26]](#footnote-26) However, the document does not provide its definition.[[27]](#footnote-27) On the other hand, the Higher Education Act states that autonomy is the right of the institutions and their main educational units to independently “determine and carry out academic, financial, economic and administrative activities…”[[28]](#footnote-28)

This provision guarantees the right of academic institutions to form their governing bodies, hire administrative and academic personnel coupled with creating educational programs without interference from the state.[[29]](#footnote-29) However, academic programs, created by the institutions, should be submitted to the state to evaluate their compliance with the accreditation standards. Students' participation in the governing process is also ensured, and they also may establish students’ self-governing bodies.[[30]](#footnote-30)

*General Education Institutions*

General Education Act also enshrines the principle of autonomy for schools.[[31]](#footnote-31) Schools are self-governing entities that are governed by a Board of Trustees.[[32]](#footnote-32) The Board is composed of teachers, parents, pupils, and a representative of the Ministry of Education.[[33]](#footnote-33) The local self-governing body is also allowed to have a member of the Board.[[34]](#footnote-34)

The Board has wide-ranging powers including approving the school’s budget, its curriculum and teaching materials, hiring teachers, and even electing the school principal.[[35]](#footnote-35) Although the Act provides that School Principals should be elected by the Board, in practice, people wishing to become school Principals should go through exams and an interview before the Ministry of Education.[[36]](#footnote-36)

Both teachers and students have their separate self-governing bodies at school- the teachers’ Council and students’ Council respectively.[[37]](#footnote-37) While the former is primarily tasked with selecting approved textbooks and establishing a schedule of lessons the latter is authorized to issue recommendations to the Board of Trustees about the schools’ development.[[38]](#footnote-38)

1. Constitution of Georgia adopted on August 24 1995 Article 27 para. 3. [↑](#footnote-ref-1)
2. Higher Education Act adopted on December 21 2004 Article 2 para. c. [↑](#footnote-ref-2)
3. ibid, Article 3, para. 4. Circumstances in which the academic freedom may be restricted are the following: “…determining organisational issues and priorities in order to achieve freedom of scientific research; b) resolving organizational issues regarding the study process, and the issues concerning the approval of the timetable of lectures and the curricula, in order to achieve freedom of teaching; c) organising the study process and ensuring high quality studies in order to achieve freedom of learning. d) in the cases when implementation of a scientific research and publication of its results is restricted under a labour agreement, or when the results contain a state secret. [↑](#footnote-ref-3)
4. ibid, Article 37, Article 374 , Article 43. [↑](#footnote-ref-4)
5. ibid, Article 43 para.1 (c). [↑](#footnote-ref-5)
6. ibid, Article 81 para.3 [↑](#footnote-ref-6)
7. ibid, Article 37 para. 1 b and c. [↑](#footnote-ref-7)
8. ibid, Article 374  para.2. a. [↑](#footnote-ref-8)
9. General Proposal of Public Defender 2016 <https://rb.gy/ce1tra> [05/01/2024]; Higher Education Act Article 3, para. 2. h. [↑](#footnote-ref-9)
10. Order 65/ნ adopted on May 4 2011 by the Minister of Education Article 2, para.2 <https://shorturl.at/cpFTZ> [available only in Georgian] [↑](#footnote-ref-10)
11. Vocational Education Act adopted on September 20, 2018. [↑](#footnote-ref-11)
12. ibid, Article 29 par.1 (b) [↑](#footnote-ref-12)
13. Order 80/ნ Adopted on August 23 2023 Article 4 para. 1. [↑](#footnote-ref-13)
14. Vocational Education Act adopted on September 20, 2018 Article 9 para. 1 [↑](#footnote-ref-14)
15. ibid, Article 28 para. 1 [↑](#footnote-ref-15)
16. ibid. [↑](#footnote-ref-16)
17. For instance, see the Framework Document for Pre-School Caregivers Adopted by the Order 192/ნ of the Minister of Education on December 12 2017. [↑](#footnote-ref-17)
18. ibid. [↑](#footnote-ref-18)
19. General Education Act, Article 15 par. 5. [↑](#footnote-ref-19)
20. ibid, Article 33 para 1. d. [↑](#footnote-ref-20)
21. See Rules about Approval of School textbooks as adopted by Orders N 28/ნ, MES 0 23 0001573130, and MES 6 23 0000032029. [↑](#footnote-ref-21)
22. General Education Act Article 46 para. b. [↑](#footnote-ref-22)
23. ibid, Article 14, para. 3. [↑](#footnote-ref-23)
24. ibid, Article 13 para. 2. [↑](#footnote-ref-24)
25. ibid, Article 8 par. 3. (c) [↑](#footnote-ref-25)
26. Constitution of Georgia adopted on August 24 1995 Article 27 para. 3. [↑](#footnote-ref-26)
27. ibid. [↑](#footnote-ref-27)
28. Higher Education Act adopted on December 21 2004 Article 2 paragraph b. [↑](#footnote-ref-28)
29. ibid, Article 10 [↑](#footnote-ref-29)
30. ibid, Article 45 [↑](#footnote-ref-30)
31. General Education Act Article 2 para. r [↑](#footnote-ref-31)
32. ibid, Article 2, para. h2 [↑](#footnote-ref-32)
33. ibid, Article 37 para.1 [↑](#footnote-ref-33)
34. ibid. [↑](#footnote-ref-34)
35. ibid, Article 38. [↑](#footnote-ref-35)
36. Order 25/N adopted by the Minister of Education on February 24th 2011 Article 20, Article 201, Article 21. [↑](#footnote-ref-36)
37. ibid, Article 45, 46,47 [↑](#footnote-ref-37)
38. ibid. [↑](#footnote-ref-38)