

Academic Freedom in Poland, Russia and Hungary

A report submitted to Scholars at Risk

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July 2020

FACULTY OF LAW, MCGILL UNIVERSITY

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PART I: BACKGROUND

Context

The spectacular demise of communism in Central and Eastern Europe in 1989 brought about abrupt changes to the economic, social and political foundations of the region. Closely watched by Western observers, Eastern Europe emerging from behind the Iron Curtain firmly transitioned towards liberal democracy at first. Notwithstanding unavoidable economic difficulties and political tensions, the post-Cold War period produced mostly successful macroeconomic reforms, the institutionalization of democracy and a rise of the human rights agenda. As a result, the political and economic restructuring created the opportunity for the former Soviet satellite nations to become part of the Western international community. Indeed, most of the region joined NATO and the European Union by 2004. The Russian Federation as well saw dramatic changes in its adoption of the market economy, even though the transformation of a vast, sparsely settled, multiethnic nation subjected to seventy years of the central command economy has proven challenging. Kremlin's continued aspiration to maintain a great-power image and, on the other hand, inequalities and uneven economic development have strengthened populism, nationalism and conservatism.¹

For the last few years, several of the former Soviet bloc countries have also raised doubts over the future of the democratic trajectory. The right-wing governance shift in Hungary and Poland, specifically, polarized the respective societies into those who benefitted from the transition and those who lagged behind. The authoritarian-minded leaders, appealing to nationalist values and shaking the grounds of the rule of law, captured the attention of international commentators,

¹ Thomas Graham, "Let Russia Be Russia. The Case for a More Pragmatic Approach to Moscow," *Foreign Affairs*, November/December 2019, <https://www.foreignaffairs.com/articles/russia-fsu/2019-10-15/let-russia-be-russia>.

who point to alarming governmental attempts to monopolize power in the respective countries.² Notably, both Hungary and Poland adopted judicial reforms that increased the respective governments' ability to participate in the process of appointing and disciplining judges, in disregard of the judicial independence or the division of powers.³ Vladimir Putin's still-expansive vision of foreign politics, articulated through military interventions in Georgia, Crimea or Syria, as well as a restrictive understanding of human rights and his latest constitutional manoeuvre that will allow him to stay in power until 2036,⁴ fit into this landscape easily.

In this context, the first steps towards the erosion of individual freedoms frequently go unnoticed. The process is gradual and overshadowed by more immediate consequences of anti-democratic political behaviours. One of such spheres, impacted by the populist turn in Eastern Europe and that received little attention, is higher education.

With this in mind, the present report, preceded by several months of monitoring, proposes to examine the current state of academic freedom in three countries of the region: Poland, Hungary and Russia. Below we offer an overview of recent legal and political developments in that sphere, divided by country. The report is complemented by a presentation of international legal standards and references to the political situation in each country.

² Joanna Fomina, Jacek Kucharczyk, "The Specter Haunting Europe: Populism and Protest in Poland," *Journal of Democracy* 27, no 4 (2016): 58-68.

³ CDL-PI(2020)002-e, Poland-Urgent Joint Opinion on the amendments to the Law on organisation on the Common Courts, the Law on the Supreme Court and other Laws adopted by the Venice Commission (Strasbourg, 16 January 2020); CDL-AD(2012)001, Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012); CDL-AD(2012)020, Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary, adopted by the Venice Commission at its 92nd Plenary Session (Venice, 12-13 October 2012).

⁴ Gabrielle Tétrault-Farber, Alexander Marrow, "Kremlin calls vote allowing Putin to rule until 2036 a triumph as Russians ponder his next move," *Reuters*, July 2, 2020, <https://www.reuters.com/article/us-russia-putin-vote/kremlin-calls-vote-allowing-putin-to-rule-until-2036-a-triumph-as-russians-ponder-his-next-move-idUSKBN2431TM>.

International Standards

Academic freedom is an independent freedom, guaranteed by different international, regional and national legal instruments. At the same time, it engages a number of other rights and freedoms, such as freedom of expression, the right to education, employment laws, freedom of association etc.

While there is no one accepted definition of academic freedom in international law, according to the Committee on Economic, Social and Cultural Rights (CESCR), academic freedom, pursued individually or collectively, includes the liberty to “develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing.” Academic freedom allows members of the academic community “to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights.”⁵ Academic freedom also entails an institutional dimension of academic freedom, that is, the autonomy of decision-making and from political interference.⁶

The United Nations Educational, Scientific and Cultural Organization (UNESCO) echoes these considerations in a ‘soft-law’ recommendation from 1997. According to the agency, academic freedom is “the right (...) 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.”⁷ On academic self-

⁵ Gen. Comment nr 38, para. 39.

⁶ Ibidem, para. 40; see also Eric Barendt, David Bentley, “Academic Freedom and the Law,” Chatham House, December 8, 2010, p. 3.

⁷ Recommendation concerning the Status of Higher-Education Teaching Personnel, November 11, 1997, para. 27.

governance, UNESCO reinforces the idea that “higher-education teaching personnel should have the right and opportunity (...) to take part in the governing bodies and to criticize the functioning of higher education institutions (...).”⁸

In other words, what connects these two understandings of academic freedom is that they both highlight its multidimensional nature, including positive rights to engage in academic activities, negative obligations on states to restrain from activities that would curtail academic freedom and, lastly, the impact of institutions and political structures on the full enjoyment of academic freedom.

Academic freedom receives protection from several international legal mechanisms. The three main international sources of law binding for all three analyzed countries are the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Hungary ratified ICCPR and ICESCR in 1974 and the ECHR in 1992; Poland ratified ICCPR and ICESCR in 1977 and the ECHR in 1993; Russian Federation ratified ICCPR and ICESCR in 1973 and the ECHR in 1998.

Article 19 of ICCPR sets forth the “freedom to seek, receive and impart information and ideas of all kinds.” Academic freedom is not referenced here explicitly because the authors of the Convention conceived the right to think broadly, including the right to artistic expression and freedom of speech, among others.⁹ The freedom envisioned by the treaty is not absolute. However, it may only be subject to limitations by domestic laws so long as these are necessary, i.e. involve the right to reputation of others or the protection of national security, public order, public health or morals.

⁸ Ibidem, para. 31.

⁹ Art. 19(2).

ICCPR facilitates the materialization of academic freedom through supplementary provisions, such as the right of peaceful assembly in Article 21, the right of association in Article 22 or the right to liberty of movement in Article 12. These rights guarantee that the academic freedom of scholars and students will not be curtailed under the pretext of regulating ostensibly unrelated liberties.

ICESCR recognizes different dimensions of scientific rights in more explicit terms. Article 13 guarantees everyone's right to education with particular goals of maximizing "the full development of the human personality and the sense of its dignity" as well as "the respect for human rights and fundamental freedoms." In the context of higher education, Article 13 establishes equal accessibility to all, depending on capacity and appropriate means of state parties. In the general comment to the treaty from 1999, the CESCR adds that "the right to education can only be enjoyed if accompanied by the academic freedom of staff and students" (*supra*, para. 38). Furthermore, Article 15 of the ICESCR imposes a legal obligation on the state parties "to respect the freedom indispensable for scientific research" and to recognize one's right to benefit from the protection of interests resulting from their scientific work. The provision also highlights the importance of international cooperation in the scientific field.

The ECHR, a regional agreement, safeguards academic freedom in Article 10, which guarantees the right to freedom of expression. Additionally, the ECHR protects the right to education in Article 2 of its Protocol No 1. Specifically, the ECHR prescribes: "[n]o person shall be denied the right to education." The negative formulation of the right has generated debates over the scope and nature of state obligations¹⁰.

¹⁰ See e.g. Klaus D. Beiter, Terence Karran, Kwadwo Appiagyei-Atua, "Academic Freedom and Its Protection in the Law of European States," *European Journal of Comparative Law & Governance* 3 (2016) 254-345, at 283 note 92.

Lastly, Hungary and Poland are state parties to the European Charter of Fundamental Rights, which entered into force in 2009. The Charter explicitly safeguards academic freedom and scientific research in Article 13. In support of this provision, the Charter provides for the freedom of expression and information in Article 11, the freedom of assembly and of association in Article 12 and the right to education in Article 14.

PART II: COUNTRY REPORTS

Poland

Political and Legislative Context

The years following the collapse of communism in Poland brought a period of rapid economic growth and other societal transformations, leading to a polarization between the pro-European liberals and traditionalists. Since returning to power in 2015, the right-wing populist Law and Justice (PiS) party has undertaken a series of illiberal measures that strengthen government interference in institutions, such as the judiciary,¹¹ the public media and academia. The government-controlled bodies, purged of the pro-opposition representatives, became part of the government's monopolizing practices. As "the assault on independent institutions" continues, Poland's score has dropped nine points in the Freedom House evaluation, from ninety-three in 2009 to eighty-four currently.¹²

The Constitution of Poland provides for a strong protection of academic freedom. Article 73 recognizes three aspects of academic freedom, that is, "the freedom of (...) scientific research

¹¹ Stefan Batory Foundation, "Report of the Stefan Batory Foundation Legal Expert Group on the impact of the judiciary reform in Poland in 2015-2018," https://www.batory.org.pl/upload/files/Programy%20operacyjne/Odpowiedzialne%20Panstwo/Batory%20Foundation_Report%20on%20the%20judiciary%20reform%20in%20Poland.pdf.

¹² Freedom House, "Freedom in the World 2020. A Leaderless Struggle for Democracy," https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf at 8, 11, 24.

as well as dissemination of the fruits thereof, the freedom to teach (...).” Article 70(5), in turn, guarantees the autonomy of the institutions of higher education, subject to the statute. The right to education is articulated in Article 70(1). In addition, several provisions facilitate the operation of academic freedom: for instance, Article 54 safeguards against preventive censorship; Article 57 protects the freedom of peaceful assembly; whereas Article 25(2) ensures the freedom of expression within public life.

The Constitution specifies that the exercise of constitutional freedoms and rights is not absolute, but may only be limited through legislation when it is “necessary in a democratic state for the protection of its security or public order or to protect the natural environment, health or public morals, or the freedoms and rights of other persons” as long as it is not inconsistent with the essence of these freedoms and rights (Art. 31(3)). This long list of concessions enlisted under Art. 31(3) is qualified with the requirement that the limitation is necessary for a democratic society, which the Constitutional Tribunal¹³ interprets as a way of inquiring about the proportionality between the legislative goals and the safeguard of individual freedoms.¹⁴

Interestingly, according to the Constitutional Tribunal, constitutional protections against the interference of the government in academic freedom do not warrant bringing claims against the government or university authorities when the stability of tenure or the access to academic degrees is limited in the legislation. In a judgement from 2009, the prominent trade union Solidarity argued that the choice to hire academic staff via either appointment or employment contract, provided for in the Law on Higher Education, is inconsistent with the protection of academic freedom under Article 73 of the Constitution. The Solidarity held the position that the

¹³ The Constitutional Court is a special Polish court designated to resolve constitutional disputes.

¹⁴ Aleksander Stępkowski, *Zasada proporcjonalności w europejskiej kulturze prawnej: sądowa kontrola* at 359.

freedom of science entailed the right to stable employment that only appointments could offer. The Tribunal did not accept this argument and remarked that “the freedom of teaching as well as the freedom of scientific research may also be conducted outside of academia.” In other words, the protection of academic freedom enshrined in Art. 73 does not include the protection of stable employment.¹⁵

This case built on a judgement from 2006. There, the claimant, who was a professor at the Institute of Art of the Polish Academy of Sciences, argued against the constitutionality of a social welfare law, which did not allow for claiming the retirement pension and continuing employment at the same time. According to the professor, this provision amounted to a violation of his academic freedom under Articles 70(5) and 73. In the reply, the Tribunal established that Article 73 of the Constitution “is not grounds for bringing any claim related to the material status of the teaching employees at universities and research facilities. This applies in particular to any claims over the guarantee of stability of employment (...) and social security.”¹⁶

The constitutional order is complemented with legislation. The broad reformatory enthusiasm following the Law and Justice party’s rise to power in 2015 also materialized in the higher education sector. The reform of the higher education system, announced in September 2016, came after years of struggles to improve Polish higher education, desperately needed after the collapse of communism. While the demand for higher education rose from 380,000 students in 1991 to almost two million in 2005, over the same period the academic staff has increased merely by 40%.¹⁷

¹⁵ Translation of the author; K 27/07 OTK ZU nr 4/A/2009, poz. 54, April 28, 2009, at 4.4.

¹⁶ Translation of the author; SK 45/04 (OTK ZU nr 2/A/2006, poz. 15, February 7, 2006.

¹⁷ Waldemar Siwinski, “The quest to promote quality over mediocrity in HE,” *University World News*, March 1, 2019, <https://www.universityworldnews.com/post.php?story=20190225100517806>.

Unlike other Law and Justice party legislative proposals, the Constitution for Education, as it is commonly referred to, received extensive consultations with the academic community prior to its enactment. The statute entered into force in October 2018, replacing the four related laws: The Law on Higher Education of 27 July 2005, the Law on the Principles of Financing Science of 30 April 2010, the Law on Academic Degrees and Title of 14 March 2003, as well as the Law on Student Loans of 17 July 1998. The law hopes to: improve the quality of education and research, restructure the self-governance of higher education and research institutions, reshape the importance and progression of scientific degrees, and introduce a centralized model of financing grounded in periodic evaluation. Among the most significant changes, it is worth mentioning that the evaluation and funding will flow directly from the university rector – not, as previously when the public funding went directly to each department. The reform also provides for the creation of new governance bodies – university councils, with half of their members drawn from outside academia.

Threats to Academic Freedom

Legislative Reform

This empowerment of university rectors and the creation of university councils aim at advancing a better administration of resources, where merit and transparency win over nepotism or corruption. Despite the intentions, the threat behind this solution consists in the possibility that certain specialized departments will lose funding if they fail to fit the “numerical” evaluation criteria, such as fulfilling a specific number of peer-reviewed publications in international journals. While it may be possible that the management of finances could improve under a university-level oversight, the autonomy of each department and faculty is at stake. In a country with unstable democratizing efforts like Poland, the centralization of power and the introduction of a governance mechanism from outside the academic community are alarming trends. The appointment of

Włodzimierz Fisiak in 2018 as chancellor of the Lodz University of Technology illustrates the threat.¹⁸ Fisiak, who now has an influence over finances and staff policy at the university, has been involved in politics with the Minister of Science and Higher Education Jaroslaw Gowin, the author of the Constitution for Education, since at least 2014. As well, Fisiak currently represents the ruling Law and Justice party in a regional-level legislature.

Another concern is the rise of the influence of the Catholic Church in academia, which corresponds to a larger trend of the conservative government supporting pro-Catholic interests. The legislative reform reduced the number of disciplines to simplify the higher education framework and eliminate overlapping areas of study. As a result, however, the reform elevated theology from a field of study under humanities to the level of one of eight main fields of art and science, next to humanities, economics, science etc.¹⁹ This, for instance, leads to the increased power of theologians on expert advisory boards as their input will have the same weight as the entire “science and natural sciences” field. Furthermore, the list of approved book publishers prepared by the Ministry includes some non-academic Catholic imprints.

Academic and Cultural Publications

Every few years, Poland publishes a list of approved peer-reviewed journals (Polish and foreign) and publishing houses, attaching to them a specific amount of points, measured through bibliometric indicators. The fair assessment of each publication is of utmost importance, as the research funding in Poland depends on the quantification and ranking of researchers’ accomplishments based on the number of points they gained over a particular period. Following the legislative reform, the evaluation and funding of each university also hinge upon the number

¹⁸ See <https://www.p.lodz.pl/pl/wlodzimierz-fisiak-kanclerzem-pl>.

¹⁹ See https://eacea.ec.europa.eu/national-policies/eurydice/content/national-reforms-higher-education-50_en.

of points gained by their academic community. Not surprisingly, the transparency and criteria of evaluation for journals have been subjected to scrutiny. The bibliometric model of assessment is the same across all disciplines and thus, may not always account for particularities of some fields of study.

Under the new Law on Higher Education, the first stage of preparing the evaluation was the creation of expert committees for each field. Experts were selected by the Ministry via a public contest. The Minister of Higher Education formed 44 committees with 3-10 members for each committee. The committees evaluated the quality and importance of each journal in their discipline and proposed punctuation for every journal. Then, the Commission of National Evaluation, a new supervisory body created through the 2018 Law on Higher Education, analyzed the results of committees' work and prepared the final version of the list. The Commission is composed of 3 representatives of each recognized discipline who are recommended by universities and 7 experts chosen directly by the Minister. In the most journal evaluation, the Commission accepted 85% of the changes proposed by the expert committees.²⁰

The commonly voiced concern relates to the depreciation of research advancements in humanities and social sciences. The Polish journal ranking undervalues Polish publications, which has a material adverse impact on the assessment of research on Polish culture, society and language.

Another example of a problematic application of the "points" system is a journal contest for additional funding concluded in March 2019. On the list of winning journals, the Ministry of Science and Higher Education included at least twenty-one Catholic theological journals, whereas

²⁰ See <https://konstytucjadlanauki.gov.pl/koniec-z-punktoza-nowy-wykaz-czasopism-juz-jest>; The Law on Higher Education, 2018, art. 267, <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20180001668/T/D20181668L.pdf>; http://www.bip.nauka.gov.pl/g2/oryginal/2019_01/9cdf7e8af9521cdbfbce9d96504a5c3a.pdf.

a few left-wing political titles were left out.²¹ The regulation of the contest, however, does not explain how each journal is evaluated, leading some to question the validity of distributing extra funding via contests.²²

Poland's Commissioner for Human Rights expressed his concern over this matter on several occasions. Most recently, in a statement from February 2020, the Commissioner asks the government to explain the exclusion of renowned cultural and socio-political magazines from the list of publicly-funded publications for 2020-2022. The excluded magazines, such as "Tygodnik Powszechny", "Przegląd Polityczny", "Krytyka Polityczna" or "Pismo", are known for a different political inclination than that of the ruling party and have all criticized the government in the past. The Commissioner further points to the pattern of cutting the funding for magazines that do not align with the political expectations of the government. Notably, in 2017, the Ministry of Culture and National Heritage denied the funding for a Jewish magazine "Midrasz" and a Roma magazine "Dialog Pheniben".²³

Academic Freedom, Scientific Truth and Ideologization

Another troubling trend unfolding in Poland is the misused resort to the value of academic freedom in order to defend events, research or comments that contradict the current state of science or are considered offensive in a democratic society. The conservative legal non-profit organization Ordo Iuris has recently published a report, which lists alleged violations of academic freedom in

²¹ Adam Leszczyński, „Kościół dostał dużo. Znowu. Kwiatki w konkursie Gowina o dofinansowanie czasopism naukowych,” *Oko.Press*, March 29, 2019, <https://oko.press/kosciol-dostal-duzo-znowu-kwiatki-w-konkursie-gowina-o-dofinansowanie-czasopism-naukowych/>.

²² Zarządzenie Ministra Nauki i Szkolnictwa Wyższego z dnia 28 września 2018 r. w sprawie powołania Zespołu interdyscyplinarnego do spraw projektów zgłoszonych w ramach programu „Wsparcie dla czasopism naukowych,” http://www.bip.nauka.gov.pl/g2/oryginal/2018_10/f21687047cfd5eec4581cc4869f861c1.pdf?fbclid=IwAR2orvkV.

²³ Commissioner for Human Rights of the Republic of Poland, <https://www.rpo.gov.pl/pl/content/rpo-niejasne-kryteria-dotacji-dla-czasopism-kulturalnych>.

Poland.²⁴ The list includes, for example, the case of prof. Nalaskowski suspended disciplinarily from his academic functions at the Nicolaus Copernicus University after publishing a homophobic op-ed piece online. In the article, Nalaskowski refers to the organization of Pride Marches as “rape of values”. The professor criticized the city for allowing public marches of “effeminate dandies, jesters living off of their mommies, pretty boys who never stop the party and repulsive, fat, tattooed hags, who kiss ostentatiously like on promiscuous movies, and individuals whose gender is difficult to identify.”²⁵ In January 2020, the university’s disciplinary advisor prof. Bogusław Sygit discontinued the suspension, after concluding that the text conveyed subjective opinions in a context, which was outside the scope of the university role and which did not purport to be informative. Furthermore, according to Sygit, the language used in the article was not discriminatory or offensive – it was a critique of a certain social group and multiple references to rape were merely a metaphor of the imposition of “LGBTQ ideology”.²⁶ In April 2020, the university’s Disciplinary Commission for Academic Teachers overturned this decision and referred the case to a new advisor. The details justifying the Commission’s decision were not presented to the public.²⁷

In another case described by the Ordo Iuris report, prof. Ewa Budzyska a sociologist from the University of Silesia faced a disciplinary investigation after students denounced the content of

²⁴ Ordo Iuris, “Lista Najważniejszych Ograniczeń Wolności Akademickiej w Polsce,” https://ordoiuris.pl/sites/default/files/inline-files/Lista_najwazniejszych_ograniczen_wolnosci_akademickiej_w_Polsce_2.pdf.

²⁵ “Co naprawdę napisał prof. Nalaskowski? Publikujemy cały felieton "Wędrowni gwałciciele", za który wykładowca został zawieszony przez rektora UMK,” *wPolityce*, September 15, 2019, <https://wpolityce.pl/polityka/463899-co-naprawde-napisal-prof-nalaskowski-cal-y-felieton>.

²⁶ Antoni Ambroziak, “UMK nie ukarze Nalaskowskiego za homofobiczny tekst. Biegły: to była metafora „szerzącej się ideologii LGBT”,” *Oko.Press*, January 3, 2020, <https://oko.press/umk-rozgrzesza-nalaskowskiego-z-homofobicznego-felietonu-to-byla-metafora-szerzacej-sie-ideologii-lgbt/>.

²⁷ “Prof. Aleksander Nalaskowski ponownie na celowniku cenzorów,” *PCh24.pl Polonia Christiana*, May 1, 2020, <https://www.pch24.pl/prof--aleksander-nalaskowski-ponownie-na-celowniku-cenzorow,75748,i.html>.

Budzynska's course. Students alleged that the course was offensive and not consistent with the current state of knowledge. Among other allegations, Budzynska remarked during the class that the use of birth control is an asocial behaviour; she defined the family as "husband and wife, father, mother and child"; and she called abortion murder. In a protest against the university's investigation, Budzynska quit her position in January 2020. This case prompted the Minister of Higher Education to vow in January 2020 to adopt an amendment to the legislation defending free speech and preventing censorship at Polish universities. In defence of Budzynska, the Minister tweeted that "we will not allow the extremely ideologized groups to censor" Polish universities.²⁸ The draft bill proposes to create a commission for freedom, comprised by nine members (including four members appointed by the Minister).²⁹

Judicial Intimidation

Another mechanism of curtailing academic freedom is by judicial intimidation. The academic community in recent years has faced the threat of judicial action when expressing criticism of the government. In 2019, the governing Law and Justice Party (PiS) and the State-run national broadcasting agency TVP filed several lawsuits against Wojciech Sadurski, a law professor at the University of Warsaw and the University of Sydney, Australia, after he publicly criticized PiS and TVP.³⁰ Specifically, on January 21, PiS filed a defamation lawsuit denouncing Sadurski's Tweet, which called the party an "organized criminal group."³¹ Sadurski's comment

²⁸ "Minister promises law to stop "censorship at Polish universities" after lecturer accused of homophobia," *Notes from Poland*, January 19, 2020, <https://notesfrompoland.com/2020/01/19/minister-promises-bill-to-defend-free-speech-at-universities-after-lecturer-accused-of-homophobia/>.

²⁹ See <http://naukawpolsce.pap.pl/sites/default/files/202001/G%C5%82%C3%B3wne%20za%C5%82o%C5%BCenia%20projektu%20nowelizacji%20Konstytucji%20dla%20Nauki.pdf>.

³⁰ See <https://www.scholarsatrisk.org/report/2019-01-20-university-of-warsaw/>.

³¹ @WojSadurski (Twitter), November 10, 2018, <https://twitter.com/WojSadurski/status/1061340280786468865>.

was a reaction to the decision to host the Independence Day parade and the far-right demonstration together. On June 18, 2020, the lower court in Warsaw dismissed the civil lawsuit filed by PiS.³² The court grounded the decision in art. 54 of the Polish Constitution and art. 10 of the European Convention on Human Rights, both of which protect the freedom of expression. In his video reaction to the court's decision, Sadurski further denounced PiS for aspiring to reach for the ultimate privilege of "freedom from criticism."³³ The court's decision is not final and is expected to be appealed.

At the same time, TVP filed separate civil and criminal lawsuits against Sadurski for his Tweets that called for the opposition to not cross "the threshold of Goebbels media" after Mayor of Gdansk Piotr Adamowicz was stabbed to death during a charity event.³⁴ According to some commentators, TVP had portrayed Adamowicz as dishonest and a liar. The special Newton Media report demonstrates that in 2018, TVP referenced Adamowicz on 1773 occasions, which amounts to five references per day.³⁵ In the criminal suit, TVP accuses Sadurski of undermining the broadcaster, who is "reliable, meticulous and enjoys an excellent reputation."³⁶ The defamation charge under art. 212 of the Polish Penal Code is punishable up to a year of imprisonment.³⁷ The trial has been adjourned until October 2, 2020.³⁸

³² @WojSadurski (Twitter), June 20, 2020, <https://twitter.com/WojSadurski/status/1274140966551564297>.

³³ OKO.press, *Sąd oddalił pozew PiS za porównanie działania partii do zorganizowanej grupy* (Facebook), <https://www.facebook.com/oko.press/videos/567479990823613/>.

³⁴ "Pawel Adamowicz, Gdansk mayor, dies after stabbing," BBC, January 14, 2019, <https://www.bbc.com/news/world-europe-46867286>.

³⁵ Agata Szcześniak, „TVP mówiła o Adamowiczu prawie 1800 razy w 2018 roku. Średnio prawie 5 razy dziennie,” OKO.press, February 1, 2019, <https://oko.press/materialow-oczerniajacych-adamowicza-bylo-w-tvp-ponad-100-pis-to-klamstwo-naprawde-telewizja-zajmowala-sie-adamowiczem-prawie-1800-razy/>.

³⁶ @WojSadurski (Twitter), June 19, 2020, <https://twitter.com/WojSadurski/status/1273857290903236609/photo/1>.

³⁷ See https://www.imolin.org/doc/amlid/Poland_Penal_Code1.pdf.

³⁸ @WojSadurski (Twitter), June 20, 2020, <https://twitter.com/WojSadurski/status/1274140966551564297>.

Another case of judicial harassment involved a group of criminal law professors from the Jagiellonian University and members of the Cracow Institute of Criminal Law, who published a report criticizing the criminal justice reform. The professors criticized the proposed amendments of the Penal Code which reduced the liability of managers of public corporations for corruption from eight to five years of maximum imprisonment. Following the publication, the Ministry of Justice announced that it would undertake legal steps against the authors of the critique. In the news release on the Ministry's Website, the Ministry repeatedly called professors liars: "The Ministry of Justice does not know the reasons why professors and doctoral students of the venerable Cracow university lied in their opinion".³⁹ In a public statement, the Deputy Minister of Justice Marcin Warchol said that "there are limits to criticism and political dispute which must not be crossed."⁴⁰ In a statement following the Ministry's announcement that it intended to file a civil suit, the experts comment:

"the news release (...) constitutes an unacceptable form of suppression of freedom of expression, an attack on academic liberty, an interference with the autonomy of research conducted at the University, and an attempt to limit the participation of the civil society in the opinion-making process with regards to projects of the future laws of the Republic of Poland. Due to the institutionalized form of the news release, issued by the official state authority, it shall be deemed that the actions of the Ministry of Justice interfere with constitutionally provided freedoms and civil rights – namely, the citizen's relationship with the state."⁴¹

Two days later, the Deputy Minister of Justice Marcin Warchol announced that the Ministry withdrew from the idea to proceed with the lawsuit.

³⁹ See <https://www.gov.pl/web/sprawiedliwosc/ministerstwo-sprawiedliwosci-wytoczy-proces-cywilny>.

⁴⁰ See <https://www.gazetaprawna.pl/artykuly/1417740,warchol-o-pozwie-przeciw-prawnikom-z-krakowa-ws-opinii-dot-kodeksu-karnego.html>.

⁴¹ See https://kipk.pl/dokumenty/statement_analysis2019.pdf.

Russia

Political and Legislative Context

Despite various symbols of democracy, Russia is a de-facto authoritarian political system, with the same person at the helm for the past twenty years. Through a loyal network of politicians at the national, state and local levels, Vladimir Putin and the Kremlin exert a strong central power over the Russian Federation, including over institutions like civil society, the media, the judiciary, security forces and the internet.⁴² Moreover, legislature and the judiciary are largely obedient to those in power.⁴³ With conservative, anti-West and nationalist values, Putin and a narrow group of wealthy men control the entire country through their control over state institutions.⁴⁴

On the *Freedom in the World Report*⁴⁵, Russia is ranked extremely poorly with a score of 5/40 for Political Rights and 15/60 for Civil Liberties. Overall, it is categorized as a Not Free country. First, the electoral system is designed to favour the governing party, United Russia. Accordingly, the legislative process is neither fair nor free, with various techniques used to retain power between United Russia and Putin. These include amending the electoral system from time to time to favour the ruling party – such as changing dates or processes – to preventing opposition from running in elections and to generic election violations like ballot stuffing and voter fraud.⁴⁶ For example, the main true opponent to Putin, Alexei Navalny, was disqualified from running in the 2018 presidential elections after being given an administrative detention for political reasons.⁴⁷ With other potential candidates harassed and prevented from participating, the only remaining opposition to the government are state-approved ones. Accordingly, the Organization for Security and Co-operation in Europe concluded that there is a lack of genuine competition in Russian

⁴² See <https://freedomhouse.org/country/russia/freedom-world/2020>.

⁴³ Ibidem.

⁴⁴ See <https://www.nordeatrade.com/en/explore-new-market/russia/political-context>.

⁴⁵ See <https://freedomhouse.org/country/russia/freedom-world/2020>.

⁴⁶ Ibidem.

⁴⁷ Ibidem.

elections.⁴⁸ This has resulted in victories for Putin and his allies, including sweeping all state governor elections in 2019.⁴⁹ Second, more broadly, any general opponent of the Kremlin is often harassed, arrested, raided and attacked by police in the name of national security. Victims include non-governmental organizations, media organizations, politicians and journalists. This forms part of a larger trend of using security agencies to maintain tight control over society and civic life. For example, NGOs are often targeted with foreign agent security rules if they receive any form of foreign findings. Burdened with increased onerous registration, labelling requirements on their materials as foreign agent and a spying stigma, NGOs – especially political NGOs – have a hard time pursuing their missions and achieving their goals.⁵⁰ Third, on a similar note, vague laws relating to extremism and national security are used to grant authorities discretion to crack down on speech, organization or activities that lack official support. For example, in March 2019, the government passed laws prohibiting insulting officials or state symbols through electronic media, as well as the spread of fake news.⁵¹ Using broad terms that are loosely defined, the government is now empowered to crack down on otherwise innocent speech.

Overall, the World Justice Project characterizes Russia as having a Declining Rule of Law for a country already Below the Median and is ranked 94th in the world out of 128 countries.⁵² The major culprit for the poor ranking is a government enjoying power with little constraint, either from the legislative or judicial branch. Moreover, independent audits also have little influence in limiting the government’s ability to do what it wants. Fundamental freedoms in Russia, especially

⁴⁸ Ibidem.

⁴⁹ Freedom House, “Freedom in the World 2020. A Leaderless Struggle for Democracy,” https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf at 23.

⁵⁰ See <https://freedomhouse.org/country/russia/freedom-world/2020>.

⁵¹ Ibidem.

⁵² World Justice Project, Rule of Law Index 2020 Insights”, <https://worldjusticeproject.org/sites/default/files/documents/WJP%20Insights%202020%20-%20Online%20.pdf> at 9, 14.

freedom of expression, is limited, with a ranking of 104th in the world.⁵³ In other words, people are generally unable to comment against the government without suffering retaliation. Finally, the criminal justice system is ranked 110th in the world, largely in part due to suffering from government influence.⁵⁴ To note, Russia is ranked second last in the overall rankings in its Eastern Europe and Central Asia rankings.⁵⁵

Putin recently solidified his ability to remain in power by getting the legislature to amend the constitution with a clause that permits someone to run in the presidential election regardless of the number of times they had already served as president.⁵⁶ This effectively circumvents the two-term limit in the constitution. This legislative amendment has been passed by the legislature in a vote of 338-0 in the name of social stability, and has been approved by the constitutional court, with a symbolic and non-binding referendum taking place in the near future.⁵⁷

Various constitutional protections exist to protect concepts associated with academic freedom. Article 29 contains multiple provisions guaranteeing freedom of ideas and speech, protecting against forced rejection of opinions and “the right to look for, receive, transmit, produce and distribute information by any legal means”⁵⁸. Article 44 also guarantees “the freedom of literary, artistic, scientific, technical and other types of creative activity, and teaching”⁵⁹.

⁵³ World Justice Project, Rule of Law Index 2020”, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf at 25.

⁵⁴ Ibidem at 29.

⁵⁵ Ibidem at 29.

⁵⁶ Andrew Roth, “Putin backs proposal allowing him to remain in power in Russia beyond 2024”, March 10, 2020, <https://www.theguardian.com/world/2020/mar/10/vladimir-putin-amendment-power-russia-2024> ; “Putin Formally Signs Off On Constitutional Changes That Allow Him To Extend Power”, March 14, 2020, <https://www.rferl.org/a/russia-putin-signs-off-constitutional-changes-extend-power/30487735.html>.

⁵⁷ Ben Noble, “Coronavirus derails Russia’s constitutional reform vote – what this means for Vladimir Putin”, March 24, 2020, <https://theconversation.com/coronavirus-derails-russias-constitutional-reform-vote-what-this-means-for-vladimir-putin-134418>.

⁵⁸ <http://www.constitution.ru/en/10003000-03.htm>, Art 29.

⁵⁹ Ibidem, Art 44.

It is interesting to note that within the provisions granting protections to fundamental academic rights, limitations exist within the rights themselves. It is especially troubling that these qualifiers on the rights are expressed in a vague way that opens the door for those in power to exploit. For example, Article 29(2) specifies that (2) Instigating or the propaganda of social or national hatred and strife shall not be allowed and that the right to information stated above is limited to "...any legal means.⁶⁰ The list of data comprising state secrets shall be determined by federal law." By using qualifiers of "by any legal means" and by retaining the power to determine what those legal means are, the State is able to instrumentalize the law to circumvent the spirit of fundamental rights. Moreover, vague terms like "national" or "social" hatred are open to interpretation and can be filled in by those in powers to their advantage. While broad and vague terms in constitutional and international law instruments are commonplace, their potential for misuse is circumscribed by an independent judiciary and legislative branch. In the Russian context with little independence in both the judiciary and legislative branch, as described above, the government's ability to exploit these terms for their benefit is unchecked.

Threats to Academic Freedom

Limitation through National Security

In line with previous trends of using national security as an excuse to exert control over different areas of the country, scholarship and academia are also being controlled and influenced through national security laws. In July 2019, the Russian Ministry of Education and Science issued new rules to make it more difficult to have contact with foreigners for natural science institutions and some organizations in other fields as well.⁶¹ Russian academics who wish to meet with foreign academics must first notify the Ministry of the meeting through their respective institutions and

⁶⁰ Ibidem, Art 29 (2).

⁶¹ See <https://meduza.io/en/news/2019/08/14/russia-imposes-new-restrictions-on-scientists-contact-with-foreign-colleagues>.

provide the names of all foreigners. Next, two Russian scientists must be present to chaperone the interactions. Following the meeting, the Russian participants will be required to file a formal report to summarize the conversation, and provide copies of passports of all attendees. Lastly, during the meeting, foreign academics are required to hand over any device with recording or copying capabilities. Thus, they are not allowed to have watches, laptops, or phones with them during the meeting, and potentially not even pens. While the Russian Academy of Science has called this decision puzzling, their ability to challenge or influence the Ministry's decision is limited as they are government-controlled and often suffer from bureaucratic interference, despite being an independent body.⁶²

Relatedly, a previous law that allowed certain organizations to be labelled as foreign agents has been expanded to also include individuals.⁶³ Prior to the December 2019 amendments, NGOs with foreign sources of income were labelled foreign agents. With the amendments, individuals will also suffer the same characterization if they receive any funding from abroad and co-operate with foreign agent media, which could be as simple as using social media.⁶⁴ While Kremlin and government were quick to downplay the law's applicability to academia, calling it "recommendations", some universities have already taken steps to implement it. For example, Kazan Federal University has introduced regulations requiring its professors to have "unified position of the Russian Side" when meeting with foreign nationals.⁶⁵

These two examples are part of the continuing trends identified in the political context above. Laws, filled with vagueness such as what constitutes receiving foreign money and dealing

⁶² <https://freedomhouse.org/country/russia/freedom-world/2020>.

⁶³ Katarzyna Kaczmarek, "Russian foreign agent rules are chilling academic freedom", January 8, 2020, <https://www.timeshighereducation.com/opinion/russian-foreign-agent-rules-are-chilling-academic-freedom>.

⁶⁴ See <https://www.reuters.com/article/us-russia-politics-media/russias-putin-signs-law-to-label-people-foreign-agents-idUSKBN1Y625T>.

⁶⁵ *Ibidem*.

with information from abroad, aimed at protecting national security are used to limit fundamental freedoms such as political activism and freedom of expression. While academics may face punishment for not following the requirements, more importantly, the enactments themselves have a chilling effect on academia by creating a sense of uneasiness when dealing with foreign colleagues and limiting foreign scholarship, especially through foreign grants. Ultimately, this aligns with the anti-West and nationalist values of those in power.

Teaching License and Accreditation

Another tactic used to root out values that go against those held by those in power, such as liberal or Western values, is the suspension of accreditation and teaching license of select universities. Two institutions impacted include the Moscow School of Social and Economic Sciences (also known as Shaninka) and the European University at St Petersburg.

In 2018, Shaninka had its programs de-accredited by the Rosobrnadzor, the government body responsible for overseeing higher education, for various minor violations uncovered following a review.⁶⁶ The violations ranged from minor technical ones, such as the dean of the school of law having an undergraduate degree in history instead of law – despite having advanced degrees in law and having published in international law journals – or having a political and legal theory course without a lab-based workshop, to fabricated ones, such as the lack of a courtroom for law students.⁶⁷ According to reports, the inspectors spent two days carrying out observations before returning on the third morning for paperwork and leaving abruptly, thereby meeting the mandated minimum three-day inspection.⁶⁸ Accordingly, while teaching continues at Shaninka,

⁶⁶ <https://meduza.io/en/feature/2018/06/22/regulators-have-revoked-their-accreditation-of-the-moscow-school-of-social-and-economic-sciences-one-of-russia-s-last-major-private-colleges>.

⁶⁷ Maria Danilova, “Crackdown feared as Russian grad school faces govt penalty”, July 22, 2018, <https://www.citynews1130.com/2018/07/22/crackdown-feared-as-russian-grad-school-faces-govt-penalty/>.

⁶⁸ <https://meduza.io/en/feature/2018/06/22/regulators-have-revoked-their-accreditation-of-the-moscow-school-of-social-and-economic-sciences-one-of-russia-s-last-major-private-colleges>.

the university is no longer able to issue state-recognized diplomas.⁶⁹ Shaninka was one of the last remaining private universities in Russia, and as a university with an international reputation, the decision to suspend its accreditation is a political decision aligned with the broader movement against the West. This is especially clear considering the university was founded by a British man and is partnered with various universities across the United Kingdom.⁷⁰

The European University at St Petersburg is another liberal and Western-leaning university that has suffered from having its accreditation and license pulled.⁷¹ Following its suspension of its accreditation in April 2016, the Rosobrnadzor used follow-up checks to carry out further investigation of EUSP despite reinstating its accreditation shortly after.⁷² These follow-up investigations were initiated following complaints of a deputy of the legislature, Vitaly Milonov, who accused the school of lacking emergency and medical services and paying students scholarships in foreign currency without documentation or record.⁷³ To note, Milonov had previously criticized the school for offering a gender studies program, describing that “[he] personally find[s] that disgusting, it’s fake studies and it may well be illegal”⁷⁴.

Following the investigations, the university was accused of 120 violations, including missing documents – such as medical examination records of its faculty and employees, not having anti-alcohol flyers on its campus and not having its own gyms.⁷⁵ Despite university officials

⁶⁹ Ibidem.

⁷⁰ Ibidem.

⁷¹ See <https://eusp.org/en/news/situation-regarding-the-suspension-of-the-educational-license-of-the-european-university-at-saint-petersburg> ; “Russia’s Education Watchdog Suspends Accreditation of Petersburg’s European University”, April 1, 2016, <https://www.themoscowtimes.com/2016/04/01/russias-education-watchdog-suspends-accreditation-of-petersburgs-european-university-a52359>.

⁷² Ibidem.

⁷³ Ibidem.

⁷⁴ Ellie Bothwell, “European University at St Petersburg faces research-only future”, October 11, 2017, <https://www.timeshighereducation.com/news/european-university-st-petersburg-faces-research-only-future>.

⁷⁵ Ibidem.

submitted large amounts of document to settle or explain the violations, the Rosonbrnadzor never responded to the university's objections, and ultimately, revoked the teaching license based on the following violations: i) not having a gym in the building it rents; ii) some teachers on fixed-term contract lacking certification; and iii) an insufficient percentage of teachers in the political science and sociology department having their primary occupation in practical work in the field they teach.⁷⁶ The EUSP noted that the last three violations were not part of the original 120 violations and were raised last minute before the order revoking the teaching license was issued by a court.⁷⁷

For the next two years, the EUSP made multiple applications to re-obtain their license, all of which was denied. Teaching was suspended for the 2017-2018 academic year, and the university was forced to give up its main campus building to the local municipality.⁷⁸ Interestingly, the municipality did not find any maintenance problems with the building.⁷⁹ Finally, in August 2018, the EUSP's license was finally restored after a fourth application.⁸⁰ Similar to Shaninka, the EUSP is another example of the Russian state using its control of public bodies to impede the work of progressive institutions with close links to the West who perform independent research.

Hungary

Political and Legislative Context

While Hungary remains a democratic country in the strict sense, the trends over the past ten years are clear: led by Prime Minister Viktor Orban, the government has and continues to

⁷⁶ See <https://eusp.org/en/news/situation-regarding-the-suspension-of-the-educational-license-of-the-european-university-at-saint-petersburg>.

⁷⁷ Ibidem.

⁷⁸ "Authorities Take Over European University's Building in St. Petersburg", January 11, 2018, <https://www.themoscowtimes.com/2018/01/11/authorities-take-over-european-universitys-building-in-st-petersburg-a60163>.

⁷⁹ Ibidem.

⁸⁰ "License Restored for European University in St. Petersburg", April 11, 2018, <https://www.themoscowtimes.com/2018/08/10/license-restored-european-university-st-petersburg-a62501> ; See Sasha Raspopina, "Education license restored to the European University in St Petersburg", August 14, 2018, <https://www.calvertjournal.com/articles/show/10579/education-license-restored-to-the-european-university-at-st-petersburg>.

consolidate power at the expense of independent institutions in order to further its right-wing and conservative vision for the country. For example, various media organizations have been purchased in Hungary by allies of the governing party, Fidesz. In one blatant instance, various pro-media companies were donated to the state for free, despite being worth over \$100 million dollars.⁸¹ Similarly, in June 2019, the government proposed legislation to broaden its ability to nominate and promote judges, while limiting judicial interpretation of case law but allowing members of the Constitutional court – all of whom have been appointed by the government – to sit on the Supreme Court, even on non-constitutional matters.⁸² With increased power over media and other institutions, the government has been given the freedom to treat state resources as party resources, including financial resources, smear campaigns in the media and politicized audits. When these are combined with bogus opposition campaigns, and with laws limiting access by politicians and journalists to public buildings, opposition to the governing party has been minimal and hard to organize, allowing the government landslide victories in elections and the ability to govern with impunity and limited check.

This is reflected in the country's rankings in rule of law and freedom rankings. In 2020, Hungary was demoted one grade to Partly Free in the Freedom in the World Report, becoming the first European Union member to be characterized as not being Free.⁸³ In fact, since 2010, Hungary has lost 20 points on its total freedom score, with the governing party's increasing concentration of power noted as one of the major driving factors.⁸⁴

⁸¹ <https://freedomhouse.org/country/hungary/freedom-world/2020>.

⁸² Ibidem.

⁸³ Freedom House, "Freedom in the World 2020. A Leaderless Struggle for Democracy," https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf at 11.

⁸⁴ Ibidem.

While Hungary is ranked 60th out of 129 countries in the World Justice Project’s Rule of Law Index, troubling trends also emerge.⁸⁵ Dropping two spots from 2019, Hungary ranks last in the region of European Union, EU Free Trade Association and North America.⁸⁶ The country performed the worst in areas of constraints on governing power, where neither legislature nor independent audits present genuine limitation on government power. Since 2019, Hungary has averaged an annual 5.3% decrease in this area.⁸⁷ Other areas of concern include fundamental freedoms, especially freedom of expression, where it ranks second from the bottom in its income group.⁸⁸ Moreover, the criminal and civil justice systems suffer from government influence, while due process is often absent in regulatory processes. Ultimately, Hungary is characterized in the category of Declining Rule of Law, and has suffered a 2.1% annual decrease in its overall ratings since 2015.⁸⁹

The Hungarian constitution, better known as Fundamental Law of Hungary, has three relevant provisions on academic freedom. Found under Article 10, freedom of scientific research and freedom of teaching are protected, although with the qualifier of “within the framework determined by law”⁹⁰. A second provision claims that “The State shall not be entitled to decide on questions of scientific truth, and scientists shall have the exclusive right to evaluate any scientific research.”⁹¹ Finally, a lengthy provision describes

“Hungary shall defend the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts. All institutions of higher education shall be

⁸⁵ World Justice Project, Rule of Law Index 2020”, https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2020-Online_0.pdf at 16.

⁸⁶ Ibidem at page 19.

⁸⁷ Ibidem at page 20.

⁸⁸ World Justice Project, Rule of Law Index 2020 Insights”, <https://worldjusticeproject.org/sites/default/files/documents/WJP%20Insights%202020%20-%20Online%20.pdf>.

⁸⁹ Ibidem at page 21.

⁹⁰ <https://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> at Art. X (1).

⁹¹ Ibid at Art. X (2).

autonomous in terms of the contents and methodology of research and teaching, and their organisations and financial management shall be regulated by a special Act.”⁹²

It is interesting to note that the government retains the power over financial management of universities, and thus, limiting the autonomy of higher education institutions. At the same time, it is clear the government has no role to play in determining the content of scholarship nor the merits of findings obtained through scholarship – such as what constitutes scientific truth.

Threats to Academic Freedoms

Gender Studies

In what appears to violate Article 10(3) of the Fundamental Laws of Hungary, the Hungarian government effectively banned and eliminated all gender studies programs in the country in the fall of 2018.⁹³ The government passed a decree ceasing funding and withdrawing accreditation for the country’s gender studies programs, citing low enrolment in the programs, poor job prospects for graduates and an overall lack of need for gender studies graduates.⁹⁴ However, at the same time, through the Prime Minister’s Chief of Staff, ideological motivations were revealed. Gergely Gulyas stated that “the Hungarian government is of the clear view that people are born either men or women.”⁹⁵ They lead their lives the way they think best, but beyond this, the Hungarian state does not wish to spend public funds on education in this area” and other government officials claimed gender studies to be “an ideology and not science”⁹⁶.

⁹² Ibid at Art. X (3).

⁹³ Lauren Kent and Samantha Tapfumaneyi, “Hungary’s PM bans gender study at colleges saying ‘people are born either male or female’”, October 19, 2018, <https://www.cnn.com/2018/10/19/europe/hungary-bans-gender-study-at-colleges-trnd/index.html>.

⁹⁴ Keno Verseck, “Hungary’s university ban on gender studies heats up culture war”, October 18, 2019, <https://www.dw.com/en/hungarys-university-ban-on-gender-studies-heats-up-culture-war/a-45944422-0> ; Lesley Wilson, “State control over academic freedom in Hungary threatens all universities”, September 6, 2018, <https://www.theguardian.com/higher-education-network/2018/sep/06/state-control-over-academic-freedom-in-hungary-threatens-all-universities>.

⁹⁵ See <https://www.reuters.com/article/us-hungary-government-education/hungary-to-stop-financing-gender-studies-courses-pm-aide-idUSKBN1KZ1M0>.

⁹⁶ Teodora Miljojkovic, “Academic Freedom in Hungary: A Fundamental Principle or Just a Pipe Dream”, December 11, 2018, <https://www.jurist.org/commentary/2018/12/teodora-miljojkovic-freedom-hungary/>.

Many observers noted this is part of a major cultural and intellectual movement led by Orban that claims the arts, sciences and educations are overly influenced by leftists and liberalism and that seeks to increase conservatism in these fields.⁹⁷ However, this appears to violate Article 10(3) of the Fundamental Laws as it undermines the ability of universities to be “autonomous in terms of the contents ... of teaching”⁹⁸. Questions with regards to Article 10(2) and the protection against state influence in evaluating scientific research are also raised.

Hungarian Academy of Sciences

In line with the dominant trend identified in the political context of Hungary, the government has seized power over what was a central and independent body in Hungarian academia that exists since 1825.⁹⁹ The Hungary Academy of Sciences is a network of 15 institutes and 150 research groups, totaling 3000 researchers working on a wide range of topics, from philosophy to music to animals to space.¹⁰⁰ The Academy was traditionally responsible for overseeing the funding and general management of research projects, independent of the government in power.

However, in June 2019, the government passed a bill to undermine this independence and seized control of the Academy’s responsibilities. Under the new law, a new research network would be formed to oversee funding and to manage research projects, including the research topics, in collaboration with a new National Council of Scientific Policy.¹⁰¹ The new research network,

⁹⁷ See <https://www.reuters.com/article/us-hungary-government-education/hungary-to-stop-financing-gender-studies-courses-pm-aide-idUSKBN1KZ1M0>.

⁹⁸ <https://www.kormany.hu/download/e/02/00000/The%20New%20Fundamental%20Law%20of%20Hungary.pdf> at Art. X (3).

⁹⁹ “Hungary’s Far-Right Government to Take Control Over Science Institutes”, July 2, 2019, <https://theglobepost.com/2019/07/02/orban-hungary-science>.

¹⁰⁰ Lydia Gall, “Hungary Renews its War on Academic Freedom” July 2, 2019, <https://www.hrw.org/news/2019/07/02/hungary-renews-its-war-academic-freedom>.

¹⁰¹ Fabian Schmidt, “Hungary: Parliament puts Academy of Science institutes under government control”, February 7, 2019, <https://www.dw.com/en/hungary-parliament-puts-academy-of-sciences-institutes-under-government-control/a-49440144>.

Eotvos Lorand Kutatasi Halozat, would encompass the 15 institutes under the Academy's control, and would be controlled by a majority of government appointees.¹⁰² Moreover, the Academy would be forced to give up its properties to the government, while the new research network would appoint directors for the institute.¹⁰³ In fact, all public funding for research in Hungary would effectively be done by the Ministry of Innovation and Technology.

Observers have noted that the National Council of Scientific Policy would become a research branch for the government, tasked to confirm its theses and positions.¹⁰⁴ This is a continuation of eroding university independence, following legislative amendments in 2014 and 2015 that allowed the government to appoint chancellors at public universities to control its finances, as well as create government-appointed advisory bodies to oversee strategic planning for universities.¹⁰⁵ Thus, reduced institutional autonomy and independence is an ongoing trend in Hungary, and changes to the Academy will further reduce these freedoms.

Central European University

The Hungarian government effectively forced the shut down and expulsion of one of Europe's premier universities, Central European University in Budapest, in 2018.¹⁰⁶ Through legislative amendment to the Act on National Higher Education, the government modified various conditions that foreign institutions had to meet in order to operate in Hungary. The law appeared

¹⁰² Zsolt Enyedi, "Hungary's Academic Freedom and the US: Is It All Hot Air?", July 8, 2019, <https://theglobepost.com/2019/07/08/hungary-academic-freedom/>.

¹⁰³ Lydia Gall, "Hungary Renews its War on Academic Freedom" July 2, 2019, <https://www.hrw.org/news/2019/07/02/hungary-renews-its-war-academic-freedom> ; "The Fight For Academic Freedom in Hungary: A Victim of 'Illiberal Democracy'", August 2, 2019, <https://www.rightwingwatch.org/post/the-fight-for-academic-freedom-in-hungary-a-victim-of-illiberal-democracy/>.

¹⁰⁴ Lydia Gall, "Hungary Renews its War on Academic Freedom" July 2, 2019, <https://www.hrw.org/news/2019/07/02/hungary-renews-its-war-academic-freedom>.

¹⁰⁵ Daniela Cracium and Georgiana Mihut, Requiem for a Dream: Academic Freedom Under Threat and Democracies in International Higher Education, Number 90, Summer 2017 at 16 (<http://dx.doi.org/10.6017/ihe.2017.90.9929>).

¹⁰⁶ Sean Coughlan, "University 'forced out' from Budapest", December 3, 2018, <https://www.bbc.com/news/education-46427810>.

to target the Central European University, in an effort to strike against its founder, George Soros.¹⁰⁷ The Hungarian government has constantly attacked Soros for his liberal views centred on rebuilding democracy and opening society, having passed various laws, known as “Stop Soros”, to slow down his efforts in Hungary.¹⁰⁸ These include criminalizing any assistance offered to help refugees settle in Hungary, in an effort to prevent the country from becoming a country of immigrants.¹⁰⁹

With regards to foreign universities in Hungary, 5 requirements were put in place that had to be met in order to continue operations in Hungary. First, an intergovernmental agreement had to be signed between Hungary and the government where the university is accredited.¹¹⁰ Second, this agreement had to essentially be approved by a federal government in the university’s home country.¹¹¹ Third, the foreign university must establish a campus in its domestic jurisdiction.¹¹² Finally, requirements as to naming of the universities and work permits of faculty members were implemented. To justify its actions, the government relied on a need to regulate the quality of cross-border education.

In an effort to comply with the requirements, the CEU opened a campus in New York and pushed New York state officials to come to an agreement with the Hungarian government.¹¹³ Following mediation, a draft of an agreement was created. The naming and work permit requirements were easily fulfilled, while the second criterion was not applicable to the United

¹⁰⁷ Petra Bard, The rule of law and academic freedom or the lack of it in Hungary, *European Political Science*, May 25 2018, DOI: <https://doi.org/10.1057/s41304-018-0171-x> at 4.

¹⁰⁸ “Hungary passes anti-immigration ‘Stop Soros’ laws”, June 20, 2018, <https://www.theguardian.com/world/2018/jun/20/hungary-passes-anti-immigrant-stop-soros-laws>.

¹⁰⁹ *Ibidem*.

¹¹⁰ Bard, note 106 at 6.

¹¹¹ *Ibidem* at page 5.

¹¹² *Ibidem*.

¹¹³ “The Fight For Academic Freedom in Hungary: A Victim of ‘Illiberal Democracy’”, August 2, 2019, <https://www.rightwingwatch.org/post/the-fight-for-academic-freedom-in-hungary-a-victim-of-illiberal-democracy/>.

States as the federal government has no control over higher education. Therefore, the only remaining item to allow CEU to operate in Hungary was the government of Hungary's signature itself on the draft agreement. However, the government withheld its agreement to the agreement, forcing the university to cease its operations of the foreign-accredited programs (i.e. the vast majority) in Budapest, and moving to Vienna instead.¹¹⁴ Ultimately, the Hungarian government forced the expulsion of the CEU for political reasons by putting in place requirements that could only be fulfilled if it desired itself, and by promptly withholding their consent. Not only were freedom of institutions and academic freedom violated, the very existence of a university was targeted, all through the use of laws.

PART III: CONCLUSION

We have attached in Appendix A the mission statement of a leading university in each of Poland, Russia and Hungary. To note, principles of academic freedom – including independence to conduct research, driving debate, free expression, commenting on domestic policy and to contribute to local knowledge bases by forming students – are embedded within each of the statements. This highlights the critical and fundamental role academic freedom plays in the higher education context: it goes to the very essence or *raison d'être* of post-secondary institutions. Accordingly, any breach of academic freedom impedes a university from serving its purpose and role within society.

¹¹⁴ Elizabeth Redden, "Central European U Forced Out of Hungary", December 4, 2018, <https://www.insidehighered.com/news/2018/12/04/central-european-university-forced-out-hungary-moving-vienna> ; Elizabeth Redden, "Enough is Enough", October 26, 2018, <https://www.insidehighered.com/news/2018/10/26/central-european-university-says-it-has-no-choice-move-us-accredited-programs-vienna>.

There are several parallels between Poland, Russia and Hungary. All three countries underwent transformative change in their political, legal and economic systems within the past thirty years. It is therefore not surprising that the democratic institutions and democratic culture in these three countries are all still maturing and developing. However, within the past five to ten years, further changes to the political landscapes – at a minimum in the approach in governance – in Russia, Poland and Hungary have threatened and indeed damaged democratic institutions and culture. It is within this broader decline in democracy that universities and post-secondary institutions have been targeted and attacked, and principles of academic freedom significantly weakened.

While it is unlikely that any judicial court or tribunal will be able to reverse any trend against respecting academic freedom in these countries, there are still a couple avenues for redress. First, and foremost, education and science are potent weapons to neutralize populist and demagogic messages from government leaders. By having alternative means of sensitizing the population on the need for a strong diversity in ideas and free speech, and its accompanying benefit, it will ensure the government's actions will remain in check by the population. While these governments are either autocratic or quasi-autocratic, their ability to act with impunity depends on having sufficient support amongst a majority of the population. Initiatives to educate the general population and raise awareness will erode the support that enables these governments from attacking higher education institutions. Secondly, the Eastern European academic community does not stand alone in its efforts to uphold the highest standards of the freedom to think and to act for the advancement of science. On the one hand, Eastern European academia should be able to count on the support of scholars in other regions of the world as well as of international networks, like Scholars at Risk. On the other hand, scholars should observe the parallels between academic

freedoms and other social spheres that have been affected by the erosion of rights like freedom of speech in culture and journalism. To ensure the observance of rights, a common mobilization between the representatives of these groups may put more pressure on the authorities.

APPENDIX A: MISSION STATEMENT OF UNIVERSITIES

University of Warsaw – Poland ¹¹⁵

The University of Warsaw recognizes as still valid its mission as a public utility institution formulated by its founders in 1816:

“The University should not only maintain in the nation both learning and skills at the level they have already attained in the scholarly world, but also further develop and propagate them as well as apply their theory for the public good.”

The University realizes its aim with the participation of the whole University community: its scholars, students and staff.

Since its establishment our University’s community has written numerous glorious pages in its history. It has produced many outstanding scholars and created famous scientific schools. It actively resisted armed force, organizing clandestine classes when the University was not allowed to function openly. Our students and graduates have served Poland and the world. These proud annals are our continuing obligation.

We must also remember what has been inglorious: submission to political pressure, religious and social discrimination, expulsion of scholars and students. Let this be a living historical lesson for us.

University of Warsaw belongs to the community of universities and accepts its universal aims, and its name is bound up with the capital of Poland. In response to the challenges arising from the transformation of our country, the new position of Poland in Europe and the world and the education of a knowledge-based society, University of Warsaw defines its mission as follows:

1. The basis of the University’s activity is the unity of teaching and research.

The University brings together scholars from a variety of disciplines. It is the place of a diversity of scientific research. Young researchers in direct contact with teachers develop their research awareness and improve their methodological skills. At the same time the University propagates throughout society this multifaceted knowledge and these sophisticated skills. New

¹¹⁵ See <https://en.uw.edu.pl/about-university/mission-statement-strategy/>.

communication technology allows this propagation to take place regionally, nationally and worldwide.

The University offers undergraduate and doctoral studies, organizes summer schools, postgraduate studies and vocational courses, initiates interdisciplinary programmes and introduces new teaching techniques.

The high level of scientific research, its connection with the education of students and the diversity and attractiveness of our teaching will determine the position of the University in the country and in the world, and so decide the University's future. We seek to be the best Polish university and a leading university in Europe. We recognize our particular responsibility toward Central and Eastern Europe.

2. The mission of the University within society is to guarantee access to knowledge and acquisition of skill to all who are entitled.

Knowledge and education today decide the lot of people and entire nations. The University generates knowledge allowing us to know and understand the world around us. Skills acquired through study ensure high professional qualification and preparation for proper fulfilment of public roles.

3. The civic mission of the University is the formation of those elites who will in their activities serve the "imperio rationis" rather than the "ratione imperii".

The University is a community of dialogue. The exchange of views, the clash of arguments, openness to new ideas and conceptions is bound up indissolubly here with respect for diversity and for personal dignity. In this way the University develops its capacity for cooperation regardless of political, ideological or religious differences, and creates a model of public debate. The shaping of the civic attitudes of students is thereby combined with the development of their personalities.

4. The cultural mission of the University is a synthesis of universal and local values.

In the emerging conflict between globalism and regionalism a special role is to be played by institutions which succeed in combining universal techniques of communication and knowledge of universal significance with maintenance of respect for the historical and cultural identity of regions and states. The University where many disciplines are cultivated – from mathematical and natural sciences to social and humanistic sciences – is a place where such a symbiosis exists naturally. The University is also an institution, which assists the dialogue between the integrating societies of Western Europe and its Eastern neighbours.

The mission of University of Warsaw approved by the Senate shall bind all members of our academic community. It is a signpost for our activities and the basis for University programmes. The University's plans for development and the decisions of University authorities should be made with reference to it.

Eötvös Loránd University – Hungary¹¹⁶

Eötvös Loránd University, the oldest continuously operating university in Hungary, was founded in the rural town of Nagyszombat in 1635 by Cardinal Péter Pázmány. It serves the interests of research and first-rate higher education rooted in European tradition. The mission of ELTE is to preserve and increase national and universal culture and literacy, to cultivate scholarship, to pass on scientific knowledge, and to express and fulfil the substantive, long-term needs of Hungarian society and of Humanity as a whole.

ELTE aims at training accomplished intellectuals in possession of state-of-the-art knowledge, who:

- are able to recognize and analyse problems; to work out possible solutions and to take responsible decisions;
- are looking for consensus; and understand and respect different cultures;
- are aware of their individual responsibility for the future of their immediate environment as well as the future of Hungary, Europe and the whole of Humanity;
- represent the values of professionalism, solidarity and humanity;
- respect general ethical principles as well as human dignity, and respect the free expression of ideas.

In order to achieve all these goals, in accordance with its nearly four-century-long traditions, ELTE aims at:

- offering students valuable, state-of-the-art knowledge and professional perspectives as well as competitive degrees, through the joint efforts of the members of the university;

¹¹⁶ See https://www.elte.hu/en/mission_statement_elte.

- maintaining high standards in master's and doctoral degree programmes as well, prioritising the postgraduate courses in its educational structure; expanding the provision of interdisciplinary and multidisciplinary programmes, courses available in foreign languages and joint programmes with leading foreign institutes of higher education;
- being a world-class competitive research team in the European field, able to respond to complex societal challenges; carrying out research, development and innovative activities focusing on social and technological problems to be solved;
- creating effective talent management; as a research university, increasing the proportion of highly qualified and productive teachers/researchers and creating an attractive educational and research environment for them;
- creating value-based and effective relationships with its immediate and wider environment, and becoming one of the leading university centres in the Central European region.

Based on the conviction that high-quality university teaching is inconceivable without high-quality research, ELTE is committed to achieving excellence on both sides of the traditional *universitas* concept: the creative community of educators and students (*universitas magistrorum et discipulorum*) and the ideal of the university of science (*universitas scientiarum*).

The achievement of these objectives is supported by the leadership of the university, as well as by the teachers, researchers, students and the entire community of ELTE.

European University at St Petersburg – Russia¹¹⁷

Founded in 1994 with the active support of the city of St. Petersburg, the European University began operating as an elite graduate school in the social sciences and humanities in 1996. From its inception, the mission of EUSP has been to meet the needs of Russian social development by training a new generation of teachers and scholars in the best Russian and Western traditions. The European University is one of only a few non-state universities fully qualified by the Ministry of Education to award advanced graduate degrees. Over some 20 years, EUSP has gained an international reputation for the superb scholarship of its faculty and the training of Russia's best and brightest graduate students at the highest international levels.

Like the best private universities outside Russia, the EUSP's independence is both intellectual and political. With a significant proportion of faculty with degrees from leading western institutions, and close relations with Stanford, Michigan, Cambridge University, Georgetown, Harvard, Helsinki University, and the University of California, Berkeley, of Michigan, Ann Arbor; Cambridge University (UK); Helsinki University (Finland), and the European University Institute in Florence, EUSP has a strong commitment to the integration of Russian scholarship with scholarship in Europe and America. With Russia's historical distance from the West in intellectual and social terms, this has been a fundamentally important position, one that encourages mobility and encourages graduates to pursue their teaching and scholarly careers in at home. For non-Russians, the International MA in Russian Studies is the only permanent program at the graduate level in Russia that offers degrees in sociology, political science and cultural studies to students from the North America, Europe and Asia.

¹¹⁷ See <https://eusp.org/en/about>.

The University is an important agent of innovation and change in other ways as well. As the Russian government itself has recognized, its democratic governance system serves as a model for other Russian institutions striving for international recognition. EUSP was an initiator of private endowment funding that has now become a standard in other universities and cultural institutions. Although fully independent of state control, the University often hosts important government figures as well as Russian and international scholars for seminars and lectures on issues of social importance. EUSP faculty and staff are also regularly invited as expert consultants by the Russian Federation Public Chamber, the Ministry of Economic Development, and the Ministry of Education and Science.

The University is also actively involved with the St. Petersburg International Economic Forum, the Petersburg Dialogue Forum, and the Krasnoyarsk Economic Forum. Partly for this reason, partly because our graduates are among Russia's best, many not only hold positions in leading universities, but occupy key posts in government and non-governmental organizations, as well as leading Russian and international companies. More than forty percent of those who have finished our core educational program have successfully defended their dissertations.

The mission of the University is to satisfy societal needs in raising and expanding professional qualification of specialists and in developing of their creative and scholarly potential on the basis of achievements of Russian and international experience and cooperation.

Due to its superlative professionalism and unique scholarly potential, EUSP has acquired a reputation as one of the most dynamic and modern educational institutions in the country.

Five important points about the European University at St. Petersburg

1. EUSP has greater independence from the Russian governmental bureaucracy than most other Russian universities. This independence is important for both intellectual and political reasons. Universities in Russia were traditionally under the control of the government, to the extent of questions of the content of instruction and research, political ideology, and administration.
2. In EUSP a high proportion of faculty have degrees from prominent Western universities. The university employs Russians with PhDs from such recognized schools as the University of California, Berkeley; the University of Michigan, Ann Arbor; Cambridge University (UK); Helsinki University (Finland), a.o.
3. EUSP has a commitment to the integration of Russian scholarship with scholarship in Europe and America. Against the background of Russian scholarship's continuing isolation from the West, this is a fundamentally important position.
4. EUSP encourages academic mobility but combats the brain drain from Russia. Rather than promoting the departure of graduate students abroad, EUSP invites students from all over the world to come and study in Russia.

EUSP is sometimes called the most international university in Russia and the most Russian among international universities. We are a well-known destination for international students from the United States, Europe, and Asia interested in studying different aspects of Russian

Studies. Students may study in English and earn a Master's degree in Russian and Eurasian Studies or in Energy Politics in Eurasia.

5. EUSP is a decisive agent of innovation and change, introducing and disseminating new standards and practices in the Russian educational system.

EUSP's educational programs are popular not only amongst talented graduates of Russian universities, who currently hail from fifty-four Russian regions, but also amongst graduates of foreign universities (mainly in Western Europe and North America). For these students, EUSP offers special international programs taught entirely in English.

EUSP's teaching faculty is staffed by well-known academics who have achieved significant results and recognition in their fields. Many of them received their PhDs from the best universities in Europe and the US, and have experience teaching in foreign universities. Our professors are the permanent members of the International Association for the Humanities

Annually EUSP holds an interdisciplinary conference «Exhibition of the Academic Research Achievements» - a central event in the university academic life, that has already become a platform bringing together researchers from different departments of EUSP and providing a ground for our colleagues to familiarize with our research achievements.

EUSP graduates work in prestigious academic and research institutes, and occupy key posts in government and non-governmental organizations, as well as at leading Russian and international companies. More than forty percent of those who have finished our core educational program have successfully defended their dissertations.

Because EUSP has based its work on the principle of combining teaching with cutting-edge research, it is the first Russian university to have repeated the success of such universities as Harvard and UC Berkeley. The research university model is reflected not only in EUSP's strategic plan and daily practice, but also in its organizational structure. The university consists of five departments and eleven research centers. A substantial portion of their work involves applied interdisciplinary research.

EUSP provides expertise during the preparation and implementation of key reforms vital to the country's development. In particular, university staff members are regularly invited as expert consultants by the Russian Federation Public Chamber, the Ministry of Economic Development, and the Ministry of Education and Science. EUSP is actively involved with the St. Petersburg International Economic Forum, the Petersburg Dialogue Forum, and the Krasnoyarsk Economic Forum.