

SCHOLARS AT RISK

NETWORK  EUROPE

SAR Europe's Submission to the 2021 Rule of Law Consultation

I am giving my contribution as:

Civil society organization/NGO

Organisation name:

Scholars at Risk Europe, (SAR Europe)

Main Areas of Work

If Other, please specify

Working to protect threatened scholars and to promote academic freedom.

Please insert an URL towards your organisation's main online presence or describe your organisation briefly:

SAR Europe is the European office of the global Scholars at Risk network. Scholars at Risk (SAR) was founded in 2000 and is an international network of over 540 higher education institutions in 42 countries working to protect threatened scholars and to promote academic freedom. SAR Europe, hosted by Maynooth University, Ireland, supports and coordinates the activities of 11 SAR national sections and 10 partner networks across Europe.

<https://www.maynoothuniversity.ie/sar-europe>

Transparency register number

693568823217-30

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Publication of your contribution and privacy settings:

Public

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8 March 2021.

Questions on horizontal developments

Media Pluralism

Other - please specify

Strategic lawsuits against public participation continue to pose a significant threat to media and academic freedom in a number of EU countries, most notably in Poland and Hungary. This threat extends to individual academics, journalists, and other civil society actors. As a step towards combatting such backsliding, SAR Europe welcomes the European Democracy Action Plan's (para. 3.2) commitment to protecting academics, journalists, and other civil society actors against strategic lawsuits against public participation (SLAPPs). However, currently, no EU member state has enacted targeted rules that protect against SLAPP lawsuits. SAR Europe, therefore, supports the adoption of the Model EU Anti-SLAPP Directive, developed by a coalition of NGOs, to introduce procedural safeguards to limit the availability of SLAPPs against academics, journalists, and other members of civil society.

Sources:

https://ec.europa.eu/info/sites/info/files/ad-hoc-literature-review-analysis-key-elements-slapp_en.pdf
 (May 2020)

<https://www.greenpeace.org/static/planet4-eu-unit-stateless/2020/07/20200722-SLAPPs-Sued-into-Silence.pdf> (July 2020)

Other institutional issues related to Checks and Balances

A. The process for preparing and enacting laws

38.

Like press freedom and an independent judiciary, academic freedom and institutional autonomy, act as an essential counterbalance to unfettered government rule. Academics are often key contributors to the development of new laws. If they are not free to give their expert opinion, to contribute freely to public debate without fear of reprisal, then an important element of the legislative process is directly undermined. While many EU member states provide legal protection for academic freedom, in their constitutions or other legislation, to enable the free flow of information and public debate informed by expertise, the implementation of such protections is far from uniform across the EU. According to the Academic Freedom Index (AFi), a tool developed by the Global Public Policy Institute, that compiles a global dataset on academic freedom in 144 countries around the world, the five top-ranking EU member states are Portugal, Latvia, Germany, Estonia, and Austria. Hungary fares the lowest of all EU member states assessed. In order to maintain a high level of quality in public consultation processes for preparing and enacting laws, and to maintain the quality of the legislative process, including the full participation of experts in debating and preparing laws, academic freedom must be guaranteed.

Sources:

Karran et,

<http://ugspace.ug.edu.gh/bitstream/handle/123456789/27595/Measuring%20academic%20freedom%20in%20Europe%20a%20criterion%20referenced%20approach.pdf?sequence=1&isAllowed=y>

Academic Freedom Index: <https://www.gppi.net/project/assessing-academic-freedom-worldwide>

D. The enabling framework for civil society

45

Universities are a central pillar of civil society. Academic freedom and university autonomy enable civil society to flourish. Over the past year, there were positive early developments at the European level to strengthen the implementation of existing legislation to protect academic freedom, thereby contributing to the creation of an enabling environment for civil society. In the past 6 months, the EU Council of Europe, European Research Council, European Higher Education Area/Bologna Follow-up Group, and the European Court of Justice each issued important reports, statements, decisions, declarations, resolutions,

and communiqués on academic freedom and the need for greater protection and for more systematic monitoring of its implementation. At the same time, in the last year alone, Romania, Poland, and Hungary saw serious attacks on academic freedom, with negative effects on civil society. As outlined in our country information below, legislative and administrative actions were a particular source of concern.

Sources:

Bonn Declaration: https://www.bmbf.de/files/10_2_2_Bonn_Declaration_en_final.pdf

EHEA: https://ehea.info/Upload/Rome_Ministerial_Communique.pdf and <https://www.ehea.info/page-ehea-ministerial-confererece-rome-2020>

Council of Europe: <https://pace.coe.int/en/files/28881>

Court of Justice of the European Union, Case C66/18 Commission v. Hungary (Higher Education)

HUNGARY

C. Accessibility and judicial review of administrative decisions

44. Implementation by the public administration and State institutions of final court decisions

On October 6, 2020, the European Court of Justice (ECJ) in Case C66/18 Commission v Hungary (Higher Education), ruled that the requirements included in ‘lex CEU’—to enable foreign universities to carry out activities in Hungary—were incompatible with EU law. The court found that the law violated Hungary’s commitments under the World Trade Organization, infringed on academic freedom as enshrined in the EU Charter of Fundamental Rights, and that the changes to Hungary’s higher education law deprived “the universities concerned of the autonomous infrastructure necessary for conducting their scientific research and for carrying out their educational activities” (*1) The landmark decision reinforces the importance of academic freedom within EU law. The Court emphasized that academic freedom has “an individual dimension in so far as it is associated with freedom of expression and, specifically in the field of research, the freedoms of communication, of research and of dissemination of results thus obtained,” but it also has “an institutional and organisational dimension reflected in the autonomy of those institutions.” (*2) Academic freedom is protected by provisions of the Charter of Fundamental Rights of the European Union, including Article 13 which specifically states that “the arts and scientific research shall be free of constraint. Academic freedom shall be respected.” (*3) The ruling has failed to remedy the harm. The Central European University (CEU), the intended target of the 2017 amendment, moved most of its operations and students to Vienna last year. (*4)

Source:

(1) & (2) Court of Justice of the European Union, “The conditions introduced by Hungary to enable foreign higher education institutions to carry out their activities in its territory are incompatible with EU law,” October 6, 2020, <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>.22.

(3) See “Charter of Fundamental Rights of the European Union,” Article 13, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.

(4) Modifications to the Hungarian Higher Education Act and CEU's Objections
<https://www.ceu.edu/istandwithceu/timeline-events>

IV. Other institutional issues related to checks and balances

Other – please specify

The attack on the Central European University which began in 2017, is part of a larger pattern of systematic attacks on independent academic and cultural institutions in Hungary: On July 3, 2020, the Hungarian Parliament passed a law that transferred ownership of the University of Theatre and Film Arts (SZFE) to a foundation established by the same law.(1) The State Secretariat for Higher Education, Innovation and Vocational Training claimed the law will make SZFE more independent and competitive.(2) However, the law actually erodes much of the university’s autonomy and threatens higher education quality by handing over crucial decision-making powers long held by the university’s senate, to a new government-appointed board of trustees. These include decisions on matters ranging from finances, hiring, and curriculum. The Ministry of Technology and Innovation appointed Attila Vidnyanszky, a self-described “cultural nationalist” and friend of Prime Minister Victor Orbán, as chair of the new board of trustees. The Ministry rejected candidates proposed by SZFE’s senate, appointing instead more supporters of Orbán to the remaining seats. Most of the professors and many students resigned/left the university. They are continuing their education and research activities outside the university, with almost no resources. The law generated intense opposition at SZFE, with prominent faculty and members of the university senate resigning in protest on August 31, 2020.(3) When the law went into effect, thousands demonstrated in the streets, including students and non-students concerned about the law’s impact.(4) Since 2019, at least twelve universities have reportedly been subjected to similar laws that transfer their ownership and management including John von Neumann University, Moholy-Nagy University of Art and Design, Széchenyi István

University, the University of Veterinary Medicine in Budapest, the University of Miskolc, and the University of Sopron, among others.(5) PACE Resolution 2352 (2020) directly appealed to the government of Hungary, ‘to take immediate action to reverse recently adopted legislation and/or practices that limit respect for principles of academic freedom and institutional autonomy’. (6)

Sources:

1. <https://www.parlament.hu/irom41/10745/10745-0014.pdf>
2. <https://www.kormany.hu/hu/innovacios-es-technologiai-miniszterium/tudas-es-innovacio-menedzsmentert-felelos-allamtitkarsag/hirek/onallobb-formaban-mukodhet-tovabb-az-szfe>.
3. <https://www.reuters.com/article/us-hungary-politics-education-theatre/heads-of-hungarys-top-arts-university-quit-amid-fears-of-state-control-idUSKBN25R264>.
4. <https://p.dw.com/p/3i57c>.
5. <https://hungarytoday.hu/controversial-law-changes-voted-ruling-majority-parliament/> and <https://balkaninsight.com/2021/02/23/fidesz-makes-hungarys-universities-an-offer-they-cant-refuse/>
6. <https://pace.coe.int/pdf/b0d53128aec46da97122204c6638a28d2faeaa633326667a8259ffe25682ae848428feba12/resolution%202352.pdf>

POLAND

III. Media Pluralism

C. Framework for journalists' protection.

'Other please specify'

The abuse of defamation laws has become a significant threat to media freedom and public interest advocacy in a number of countries. This threat extends to academics. These types of strategic lawsuits against public participation (SLAPPs) attempt to silence public criticism through expensive, meritless legal proceedings. Scholars at Risk Europe supports the Model EU Anti-SLAPP Directive as endorsed by over 60 organisations.

Source: <https://www.article19.org/resources/eu-a-call-for-action-to-combat-slapps/>

A number of such baseless lawsuits have been pursued against Wojciech Sadurski, a professor of law at the University of Warsaw and the University of Sydney, in Australia, for public comments he made criticizing the ruling party, the Law and Justice Party (PiS). However, in welcome news, the Court of Appeal in Warsaw on November 6, 2020 dismissed the SLAPP lawsuit initiated against him by the PiS in response to social media comments he made from November 10, 2018, in which Sadurski denounced a government-organized Independence Day military parade, allegedly planned to occur alongside a far-right demonstration, and compared PiS to an “organized criminal group.” PiS had alleged Sadurski’s comments caused harm to the party’s personal rights under Articles 23 and 24 par. 1 of the Civil Code. The verdict is an important pushback against efforts by the ruling PiS to attack and undermine the rule of law, democracy, and judicial independence. In further good news, the District Court in Warsaw-Mokotów on March 5, 2021 acquitted Professor Sadurski in a criminal defamation lawsuit brought by the public broadcaster Telewizja Polska SA (TVP).

Source:

<https://www.article19.org/resources/appeal-court-slap-sadurski/>

<https://www.scholarsatrisk.org/wp-content/uploads/2020/01/Scholars-at-Risk-Free-to-Think-2019.pdf>
 (page 18)

<https://www.article19.org/resources/poland-acquits-sadurski/>

Prof Jan Grabowski of the University of Ottawa and Prof Barbara Engelking of the Polish Center for Holocaust Research were accused of defamation by the heir of a person mentioned in their work, “Night Without End: The Fate of Jews in Selected Counties of Occupied Poland”, a two-volume book totalling approximately 1,600 pages. In a civil case condemned by Jewish organisations and historians as an attack on free academic inquiry, the historians were told to apologise, as the court determined they provided inaccurate information. The disputed passage was based on the testimony of a survivor. The judgment means a court, instead of the academic community, is now deciding which historical sources are reliable. The judgment is under appeal.

Sources:

<https://www.theguardian.com/books/2021/feb/03/fears-rise-that-polish-libel-trial-could-threaten-future-holocaust-research>

<https://aemjp.eu/2021/01/30/solidarity-with-prof-barbara-engelking-and-prof-jan-grabowski/>

<https://www.nytimes.com/2021/02/08/world/europe/poland-massacre-jews-nazis-blame.html>

IV. Other institutional issues related to checks and balances

Other – please specify

State authorities began pushing aggressive free speech legislation carrying major consequences for academic freedom in Poland. (1) This potentially limits institutional autonomy by requiring elected officials and their appointees to assess where teaching and research are in compliance with academic freedom norms—tasks these officials are generally unqualified to do. The legislation was triggered by students’ complaints about a University of Silesia sociology professor Ewa Budzynska, who allegedly made offensive and anti-scientific statements in class at a required course. (2) Consistent with Polish law, the administration commenced a disciplinary investigation against the professor. A January 2020 report recommended she be reprimanded. In protest, she resigned her position from the university and filed a complaint with the local prosecutor’s office for alleged “falsification of evidence” in connection with the administrative action. She has received support from Ordo Iuris – a religious organization – in these matters. In connection with the criminal proceeding, police summoned the seven students who brought the complaint against the professor and interrogated them in the presence of Ordo Iuris lawyers.(3) Responding to the University of Silesia case, then-Minister of Higher Education Jaroslaw Gowin vowed to adopt an amendment to legislation defending free speech and preventing censorship at Polish universities.(4) The draft bill, reportedly based on an earlier draft by Ordo Iuris, proposes to create a committee for free speech on campus, comprised at least in part of individuals appointed by the Minister. While packaged as an attempt to defend free expression on campus, Polish academics expressed concern that the bill would impose outside pressure on teaching and disciplinary matters. (5) Such legislation would subject fundamental aspects of academic freedom to the political whims of the party in power. It would also ask elected officials and their appointees to engage in a task for which they are generally unqualified: to assess whether particular forms of teaching, learning, and research are properly consistent with norms related to academic freedom, as well as discipline-specific standards. Although the status of the draft legislation is unclear for now, its support from a top government higher education official has raised serious concerns among members of Poland’s higher education community.

Sources:

1. SAR Free to Think Report, 2020, pg 102
2. <https://kafkadesk.org/2020/06/19/freedom-of-intimidation-in-poland-scandal-at-the-university-of-silesia-in-katowice>
3. <https://ordoiuris.pl/edukacja/sprawa-profesor-ewy-budzynskiej-nie-dotyczy-studentow-spor-o-wolnosc-akademicka-wideo>.
4. <https://notesfrompoland.com/2020/01/19/minister-promises-bill-to-defend-free-speech-at-universities-after-lecturer-accused-of-homophobia/>
5. <https://www.insidehighered.com/news/2020/02/20/polish-academics-fear-role-roman-catholic-group-legislation-free-speech>

ROMANIA

IV. Other institutional issues related to checks and balances

Other – please specify

On June 16, 2020, Romania’s Parliament passed an amendment to art. 7 of the National Education Law no. 1/2011—without public debate—that would prohibit all educational institutions from “propagating theories and opinion on gender identity according to which gender is a separate concept from biological sex.” (*1) The amendment amounted to an effort to effectively ban the field of gender studies. News of its passage was met with vocal opposition from scholars, students, and university leaders, who decried the amendment for violating academic freedom and institutional autonomy. The National University of Political Studies and Public Administration (SNSPA), Bucharest and the West University of Timișoara, together with the support of other major universities, academics and researchers, submitted amicus curiae observations to the Romanian Constitutional Court. They argued that as well as contravening EU and international law, the amendment restricted the right to freedom of expression, including scientific opinions, guaranteed by the Romanian Constitution (30, para’s (1) and (2)) and further violated (art. 32) by undermining the freedom of research thereby representing a serious interference of politics in university autonomy. (*2) The University of Bucharest issued a statement commenting that the amendment “contradicts fundamental rights guaranteed by the Romanian constitution and international conventions such as freedom of conscience, freedom of opinion, and university autonomy.” (*3) On June 18, protesters demonstrating outside President Klaus Iohannis’s residence waved banners that read “this is an attack on the autonomy of the universities,” “open minds not closed doors,” and “biological sex is not gender identity,” according to reporting by the Associated Press. (*4) They demanded that President Iohannis refrain from signing the amendment into law. On July 10, 2020, President Iohannis submitted an appeal to Romania’s Constitutional Court regarding the “unconstitutionality” of the amendment, specifically citing provisions relating to “freedom of conscience,” “freedom of expression,” “access to education,” and “university autonomy,” among others. (*5) In a positive development, in December 2020, the Constitutional Court of Romania annulled the law. (*6)

Sources:

1. http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=18210.
2. <http://snspa.ro/en/unprecedented-national-and-international-solidarity-to-protect-the-academic-freedom-and-the-freedom-of-thought-in-romania/>
3. <https://euobserver.com/social/148762>.
4. <https://apnews.com/50be6902fbef23bfb2e2d7a796d2267d>.
5. <https://www.presidency.ro/ro/media/comunicate-de-preses/sesizare-de-neconstitutionalitate-asupra-legii-pentru-modificarea-art-7-din-legea-educatiei-nationale-nr-1-2011-pl-x-nr-617-2019>. and <https://eua.eu/news/536:romanian-president-moves-to-reject-ban-on-gender-studies.html>.
6. <https://balkaninsight.com/2020/12/16/romanian-court-scraps-law-banning-gender-studies/>

SWEDEN

IV. Other institutional issues related to checks and balances

D. The enabling framework for civil society [3000 characters]

45. Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

In a positive effort to strengthen the enabling environment for civil society, the Swedish government undertook a consultation on whether to re-introduce academic freedom in higher education law, with the majority of those consulted endorsing the proposal. The memorandum proposes amendments to the Higher Education Act (1992: 1434) in order to promote and safeguard academic freedom as a prerequisite for high-quality education and research. If accepted, the amendments to the law are proposed to enter into force on 1 July 2021. In August 2020, The Association of Higher Education Institutions (SUHF) submitted their response on Academic Freedom and the proposed changes to the higher education act. SUHF declared the importance of highlighting academic freedom as a fundamental principle in the act but urged greater attention in the act to the role of government.

Sources:

1. <https://www.universityworldnews.com/post.php?story=20201107080157547>
2. <https://www.regeringen.se/rattsliga-dokument/departementsserien-och-promemorior/2020/05/andringar-i-hogskolelagen-for-att-framja-den-akademiska-friheten-och-tydliggora-larosatenas-roll-for-det-livslanga-larandet/>
3. <https://www.universityworldnews.com/post.php?story=20190214103125883>
4. <https://suhf.se/publikationer/remissyttranden/>