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Protecting Academic Freedom at the Constitutional Level: Why it Matters

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Abstract: This article highlights the concept of academic freedom of higher education institutions, and examines the necessity of safeguarding academic freedom at the constitutional level, focusing on its role in democracy, legal certainty, and international compliance, with a particular emphasis on the Constitution of Uzbekistan.

Key words: academic freedom, constitutional protection, higher education, intellectual autonomy, legal certainty, democratic governance, institutional independence, self-censorship, political interference, the state, institutional, and personal levels.

Introduction.

The progress of any nation—its prosperity or decline—is primarily and directly linked to the state of science and knowledge in society. New ideas, scientific discoveries, initiatives, and unconventional approaches are essential in the 21st century. Scientific achievements shape not only social life but also the destiny of civilization as a whole. In this context, academic freedom emerges as a paramount consideration. Since academic freedom is a cornerstone of intellectual progress, fostering critical thinking, innovation, and societal advancement.

Legal scholars, such as Ronald Dworkin[1] and Cass Sunstein[2], have emphasized the constitutional importance of academic freedom in preserving democratic integrity and intellectual progress. Furthermore, international organizations like UNESCO[3] and the United Nations have advocated for its protection as a fundamental human right.

As far as **academic freedom** is concerned, higher education relies on this fundamental value. Since academic freedom protects faculty members in colleges and universities from undue restrictions on their scholarly activities. It is a broad principle that grants educators substantial autonomy in engaging with their academic disciplines, including the freedom to question established theories. Under this doctrine, faculty members have the right to pursue research on any subject, introduce complex and controversial topics in classroom discussions, and publish findings that may challenge prevailing views. The strength of the American higher education system, for example, is fundamentally rooted in this principle[4]. So that means academic freedom is a fundamental right in the field of science. According to UNESCO's definition, academic freedom encompasses the following rights:

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;

[1] Dworkin, R. (1979). ACADEMIC FREEDOM. Philosophical Papers, 8(1), 1–10. https://doi.org/10.1080/05568647909506491
[2] Sunstein, Cass R., Free Speech On Campus? Thirty-Seven Questions (and Almost As Many Answers) (December 23, 2023). Available at SSRN: https://ssrn.com/abstract=4674320 or http://dx.doi.org/10.2139/ssrn.4674320
[3] The Road to the 1997 UNESCO Statement on Academic Freedom by Donald C. Savage, Patricia A. Finn.
[4] https://www.law.gwu.edu/sites/g/files/zaxdzs5421/files/downloads/Academic-Freedom-Primer.pdf

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and freedom to participate in professional or representative academic bodies[5].

Academic freedom clearly comprises various elements and manifests at multiple levels: *the state, institutional,* and *personal levels*. The freedom to pose any question, no matter how uncomfortable, is fundamental to the progression of science. Students arrive at university with an eager intellectual curiosity, prepared to engage in critical thinking, debate, and reasoned discourse. Yet, they are often met with bureaucratic inertia, institutional hierarchies, and a pervasive culture of silence—primarily at **the state level**. As a result, they find themselves constrained by the rigid parameters of state-sanctioned norms, engaging in discussions that rarely challenge or transcend these boundaries. This limitation is deeply influenced by the overarching ideological climate and the prevailing social structures of the nation.

At the **institutional level**, restrictions tend to be less overt. Students, faculty, and researchers often have the opportunity to engage in discussions on a wide array of topics, including those that are highly controversial. However, the extent of this freedom is largely contingent on the institution itself—whether a university or a research center. Fostering an environment of intellectual freedom necessitates not only a commitment to open discourse but also the adoption of contemporary educational management practices and innovative teaching methodologies.

When it comes to **the personal level**, the regulation of academic freedom often manifests as self-censorship. Remarkably, various studies suggest that this form of self-imposed restriction accounts for up to 80% of the limitations on academic freedom. However, personal censorship does not arise in isolation; it is frequently a consequence of external constraints on intellectual freedom. In such environments, researchers may deliberately avoid certain topics out of fear of potential sanctions, having witnessed or heard of others facing punishment for similar actions. In these cases, direct threats are not always necessary to induce self-censorship.

While many constitutions recognize this freedom at a generic level, ensuring its explicit protection within a constitutional framework is essential for upholding democratic values and preventing political interference. This article examines why academic freedom should be safeguarded at the constitutional level, focusing on its role in democracy, legal certainty, and international compliance, with a particular emphasis on the Constitution of Uzbekistan[6].

The Role of Academic Freedom in a Democratic Society

As mentioned above, academic freedom empowers scholars and institutions to pursue independent research, foster open debate, and engage in critical inquiry without fear of censorship or retribution. This liberty is not merely a privilege but a cornerstone of democracy, as it cultivates an informed citizenry capable of scrutinizing government policies and enriching public discourse (Altbach, 2001). In the absence of constitutional protections, governments may impose ideological constraints on academic institutions, suppressing dissent and eroding the very foundations of democratic governance[7]. When academic freedom is constitutionally protected, it gains **a higher legal status,** making it less susceptible to political manipulation. If safeguarded only through legislation, future governments might easily alter or restrict it to serve political agendas[8]. A constitutional guarantee, however, provides long-term stability, ensuring that academic institutions remain independent and free from undue influence.

[5] https://bulletin-archives.caut.ca/bulletin/articles/1999/01/
[6] https://lex.uz/docs/6451070 - Article 51.
[7] Altbach, P. G. (2001). Academic freedom: International realities and challenges. Higher Education, 41(1-2), 205-219.
[8] Karran, T. (2007). Academic freedom in Europe: A preliminary comparative analysis. Higher Education Policy, 20(3), 289-313.

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International Council for Science (ICSU) indicates that the constitutions of more than 90 countries worldwide enshrine the right to freedom of science and research. Additionally, the constitutions of over **28 countries** explicitly affirm the state's obligation to uphold **academic freedom** for individuals, higher education institutions, and scientific research organizations:

- **Finland**: Section 16 of the Constitution protects academic freedom as part of educational rights;
- **Armenia** (2005) Article 40.Everyone shall have the right to freedom of (…) scientific (…) creation (…).
- **Austria** (Basic Law, 1867) Article 17 [Science, Teaching] (1) Knowledge and its teaching are free.
- **Brazil** (2006) Article 5. All persons are equal before the law, (…)on the following terms:(...) IX - the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license; (…) Article 206. Education shall be provided on the basis of the following principles: (…); II - freedom to learn, teach, research and express thought, art and knowledge; (…)
- **China** (1982) Article 47. Citizens of the People's Republic of China have the freedom to engage in scientific re-search (…). (…)
- **The United States**: While not explicitly mentioned in the Constitution, the First Amendment has been interpreted by courts to safeguard academic freedom. These examples illustrate that constitutional recognition strengthens academic freedom by providing a solid legal foundation for judicial enforcement.
- **Germany**: Article 5(3) of the Basic Law guarantees the freedom of teaching and research.
- **Italy** (1947, amended in 2007) Article 33. The Republic guarantees the freedom of the arts and sciences, which may be freely taught.
- **Russian Federation** (1993) Article 44.Everyone shall be guaranteed freedom of literary, artistic, scientific, intellectual and other types of creative activity and tuition.
- **Vietnam** (1992) Article 60. The citizen has the right to carry out scientific and technical research, make inventions and discoveries, initiate technical innovations (…).
- **Uzbekistan (**2023) Article 51. Higher educational institutions shall have the right to academic freedom, self-government, freedom of research and teaching in accordance with the law.

Indeed, the mere inclusion of academic freedom in the constitution does not, by itself, guarantee its comprehensive protection. While constitutional recognition elevates its legal standing, the practical enforcement of this right often depends on the judiciary's independence, the political climate, and the broader societal commitment to upholding democratic values.

In the case of Uzbekistan, prior to the adoption of the new Constitution, all three levels of restrictions on academic freedom were slightly observable, shaping the academic landscape and influencing intellectual discourse. For instance, at the state level, engaging with issues beyond the officially sanctioned narrative is subtly discouraged. In scientific research and academic discourse, certain sensitive topics—such as human rights conditions, corruption, the ethical conduct of officials, and nepotism in public administration—remain off-limits. This restriction is particularly pronounced in the social and political sciences, including political science, sociology, and philosophy. Consequently, when selecting dissertation topics, young researchers are often compelled to align their work with the prevailing ideological framework. The Soviet-era model of conducting scientific research and defending dissertations remains firmly entrenched in Uzbekistan. Moreover, various bureaucratic and artificial barriers have been introduced, further constraining academic inquiry. One notable example is the Higher Attestation Commission (HAC), a state institution that holds a monopolistic authority over

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the defense of scientific works. Such a centralized body is virtually nonexistent in academically progressive nations.

However, in recent years, significant reforms have been introduced in the higher education sector in Uzbekistan. For instance, the number of higher education institutions has expanded 2.5 times, reaching more than 200, while the student enrollment rate has risen to 40 percent. Notably, more than 40 universities have been granted academic and financial autonomy. Last but not least, the most significant milestone in the advancement of academic freedom has been its formal recognition in the latest revision of the Constitution *(Article 51. 2023)*. This landmark development, driven by President Sh. Mirziyoyev's unwavering emphasis on educational reform, heralds a new era in which the level of academic freedom is poised to align with the standards observed in developed nations. As in the absence of constitutional guarantees, universities may impose administrative or political constraints on scholars, ultimately fostering self-censorship. Constitutional protections provide academic professionals with legal recourse against infringements on their freedom, thereby safeguarding the integrity of higher education institutions.

In conclusion, academic freedom is not merely a privilege but a fundamental right that serves as the cornerstone of democratic governance, legal certainty, and societal advancement. Its constitutional protection fortifies resilience against political interference, upholds international legal standards, and cultivates both intellectual and economic progress. History demonstrates that societies committed to academic freedom flourish in innovation and democratic stability. Therefore, embedding this principle within constitutional frameworks is essential to safeguarding democratic values and fundamental human rights on a global scale.

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