

Academic Freedom and the Rule of Law

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1 Introduction

Academic freedom and institutional autonomy of universities are important elements of a functioning democracy. Academic freedom has been seen to be in crisis over the last decade and this development has been linked in particular to the rise of authoritarian populism.¹ In Europe especially the examples of Poland and Hungary have raised concerns about problems with academic freedom also elsewhere.²

The relationship between violations of academic freedom and the Rule of Law and democracy has been raised, but this relationship between academic freedom, the Rule of Law, democracy, and human rights has been largely unexplored in research.³ Therefore, this article aims to clarify this relationship and analyse the importance of academic freedom in light of the Rule of Law.

Academic freedom means the freedom of teachers, researchers, and students to teach, study, as well produce, and use academic information without undue influence. In this article, we focus on researchers' perspective and analyse freedom of research as a part of academic freedom. Freedom of research refers to the right of researchers to choose their research topics and methods, publish their research results, and the right to receive information, and participate in civic discussion.

Beside theoretical contribution, the aim of this study is to introduce and analyse the situation in Finland. Finland, similar to other Nordic countries, ranks among the top countries in academic freedom indices when at the same time there are worrying developments in indices measuring for example freedom of expression. On sensitive issues, the possibility to express one's opinions freely has been reduced.⁴ Our observations are also based on empirical data, collected

¹ Novotny, Helga, Scott, Peter & Gibbons, Michael, *Re-Thinking Science: Knowledge and the Public in an Age of Uncertainty*. Cambridge: Polity Press, 2008, pp. 232–236.

² Grimm, Jannis & Saliba, Ilyas, *Free research in fearful times: conceptualizing an index to monitor academic freedom*. *Interdisciplinary political studies*, 2017, vol. 3, no. 1, p. 46; Altbach, Philip G, *The international imperative in higher education*. Rotterdam: Sense, 2013, pp. 2–4; Bard, Petra, *The Rule of Law and academic freedom or the lack of it in Hungary*. *European Political Science*, 2018, vol. 19, no. 1, pp. 87–96.

³ Matei, Livui & Iwinska, Julia, *Diverging Paths? Institutional Autonomy and Academic Freedom in the European Higher Education Area* in Curaj, Andrian, Ligia, Deca & Pricopie, Remus (eds.) *European Higher Education Area: The Impact of Past and Future Policies*, pp. 345–368, Cham: Springer, 2018; Matei, Livui, *Academic freedom, university autonomy and democracy's future in Europe* in Bergan, Sjur, Gallagher, Tony & Harkavy, Ira (eds.) *Academic Freedom, Institutional Autonomy and the Future of Democracy*, pp. 29–40, Council of Europe Higher Education Series No. 24, 2020, pp. 31–36.

⁴ Spannagel, Janika, Kinzelbach, Katrin & Saliba Ilyas, *The academic freedom index and other new indicators relating to academic space: An introduction*. University of Gothenburg, Series 2020:26, available at https://www.v-dem.net/media/publications/users_working_paper_26.pdf, last visited 6 Jan 2023; Mäntylä, Niina, Autioniemi, Jari, Kosonen, Jonna, Partinen, Hanna & Pernaa, Hanna-Kaisa, Hallinnon tutkimuksen vapaus poliittisen ja hallinnollisen ohjauksen näkökulmasta in Jäntti, Anna, Kork, Anna-Aurora, Kurkela, Kaisa, Leponiemi, Ulriika, Paananen, Henna, Sinervo, Lotta-Maria & Tuurnas, Sanna (eds.) *Hallinnon Tutkimuksen tulevaisuus*. Tampere: Vastapaino 2022, pp. 59–82, p. 66; ECREA, *Public statement on situation in Denmark 2021*, available at <https://ecrea.eu/news/10713131>, last visited 6 Jan 2023; V-Dem Institute, *Finland's*

in Finland in 2021 and we use citations from the Survey material to concretize the issues we address. The survey was targeted at researchers working in Finnish universities on public administration topics. (N=124). This choice was made because academic freedom is especially strongly linked to democracy in social science and law, as stated also in the European Convention on Human Rights (ECHR) case *Mustafa Erdogan v. Turkey*. In those fields “scholarly discourse informs public discourse on public matters including those directly related to government and politics.”⁵

Traditionally, threats to academic freedom have been seen as coming from outside the scientific community and research institutions. The researchers are typically affected by the state and other public authorities, as well as by university stakeholders such as businesses. In addition, free research may also be threatened by parties not directly linked to the university's activities. Such parties may include individuals or companies and in recent years there has been a rise in incidents of doxing and researchers have reported that they are afraid or unwilling to enter the public debate on certain topics.⁶ In addition to external threats, we will touch upon internal threats, inside the scientific community as far as those are linked to the Rule of Law approach.

2 Understanding Academic Freedom from the Perspective of the Rule of Law

2.1 Relationship between the Rule of Law, Democracy, and Human Rights

Rule of Law can be defined in many different ways and interpretations of it at national and supranational levels vary. This article follows the European, operational approach to the Rule of Law, defined by the Council of Europe's Venice Commission and EU. In this context, the Rule of Law includes elements such as legality, legal certainty, prevention of abuse of powers, equality, and access to justice. At the European level also the link between the Rule of Law, democracy and human rights protection has been highlighted.⁷

The Rule of Law and the protection of human rights are necessary for a democracy. For example separation of powers, which is an important element of the Rule of Law secures democratic procedures. At the same time, in European thinking, the core idea is, that the Rule of Law can become reality only in democratic societies. In authoritarian states, the government exercises power over e.g. judicial power and in the context of academic freedom it makes academics vulnerable to despotism. There are examples of a demonstrable

country data, available at <https://www.v-dem.net/data_analysis/CountryGraph/>, last visited 6 Jan 2023.

⁵ *Mustafa Erdogan v. Turkey* App. 346/04 and 39779/04.

⁶ See: Stachowiak-Kudla, Monika, *Academic freedom as a source of rights' violations: a European perspective*. Higher Education, 2021, vol. 82, no. 5, p. 1031.

⁷ *Venice Commission 2016*, Article 13 CFR, COM 2019/343 final, COM 2018/324 final.

erosion of judicial independence and instrumentalisation of the law related to academic freedom, e.g. from Poland.⁸

The role of human rights is also connected to democracy and the Rule of Law. Human rights for example protect minorities so that democracy does not mean unlimited power of a simple majority. Also, academics' freedom of expression as a human right is an essential precondition for a democratic society. The link between human rights and the Rule of Law is connected to the "thick" definition of the Rule of Law, meaning more substantive outcomes such as justice and protecting rights instead of only procedures.⁹

Because there are also overlapping elements between these three values, it is possible to say that human rights and democracy are elements of the Rule of Law. Some researchers prefer to talk about the three intertwined core principles.¹⁰ However, it is not possible to analyse the Rule of Law without seeing its connections to human rights and democracy. Thus, the interaction between these values is important also when we are defining the meaning of academic freedom in the light of the Rule of Law.

2.2 Academic Freedom – Why is it Important from the Rule of Law Perspective?

The concept of academic freedom creates a framework also for the freedom of research. The right to academic freedom, as such, is not protected in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, both agreements include provisions that protect certain aspects of academic freedom. For example, Article 15(3) of the ICESCR states that the parties should respect the freedom of research. Since academic freedom is not defined in international agreements, the concept is multi-meaning and context-related: academic freedom means different things in different legal systems.¹¹

At the European level, academic freedom is protected by EU law. Article 13 of the Charter of Fundamental Rights states that the arts and scientific research shall be free of constraint and Academic freedom shall be respected. Although the concept of academic freedom is at some level unclear, it is typically divided into rights at the individual (academic freedom), community (self-governance) and institutional level (institutional freedom, institutional autonomy, autonomy).

⁸ Ramanujam, Nandini & Wijayake, Vishakha, *The Bidirectional Relationship Between Academic Freedom and Rule of Law: Hungary, Poland and Russia*. Hague Journal on the Rule of Law, 2022, vol. 14. no. 1, p. 32.

⁹ See Bingham, Tom, *The Rule of Law*, London: Penguin, 2011.

¹⁰ See Raitio, Juha, Rosas, Allan & Pohjakoski, Pekka, *Oikeusvaltiollisuus Euroopan unionissa ja Suomessa*. Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja 2022:39, available at <<https://tietokayttoon.fi/julkaisut/raportti?pubid=URN:ISBN:978-952-383-088-2>> last visited 6 Jan 2023.

¹¹ Beiter, Klaus D., Karran, Terence & Appiagyei-Atua, Kwadwo, *Measuring the Erosion of Academic Freedom as an International Human Right: A Report on the Legal Protection of Academic Freedom in Europe*. Vanderbilt journal of transnational law, 2016, vol. 49, no. 3, pp. 597–691.

These dimensions can be seen as interconnected, but they can also conflict with one another.¹²

The academic freedom of the individual is typically, in turn, considered to include four elements: 1) freedom of teaching and discussion, 2) freedom to publish research and research results, 3) the academic freedom within the institution, i.e. the freedom of researchers to express their opinions on higher education without censorship and to participate in academic bodies and 4) the external academic freedom of the institution of higher education, i.e. the right to exercise its civil rights without the absence of a state or university. In Finland, academic freedom has been secured in detail in the Constitution. According to Article 16(3) of the Constitution, the freedom of science, art, and higher education is guaranteed. The freedom of science, which we especially will focus on in this article, includes the right of researchers to choose their research topics and methods, publish their research results, and the right of the researchers to receive information on the subject he or she is researching.

Academic freedom is closely linked to freedom of expression protected by Article 10 of the ECHR and a human rights perspective highlights the individual element of academic freedom. The European Court of Human Rights (ECtHR) has referred to academic freedom within its praxis. In ECHR cases have been defined for example that individuals enjoy academic freedom not only within their institutions but also as commentators outside the institution such as in a TV programme (*Kula v. Turkey*). In the Finnish Constitution, academic freedom and freedom of expression are separate rights, but scholars have seen them very closely.¹³

Because at least from the European perspective, democracy is a fundamental requirement for the Rule of Law, the connection between democracy and academic freedom is important to understand. Academics produce (objective) information, which is essential in democratic societies and it promotes healthy civic discourse. As previously mentioned, especially scholars in the field of social science and law have a specific role as guardians of democracy.¹⁴ Also the Council of Europe has pointed out that higher education has a democratic mission.¹⁵ A major part of the democratic mission of higher education is to stimulate a commitment in university students and staff to public space: voting

¹² Ramanujam & Wijenayake, 2022, 27. See also Jonsson Cornell, Anna and Marcusson, Lena. *Den akademiska friheten - rättsliga aspekter i ett svenskt perspektiv*. In: Vänbok till Hans Eklund. Största möjliga lycka åt största möjliga antal, pp.189-210, iUSTUS förlag, Uppsala, pp. 209–210.

¹³ *Government proposal 309/1993*, 64; Arajärvi, Pentti, *Sivistykselliset oikeudet ja velvollisuudet*. Joensuu: Joensuun yliopisto, 2006, pp. 87–88; Hoikka, Mikko, *Perusoikeuksien välisestä suhteista viestintäoikeudessa*. Viestintäoikeuden vuosikirja 2013, pp. 10–11; Neuvonen, Riku, *Sananvapauden sääntely Suomessa*. Helsinki: Lakimiesliiton kustannus, 2012, 150–155; Neuvonen, Riku & Rautiainen, Pauli, *Viestinnällisten perusoikeuksien kokonaisuus Suomen perusoikeusjärjestelmässä*. Viestintäoikeuden vuosikirja 2013, 109–131.

¹⁴ See *Mustafa Erdogan v. Turkey* App. 346/04 and 39779/04.

¹⁵ Council of Europe, *Reference framework of competences for democratic culture, – Volume 1: Context. Background to the framework*, available at <<https://rm.coe.int/background-to-the-framework-reference-framework-of-competences-for-dem/1680994101>>, last visited 6 Jan 2023.

and participating. Higher education should develop one's ability to argue and the will and ability to seriously consider others' arguments.¹⁶

Strong civil society usually helps to prevent authoritarianism, through trustworthy information and diversity of opinions - even when these are critical from the government's perspective. This is how academic freedom is also linked to the thick idea of the Rule of Law, through human rights, such as freedom of expression and equality. Academic freedom in the European context means freedom to do research and teach based on the values of liberal democracies, such as equality and that is why for example bans related to gender studies violate this freedom. At the same time, there is a bidirectional link between these core values and academic freedom. Rule of Law, human rights, and democracy secure academic freedom, but academic freedom itself helps to reinforce these values.¹⁷

At the European level, the Court of Justice of the European Union (CJEU) has addressed academic freedom from the Rule of Law perspective. It ruled in 2019 that Hungarian higher education law was contrary to the provisions of the Charter of Fundamental Rights of the European Union Articles 13-16 (CFR). The law obliged all foreign universities to follow strict requirements for registration and authorisation, to make it impossible for them to function in Hungary. (*C-66/18 Commission v. Hungary*). The case touches upon the free movement of services (Article 16 of Directive 2006/123/EC), but also academic freedom (Articles 13-16 CFR). The arguments are significant from the viewpoint of defining and developing academic freedom as a fundamental right, not only from an individual perspective but highlighting also its structural and institutional dimensions.

The Rule of Law ensures that university autonomy is not threatened by State power. Separation of powers prevents the abuse and concentration of power and is then one of the most important elements of the Rule of Law. In authoritarian societies political pluralism is limited and opposition is extinguished. In authoritarian societies, there is also a need to silence academic critical thinking, because it creates a threat to an authoritarian regime. However, challenges towards academic freedom don't appear only in authoritarian societies. Many factors will affect academic freedom in western democratic societies as well, but in democracies, the worrying aspects are more complex, indirect, and subtle. However, mostly the worrying aspects are still linked to the abuse and concentration of power. This article aims to make those factors visible.

¹⁶ Bergan, Sjur & Harkavy, Ira, *Academic freedom, institutional autonomy and the engaged university*, in Bergan, Sjur, Gallagher, Tony & Harkavy, Ira (eds.), *Academic Freedom, Institutional Autonomy and the Future of Democracy*, pp. 15–28, Council of Europe Higher Education Series No. 24, 2020, pp. 16–18.

¹⁷ Ramanujam & Wijenayake, 2022.

3 Political and Administrative Influence on Academic Freedom

3.1 *The Autonomy of the Universities*

Autonomy is a multidimensional and complex issue and therefore difficult to define. Autonomy is one's freedom from external control. However, autonomy is not emptied of the university's freedom from external control. Autonomy is also functional. It's the ability to exercise freedom of action and to do the things that one wants to do freely.¹⁸ The autonomy of the university is typically assessed in the relationship between the university and the state. Clark introduced "the Triangle of Coordination", in which academic oligarchy, market and state authority are the driving forces of higher education institutions.¹⁹ This means that the university's ability to function can also be assessed concerning stakeholders. It is a question of the university and society – what is the university's relationship with stakeholders outside it? These typically include such as business representatives, public authorities, companies and media.²⁰

In Finland, university autonomy is guaranteed in the Constitution. The explanatory statement of the Government's proposal on the Constitution states that autonomy has a strong link to Article 16(3) of the Constitution. In turn, the explanatory statement of Article 16(3) states that the freedom of science, art and higher education is also protected by the law-based autonomy of universities.²¹ Autonomy has a strong functional meaning in safeguarding individuals' rights in university institutions. From the Nordic perspective, institutional academic freedom seems to be more strongly protected in the Finnish Constitution than e.g. in Sweden, where the researchers have seen that the institutional element is weaker protected than individual academic freedom.²²

In general, several developments have affected autonomy in recent decades: increased globalization and internationalization; the growing importance of new technologies; the rise of knowledge-based economies; and the growth in student numbers. Key trends in higher education include the emergence of New Public Management (NPM), managerialism, competitiveness, effectiveness, top-down

¹⁸ Kohtamäki, Vuokko & Balbachevsky, Elizabeth, University autonomy: From past to present, in Pekkola, Elias, Kivistö, Jussi, Kohtamäki, Vuokko, Yuzhuo, Cai & Lyytinen, Anu (eds.) *Theoretical and methodological perspectives on higher education management and transformation*. Tampere: Tampere University Press, 2018, pp. 179–194; Pruvot, Enora Bennetot & Estermann, Thomas, University Autonomy in Europe III, The Scorecard 2017. European University Association (EUA) 2017, available at <<https://www.eua.eu/downloads/publications/university%20autonomy%20in%20europe%20iii%20the%20scorecard%202017.pdf>> last visited 6 Jan 2023.

¹⁹ Clark, Burton, *The higher education system. Academic organization in cross-national perspective*. Berkeley, California: University of California Press 1983, p. 142.

²⁰ Freed, Gwendolyn H., "Managing external relations, higher education institutions" in Teixeira, Pedro & Shin, Jung Cheol (eds.), *The International encyclopedia of higher education Systems and institutions, 2018–2023*, Dordrecht: Springer, 2020.

²¹ *Government proposal 1/1998*, p. 33.

²² Jonsson Cornell & Marcusson 2022, p. 206.

management, the raise of individual managers, the erosion of collegial decision-making, external stakeholders, bureaucracy, and especially accountability.²³

At the same time, the formal autonomy of universities has been strengthened. In particular, the financial, administrative, and staffing autonomy of universities has increased in different countries.²⁴ The Finnish University Act was enacted in 2009 (558/2009) and is part of the emergence of NPM. The main objective was to increase the financial and organizational autonomy of universities.²⁵ According to the University Act, most Finnish universities are independent corporations under public law, but there are also two foundations universities — Aalto University and Tampere University.

However, the expanded formal autonomy granted to the universities has resulted in growing accountability to the State.²⁶ At the European level, there is a significant gap between formal autonomy and a university's actual ability to act independently.²⁷ The Finnish steering system is carried out by the Finnish Ministry of Education and Culture through the funding model. The detailed model focuses on outputs, such as high-quality publications and competitive research funding. Also, The Ministry of Education and Culture and the university conclude agreements on quantitative and qualitative targets of pivotal relevance to education and science policy and the monitoring and evaluation of their implementation. In international surveys, the accountability system of Finnish higher education shows itself to be extreme.²⁸ The distinction between formal and de facto autonomy is obvious.

²³ Christensen, Tom, *University governance reforms: Potential problems of more autonomy?* Higher Education, 2011, vol. 62, no. 4. pp. 503–517; Surssock, Andrée, “Autonomy and accountability in higher education, Western Europe”, in Teixeira, Pedro & Shin, Jung Cheol (eds.), *The International encyclopedia of higher education Systems and institutions*, pp. 152–155, Dordrecht: Springer, 2020.

²⁴ Pruvot & Estermann 2017. Nordic context see Nokkala, Terhi & Bladh, Agneta, *Institutional Autonomy and Academic Freedom in Nordic Context: Similarities and Differences*. Higher education policy 2014, vol. 27, no. 1. pp. 1–21; Hofsvøy, Mai-Lin, Johannessen, Steinar, Ingvild, Larsen, Marheim & Rustad, Sverre, *Styring av høyere utdanning og forskning i Danmark, Finland og Sverige, med vekt på rettslig regulering*. Rapport til utvalget for Lov om universiteter og høyskoler 28. juni 2019 available at <https://www.regjeringen.no/contentassets/65a475004027495a8009b359e253b19e/no/sved/dig01.pdf>, last visited 6 Jan 2023.

²⁵ Jääskinen, Niilo & Rantanen, Jorma, *Yliopistojen taloudellisen ja hallinnollisen aseman uudistaminen*. Opetusministeriön työryhmämuistioita ja selvityksiä 2007:2. Helsinki: Opetus- ja kulttuuriministeriö, 2007.

²⁶ Harvey, Lee & Stensaker, Björn (eds.), *Accountability in higher education: Global perspectives on trust and power*. New York, NY: Routledge, 2011; Surssock 2020.

²⁷ Pruvot & Estermann 2017.

²⁸ de Boer, Harry, Jongbloed, Ben, Bennenworth, Paul, Cremonini, Leon, Kolster, Renze, Kottmann, Andrea, Lemmens-Krug, Katharina & Vossensteyn, Hans, *Performance-based funding and performance agreements in fourteen higher education systems*. Center for Higher Education Policy Studies 2015, available at <https://ris.utwente.nl/ws/portalfiles/portal/5139542/jongbloed+ea+performance-based-funding-and-performance-agreements-in-fourteen-higher-education-systems.pdf>, last visited 6 Jan 2023, pp. 152–160.

3.2 Funding and State Control

Academic freedom is safeguarded by the elements of the Rule of Law. One of the institutional arrangements is concerned with economic conditions such as public funding. In a state governed by the Rule of Law, funding involves a degree of academic freedom. Hence, the state cannot know in advance what kind of scientific information will be produced by the research it is funding. Scientific institutions cannot be fully predicted nor controlled by the state – since academic freedom contains an idea of open and critical thinking. Moreover, a state governed by the Rule of Law should be committed to scientific thinking that might be sometimes critical to the state itself.²⁹

Because the freedom of research is guaranteed in the Finnish Constitution, the university cannot prevent the researchers from choosing a certain research topic. However, top-down profiling and strategic priorities can de facto influence researchers' choices. Profiling and strategic choices are strongly steered by the state by using funding and agreements between universities and the Ministry of Education and Culture.³⁰

At present, the conduct of research and the choice of topics is strongly influenced by a narrow understanding of 'policy relevance', the idea of research as a top-down solution to problems, as a provider of information to meet the needs of those in power and public authorities. The spirit of social engineering is strong. Critical research, guided by the internal processes of science and not by the directly aimed at exploitability, serving industry and narrowly understood 'innovation' and 'impact', is in a tight spot. [...] The autonomy of science will suffer and science will drift increasingly subject to political and economic interests.

In Finnish universities, strategic choices are decided by the university board, under the University Act (558/2009). External stakeholders play a much greater role than previously and can use more power concerning different areas of management in everyday university affairs.³¹ This can be seen, for example, in university profiling, which is sometimes a question of “de-selecting” certain research areas.

The very different unequal treatment of different sectors is very annoying. I was just looking at the PhD researcher vacancies in the Faculty of Engineering at my university and there were about 15 open at any one time, each with a completed research topic (probably defined by someone outside the university) and a paid

²⁹ Butler, Judith, *Academic freedom and the critical task of the university*. Globalizations, 2017, vol. 14, no. 6, p. 858.

³⁰ Seuri, Allan & Hannu Vartiainen, *Yliopistojen rahoitus, kannustimet ja rakennekehitys*. Talouspolitiikan arviointineuvosto, available at <https://www.talouspolitiikanarviointineuvosto.fi/wordpress/wp-content/uploads/2018/01/Seuri_Vartiainen_2018-1.pdf>, last visited 6 Jan 2023.

³¹ Aarrevaara, Timo, Dobson, Ian R. & Elander, Camilla, *Brave new world: Higher education reform in Finland*. Higher Education Management and Policy, 2009, vol. 20, no. 1, pp. 1–18.

research project for which they were only looking for a student. In my field, in administrative sciences, this could never happen.

In the Nordic countries, also the risks concerning decreasing basic funding and the negative impact of external funding have been recognised. The development benefits some researchers and disciplines, while at the same time, it is problematic e.g. from the viewpoint of innovations and increased power of funders.³²

The rise of external funding will inevitably change the research landscape in the social sciences, and researchers will increasingly have to bow to the demands of funders. This limits scientific freedom and, to some extent, the choice of research topic, as the strategic themes and topics are already predefined by funders in a very narrow sense. I do not see this as a positive development. There should be more resources for basic research.

If something currently defines the freedom of research, it is the scarcity of funding. One academic aptly said that we now celebrate getting funding when we should be celebrating research results.

3.3 Role of University Employee – A Shift Towards Neoliberal University Policies

Since 2010 universities in Finland became individual employers separate from the central government and nowadays all the employment relationships at the universities are contractual. Before the University Act, the status of university personnel was civil servants and the state was the employer of all the staff at the universities in Finland. The changing status of university staff is part of the trend of privatisation and managerial culture.

From the Rule of Law and academic freedom perspective, the form of service relationship at the universities is linked to employment security. Traditionally, a public office relationship has been seen as more securely protecting staff from the threat of dismissal even when their research topics and results consist e.g. politically sensitive aspects and protecting thus the neutrality of public administration. For example, in Germany, most of the professorships are civil servant positions meaning life tenure. Instead in Finland, in practice, fixed-term contracts were very usual at the universities even in public office relationships, especially in case of other positions than professors.

UNESCO argues that tenure should be considered “one of the major procedural safeguards of academic freedom”.³³ In a tenured position, one has more autonomy for challenging academic and university orthodoxies when compared to non-tenured positions, not to forget the possibility to think more

³² See Mäntylä et al. 2022, p. 69; Jonsson Cornell & Marcusson 2022, p. 203.

³³ UNESCO, *Recommendations concerning the Status of Higher-Education Teaching Personnel* 1997, available at <<https://www.unesco.org/en/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel>>, last visited 13 Jan 2023.

independently and resist administrative influence.³⁴ However, precarious academic working life and fixed-term contracts make the situation challenging in retaining independent thinking. Today, there is also discussion about generational injustice where older generations of academics have better working-life security compared to younger ones.³⁵

It includes also a shift towards more managerial forms of leadership and neoliberal university policies, which means a more business-oriented approach. For example, the essential purpose of the research is to support the national economy in global competition. As in Finland, this development is common in Europe and the Nordics and started in early 2000.³⁶

Economic conditions mean things such as permanent employment in universities and external funding for project-based work through which there is ever more competition between both universities and researchers. Economic conditions usually mean competition, which in turn might limit the free exchange of ideas. This goes to show how NPM has changed the way universities are being led in terms of managerialism and criteria such as efficiency, effectiveness and economy.³⁷ As *Auranen and Nieminen* argue, in “current science policies, competition and output incentives are emphasized as a means of making university systems efficient and productive”.³⁸

Market-based and corporatist models in universities weaken collegiality and the academic profession due to the weakening of academic freedom, which can be seen, for example, in increased control over research and teaching: in this situation, researchers are more involved with a new profession, i.e. managers, who control researchers with the help of new accountability mechanisms.³⁹ The downside of managerialism for academic freedom is in its simplistic accountability mechanisms that demand researchers to pay attention to, for example, high production in publications, impact scores, and accepted research proposals.

Every autumn and spring, an incredible amount of the researcher's working time is spent on writing various funding applications, especially for such an academic career

³⁴ Lynch, Kathleen & Ivancheva, Marina, *Academic freedom and the commercialisation of universities: A critical ethical analysis*. Ethics in Science and Environmental Political 2015, vol. 15, no. 1, pp. 71–85.

³⁵ Kaplan, Karen, *Changing face of tenure*. Nature 2010, vol. 468, no. 7320, pp. 123–125.

³⁶ Krejsler, John, *Discursive Battles about the Meaning of University: The Case of Danish University Reform and Its Academics*. European Educational Research Journal 2006, vol. 5, no. 3–4, pp. 210–220.

³⁷ Broucker, Bruno & De Wit, Kurt, *New Public Management in higher education* in Huisman, Jeroen; de Boer, Harry; Dill, David D. & Souto-Otero, Manuel (eds.), *The Palgrave International Handbook of Higher Education Policy and Governance*, pp. 57–75, Houndmills, Basingstoke, Hampshire; New York, NY: Palgrave MacMillan, 2015.

³⁸ Auranen, Otto & Nieminen, Mika, *University research funding and publication performance – An international comparison*. Research Policy, 2010, vol. 39 no. 6, p. 822.

³⁹ Carvalho, Teresa, *Shaping the ‘new’ academic profession* in Neave, Guy & Amaral, Alberto (eds.), *Higher Education in Portugal 1974-2009: A Nation, a Generation*, pp. 329–352, New York; Springer, 2012.

in the initial phase, whose employment contracts are in the category of 12–18 months at a time. Applying for funding is a close part of the job description.

According to my own experience, younger researchers learn the university's so-called career model in an increasingly early stage: it is worth publishing quickly in international journals and always looking for money. Thinking and research are constantly less encouraged.

3.4 *Undue Political Influence as a Threat to Objective Information*

Academic freedom has a specific role related to the university's task of producing and distributing scientific information in a free democracy as a public and publicly funded service.⁴⁰ Universities must produce information and share it as a public educational service. The theme is connected to the Rule of Law through the fact that public debate needs to be based on objective information that everyone has access to. This means that academic freedom is needed for the education of an informed public that has the capacity in forming critical judgments needed for assessing the legitimacy of the political system. This highlights the need for open thinking in universities and academic freedom in general. As *Butler* states, "Although we are supported by that state – perhaps we are citizens or the university is funded by the state – we are also in the position to call a particular form of government into question when its actions prove to be unjust."⁴¹

The critical thinking of citizens is only possible if the information in the society is objective and produced without undue political influence. Our survey results highlight this challenge. Our survey was targeted at public administration researchers in Finnish universities. Public administration (PA) research has a key role in supporting policy-making and developing society and is more often used in practical questions than in many other fields of scientific inquiry.⁴² PA research is closely linked to citizens' everyday lives, e.g. citizens' rights, service provision, and ethics in public administration. Because of the practical implications of PA research at political and administrative levels, there is a risk of political and administrative undue influence on PA research in turn, however. *Hukkinen* talks about two-way trade, as researchers need decision-makers to resource their research.⁴³

In Finland, more attention should be paid to who in society can produce information and analysis relevant to political and administrative decision-

⁴⁰ Jonsson Cornell & Marcusson 2022, p. 189.

⁴¹ Butler, 2017, p. 858.

⁴² Carboni, Julia L., Dickey, Todd, Moulton, Stephanie, O'Keefe, Sean, O'Leary, Rosemary, Piotrowski, Suzanne J. & Sandfort, Jodi, *Start with the problem: Establishing research relevance with integrative public administration*. Perspectives on Public Management and Governance, 2019, vol. 2, no. 4, pp. 267–274.

⁴³ Hukkinen, Janne I, "Tutkijoiden sananvapaus yhteiskunnallisesti vaikuttavan tieteen aikakaudella" in Väliverronen, Esa & Ekholm, Kai (eds.) *Tieteen vapaus & tutkijan sananvapaus*, pp. 261–282, Tampere: Vastapaino 2020, p. 262.

making.⁴⁴ This poses a question: how objective is the information used in Finland? For example, money and resources are of great importance here, as not everyone has the same opportunities to knock on the doors of decision-makers. Researchers and universities are not the sole contributors to policy-making since they, rather, must compete with other actors such as research institutes, think tanks, and consultancies who may be more responsive to the changing needs of political and administrative decision-makers today.⁴⁵ In Finland, this phenomenon is reinforced by cuts in the public sector where knowledge production is often outsourced and dispersed.⁴⁶

Evidence-based decision-making⁴⁷ has been one of the main trends in Finnish public administration and it can be thought of concerning the elements of the Rule of Law, such as democracy, equality and prevention of discrimination. Its starting points are academic freedom and freedom of speech. For research to be used in decision-making, even sensitive topics must be researched. Emphasizing evidence-based decision-making can be interpreted as an aim to reduce the political dimension of decision-making. When information is framed as a neutral resource, its task is assumed to ensure the objectivity of decision-making – which is a rather hard task to fulfill.⁴⁸

In practice, however, this is rarely the case, since decision-making is always more or less a question of argumentation and value-based judgments. Hence, knowledge is an important aspect of decision-making but at the same time a resource that is used selectively. *Tamas* argues that especially in highly contested issue areas such as migration or integration, the research may become politicized. He points out that it does not necessarily mean reduced utilization of knowledge or evidence in policy-making, but rather symbolic use of it.⁴⁹

This is why it is important to understand and make visible how objective knowledge is produced and used – also in liberal democracies. In Finland e.g. *Dahlberg* has published an empirical study concerning the role of constitutional expertise in the Constitutional Committee. Finland does not have a constitutional court and the role of the Committee in ensuring the constitutionality of legislation is significant as a primary control mechanism. The Committee hears academic experts on constitutional law and the experts exercise significant power. *Dahlberg* points out that legal experts who are consulted by the

⁴⁴ Ylönen, Matti, Mannervuo, Mona & Kari, Niina. *Viestintätoimistojen valta – Poliittikan uudet pelurit*. Tampere: Vastapaino, 2022.

⁴⁵ Campbell, John L. & Pedersen, Ove K, *The National Origins of Policy Ideas: Knowledge Regimes in the United States, France, Germany, and Denmark*. Princeton: Princeton University Press, 2014.

⁴⁶ Ylönen, Mannervuo, & Kari, 2022.

⁴⁷ Cairney, Paul, *The UK government's imaginative use of evidence to make policy*. *British Politics* 2018, vol. 14, no. 1, pp. 1–22.

⁴⁸ Greenhalgh, Trisha & Russell, Jill, *Evidence-based policymaking: A critique*. *Perspectives in Biology and Medicine*, 2009, vol. 52, no. 2, pp. 304–318.

⁴⁹ Tamas, Kristof, *The Politicization of Evidence-based Policies: The Case of Swedish Committees* in Ruhs, Martin, Tamas, Kristof, Palme, Joakim (eds.): *Bridging the Gaps: Linking Research to Public Debates and Policy Making on Migration and Integration*. Oxford: Oxford University Press, 2019. pp. 127–145.

Committee, are chosen based on e.g. their academic status, but also it is significant, how beneficial the expert is for the Committee or does the expert know the right persons such as the Committee Counsel. Academic merits such as peer-reviewed publications related to the topic of hearing are not an essential factor. She also addresses the challenges concerning impartiality, when e.g. ministries use the same experts in the legislative drafting process and the number of experts used on the Committee is low.⁵⁰

Also, our survey results from the Finnish public administration research indicate that evidence-based decision-making is a rather ideal model for portraying the impact of scientific knowledge at the political and administrative levels. When the evidence-based model is emphasized, the decision-maker might not only symbolically use the knowledge but also try to influence the producer of the evidence. While the results from the scaling question in our Finnish survey indicated that political steering was not a significant factor in the choice of research topics, open-ended responses painted a somewhat different picture. One important issue was funding, which will direct the research and this way affect the choice of topics. The responses were focused also on elements of research freedom other than the choice of topic, such as the freedom to publish results.

Most alarming were the findings concerning funding instruments coordinated by decision-makers such government. Some respondents pointed out that e.g. ministries were preventing or affecting the publication of research results on politically sensitive issues. This supports the results of the V-Dem Institute according to which the degree of freedom of academic and cultural expression in Finland is in decline.⁵¹

The results may not be published if they do not meet the commissioner's expectations.

[Censorship occurred] at ministerial level, when the study raised a politically sensitive issue and there was no desire for a public debate. The ministry, therefore, assigned the report a security rating of 4, which meant that the results could not be published or discussed anywhere. With the help of lawyers, the security classification was eventually declassified, but the report was never officially published.

It is also important to notice that emphasizing evidence-based (scientific) knowledge is not the only approach in the political field and trust in science varies. Populist movements have emerged in Finland as in other countries and have gained voter support e.g. based on their strong opinions related to climate change or immigration from the “ordinary people's” perspective. Populists criticize the political elite, but also academics, scholars, and experts. *Mede and Schäfer* have analyzed science-related populism and they link it e.g. to the “participatory turn” meaning in the populist context a shift from representative

⁵⁰ Dahlberg, Maija, *Valtiosääntöoikeudellinen asiantuntijuus perustuslakivaliokunnassa*. Oikeus, 2022, no. 4, pp. 509-512.

⁵¹ V-Dem Institute, *Finland's country data*, available at <https://www.v-dem.net/data_analysis/CountryGraph/>, last visited 6 Jan 2023.

democracy to more direct forms of participation and citizen participation also in science-related decision-making. In science-related populism, ordinary people's everyday experiences are the important evidence, on which decision-making should be based and they criticize the "academic elite" also because they ignore the topical interests of the ordinary people.⁵²

Social media has strengthened the development and part of this phenomenon is "social media storms" or even doxing and harassment in the online environment. Not all this action is of course linked to populist ideologies. However, this kind of development can have a chilling effect on the researcher's free speech through self-censorship. At the same time, it is important to understand that criticizing science is also an important element of healthy civic discourse and this is why it is difficult to intervene in it. Also in our survey, the respondents described the "social media storms" as a factor that will prevent them to choose certain research topics. The "storms" might not include any illegal activity, but it makes it uncomfortable for the researchers to continue their work around these topics.

Scientific communities should take the side of their researchers, e.g. in the context of social media trolling. Sensitive and turbulent topics will cause social media storms and researcher doxing. Scientific communities should be more vigilant on these issues.

4 Centralisation of Academic Power

4.1 Power of Academics

There are also internal threats to academic freedom in addition to external ones. For example, power relations inside the academic community can influence the choices of research topics and different elements of the research process in general, such as methodology and collaboration.

Some researchers have more power than others. There are for example different challenges to academic freedom for researchers in different career stages. Senior researchers might exercise undue power over the decisions of younger researchers. However, young researchers are often seen as bringers of new ideas. This can lead to the rejection of new research topics and methods and sticking to old practices. Traditionally new ideas and critical thinking have been seen as threatened by the state, and academic freedom historically secures universities' role, so that the researchers can generate new ideas which entail challenging accepted norms.⁵³ There is not much discussion about who are those researchers, and whom academic freedom protects in practice.

⁵² Mede, Niels G. and Schäfer, Mike S., *Science-related populism: Conceptualizing populist demands toward science*. *Public Understanding of Science*, 2020, vol. 29, no. 5, 458–558; Ylä-Anttila, Tuukka., *Populist knowledge: "Post-truth" repertoires of contesting epistemic authorities*. *European Journal of Cultural and Political Sociology*, 2018, vol. 5, no. 4, pp. 356–388.

⁵³ Ramanujam and Wijenayake, 2022, p. 32.

Under the guidance of senior researchers, the university's traditional practices are emphasized, which may discourage new researchers and reduce innovation in research. Stick to the old and familiar.

In the early stages of an academic career, one is very dependent on the popularity of senior colleagues, their guidance, and often their connections. Then you often have to make compromises between research interests and e.g. supervisor/supervisor's research interests. I have been in such situations at least several times, but on the other hand, I am very grateful for what I got guidance and e.g. benefiting from a colleague's connections. This dichotomy is related to many things.

A research career from the very beginning demands success in obtaining research funding and active publication in peer-reviewed scientific journals. This in turn will increase the chances of obtaining external funding and university posts. The further the process deepens, the better the possibilities for conducting research and gaining better positions in academia.

Hence, *Merton* talks about “the Matthew effect” in science where “scientific contribution will have greater visibility in the community of scientists when it is introduced by a scientist of a high rank than when it is introduced by one who has not yet made his (*sic*) mark”.⁵⁴ This kind of cumulative advantage can also be seen in interdisciplinary competition, with disciplines at the centre of science policy and close to funding sources outperforming those on the fringes of science policy and far from funding sources in the competition for resources. There we come to the link between the democracy and power of academics. Some disciplines and researchers have more power than others do.

In addition, the production of scientific knowledge is nowadays understood in terms of collaboration not only inside the scientific community but also with a variety of other actors.⁵⁵ The increasing power of stakeholders is linked to research integrity and this development makes it even more important to recognize conflicts of interest in the academic world. Traditionally the influence of public administration research does not come from the private sector. Also, our survey did not show that business or industry had any significant influence e.g. on the correspondents' choice of research topics in conducting PA research. Still, the situation varies by different research fields.

For example, *Raitasuo* has demonstrated in his dissertation how conflicts of interest in tax scholarship may lead to bias in tax law interpretation in Finland. Many tax law scholars work in tax consulting, and as a result, research in the field emphasizes the interests of the tax consulting industry. He points out that tax research can improve the ability of economically powerful actors to minimize their taxes and at the same time reduce the democratic legitimacy of the tax system in general.⁵⁶

⁵⁴ Merton, Robert K., *The Matthew effect in science*. *Science*, 1968, vol. 159, no. 3810, pp. 56–63.

⁵⁵ Ellemers, Naomi, *Science as collaborative knowledge generation* *Social. Psychology*, 2021, vol. 60, no. 1, pp. 1–28.

⁵⁶ Raitasuo, Santtu, *Oikeustiedettä vai asianaajo?: Kriittisiä näkökulmia vero-oikeuden tutkimukseen*. Helsinki: Helsingin yliopisto 2022, pp. 5–6.

In Finland, *Responsible conduct of research and procedures for handling allegations of misconduct in Finland* constitutes the frame for the self-regulation system in research integrity cases. National approaches differ and in some countries in Europe, there are also legislation-based systems concerning allegations and imposing sanctions in the case of violations of research integrity.⁵⁷ The strong emphasis on self-regulation systems can lead to problems from the academic freedom perspective if the individual and collegial elements of it are not in balance.

Typically, the criminal law system completes the self-regulation system in integrity cases. The main idea of the Finnish Penal code concerning offenses in office and offenses by an employee of a public corporation (chapter 40) is to regulate the criminal liability of persons exercising public authority, but it also partly applies to persons performing public tasks. For example, in Finland six professors were found guilty of negligent violation of official duties in 2022. The district court stated that they participated in a meeting concerning research funding, which would have benefited themselves or persons close to them. University hospitals do close collaboration with universities. In this case the professors were members or advisory members of the University hospital's research committee.⁵⁸

4.2 Individual Academic Freedom and Power of Universities

Universities exercise power over academics and the university as an organisation may be limiting individual academic freedom. As highlighted before, universities exercise power through funding and profiling, but there are also examples of retaliation such as dismissals as *Ramanujam and Wijenayake* describe related to Hungarian and Russian cases. In the Russian case, a teacher who participated in the protests against the arrest of Alexey Navalny was fired and in Hungary, an academic had her contract terminated for questioning the university's decision to cancel a conference addressing anti-LGBTQ+ and anti-immigrant crimes.⁵⁹ In the ECHR case *Kula v. Turkey*, the court found that also milder sanctions such as reprimands have an impact on the exercise of academics' freedom of expression and even have a chilling effect in that regard. In that case, the Dean informed the academic not to participate in a TV program. The Dean first reduced the applicant's salary by one-eighth, but the sanction was later replaced by a less severe penalty, a reprimand. Also, the case *Sorguç v. Turkey* highlights an academic's freedom to express freely his opinion about the institution or system in which he works and freedom to distribute knowledge and truth without restriction. The domestic courts had qualified his criticism of the academic system as defamation.

⁵⁷ See <<https://tenk.fi/en/research-misconduct/finnish-model-self-regulation>>, last visited 13 Jan 2023.

⁵⁸ Yle, *Itä-Suomen yliopiston professorit osallistuivat omien tutkimushankkeidensa rahoituksen käsittelyyn – oikeus antoi sijaan varoituksen* available at <<https://yle.fi/a/3-12603986>> last visited 13 Jan 2023.

⁵⁹ Ramanujam & Wijenayake, 2022, pp. 32–33.

Also in Finland and other Nordic countries, there are examples of the sanctions targeted at researchers and violating freedom of expression. The Finnish Parliamentary Ombudsman has found illegal a formal written warning, in a case concerning a researcher of the Technical Research Centre of Finland (VTT) (Dnro 3098/2/10). The researcher commented in the press and criticized the preparation of a government decision concerning licenses for nuclear power plants. He was also heard by the parliament's committee as an expert. In the same organization, there had been also a case related to the researcher's right to publish critical comments on the use of peat energy. The Ombudsman refers to the freedom of expression and the Finnish Constitution, Article 16(3), which protects the freedom of science, the arts and higher education. The Parliamentary Ombudsman pointed out that the freedom of science is not without significance in those institutions, although they do not have similar autonomy to universities.

In cases not linked to freedom of speech, e.g. cases which are linked to the financial preconditions for free research instead, the protection against e.g. dismissal at the universities is not strong in Finland. This is the situation, despite, according to the University act, section 32, the employer may not act in the employment relationship in a manner that may endanger the freedom of research, art or education and the employment contract of an employee belonging to the research and teaching staff of a university may not be terminated or canceled on grounds that could be invoked and infringe on the freedom of research, art or education. The Supreme Court has recently ruled in a case (KKO 2023:1) that a dismissal based on productive and financial grounds and university's right to choose which person will be dismissed in those situations, do not violate these provisions.

As a result of the trend of NPM, as well as the University Act reform, universities' power (and need) to make organizational restructuring has increased. In the above-mentioned Supreme Court case KKO 2023:1, a professor in plant ecology had worked at the university as a professor since 1998 and was dismissed for productive and financial reasons in 2016 when the state cut basic funding for the universities. The professor's work duties were terminated and partly distributed to others. Also, a tenure-track assistant professor was hired. The person hired, had worked at the university since 2013 and had received significant external funding. The Supreme Court, opposed to the decision of the Court of Appeal, stated that the tenure track assistant professor had not been hired for the same duties after the professor's dismissal. Despite the same branch of science and the same field of professorship, their research interests were not similar and the professor's tasks were distributed also to others than the tenure track professor. The University had received savings. The Court of Appeal found, that when the only difference between the positions was the different research interests and when this kind of difference is a consequence of freedom of science, the dismissal was not legal, because the assistant professor was hired for the same duties. The Supreme Court instead, pointed out that the freedom of science does not prevent the university to act as others' employers when organizational restructuring is needed. Hence, the grounds for the dismissal were found legal.

4.3 Risks Related to Universities' Self-governance and Significance of the Collegial Element of Academic Freedom

Self-regulation refers to the university's ability to define its norms: processes, practices, administrative structures et cetera.⁶⁰ Self-regulation can be seen as a part of the NPM discourse. At the same time, it is also strongly connected with university autonomy. However, there are different self-regulation models in European higher education systems. The Finnish self-regulation model is less state-controlled than state-centered models (e.g. France), but not as market-oriented as managerial models (e.g. England).⁶¹ In Finland, universities have extensive administrative autonomy and they can decide, for example, how university staff can participate in and influence university activities.⁶² The university's norms cannot be contrary to the University Act. Also, they cannot regulate matters that are already regulated in the Act.

Organizational autonomy and self-regulatory power must be evaluated in relationship to the principles of democracy and separation of powers. The Constitution states that the powers of the State in Finland are vested in the people, who are represented by the Parliament (2.2). Moreover, other authorities may be authorized by an Act to lay down legal rules on given matters, if there is a special reason pertinent to the subject matter and if the material significance of the rules does not require that they be laid down by an Act or a Decree. The scope of such authorization shall be precisely circumscribed. The Constitution also includes the individual right to participate in and influence.

The constitutional autonomy of the Finnish universities does not include the principle of democracy. The lack of democracy has been seen as a significant problem in the current university system.⁶³ In Finland, the university members might not be involved in the University Board. This means that members of the university are not part of the regulatory power because the University Board has the exclusive power to decide the university regulations. This is the case in Finnish foundation universities (University Act 26). Overall individual participation and influence opportunities are minimally secured in both university types (public universities and foundation universities). The Finnish university system is not based on a dualist principle in which decision-making power (regulatory power) is separated from executive power and preparatory power. The University Board end rector uses regulatory and executive power

⁶⁰ Sabzalieva, Emma, Jaime Roser & Takudzva, Mutize, The impact of self-regulation in the governance of European higher education systems on quality and equity. *Hungarian Educational Research Journal*, 2022, online print, pp. 3–5.

⁶¹ Sabzalieva & Takudzva 2022, pp. 3–5.

⁶² Hallberg, Pekka, Pohjolainen, Teuvo, Letto-Vanamo, Pia, Peltola, Maija S. & Kivistö, Jussi, *Yliopistoautonomia 2021*. Opetus- ja kulttuuriministeriön julkaisu 2021:7. available at <https://minedu.fi/documents/1410845/4154572/Yliopistoautonomia+1.3.2021.pdf/1dc10e06-e151-492c-5849-af3c51bcec09/Yliopistoautonomia+1.3.2021.pdf?t=1614614739981>, last visited 6 Jan 2023, pp. 103–106.

⁶³ Kekkonen, Jukka, *Kulminaatiopiste yliopistopolitiikassa – kappale 2000-luvun oikeushistoriaa* in Hemmo, Mika, Hoppu, Kari, Norros & Olli, Pönkä, Ville (eds.) *Yksityisoikeus ja oikeuskulttuuri – Juhlajulkaisu Heikki Halila – 1952 – 26/5 – 2022*, pp. 164–184, Helsinki: Edita Publishing Oy, 2022.

jointly. The higher education system is not based on the principle of parliamentarism. The university's regulations are not subject to primary human rights control. The lack of constitutional control is problematic because the university regulations are closely linked to the implementation of the Article 16 of the Constitution. According to the University Act (section 84) no appeal may be lodged against a university decision pertaining to university regulations.

According to UNESCO, recommendation on self-governance and collegiality means that higher-education teaching personnel should have the right and opportunity to take part in the governing bodies, and they should also have the right to elect a majority of representatives to academic bodies within the higher education institution. Collegial decision-making should encompass decisions regarding the administration and determination of policies of higher research, the allocation of resources, and other related activities.⁶⁴

As indicated earlier, the Finnish Constitution safeguards academic freedom at institutional and individual levels. Instead, the Constitution safeguards the right of the university community weakly. According to *Kekkonen*, the culture of participation can strongly vary by university.⁶⁵ In Finland, self-governance equals community members' opportunity to participate in governing bodies. According to the explanatory statement of Article 16(3) there is one important collective aspect of freedom of research: scientific orientation must be achieved primarily through academic criticism by the academic community itself.⁶⁶ This underlines the importance of the academic community and academic evaluation. The academic evaluation is guaranteed only in certain matters in University Act. Professors can be recruited either through an open requirement process or by invitation. In both cases, external academic evaluation is mandatory (University Act, section 31). Regulations aim to secure the academic evaluation procedure. The academic evaluation procedure is also part of doctoral and licentiate dissertations (University Act, section 44).⁶⁷

5 Lack of Effective Legal Remedies as a Rule of Law Problem

The ECtHR has emphasized in many cases an effective concrete remedy as an essential element of the Rule of Law. (e.g. *Klass and others v. Germany*, 6 September 1978, *Golder v. United Kingdom*, 21 February 1975). Also According to the case law of the CJEU, the Rule of Law includes procedural rights, such right to a judicial remedy. E.g. in the case *Rosneft*, C-72/15, the CJEU stated

⁶⁴ UNESCO, *Recommendations concerning the Status of Higher-Education Teaching Personnel* 1997, available at <<https://www.unesco.org/en/legal-affairs/recommendation-concerning-status-higher-education-teaching-personnel>>, last visited 13 Jan 2023.

⁶⁵ Kekkonen, Jukka, *Kekkosen kynästä. Diagnoosi Suomesta*. Edita 2019, p.167.

⁶⁶ *Government proposal* 309/1993, pp. 64–65.

⁶⁷ Vellamo, Tea, Kosonen, Jonna, Siekkinen, Taru & Pekkola, Elias, *Bureaucratic, professional and managerial power in university tenure track recruitment* in Forsberg, Eva, Geschwind, Lars, Levander, Sara & Wermke, Wieland (eds.): *Peer review in an era of evaluation: understanding the practice of gatekeeping in academia*. Cham: Springer International Publishing AG, 2022, pp. 371–402.

that “the very existence of effective judicial review designed to ensure compliance with provisions of EU law is *of the essence* of the rule of law”.

Related to academic freedom and legal remedies, some challenges occur at the domestic and European levels. First, in Finland, all elements of academic freedom as secured in the Finnish Constitution and human rights treaties, are ensured by the Constitutional Law Committee’s primary control mechanism.⁶⁸ However, ordinary courts’ possibility to rule on the constitutionality of laws passed by parliament is limited and there is no constitutional court in Finland. This might be a threat from the viewpoint of the Rule of Law, especially in case of a rise of extreme political parties, because the Constitutional Law Committee is a parliamentary sub-committee. At the moment, ordinary courts can secondary review the constitutionality of legislation giving primacy to the provision in the Constitution in a matter in which legislation is in *evident conflict* with the Constitution (Constitution of Finland, 106), which creates a relatively high threshold for the secondary review. In general, many researchers have seen this as a threat to the Rule of Law principle in Finland and suggested that the threshold for secondary review should be lower.⁶⁹

However, in case of violation of the institutional element of academic freedom, the problem is also who would take the case to the domestic court; who can act if there is no direct personal right, interest or obligation affected by the matter. That is also the reason why the European-level judicial review is so important concerning academic freedom and the Rule of Law. In case of violation of institutional academic freedom, the legal system of the European Union complements the domestic system, because the EU Commission and other member states can start a case against a national government which fails to comply with EU law.

At an individual human right level, the main problem is that the content of academic freedom is strongly linked almost only to the freedom of expression. Other aspects such as protection against influence by stakeholders, conflict of interest or internal threats related to the concentration of power inside the academy, will be secured and handled at the domestic level, and in some countries such as Finland, specifically based on self-regulation. In general, many challenges occur at the collegial level as mentioned before, e.g. no appeal may be lodged against a university decision pertaining to university regulations.

The autonomy of universities is important, but the strong power of internal actors, for example, imposing sanctions in case of research integrity, can create a risk from the viewpoint of the individual researcher, because there is a lack of strong procedural safeguards. However, in some cases, labour law and criminal proceedings will help to plug the gaps in legal protection. In addition, creating a

⁶⁸ *Statement of Constitutional Law Committee* 19/2004, 28/2005, 13/2006, 11/2009, 18/2009, 2/2013, 10/2012 and 43/2017.

⁶⁹ Suviranta, Outi, *Perustuslain tuomioistuINVALVONTA Suomessa – vertailevia näkökohtia*. Lakimies, 2021, 3–4, pp. 357–364, p. 358; See also Hidén, Mikael, *Selvitys perustuslain toimivuudesta ja mahdollisista tarkistamistarpeista*. Oikeusministeriön julkaisu, 2019. p. 22.

broader whistleblowing system than the EU directive (EU) 2019/1937 requires, might help to recognize these internal risks better.⁷⁰

In the end, it is important to notice that self-censorship is a phenomenon, which can not be tackled by legal remedies.⁷¹ E.g. if the system of funding is created in a way that will direct the research in a certain direction, researchers are choosing topics related to these themes. Or if some research topics are too sensitive because of the strong social media pressure, researchers might prefer to choose easier topics. As a result of this, academic freedom is structurally vulnerable and needs repairing elements also at the structural level. For example, the UN Economic and Social Council has in its General Comment 25 highlighted, states' positive duty to actively promote the advancement of science e.g. approving policies and regulations that foster scientific research, allocating appropriate resources in budgets and generally creating an enabling and participatory environment for conversation.

6 Conclusions

Academic freedom needs strong institutional arrangements to become reality. It is not just a question of the individual and his or her freedom to conduct research as such. Rather, there are often different background conditions beyond the control of the individual researchers. For example, different scientific practices, social norms and incentives determine scientific research. Different negative factors, constraints and undue influences also limit academic freedom. At the same time, the challenges vary by different branches of science.

In the modern world, knowledge is power and digitalization accelerates this development. In Rule of law discussion, this dimension has not been recognized very well when the question related to the balance of power has been addressed. Citizens and decision-makers need information. From the citizen's perspective, academics have an important role in promoting healthy civic discussion and the objectivity of information is essential. At the same time, influencing research topics and research results benefit many actors when knowledge has become so important. Besides states having a negative obligation to not violate academic freedom, they also have a positive obligation to prevent the violation of academic freedom by other actors such as private parties e.g through legislation and effective legal remedies, which are important elements of the Rule of Law.

Even related to academic freedom itself, different power dimensions occur. The balance between the institutional, collegial and individual elements of academic freedom must be secured. For example, if the autonomy of universities is strong without effective legal remedies and participatory rights at the collegial level, it just moves the problem of concentration of power from the state-university relation to the university-individual relation. For example, as mentioned before, in Finland the University Board and rector use regulatory and executive power jointly when individual participation and influence

⁷⁰ Kosonen, Jonna, Mäntylä, Niina, Perttola, Laura & Jokipii, Annukka, *Whistleblowing-kanavat ja opiskelijan oikeusturvaodotukset yliopistoissa*. Oikeus, 2022 vol. 51, no. 3, pp. 425–448.

⁷¹ Mäntylä et al. 2022.

opportunities inside the academy are minimally secured by legislation (because of the autonomy).

From the Rule of Law perspective, and especially from the viewpoint of power, it is important to recognize that as important concern as the state control, is the imbalance of power inside the academy and the role of stakeholders. Now many factors strengthen the power of powerful academics and stakeholders, which might threaten democracy, human rights, and the Rule of Law as well if they use their power for something else than for common good. Scientific knowledge should from the very beginning be neutral and objective. As *Reiss and Sprenger* argue, scientific objectivity is an idea according to which “scientific claims, methods, results – and scientists themselves – are not, or should not be, influenced by particular perspectives, value judgments, community bias or personal interests”.⁷²

Thus, academic freedom is not without obligations and limitations: there are, for example, different rules inside the scientific disciplines as well as limits set by law and even deeper liberal democratic values such as equality and human dignity which are strongly linked to the idea of the Rule of Law. In the name of academic freedom, not all kinds of research and all kinds of expression is possible, because being a state governed by the rule of law, means that also academics respect these values. Academic freedom without these values would be science without legitimacy. 70

⁷² Reiss, Julian & Sprenger, Jan, *Scientific objectivity* in Edward N. Zalta (ed.) The Stanford Encyclopedia of Philosophy (Winter 2020 Edition), 2020. Available at <<https://plato.stanford.edu/archives/win2020/entries/scientific-objectivity/>> last visited 13 Jan 2023.

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