

SUMMARY

Developments in many countries in Europe and beyond show how academic freedom can be undermined when the law fails to provide adequate safeguards. Academic freedom is under threat in the Netherlands as well, with data from several international benchmarks showing a downward trend in recent years. That is why the Dutch Ministry of Education, Culture and Science has asked the Royal Netherlands Academy of Arts and Sciences (KNAW) to examine whether academic freedom currently enjoys adequate legal protection in the Netherlands, and to identify ways in which it could be better protected.

Academic freedom is a necessary condition for reliable knowledge development and therefore of fundamental significance to society. Individual academic freedom includes the freedom of researchers and teaching faculty to conduct research, to disseminate their findings, and to teach. Academic freedom also has a collective dimension that encompasses institutional autonomy, self-governance of the academic community, employment security, and secure funding conditions. These aspects are also among the requirements that must be met to safeguard individual academic freedom. Academic freedom is not absolute, but is constrained by laws, institutional responsibilities and professional standards.

Academic freedom does have some legal safeguards in the Netherlands, for example under article 1.6 of the Higher Education and Scientific Research Act (WHW), which states that ‘academic freedom is respected at higher education institutions and university medical centers’. European Union fundamental law and treaties, such as the European Convention on Human Rights, also offer some protection, particularly when a threat to individual academic freedom can be construed as a restriction on freedom of expression. However, the law offers fewer safeguards for other forms of academic freedom; there is, for example, little or no protection against the erosion of institutional autonomy

resulting from political interference and funding incentives, the systematic curtailment of independent research caused by shifts in funding streams, or the vulnerability of academics in employment disputes concerning the limits of their academic freedom. The Dutch Constitution does not explicitly recognise a fundamental right to academic freedom, and article 1.6 of the WHW is so broadly worded that it cannot serve as an effective legal norm.

The Academy must therefore conclude that the safeguards for academic freedom currently offered under Dutch law are inadequate, not least in light of the growing threats to that freedom. There is a need for better legal protection. This advisory report identifies three interrelated measures to better protect academic freedom in the Netherlands. They are:

1. Improve the Higher Education and Scientific Research Act (WHS)

The wording of article 1.6 of the WHW is too broad to adequately define the substance and scope of academic freedom or the corresponding responsibilities of academics, institutions and government. The legislature should amend the relevant provision by replacing the current passive wording ('is respected') with an active obligation on the part of government and knowledge institutions to protect and uphold academic freedom. Any amended provision should also offer conceptual clarity: it should explicitly state to whom the protection applies, while recognising both individual academic freedom and the institutional autonomy of knowledge institutions. It should furthermore clarify the conditions under which academic freedom may be restricted. Finally, the amended provision should establish a standard that individuals can invoke when in dispute with their institution, and that institutions in turn can invoke when in dispute with the authorities.

2. Anchor academic freedom in the Constitution

Constitutional protection would make academic freedom less vulnerable to shifting political majorities and less dependent on the limited safeguards afforded by existing legislation, treaties and European Union law. Protection under the Constitution would furthermore emphasise that academic freedom is a separate fundamental right that cannot be reduced to freedom of expression. It would therefore be preferable to offer such protection in a separate, hybrid constitutional provision, that combines the features of a classical fundamental right, requiring respect for academic freedom, and a social fundamental right, requiring its promotion. It should oblige authorities and institutions not only to refrain from interfering in academic freedom but also to actively create conditions conducive to it. Great care must be taken when drafting such a constitutional provision to properly assess the scope of the research that it protects. Who is protected, and under what circumstances?

3. Apply legal standards in practice

Anchoring academic freedom in the WHW and the Constitution is not enough in itself to protect it in everyday practice. Knowledge institutions must each work out how they safeguard academic freedom in specific situations, such as in cases of harassment, external interference, internal peer pressure and tension between institutional governance and individual academic freedom. A national code of conduct on academic freedom could serve as a shared framework. In addition, there is a need for an institutional culture in which academic freedom is actively discussed, supported and enforced. Only then can the legal safeguards genuinely serve to protect it.

The Academy has recommendations for the following stakeholders:

The Dutch government:

- Initiate legislation to amend article 1.6 of the WHW. The amended provision or provisions should provide conceptual clarity regarding the substance and scope of academic freedom; recognise both individual academic freedom and institutional autonomy; actively oblige authorities and institutions to protect academic freedom; and establish a standard that individuals can invoke when in dispute with their institution, and that institutions can invoke when in dispute with the national government. The preparations should involve extensive consultation with the institutions and other relevant stakeholders.
- Initiate a procedure for enshrining academic freedom in the Constitution. This advisory report expresses a preference for a separate, hybrid constitutional provision that enshrines both respect for and protection of academic freedom, and that defines it as separate from freedom of expression. Here too, the preparations should involve extensive consultation with the institutions and other relevant stakeholders.

The collective organisations (UNL, Vereniging Hogescholen, UMCNL, NWO and KNAW):

- Develop a national code of conduct on academic freedom that identifies shared principles, defines terms and establishes a common framework for issues that institutions should, at the very least, address in their own codes, without dictating the specific details to them.

The institutions:

- Review your own codes of conduct to determine their adequacy in relation to academic freedom and amend them where necessary. Any additional provisions should be drawn up after consultation with staff representative bodies, and should address at least the following: the distinction between academic freedom and freedom of expression; how to protect diversity in theoretical, methodological and epistemological approaches and minority viewpoints; how to handle harassment and threats; and the relationship between institutional governance and individual academic freedom.

- Explicitly consider the legal significance of academic freedom in decision-making processes that could affect it, so that academic freedom is not inadvertently compromised by other considerations. This may, for example, arise in decisions concerning the organisation of research and teaching, the enforcement of knowledge security policy, disciplinary and employment law proceedings, and the recruitment and selection of executive and supervisory board members.

The members of the academic community:

- Ensure that academic freedom is anchored in everyday practice and culture, and respect it in interactions between one another. Legal safeguards are a necessary requirement, but not sufficient in themselves. Long-term awareness-raising, dialogue and training across leadership levels, research groups and study programmes are needed to truly protect academic freedom.

In conclusion: stronger legal safeguards will not shield academic freedom from all threats. They cannot eliminate internal peer pressure, self-censorship or every tension arising from social and political debate. What they can do is provide a well-defined normative framework that supports government, institutions, academics and other stakeholders in meeting their responsibilities. Better legal protection of academic freedom will not only help overcome current impediments but will also make Dutch higher education and research more resilient in the longer term. At a time when international developments have highlighted just how quickly academic freedom can come under threat, a clearly defined and future-proof legal framework is a necessary prerequisite for an independent academia.