



DROIT A L'EDUCATION ET LIBERTE D'ENSEIGNEMENT | RIGHT TO EDUCATION AND FREEDOM OF EDUCATION |
CONSULTATIVE STATUS WITH THE UN, UNESCO AND THE COUNCIL OF EUROPE

**Contribution to Special Rapporteur on the right to education's report
"Academic Freedom and Freedom of Expression in Educational Institutions"**

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3. What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?

- a) A major challenge we see to academic freedom is the rigidity the term has been treated with in the past. A narrow understanding of "academic freedom", defined in terms of higher education, and then applied, without adaptation, to other education levels can be counterproductive. The scope of academic freedom on the primary and secondary levels has to be established.
- b) If we think of academic freedom on all levels of education, then the legal framework to protect it needs to apply a broadened understanding of the "academic community". If minors on the primary and secondary education level are seen as part of the academic community, then not only they but also their parents, as their representatives, have to be considered part of the academic community. A legal framework for protecting academic freedom on all levels without mentioning the crucial role of parents will remain incomplete and the academic freedom of students, especially minors, will be insufficiently protected.

4. Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. [...]

The needed autonomy of educational institutions to function properly and to protect human rights differs greatly between different levels of education (primary, secondary, and higher education). Universities teach adults, while primary and secondary educational institutions teach minors. Primary and Secondary Education helps students to establish who they are (art. 26.2 UDHR), while Universities help students to establish critical thinking (among others). It is commonly expected that primary school children learn concrete subjects, such as mathematics,



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language, civic education, etc. Because this is a given, a primary educational institution has only limited freedom in the content of its curriculum and thus limited self-governance. This is different for higher education institutions which don't need the same restrictions on the education they offer. They can offer courses in French or not, in mechanical engineering or not. Therefore, higher education institutions should have more autonomy and self-governance than primary and secondary education institutions.

Besides the levels of education, a differentiation should also be made between the different providers of education (governmental and non-governmental education). Parents are the primary responsible for a child's upbringing (art. 18.1 CRCh) and they have the right to choose the education for their children (art. 26.3 UDHR). Parents often choose non-governmental schools based on a certain pedagogy or philosophy of the school. Those schools need high autonomy in terms of the hiring process or curricula so they can offer a particular education. In that way, parents have a real choice between different schools and then, after choosing one, have assurance over the education of their children for whom they are responsible. If a State homogenizes curricula in its territory or it forces schools to hire and keep teachers that do not submit to the philosophy or pedagogy of a particular school, the parent's choice and their right to choose become void. In other words, the autonomy of non-governmental schools is a requirement for granting the right of parents to freedom of education.

Also on the academic level, a difference must be made between governmental and non-governmental institutions to determine the institution's autonomy. On the one hand, non-governmental bodies have the right to establish and manage schools and universities to pursue an educational project different from the public one (art. 13.4 ICESCR). In the case of a private university, individuals and private institutions have invested their resources to support that specific educational project. They should have the right to a high level of self-governance, because if not, their right to exist is void. On the other hand, public universities are managed by the State and thus the university does need the same amount of autonomy to exist.

9. Do teachers and professors, at all levels of education, enjoy freedom of expression in their own teaching? Are there any limitations imposed, such as remaining "neutral" or forwarding a particular perspective, e.g. on religious and political matters?

Academic freedom and the freedom of teaching are strongly connected. One cannot choose a teacher if the teacher does not have the freedom to teach. It seems obvious that one should be able to choose their teacher. This was already done in classical Greece, and schools around great teachers have existed throughout modern history. However, there is an essential difference in a teacher's freedom of expression between higher education and primary and secondary education.



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In primary education, the child is a "moldable clay." Kant stated that "man is only what education makes of him." We speak of the ultimate purpose of education as the "free development of personality" (art. 26 UDHR, art. 13. ICESCR). The dimension of "being" is essential for this free development of personality and it has been extensively discussed by the Faure and Delors reports from UNESCO. This dimension is especially relevant for non-mainstream groups. Parents, as mediators of the child's identity, should be able to choose the school, which in non-university education mediates academic freedom. Therefore, in all major global educational agreements, parents play an essential role. Without their mediation, children, especially those belonging to minorities, are susceptible to receiving an education that empties their cultural identity. Tragic the cases where teachers, without family intermediation, became instruments of eliminating identities, such as the Inuit in Canada or Catholics in Napoleonic France.¹ For the protection of cultural rights and freedom of religion, teachers, especially of non-governmental schools, can therefore be expected to forward a particular cultural or religious perspective that parents have chosen for the development of identity for their child.

In higher education, there is an assumption of freedom on the part of the adult student that does not require the above-mentioned parental mediation. Therefore, the parents' role of mediation decreases as the student theoretically has full "faculties, direction, and appropriate guidance" (art. 5 CRCh). Furthermore, an educational institution like a university is designed with the goal of expanding knowledge and spirit.² This is impossible without ample freedom for professors to teach and think. Rigid State control over faculties would hinder the development of matters such as philosophy or mathematics.

¹ UNESCO, Reimagining our futures together, p. 26

<https://unesdoc.unesco.org/ark:/48223/pf0000379707>

² AGÍS VILLAVERDE, M. (2008). Los orígenes de la universidad en Europa y los desafíos del futuro. In M. AGÍS VILLAVERDE, Galicia y Japón: del sol naciente al sol poniente (p. 183-196). Santiago de Compostela: Universidade da Coruña, Servizo de Publicacións.