ACADEMIC FREEDOM AS A LEGAL CONCEPT IN EUROPE
TOWARDS A MORE EFFECTIVE SUPRANATIONAL JUDICIAL PROTECTION

Kriszta Kovács

(This is a draft outline, only for internal workshop use.)

Academic freedom is highly prized by scholars[1] in Europe; it is assumed to be fundamental to serious academic work. Yet, as a European legal concept, academic freedom has hardly been discussed in the scholarly literature,[2] and the seminal works on the topic mostly discuss certain European jurisdictions.[3] Thus, this paper has been written to fill a gap in the scholarly literature. It is particularly important to fill this gap now. Although academic freedom has largely been taken for granted in Europe, as a new comprehensive empirical study demonstrates, there have been dramatic declines in the academic freedom index recently in many European countries.[4] Hence, this paper asks whether European courts are prepared to safeguard the exercise of academic freedom on the continent.

Academic freedom seems to have a somewhat precarious standing in European jurisprudence. It is less well developed than one might expect. As ECtHR judges rightly put in one of the leading cases, "The meaning, rationale and scope of academic freedom are not obvious, as the legal concept of that freedom is not settled."[5] And as a recent resolution of

[1] Often the terms 'scholar' and 'academic' are used in this article as shorthand terms for all members of an academic staff (professors, researchers, lecturers, etc.) in higher education.

[2] It is telling that neither the latest commentary of the European Convention on Human Rights nor the latest comprehensive book on European Law addresses academic freedom. Bernadette Rainey, Pamela McCormick, Clare Ovey, *Jacobs, White, and Ovey: The European Convention on Human Rights*, Oxford, 2017.; Paul Craig and Gráinne de Búrca, *Evolution of EU Law*, Oxford, 2021. The comprehensive 129-page long Guide on Article 10 of the European Convention on Human Rights devotes two sentences to academic freedom. See *Guide on Article 10 of the European Convention on Human Rights*, 30 April 2021, https://echr.coe.int/Documents/Guide_Art_10_ENG.pdf, 44, 73. Two other commentaries dedicate only a short paragraph to this issue. Christoph Grabenwarter, *European Convention on Human Rights: Commentary*, CH Beck-Hart-Nomos Helbing Lichtenhahn, 2014, 259.; Ulrich Karpenstein and Franz C Mayer, *Konvention zum Schutz der Menschenrechte und Grundfreiheiten,* CH Beck, 2015, 319. It is only one commentary that discusses academic freedom in length. Katharina Pabel and Stefanie Schmahl, *Internationaler Kommentar zur Europäischen Menschenrechtskonvention*, Carl Heymanns, 2013, 85–88. Academic freedom as a European legal concept has hardly been discussed in periodical literature. For instance, the otherwise comprehensive article of Klaus D. Beiter, Terrence Karran and Kwdwo Appiagyei-Atua looks at the European state performances with regard to academic freedom. Klaus D. Beiter, Terrence Karran and Kwdwo Appiagyei-Atua, Academic Freedom and Its Protection in the Law of European States, (2016) 3 *European Journal of Comparative Law and Governance* 254. Terrence Karran's article examines the compliance of EU universities with the UNESCO Recommendation. Terrence Karran, Academic Freedom in Europe: Reviewing UNESCO's Recommendation, (2009) 57 *British Journal of Educational Studies* 191.

[3] Eric Barendt's seminal book discusses the relevant court decisions in three jurisdictions, the UK, Germany and the US. Eric Barendt, *Academic Freedom and the Law: A Comparative Study*, Hart, 2010. See also Margrit Seckelman et. al (eds), *Academic Freedom Under Pressure? A Comparative Perspective*, Springer, 2021. The latter book makes a German-Italian comparison.

[4] In Hungary, Poland and Turkey, in particular. See Katrin Kinzelbach, Staffan I Lindberg, Lars Pelke and Janika Spannagel, *Academic Freedom Index 2022 Update.* FAU Erlangen-Nürnberg and V-Dem Institute. DOI: 10.25593/opus4-fau-18612.

[5] Joint concurring opinion of Judges Sajó, Vučinič and Kūris, *Mustafa Erdoğan and Others v. Turkey*, Judgment of 27 May 2014, para 4.

the Council of Europe Parliamentary Assembly has emphasised, there is a lack of common conceptual reference on the fundamental values of academic freedom.[6] So, in what follows, I will discuss how the European supranational courts understand academic freedom and how these courts handle conflicts in academic freedom debates.

Academic freedom is a global phenomenon, but European supranational courts have particular understandings of this concept. That is because the texts they interpret, – the European Convention on Human Rights (Convention) and the European Union Charter of Fundamental Rights (Charter) – protect academic freedom differently. The Convention does not make reference to academic freedom, but the ECtHR treats it as a special concern of the freedom of expression clause of Article 10. Article 13 of the Charter, however, guarantees academic freedom explicitly.

This paper provides a critical analysis of the jurisprudence of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (ECJ) relating to academic freedom. It demonstrates that in the jurisprudence of the ECtHR, academic freedom takes the form of an individual claim, while in the case law of the ECJ, it takes the form of an institutional claim. The paper argues that both European judicial approaches are inadequate in themselves, but the two courts can work synergistically to better protect academic freedom by successfully addressing political attacks on this freedom.

1. The Convention: the right to free speech in the academic context

The Convention was formulated in the late 1940s when protecting academic freedom in constitutional documents was not à la mode. Only a handful of constitutions mentioned academic freedom or university autonomy.[7] Moreover, British legal experts drafted the Convention, and in the United Kingdom, academic freedom was protected until the late 1980s as a matter of convention and practice.[8] So, it is no surprise that the Convention's text *makes no explicit reference to academic freedom*. However, this does not mean that the Convention does not protect academic freedom; the case law treats it as a manifestation of the right to freedom of expression[9] under Article 10. Still, while the ECtHR attributes particular importance to Article 10 in general, there have only been a few occasions where it has at least peripherally touched on the issue of academic freedom.

1.1. The right holders

The Convention case law indicates who can make legitimate claims to the exercise of academic freedom in particular circumstances. The ECtHR does not perceive academic freedom as a human right.[10] Under Article 10, there is no general right to academic freedom.

[6] Council of Europe Parliamentary Assembly Resolution 2352 (2020) Threats to academic freedom and autonomy of higher education institutions in Europe.

[7] See Janika's map 'Wording of constitutional AF provisions 1950'.

[8] It was only in 1988 that the Education Reform Act formulated a statutory right to academic freedom. Barendt, supra note 3, 12.

[9] In this paper I use the terms 'speech' and 'expression' interchangeably.

[10] Some scholars argue for defending academic freedom as a human right. See, e.g., Balakrishnan Rajagopal, Academic Freedom as a Human Right: An Internationalist Perspective, May-June 2003 *Academe* 25–28., Renáta Uitz, Academic freedom as a human right? Facing up to the illiberal challenge, Manuscript, 2021.

The right to freedom of expression in the academic context is more a professional freedom than a set of individual rights:[11] freedom enjoyed by individual scholars, that is, certified members of an academic profession. However, the ECtHR recognises that scholarly research can be conducted outside of the framework of academic institutions. Thus, Article 10 offers protection not just to academics who work at universities or research institutes but also to freelance researchers on matters relevant to their work against unjustified state intrusions.[12]

Suppose an individual is both an academic and a public office holder. In that case, the ECtHR considers whether the individual at a public event is speaking in their capacity as a public office holder (a politician or a judge) rather than in their capacity as an academic—in the latter case, one could expect them to proceed in a scholarly manner.[13]

1.2. The core of Article 10: free speech in the academic context

Article 10 protects free speech in the academic context, including *intramural expression*—the freedom to criticise the institution or the system in which the academic works. The most relevant two cases involve scholars who, at scientific conferences, criticised the operation of their home institutions. In the first case, a professor disapproved of how their work in their discipline was evaluated and how the examinations for assistant professors were being administered.[14] In the second case, a professor highlighted the shortcomings in the election procedure for the university's governing body, namely, the absence of an open discussion of candidates for the academic senate election.[15] In both cases, the ECtHR upheld the scholars' claim by stressing the importance of open discussion concerning the organisation of academic life and self-governance.[16]

The freedom of *extramural expression* is also covered by Article 10. [17] In the leading ECtHR case, the applicant, Mustafa Erdoğan was a constitutional law professor who harshly criticised a Turkish Constitutional Court decision and the judges who delivered this decision in a quasi-academic quarterly.[18] The professor alleged that the Constitutional Court judges who had

[11] The ECtHR's understanding of academic free speech does not go as far as Dieter Grimm's. Grimm calls academic freedom a fundamental functional right (*Funktionsgrundrecht*) that does not protect individuals' freedoms but primarily aims to protect the scientific system along with the conditions necessary for its proper functioning. Dieter Grimm, Wissenschaftsfreiheit als Funktionsgrundrecht, in *Wissenschaftsfreiheit in Deutschland. Drei rechtswissenschaftliche Perspektiven*, Berlin-Brandenburgische Akademie der Wissenschaften, 2021, 21.

[12] See the case of *Kenedi v Hungary*.

[13] In the case of *Perinçek v Switzerland*, the ECtHR argued that the applicant spoke as a politician and not a scholar when he declared that "the allegations of the 'Armenian genocide' are an international lie". Appl no 27510/08, Judgment of 15 October 2015. In the case of Wille v Lichtenstein the applicant was not just an academic but a high-ranking judge who expressed his view on whether the prince of Lichtenstein was subject to the jurisdiction of a constitutional court. Wille v Lichtenstein, Appl no 28396/95, Judgment of 28 October 1999.

[14] *Sorguç v. Turkey*, Appl no 17089/03, Judgment of 23 June 2009, para 35. Turkish courts qualified the criticism of the academic system as defamation and ordered the lecturer to pay damages.

[15] *Kharlamov v. Russia*, Appl no 27447/07, Judgment of 8 October 2015.

[16] Ibid., para 29.

[17] In *Kula v. Turkey*, Appl no 20233/06, Judgement of 19 June 2018, the ECtHR found a violation of Article 10 because the university imposed disciplinary sanction on the university professor who participated in a television programme discussing the topic of the cultural structure of the EU and the traditional structure of Turkey.

[18] *Mustafa Erdoğan and Others v. Turkey*, Appl no 346/04, 39779/04, Judgment of 27 May 2014, para 45.

ordered the dissolution of a party did not know the law and that their professional knowledge and intellectual capabilities were insufficient.[19] The Constitutional Court members brought separate civil actions against the professor, and the Turkish courts decided that the criticism constituted defamation of the Constitutional Court members. The ECtHR found this as a violation of Article 10, arguing that academics should be able to "express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof."[20]

The freedom to *access information* also constitutes a part of the right to free speech in the academic context. Article 10 protects law professors' right to access to YouTube[21] and historians' right to access to original documentary sources for legitimate historical research.[22] In addition to these protections of the right to obtain relevant information and documents, there are also protections for publishing and disseminating academic findings. [23] In the *Aksu v Turkey* case, the applicants alleged that government funded publications included remarks and expressions that reflected anti-Roma sentiment. The ECtHR took the complaint seriously; still, it disagreed with it by holding that imparting the outcome of serious research is protected by Article 10 even if the otherwise sincere findings may hurt the sensibilities of a vulnerable group.[24]

In sum, most academic freedom claims concern contestations in intramural and extramural involvement. As a response to these claims, the ECtHR's case law explicitly protects speech in the academic context, enabling academics to communicate both inside and outside of the university's walls. The importance of the extra protection of academic speech provided by Article 10 is that it gives the scholars a secure status as inquirers.[25] Nevertheless, Article 10 protects cases of extramural expression involving expressions on matters of public concern within the scholars' disciplines and expertise; hence, academic freedom cannot be understood as unlimited freedom of the academics to speak openly on any subject.

[19] Ibid., para 12.

[20] Ibid., para 40. In *Cox v Turkey*, Appl no 2933/03, Judgment of 20 May 2010, the ECtHR held that precluding Cox from re-entering Turkey on grounds of her past discussions with students and colleagues on minority related issues, that is the Kurdish and Armenian questions had been in breach of the Convention.

[21] *Cengiz and Others v Turkey*, Appl no 48226/10, 14027/11, Judgment of 12 December 2015. The ECtHR found that the blocking of YouTube in Turkey violated the law professors' right to receive and impart information and ideas.

[22] *Kenedi v Hungary*, Appl no 31475/05, Judgment of 26 May 2009. The Hungarian authorities denied Kenedi certain documents regarding the functioning of the Hungarian secret services in the 1960s, however, the ECtHR found that the granting of access was necessary for Kenedi to accomplish the publication of a historical study.

[23] *Sapan v Turkey*, Appl no Judgment of 8 June 2010. The ECtHR held that the seizure of Sapan's doctoral thesis-based book addressing the social phenomenon of stardom and focussing on a well-known Turkish pop singer constituted a violation of Article 10.

[24] *Aksu v Turkey*, Appl no 4149/04, 41029/04, Judgment of 15 March 2012.

[25] On the importance of these aspects, see Pettit … in Jennifer Lackey (ed), *Academic Freedom*, Oxford, 2018.

1.3. The rationale for protecting academic speech in particular

The ECtHR treats academic freedom as an instantiation of freedom of speech, but it *does not clearly identify the arguments justifying academic freedom*. Although the judgments often emphasise the importance of academic freedom,[26] they do not conceive of academic freedom cases in terms of either consequentialist or deontological arguments.

In the ECtHR's jurisprudence, the case for freedom of expression often takes the form of a consequentialist argument: the role of free speech is, according to this argument, to ensure a lively, participatory democracy; without it, a democratic society could not function. Furthermore, the Millian argument that truth emerges best from a marketplace of ideas from which no opinion is excluded is also present in the Convention case law. However, neither of these arguments justifies a claim that academics are more entitled to say what they want than other citizens. The first argument emphasises the role of free speech in ensuring a lively democracy; it is essentially an egalitarian argument, "contending that all citizens have equal rights to contribute to public discourse."[27] Thus, it does not explain the "privilege" of academic speech. Mill's argument can provide a rationale for robust intramural discussion and dissemination of research outcomes, but it does not justify the extra protection of academics[28] in public discourse or in debates in the mass or social media. Furthermore, these arguments do not explain why Article 10 protects conducting research. The very act of carrying out research activities is not by definition an "expressive" act,[29] or at least it is very rarely an expressive act. Often, it involves surveys, experiments, or clinical trials. Still, the ECtHR holds that any restriction "on the freedom of academics to carry out research" should be carefully scrutinised.[30] What arguments justify this protection? We do not find clear answer in the case law because the ECtHR does not give specific reasons why academic deserves special protection.

Some paragraphs in the judgements, though, suggest that the focus on knowledge and truth is also present. In many academic freedom cases, the ECtHR has referred to the Parliamentary Assembly's recommendation,[31] which states, among other things, that academic freedom should guarantee freedom to "distribute knowledge and truth without restriction,"[32] and recommends the Committee of Ministers to work on "academic freedom and university autonomy as a fundamental requirement of any democratic society".[33] These references

[26] *Sorguc* supra note 10, para 35. *Hasan Yazıcı v Turkey*, Appl no 40877/07, Judgment of 15 April 2014. In the latter case, an academic was sanctioned by the Turkish courts for defamation of a prominent academic whom he had accused of plagiarism.

[27] Barendt 19.

[28] For instance, the case of *Aksu v Turkey* suggests that academics enjoys much wider protection of their freedoms than some segments of the press do: while political expression can be restricted to protect members of racial minorities, academic freedom trumps these concerns if the work in question is a serious work of scholarship. See *Aksu v Turkey*, supra note 24.

[29] See Karpenstein and Mayer, supra note 1, 319.

[30] *Aksu v Turkey*, supra note 24, para 71., Mustafa, para 40.

[31] Parliamentary Assembly of the Council of Europe (PACE), *Academic Freedom and University Autonomy*, Recommendation 1762 (2006).

[32] Ibid., para 4.1. See, e.g., *Sorguc v Turkey*, supra note 10, para 35, *Hasan v Turkey*, supra note 24, para 55.

[33] Ibid., para 14.

elucidate that the ECtHR at least implicitly acknowledges that the distinction between speech and academic speech lies in the rationale of academic freedom, which is to produce new scientific knowledge in a manner that is conform to certain professional standards. Furthermore, ECtHR judges who did not receive the support of the majority of the court in the Mustafa case wrote a minority opinion arguing that the democracy argument is not the only argument that justifies extramural speech; another argument is the need to communicate ideas "for the sake of the advancement of learning, knowledge and science".[34] These judges offered a test to determine whether a speech act amounts to an extramural speech. According to this test, the ECtHR should consider 1) whether the person is an academic, 2) whether his/her public statement falls within the academic's research, and 3) whether the statement amounts to opinions based on his/her professional expertise. They suggested that the statement must enjoy the utmost protection if these conditions are satisfied.[35] (…)

1.4. The missing link: institutional protection

When the ECtHR merely applies the general right to freedom of expression to the special case of academic freedom and refers to the Parliamentary Assembly's recommendations on academic freedom, it obscures much that is special about academic freedom. For example, one of the consequences of not providing clear rationales for the extra protection of academic freedom is that the case law does not acknowledge that academic freedom has an institutional aspect, namely, autonomy,[36] and that an academic decision might infringe the academic freedom interests of individual scholars. In other words, there might be a *conflict between individual and institutional academic freedom interests*.

The Vallauri case illustrates this tension well: Lombardi Vallauri, an Italian legal philosophy lecturer, had been habitually employed on temporary contracts for over 20 years by the Catholic University of Milan when, suddenly, a post was advertised at the Faculty of Law. He applied. However, the Faculty Board decided not to consider his application because the Congregation for Education of the Holy See informed the university president that Vallauri's views were "in clear opposition to Catholic doctrine" and that "in the interests of truth and of the well-being of the students and the University". Vallauri turned to the Italian courts, but the domestic judges rejected his application, so his case went up to the ECtHR. [37]

The ECtHR did not recognise that the Vallauri case involved conflicting academic freedom interests: an institutional claim of the university of its own academic freedom to provide teaching based on Catholic doctrine and hire lecturers, and an individual claim of Vallauri to have his job application considered in its entirety. Instead, the ECtHR decided the case on

[34] *Mustafa and Others v Turkey*, Joint Concurring Opinion of Judges Sajó, Vučinić and Kūris, para 5.
[35] Ibid., para 8.
[36] Interestingly, the Joint Concurring Opinion of Judges Sajó, Vučinić and Kūris recognises that "academic freedom refers, first and foremost, to institutional autonomy" and that "institutional autonomy is meaningful only if they enjoy personal freedom of research that entails unimpeded communication of ideas within, but not exclusively within, the scholarly community". This joint opinion even refers to the Recommendation CM/Rec(2012)7 of the Committee of Ministers to Member States on the responsibility of public authorities for academic freedom and institutional autonomy, which emphasises that the "academic freedom should guarantee the right of both institutions and individuals to be protected against undue outside interference". para 4.
[37] *Lombardi Vallauri v. Italy*, Appl no 39128/05, Judgment of 20 October 2009.

procedural grounds: the university violated Article 10 because it did not even consider the application of Vallauri.

Despite the increase in the number of cases, academic freedom is not high on the ECtHR's agenda. The ECtHR has recently launched its new case-processing strategy, which gives preferential treatment to the so-called "impact" cases, i.e., cases that might lead to a change in law, touches upon moral or social issues or deal with significant human rights issues.[38] However, academic freedom cases – for instance, the cases of those Turkish academics who were dismissed from their universities in 2016 and 2017 for signing the strongly worded "peace petition"[39] – did not receive such a priority status. This is despite the fact that the ECtHR is confronted with ethical and moral issues in academic freedom cases,[40] and the precariousness of academic freedom is a matter of serious concern not only in Turkey, but also in other European states.[41] So, in what follows, I will look at how the other regional supranational court, the ECJ, protects academic freedom.

2. Academic freedom in EU law: autonomy of academic structures

"The arts and scientific research shall be free of constraint. Academic freedom shall be respected." Article 13 of the EU Charter articulates these freedoms for the first time within the European context by mentioning scientific research and academic freedom as two distinct but related concepts.[42] The connection between freedom of science and academic freedom is not a coincidence.[43] The Charter was drafted and adopted in the 2000s when scientists had extraordinary authority and science had prestige.[44] Freedom of scientific research in the Charter can be understood as an idea that demands a kind of institutionalisation at universities and other institutes where researchers organise themselves. (…)

The wording of the Charter reminds the reader of Article 5(3) of the German Basic Law, which recognises the freedom to research of anyone who is engaged in scientific activity that, based on its content and form, can be seen as a serious, systematic endeavour to discover what is true.[45] (Here, I would like to write about how Article 13 was influenced by the German jurisprudence on academic freedom, perhaps not by its focus on professorships (see the article of Christoph Möllers) but by the concept of the Humboldtian science. I also want to

[38] This how the ECtHR explains the criteria to identify "impact cases". European Court of Human Rights, *'A Court that matters': A strategy for more targeted and effective case-processing*, 17 March 2021, https://www.echr.coe.int/Documents/Court_that_matters_ENG.pdf, 1.

[39] The petition titled "We will not be a party to this crime!" urged Turkey to end curfews and military operations in Kurdish settlements. https://barisicinakademisyenler.net/node/63

[40] Julia Laffranque, 'A Look at the European Court of Human Rights Case Law on Moral Issues and Academic Freedom' (2017) *Juridica International* 26, 42.

[41] This is why the ECtHR's lack of attention for the issue of academic freedom with regard to prioritisation of pending cases has been criticised. Başak Çalı and Esra Demir-Gürsel, "'A Court that matters' to whom and for what? Academic freedom as a (non-)impact case", *Strasbourg Observers*, 2021-06-11. https://strasbourgobservers.com/2021/06/11/a-court-that-matters-to-whom-and-for-what-academic-freedom-as-anon-impact-case/.

[42] Peers 13.01. They argue that academic freedom is non-justiciable. But see the CEU case.

[43] Breiter

[44] Meyer

[45] Hochschulurteil 113.

demonstrate that the focus of the ECJ case law is on the inner self-governance (autonomy) of academic structures.)

There was virtually no case law on academic freedom in EU law[46] until very recently. It is only since October 2020, with the ECJ judgment in *Commission v Hungary*, that relevant case law on academic freedom is available. [47] The case involves a Hungarian private university, the Central European University (CEU) founded in 1992 by George Soros. Shortly after the right-wing Fidesz government entered power in 2010, they made George Soros and the idea of open society[48] he promotes public enemy number one.[49] In 2017, an amendment to the law on higher education was adopted to require, among others, an international agreement between the foreign university's home and host state and proof that the foreign university had a campus in its home country. The public called the amendment "Lex CEU" because most criteria affected only the CEU.

On 1 February 2018, the European Commission filed a lawsuit against the Hungarian government at the ECJ, arguing that the amendment violated Article 13 because it affected the ability of some universities to conduct research freely in Hungary and to disseminate scientific knowledge and advances.[50] The Hungarian government, by contrast, insisted that though the university must meet certain legal obligations, it does not affect the academic freedom of the institution nor that of its staff, including their ability to undertake scientific activities.[51]

The ECJ delivered its judgment on 6 October 2020, offering creative legal reasoning: the judgment required the ECJ to first establish that Hungary had violated WTO trade law, which is regarded as an integral part of EU law and to determine that such a violation was a wrongful way of implementing EU law with a view to availing of the Charter and its Article 13.[52] The ECJ dedicated only a couple of pages to academic freedom of its 34-page-long judgment.[53] Here, I focus only on the arguments for academic freedom.

Advocate General (AG) Julianne Kokott interpreted the concept of academic freedom as an autonomous right that includes "substantively autonomous research and teaching that is free from state inference," and the institutional and organisational framework of the research and teaching. The opinion recognised that an institutional affiliation is an essential condition for academic research because the institution serves as "a platform for academic discourse and a network and infrastructure for teaching staff, students and donors".[54] Still, academic freedom is not absolute – it may be subject to limitations. These limitations should nevertheless be prescribed by law, they should be necessary in a democratic society in order

[46] Vedder Kommentar, 1340.
[47] For a detailed description, see Enyedi.
[48] Karl Popper introduced the idea of an open society and Soros gave this name to his foundation: the Open Society Foundation.
[49] Dismantling Higher Education, 44. The Minister of Human Capacities stated in a radio interview that "we do not want CEU to continue operating in this form." 5 April 2018.
[50] para 218.
[51] para 220.
[52] Cs I Nagy
[53] See pages 30-33.
[54] Opinion of Advocate General Kokott, para 146.

to safeguard the aims listed in Article 10 of the Convention and they should be proportionate to the aim to be achieved.[55]

The ECJ mainly followed the AG opinion and referred to the relevant ECtHR case law because Article 52(3) of the Charter stipulates that the Charter rights, which correspond to Convention rights, must be given the same meaning and, at the very least, the same scope as those laid down by the Convention. The AG opinion and the ECtHR case law, especially the Mustafa judgment, led the ECJ to conclude that the concept of academic freedom "must be understood broadly":[56] matters relating to the organisation of universities, including their establishment and operation, must be covered by Article 13.[57] Interpreting Article 13 in this way prompted the ECJ to condemn Hungary because the amendment endangered the academic activity of the CEU within Hungary by giving the government to right to block or stop university programs with absolute discretion.

2.1. The right holders

(…)

2.2. The core of Article 13: institutional autonomy

The ECJ recognises that institutional autonomy is necessary to guarantee the proper fulfilment of the functions entrusted to higher education teaching personal and institutions.
(…)

2.3. The rationale for protecting academic freedom

The paper's overall conclusion would be that both the ECtHR and the ECJ jurisprudence are one-sided. The former can provide only incomplete protection of free speech in the academic context, while the latter one-sidedly focuses on the institutional aspect. A robust democracy with vibrant academic freedom presupposes both the individual right of the researcher and the autonomy of the academic institution against unjustified state interventions. Of course, the question of what constitutes an unjustified state intervention cannot be resolved on a conceptual level. The answer must quite literally be found as the result of a judicial process. Individual and institutional claims must be tried before the supranational courts, which independently and impartially hear what both sides have to say for their justification. In order to achieve greater protection of academic freedom in the continent, a coordinated collaboration between the two European courts would be necessary: something similar to what we are witnessing in the field of the rule of law, where the European courts affirm each other's decision by embracing the principles adopted and paraphrasing the decisions delivered by the partner court.

[55] paras 148-150.
[56] para
[57] Kende