



Belkin M.L. ♦

Iurynets J.L. ♦

DOI: 10.25108/2304-1730-1749.iolr.2017.52.78-125

Administrative and legal guarantees of academic freedoms as freedom of expression

Abstract: The administrative and legal guarantees of academic freedoms – components of the right to freedom of expression are considered. It is established that the concept of academic freedom is a recipe for the principles of freedom of expression in a specific field – teaching in higher educational institutions. Academic freedom is an important factor in the activities of universities, recognized as an important type of freedom by the Council of Europe, its legislative recognition, consolidation and observance are in line with international obligations, at least countries of the Council of Europe, the general democratic tendencies in the modern world. A generalized understanding of academic freedoms includes both the freedom of teaching and the freedom of scientific, pedagogical, scientific and/or innovative activity, but the limitations established by law and evaluated by the academic community are not excluded.

Keywords: academic freedom; freedom of expression; freedom of teaching; freedom of scientific and pedagogical; scientific and/or innovative activity; cultural rights; information rights; the 1950 Convention on the Protection of Human Rights and Fundamental Freedoms; the Parliamentary Assembly of the Council of Europe; the Bologna process; the Magna Charta of European Universities; University autonomy; UNESCO; the International Labor Organization (ILO); the

♦ **Belkin Mark Leonidovich** – candidate of law, lawyer, director of the law firm Mark Belkin's "Etalon" (Kiev, Ukraine), e-mail: advokat@etalon.co.ua

♦ **Iurynets Julia Leonidovna** - PhD, Department of Constitutional and Administrative Law Faculty of the National Aviation University, Kiev (Ukraine). E-mail: iurynetsjulia@ukr.net



UNESCO and ILO Recommendations dated 11.11.1997 “On the status of teaching staff in higher education institutions”; administrative persecution of scientists.

The urgency of developing this topic is that the level of academic freedoms has always been an indicator of the general level of freedoms in society [5, p. 19]. American researcher Philip H. Altbach notes that academic freedom, undoubtedly, is the main value of higher education. Facts show that today academic freedom is an indispensable condition for a high-level university of world level. The evidence seems to show the requirement. The various international rankings of universities give those institutions with a high degree of academic freedom the top scores. Few highly ranked universities systematically violate traditional norms of academic freedom. A high degree of academic freedom is particularly important for the social sciences and humanities, but all fields benefit from freedom of inquiry and a sense that the university is committed to the free expression of ideas [20].

The Soviet period of activity of the higher school in the USSR was characterized by a complete lack of academic freedoms. As Prof. Ya. Ganitkevich [4], before the Bolshevik coup, the universities that operated, in particular, on the Ukrainian lands (Lviv, Chernivtsi, Kharkov, Kiev, Odessa), for a long time enjoyed university autonomy, which, in certain limits, was also provided on lands under the power of Russian tsarism (in accordance with the charter of the tsarist government from 1804, compiled according to the system of autonomy of German universities). Having seized power in Ukraine, the communist regime, first of all, completely destroyed the university system, first of all, the university system of self-government and autonomy. Soviet universities were left without the basic privileges of the secular university system, only superficially in their structure (the administration, faculties, departments), reminding the European universities, but in contrast to them were under the petty care of party and administrative bodies [4]. In the Soviet era, special traditions of relations between the state and higher



education were created. The dominant ideology considered higher education as a means of educating and training the ‘new’ formation [2, p. 32]. All universities were governed by the state, and teaching and scientific research were subjected to strict ideological control for compliance with the Marxist-Leninist doctrine [3, p. 48]. A vivid example of the violation of academic freedoms in the USSR was the phenomenon that was defined as ‘Lysenkoism’ – any administrative persecution of scientists for their ‘politically incorrect’ scientific views¹. At the moment, Ukraine painfully overcomes the conscience of academic lack of freedom [4].

Similar problems are also faced by Azerbaijan. As noted in a research report [8], the system of higher education in the Republic of Azerbaijan, according to the Education Act, 1992, is based on the Western European model of higher education. This entailed, in particular, quite a radical revision of all embodied in the Soviet educational system principles. Accordingly, the content of the training programs of bachelors and masters is determined by state standards of higher education, which establish, inter alia, protection of independence and academic freedom. Similar to F.P. Rakhmanov indicates that education in our country (*Azerbaijan – note the authors*) moved to an entirely new structure of the educational standards that provides ample academic freedom for flexible formation programs according to the specific needs of the economy [11].

A relatively small number of works [2-7, 12, 14, 20 and some others] are devoted to the scientific and/or practical aspects of the essence and/or provision of academic freedom, including the author's works [15-19].

Describing the importance of university autonomy, an outstanding physician and teacher M.I. Pirogov wrote [10, p. 338-339]: “...The whole autonomy of the university can only consist in making it as bureaucratic as possible and as dependent as possible on bureaucracy. Autonomy and bureaucracy go together. A

¹ <https://wiki2.org/en/Lysenkoism>



scientist striving for independence is an ordinary matter; an official with this aspiration is unthinkable... And what does the activity of a corporation, united in a single whole by the spiritual interests of science, have in common and undertaken a moral obligation to educate, with the activities of other civil classes? The rights of this corporation are in the freedom of thought and speech. Its strength lies in the power of truth... Autonomy on a large scale, as it is necessary in the case of radical reform, can only be given to a decentralized university”.

In these statements, even before formal formalization in legal documents, the principles of academic freedoms of higher education are actually formulated.

In a lecture [13], read on 17/09/1904, the Russian philosopher P. Tikhomirov noted that the central characteristic feature of university teaching and student studies in Germany can be defined in one word: freedom! This, as its Germans call, ‘academic freedom’ (‘akademische Freiheit’), in fact, has two sides: 1) the freedom of professors to teach anything and anything; and 2) the freedom of students to learn anything, anywhere and anyhow. The first freedom of teaching is ‘Lehrfreiheit’, the second freedom of teaching is ‘Lernfreiheit’ (‘lehren’ – to teach and ‘lernen’ to learn). These concepts of ‘Lehr- und Lernfreiheit’ are not mere harassment or even distractions from the current state of affairs, and the principle that is tacitly recognized by German law itself normalizes university life – the activities of professors and students. Freedom of teaching is the pride of the German university [13].

In Ukraine, the concept of «academic freedom» was first fixed at the level of law “On Higher Education” Law of Ukraine as amended on 01/07/2014, № 1556-VII (hereinafter – Act No. 1556-VII). Table 1 provides definitions relevant to this concept. As pointed out by Ukrainian author N. Davidova, in this edition of the Law of the right to academic freedom for the first time directly assigned certain norms, which is a sign of progressive approach to the implementation of the



principles of ‘academic freedom’ [7, p. 92]. The task now is to fill these norms with concrete content, taking into account the progressive Western legal tradition.

Table 1

The use of the concept of ‘academic freedom’ in Act No. 1556-VII

The Rule of Law	Content
Item 1 of Part 1 of Art. 1	Autonomy of a higher educational institution – independence, independence and responsibility of the higher educational institution in making decisions on the development of academic freedoms, the organization of the educational process, scientific research, internal management, economic and other activities, independent selection and placement of personnel within the limits established by this Law
Item 3, Part 1 of Art. 1	Academic freedom – independence and independence of the participants in the educational process during the implementation of pedagogical, scientific, pedagogical, scientific and / or innovative activities carried out on the principles of freedom of speech and creativity, the dissemination of knowledge and information, the conduct of scientific research and the use of their results, and is implemented subject to restrictions Law
Item 5, Part 3 of Art. 3	Formation and implementation of the state policy in the sphere of higher education are provided by: 5) the development of the autonomy of higher education institutions and the academic freedom of participants in the educational process. The autonomy of a higher educational institution predetermines the need for such self-organization and self-regulation that are open to criticism, serve the public interest, establish truth about the challenges facing the state and society, are carried out transparently and publicly
Item 1 of Part 1 of Art. 57	Scientific and pedagogical, scientific and pedagogical employees of a higher educational institution of all forms of ownership have the right: 1) academic freedom, which is realized in the interests of the individual, society and humanity as a whole

Table 2 summarizes the definitions of academic freedoms, used, inter alia, in international acts on higher education. The above definitions indicate that



academic freedoms imply freedom of expression and action, in particular, protection from restrictions on political, religious, ideological grounds on the part of the state or other entities; Freedom of information dissemination, including relatively contradictory and unpopular views; Include both freedom of teaching and freedom of scientific, pedagogical, scientific and/or innovative activities; but the limitations established by law and evaluated by the academic community are not excluded. In this context, the properties of the rights to academic freedom correspond to the properties inherent in cultural and information rights in their unity.

Consideration of academic freedoms as cultural rights allows us to conclude that they are specific, as these rights are closely related to the right to education. At the same time, considering the construction of the legal regulation of academic freedoms (or its components) – where such regulation is carried out, it can be concluded that it is possible to classify academic rights in terms of cultural rights - at least in terms of the principles of legal regulation, protection and/or restrictions, as well as the general scope of their application.

Table 2

The use of the concept of ‘academic freedom’ in international practice

A source	Content
Rec. 1762 (2006) Parliamentary Assembly of the Council of Europe, of 30/06/2006, p. 4.1	Academic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17469&lang=en
The Declaration on Academic Freedom and Autonomy of Institutions of Higher Education (Lima, 10/09/1988), Item a),	‘Academic freedom’ means the freedom of members of the academic community, individually or collectively, in the pursuit, development, and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing, and writing. https://osut.ro/wp-content/uploads/2017/05/Declaratia-de-la-Lima-din-10-septembrie-1988.pdf



Part 1	
Academy for academic freedom, AFAF	Principles of academic freedom: – both inside and outside of an educational institution or research organization full freedom is allowed to raise any questions and strive for truth, including about conflicting and unpopular views, regardless of whether or not someone touches one or another point View. – educational institutions and research organizations are not allowed to restrict academic freedom for their staff members, and to use their public statements as an excuse for disciplinary action or dismissal Http://dic.academic.ru/dic.nsf/ruwiki/613724
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, 27/07/2010	Academic freedom includes the right of individuals to freely express an opinion on the institution or system in which they work; Perform their functions without experiencing discrimination or fear of persecution by the State or other entity, participate in the work of professional or representative scientific bodies and enjoy all the internationally recognized human rights inherent in other persons under the same jurisdiction Http://www.leofond.ru/upload/iblock/069/069d2c98da9141de900eb6618a25f740.pdf
Model Law of the CIS «On Education, Item 15 of Art. 1 Ch. 1	Academic freedom is the freedom to set forth a subject at your discretion, to choose topics for scientific research and to conduct them by one's own methods, as well as the freedom of learners to acquire knowledge according to their inclinations http://www.cis.minsk.by/page.php?id=7782
Byrne P. Academic Freedom of Part-Time Faculty // Journal of College and University Law. – 2001. – Vol. 27. – No 3. – P. 583-593.	The components of academic freedom: – the right of the teacher to engage in the chosen research topic and submit his professional opinion without imposing and fearing the imposition of responsibility for political, religious, ideological views, but the result of the research can be assessed by colleagues or officials of the institution; – the right of the teacher to teach without fear the imposition of responsibility for political, religious, ideological views, but the education must correspond to the reasonable educational aspiration of the student and



	<p>respect the student's dignity;</p> <ul style="list-style-type: none">– the right of the teacher as a citizen to speak out on socially important topics and pursue together with other political goals without fear of imposing responsibility, but it is necessary to separate propaganda from science;– the right of the teacher to have a position on the educational policy and institutional priorities of the university without fear of imposing responsibility, but it is necessary to respect
--	---

So, in part 3 of Art. 15 of the International Covenant on Economic, Social and Cultural Rights (1966) provides that the States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. In Art. 13 “Freedom of the arts and sciences” of the Charter of Fundamental Rights of the European Union of 07.12.2000 (2000/C 364/01) specifies that “the arts and scientific research shall be free of constraint. Academic freedom shall be respected”. In the Report “Cultural rights in the case-law of the European Court of Human Rights”, the decisions of the Court in the field of protection of academic freedoms are categorized as cultural rights [9, p. 21-22]. Thus, there is a general relationship with the right to self-expression in general (artistic, informational) regulation of the right to academic freedom.

Based on the study of the regulation of academic freedoms in the United States N. Davydova [7] will conclude that the concept of the right to academic freedom in the US is an ideological expression that is not fixed either at the level of the Constitution or other legislative acts or at the level of judicial precedents of the Supreme Court. Most often this right is interpreted in the context of the First Amendment on the right to freedom of speech. The content of the right to academic freedom is determined by judicial practice and the following documents:

- a) Recommendations on the institutional regulation of academic freedom and perpetual labor relations;
- b) Bulletin of the principles of academic freedom and perpetual labor relations, approved by the American Association of University



Professors [7, p. 92]. As noted in the article [1], the generalized basic principles of academic freedoms are set forth in the Statement on the Principles of Academic Freedoms and Academic Career of 1940, jointly adopted by the “American Association of University Professors” and “the Association of American Colleges” (now «American Association of Colleges and Universities»). According to these principles, “the teaching staff in the course of fulfilling their duties enjoys the freedom to express their views on the subject”. ‘Statement’ allows the administration to impose “restrictions on academic freedom on religious and other issues”, which should be indicated in writing when applying for a job. The implementation of this agreement is monitored by six regional commissioners who work in all US colleges and universities, including private and religious schools. All revealed cases of violations are to be publicized in the mass media.

Considering academic freedom in the context of Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as the ECHR), S. Shevchuk notes that the right to receive and disseminate information and ideas includes the right to academic freedom as a legal means of opposing state interference in determining the content of curricula and the adoption of On the work of professors and teachers. Accordingly, any restriction on the activities of schools and universities should obviously be necessary to achieve a legitimate aim. The concept of academic freedom is based on considerations that the common good of society is the search for knowledge and their free expression [14, p. 464].

As noted above, the level of academic freedoms has always been an indicator of the general level of freedoms in society [5, p. 19]. Accordingly, the restriction or elimination of academic freedoms has always marked the roll-out of a society to authoritarianism and totalitarianism. For example, in Germany, during the Third Reich, the self-government traditional for German universities was abolished, the former humanistic ideals of higher education were replaced by



political and racial institutions that imposed militarism and territorial expansion. All professors and teachers were obliged to adjust their lectures in accordance with the ideology of National Socialism. Italy was no exception, where teachers were forced to swear allegiance to the fascist regime. Above attention was paid to significant deviations from the principles of academic freedom in the higher education system in the former USSR, where the subordination of the teaching content in almost all branches of knowledge to the principles of communist ideology was clearly manifested, rigid administrative and party control over the activities of the teaching corps, etc. [5, p. 19]. N. Davydova [7] draws attention to numerous deviations from the observance of the principles of academic freedom in the United States during the ‘witch-hunting’ of 1950-1957 – political repression against ‘anti-American attitudes’ [7, p. 88-89].

And today, Philip G. Altbach notes, traditional academic freedom is under threat in many places today, creating the need for more attention to be paid to contemporary challenges. These crises range from professors being subject to severe sanctions for their teaching, research, or expression – including firing, jail, or even violence. Groups like Scholars at Risk provide assistance to such academics and publicize their problems. In some countries, restrictions exist on what can be researched, taught, and published. In some cases the restrictions are explicit, but in most cases the ‘red lines’ that cannot be crossed are not clearly spelled out. Yet, academics may be sanctioned if they violate these terms [20].

The fact that such threats are not purely speculative is evidenced by the concern expressed in the preamble to the UNESCO and ILO Recommendation concerning the Status of Higher-Education Teaching Personnel on 11/11/1997 on the vulnerability of the academic community to untoward political pressures, which could undermine academic freedom, considering that the right to education, teaching and research can only be fully enjoyed in an atmosphere of academic freedom and autonomy for institutions of higher education.



As noted in PACE Recommendation 1762 (2006), para. 4.3, history has proven that violations of academic freedom and university autonomy have always resulted in intellectual relapse, and consequently in social and economic stagnation (*obviously, if these violations are not eliminated, note the authors*).

It is in connection with the problems that have arisen in the field of academic freedom in the second half of the 20th century that a need has arisen in the context of new socio-political and sociohumanitarian realities, the implementation of systematic educational reforms in many countries of the world, the deployment of active internationalization processes and international cooperation in higher education, to remind Europe of the historic mission of universities, to update the age values and traditions of university education, which entailed the adoption of the Great Hart European universities. The following provisions of the Charter are significant for the implementation of the mission's universities: university autonomy, freedom in research and teaching activities; the university is an independent institution that creates, studies, evaluates and communicates culture through research and training; Research and teaching activities must be morally and intellectually independent of any political and economic power; Training must meet the requirements of society and achievements in scientific knowledge; To ensure freedom in research and teaching, all members of the university community should be provided with the necessary funds for its implementation, and the recruitment of teachers and the determination of their status should take place in accordance with the principle of the inalienability of research activities from teaching staff; Each university should guarantee to its students the observance of freedoms and conditions under which they could achieve their goals in culture and education.

As noted in the Magna Charta of European Universities, the university, being at the heart of societies differently organized due to various geographical conditions and differences in historical development, is an autonomous institution



that critically creates and transmits culture through research and education. To adequately respond to the needs of the modern world, it must have moral and intellectual independence in relation to any political and economic power, realizing its activities in the field of research and education. Freedom of research, education and training, being the fundamental principle of the life of universities, should be guaranteed by both the state authorities and universities, each in its own sphere of competence. Rejecting intolerance and supporting an open, incessant dialogue, the university is a privileged meeting place between teachers with the ability to transfer knowledge and the means of their development through research and innovation, and students who have the right, the will and the capacity to enrich knowledge. The University affirms the urgent need for mutual knowledge and interaction of cultures. As noted in [12], these provisions just mean the requirements for the autonomy of universities and academic freedoms recognized as fundamental principles of university life.

Thus, if in fact implement the principles of the Bologna Process, then it is necessary to ensure compliance with these principles.

In doing so, the Bologna Principles received a positive assessment and full support for PACE. As noted in the PACE Recommendation 1762 (2006), The Parliamentary Assembly of the Council of Europe recalls the Magna Charta Universitatum opened for signature by universities in 1988 on the occasion of the 900th anniversary of the University of Bologna (Italy), which has since been signed by some 600 universities from all continents with new signatories every year (Art. 1). The Magna Charta Universitatum reflects the vital role universities played in the development of the European humanist tradition and in the development of civilisations. It also reiterates that the fundamental principles and rights of academic freedom and institutional autonomy are essential for universities, and that continued observation of those values is for the benefit of individual societies and humanity in general (Art. 2). In 2000, the University of



Bologna and the Association of European Universities, as depositories of the Magna Charta Universitatum, founded the Observatory of Fundamental University Values and Rights, to which the Council of Europe has delegated a representative. The task of the Observatory is to monitor the observation of the principles and initiate an open debate on the values these principles represent (Art. 3). The Assembly resolves to co-operate with the Observatory of the Magna Charta Universitatum in monitoring the observance of the principles of academic freedom and university autonomy in Europe, thus adding a European parliamentary dimension to the work of the observatory (Art. 13). In accordance with the Magna Charta Universitatum, the Assembly reaffirms the right to academic freedom and university autonomy which comprises the following principles (Art. 4).

Therefore, this PACE resolution means that the provisions of the Charter, including on academic freedoms, are not just documents of the university community, but also all-European principles that are protected by the Council of Europe.

A commonly recognized understanding of academic freedoms is contained in the later UNESCO and ILO Recommendation concerning the Status of Higher-Education Teaching Personnel on 11/11/1997. According to paragraph 27 of the Recommendations, higher-education teaching personnel are entitled to the maintaining of academic freedom, that is to say, the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies.

Paragraph 4 of the Recommendations emphasizes that institutions of higher education, and more particularly universities, are communities of scholars preserving, disseminating and expressing freely their opinions on traditional



knowledge and culture, and pursuing new knowledge without constriction by prescribed doctrines. Paragraph 11 of the Recommendations draws attention to the fact that higher-education teaching personnel should also have access, without censorship, to international computer systems, satellite programmes and databases required for their teaching, scholarship or research.

According to the Recommendations, the implementation of the principles of academic freedom is based on the following provisions:

a) the proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below require the autonomy of institutions of higher education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of higher education regarding their academic work, standards, management and related activities consistent with systems of public accountability, especially in respect of funding provided by the state, and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved (par. 17 of the Recommendations);

b) autonomy is the institutional form of academic freedom and a necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions (par. 18 of the Recommendations);

c) member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source (par. 19 of the Recommendations);

d) autonomy should not be used by higher education institutions as a pretext to limit the rights of higher-education teaching personnel provided for in this Recommendation or in other international standards set out in the appendix (par. 20 of the Recommendations);



e) self-governance, collegiality and appropriate academic leadership are essential components of meaningful autonomy for institutions of higher education (par. 21 of the Recommendations).

The autonomy of higher education institutions and academic freedoms do not deny their accountability and openness in activities. Thus, according to par. 22 of the Recommendations, in view of the substantial financial investments made, Member States and higher education institutions should ensure a proper balance between the level of autonomy enjoyed by higher education institutions and their systems of accountability. Higher education institutions should endeavour to open their governance in order to be accountable. It is interesting to note, however, that the lines of accountability of higher education institutions should include, inter alia, effective support for academic freedom and basic human rights; Drawing up, within the framework of the collegial process and through negotiations with organizations representing teachers of higher education institutions in accordance with the principles of academic freedom and freedom of speech, ethics declarations or codes, with which they will be guided in their teaching, research and research activities and consultative lecture work . That is, the observance of the principle of academic freedom is ensured not only from outside, but also from within the higher educational institution.

In addition, the principles of academic freedom do not negate the accountability of teachers to higher education institutions. Thus, according to par. 24 of the Recommendations, higher education institutions, individually or collectively, should design and implement appropriate systems of accountability, including quality assurance mechanisms to achieve the above goals, without harming institutional autonomy or academic freedom.

The use of academic freedom imposes responsibility. According to par. 33 of the Recommendations, higher-education teaching personnel should recognize that the exercise of rights carries with it special duties and responsibilities,



including the obligation to respect the academic freedom of other members of the academic community and to ensure the fair discussion of contrary views. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base research on an honest search for truth. Teaching, research and scholarship should be conducted in full accordance with ethical and professional standards and should, where appropriate, respond to contemporary problems facing society as well as preserve the historical and cultural heritage of the world.

The requirement of responsibility in the framework of the use of academic freedoms has already been mentioned above and corresponds to the concept of Part 2 of Art. 10 ECHR. For example, according to the German academic tradition, professors can promote their personal views and philosophical views among students. However, outside the school, the dissemination of their views is undesirable or even prohibited. In teaching, the professor is unlimited and is not bound by any officially approved program or timetable [1].

We also mentioned the right of the administration of US universities to impose «restrictions on academic freedom on religious and other issues» [1]. N. Davydova [7] confirms that academic freedom can be limited due to religious beliefs, the teacher must show respect for the position of other researchers, the teacher should not use disputable matter not related to the subject of study. Academic freedom is not only a right, but also has correlative responsibilities, for example, the professor «must avoid exploitation, sexual harassment and discriminatory attitudes toward students». Judicial practice of the United States several times confirmed, in particular, that they are not protected by the demands of academic freedoms of statements by teachers who do not relate to the subject matter. It was recognized that the use of offensive vocabulary is not protected by the First Amendment, since this does not concern a socially important topic and does not pursue an educational goal [7, p. 91-92].



S. Shevchuk [14, p. 464] also notes that, despite the guarantees of academic freedoms, the enjoyment of these freedoms is accompanied by the obligation to use such freedom in a manner consistent with teaching duties to substantiate their research and teach on an honest search for knowledge.

In France, like all public servants, a professor of an educational institution or research associate of a research laboratory should adhere to a neutral point of view and in the performance of his official duties and show no political or religious views. However, academic freedom of the university professor is confirmed by the law and the Constitutional Council of France: “research and teaching staff (university professors and their assistants) in their research and teaching activities are completely independent and enjoy freedom of speech on the condition that they respect university traditions , The requirements of the law, the principles of tolerance and objectivity” [1].

The controversial issues of the limitation of academic freedoms were examined in some decisions of the European Court of Human Rights (hereinafter ECHR) [9, 14]. Thus, in the European Court of Human Rights in «Lombardi Vallauri v. Italy» (No. 39128/05, 20/10/2010), the Court stressed that freedom of expression protected by Article 10 of the Convention also provides for procedural guarantees of academic freedoms for Professors and teachers. In this case, the Council of the Faculty of Law of the Milan Catholic University of the Sacred Heart refused to consider the application for the employment of a lecturer who taught the philosophy of law in this institution for more than 20 years on the basis of an annually renewed contract. The decision to refuse was taken in view of the fact that the Congregation for Catholic Education (Holy See Authority) did not grant its approval, and the Council of the Faculty only noted that some of the applicant's allegations “obviously contradicted the Catholic doctrine”. The Court noted that the Faculty Council had not notified the applicant and had not assessed the extent to which allegedly unconventional statements attributed to the applicant and in



which he was accused were reflected in his teaching activities or how they could subsequently affect the university's interests in providing education, Based on his religious beliefs. Moreover, the administrative courts in examining the legality of this controversial decision confined themselves to the fact that the Faculty Council indicated the existence of the decision of the Congregation, and thus refused to submit the question of disclosing the applicant's alleged non-traditional views, nor did he consider the teacher's ignorance of the reasons His dismissal, thereby suppressing any possibility for an adversarial process. Thus, the Court concluded that the university's interest in providing education based on Catholic doctrine can not reach such a degree as to damage the very essence of the procedural safeguards inherent in Article 10 of the Convention [9, p. 22].

In the case of “Wille v. Liechtenstein” (No. 28396/95, 28/10/1999), the ECHR examined the lawfulness of the actions of the authorities of Liechtenstein in the person of the prince regarding the non-assignment of the applicant to the state post in connection with the lecture delivered by the Applicant. So, in February 1995, in the context of a series of lectures on questions of constitutional jurisdiction and fundamental rights, the applicant gave a public lecture at the Liechtenstein-Institut, a research institute, on the “Nature and Functions of the Liechtenstein Constitutional Court” (“Wesen und Aufgaben des Staatsgerichtshofes”). In the course of the lecture, the applicant expressed the view that the Constitutional Court was competent to decide on the “interpretation of the Constitution in case of disagreement between the Prince (government) and the Diet”.

The point of view expressed by the applicant did not correspond to the position of the Prince on this issue. As a result, the Prince rejected the Applicant's candidacy for a high administrative position.

On the facts of the present case, the Court finds that, while relevant, the reasons relied on by the Government in order to justify the interference with the



applicant's right to freedom of expression are not sufficient to show that the interference complained of was 'necessary in a democratic society'. Even allowing for a certain margin of appreciation, the Prince's action appears disproportionate to the aim pursued. Accordingly the Court holds that there has been a violation of Article 10 of the Convention [14, p. 465-468].

Conclusions. Academic freedoms as cultural rights – components of the rights to freedom of expression are considered. It is established that the concept of academic freedom is a recipe for the principles of freedom of expression in the field of art and information in a specific field – teaching in higher educational institutions. In this context, the properties of the rights to academic freedom correspond to the properties inherent in cultural and information rights in their unity. From the point of view of the principles of legal regulation, protection and/or restrictions, as well as the joint scope of their application, academic freedom can be regarded as a cultural right. Academic freedom is an important factor in the activities of universities, recognized as an important type of freedom by the Council of Europe, its legislative recognition, consolidation and observance is in line with the international obligations of at least the countries of the Council of Europe, the general democratic tendencies in the modern world.

A generalized understanding of academic freedoms as meaning freedom of expression and action, in particular, protection from restrictions on political, religious, ideological considerations on the part of the state or other entities; Freedom of information dissemination, including about contradictory and unpopular views; Include both freedom of teaching and freedom of scientific, pedagogical, scientific and/or innovative activities; But the limitations established by law and evaluated by the academic community are not excluded. In this context, the properties of the rights to academic freedom correspond to the properties inherent in cultural and information rights in their unity.



References

1. Akademicheskiye svobody: Akademik. Elektronnaya entsyklopedyya [Academic freedoms : Academician. Electronic encyclopedia]. Access mode: <http://dic.academic.ru/dic.nsf/ruwiki/613724>
2. Verlanov Yu.Yu. Akademichni svobody ta avtonomiya universytetiv: novyy format ekonomichnykh vidnosyn z derzhavoyu [Academic freedom and autonomy of universities: a new format for economic relations with the state] // Naukovi pratsi. Ekonomika: naukovo-metodychnyy zhurnal [Scientific works. Economics: a scientific and methodological journal]. Mykolaiv, 2009, v. 109, # 96, pp. 29-34. Available at: <http://lib.chdu.edu.ua/pdf/naukpraci/economy/2009/103-96-2.pdf>
3. Volosnykova L.M. O pryntsype akademicheskoy avtonomyi [On the principle of academic autonomy] // Unyversytetskoe upravlenye [University Administration]. 2005, # 5 (38), pp. 44-49.
4. Hanitkevych Ya. Do vidnovlennya v Ukrayini universytet-s'koyi avtonomiyi [Until the restoration of university autonomy in Ukraine] // Naukove tovarystvo im. Shevchenka. Onlayn-zhurnal Tovarystva [Scientific Society named after Shevchenko. Online magazine of the Society]. Access mode: http://www.ntsh.org/univer_autonomy
5. Hertsyuk D. Akademichni svobody u systemi tsinnostey vyshchoyi osvity: evolyutsiya i suchasnyy stan [Academic Freedom in the System of Values of Higher Education: Evolution and the Current State] // Visnyk L'vivs'koho universytetu: Seriya pedah. [Visnyk of Lviv University: Pedagogical Series]. 2009, issue 25, p. 4, pp. 16-24.
6. Davydova N.O. Avtonomizatsiya tsyvil'no-pravovoho statusu vyshchoho navchal'noho zakladu [Autonomization of the civil status of a higher educational establishment] // Yurydychnyy visnyk [Legal Bulletin]. 2014, # 4 (33), pp. 88-93.
7. Davydova N.O. Pravo na akademichnu svobodu v amerykans'kiy



vyschchiy osviti [The right to academic freedom in American higher education] // Byuleten' Ministerstva yustytisiy Ukrainy [Bulletin of the Ministry of Justice of Ukraine]. 2015, # 5, pp. 87-93.

8. Korbut A.M. Transformatsyy vyssheho (unyversytet·skoho) obrazovaniya stran SNH y blyzhneho zarubezh'ya v post·sovet·skyy peryod. Transformatsyy vyssheho (unyversytet·skoho) obrazovaniya v Azerbaydzhane v post·sovet·skyy peryod [Transformation of higher (university) education of the CIS countries and the near abroad in the post-Soviet period. Transformation of higher (university) education in Azerbaijan in the post-Soviet period] // Tsentr problem razvytya obrazovaniya Belorusskoho hosudarstvennoho unyversyteta [Center for Educational Development Problems of the Belarusian State University]. Access mode: http://charko.narod.ru/tekst/an8/II_1.htm

9. Kul'turnye prava v pretsedentnoy praktyke Evropeyskoho Suda po pravam cheloveka : Otchet / Otdel yssledovaniy Evropeyskoho Suda po pravam cheloveka [Cultural rights in the case law of the European Court of Human Rights : Report / Research Division of the European Court of Human Rights]. Access mode: http://www.echr.coe.int/Documents/Research_report_cultural_rights_RUS.pdf

10. Pyrohov N.Y. Unyversytet·skyy vopros [University question] // Pyrohov N.Y. Yzbrannyye pedahohycheskiye sochyneniya. [Pirogov N.I. Selected pedagogical compositions]. Moscow, 1953, pp. 324-393. Available at: http://www.charko.narod.ru/tekst/biblio/Pirogov_1863.pdf

11. Rahmanov F.P. Science and innovations in Azerbaijan // ACADEMIA. Access mode: www.academia.edu/29369830/

12. Safyn Y.M. Mezhdunarodnaya traktovka termyna «akademycheskaya svoboda» [International interpretation of the term «academic freedom»] [Electronic resource, 01/08/2017] / Y.M. Safyn. Access mode http://www.ispu.ru/files/SovetRector_9-2008-%D1%81.27-30.pdf

13. Tykhomyrov P.V. Akademycheskaya svoboda y razvytye fylosofyy v



Hermanyy : Lektsyya, prochytannaya studentam Moskovskoy Dukhovnoy Akademyy [Academic Freedom and Development of Philosophy in Germany : Lecture delivered to students of the Moscow Theological Academy] // Bohoslovskyy vestnyk [The Theological Herald]. 1905. v. 2. – # 5. pp. 65-94. Available at: [https://azbyka.ru/otechnik/Pavel_Tihomirov/ akademicheskaja-svoboda-i-razvitiie-filosofii-v-germanii/](https://azbyka.ru/otechnik/Pavel_Tihomirov/akademicheskaja-svoboda-i-razvitiie-filosofii-v-germanii/)

14. Shevchuk S. Sudovyy zakhyst prav lyudyny: Praktyka Yevropeys'koho sudu z prav lyudyny u konteksti zakhidnoyi pravovoyi tradytsiyi [Judicial protection of human rights: The practice of the European Court of Human Rights in the context of Western legal tradition] Kiev, 2006, 848 p. ISBN 966-8058-14-3.

15. Yurynets Yu.L. Akademicheskiye svobody kak yndykator urovnya svobod v obshchestve: rekomendatsyy YuNESKO y praktyka realizatsyy [Academic freedoms as an indicator of the level of freedoms in society: UNESCO's recommendations and implementation practices] // Sovremennyye tendentsyy razvytyya yurydycheskoy nauky: sb. materiyalov Mezhdunar. nauch.-prakt. konf., may 2012 h. [Modern trends in the development of legal science: a collection of materials of the International Scientific and Practical Conference, May 2012]. Omsk, 2012, pp. 203-211.

16. Yurynets' Yu.L. Akademichni svobody yak zaporuka demokratychnosti vyshchoyi osvity [Academic Freedoms as a Key to the Democracy of Higher Education] / Yu. Yurynets' // Stanovlennya ta rozvytok yurydychnoyi osvity v natsional'nomu aviatsiynomu universyteti : Materialy Vseukr. naukovo-praktych. konf. do Dnya nauky, Kyyiv, Natsional'nyy aviatsiynyy universytet, 16.05.2013 [Formation and development of legal education at the National Aviation University: Materials of the All-Ukrainian Scientific and Practical Conference on the Day of Science, Kyiv, National Aviation University, 16.05.2013]. Kiev, 2013. pp. 152-155.



17. Yurynets Yu.L. Akademichni svobody yak kul'turni prava [Academic liberties as cultural rights] / Yu.L. Yurynets' // Sbornyk nauchnykh trudov po materiyalam mezhdunarodnoy nauchno-praktycheskoy konferentsyy «Sovremennyye napravlenyya teoretycheskykh y prykladnykh yssledovanyy'2011». – Tom 16. Yurydycheskye y polytycheskye nauky [Collection of scientific papers on the materials of the international scientific and practical conference "Modern trends in theoretical and applied research' 2011". – Volume 16. Juridical and political sciences]. Odessa, 2011. pp. 26-29.

18. Yurynets' Yu. Pryntsypy akademichnykh svobod yak zaporuka demokratychnosti vyshchoyi osvity: Mizhnarodno-pravovyy aspekt [The Principles of Academic Freedoms as a Key to the Democracy of Higher Education: The International Legal Aspect] / Yu. Yurynets // Yurydychna hazeta [Legal newspaper]. – 15.03.2011, # 15 (276), p. 24.

19. Yurynets' Yu.L. Rekomendatsiyi YuNESKO shchodo akademichnykh svobod [UNESCO Recommendations on Academic Freedom] / Yu.L. Yurynets' // Chasopys Akademiyyi advokatury Ukrayiny: Elektronne naukove fakhove vydannya [The journal of the Academy of Advocacy of Ukraine: Electronic scientific special edition]. 2011. # 2 (11). Access mode: <http://e-pub.aau.edu.ua/index.php/chasopys/article/view/491/511>

20. Philip G. Altbach. Academic Freedom: A Realistic Appraisal // International Higher Education. 2009, no 57, pp.2-3. Access mode: <https://ejournals.bc.edu/ojs/index.php/ihe/article/view/8450/7584>