Common constitutional traditions? A comparative perspective on academic freedom in Europe

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Preface

This Chapter results from the AFITE research project '*The EU fundamental right to "freedom of the arts and sciences": exploring the limits on the commercialisation of academia*', funded by an NWO Vidi grant and led by Dr. Vasiliki Kosta. The AFITE project's first aim is to construct the content of academic freedom in EU law, drawing on comparative constitutional law (for establishing the constitutional traditions common to the EU's Member States), public international law, philosophy, social sciences and (legal) history. This task is tackled in the forthcoming edited volume Vasiliki Kosta (ed.), *Academic Freedom: Constructing Its Content for EU Law*, Cambridge University Press, 9781009641975.

This chapter titled 'Common constitutional traditions? A comparative perspective on academic freedom in Europe' authored by Dr. Olga Ceran, compares six jurisdictions drawing on six national jurisdiction chapters appearing in this edited volume (F. Behre, O. Ceran, V. Kosta, writing on Germany; R. Calvano, writing on Italy; L. Papadopoulou writing on Greece; J. Groen writing on The Netherlands; A. Bodnar, D. Kuna writing on Poland; E. Barendt writing on England), and supplementing them with other sources and follow-up exchanges with the same experts.

Common constitutional traditions? A comparative perspective on academic freedom in Europe

Olga Ceran

1. Introduction

Academic freedom is widely accepted as a prerequisite for research and higher education.[1] However, as already noted in the introduction to this volume, no agreement exists regarding its content and nature – it has been framed all 'as a human right, fundamental right, professional right, value, governance principle, or philosophical/moral principle', which may or may not be mutually exclusive.[2] While academic and scientific freedoms can be found in many national constitutions, they are hardly as settled or universal as some other constitutional rights.[3] Against this background, Article 13 of the EU Charter of Fundamental Rights (CFR) – at the heart of this volume – explicitly proclaims that 'scientific research shall be free of constraint' and 'academic freedom shall be respected'. The Charter does not explain these concepts in detail but provides some interpretative guidance, among others requiring for its rights to be interpreted in harmony with the constitutional traditions common to the Member States (Article 52(4) CFR). However, comparative research on these traditions is relatively scarce and has not yet been conducted 'with the aim to "produce" EU law', as set out in the AFITE research project underpinning this edited volume.[4] This chapter moves toward that goal by examining the core features and ambiguities of academic and scientific freedoms in selected states discussed in this volume, and by highlighting their intersections with questions arising in EU law. At the same time, the chapter refrains from offering explicitly normative answers on how the comparison should shape the content of Article 13 CFR, leaving this puzzle to the more holistic analysis in the final chapter in this volume.[5]

2. The comparative approach

The comparison undertaken in this chapter has two immediate aims and one broader ambition. First, it seeks to explain – in a comparative light – key features of national constitutional protection of academic freedom in the selected six jurisdictions: five EU Member States

[1] For the purposes of this chapter, 'academic freedom' should be understood functionally, as a comparative second-order language to frame the issues at hand, unless suggested otherwise.

[2] Liviu Matei and Giulia D'Aquila, 'Newly Emerging Frameworks of Reference and Conceptual References for Academic Freedom: Institutional, National, Regional, and Global' in Adrian Curaj, Remus Pricopie and Cezar Mihai Hâj (eds), *European Higher Education Area 2030: Bridging Realities for Tomorrow's Higher Education* (Springer Nature Switzerland 2025) 542–543. See also Kosta, Introduction to this volume.

[3] E.g. Janika Spannagel, 'Introducing Academic Freedom in Constitutions: A New Global Dataset, 1789–2022' [2023] European Political Science 426–430 <https://doi.org/10.1057/s41304-023-00446-5>.

[4] Vasiliki Kosta, 'The EU fundamental right to "freedom of the arts and sciences": exploring the limits on the commercialisation of academia' (AFITE) (Leiden University, 2020) <https://scholarlypublications.universiteitleiden.nl/handle/1887/3656689> 4, 6, citing the methodological observations made in Monica Claes and Maartje de Visser, 'Reflections on Comparative Method in European Constitutional Law' in Maurice Adams and Jacco Bomhoff (eds), *Practice and Theory in Comparative Law* (Cambridge University Press 2012). See also Kosta, Introduction to this volume.

[5] See Kosta in this edited volume. It is acknowledged, however, that implicit normativity is unavoidable in the assessment of commonality. See Claes and Visser (n 4) 162.

(Germany, Greece, Italy, the Netherlands, Poland), and the UK (England).[6] While discussed in more detail in the introduction to this volume,[7] the selection broadly aims to capture diversity in geography, legal traditions, and EU membership trajectories. The UK remains a valuable comparative reference, highlighting the cumulative and partly transnational nature of European traditions. For all jurisdictions, the comparison draws on chapters written by national experts (chapters 1 – 6 in this volume), supplementing them by other sources and follow-up exchanges with the experts.[8] While it cannot be exhaustive on all points, it remains attentive to both the substance and structure of the rights.[9] Second, the chapter examines similarities and differences among these national doctrines to identify 'common traditions' relevant as a source of EU law. The analysis emphasizes positive rather than normative claims – but acknowledges national debates of a normative character.[10] Lastly, the chapter's broader ambition is to 'contribute both to the formulation of general jurisprudential ideas and to the evolution of the application of those ideas to concrete situations'.[11] Therefore, it combines universalist and functionalist perspectives,[12] recognizing the specific challenges of using comparative method in European constitutional law.[13] While taking the national level as a starting point, it integrates a bottom-up and a top-down perspective,[14] considering also specific features of EU law that can usefully feed into the comparison. Its purpose is to discuss different doctrinal premises that can be used for conceptual clarification and, where appropriate, future normative reflection. Section 3 takes a conceptual approach, outlining the content of the freedom, while Section 4 examines specific challenges to illustrate how constitutional provisions work in practice.[15] Although these challenges have not been faced equally by all jurisdictions, it is assumed here that even single-country case studies can contribute to the formulation of jurisprudential ideas, both in EU law and beyond.[16]

[6] This research defines 'constitutional' law in functional terms, as encompassing fundamental laws and principles governing the state's powers rather than a single written document with a particular title. All English-language translations of the constitutional texts come from official websites of respective state authorities.
[7] See Kosta, Introduction to this volume.
[8] These experts are F. Behre, O. Ceran, and V. Kosta (Germany); R. Calvano (Italy); L. Papadopoulou (Greece); J. Groen (The Netherlands); A. Bodnar and D. Kuna (Poland); and E. Barendt (England). I would like to acknowledge the support of all national experts, as well as my colleagues Emma De Vries and Martina Iemma for their insights on Dutch and Italian law, respectively.
[9] Structure is understood here as 'the underlying framework … that … characterizes constitutional rights analysis as a whole within that system'. See Stephen Gardbaum, 'The Structure and Scope of Constitutional Rights' in Tom Ginsburg and Rosalind Dixon, *Comparative Constitutional Law* (Edward Elgar Publishing 2011) <http://www.elgaronline.com/view/9781848445390.00030.xml>.
[10] On the need to distinguish the two claims, see Vicki C Jackson, 'Methodological Challenges in Comparative Constitutional Law' (2010) 28 Penn State International Law Review 324.
[11] John Bell, 'Is Comparative Law Necessary for Legal Theory?' in Maksymilian Del Mar and Michael Lobban (eds), *Law in Theory and History: New Essays on a Neglected Dialogue* (Hart Publishing 2016) 145.
[12] See the overview in Vicki C Jackson, 'Comparative Constitutional Law: Methodologies' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) <https://doi.org/10.1093/oxfordhb/9780199578610.013.0004>.
[13] Claes and Visser (n 4).
[14] See ibid 147.
[15] This approach seems to correspond to the problem-based approach advocated by Claes and Visser for comparison in European constitutional law: ibid 166.
[16] See Jackson (n 12) 65 on the value of single-country case studies.

3. Academic freedom as a fundamental right from a comparative perspective

The constitutional entrenchment of academic freedom varies across jurisdictions, including the six examined in this chapter. The following sections discuss the constitutional concepts used to designate the object of protection, the scope, nature and function of the freedom(s), and their legitimate limitations. As will be shown, certain commonalities emerge from the analysis, but some differences – with important implications – remain.

3.1. Constitutional texts and their variation

A key finding of the comparative research is that 'academic freedom' is rarely used as a constitutional term.[17] While constitutions of Italy,[18] Germany,[19] Greece,[20] and Poland[21] refer to (combinations of) the freedom of science, research, and teaching, only the Greek Constitution explicitly names 'academic freedom' as such.[22] Several constitutions explicitly recognize the institutional dimension of academic freedom: the Italian Constitution grants higher education institutions, universities, and academies the right 'to establish their own regulations' (Article 33), Poland ensures 'the autonomy of the institutions of higher education' (Article 70(5)), and the Greek Constitution sees university-level educational institutions as 'fully self-governed public law legal persons' (Article 16(5)). The detail of the provisions also varies, with the Greek Constitution containing the most elaborate provisions.[23] Neither the Netherlands nor the UK explicitly protect academic freedom in their constitutions. In the Netherlands, relevant aspects of the freedom may fall under Article 7 (freedom of expression) or Article 23 (freedom of education) – though the latter is rarely referenced in this context directly.[24] Academic freedom, explicitly recognized in secondary legislation in the Netherlands, is often framed as an 'umbrella concept' that draws on multiple legal norms, including international law and the European Convention on Human Rights (ECHR).[25] While (aspects of) academic freedom have been recognized under Article 10 (freedom of expression) ECHR, the Convention does not mention it explicitly. Therefore, also in the UK – where the Human Rights Act 1998, seen as of constitutional nature,[26] incorporates the ECHR into UK law – broader academic freedom lacks clear constitutional embedding. While both 'academic freedom' and 'institutional autonomy' feature in secondary legislation, Eric Barendt cautions that it 'does not follow that academic freedom, as it is often understood, is as secure in England

[17] See also the broader findings of Vasiliki Kosta and Olga Ceran, *EP Academic Freedom Monitor 2024. Part I: Overview of de jure academic freedom protection* (European Parliament: Directorate-General for Parliamentary Research Services 2025).
[18] Articles 9 and 33 of the Italian Constitution.
[19] Article 5(3) of the German Constitution.
[20] Article 16(1) of the Greek Constitution.
[21] Article 73 of the Polish Constitution.
[22] Article 16(1) of the Greek Constitution.
[23] The Greek provision stands out against the background of all EU Member States. See V. Kosta and O. Ceran (n 17).
[24] Article 23 is primarily concerned with primary and secondary education, especially in relation to religious education. It is rarely linked to higher education, albeit it features (implicitly) in some discussions on academic freedoms. See Groen in this edited volume, s 5.
[25] Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) ETS 5/CETS No 005. See Articles 93 and 94 of the Constitution that incorporate such norms into Dutch law. See also Groen in this edited volume, s 2.
[26] E.g. Aileen Kavanagh, *Constitutional Review under the UK Human Rights Act* (Cambridge University Press, 2009).

as it would be if it were a constitutional right'.[27] Even so, its increasing prominence in national and international legal debates suggest that academic freedom may be on a path toward constitutional recognition.

The systemic placement of relevant provisions can also affect their interpretation. Most appear under sections on fundamental rights or their specific categories.[28] Notably, Article 9 of the Italian Constitution (promotion of scientific research) is placed among fundamental principles of the state, not subject to amends. Academic or scientific freedoms are also often accompanied by other creative or expressive rights – such as freedom of the arts (Italy, Germany, Poland, Greece), cultural rights (Italy, Poland), or even athletics (Greece). In Germany, scientific freedom appears as the last paragraph of an article that protects also freedom of expression and freedom of press. In Italy and Greece, institutional autonomy and academic freedoms are regulated in the same provision, while in Poland institutional autonomy is tied to the right to education instead.[29] These structural variations may shape the scope of protection and the relationship of academic freedom with other rights.

3.2. Academic or scientific freedoms? The constitutional vocabulary and the material scope of the rights

Different constitutional concepts, as outlined above, may imply different scopes of protection. The key question – also given the framing of Article 13 CFR – is whether a conceptual distinction exists between 'academic freedom' and 'freedom of the sciences' or 'freedom of scientific research'. Among the analysed jurisdictions, only Greece uses both constitutional terms, with distinct scopes of application: 'freedom of the sciences' applies broadly to all scientific activity, while 'academic freedom' is specific to the higher education context.[30] This broadly aligns with how 'scientific' freedoms are understood in Germany, Poland, and Italy and – on the other hand – how 'academic freedom' is conceived in England and the Netherlands.[31] The core differences lay therefore in their respective personal scopes of application. This has affected the nature of national legal debates. If academic freedom is tied to membership in the academic community, defining who belongs becomes crucial. On the other hand, where scientific freedoms belong to everyone, it is the nature of the activity that largely determines where protection should be granted.

Across jurisdictions, the material scope of scientific freedoms rests on the concept of science itself. While open to debate, the four states explicitly protecting 'scientific freedom' (Germany, Greece, Italy, and Poland) seem to be broadly aligned: 'science' encompasses all research disciplines and is generally understood – in the words of the German Federal Constitutional Court – as 'all scientific activity that on the basis of its content and form is to be seen as a

[27] See Barendt in the edited volume.
[28] 'Ethical and social relations' for Article 33 of the Italian Constitution, 'Basic rights' for Article 5(3) of the German Constitution, 'Individual and Social Rights' for Article 16 of the Greek Constitution, and 'Economic, Social and Cultural Freedoms and Rights' for the Polish Constitution.
[29] Article 23 of the Dutch Constitution can be seen as such an example as well.
[30] See Papadoloulou in the edited volume, and the literature cited there.
[31] See the national chapters in this edited volume.

serious, systemic endeavour to discover what is true'.[32] Protection does not depend on correct (objectively true) results, but on adhering to the truth-seeking, methodological process. Activities lacking such characteristics – including data falsification or gross negligence – are consequently not protected.[33] While the concept of 'science' is less central to the jurisdictions referring to 'academic freedom' (the UK and the Netherlands), this truth-seeking nature of academia still shapes their understanding of academic rights and responsibilities.[34] In practice, both 'scientific' and 'academic' freedoms generally protect similar activities: scientific research (formulating research questions, choosing methods, developing research processes), its dissemination, and teaching.[35] In Greece, 'academic freedom' covers these activities in the context of higher education specifically, and 'scientific freedom' more broadly.[36] However, the comparison does not fully clarify whether exactly the same substantive threshold of scientificity applies under different dimensions of 'academic' as compared to 'scientific' freedoms.[37]

The last element of the freedoms – teaching – is explicitly protected in the constitutions of Germany, Greece, Italy, and Poland. In Germany, this freedom shall be understood in the context of the whole provision. Teaching is protected if sufficiently research-based, extending beyond content delivery to include decisions on methods of teaching and, where relevant, modes of examination.[38] Greece and Poland have adopted similar interpretations.[39] Some differences persist regarding whether protection covers all teaching (regardless of context), the educational system, or only higher education. While debates continue, most scholars in Germany, Greece, and Poland accept that teaching outside higher education may be protected if it is sufficiently scientific.[40] However, it does not generally apply to lower levels of education (schools), notwithstanding any educational freedom or professional discretion they may enjoy. In Italy, freedom of teaching applies to all levels of education (and beyond), though its scope

[32] See Eric Barendt, *Academic Freedom and the Law: A Comparative Study* (Hart Publishing 2010) 125–126, translating the text of the so-called Hochschulurteil [BVerfGE 35, 79]. See also the German chapter in this edited volume.
[33] Łukasz Żukowski and Sylwia Jarosz-Żukowska, 'Wolność badań naukowych i nauczania' in Mariusz Jabłoński (ed), *Realizacja i ochrona konstytucyjnych wolności i praw jednostki w polskim porządku prawnym* (E-Wydawnictwo Prawnicza i Ekonomiczna Biblioteka Cyfrowa Wydział Prawa, Administracji i Ekonomii Uniwersytetu Wrocławskiego 2014) 727 <https://repozytorium.uni.wroc.pl/dlibra/publication/53071/edition/53684>. See Germany, Italy and Greece in this edited volume.
[34] See, e.g. Groen (4.1.3, Conclusions), Barendt in the edited volume.
[35] See national chapters in this volume.
[36] See Papadoloulou in the edited volume.
[37] Academic freedom under international law has been said to be more tolerant of pseudoscientific views: Andrea Boggio, 'Academic Freedom and Scientific Freedom: Convergence and Divergence' (*Science for Democracy*, 28 October 2020) <https://sciencefordemocracy.org/academic-freedom-and-scientific-freedom-convergence-and-divergence/>. This claim can be disputed and the comparative material does not allow to fully settle the question.
[38] See the German chapter in this edited volume. BverfGE 55, 37 [68]; BverfGE 61, 260/279.
[39] See Papadoloulou in the edited volume; Leszek Garlicki and Marta Derlatka, 'Art. 73' in Leszek Garlicki and Marek Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II, wyd. II* (Wydawnictwo Sejmowe 2016) s 13.
[40] Żukowski and Jarosz-Żukowska (n 33) 737–738. See Papadoloulou in the edited volume (Section b(a)) implicitly, the German chapter in this edited volume.

varies based on the level of education.[41] Overall, teaching freedoms remain one of the least settled aspects of the national debates. At the same time, the Netherlands and UK seem to face fewer ambiguities, as academic freedom is by definition confined to higher education specifically.

Terms like 'institutional autonomy' or 'self-governance' are commonly used in reference to the institutional dimension of academic freedom (Italy, Greece, Poland). Where recognised explicitly, the protection is broadly similar across the jurisdictions, covering organizational, academic, and financial self-management within legal limits.[42] This holds also in Germany, despite the lack of an explicit mentioning of institutions in the constitutional provision.[43] In English law, 'institutional autonomy' is recognized in a statute and defined as a 'management freedom', freedom to decide on teaching matters (courses, admission criteria), and 'the individual freedom of academic staff'.[44] The freedom to choose the institution's own students, recognized to a lesser extent in other jurisdictions,[45] is also strongly emphasised. In the Netherlands, universities' autonomy is sometimes linked to the general value of free education under Article 23 of the Constitution, but its protection is generally not framed in academic freedom terms and remains to be clarified from this perspective.[46] Despite some general similarities, national doctrines may emphasize different aspects of autonomy, also in relationship to individual rights, leading to divergent outcomes in specific cases – some of which will be further discussed in Section 4.

3.3. Rights holders and duty bearers

Academic freedom has been said to operate within a 'matrix' of students, academics, institutions (especially universities), and the state.[47] The matrix necessarily looks differently in jurisdictions perceiving scientific freedom as 'everyone's freedom' but nevertheless provides a useful framework to discuss the personal scope of application of respective provisions.

Students arguably constitute the largest and most vulnerable group in higher education, prompting some to hold that they enjoy the most rights within the matrix.[48] Yet across the analysed jurisdictions, their status as rights-holders of academic or scientific freedom remains underexplored. While generally viewed as independent members of the academic community,

[41] See Calvano in this edited volume. See also Emanuele Rossi, Paolo Addis and Francesca Biondi Dal Monte, 'La libertà di insegnamento e il diritto all'istruzione nella Costituzione italiana' (2016) 1 Osservatorio Costituzionale <https://www.osservatorioaic.it/images/rivista/pdf/liberta_insegnamento_e_diritto_istruzione.pdf> 4-6.

[42] See Papadoloulou p. 20; see Calvano in this edited volume; Adam Krzywoń, 'II.Konstytucyjne Aspekty Autonomii Szkoły Wyższej' in Aleksander Jakubowski and Aleksandra Wiktorowska (eds), *Prawo nauki. Zagadnienia wybrane* (Wolters Kluwer 2014) s II.3.

[43] See the German chapter in this edited volume.

[44] See Section 3.4. below and Barendt in the edited volume.

[45] See, e.g., Pietro Perlingieri and Paola Pisacane, 'Art. 33' in Pietro Perlingieri (ed), *Commento alla Costituzione italiana* (Edizioni scientifiche italiane 2001) 218 noting that the Italian Constitutional Court considered that arbitrary rules on the imposition of *numerus clausus* on universities may violate Article 33.

[46] See Groen in this edited volume (section 5)

[47] Kwadwo Appiagyei-Atua, 'Students' Academic Freedom in African Universities and Democratic Enhancement' (2019) 19 African Human Rights Law Journal 154.

[48] ibid.

no jurisdiction clearly recognizes a distinct *constitutional* "freedom to study" (or an equivalent category) as a component of academic or scientific freedom. Students are granted some functional rights, but to varying degrees – primarily determined by the perception of their role within the community.[49] Academic freedom under Dutch secondary law protects students' 'freedom to receive education', but its constitutional status and degree of enforceability remain unclear.[50] On the other hand, academic freedom in England excludes research students.[51] Students are guaranteed freedom of speech under the new Higher Education (Freedom of Speech) Act 2023, but not as part of *academic freedom* rights that remain exclusive to academic staff. In Germany, students – like everyone – are considered right-holders of scientific freedom under Article 5(3) of the German Constitution when independently engaged in relevant scientific activity, e.g. conducting research for their theses.[52] They also hold rights under other provisions, e.g. occupational freedoms, but whether these support a distinct category of *scientific freedom* claims remains either relatively absent from the discourse or disputed.[53] One further debated aspect of students' rights is their participation in higher education governance. In Poland, institutional autonomy has been suggested to include the right of students to participate in the elections of academic bodies,[54] but it has not been authoritatively clarified whether the constitution gives rise to an enforceable individual right to that effect. Student associations in Greece are to be regulated by a statute (Article 16(4) of the Constitution), but there has similarly been no authoritative constitutional recognition of students' right to participate in university governance.[55] In Germany, although various actors enjoy self-governance rights, the matter has not been fully clarified by courts either.[56] Some key questions remain therefore unresolved.

In contrast to students, the rights of individuals professionally engaged in teaching or research are well covered in constitutional jurisprudence and legal scholarship. In Greece, 'academic freedom' extends beyond university faculty to include others involved in university's research or teaching, e.g. invited external speakers.[57] University professors nevertheless 'enjoy special personal and functional independence' as public functionaries under Article 16(6) of the Constitution.[58] In England, academic staff are protected, but the status of roles like library staff or research assistants remains unclear.[59] In the Netherlands, the exact personal scope of

[49] See, e.g., Papadoloulou in the edited volume (section B(a)).
[50] Janka Stoker, Carel Stolker and Berteke Waaldijk, 'Powerful and Vulnerable. Academic Freedom in Practice' (University of Amsterdam 2023) 38, 53–54.
[51] See Barendt in this edited volume.
[52] Hans Jarass, 'GG Art. 5 [Kommunikationsfreiheiten Sowie Kunst- Und Wissenschaftsfreiheit]' in Hans Jarass and Bodo Pieroth (eds), *Grundgesetz für die Bundesrepublik Deutschland* (17th edn, 2022) para 140.
[53] See the German chapter in this edited volume.
[54] See Piotr Winczorek, *Komentarz do Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r*. (Warszawa 2000) 170, as cited in Michał Bartoszewicz, 'Art. 70' in Monika Haczkowska (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (LexisNexis 2014).
[55] See Papadoloulou in the edited volume.
[56] See the German chapter in this edited volume.
[57] Spyridon Vlachopoulos, 'Article 16: education, arts, science' in Spyridon Vlachopoulos, Ksenofon Kontiadis, Giannis Tasopoulos, Constitution – interpretation by article (2023), p. 26, as cited in V. Kosta and O. Ceran (n 17) 62.
[58] See Papadoloulou in the edited volume.
[59] See Barendt in this edited volume.

academic freedom is difficult to assess due to the multiplicity of relevant norms, but secondary law clearly grants protection to 'individual teachers and researchers'.[60] Where scientific freedom is "everyone's freedom", it becomes applicable to anyone conducting relevant activities in a sufficiently independent way (Greece, Germany, Italy, Poland).[61] Still, university teachers and researchers are its core bearers, as the freedom is particularly relevant for professional scientific staff. Their academic qualifications or formal roles may influence how the rights are defined, balanced, or distinguished from those of non-professionals.[62] There is therefore a broad acceptance that the nature and scope of the rights ascribed to different rights holders might be functionally differentiated.[63]

The final group of right-holders within the matrix are institutions (especially universities). Here, constitutional texts and doctrinal interpretations vary considerably.[64] Italy, Greece, and Poland protect institutional autonomy explicitly (under Article 33(6), Article 16(5), and Article 70(5) respectively). In Italy, the provision grants autonomy only to higher education institutions, universities and academies, though legal scholarship asserts that it extends to other public research organisations.[65] The Greek Constitution foresees that 'education at university level shall be provided exclusively by institutions which are fully self-governed public law legal persons' (Article 16(5)), but other legal persons – while not granted comparable self-governance rights – can still be right-holders under Article 16(1).[66] In Poland, Article 70(5) applies to public and private higher education institutions, but – following a textual interpretation – not to other scientific institutions.[67] Given their growing role, some scholars argue that these other institutes or organisations should be recognized as rights-holders under Article 73 on scientific freedom (similarly as in Greece).[68] However, this proposal has not yet been widely accepted. The legal landscape varies among the remaining jurisdictions. In Germany, Article 5(3) does not mention institutions explicitly, but both scholarship and legal practice have taken a functional approach and broadly recognized institutional scientific freedom for a range of actors – public and private universities, research institutes, sufficiently autonomous faculties, with some authors suggesting even its applicability to museums or foundations.[69] Institutional autonomy can be discussed in reference to the value of free education under Article 23 of the Dutch Constitution,[70] but its exact scope – especially if

[60] Stoker, Stolker and Waaldijk (n 50) 38. See Groen in this edited volume (s 6.2).
[61] See the national chapters in this edited volume.
[62] E.g. *Judgment of the Polish Constitutional Tribunal of 28 April 2009* (K 27/07) OTK ZU 4A/2009, poz 54; *Judgment of the Polish Constitutional Tribunal of 25 November 2008* (K 5/08) OTK-A 2008/9 poz. 159.
[63] See, for example, the German chapter in this edited volume.
[64] Institutional autonomy is particularly widely discussed in Italy, in contrast to other jurisdictions that typically devote more attention to individual freedoms.
[65] See Calvano in this edited volume.
[66] Vlachopoulos (n 57), p. 17.
[67] Leszek Garlicki and Marta Derlatka, 'Art. 70' in Leszek Garlicki and Marek Zubik (eds), *Konstytucja Rzeczypospolitej Polskiej. Komentarz. Tom II, wyd. II* (Wydawnictwo Sejmowe 2016) s 21; Krzywoń (n 42) s II.4.
[68] Wojciech Brzozowski, 'I.Konstytucyjna Wolność Badań Naukowych i Ogłaszania Ich Wyników' in Aleksander Jakubowski and Aleksandra Wiktorowska (eds), *Prawo nauki. Zagadnienia wybrane* (Lexis Nexis 2014) s I.4.
[69] See the German chapter in this edited volume. Klaus Ferdinand Gärditz, 'GG Art. 5 Abs. 3' in Günter Dürig, Roman Herzog and Rupert Scholz (eds), *Grundgesetz. Kommentar* (CH Beck 2024) para 135; see also Barendt (n 32) 156–157 on funders of research or publishers.
[70] Groen in this edited volume, s 5.

compared to non-tertiary education – remains unclear. In the UK, 'institutional autonomy' features in statutory law and is directly associated with higher education, but is not treated as a *constitutional* right, even if recognized in practice.[71]

The state and its bodies are universally the principal duty bearers with the 'matrix'.[72] However, duties can also extend – 'in a cascading fashion' – towards other rights-holders in the matrix.[73] These include primarily public institutions that bear duties towards individuals within them.[74] Views differ on the horizontal application of academic or scientific freedoms (i.e. between private actors). German law excludes such a possibility, albeit – in line with broader constitutional principles – Article 5(3) GG can have indirect horizontal effect on private relationships, influencing interpretation of relevant rights and duties.[75] Some (indirect) horizontal application is acknowledged in Greece,[76] and may be possible in Italy. In Poland, scholars remain divided, with some advocating for a narrow interpretation of horizontal application.[77] No substantial debate on the topic exists in England or the Netherlands, though Dutch commentators note some obligations – not explicitly legal – of various actors to respect academic freedom.[78] Notwithstanding the formal status of a duty-bearer, some individual responsibilities may be seen as inherent to the profession and influence the interpretation of academic or scientific freedoms in legal judgments.[79] Further, as private actors increasingly shape research and education, it may be expected that more questions concerning non-state duty-bearers are likely to arise across jurisdictions.

3.4. The nature and function of academic freedom

All the issues discussed above are shaped, even if implicitly, by how each legal system understands the nature and function of academic or scientific freedoms, or the relationship between their individual and institutional dimensions. These freedoms share some features with other 'intellectual' or 'expressive' freedoms, primarily of the arts or speech, as often reflected in their systemic placement.[80] Other rights may also be functionally related, such as rights concerning state's informational duties,[81] freedom of movement, or freedom of association.[82]

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[71] See Barendt in this edited volume.
[72] Appiagyei-Atua (n 47) 154.
[73] ibid.
[74] Where professors are granted a particular official status (e.g. as civil servants in Germany), they may also be in some circumstances considered duty-bearers in reference to other individuals. See Dieter Grimm, 'Wissenschaftsfreiheit als Funktionsgrundrecht', in Dieter Grimm, Lothar Zechlin, Christoph Möllers, and Uwe Schimank (eds), *Wissenschaftsfreiheit in Deutschland. Drei rechtswissenschaftliche Perspektiven*, (Wissenschaftspolitik im Dialog, 14/2021, Berlin-Brandenburgische Akademie der Wissenschaften) 17, 23. See also Barendt (n 32) 132.
[75] Barendt (n 32) 133.
[76] See Papadoloulou in the edited volume.
[77] Compare Garlicki and Derlatka (n 39); Brzozowski (n 68) s I.5.
[78] Stoker, Stolker and Waaldijk (n 50) 54; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW, 'Academische vrijheid in Nederland. Een begripsanalyse en richtsnoer' (Koninklijke Nederlandse Akademie van Wetenschappen 2021) s 3.4 <https://knaw.nl/publicaties/academische-vrijheid-nederland>.
[79] E.g., *Judgment of the Polish Constitutional Tribunal of 28 April 2009* (K 27/07) OTK ZU 4A/2009, poz 54. See also Stoker, Stolker and Waaldijk (n 50) 51–52.
[80] See Section 3.1.
[81] See Brzozowski (n 68) s I.2; Żukowski and Jarosz-Żukowska (n 33) 727.
[82] See Groen in this edited volume.

However, despite this closeness or functional relationship, their theoretical foundations do differ.[83] While a comprehensive legal theory of academic or scientific freedom is lacking in most jurisdictions, a closer discussion of their philosophical underpinnings helps to clarify differences in interpretation and application. In this regard, Germany stands out with a more theoretically elaborate doctrine, occasionally referenced in countries like Greece and Poland.[84] Germany's constitutional understanding of scientific freedom has been shaped by its philosophical traditions, particularly Wilhelm von Humboldt's influential vision of modern universities.[85] Central to his ideas were freedoms of research, teaching, and learning, the unity of teaching and research, and the freedom of science in a functional sense, intended to protect the university as a place of scientific activities. Though adapted in various ways, both in educational practice and legal thought, Humboldt's ideas remain visible in German constitutional jurisprudence.[86] Other philosophical ideas have also played an important role in the understanding of academic freedom, such as writings of John Stuart Mill in the UK.[87] Further, the concept is shaped by states' historical experiences, as illustrated by Greek debates on 'university asylum'.[88] Therefore, while some theoretical foundations are shared, varying experiences may result in different doctrinal approaches to specific questions.

One such question concerns the negative or positive nature of academic or scientific freedoms. The freedoms are universally recognized as negative freedoms, protecting from external interference, but their positive side is not unanimously accepted everywhere. In Italy, despite a distinction being drawn by some between Article 9 and Article 33 of the Constitution, both have been said to impose positive obligations.[89] German constitutional law recognizes the so-called 'objective dimension' of fundamental rights, including Art. 5(3) GG, that gives rise to positive obligations and has played an important role in the jurisprudence of the German Federal Constitutional Court.[90] Positive obligations of the state, such as provision of sufficient resources or adequate organisational frameworks, have also been accepted in Greece.[91] They flow from Article 16(1) of the Greek Constitution that mandates the 'development and promotion' of science, as well as Article 16(5) on financial entitlements of public higher education institutions. These obligations, in combination with Article 16(4) (free education at all levels) and Article 16(8) (ban on private universities), led to the exclusively public character of higher education in Greece.[92] In Poland, positive obligations are recognized in reference to institutional autonomy (Article 70(5)), but remain debated under Article 73 (scientific

[83] See Barendt in this edited volume.
[84] See, e.g., Papadoloulou in the edited volume; Żukowski and Jarosz-Żukowska (n 33) 723.
[85] See the overview in Terence Karran, 'Academic Freedom: In Justification of a Universal Ideal' (2009) 34 *Studies in Higher Education* 263.
[86] See, for example, references to the unity of research and teaching in the Judgment of the German Federal Constitutional Court (First Senate) of 13 April 2010 (1 BvR 216/07).
[87] See Barendt in this edited volume.
[88] See Papadoloulou in the edited volume
[89] See Calvano in this edited volume.
[90] See the German chapter in this edited volume.
[91] See Papadoloulou in the edited volume.
[92] See Section 4.4 and Papadoloulou in the edited volume.

freedoms).[93] In the Netherlands and the UK, while positive obligations may be recognized in secondary law or sectorial practice, or implied by stakeholders, their constitutional status has not yet been authoritatively clarified.[94]

Lastly, an important aspect of the discussion – often leading to tensions in practice – concerns the relationship between institutional and individual dimensions of the freedoms. Most jurisdictions see institutional autonomy as functional to individual freedoms or, additionally, the right to education, shaping the scope of institutional duties.[95] However, the new English legislation frames individual academic freedom as an aspect of institutional autonomy, a development characterised as 'unfortunate'[96] and potentially creating issues in cases of their conflict. In the Netherlands, secondary legislation clearly requires institutions to respect academic freedom, but the fragmented legal framework leads to some controversies, e.g., in the context of institutions' autonomy to terminate employment of their academic staff.[97] These tensions relate simultaneously to the broader issue of legitimate limits of academic freedom and institutional autonomy.

3.6. Limits of the right

All examined jurisdictions recognize that academic and scientific freedoms are subject to limits, but their doctrinal construction varies.[98] Germany and Greece explicitly state that exercise of certain freedoms – of teaching in Germany, and broader academic freedom in Greece – does not exempt anyone from allegiance to the constitution (Article 5(3) and Article 16(1), respectively). The German Federal Constitutional Court has not yet offered clear guidance how this clause should be interpreted, but it has been suggested that it allows for limitations where teaching freedoms are abused against the democratic order.[99] The interpretation of the Greek provision, inspired by the German Constitution, is also yet to be fully clarified.[100] Explicit limitations may result from other constitutional provisions. For example, Article 39 of the Polish Constitution prohibits scientific experimentation on a person without their voluntary consent. Provisions on institutional autonomy in Poland, Greece and Italy directly task the legislators with outlining the limits to the autonomy of relevant institutions in a statute.[101] In the Netherlands, where academic freedom rests on various legal norms, limits depend on the underlying provisions. In England, academic freedom is granted

[93] See Ewa Łętowska, 'Fałszywe paradoksy ochrony wolności nauki' [2021] Nauka 87, 93; Garlicki and Derlatka (n 39) s 11; Monika Florczak-Wątor, 'Art. 73' in Piotr Tuleja (ed), *Konstytucja Rzeczypospolitej Polskiej. Komentarz, wyd. II* (LEX 2021); Brzozowski (n 68) s I.3.
[94] E.g. Graeme C Moodie, 'On Justifying the Different Claims to Academic Freedom' (1996) 34 Minerva 129, 147; Stoker, Stolker and Waaldijk (n 50) 51.
[95] See, for example, Calvano, Papadoloulou (section C(b)) and Barendt in this edited volume.
[96] See Barendt in this edited volume.
[97] See Groen in this edited volume (s 3.2.).
[98] For example, *Wissenschaftsfreiheit* is generally considered to be an 'absolute' right in German law. What this means, however, is not that it is not subject to any limits, but rather that it cannot be limited by a regular statute, in contrast to some other rights (including other expressive rights). See the German chapter in this volume.
[99] Hans Hofmann and Hans-Günter Henneke (eds), *GG. Kommentar zum Grundgesetz* (Carl Heymanns Verlag, Wolters Kluwer 2025) para 51.
[100] See Papadoloulou in the edited volume (Section B(c)).
[101] Article 70(5) in Poland, Article 16(5) in Greece, and Article 33 in Italy.

'within the law' and the legitimate limits of or institutional autonomy are to some extent set out in the legislation, but much uncertainty remains.[102] In both jurisdictions, an important source of academic freedom rights is Article 10 ECHR, permitting restrictions for grounds listed in Article 10(2) ECHR. However, the European Court of Human Rights has so far had only a few opportunities for explicitly discussing permissible limits to academic freedom.[103]

Academic or scientific freedoms may also be limited under broader constitutional doctrines and/or clauses. First, justified restrictions arise universally from the need to protect other constitutional rights, following a balancing of interests based on each state's constitutional doctrine,[104] including in cases of conflicting academic or scientific freedom rights of different academic actors. For example, the German Federal Constitutional Court has recognized that a professor's teaching freedom is not absolute and must have consideration for other university members, in particular students, in light of the university's educational mission.[105] Second, professional norms and values have also been recognized as limitations to the freedoms in several jurisdictions, albeit discussed in various doctrinal terms (often in connection with the material scope of protection).[106] In Germany, restrictions can result from the protection of the functional conditions of science, such as evaluation regimes or measures against scientific misconduct.[107] Research evaluation frameworks have given rise to several controversies also in other jurisdictions, but they do not appear to have been settled by courts.[108] Third, some constitutions contain general limitation clauses that are relevant in this context. For example, Article 31(3) of the Polish Constitution lists general conditions for limitations of constitutional rights and freedoms, while Article 233(1) allows to limit scientific freedom and institutional autonomy in times of martial law and states of emergency.[109] While untested in practice, these provisions potentially leave a wider margin for limitations than permitted in, for example, Germany. Therefore, while all jurisdictions see the freedoms as subject to certain limits, the nature and scope of permissible restrictions may vary.

3.7. Preliminary conclusions

This comparison, while not exhaustive, reveals key patterns in how academic and scientific freedoms are understood across the selected jurisdictions. Freedom of sciences or freedom of scientific research (Germany, Greece, Italy, and Poland) constitute "everyone's freedoms" that protect pursuit of truth. By contrast, academic freedom (as recognized in Greece, the Netherlands, and England) is tied to the academic context, yet substantively covers similar activities: research, its dissemination, and teaching. Among these, freedom of teaching remains the least developed across jurisdictions. In parallel, also students' status as rights-holders of academic or scientific freedoms remains underexplored: while their membership in the

[102] See Barendt in this edited volume.
[103] See Uitz and Sajó in this edited volume.
[104] All the jurisdictions are also familiar with the proportionality doctrine, albeit its exact structure may vary.
[105] Gärditz (n 69) para 161.
[106] Żukowski and Jarosz-Żukowska (n 33) 727; Commissie voor de Vrijheid van Wetenschapsbeoefening van de KNAW (n 78) 26.
[107] E.g., Judgment of the German Federal Constitutional Court (First Senate) of 17 February 2016 (1 BvL 8/10). See also the German chapter in this edited volume.
[108] See Calvano in this edited volume.
[109] See also Bodnar and Kuna in this edited volume.

academic community is acknowledged, no jurisdiction clearly recognizes a *constitutional* 'freedom to study' as part of scientific or academic freedom. In the context of institutional autonomy, broadly recognized, national doctrines vary in defining its scope, both material and personal. Despite significant substantive overlaps at an abstract level and some shared theoretical underpinnings, approaches differ further with regard to structural issues, such as the existence of positive obligations or the possibility of horizontal application. In all jurisdictions, at least some important questions about the nature of protection remain open, allowing for new normative proposals to be informed by comparative insights. The same applies more broadly to the Netherlands or the UK, where the constitutional embedding of academic freedom is limited.[110] Alongside the national level, these insights can offer guidance for interpreting Article 13 CFR, at the core of this volume. The provision explicitly distinguishes between the freedom of the sciences and academic freedom, while the so-called *Lex CEU* judgment clearly recognizes Article 13 CFR as encompassing both an individual and an institutional or organisational dimension.[111] At the same time, neither the legislator nor the Court of Justice has provided a comprehensive explanation of the scope of these concepts, allowing for the comparative insights to lay the foundation for future normative debates.

4. Framing the freedoms: key questions in practice

The previous section outlined the core features of constitutional protection of academic and scientific freedoms across the jurisdictions. This section examines how these provisions have been applied in practice in response to four specific challenges, identified from both national (bottom-up) and EU (top-down) perspectives. Though unevenly distributed across jurisdictions, these challenges offer further insights into the evolving understanding of academic and scientific freedoms in Europe.

4.1. Freedom of speech or academic freedom?

Challenges to academic freedom often manifest as challenges to academic speech. Since freedom of speech is a widely recognized human right, in contrast to academic freedom, the latter is often subsumed under free speech protections (see, e.g., the general remarks on the Dutch constitutional framework in Section 3.1). This raises a conceptual question: how do the two freedoms differ? The issue arises also in EU law, where Article 13 CFR links to 'the right to freedom of thought and expression' and Article 10 of the ECHR (freedom of expression).[112] Clarifying their relationship is therefore timely for both national and European legal actors.

A comparative perspective reveals that all jurisdictions recognize the shared foundations of free speech and academic or scientific freedoms, at least in their expressive dimension.[113] However, jurisdictions with separate provisions on academic or scientific freedoms (Germany, Greece, Italy, Poland) see them as clearly distinct and extending beyond expressive activities.[114] It is then generally accepted that these provisions constitute *lex specialis*

[110] Stoker, Stolker and Waaldijk (n 50) 37. See also Barendt in this edited volume.
[111] ECJ 6 October 2020, Case C-66/18, *European Commission* v *Hungary*, paras 226-227.
[112] European Union, Explanations Relating to the Charter of Fundamental Rights [2007] OJ C303/17, 25 (Explanation on Article 13).
[113] See Section 3.4.
[114] See Calvano, Papadopoulou, Bodnar and Kuna in this edited volume.

applicable to cases of academic or scientific speech, governed by a distinct rationality of scientific discourse and expertise – and potentially in need of stronger safeguards.[115] Certain limits that apply to broader free speech do not therefore apply equally to academic or scientific freedoms (e.g. the 'buon costume' – common decency – clause in the Italian constitution).[116] On the other hand, it is the freedom of expression that grounds protection of academic freedom in the Netherlands and the UK. While the former is clearly a self-standing constitutional right, the latter has not been authoritatively granted such status – though national commentators still regard academic freedom as distinct.[117] Due to the lack of established constitutional doctrines, they often turn towards the ECHR, where academic freedom is treated as a qualified form of expression, influencing 'the threshold of necessity and proportionality' of any interference.[118] National statutory laws can be seen as supporting such an assessment. For example, academics are not subject to the same restrictions of expression as other public officials in the Netherlands.[119] While no English court judgments explicitly refer to the relevant jurisprudence of the ECtHR or academic freedom as such,[120] it has now been – for the first time – asserted before the Dutch Supreme Court. In a controversial case involving a publication by Dr. Susanne Täuber and her subsequent dismissal from the University of Groningen,[121] the Court recognised academic freedom under Article 10 ECHR, yet found no violation thereof, as no sufficient causal relationship was established between the academic publication and the termination of employment. In the assessment of causality between the expression and the sanction (dismissal), the Court chose to apply the same standards as applicable to the general freedom of speech. Given the limited scope of the Court's analysis, ambiguity persists regarding the broader relevance of the distinction between the two freedoms and the scope of protection granted to academic freedom beyond free speech under Dutch law.[122]

Controversies persist also in other jurisdictions. Recent legislation in England and Poland has been criticised for, respectively, either implying that academic freedom is a subset of freedom of speech, or for conflating the two.[123] In Poland, critics highlighted the constitutional distinction between scientific freedom (subject to scientific rationale) and the general freedom of speech (free of such constraints).[124] Although few challenges to academic speech have reached the highest courts, they illustrate how scholars' constitutional rights can be balanced against other rights and interests. In Greece and Poland, challenges to academic speech – particularly in historical research – have often arisen through defamation claims and memory laws that criminalize certain narratives on historical events, in some contexts amounting to

[115] E.g. Gärditz (n 69) para 31; Łętowska (n 93) 90. P. Perlingieri and P. Pisacane (n 45). On a more nuanced view regarding the systemic placement of the provision in Poland, see Jacek Sobczak, 'Wolność badań naukowych - standardy europejskie i rzeczywistość polska' [2007] *Nauka i Szkolnictwo Wyższe* 53, 53.
[116] Calvano in this edited volume.
[117] Barendt, Groen in this edited volume.
[118] Barendt, Groen, see also the chapter Uitz and Sajó in this edited volume.
[119] Groen in this edited volume.
[120] Barendt in this edited volume.
[121] Hoge Raad, ECLI:NL:HR:2025:1140 (11 July 2025). For the description of the circumstances of the case, see also Groen in this edited volume.
[122] I would like to thank my colleague Emma De Vries for her assistance with the interpretation of the judgment.
[123] Barendt, Polish chapter in this edited volume.
[124] Łętowska (n 93) 94–95.

strategic lawsuits against public participation.[125] Courts in both countries have sought to balance the relevant freedoms with other rights and interests, affirming the need to protect academic and expressive freedoms in cases concerning research publications.[126] Where the scientific nature of the speech is not fundamentally in question, judges have emphasized that neither they nor national parliaments should settle historical facts through legal prohibitions and sanctions.[127]

High-profile disputes between academics and their institutions have been recently reported all in Germany, Italy, the Netherlands, and the UK. In the Netherlands, as already mentioned above, Dr. Täuber was dismissed by her employer (University of Groningen) after publishing an article critical of her university's gender equality policies.[128] The university deemed the publication defamatory and disruptive to collegial relations. The termination of Dr. Täuber's employment was upheld by courts, including by the Dutch Supreme Court that recognized academic freedom under Article 10 ECHR but noted an overall breakdown in the employment relationship and the lack of a sufficient causal link between the article and the termination.[129] Joris Groen notes that academic freedom in the Netherlands currently offers limited protection in such employment disputes.[130] While some commentators have criticised this state of affairs, Groen emphasises the collective dimension of the academic enterprise and cautions against drawing courts into such disputes.[131] In a somewhat comparable Italian case, a scholar got suspended for one month (without pay) for publishing a contribution critical of working conditions in private online universities.[132] Though no institution was named, the employer claimed reputational harm. The challenge against the sanction was framed in constitutional terms, but the court focused on institutional obligations contained in secondary law that proclaim all university institutions – including private or online ones – as primary locations of free research and education. It also emphasised that disciplinary sanctions are only permissible under specific legal grounds, such as serious insubordination, which were not met. As such,

[125] See Adam Bodnar and Aleksandra Gliszczyńska-Grabias, 'Strategic Lawsuits against Public Participation (SLAPPs), the Governance of Historical Memory in the Rule of Law Crisis, and the EU Anti-SLAPP Directive' (2023) 19 European Constitutional Law Review 642; Ioanna Tourkochoriti, 'Memory Politics and Academic Freedom: Some Recent Controversies in Greece' (Verfassungsblog, 14 January 2018) <https://verfassungsblog.de/memory-politics-and-academic-freedom-some-recent-controversies-in-greece/>. It is interesting to note that the Greek controversies arose under the law implementing the European Council Framework Decision 2008/913/JHA on criminalizing the denial of crimes against humanity, illustrating how EU law can get implicated in such cases as well. See Ioanna Tourkochoriti, 'Challenging Historical Facts and National Truths: An Analysis of Cases from France and Greece' in Uladzislau Belavusau and Aleksandra Gliszczyńska-Grabias (eds.), *Law and Memory: Towards Legal Governance of History* (Cambridge University Press, 2017) 151–174.
[126] See ibid.
[127] See ibid.
[128] For the description of the circumstances of the case, see Groen in this edited volume. For the article in question, see Susanne Täuber, 'Undoing Gender in Academia: Personal Reflections on Equal Opportunity Schemes' (2020) 57 Journal of Management Studies 1718 <https://doi.org/10.1111/joms.12516>.
[129] Hoge Raad, ECLI:NL:HR:2025:1140 (11 July 2025).
[130] See Groen in this edited volume.
[131] See the discussion in Groen in this edited volume.
[132] Tar Lazio, III sez., ruling no. 6682/2014, June 24, 2014.

Calvano finds marginalisation to be the most common "sanction".[133] Nevertheless, the precise boundaries of individual academic speech in the context of employment remain contested.

The high-profile cases in Germany and the UK differ from earlier examples, as courts did not directly engage with academic or scientific freedom. In Germany, a Max Planck Institute academic was dismissed over social media posts critical of Israel after the Hamas-led attacks of 7 October 2023. The institute saw the posts as anti-Semitic and incompatible with the core values of the Max Planck Society.[134] While the labour court sided with the academic on procedural grounds (notice), it upheld the dismissal substantively. Notably, the case was discussed not under scientific freedom (Article 5(3) GG), but under general freedom of expression (Articles 5(1) and 5(2) GG) – focusing on the speech predominantly in the context of rights and duties in employment.[135] The court also invoked the employer's professional freedom (Article 12 GG) and, interestingly, the Institute's own rights under Article 5(3) GG, including the duty of loyalty to the Constitution covered by the provision. While – to the best of my knowledge – not appealed, the judgment raises important questions about how scholars' (extramural?) speech is categorized and assessed by courts.[136] A partially comparable case arose in the UK, involving Professor David Miller.[137] While the case was not decided in reference to academic freedom directly, the employment tribunal asserted that '[t]he fact that what was partly in issue involved both political and academic speech are also important considerations in the balancing exercise' and found the dismissal disproportionate.[138] These cases highlight the complex balance between institutional interests and individual rights, especially when academic speech goes beyond core academic activities. In employment disputes, institutional interests often carry significant weight but must be carefully balanced against individual freedoms, considering the specific circumstances of each case.

4.2. Academic freedom and language

The choice of language in research and teaching is increasingly viewed through the lens of academic freedom, especially regarding the language of instruction. Once mainly a minority rights issue, it now intersects with debates on higher education internationalization and the rise of English-language instruction and publishing in non-English-speaking countries. With different arguments raised in support or opposition of such developments, questions arise as to whether language policies – mandating or restricting foreign languages – implicate academic freedom *as a legal right*. This issue has also been raised in reference to Article 13 CFR, against

[133] See Calvano in this edited volume.
[134] Max-Planck-Gesellschaft, 'Statement of the Max Planck Society about Prof. Ghassan Hage' (Max-Planck-Gesellschaft, 7 February 2024) <https://www.mpg.de/21510445/statement-ghassan-hage>.
[135] Arbeitsgericht Halle, judgment of 10 December 2024, 1 Ca 378/24.
[136] Extramural speech is understood either as (1) expression by academics on general political and social affairs, or (2) as expression outside of their institutional (academic) context. Defining such speech and the scope of freedom granted in this context has long caused controversies. These dilemmas may also hinge on whether the issue concerns academic or scientific freedom, with the latter potentially offering clearer doctrinal answers as less dependent on the institutional context and professional attributes of the speaker.
[137] For a more detailed discussion of the case, see Barendt in this edited volume.
[138] Miller v University of Bristol [2024] ET 1400780/2022 (31 January 2024) <https://assets.publishing.service.gov.uk/media/6707c243366f494ab2e7b67d/Miller-judgment-1400780.2022-JDT.pdf>. See also Barendt in this edited volume.

the backdrop of Latvian law restricting the use of foreign languages in higher education, but the Court of Justice did not discuss the matter.[139] While the comparative analysis offers no clear answers, national case law and scholarship remain nevertheless potentially valuable in shaping jurisprudential ideas also in this context.

National disputes about language emerge from different legal and political contexts, but consistently raise questions about institutional autonomy, academic freedom, and access to knowledge. Greek and Polish scholars from various fields have criticised research evaluation schemes that prioritize English-language publications and outlets, arguing they undermine academic freedom, diminish linguistic diversity, and limit access and utility of the knowledge produced to local communities.[140] In the Netherlands – the most internationalized of the non-English-speaking jurisdictions discussed here – debates focus on language of instruction.[141] A recent bill on the internationalisation of higher education proposed a special requirement for a ministerial approval based on a restrictive test for foreign-language programmes, among others to preserve the Dutch language and improve access to education for Dutch students.[142] Some stakeholders view the proposed solutions as an infringement of the autonomy of higher education institutions and academic freedom.[143] This impression may be reinforced by the fact that the government, while recognising the value of this autonomy, justified the bill also by the universities' inadequate approach to managing internationalisation and the influx of foreign students. Despite these debates, comprehensive constitutional analyses of these issues or relevant case law are absent in all three jurisdictions.

In contrast, such analyses can be found in Italy and Germany, with Italy being the only jurisdiction where the issue reached the Constitutional Court. The case arose from a 2012 decision by the Academic Senate of the Politecnico di Milano to teach all Master's degree and PhD programmes exclusively in English, in reference to the need for internationalisation mandated by national law.[144] Challenged by some staff members, the measure was eventually

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[139] Judgment of the Court (Grand Chamber), Case C-391/20 *Boriss Cilevičs and Others* (22 September 2022) ECLI:EU:C:2022:638; see also the Opinion of Advocate General Emiliou, Case C-391/20 *Boriss Cilevičs and Others* (8 March 2022) ECLI:EU:C:2022:166, paras 107-109, where it was suggested that such measures restrict the academic freedom of teachers.

[140] Christos Mais, 'Publish (in English) or Perish: Greek Academia and the Imposition of English Language' (2024) 27(1) *The Journal of Electronic Publishing* <https://doi.org/10.3998/jep.5329>; Anna Odrowąż-Coates, 'Chaos Theory and the Neoliberal English-Based Dimension of the Polish Higher Education Reforms 2018/2019' (2020) 24(1) *Education as Change* 1 <https://doi.org/10.25159/1947-9417/5913>. Language intersects also with some Greek debates on the private nature of higher education. See Section 4.4 below.

[141] E.g., Jos Swanenberg and Massimiliano Spotti, 'The Monolingual Campus and the Bilingual Campus: Ideological Debates on the Management of Language Diversity at Two Dutch Universities' (2025) 2 *Diversity & Inclusion Research* <https://doi.org/10.1002/dvr2.70010>.

[142] For the draft and accompanying legislative developments, see 'Wetsvoorstel internationalisering in balans' (Wetgevingskalender, overheid.nl) <https://wetgevingskalender.overheid.nl/Regeling/WGK015111>.

[143] ibid.; Royal Netherlands Academy of Arts and Sciences (KNAW), 'Academy: academic freedom in the Netherlands under pressure' (KNAW, 15 May 2025) <https://www.knaw.nl/en/news/academy-academic-freedom-netherlands-under-pressure>.

[144] See the Judgment no. 42/2017 of the Italian Constitutional Court. The semi-official English translation uses the term 'academic freedom', though the original Italian text refers explicitly to 'freedom of teaching' and of 'the arts and sciences'. For a case summary in English see Diana-Urania Galetta, 'Academic Freedom and the Use of Native Languages (the Italian "English-Only" Saga and Its Downsides)' in Margrit Seckelmann and others (eds), *Academic Freedom Under Pressure?* (Springer International Publishing 2021).

referred by the Council of State to the Constitutional Court to rule on the constitutionality of the national law underpinning it. The Court held that the measure could violate equality (Article 3 of the Constitution), the primacy of the Italian language (Article 6 of the Constitution) and academic freedom (Article 33 of the Italian Constitution) of the staff members. The constitutional judges reasoned that such a violation would result from 'a significant effect on the manner in which teachers are required to teach, depriving them of the choice over how to communicate with students, irrespective of their degree of familiarity with the foreign language'.[145] While institutional autonomy to make choices regarding internationalisation – including introduction of foreign-language courses – is also constitutionally protected, it must be balanced with other constitutionally protected rights and interests, such as the right to education, and comply with legitimate boundaries set by relevant statutory law.[146] In the given case, the law itself was upheld as it allowed for constitutionally consistent interpretations: the objective of internationalisation could be pursued in many alternative ways.[147] The Council of State eventually ruled that the university's decision was unlawful.[148]

In Germany, courts have not clarified the link between academic freedom and language, but the issue has been discussed in scholarship – though, to the best of my knowledge, only in one contribution. Language choice has been considered a core component of Article 5(3) rights, whether seen as part of dissemination or teaching freedoms.[149] However, these freedoms can be limited by other constitutional rights and freedoms (such as the right to education or – in cases of private institutions – business freedoms).[150] Any restrictions must however be proportionate, and this assessment depends on context. For example, the legitimate aims in limiting language of publications at a public university are hard to establish, but linguistic choices in teaching may require a more in-depth proportionality assessment and be circumvented by, e.g. educational needs of students and the university's mission to deliver such education.[151] More broadly, while not explicitly framed in constitutional terms, universities may be understood to have both the right and duty 'to formulate an institution-specific language policy that contributes to the preservation of German as a language of academic discourse and at the same time actively promotes the acquisition and use of other languages', as reflected in a detailed 2011 resolution on language policies issued by the German Rector's conference.[152]

As this discussion shows, the choice of language is becoming an increasingly relevant dimension of academic freedom debates across jurisdictions. While authoritative legal interpretations are rare, with Italy being a notable exception, the comparative analysis suggests broad recognition of language choice as part of both individual academic freedom and

[145] Translation following ibid 106.
[146] See the Judgment no. 42/2017 of the Italian Constitutional Court, para 4.2. In my view, the judgment does not clearly establish a violation of students' *academic freedom*. Compare the remarks in ibid 112–113.
[147] See also ibid 109.
[148] On later developments, see ibid 111.
[149] Maren Jantz, 'Sprachwahl und Wissenschaftsfreiheit' (2017) 1 *Ordnung der Wissenschaft* 41–50, 42.
[150] ibid 46.
[151] ibid 45, 49.
[152] German Rectors' Conference (HRK), 'Language Policy at German Universities' (November 2011) <https://www.hrk.de/resolutions-publications/resolutions/beschluss/detail/language-policy-at-german-universities>.

institutional autonomy. However, any restrictions – especially in teaching – are highly context-dependent and must be balanced against other constitutional rights. Some issues remain in need of conceptual clarification, for example, whether indirect "steering" through evaluation schemes qualifies as a restriction in a *legal* sense, notwithstanding any broader claims to this effect. With internationalisation increasingly shaping higher education policy across Europe, the need for clearer normative guidance becomes more and more pressing.

4.3. Academic freedom and employment stability

While academic freedom and employment issues often intersect in cases involving controversial speech, as discussed above, recent debates have expanded also to structural concerns about precarious working conditions in academia and its widespread reliance on fixed-term appointments, fellowships, and grants. The University and College Union Academic Freedom Survey found that most academics in the UK and approximately half of their EU-based colleagues, perceive a decline in employment stability.[153] The structural concerns have led to bottom-up initiatives, such as the German Network for Decent Labour in Academia[154] and various legal actions. For example, two academics in the UK successfully brought a case against the University of Oxford, challenging their repeated employment on fixed-term contracts and winning their claim to employee status.[155] Dutch courts similarly recognized PhD researchers funded through grant scholarships as employees and afforded them corresponding benefits and legal protection.[156] In Italy, a new law introducing various types of fixed-term contracts even gave rise to a preliminary question to the CJEU about the interpretation of the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work.[157] Although these rulings weren't explicitly framed in terms of academic freedom, various commentators have perceived issues of such precarious employment as hampering the freedom.[158] Explicit constitutional arguments were used in recent debates on private higher education in Greece, where scholars argued that private universities must guarantee professors the employment stability constitutionally granted in public institutions.[159] The constitutional relevance of the issue is further illustrated by cases

[153] Terence Karran and Lucy Mallinson, 'Academic Freedom in the UK: Legal and Normative Protection in a Comparative Context' (Report for University and College Union, May 2017) <https://www.ucu.org.uk/media/8614/Academic-Freedom-in-the-UK-Legal-and-Normative-Protection-in-a-Comparative-Context-Report-for-UCU-Terence-Karran-and-Lucy-Mallinson-May-17/pdf/ucu_academicfreedomstudy_report_may17.pdf>.

[154] Network for Decent Labour in Academia (NGAWiss), 'Demands of the Network for Decent Labour in Academia' (Mittelbau, 2025) <https://mittelbau.net/demands-of-the-network-for-decent-labour-in-academia/>.

[155] A Jolly and R Abrams v The Chancellor, Masters and Scholars of the University of Oxford (Employment Tribunal, 9 February 2024) Case Nos 3313598/2022 and 3313599/2022, <https://www.gov.uk/employment-tribunal-decisions/a-jolly-and-r-abrams-3313598-slash-2022-and-3313599-slash-2022>. For a summary, see 'Academics win claim against Oxford University over "sham contracts"' The Guardian (21 February 2024) <https://www.theguardian.com/education/2024/feb/21/academics-win-claim-against-oxford-university-over-sham-contracts>.

[156] Algemene Onderwijsbond (AOb), 'Hoge Raad oordeelt: beurspromovendi zijn werknemers' (AOb, 11 June 2024) <https://www.aob.nl/en/actueel/artikelen/hoge-raad-oordeelt-beurspromovendi-zijn-werknemers/>.

[157] Judgment of the Court (Sixth Chamber), Joined Cases C-40/20 and C-173/20 *AQ and Others v Presidenza del Consiglio dei ministri and Others*, (15 December 2022) ECLI:EU:C:2022:985. For more details, see Calvano in this edited volume. The law has since been changed.

[158] E.g. Calvano in this edited volume; Stoker, Stolker and Waaldijk (n 50) 46.

[159] Giannis A. Tasopoulos, Το "νέο" άρθρο 16 του Συντάγματος, η ακαδημαϊκή ελευθερία και η εργασιακή σχέση των καθηγητών στα ιδιωτικά πανεπιστήμια (SyntagmaWatch, 6 March 2024)

brought to courts in Germany and Poland, invoking claims to freedom of scientific research and raising interesting questions about any positive obligations that may be derived from respective constitutional provisions in this context.

The German Federal Constitutional Court considered whether fixed-term academic employment (without objective reasons) affects the freedom of a university teacher to carry out their scientific activities, in reference to Article 12 (professional freedom) in connection with Article 5(3) of the Constitution (scientific freedom).[160] The Court held that these rights do not confer a guarantee for continuous employment nor direct protection against job loss. While scientific freedoms have a positive dimension, they must be balanced with other rights and the legislature has broad discretion in doing so – limited only where scientific activity is structurally threatened. In this case, the labour courts were held to have reasonably concluded that the relevant higher education law was proportionate to the objective of supporting innovation in research and teaching, by allowing universities to increase staff rotation through fixed-term appointments. The fixed-term nature of the employment was not found to cause any concrete impairment of the claimant's freedoms. The Constitutional Court saw no structural risk to scientific freedoms in the case in question, citing an overall low number of fixed-term contracts in Brandenburg (the state concerned). It noted, however, that some individual cases might amount to an abuse of rights. Interestingly, the claimant also referred to the Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work, claiming the failure of lower courts to refer a question to the CJEU, but the Federal Constitutional Court found no constitutional obligation to do so in this case.

Several employment-related cases have reached the Polish Constitutional Tribunal, which has consistently held that the freedom of scientific research does not entitle individuals to employment at universities, more stable employment conditions, nor any related material claims against the state or their institutions.[161] In one case, the claimant challenged the constitutionality of provisions allowing for academic staff to be employed either by appointment or by "regular" employment contract, arguing that appointment offers more stability and better legal protection – and should therefore be the default for the regulation to uphold rights and freedoms set out in Article 73 of the Constitution.[162] The Tribunal acknowledged the importance of these freedoms to academics in particular but stressed their connection to academic duties and students' right to education. It upheld universities' autonomy in deciding how to fulfil their mission, noting the need to ensure high-quality education in competitive conditions. The Tribunal also held that Article 73 does not guarantee permanent or more stable employment and that scientific freedom can be exercised outside academia. It further noted that transitional roles in question, such as assistants and adjuncts, are meant to lead to academic independence. Competition both among universities and among academic

<https://www.syntagmawatch.gr/trending-issues/to-neo-arthro-16-tou-syntagmatos/>. For more context, see Section 4.4.

[160] Decision of the German Federal Constitutional Court (First Senate) of 15 November 2018 (1 BvR 1572/17). It is worth noting, however, that most German professors are appointed as civil servants for life.

[161] E.g. Judgment of the Polish Constitutional Tribunal of 7 February 2006 (SK 45/04), Judgment of the Polish Constitutional Tribunal of 12 April 2012 (SK 30/10).

[162] Judgment of the Polish Constitutional Tribunal of 28 April 2009 (K 27/07).

staff was seen as contributing to better implementation of Article 70(1) and Article 73 of the Constitution, allowing the best universities to retain the most highly qualified academic teachers. At the same time, scholars increasingly suggest that the broader doctrine sceptical of positive obligations merits reconsideration in the future, because modern research necessarily requires some baseline material resources.[163]

This overview shows that employment stability is a growing concern across jurisdictions. While some courts have upheld academic claims to employment status, the constitutional courts in Germany and Poland have been cautious about extending *constitutional* scientific freedoms to cover employment stability. Nevertheless, the German Court seems to have left more room for reconsideration if structural threats arise, with a similar sentiment observed in the Polish literature. A broader question is whether the issue would result in different approaches when analysed in reference to academic freedom that – unlike the relevant freedoms in Poland and Germany – is specific to the academic sector. Debates on this issue are likely to continue and may implicate, as shown, also EU law.

4.4. Academic freedom and the organisation of the academic sector

Many of the challenges discussed above are conditioned by how each state organises its academic sector. These organisational provisions – including constitutional frameworks – offer insight into the philosophical foundations of institutional freedoms. While academic organisation is primarily a national prerogative, is does at times overlap with unresolved questions in EU law, such as the scope of the 'institutional and organisational dimension' under Article 13 CFR, or the ambit of the right to found educational establishments under Article 14(3) CFR.[164]

Greece is unique in explicitly requiring higher education institutions to be public, as stated in Article 16(5) and (8) of its Constitution. This contrasts with provisions for lower-level educational institutions that can be established by private actors. As discussed by Papadopoulou, this framework rests on two key arguments. First, free access to higher education is widely seen as a social right closely related to academic freedom. Therefore, to guarantee access to tertiary education for all citizens, fees in higher education can be introduced only for postgraduate courses and only as long as they are not unreasonably high.[165] This led to some institutions establishing fee-based, English-language courses that exclude Greek nationals – a development illustrating further how the use of language may intersect with constitutional issues concerning higher education.[166] Second, the public character of universities is viewed as conducive to academic freedom, which private institutions – reliant on private resources – may not be able to guarantee.[167] In other words, this organisational choice can be seen as a "manifestation" of academic freedom. Public higher education institutions consequently have a constitutional claim to state funding to ensure the necessary

[163] Łętowska (n 93) 97–98; Brzozowski (n 68) s I.3.
[164] ECJ, Case C-66/18, *European Commission* v *Hungary* (6 October 2020), paras 226-227.
[165] See Papadopoulou in this edited volume.
[166] Personal communication with Lina Papadopoulou.
[167] See Papadopoulou in this edited volume, Section C(b)(i) and C(f)(i).

conditions for academic work, 'to the extent that the institution's own resources are not sufficient for this'.[168] However, as summarised by Papadopoulou, recent reforms signal an increasing political pressure to allow the establishment of private universities. Many constitutional scholars see this as contrary to the Greek Constitution, while others argue that it could resolve tensions between national provisions and EU free movement laws.[169] The public–private divide has thus become central to an ongoing constitutional debate in the field. In contrast, private higher education has long been accepted in all other jurisdictions, even if the higher education sector remains overwhelmingly public in all of them. The right to found such establishments is granted by Article 33(3) of the Italian Constitution, Article 7(4) of the German Constitution, Article 23 of the Dutch Constitution, and Article 70(3) of the Polish Constitution, as well as permitted by statute in the UK. Though emphasis varies, existence of the private sector is generally justified by educational pluralism and structural independence from the state. From this perspective, the right to found (private) educational establishments becomes conducive to academic freedom.

What further intertwines with questions of the public character of education or institutional autonomy is the issue of payment for educational services. In Poland, while Article 70(2) of the Constitution explicitly permits the legislator to allow public institutions to charge for certain educational services, such right is clearly limited by the right to education,[170] similarly as in Greece. The Polish Constitutional Tribunal identified some conditions that must be met for such fees to remain compliant with the constitutional right to free education: they must be exceptional in both scale and scope, consider other constitutional values (including the protection of public finances), and cannot be charged for educational services already fully funded by public resources nor exceed the actual cost of providing the services. Finally, a public university 'cannot … turn itself into a commercial enterprise, a profit-oriented entity competing with private universities and fully subject to market forces'.[171] According to the Tribunal, the right to introduce any fees is therefore shaped both by the institutions' constitutional autonomy and their public mission set out by Article 70 (right to education) at large.[172] Tuition fees have been widely discussed also in other jurisdictions. The Constitutional Court in Baden-Württemberg, one of Germany's highest state courts, held that the right to education does not guarantee free university education and upheld the state's authority to set fees for international (non-EU) students.[173] In the UK and the Netherlands, tuition fees for domestic students (and EU/EEA students in the Netherlands) are generally set by statute, while institutions enjoy significant autonomy in setting fees for other categories of students.[174] Interestingly, institutional fees in the Netherlands apply also to second degrees – a regulation

[168] See Papadopoulou in this edited volume, Section C(b)(ii) and references mentioned in footnote 136.
[169] See Papadopoulou in this edited volume.
[170] See, for example, the judgments of the Polish Constitutional Tribunal: of 5 June 2014 (K 35/11) and of 8 November 2000 (SK 18/99).
[171] Judgment of the Polish Constitutional Tribunal of 8 November 2000 (SK 18/99) [own translation]; see also Monika Florczak-Wątor, 'Art. 70' in Piotr Tuleja (red.), *Konstytucja Rzeczypospolitej Polskiej. Komentarz* (LEX 2023).
[172] Judgment of the Polish Constitutional Tribunal of 8 November 2000 (SK 18/99).
[173] Judgment of the Constitutional Court of Baden-Württemberg of 10 October 2022 (1 VB 29/18).
[174] The fees have been subject to several court decisions. See, for example, Raad van State (Administrative Jurisdiction Division), Judgment of 1 March 2023, ECLI:NL:RVS:2023:839.

that could be seen as contrasting with the Polish Constitutional Tribunal's evaluation of fees for second (and subsequent) study programmes in Poland as unconstitutional.[175] While, to my best knowledge, no direct references to academic freedom have been drawn in such debates in the Netherlands or the UK, the issue of fees clearly intersects with different understandings of both the right to education and institutional autonomy. Still, even these relatively liberal funding structures cannot necessarily prevent institutions from facing financial difficulties if state funding is insufficient, and the legal remedies available to address such difficulties are limited.[176]

Another key organisational issue is accreditation, the formal process of quality assurance for higher education institutions and programmes. Whether public or private, educational institutions require accreditation to gain state recognition and, where relevant, access to public funding. While accreditation mechanisms vary, their impact on academic freedom has been widely recognized. In Germany, extensive discussions on the topic followed changes "imposed" by the Bologna Process and the Europeanisation of the higher education area.[177] The Federal Constitutional Court held that accreditation 'affects the general and the teaching-related organisational autonomy of higher education institutions, also with regard to their budgets', but – as a quality mechanism – does not inherently conflict with the freedom of research and teaching. However, the legislator must establish suitable organisational and procedural accreditation rules, 'taking into consideration the intrinsic rationale of academic research and teaching', respecting institutional prerogatives, and granting academics sufficient participation in the accreditation process itself.[178] The Court further emphasised that Europeanisation of higher education rests on cooperation measures and – as it remains the full responsibility of the Member States – cannot in itself justify restrictions on scientific freedom.[179] Commentators in Italy, the Netherlands, and the UK have also noted the need for accreditation bodies to maintain academic independence, albeit explicitly framed in constitutional terms in Italy only.[180] In Poland, while no direct challenge has been brought in reference to the relevant provisions, the Constitutional Tribunal remarked in another complaint that rules on accreditation and competent bodies should not lose sight of constitutional values such as institutional autonomy and/or scientific and teaching freedoms, cautioning against regulatory overreach.[181] Therefore, while specific models vary, accreditation is generally regarded as compatible with academic and scientific freedoms, as long as it aligns with the intrinsic rationale of academic work. Aside Germany, what this means in practice has yet to be authoritatively clarified in detail.

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[175] Polish Constitutional Tribunal, judgment of 5 June 2014 (K 35/11). The Dutch and Polish regulation discussed here do not have the same scope, but both apply to second degrees.
[176] See, for example, Barendt in this edited volume.
[177] E.g., U. Quapp, 'Akkreditierung – Ein Angriff auf die Freiheit der Lehre? Verfassungsmäßigkeit der Akkreditierung unter besonderer Betrachtung der Lehrfreiheit' (2010) 43 *Wissenschaftsrecht* 346; Ute Mager, 'Verfassungsrechtliche Rahmenbedingungen der Akkreditierung von Studiengängen – Zugleich eine Kritische Auseinandersetzung mit der Akkreditierungs-Entscheidung des Bundesverfassungsgerichts und eine Verfassungsrechtliche Bewertung des Akkreditierungs-Staatsvertrags' Heft 4 *Ordnung der Wissenschaft* 237.
[178] BVerfG, 1 BvL 8/10, Judgment of the First Senate, 17 February 2016.
[179] BVerfG, 1 BvL 8/10, Judgment of the First Senate, 17 February 2016.
[180] See Groen, Calvano in this edited volume.
[181] Polish Constitutional Tribunal, 25 July 2013, SK 61/12.

5. Conclusions

This comparative analysis, though not exhaustive, shows that academic and scientific freedoms are a familiar feature across Europe, despite the variation in legal vocabularies. Nevertheless, while significant commonalities exist at the abstract level, national approaches diverge in important ways regarding all their constitutional embedding, substance and structure. Several issues remain underdiscussed, such as the position of students as academic freedom rights-holders. Shared conceptual roots do not fully eliminate fragmentation or divergence in application, shaped by differing national contexts and historical experiences. Where constitutional entrenchment is limited, as in the Netherlands or the UK, academic freedom's legal status remains somewhat ambiguous – creating both space for legal innovation and a risk of legal uncertainty. The analysis nevertheless reveals a relative scarcity of legal-theoretical reflection on academic freedom in Europe, in particular in reference to the modern challenges faced by the sector. Even so, comparative scholarship can contribute to a clarification of relevant legal concepts and provide interpretative guidance, both for national and EU legal actors. That said, any normative proposals for EU law must account for the EU's unique institutional and legal setup. As constitutions always relay on a particular equilibrium between substantive and institutional norms, the comparative insights cannot be directly transplanted into EU-level norms – yet they help to frame new questions or to guide possible solutions.[182] The importance of a multi-level dialogue is underscored by the many intersections between national and EU law that emerge in reference to specific challenges, e.g. in the context of employment stability. Building on this comparative foundation, the following chapter develops more concrete normative proposals for EU law.[183]

[182] See Mark V Tushnet, 'Interpreting Constitutions Comparatively: Some Cautionary Notes, with Reference to Affirmative Action' (2004) 36 *Connecticut Law Review* 649, 650, 662–663.
[183] See Kosta in this edited volume.