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## **International Aspect of the Status of Academic Freedom in European Culture**

The academic freedom belongs to those freedoms which have received conceptualisation in normative acts, both home and international, relatively late. Although the origins of organised teaching should be traced back to antiquity (Stelling-Michaud 1960),<sup>1</sup> the scope of freedoms that form academic freedom today has been shaped very slowly. The literature testifies to that the beginnings of these freedoms came into existence when universities were founded in medieval Europe (Verger, 1973; Moulin, 2002; Hay, 2001, p. 299–320; Le Goff, 1997; Rashdall, 1936; Génicot, 1964; Bloch, 1981; Burckhardt, 1991, p. 136–139; Daly, 1961; Baszkiewicz, 1997, p. 8–54; Guriewicz, 1976). As time went on, considerably different models of the university appeared (Goćkowski, 1977, p. 21). Paris and Italian, the latter sometimes called Bolonia, models are generally distinguished. In modern times one usually distinguishes the following: English model of the university, the most similar to medieval universities in terms of its structure, oriented to educate the state's intellectual elite, where public authorities only support activity of universities and don't control their work; French model, also called the Napoleonic one, whose objective is to educate highly qualified professionals, and the state maintains full control of the universities' operation; German model, sometimes called the Humboldt one, characterised by combining research

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<sup>1</sup> Doctrine seeks university origins back in the philosophical and religious community created by Pitagoras in the 6<sup>th</sup> century BC in southern Italy's Kroton, the Platonic Academy, Arystoteles' Lyceum (Lykeion), Epikur's Garden, Museion of Alexandria. Sometimes Islamic schools are mentioned, such as "House of Wisdom" (Bajd al-hikma) existing in Baghdad, Al-Azhar founded in Cairo in the 960s. Also, Chinese academies are referred to, namely: Palace of Science Jixia (Jixia xuegong) founded around 370 BC, a school founded in 124 BC referred to in the literature as the Imperial College, the Chinese School of the Sons of the State (Guozijian), "Greatest Study or Learning" school (Taixue) and the Hanlin Academy (Hanlin yuan), as well as the Hindu Nalanda Academy founded in the 5<sup>th</sup> century in northern India.

work with didactics, where the state does not intervene in the any internal affairs of the university. A variety of the German model was the so-called Kantian model, in which the state may intervene in some aspects of the university work (Tight, 1988). The source of **academic freedom** must be seen in entitlements acquired by universities and academic establishments in the period of the so-called liberal university in the 19<sup>th</sup> century (Stachowiak-Kudła, 2012).

What forms part of academic freedom in the first place is freedom of teaching and research for academic teachers, which means presenting one's own views and conducting research in accordance with the scientific character and dictate of conscience; freedom of choice of methods and research issues, announcing and publishing of results; possibility to pursue the so-called pure science aimed exclusively at broadening one's knowledge and reaching truth in a given field with no regard to any utilitarian considerations. Secondly, one element of this freedom is students' right to free study and acquire knowledge, i.e. free choice of university, subject of the studies and academic teachers. Thirdly, another element of academic freedom is full internal and external **autonomy** of the university in the form of election of its authorities, department staffing, exams, proper jurisdiction engaged in violations of university regulations, including freedom from unauthorised interventions or restrictions by public authorities. Elements of academic freedom appeared in the statutes of the University of Göttingen in 1734 together with the rule of treating the university as a scientific institution of the highest level. These rules were fully formulated in the statutes of the Berlin University in 1816 drawn-up by A. Von Humboldt. They were adopted by other universities, first German, then West European, and lastly American ones.

Controversial are **limits of academic freedom** addressed particularly during wars. It is assumed that academic freedom is limited by the following: ethical issues, public and state interests, number of places in individual fields, adopted study regulations, study fees, legal regulations of university autonomy in acts and statutes, as well as financial and legal status of the university, particularly whether it is a state, social or private establishment. In authoritarian countries academic freedom often used to be subject to substantial restrictions, and in totalitarian ones (fascist, communist and religious) it was practically done away with (Piechowiak, 1993; Ajdukiewicz, 1965, p. 46; Labuda, 1962, p. 1–32; Newman, Turner, 1992, p. 1–83; Pluciński, 2012, p. 197–214). In defining the autonomy of universities, the Spanish University Act of 21<sup>st</sup> December 2001 indicates that

this freedom consists of the right to enact statutes, elect, appoint and dismiss single-person and collective bodies, possibility to create an organisational structure to support carrying out of education and research, work out and implement study plans and lifelong education plans, set directions for scientific research, free selection of university teachers, academic and administration staff members, verification of students' knowledge and skills, issuing diplomas of higher education confirming acquisition of professional title, certificates of completion of doctoral studies, determination and modification of study conditions, approving budget and managing property, establishing co-operation to promote the university and develop its institutional objectives, and first of all freedom of teaching and study (Stachowiak-Kudła, 2001, p. 145–161; Stachowiak-Kudła, 2012).

And so, academic freedom is considered as an immanent feature of the university, and extensive statutory self-government entitlements, autonomy and freedom of study and teaching are its essence (Parsons, Platt, 1973, p. 153–154; Brzeziński, 1997, p. 211–218; Brzeziński, 1994, p. 25). **Autonomy** should be perceived as a right of self-determination and self-deciding by the university, and the institution of higher education in a broader sense. From autonomy also results a possibility of creating internal normative acts by the universities that regulate their operation as well as rights and obligations of both academic teachers and other employees. University statutes are of such character. Autonomy is usually perceived as freedom to dispose of financial funds, without noticing, however, that these funds must be granted by someone, and the granting entity will most often be the state or various legal persons including industrial corporations. Over time it was recognised that academic freedom belongs to all institutions of higher education. The literature emphasises that academic freedom makes higher education facilities independent of political institutions, including legislative, executive and judicial powers (Dworkin, 1996, p. 183). It is also indicated that the main objective of academic freedom is **freedom of scientific research**, i.e. making it possible for lecturers to present their views, even unpopular and not accepted by representatives of public authorities or the entire society. The essence of academic freedom is therefore the scientist's right to choose the subject of research and the method to present its results without a threat. It is related to the right to teach free from concerns that propagation of any contents, particularly political, religious or ideological in character will be punished.

Academic freedom allows scholars to take advantage of the freedom of speech right and a possibility of conducting activity in various political

and social organisations. These laws are guaranteed to all citizens both in international law acts and internal laws of democratic countries. Raising a point and participation at different organisations by recognised scientists is sometimes considered by public authorities as unacceptable, and they try to prove that using academic freedom makes scientists go beyond their competences (Melosik, 2009, p. 13). Academic freedom is a form of defence of the university community in the sphere of freedom of speech and expression, professional autonomy and collective self-government (Haskell, 1996, p. 54; Melosik, 2004, p. 47).

As any freedom, academic freedom, is of course not unlimited, which regrettably is often forgotten, particularly with regard to freedom of press. The literature point out to its **external limitations**, which boil down to prohibition of transfer of intellectual knowledge and contents which have been successfully refuted in the course of scientific discourse. Surely, this is more easily determined in the case of exact, natural, chemical or technical sciences, but more difficult in the case of the humanities or social sciences. However, external limitations may result from an attempt to put a legal ban on voicing certain contents. As an example may serve teaching of the theory of evolution, presenting philosophical, sociological, economic, and even legal contents (e.g. with regard to human rights) not in keeping with ideological or worldview-related conceptions preferred by a country's public authorities or religious organisations and political parties dominant in the state structure.<sup>2</sup> In the realm of historical sciences,

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<sup>2</sup> Bans on voicing historical views subject to penal liability might pose a problem here. As an example may serve the so-called "Auschwitz lie", also called Holocaust negationism or revisionism that denies the crime of the Holocaust. See Art. 55 in conjunction with Art. 1(1) of the Act on the Institute of National Remembrance – Chief Commission for the Prosecution of Crimes against the Polish Nation dated 18<sup>th</sup> December 1998, consolidated text in "Dziennik Ustaw" 2007, No. 63, Item 424 as amended. Contrary to "commonplace", journalistic opinions that Art. 55 is to put an end to any further scientific research concerning the extermination of the Jews, analysis of the provisions of the Act testifies to that such judgements are completely arbitrary. In no way does the act limit the research over the Holocaust, and there are no obstacles to verify the existing results, e.g. by indicating what was the role of individual persons who conducted a criminal activity, or determine other dates of particular criminal events. The only impermissible thing seems to be a thesis that Holocaust never actually took place (Arendt, 2003a, p. 257–285; Arendt, 2003b, p. 244–256). This is testified to by a provision of Art. 55 of said act, which clearly indicates that by meeting the criteria of crime the perpetrator must deny the crimes **contrary to the facts**. This of course may lead to "objectification" of historical truth, but does not ham-

there may appear various controversies, that may result in state-imposed bans subject to penal sanctions.<sup>3</sup> It's interesting that bans placed by decisions of the public authorities, including international organisations, that constitute external limitation of academic freedom, may sometimes concern technical or medical sciences.<sup>4</sup>

Legally sanctioned bans concerning different aspects of religious issues resulting from pressure of public opinion as in some Islamic countries may be a particularly severe form of external limitations of academic freedom. In countries where most people regard themselves as Roman Catholics these come down to pressures conditioned by moral considerations of that religion, and they mainly touch upon aspects of biological and medical sciences, e.g. a problem of *in vitro* research. As far as Roman Catholic

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per scientific research. The literature extremely accurately points to that in the case of the "Auschwitz lie" there may occur a special combination of objective falseness and subjective bad faith"[Garlicki, 2003, p. 7). It's worth noticing that storing, possessing or presenting printed matter, recordings or other objects that propagate a fascist or other totalitarian political system of a country or calling for hatred over national, ethnic, racial or religious differences is a crime, but it is not committed by the doer if it was done as part of their artistic, educational, collector's or scientific activity. (Art. 256 § 2 of the Penal Code of 1997). For the Auschwitz lie, see decision of the Human Rights Committee of 8<sup>th</sup> November 1996 on Faurisson vs. France, case 550/1993 (Gliszczynska-Grabias, 2014, p. 517–531; Kamiński, 2010, p. 254–263, 551–579; Horała, 2009, p. 287).

<sup>3</sup> An example of this type of actions is prosecution by Turkish authorities of researchers, both historians and journalists presenting results of that research, who prove that Turkish authorities were responsible for the carnage of Armenians in 1915–1916. Conformism (which fortunately not all scientists are characterised by) causes it that some topics are reluctantly brought up only by being unpleasant to public authorities (Kula, 2002; Kula, 2003; Kula, 2001; Iggers, 2002, p. 105–116; Lacapra, 2002, p. 127–162).

<sup>4</sup> In the former USSR it was forbidden to teach cybernetics, and nowadays most countries impose bans on research in human cloning. See The Universal Declaration on the Human Genome and Human Rights of 11<sup>th</sup> November 1997; International Declaration on Human Genetic Data of 16<sup>th</sup> October 2003, International Declaration on Bioethics and Human Rights of 19<sup>th</sup> October 2005 (Jasudowicz, Czepek, Kapelańska-Pręgowska, 2014, p. 89–117); Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (The European Convention on Bioethics), Oviedo, 4<sup>th</sup> April 1997; Explanatory report to the Convention (Jasudowicz, Czepek, Kapelańska-Pręgowska, 2014, p. 14–55); The European Convention on Human Rights and Biomedicine, Additional Protocol on the Prohibition of Cloning Human Beings (Jasudowicz, Czepek, Kapelańska-Pręgowska, 2014, p. 57–60).

clergymen are concerned, external limitations of academic freedom and related freedom of scientific research have to this day taken on a form of church censorship as *imprimatur*. A phenomenon of self-censorship, extremely dangerous for the culture, is an effect of formal and informal bans that limit academic freedom in its external plane as the freedom of research.

Another form of external limitations of academic freedom is an **internal aspect**, i.e. capacity of self-limitation, which means refraining from presentation of controversial opinions both in contacts with the students and outside the higher education institution (Salomon, Salomon, 1993, p. 239–240). The literature emphasizes now and then that academic freedom may not lead to **academic anarchy**, and it is necessary to create certain procedural regulations in the interest of good manners and intellectual integrity. Here, academic freedom is looked upon as some privilege that may be exercised by scientists on account of their functions. Academic freedom is perceived as antithesis of bureaucratic subordination (Parsons, Platt, 1973, p. 128). **Responsibility** of both the scientists and the entire university must be an attribute of academic freedom (Menand, 1996; Parsons, Platt, 1973, p. 123). And so, academic freedom is conditioned by the freedom of scientific research and announcement of its results, but also by freedom of teaching, freedom of taking advantage of the cultural assets and freedom of artistic activity. Its component is “**student freedom**”, also called “freedom of study”, which encompasses freedom to choose the area, i.e. scientific discipline, field of study, major, type of studies, seminars, right to receive official documents confirming the course of study, relevant certificates, student IDs, and finally the diploma (Szadok-Bratuń, 2009, p. 713).

Academic freedom has for a long time failed to find its formal manifestation in international and regional normative acts enacting human rights. However, quite early were in these types of acts included the freedom of scientific research and the freedom of expression, without which the academic freedom cannot exist. Academic freedom was neither provided for in the European Convention for the Protection of Human Rights and Fundamental Freedoms drawn-up in Rome on 4<sup>th</sup> November 1950<sup>5</sup> nor in the International Covenant on Civil and Political Rights of 19<sup>th</sup> December

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<sup>5</sup> Dz. U. 1993, No. 61, Item 284. In Art. 10(1), the right of freedom of expression was formulated, including receipt and transfer of information and ideas, without intervention of public authorities and with no regard to state borders.

1966.<sup>6</sup> It was only the International Covenant on Economic, Social and Cultural Rights of 19<sup>th</sup> December 1966, which in its Art. 15(3) obliged the states parties to the Covenant to respect the freedom necessary to conduct scientific research and artistic activity, indicating in the successive item of Art. 15 that the states parties to the Covenant acknowledge the benefits that result from support and development of international contacts and co-operation in science and culture.<sup>7</sup> Art. 15 recognised the right of all individuals to take part in cultural life, take advantage of scientific progress and its applications, and the possibility of availing oneself of protection of moral and material interests resulting from any scientific, literary or artistic creativity. In Art. 12(2), the Covenant states parties committed themselves to take relevant steps to execute said rights and protection and measures to develop and popularise science and culture. In Art. 15(3), the states undertook to respect freedom necessary to conduct scientific research and artistic activity. In this situation, the International Covenant on Economic, Social and Cultural Rights of 19<sup>th</sup> December 1966 determines general framework within which the freedoms of scientific research, artistic activity and taking advantage of cultural assets is effected (Motyka, 2004, p. 136–137).

In the Non-European regional international law, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights adopted in San Salvador on 17<sup>th</sup> November 1998, in Art. 14 the states parties to said Protocol recognised the right of all individuals to take advantage of the achievements of scientific and technical progress (Item 1c), and committed themselves to take steps to reliably ensure using this right, necessary to preserve, develop and popularise science, culture and art (Art 14(3)). Furthermore, they undertook to make sure the freedom necessary for scientific development and artistic activity is observed (Zubik, 2008, p. 118; Gronowska, Jasudowicz, Mik, 1993). It is peculiar that said right was determined as the right of access to cultural assets, and not the right of scientific research and even academic freedom. The right to study stipulated in Art. 13 of the Additional Protocol means, as results from its provision, a right to education on primary, secondary and higher levels.

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<sup>6</sup> Dz. U. 1977, No. 38, Item 167. Art. 19(1) provides for the right to freedom of expression, and Art. 19(2), the right to freedom of opinion.

<sup>7</sup> Dz. U. 1977, No. 38, Item 169.

Difficulties in normative formulation of academic freedom as one of the human rights resulted partly from the fact that attempts to determine the contents, scope and limits of that freedom were made by different international organisations. On the one side, it remained in the orbit of the common international law system, the UNO system, particularly UNESCO as a specialised agency. On the other hand, it was subject to actions of various non-governmental organisations. Thirdly, after the European Union was created, academic freedom became subject to activity of its bodies. It's paradoxical that it was the Union, which addressed the issue of academic freedom relatively late, has succeeded in introducing it to the documents valid for the Union states. Academic freedom has not been regulated in the normative acts of the Council of Europe although one of its elements, namely the right to freedom of expression and the freedom to hold opinions and to receive and impart information and ideas, was included in the provision of Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Academic freedom, however, was referred to, and quite often in its decisions, by the European Court of Human Rights in Strasbourg.<sup>8</sup>

The need to formulate institutional foundations of academic freedom was repeatedly discussed and conceptualised in various documents, among others the following: UNESCO International Conference in Nice in 1950, when the basic principles of the operation of the universities were laid down: right to develop knowledge, seek truth, toleration for different opinions, freedom from political influence, obligation to promote principles of freedom and justice as well as human dignity and solidarity through teaching and research; Declaration of Rights and Duties Inherent in Academic Freedom, adopted at the International Association of University Professors and Lecturers in Siena in 1982 (Szadok-Bratuń, 2009, p. 699–716); Declaration on Academic Freedom and Autonomy of Institutions of Higher Education adopted by the World University Service (Lima,

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<sup>8</sup> Decision of the European Court of Human Rights (hereinafter referred to as the ECHR) in Strasbourg of 13<sup>th</sup> February 2001 in *Lunde vs. Norway* case, complaint no. 38318/97, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-5733>, read on 06-07-2014, 04:37 p.m.; verdict of the ECHR of 27<sup>th</sup> March 2008, final decision on 27<sup>th</sup> June 2008, in the *Azevedo vs. Portugal* case, complaint no. 20620/04, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-85545>, read on 6.07.2014, 04:39 p.m.; verdict of the ECHR of 29<sup>th</sup> June 2004 in *Chauvy and others vs. France* case, complaint no. 64915/01, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-61861>, read on 6.07.2014, 04:45 p.m.



1988); Magna Charta of Universitatum adopted by the Standing Conference of Rectors (Bologna, 1988) (*Magna Charta Universitatum*); Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics adopted by members of the African academic community in 1990; and Kampala Declaration on Intellectual Freedom and Social Responsibility (Symonides, 2004, p. 409; Jarosz-Żukowska, Żukowski, 2014, p. 712).

In the **Magna Charta Universitatum**<sup>9</sup> has been defined a catalogue of the most essential principles that collectively form academic freedom, namely: autonomy, unity, freedom and universality, where the greatest importance is attached to principles of autonomy. This is confirmed by the **Erfurt Declaration** on University Autonomy, *Towards the Responsible University of the Twenty-first Century*, which attempts to specify relations between the state and the higher education institution. University autonomy was equated with the freedom of scientific research. Academic autonomy was defined as “the ability of academic institutions to decide for themselves how they will perform the tasks set for and agreed by them or which they have set for themselves” (“Forum akademickie”, 1996). Magna Charta affirms that the state should respect academic freedom and autonomy, and permit higher education institutions to constitute their own patterns of activity and measures of their quality. Also, it remarks that the state must provide the higher education institutions with stable funds and allow them to fulfil their historical, research and culture-forming function. Furthermore, the state must liberalise its supervision over the structure and operation of higher education institutions so that they could perform their university and supranational functions. On the other hand, higher education institutions should constitute a responsible and coherent community, and not an anarchist or irresponsible association. Also, they should ensure transparency and public character of the self-regulation process, and all the procedures used by the higher education institution to supervise

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<sup>9</sup> *Magna Charta Universitatum* is an agreement of rectors of 388 universities signed in Bologna in 1988, with which the Bologna Declaration is related, which was signed by European ministers of education from 29 countries in 1999. Text “Higher Education in Europe” of the Bologna Declaration refers to Magna Charta Universitatum and the Sorbona Declaration of 25<sup>th</sup> May 1998. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/MDC/SORBONNE\\_DECLARATION\\_1.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/documents/MDC/SORBONNE_DECLARATION_1.pdf), read on 6.07.2014, 12:11 p.m. For text of the Bologna Declaration see [http://europa.eu/legislation\\_summaries/education\\_training\\_youth/lifelong\\_learning/c11088\\_pl.htm](http://europa.eu/legislation_summaries/education_training_youth/lifelong_learning/c11088_pl.htm), read on 6.07.2014, 12:04.

standards and ensure quality must be open to public scrutiny and criticism (Szadok-Bratuń, 2009, p. 710). It's worth noting that the Erfurt Declaration speaks about the higher education institution, and not university, which testifies to that the authors of the Declaration referred its contents to all academies. However, one must admit that the literature quite strongly emphasizes the fact that the role of the university that distinguishes it from other higher education institutions is unity of learning and teaching. The university is to educate creative individuals, and the higher education institution first of all professionals. Freedom of curriculum and diversity of methods should prevail at the university, and strict curriculum at higher education institutions (Czeżowski, 1989, p. 239). The above mentioned German model of the Humboldt University based on the community of master and students, characterised by complementarity of research and teaching, is criticised in Europe as purportedly failing to befit the new reality. Yet, in the United States, whose higher education institutions are held up as an example for the European researchers, it is commonly accepted (Szadok-Bratuń, 2009, p. 711–712; Jaspers, 1978, p. 733–743). In practice, however, it turns out that what public authorities strive to is for the university to educate not so much creators, but experts to meet “social needs”.

Pursuant to the Erfurt Declaration, **autonomy of universities** is to be related to responsibility towards students and society. It is noted that the responsibility conditions sensitivity of higher education institution to social needs (Filip, 2001).

Magna Charta Universitatum presents the university as a centre of culture, knowledge and scientific research, created to serve the entire society, that consists in imparting knowledge and skills to young generations and cultural, social and economic development, which requires incessant education. It is stressed that academic freedom is correlated with the right to study, which, being cultural in character, is presented as part of the so-called second-generation human rights in the group of social and economic rights. It is fundamental and is perceived in terms of both individual and communal good. Magna Charta demonstrates that teaching and scientific research must form an inseparable whole, and freedom of scientific research is the most fundamental principle of university life.

Organising in 1989 by UNESCO in collaboration with the World University Service of the International Seminar on Factors and Conditions Conducive to Academic Freedom was an essential step in working towards regulation of academic freedom. During the Seminar, it was stated

that there were no legal instruments in place to regulate academic freedom and university autonomy. It was noted that UNESCO should have taken measures to prepare such an instrument. Similar conclusions were formulated at a consecutive seminar organised by UNESCO and the Raoul Wallenberg Institute in Lund in 1992, and some time later during the International Conference on Academic Freedom and University Autonomy held in Rumania in 1992.

In December 1992, UNESCO together with Poznań Human Rights Center and Adam Mickiewicz University organised a seminar whose product was a draft Declaration on Academic Freedom (Piechowiak, 1993). It was presented during the International Congress on Education for Human Rights and Democracy in Montreal in March 1993. The Congress presented the Director-General of UNESCO a document entitled "Contributions to the Preparation of a Declaration on Academic Freedom." In its content it was emphasized that academic freedom is an indispensable condition to perform educational, research and administrative functions by universities and other higher education institutions. It was noted that every country is obliged to guarantee academic freedom without any discrimination, and pointed out that members of the academic community are specially responsible to the society. Another remark was that academic freedom has its limits, and no member of the academic community can be involved in any activity aimed against human rights. Research, teaching, collection and exchange of information should be done in keeping with ethical and professional standards expressed in human rights. The document endeavoured to objectively determine the elements of academic freedom by indicating firstly that they include the right to become member of the academic community without any discrimination, and exclusively on the basis of abilities and competences and to freely determine the subject and methods of research, and present their results. Secondly, it was acknowledged that students' right to study, including choosing a study area, participation in organisation of teaching process and receive official documents, diplomas included, is an element of academic freedom. Thirdly, it was acknowledged that academic freedom is also composed of a right of the academic community members to seek, acquire and disseminate information and views in all forms, and to co-operate with personally selected partners from any part of the globe.

It is interesting that the Montreal document did not classify university autonomy as academic freedom, but indicated that full use of academic freedom requires its independence (Symonides, 2004, p. 419–421). Three

years later, in February 1996, the Department of Human Rights, Democracy and Peace of UNESCO and the International Institute for Human Rights Studies in Trieste organised a colloquium on academic freedom. Participants of this meeting generally supported the Montreal Declaration, but proposed numerous amendments referring to other human rights, particularly freedom of thought, conscience and religion, and the right to hold opinions. It was proposed to include issues of academic freedom in the programme of the World Conference on Higher Education scheduled for 1998.<sup>10</sup>

Notwithstanding these initiatives, the World University Service published in 1990 its first report concerning academic freedom in which examples of violation of this freedom in different countries were presented (Fernando, Hartley, Nowak, Swineharts, 1990). In 1995 the Academic Freedom Committee was founded by *Human Rights Watch* to monitor cases of violation of the freedom. The Committee is composed of rectors and university professors. In the case of violation of academic freedom, persecution of students or academic staff members, censorship or discriminatory activities, the Committee takes verbal measures internationally, formulate protests and publishes lists of abuses (Symonides, 2004, p. 408). One must not forget numerous non-government organisations associating rectors of higher education institutions, which publish plenty of documents that bring attention to the need to observe that freedom.

Execution of the provisions of the **Bologna Declaration** of 19<sup>th</sup> June 1999 led to successive meetings of European ministers in charge of higher education. These took place in: w Prague, on 19<sup>th</sup> May 2001, whose effect was a Statement “Towards the European Higher Education Area”;<sup>11</sup>

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<sup>10</sup> *The Final Report of the International Colloquium on Academic Freedom*, Trieste, 23<sup>rd</sup>–25<sup>th</sup> February 1996.

<sup>11</sup> The Statement made reference to the Convention of European Higher Education Institutions held in Salamanca on 29<sup>th</sup>–30<sup>th</sup> March 2009 and the Convention of European Students held in Göteborg on 24<sup>th</sup>–25<sup>th</sup> March 2001. Achievements of the European University Association (EUA) and National Unions of Students in Europe (ESIB) were taken into consideration; [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/P-Komunikat\\_Praga.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/P-Komunikat_Praga.pdf), read on 6.07.2014, 12:16 p.m. The Prague Statement complemented the Bologna Process by indicating the necessity of lifelong learning, the need of engagement of higher education institutions and students, the process of creation of the European Higher Education Area, and promotion of European higher education institutions in other parts of the world. However, it did not touch upon the problem of academic freedom.

Berlin, on 19<sup>th</sup> September 2003, after which a Statement “Realisation of European Higher Education Area”<sup>12</sup> was announced; Bergen, on 19<sup>th</sup>–20<sup>th</sup> May 2005, concluded with a Statement “European Higher Education Area – Realisation of Objectives”;<sup>13</sup> London, on 18<sup>th</sup> May 2007 concluded with a Statement “Towards the European Higher Education Area: responding to challenges in a globalised world”;<sup>14</sup> Leuven and Louvain-la-Neuve, on 28<sup>th</sup>–29<sup>th</sup> April 2009, followed by a Statement – “The Bologna Process 2020 – The European Higher Education Area in the New Decade”;<sup>15</sup> Budapest and

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<sup>12</sup> This Statement included doctoral studies in the Bologna process, and emphasised the significance of research and training to improve the quality of higher education, and increase its competitiveness. It stressed the necessity to increase mobility on doctoral and post-doctoral levels. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/Berlin\\_Komunikat.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/Berlin_Komunikat.pdf), read on 6.07.2014, 12:30 p.m.

<sup>13</sup> This meeting resulted in introduction of national qualification framework, implementation of points of reference and guidelines to ensure guarantee according to the report of the European Association for Quality Assurance in Higher Education, addressing of the issue of awarding and recognition of joint diplomas, including doctoral ones, creation of possibilities as part of flexible teaching paths in higher education; however, it did not make an attempt to specify the content of academic freedom. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/2005\\_Bergen\\_Communique\\_Polish.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/2005_Bergen_Communique_Polish.pdf), read on 6.07.2014, 12:35 p.m.

<sup>14</sup> This Statement focused on promotion of mobility of students and scientists, and elaboration of mobility assessment means, assessment of national strategy effectiveness within the scope of social dimension of education, elaboration of indices and data to measure progress in mobility, examination of the method of employment capacity improvement related to the system of three cycles of teaching, the initiative of lifelong learning, enhancement of dissemination of information on the European Higher Education Area and its world-wide recognition; also, it stressed the necessity of approximation with the European Research Area. However, it did not touch upon the issue of academic freedom. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/2007\\_London\\_communique\\_Polish.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/2007_London_communique_Polish.pdf), read on 6.07.2014, 12:38 p.m.

<sup>15</sup> It affirmed that the decade to come must allow for the following priorities: equal access and possibility to complete studies, increased participation in lifelong learning, promotion of employment capacity, development of education focused on the student and didactic mission of higher education, linking of education, research and innovation, openness of higher education institutions internationally, increased mobility, improvement of data collection, elaboration of multidimensional tools to enhance transparency, guarantee of financing. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/Leuven\\_i\\_Louvain-la-Neuve\\_Komunikat.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/Leuven_i_Louvain-la-Neuve_Komunikat.pdf), read on 6.07.2014, 12:45 p.m. The Statement postulated that current reforms of the system and policy of higher education should be based on the European values of autonomy of higher education institutions, academic freedom and social equality. However, not a single remark was made

Vienna, on 11<sup>th</sup>–12<sup>th</sup> March 2010, whose result was “Declaration on the European Higher Education Area”.<sup>16</sup> In the last Declaration, after the meetings in Budapest and Vienna, the problem of academic freedom was finally addressed. This document stressed that academic freedom and accountability of higher education institutions constitute a foundation of **the European Higher Education Area**. It was noted that higher education is “a domain of public accountability”, therefore it should receive necessary resources within the framework specified and supervised by national authorities. Another Conference of the ministers of the European Higher Education Area was held on 26<sup>th</sup>–27<sup>th</sup> April 2012 in Bucharest. During its course, the state of implementation of the Bologna Process was recapitulated, and main results of the Implementation Report constituting a comparative analysis of the state of advancement of the process in 47 countries were presented.<sup>17</sup>

At the 27<sup>th</sup> session of the General Conference of UNESCO in 1993, it was decided to prepare a recommendation concerning the status of higher-education teaching personnel. It took a very long time to complete the works on it, and in their course consultations were held with the International Labour Organisation and various non-government organisations. Final draft was adopted at the meeting of UNESCO experts in Paris on 8<sup>th</sup>–9<sup>th</sup> October 1996.<sup>18</sup> Based

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concerning clarification of how academic freedom and autonomy of higher education institution is to be perceived.

<sup>16</sup> During the Conference, Kazakhstan was admitted to the group of members of the European Higher Education Area (sic!), special character of Bologna process in providing for the exceptional partnership among state authorities, students and academic staff members was emphasised, and the need of regional and cross-border co-operation was pointed out. It was conceded that the Bologna process activities had been realised to a diverse extent, and some of the Bologna objectives and reforms had not been correctly implemented and clarified, which led to criticism in some countries. [http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/P-Deklaracja\\_Budapest-vienna-pl-ost.pdf](http://www.ond.vlaanderen.be/hogeronderwijs/bologna/links/language/P-Deklaracja_Budapest-vienna-pl-ost.pdf), read on 6.07.2014, 12:55 p.m. Next meeting was agreed to be held in Bucharest on 26<sup>th</sup>–27<sup>th</sup> April 2012.

<sup>17</sup> In the Conference sum-up Statement, attention was given to the necessity of ensuring high quality of education, increase in employment of graduates, improvement of the scale and quality of mobility. [http://www.uz.zgora.pl/ksztalcenie/html/proces\\_bolonski.php?len=pl&i=1](http://www.uz.zgora.pl/ksztalcenie/html/proces_bolonski.php?len=pl&i=1), read on 6.07.2014, 14:08 p.m.; [http://www.uz.zgora.pl/ksztalcenie/html/dokumenty/Bucharest\\_Communique\\_2012\\_2\\_.pdf](http://www.uz.zgora.pl/ksztalcenie/html/dokumenty/Bucharest_Communique_2012_2_.pdf), read on 6.07.2014, 14:10 p.m.

<sup>18</sup> *New Papers on Higher Education, Meeting Documents, 12, Governmental Experts' Meeting to Examine the Draft Recommendation concerning the Status of Higher-Education Teaching Personnel*, UNESCO, Final Report, ED-96/45.41, Paris (Symonides, 2004, p. 422).

on the Report of Commission II at the 26<sup>th</sup> plenary session of the Commission on 11<sup>th</sup> November 1997, the General Conference at the 29<sup>th</sup> session in Paris held between 21<sup>st</sup> October and 12<sup>th</sup> November 1997, having made an analysis of document 29C/12 containing draft Recommendation on the status of higher-education teaching personnel, adopted the Recommendation on the status of higher-education teaching personnel. The Recommendation preamble emphasized that higher education and scientific research contribute to the development and imparting of knowledge, and constitute special cultural and scientific wealth. Also, it was stated that academic teachers, like any other citizens, should act with respect for cultural, economic, social, civil and political rights of all nations. Concern was expressed about weakness of the academic community towards undesired political pressure, which, as it was put, may threaten academic freedom. It was noted that the right to study, education and research may be fully executed only in the atmosphere of academic freedom and autonomy of higher education establishments, and that free flow of results, hypotheses and opinions makes up the essence of higher education and a lasting guarantee for full and objective development of knowledge and research.

What is important, is that this very comprehensive Recommendation formulated definitions of terms used in it, which should be valid for both academic teachers and public authorities in respective countries. It presented UNESCO-acceptable objectives and policy of higher education, obligations and tasks of higher education establishments, including the matter of autonomy, reports filed by these establishments, and the right and freedom of academic teachers, including rights and freedoms of the individual among which civil rights, academic freedoms, and the right to publish and exchange information at international level were numbered, and finally self-government and collegiality of operation of higher education institutions.

The Recommendation stated that every member State is obliged to protect autonomy of higher education establishments against any threats of losing it. Also, it indicated that autonomy is an institutional expression of academic freedoms, and a condition necessary to perform due functions by the staff and higher education establishments. It stressed that full execution of academic freedoms, discharging of duties, and requirements of academic teacher' responsibility presuppose existence of autonomy of higher education establishments, i.e. freedom necessary to make by those establishments effective decisions concerning academic activity, rules of operation, management and other related actions, as long as these actions

are consistent with public control systems, particularly with reference to funds granted by the state, and are based on respect both for academic freedoms and human rights. It pointed out that the nature of autonomy may vary depending on the type of establishment. Also, it stipulated that higher education establishments may not invoke autonomy in order to violate academic teachers' rights specified in the Recommendation or international documents mentioned in an appendix to it.

The Recommendation recognised the need of academic teachers to be entitled and allowed to participate, without any discrimination and in accordance with their competences, in the works of executive bodies, and express criticism of higher education establishment operation, including that of their own establishment, while respecting the participation of other academic community sectors. Moreover, they should be entitled to elect most of the representatives of academic authorities in a higher education establishment. According to the Recommendation, said collegiality should be based on the following principles: academic freedom, division of responsibilities, right of all those interested to participate in the structures and practical procedure of decision-making in the institution and establish consultative mechanisms.<sup>19</sup>

In determining of the obligations and responsibilities of academic teachers, it was stated that academic freedoms also mean an obligation to take advantage of them while respecting the obligation of every scientist to base their work on genuine search for truth. Education, studies and research should be conducted in keeping with ethical and occupational standards and must be aimed at responding, where necessary, to problems confronted by the society, and protecting of historical and cultural heritage of humanity. It was emphasized that academic teachers should concede that their work is also accompanied by duties and specific responsibility, including an obligation to respect academic freedoms of other members of the academic community, and accept loyal confrontation of different points of view.

Beginning from the mid-'90s, different non-government organisations have attempted to specify academic freedom, including the International Association of Universities, which as a result of its General Meeting in

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<sup>19</sup> The Recommendation remarked that any issues concerning administration and definition of higher education policy, curricula, university-related activities, distribution of resources, and other activities, should be subject to decisions made collectively to raise the level and quality of establishments in the interest of the whole society.



New Delhi appointed an Expert Group for academic freedom and university independence (Symonides, 2004, p. 420). It prepared a document<sup>20</sup> that was the basis for the World Conference of Higher Education called by UNESCO, which was held on 5<sup>th</sup>–9<sup>th</sup> October 1998, whose objective was to determine main principles conducive to adjust higher education to requirements of the 21<sup>st</sup> century. The Conference addressed the problem of academic freedom, university autonomy and social accountability of researchers. The document prepared by the International Association of Universities pointed out that academic freedom encompasses freedom of research and teaching, and students' freedom to study. It indicated that these freedoms are not privileges, but principles, which enable universities and their staff to discharge duties towards the society. Academic freedom was defined as "freedom of the academic community members, i.e. researchers, teachers and students, to engage in scientific activity and teaching while respecting ethical rules and international standards without any pressure from the outside" (Symonides, 2001, p. 266; Symonides, 2004, p. 423). Also, it indicated that the objective of academic freedom is the possibility to meet an obligation to disseminate and develop knowledge. The documents of the World Conference of 1998 stressed that academic freedom in higher education institutions and their broad autonomy are an essential condition to carry out tasks by these institutions. The Document drawn-up during the Conference entitled "Towards an Agenda 21 for Higher Education"<sup>21</sup> indicated that academic freedom is based on the obligation of acting in accordance with valid rules and standards and respecting the demand of objectivity, impartiality and intellectual rigour. During the debate, participants of the World Conference affirmed that irrespective of the content of the recommendation on the status of higher-education teaching personnel it was necessary to create a separate document in which the subject matter and limits of academic freedom would be specified. This standpoint was included in the final document of the World Conference, namely in the World Declaration on Higher Education for the Twenty-first Century, and in the assumptions of priority action to change and develop higher education. The Declaration emphasized that higher education institutions and their staff should take advantage of academic freedom and autonomy. These terms of the Declaration mean a set of rights

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<sup>20</sup> Document ED-98/CONF.202/7.12, Paris, August 1998.

<sup>21</sup> Document ED-98/CONF.202/6, Paris, July 1998 (Symonides, 2004, p. 423).

and obligations for academic teachers and students, who, on the other hand, need to remember about their accountability to the society. The assumptions affirmed that UNESCO should take the initiative in preparing an international document regulating academic freedom, autonomy and social accountability. It should allow for the provisions of the recommendation concerning the status of higher-education teaching personnel<sup>22</sup>.

On 22<sup>nd</sup> September 2001, the Magna Charta Observatory of Fundamental University Values and Rights, an international organisation intended to collect, analyse and publish data on the condition of observance of academic freedom in European states was put in operation. Observatory was founded by the University of Bologna and the European University Association.<sup>23</sup>

In the European regional law, **academic freedom** was clearly formulated in sentence 2 of Art. 13 of the Charter of Fundamental Rights of the European Union. This freedom was associated with sentence 1, which stipulated that the arts and scientific research are free from limitations. Solutions included in Art. 13 of the Charter of Fundamental Rights of the European Union result from the freedom of thought and expression. What's usually added here is that because of the importance of the subject matter, freedom protected by Art. 13 of the Charter of Fundamental Rights of the European Union has been articulated and singled out in a separate standard, although it is included in the standard of protection of free thought and freedom of expression (Hambura, Muszyński, 2001, p. 87–92; Jasiński, 2003, p. 200–222; Świątkowki, 2006, p. 210–229; Sobczak, 2007, p. 55–57).

The term “academic freedom” provided for in Art. 13, sentence 2, of the Charter of Fundamental Rights of the European Union has not been defined in the body of this document. Also, no decisions of the Court of Justice in Luxembourg are available in this regard. Although Art. 13 of the Charter of Fundamental Rights of the European Union is largely similar to Art. 10 the European Convention for the Protection of Human Rights and Fundamental Freedoms, however, it seems to expand the provision in-

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<sup>22</sup> See “The Framework for Priority Action for Change and Development of Higher – Education”, para. 14(e), adopted on 9<sup>th</sup> October 1998 (Symonides, 2000, p. 27; Symonides, 2004, p. 424).

<sup>23</sup> Five-member Board is composed of former university rectors, headed by professor Fabio Roversi-Monaco, of the University of Bologna; the Board consists of representatives of Czech Republic, Norway, Slovenia and Spain.

cluded in Art. 10 the European Convention for the Protection of Human Rights and Fundamental Freedoms and repeated with some amendments in Art. 11 of the Charter of Fundamental Rights. In the European Convention for the Protection of Human Rights and Fundamental Freedoms, there is no mention of freedom of the arts and scientific research, although the European Court of Human Rights clearly refers to this issue in its numerous decisions considering the term “scientific research” as an existing one.

Doctrine emphasizes that the solutions included in Art. 13 the Charter of Fundamental Rights of the European Union result from the freedom of thought and expression. What’s usually added here is that because of the importance of the subject matter, freedom protected by Art. 13 of the Charter of Fundamental Rights of the European Union has been articulated and singled out in a separate standard, although it is included in the standard of protection of free thought and freedom of expression (Hambura, Muszyński, 2001, p. 87). In the successive article of the Charter of Fundamental Rights of the European Union, every individual is guaranteed the right to study, possibility of gratuitous learning as part of the schooling obligation, and freedom of founding educational establishments that allows for respect of democratic principles. The literature points out that the solution of Art. 14 of the *Charter* should be associated with the provision of art. 10(3) of the *European Social Charter* (Jasiński, 2003, p. 200–222; Hambura, Muszyński, 2001, p. 88–92; Świątkowki, 2006, p. 210–229).

Undoubtedly, the type of culture and its forms are not and never will be immaterial for the state as a political organisation. In no-way can one assume, however, that in realisation of its vision of culture the state could effectively obstruct freedom of scientific research, freedom of teaching or freedom of expression. In no way can one deny the state, and strictly speaking public authority bodies, a possibility of influencing the mentioned spheres, still such an influence may not take the form of dictatorship. Academic freedom, and particularly the freedom of scientific research and teaching included in it, should become an effective barrier to this type of solutions in all its forms and aspects. Another thing that’s indispensable is independence of the higher education institution which must be respected by public authorities, both government and self-government ones. Even when operation of universities and most of the other higher education institutions depends on budgetary resources granted by the state, it may not be assumed that financing of such establishments can allow public authorities to violate autonomy and impose teaching content

or curricula not acceptable by academic community, or ideologies scientific research. Ensuring balance between the state's interest and academic teachers' aspirations requires great conciliatory skills and simply common sense. This seems to stand in contradiction with attempts to stigmatise higher education institution authorities for inviting certain speakers to meetings with students or allowing or refusing to put up religious symbols, or stigmatise institutions which propose yet other content than the curriculum imposed by the ministry.

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### **Aspekt międzynarodowy statusu wolności akademickiej w kulturze europejskiej**

#### **Streszczenie**

Wolność akademicka należy do tych wolności, które stosunkowo późno doczekały się sformułowania zarówno w międzynarodowych, jak i krajowych aktach normatywnych. Na wolność akademicką składa się w pierwszym rzędzie wolność nauczania i badań dla nauczycieli akademickich, a więc głoszenie własnych poglądów i prowadzenie badań zgodnie z wymogami naukowości i nakazami sumienia; wolność wyboru metod i problematyki badawczej, ogłaszania i publikowania wyników; możliwość uprawiania tzw. czystej nauki, zmierzającej wyłącznie do pogłębiania wiedzy i osiągnięcia prawdy w danej dziedzinie bez oglądania się na jakiegokolwiek względy utylitarne. Po drugie elementem tej wolności jest prawo studentów do swobodnego studiowania i dochodzenia do wiedzy, tj. wolnego wyboru uniwersytetu, przedmiotu studiów, nauczycieli akademickich. Po trzecie wreszcie składnikiem wolności akademickiej jest pełna autonomia wewnętrzna i zewnętrzna uniwersytetu w postaci wyboru władz, obsady katedr, egzaminów, własnego sądownictwa zajmującego się wykroczeniami przeciwko regulaminom uniwersyteckim, w tym wolność od nieuprawnionych ingerencji lub restrykcji ze strony władz publicznych. Dyskusyjne są granice wolności akademickich, formułowane zwłaszcza w okresie wojen. Przyjmuje się, że wytyczają granice wolności akademickiej względy etyczne, interes publiczny i państwowy. Wolność akademicka uznawana jest jako immamentna cecha uniwersytetu, a jej treścią są rozległe uprawnienia statutowe o charakterze samorządowym, autonomia oraz wolność nauki i nauczania. Autonomia winna być pojmowana jako uprawnienie do samookreślenia i samego decydowania uniwersytetu, a szczerzej ujmując uczelni wyższej, o sobie. Wolność akademicka pozwalać ma także na korzystanie przez uczonych z prawa wolności słowa oraz z możliwości podejmowania działalności w rozmaitych organizacjach politycznych i społecznych. Prawa te gwarantowane są zarówno w aktach prawa międzynarodowego, jak i w prawie wewnętrznym państw demokratycznych wszystkim obywatelom. Oczywiście wolność akademicka, jak wszelka wolność – o czym niestety się dość często zapomina zwłaszcza w odniesieniu do wolności prasy – nie ma charakteru nieograniczonego. W literaturze wskazuje się na jej ograniczenia zewnętrz-

ne, które sprowadzają się do zakazu przekazywania wiedzy nieaktualnej oraz treści, które zostały skutecznie obalone w toku dyskursu naukowego. Potrzeba sformułowania instytucjonalnych podstaw wolności akademickiej była wielokrotnie dyskutowana i formułowana w rozmaitych dokumentach. W Wielkiej Karcie Uniwersytetów Europejskich określono katalog najistotniejszych zasad tworzących razem wolność akademicką, a mianowicie: autonomię, jedność, wolność i uniwersalność, przy czym najważniejszą wagę wśród nich przywiązuje się do zasady autonomii. Potwierdza to Deklaracja Erfurcka w sprawie autonomii wyższych uczelni. W europejskim prawie regionalnym wolność akademicka została wyraźnie sformułowana w zdaniu 2 art. 13 Karty Praw Podstawowych Unii Europejskiej.