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# Freedom of Speech of an Academic Teacher: Some Conceptual Clarifications and a Landscape of Challenges<sup>1</sup>

## 1. Why it matters

Let us begin by pointing out a few reasons why today freedom of speech of academic teachers seems particularly important and worthy of consideration. The first reason is what can be briefly described as a far-reaching change in the cultural context of academia. Although this change has many different aspects, two of them seem to play a central role here, namely, the growing cultural diversity of contemporary Western societies, and the increasingly strong contestation of the axiological and political

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order established after World War II. These processes are accompanied by the radicalization of disputes in public debate, an increase in populism, and the questioning of elements of the previously dominant worldview. All this leads to a situation where the expectations formulated towards academic institutions and academics themselves become less obvious, and their internal coherence often seems problematic. For example, Geoffrey R. Stone diagnoses that, among the four most serious contemporary threats to academic freedom, one consists in succumbing to political correctness, while another one – in abandoning neutrality and taking positions on political, moral, legal, social, religious, and international issues.<sup>2</sup> However, it seems that the possibility of combining the demand for non-compliance with political correctness, on the one hand, and the requirement to remain neutral on issues that divide society, on the other hand, is not obvious and requires interpretative clarification.

The second reason why the issue of academic freedom of speech seems particularly important to us today is what we have elsewhere<sup>3</sup> referred to as the rapid transformation of the structure of social communication, primarily associated with the development of the Internet and social media. This transformation has triggered a whole range of questions, unknown two decades ago, concerning the use of new communication channels by academic teachers. It has led to a huge expansion of potential audiences for academics whose voices can now be heard beyond the walls of the university. The speed with which an academic's statement must be prepared and is disseminated has also increased.

The abovementioned recontextualizations of the issue of academic freedom of speech highlight another reason why it is particularly important to discuss this issue today. Namely, there is a lack of agreement on the mode of normativity that should regulate this issue. To what extent should this area be subject to legal regulation, and to what extent should it be left to "weaker" norms, such as morality and academic ethos? Should this issue be regulated at the level at which there is a national consensus, or should individual universities develop their own speech codes, as is the case in the US? It is worth emphasizing that the resolution of these issues concerns a very large professional group, currently numbering around 95,000 people in Poland.<sup>4</sup>

In the light of the abovementioned reasons, another one seems particularly important and somewhat surprising. Academic freedom of speech is an area that has been discussed relatively little in Polish academia, and only in recent years has interest in it increased. The relatively poor recognition of this issue contrasts with the growing

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<sup>2</sup> G.R. Stone, *A Brief History of Academic Freedom* [in:] *Who's Afraid of Academic Freedom?*, eds. A. Bilgrami, J.R. Cole, Columbia University Press, New York 2015, p. 8.

<sup>3</sup> P. Jabłoński, P. Kaczmarek, M. Wojtanowski, *Wolność ekspresji sędziego w czasach kryzysu kultury polityczno-prawnej* [Eng. The freedom of expression of a judge in times of politico-legal culture crisis], Wydawnictwo Naukowe Scholar, Warszawa 2024, p. 13.

<sup>4</sup> See: *Nauczyciele akademicki w 2023 roku* [Eng. Academic teachers in 2023], [https://radon.nauka.gov.pl/raporty/nauczyciele\\_akademiccy\\_2023](https://radon.nauka.gov.pl/raporty/nauczyciele_akademiccy_2023) (accessed: 31.05.2025).

number of cases concerning potential violations of the limits of acceptable speech by academic teachers. It is therefore a pressing and troublesome practical issue, addressed not only in the media, but also by courts, academic disciplinary committees, and academic ethics committees. We therefore hope that this issue of "Archiwum" will contribute to reviving the academic debate on this issue, a debate that is needed today and one in which legal theorists and philosophers should also participate.

The last reason for addressing this issue that we would like to point out – which partly complements all of the above reasons and partly incorporates them into its scope – is that we treat the discussion on academic freedom as part of a more fundamental question: the question of the contemporary role and shape of one of the most remarkable inventions of Western culture, namely the university. It is worth recalling that this thousand-year-old institution derives its name ("universitas") from what is general, universal, communal, and related to the world as a whole. What should a university look like in a "worldview-fragmented" world, which, in many respects, is the opposite of the world in which the university was born? The question of academic freedom is, therefore, also a question of academic ethos. It appears, however, that we are now witnessing a shift in the prevailing understanding of this ethos. According to the classical formulation by Robert Merton, the ethos of modern science consists of four institutional imperatives: universalism, communism, disinterestedness, and organized skepticism.<sup>5</sup> Nevertheless, it has been argued in literature that the classical ethos of science, as grounded in Merton's vision, fails to adequately emphasize academia's relationship with its broader social environment in current times. According to John Ziman, who developed the notion of post-academic science, "science can no longer evade all social responsibility by pretending that the production of universally valid, value-neutral knowledge is its only goal and its only achievement."<sup>6</sup> Indeed, contrary to the *scire propter ipsum scire* maxim, the question of the practical utility of scientific knowledge appears to be increasingly topical. As stated in the 2020 Magna Charta Universitatum: "Universities acknowledge that they have a responsibility to engage with and respond to the aspirations and challenges of the world and to the communities they serve, to benefit humanity and contribute to sustainability".<sup>7</sup>

<sup>5</sup> R.K. Merton, *The Sociology of Science. Theoretical and Empirical Investigations*, ed. N.W. Storer, The University of Chicago Press, Chicago 1973, pp. 270–278.

<sup>6</sup> J. Ziman, *Real Science. What It Is and What It Means*, Cambridge University Press, Cambridge 2000, pp. 329–330.

<sup>7</sup> Magna Charta Universitatum (2020), <https://www.magna-charta.org/magna-charta-universitatum/mcu2020> (accessed: 10.05.2025).

## 2. Academic teacher

The considerations presented in this volume and in the introductory article focus on the issue of freedom of speech as it relates to specific subjects: academic teachers. It can be assumed that Article 115 of the Polish Act of 20 July 2018 on the Law on Higher Education and Science may serve as a basis for identifying their fundamental functions within the social division of labour. The entirety of this article allows for the reconstruction of three main areas of professional activity: (1) teaching, (2) research, and (3) organizational tasks (the last one, as suggested by the structure of the provision, is of lesser importance to the professional role in question). The relevant statute also defines the possible positions in academic employment. Pursuant to Article 116(1) thereof, an academic teacher may be employed as a professor, associate (university) professor, assistant professor, or assistant lecturer.

Two classifications of academic teachers seem most appropriate: the horizontal one and the vertical one. The former concerns differentiation by academic discipline. According to the Frascati Manual 2015, issued by the Organization for Economic Co-operation and Development (OECD), the following fields of research and development are distinguished under the first-level classification: (1) natural sciences, (2) engineering and technology, (3) medical and health sciences, (4) agricultural and veterinary sciences, (5) social sciences, and (6) humanities and the arts.<sup>8</sup> Let us now refer to observations that stress the specificity of the fifth of these fields, also highlighting the role of law. As noted in the concurring opinion in *Mustafa Erdoğan v. Turkey*: "There is no Chinese wall between science and a democratic society. On the contrary, there can be no democratic society without free science and free scholars. This interrelationship is particularly strong in the context of social sciences and law, where scholarly discourse informs public discourse on public matters including those directly related to government and politics."<sup>9</sup> The contribution of social sciences to the proper functioning of a democratic society is also strongly emphasized in Recommendation No. R (2000) 12, adopted by the Committee of Ministers of the Council of Europe.<sup>10</sup>

As we move on to examining the vertical classification, the focus shifts to hierarchical differentiation among academic teachers. This relates, on the one hand, to the positions listed in Article 116(1), cited above, but – what is arguably even more relevant from the perspective of exercising the right to freedom of speech – it also concerns the

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<sup>8</sup> OECD, *Frascati Manual 2015. Guidelines for Collecting and Reporting Data on Research and Experimental Development*, [https://www.oecd.org/en/publications/2015/10/frascati-manual-2015\\_g1g57dcb.html](https://www.oecd.org/en/publications/2015/10/frascati-manual-2015_g1g57dcb.html) (accessed: 11.05.2025), p. 59 (table 2.2).

<sup>9</sup> Joint concurring opinion of judges Sajó, Vučinić and Kūris, attached to: ECtHR judgment of 27 August 2014, app. nos. 346/04 and 39779/04 (*Mustafa Erdoğan and Others v. Turkey*), § 6.

<sup>10</sup> Council of Europe, Recommendation No. R (2000) 12 of the Committee of Ministers to member states on the social sciences and the challenge of transition, adopted by the Committee of Ministers on 13 July 2000, at the 717th meeting of the Ministers' Deputies, <https://rm.coe.int/native/09000016804caa38> (accessed: 11.05.2025).

potential assumption of higher education institutional functions. This is about leadership roles, such as head of department, dean, or rector, which involve exercising institutional authority. Tomasz Pietrzykowski notes that individuals in such roles – even when the policy of a given university strongly emphasizes freedom of speech, in the spirit of the 2015 Chicago Principles<sup>11</sup> – should be subject to considerably further-reaching limitations.<sup>12</sup> In the case of such academic teachers, there is a discernible functional similarity to judges, whose duty of impartiality necessitates the careful shaping of their expression, including in their conduct outside the official sphere.

An important limitation of reliance on the term “academic teacher” (as understood above) is that it excludes from view those individuals who conduct research without being employed in an academic capacity. It is worth noting that, within legal discourse, there is a view that such individuals should nonetheless fall within the scope of the protections accorded by academic freedom.<sup>13</sup> While the historical contribution of such individuals to the advancement of knowledge is beyond measure,<sup>14</sup> it is also difficult to deny that contemporary science depends heavily on institutional and financial conditions (and, in the last instance, on public support).<sup>15</sup>

### 3. Freedom of speech and academic freedom

The theme of this volume connects the figure of the academic teacher with the concept of freedom of speech, understood broadly as encompassing any form of expressing one’s thoughts, views, or emotions.<sup>16</sup> This does not, however, change the fact that the volume’s primary focus is on speech in its narrower sense. Within the field of inquiry

<sup>11</sup> Chicago Principles: Report of the Committee on Freedom of Expression (2015), <https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf> (accessed: 12.05.2025). As stated in one part of the document, “it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.”

<sup>12</sup> T. Pietrzykowski, *Tezy wstępne do dyskusji nad wolnością manifestowania poglądów w przestrzeni uniwersyteckiej* [Eng. Preliminary Theses for a Discussion on the Freedom to Express Views in the University Environment], Uniwersytet Śląski w Katowicach, [https://us.edu.pl/wp-content/uploads/pliki/glos\\_w\\_dyskusji\\_wolnosc\\_slowa\\_TP.pdf](https://us.edu.pl/wp-content/uploads/pliki/glos_w_dyskusji_wolnosc_slowa_TP.pdf) (accessed: 11.05.2025).

<sup>13</sup> Judgment of the Constitutional Tribunal of 28 April 2009, K 27/07, point 4.4, *Journal of Laws* 2009, No. 68, item 584.

<sup>14</sup> D.J. Boortsin, *The Discoverers: A History of Man’s Search to Know His World and Himself*, Random House, New York 1983, *passim*.

<sup>15</sup> Cf. J. Ziman, *Real Science...*, pp. 79–80.

<sup>16</sup> Among the international legal instruments referring to freedom of speech/expression are: art. 10(1) of the European Convention on Human Rights opened for signature in Rome on 4 November 1950 (hereinafter: ECHR), art. 11(1) of the Charter of Fundamental Rights of the European Union proclaimed on 7 December 2000, OJ EU 2012/C 326/02, 26.10.2012 (hereinafter: CFR), art. 19 of the Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (hereinafter: UDHR), and art. 19(2) of the International Covenant on Civil and Political Rights adopted by the United

concerning freedom of speech – contrary to how it is frequent portrayed in public discourse outside academic circles as an absolute value, *ius infinitum* – its limitations become one of the central themes. One way to conceptualize these limitations is by distinguishing between external and internal constraints on freedom of speech. As for the notion of external constraints, freedom of speech must be balanced against other values (including other human rights) in cases of conflict. The aim, therefore, is to find an appropriate balance between competing values. In the case of internal constraints, by contrast, it is assumed that the very values that justify freedom of speech may also support the restriction of its certain manifestations.<sup>17</sup>

Let us consider examples relevant to the Polish legal system. One instance of the operation of external constraints may be seen in the balancing of the right to freedom of expression guaranteed under Article 10(1) of the European Convention on Human Rights (ECHR) against the limitations set out in Article 10(2), which specifically concerns restrictions on freedom of expression. A similar relationship can be observed between Article 54 of the Constitution of the Republic of Poland, which guarantees freedom of expression, and the limitation clause contained in Article 31(3) of the same act, which pertains to general restrictions on rights and freedoms.<sup>18</sup> As regards internal constraints, a classic example from the Polish legal context is Article 13 of the Constitution, which prohibits the activities of organizations whose programmes are based, among others, upon totalitarian methods and the modes of activity of Nazism, fascism and communism. This provision concerns expressing views that fall entirely outside the liberal-democratic order and the system of human rights it protects – views that are, in fact, oriented towards destroying that very order.<sup>19</sup> The strong emphasis placed on the limitations of free speech should, however, be accompanied by a reminder that human rights discourse consistently stresses that restrictions imposed on the exercise

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Nations General Assembly Resolution 2200A (XXI) of 16 December 1966 (hereinafter: ICCPR). In the context of Polish jurisdiction, the relevant constitutional provision is art. 54 of the Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483, as amended).

<sup>17</sup> J.W. Howard, *Freedom of Speech* [in:] *The Stanford Encyclopedia of Philosophy*, eds. E.N. Zalta, U. Nodelman, 2024, <https://plato.stanford.edu/archives/spr2024/entries/freedom-speech/> (accessed: 10.05.2025), particularly points 3.2 and 3.3.

<sup>18</sup> Ewa Łętowska underscores that conflicts of values should not be resolved in an all-or-nothing manner, but by recognizing the need for differentiated levels of protection. She also points out that Polish courts are not sufficiently prepared to undertake this kind of evaluation; E. Łętowska, *Fałszywe paradoksy ochrony wolności nauki (tezy)* [The False Paradoxes of Defending Freedom of Science. Theses], "Nauka" 2021, no. 2, pp. 87–101.

<sup>19</sup> A. Biłgorajski, *Granice wolności wypowiedzi. Studium konstytucyjne* [Eng. The Limits of Freedom of Expression: A Constitutional Study], Wydawnictwo Sejmowe, Warszawa 2013, pp. 38–42. The issue of constraints on freedom of expression involves numerous philosophical complexities. Opinions on the matter remain significantly divided. Notably, while Howard appears to regard utterances subject to internal constraints as falling within the scope of free speech, Biłgorajski strongly emphasizes that such utterances should not be seen as an exercise of the right to freedom of expression at all.

of freedom of expression must not jeopardize this right itself. Freedom of expression is the principle, and any restrictions must be interpreted as exceptions to it.<sup>20</sup>

We have considered above – in line with the title of the volume – the meaning of “academic teacher” and “freedom of speech.” However, it must be noted that in the context of academic teachers’ activity, the category of “academic freedom” holds a prominent place. Its relationship with the general discourse on freedom of speech remains a matter of debate. Within academic freedom, one can distinguish between a personal and – although this is often disputed – an institutional aspect. The former concerns the freedom to conduct research, publish the results and teach. The latter aspect, on the other hand, pertains to the autonomy of the university, as well as the university’s self-governance in matters of research, teaching, and personnel policy.<sup>21</sup> It should be emphasized, as noted above, that the attribution of these institutional elements to academic freedom is a point of ongoing debate.<sup>22</sup>

Leszek Garlicki underlines the connection between freedom of speech and Article 73 of the Polish Constitution, which, among the freedoms it regulates, also includes “freedom of science” (*wolność nauki*), encompassing the freedom to conduct research, publish the results and teach, which seem to be the most prominently highlighted components of academic freedom. According to this distinguished Polish constitutional scholar, the freedom in question is closely linked to the freedom of speech under Article 54 of the Constitution and may be regarded as a specific form in which that freedom is exercised. Consequently, in Garlicki’s view, the interpretation of “freedom of science” may draw on the general principles and interpretative frameworks developed for freedom of speech, including the assumption of its central importance.<sup>23</sup> This way of thinking, which assumes the translatability of insights from the discourse on freedom of speech into the domain of academic freedom, can be described as “the traditional liberal (rights-based) approach”. This perspective draws on the broader tradition of human rights and views the issue primarily through the lens of individual

<sup>20</sup> See, e.g. UN Human Rights Committee, *General comment No. 34* (2011), CCPR/C/GC/34, § 21; ECtHR, judgment of 26 April 1979, no. 6538/74 (*The Sunday Times v. the United Kingdom*), § 65.

<sup>21</sup> Cf. E. Barendt, *Academic Freedom and the Law. A Comparative Study*, Hart Publishing, Oxford 2010, pp. 22–34; F.F. Padró, *Academic freedom as both quality assurance and quality control mechanisms for universities*, 25th EISIC Conference, Visby, August 25–26, 2022, <https://sites.les.univr.it/eisic/wp-content/uploads/2022/10/Padro.pdf> (accessed: 11.05.2025), p. 6; Joint concurring opinion of judges Sajó, Vučinić and Kúris, § 4. International regulations that explicitly refer to aspects of academic freedom include Art. 13 of the CFR and Art. 15(3) of the International Covenant on Economic, Social and Cultural Rights. It is also recognized that academic freedom is implicitly embedded in the following provisions: Art. 10(1) of the ECHR, Art. 19 of the UDHR, and Art. 19(2) of the ICCPR (as well as, for example, in the First Amendment to the US Constitution).

<sup>22</sup> Cf. M. Stachowiak-Kudła, *Academic freedom as a source of rights’ violations: a European perspective*, “Higher Education” 2021, vol. 82, pp. 35–36; R. Post, *Discipline and Freedom in the Academy*, “Arkansas Law Review” 2012, vol. 65, p. 215. For instance, in the Polish legal system, separate constitutional provisions apply in this context: Art. 73 (freedom of research and teaching) and Art. 70(5) (autonomy of higher education institutions).

<sup>23</sup> L. Garlicki, *Art. 73 [in:] Konstytucja Rzeczypospolitej Polskiej. Komentarz* [Constitution of the Republic of Poland: Commentary], eds. L. Garlicki, M. Zubik, Wydawnictwo Sejmowe, Warsaw 2016, LEX database.



rights and freedoms. This approach, however, has been met with an opposing line of thought, which argues that these two historically developed frameworks – the general human rights discourse and the concept of academic freedom – follow distinct logics and should not be conflated. From this second perspective, which may be termed the “professional-institutional approach”, academic freedom has a different historical origin and serves fundamentally different purposes.<sup>24</sup> In fact, the institutional environment in which academics operate – universities and research institutions – imposes a range of standards and obligations on members of these communities. In the context of academic freedom, Martin Jay has written about the need for “certain protocols of discrimination between good and bad ideas”.<sup>25</sup>

Stanley Fish is a prominent representative of this tradition. In his view, discussions of “academic freedom” often overemphasize the word “freedom” while failing to give due weight to the limiting adjective “academic”. According to Fish, academic freedom, properly understood, is “the freedom – or [...] the ‘latitude’ – necessary to the performance of the academic task for which you are trained and paid”. As the renowned American philosopher states, “Academic freedom is not a general license to say whatever you like on any topic under the sun. It is a limited freedom to follow where the evidence pertaining to an academic question leads”. Fish’s position, formulated also in the context of widely discussed and politically charged debates in the United States about the appropriate response of academic administrators to the Hamas-Israel war, should not be understood as a blanket prohibition on engaging with this issue. Rather, it represents a rejection of doing so under the guise of academic freedom.<sup>26</sup> In a similar vein, he noted: “I don’t mean that professional values take precedence over more general human values, but that more general human values should not be the ones dictating your behavior when you are acting as a professional”.<sup>27</sup> Translating this point into the context of Polish law, one could argue that, according to Fish, the utterances in question, as related to public sociopolitical debate, should not be assessed under Article 73 of the Constitution (governing the “freedom of science”), which would be interpreted as a specific manifestation of the right to freedom of expression. Instead, they should be evaluated with reference to the provision directly concerning the right to freedom of speech, that is, Article 54 of the Constitution.<sup>28</sup>

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<sup>24</sup> A similar distinction is drawn in Robert Post’s reflections: R. Post, *Discipline and Freedom...*

<sup>25</sup> M. Jay, *The Weaponization of Free Speech* [in:] *idem, Genesis and Validity. The Theory and Practice of Intellectual History*, University of Pennsylvania Press, Philadelphia 2022, p. 205.

<sup>26</sup> S. Fish, *Do Nothing Until You Hear From Me*, *The Chronicle of Higher Education*, 30.11.2023, <https://www.chronicle.com/article/everyone-just-shut-up-already> (accessed: 10.05.2025). Importantly, the author denies that his position can be described as one of “neutrality”, which he defines as the absence of support for either side after considering the available alternatives. As he states, his approach is rather one of “staying silent”, understood as a refusal to take any position at all.

<sup>27</sup> S. Fish, *Academic Freedom and the Boycott of Israeli Universities* [in:] *Who’s Afraid...*, p. 282.

<sup>28</sup> The conservative position regarding the role of the university and its academics is also reflected in the work of Eric Barendt, who opposes the argument that “academic freedom amounts to an unrestricted freedom



If we accept the approach outlined above, the issue of demarcating expressions protected by academic freedom from those protected by “bare” freedom of speech becomes a crucial issue. In a concurring opinion in the *Mustafa Erdoğan* case, issued in response to what was perceived as insufficient emphasis on the specifically academic dimension of the case, the judges proposed a test for identifying the presence of an “academic element” in a given utterance. According to them, identifying this element accords the statement the highest level of protection under Article 10 of the ECHR. This assessment involves the following criteria: “(a) whether the person making the speech can be considered an academic; (b) whether that person’s public comments or utterances fall within the sphere of his or her research; and (c) whether that person’s statements amount to conclusions or opinions based on his or her professional expertise and competence”. At the same time, the authors of the concurring opinion stressed that factors such as the form of the publication and the intended audience should be regarded as secondary considerations.<sup>29</sup>

#### 4. Spheres of academic teachers’ activity

The identification of the academic teacher’s freedom of speech as the topic of this volume suggests that the discussion concerns not only the activity encompassed by academic freedom (that is, speech displaying an “academic element”) but also utterances of academic teachers that fall outside this framework. This leads to the question of how the professional role of the academic teacher influences the scope of their freedom of speech without an academic dimension. Our goal is not to provide a definitive answer to this question but rather to propose a preliminary conceptual framework

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of speech for university teacher” (E. Barendt, *Academic Freedom...*, pp. 17–22). He regards this contested view as encapsulated in the 2006 statement made by a group of UK academics (Statement of Academic Freedom, 2006, <https://web.archive.org/web/20070715160014/http://www.afaf.org.uk/>, accessed: 22.05.2025). A noteworthy perspective is also offered by Robert M. Simpson, who challenges what he calls “the standard view”, namely, the idea that universities require both the debate protected by academic freedom and the debate protected by freedom of speech. He questions the assumption that the latter contributes to epistemic benefits within scholarly inquiry or serves democratic aims (or at least he regards the benefits in this respect as insufficient and beleaguered). While not denying the value of free expression, Simpson views academic freedom as a governing principle in universities, and he rejects the conception of universities as a special venue for extra-academic speech. His argumentation echoes the aforementioned position on the necessity of discriminating among ideas within the academic sphere. As he writes, “[c]ontent-based restrictions on speech, which are anathema to a free speech ethic, are (...) an integral part of serious academic practice” (R.M. Simpson, *The Relation Between Academic Freedom and Free Speech*, “Ethics” 2020, no. 3, p. 289).

<sup>29</sup> Joint concurring opinion of judges Sajó, Vučinić and Kúris, § 8. It is worth adding that Marcin Górski proposed an additional criterion, namely: (d) the “enlightenment” of public opinion, as opposed to its manipulation or the pursuit of a sensational effect (M. Górski, *Standardy ochrony wolności wypowiedzi akademickiej w perspektywie porównawczej* [Eng. Standards for the Protection of Academic Freedom of Speech in a Comparative Perspective], “Państwo i Prawo” 2019, no. 10, pp. 48–49).

through which it might be addressed. It seems that such an analysis – to avoid overly general conclusions and to properly situate findings – requires a classification of the spheres of the academic teacher's activity. For this reason, we propose to tentatively distinguish the following three spheres: (1) the strictly professional sphere (research, teaching and involvement in the organizational dimension of university activities); (2) the public sphere beyond strictly professional contexts; and (3) the private sphere. It can be preliminarily assumed that utterances which belong to the first sphere fall under the protection of academic freedom and some of those in the second one may also be covered by it. In the third sphere, however, we are dealing exclusively with protection under the general right to freedom of speech. Determining the appropriate sphere for a particular utterance may prove difficult, as it depends on factors such as the topic, the audience and the place where it is made.

In the relevant literature, a distinction is commonly drawn between intramural speech, referring to academics' statements about the organizational dimension of the university, and extramural speech, which concerns their views on matters of general public interest (these two types can be respectively assigned to the first and second spheres proposed above). Whether extramural speech is encompassed by academic freedom remains a contested issue.<sup>30</sup> It is, however, important to highlight the significance of another problem. Regardless of how the above dilemma is resolved, the question remains about the status of the domain that still falls outside the protection of academic freedom (namely, part of the second sphere and the entirety of the third sphere, as proposed above). Are expressions within this domain subject to limitation by the requirements of the academic teacher's professional role? Barendt notes the instance of "seriously disruptive extramural speech, for example, the circulation of a racist publication that made it impossible for the particular employee to work in harmony with colleagues from minority racial or ethnic groups".<sup>31</sup> In light of such examples, it can be stated – without yet engaging in a more detailed determination – that the answer to the question posed above is, to some extent, affirmative. This issue becomes particularly relevant when considered in the context of academic teachers in leadership positions within higher education institutions, as previously noted. However, a further question arises at this point: should we speak here of legal limitations, or merely of constraints grounded in academic ethics (since what may be regarded as an exercise of freedom from a legal standpoint may nevertheless, from the perspective of professional ethics, be classified as either a duty or a prohibition)? And subsequently: how ought the disciplinary system for academic teachers to be shaped in such cases? It should be noted that these questions already move us into a different area of inquiry than that addressed by the test proposed in the concurring opinion in *Mustafa Erdoğan v. Turkey*.

<sup>30</sup> E. Barendt, *Academic Freedom...*, pp. 270 ff.

<sup>31</sup> *Ibidem*, p. 276. For the sake of clarity, let us assume that the publication in question bears no connection to academic reflection.

## 5. The activism of the academic teacher

The discussion presented so far has dealt with the questions about: (a) who we can consider an academic, (b) when an academic's speech falls within the scope of academic freedom and when within the scope of freedom of speech, and (c) what the relationship is between these concepts, taking into account different spheres of activity. Now it is time to present another question: can an academic express views on current public affairs? The question posed is connected to the issue we have already raised about the limitations associated with the morality of the role. On the other hand, this question can be profiled due to the already distinguished spheres of activity or the particularities of the scientific discipline represented by the academic teacher.

Opponents of academics' activism include Tarunabh Khaitan. In his view, this activism remains in tension with the role morality of academics, which boils down to two duties: the search for truth and the dissemination of knowledge. The fulfilment of these duties presupposes that in public activities, especially in research and teaching, the academic is a special category of citizen whose identity is defined primarily by the obligations associated with the role. In the view presented here, the morality of the role affects a person's civil rights. This is because it requires adopting an attitude of restraint and a certain distance from social problems. In this view, the role performed is a limiting factor for the academic's freedom of expression.

The presented vision of the morality of the role is supposed to protect academia from two threats of disappearance or, in a weaker version, excessive entanglement: (a) in the individual judgements of individual academics, (b) in ongoing political activity. Both these dangers are said to be linked to activism, portrayed as being guided by individual rationales or political beliefs instead of the responsibilities of the role of an academic. Advocates of the restrained stance assume that the goals of scientific activity are or, in a weaker version, may be in conflict with the activist stance. For this reason, the choice of an activist attitude, which can have various facets, means that the academic puts individual beliefs above his or her role responsibilities. Opposing such an attitude, Tarunabh Khaitan recommends a solution which he describes as follows: "But a scholar's engagement with morality must be, well, scholarly. This entails a concern with what morality demands, investigated through appropriate disciplinary tools (e.g. of moral philosophy), based on a thorough knowledge of extant scholarly literature on the issue, in constant engagement with peers who disagree, and an abiding attitude of revisability in light of new evidence or irrefutable arguments."<sup>32</sup>

<sup>32</sup> T. Khaitan, *On scholactivism in constitutional studies*, "I-CON" 2022, no. 2, p. 549; *idem*, *Facing Up: Impact-Motivated Research Endangers not only Truth, but also Justice*, VerfBlog, 6.09.2022, <https://verfassungsblog.de/facing-up-impact-motivated-research-endangers-not-only-truth-but-also-justice/> (accessed: 15.05.2025).

Alberto Alemanno calls the approach presented by Tarunabh Khaitan, “an academic ivory towerism”.<sup>33</sup> Alemanno, as a proponent of an activist stance, advocates the possibility for academics to engage in evaluating current social and political issues. Activism understood in this way challenges the view that academics should take a “neutral” and “objective” stance towards social reality, political or social transformations taking place. From the perspective of activism, by choosing such a stance of academics evade their responsibility to society. Such a position can be justified by an argument from the audience. In this view, an element of the right to freedom of expression is citizens’ right to information. Hence, responding to social challenges, such as those related to various crises, is one of the factors determining the identity of the role of scientists.

The activism of academics may represent a progressive stance, the aim of which is to challenge the status quo and advocate certain social or legal changes. But activism can take on a more conservative form, which aims to defend traditional values, such as social hierarchies. However, they are united by “some form of academic engagement with the real world”.<sup>34</sup> Justifying this attitude, Alemanno emphasizes: “society increasingly expects academia to contribute more to society by going beyond the traditional scholarly boundaries of truth-seeking and knowledge dissemination”.<sup>35</sup> These expectations can be profiled taking into account various variables, such as the field of study.<sup>36</sup>

In the debate so far, the consideration of the role of legal academics, especially constitutionalists, is particularly evident. This has also been influenced by the rule of law crisis.<sup>37</sup> A restrained position can be distinguished in this debate, presented by András Jakab. In his view, the role of constitutionalists is a dogmatic analysis of the law, which should be essentially free from assessing current social events. This is because the choice of such an attitude allows us to maintain a certain distance from the world of politics and promotes preserving the autonomy of law.<sup>38</sup> On the other hand, we have researchers, like Adrienne Stone, who emphasize the social rationale in favour of engaging in social debates that preoccupy the general public, especially when an academic is professionally involved in the issue. The purpose of such involvement, in the case of lawyer-academics, may be: (a) to protect liberal democracy – its institutions – especially in times of crises, or (b) to make the law more inclusive. The latter rationale

<sup>33</sup> A. Alemanno, *Why Academic Ivory Towerism Can't Be The Answer*, VerfBlog, 31.08.2022, <https://verfassungsblog.de/why-academic-ivory-towerism-cant-be-the-answer/> (accessed: 15.05.2025).

<sup>34</sup> *Ibidem*, p. 3.

<sup>35</sup> *Ibidem*, p. 3.

<sup>36</sup> L. Rahbari, D. Kramer, M. Deserno, T. Tse, T.R. Matos, *Activism and academia: an interdisciplinary dialogue on academic freedom and social engagement*, “Journal of Higher Education Policy and Management” 2025, vol. 47, no. 6, pp. 73–89.

<sup>37</sup> L. Lazarus, *Constitutional Scholars as Constitutional Actors Constitutional Scholars as Constitutional Actors*, “Federal Law Review” 2020, vol. 48, no. 4, p. 483.

<sup>38</sup> A. Jakab, *Moral Dilemmas of Teaching Constitutional Law in an Autocratizing Country*, VerfBlog, 15.07.2020, <https://verfassungsblog.de/moral-dilemmas-of-teaching-constitutional-law-in-an-autocratizing-country/> (accessed: 18.05.2025).

can be understood as a response to the deepening process of alienation of law.<sup>39</sup> One of its sources is the growing gap between how law is understood by the legal milieu and by other citizens. In this regard, the goal of the activity of legal academics may be to explain to citizens the mechanisms of law, to create bridges between law and society and thus break down the various barriers to access to justice.<sup>40</sup>

## 6. Overview of the articles featured in the issue

This volume, in addition to the present introductory piece, contains nine articles that both diagnose the problem and pose questions, navigating between the titular “known and unknown”. The article by Ewa Ilczuk and Andrzej Porębski, titled *Wolność debaty akademickiej dla wszystkich czy dla wybranych? Postawy studentów względem granic debaty akademickiej w kontekście kultury unieważniania* (Freedom of Academic Debate: For All or for the Chosen Ones? Students’ Attitudes Toward Freedom of Speech for Academics), adopts a sociological approach. In the context of the volume’s central themes, it is noteworthy that academic teachers are considered relevant here as subjects whose expression is evaluated by the specified members of the academic community, namely by students. Student attitudes were examined using questionnaires distributed among them. According to the authors’ findings, a strict stance toward particular behaviours of academic staff is indeed influenced by the respondents’ worldview. At the same time, Ilczuk and Porębski argue that neither left- nor right-leaning worldviews are more likely to involve a punitive stance toward ideological opponents. Rather, in line with the congruence theory framework for understanding cancel culture, they suggest that there is a universal tendency to silence minority viewpoints.

In the next article, entitled *Between Protection and Restriction: Academic Freedom in the Case Law of Turkish Administrative Courts Through the Lens of Frederick Schauer*, Muhammet Koçakgöl and Olcay Karacan present an interesting combination of theoretical and empirical approaches. Drawing on the perspective of Schauer, a classic figure in the field of freedom of expression, the authors analyse the complex issue of academic freedom in contemporary Turkey. The text emphasises that the actual scope of this freedom is not simply the result of administrative court rulings, but rather a more complex interplay in which an important role is also played by other factors, such as constitutional jurisprudence, the academic hierarchy and relationships within academia, and finally, the ways of thinking of academic teachers themselves.

<sup>39</sup> A. Stone, *A Defence of Scholarly Activism*, “Constitutional Court Review” 2023, vol. 13, no. 1, pp. 1–15; F. Bashiri, *Conceptualizing Scholar-Activism Through Scholar-Activist Accounts* [in:] *Making Universities Matter. Collaboration, Engagement, Impact*, eds. P. Mattsson, E. Perez Vico, L. Salö, Springer, Cham 2024, p. 72.

<sup>40</sup> The problem area presented is also taken up in legal studies. Tomasz Pietrzykowski participates in this debate, distinguishing two models of academic freedom, referring to them as: the “conscious tolerance model” and the “sterile model”. See: T. Pietrzykowski, *Tezy wstępne...*, pp. 2–3.

In the article by Sławomir Tkacz and Aleksandra Wentkowska, *Nauczyciel akademicki w momencie kryzysu rządów prawa. Dynamika i perspektywy na przykładzie nauczyciela akademickiego będącego prawnikiem* (The Academic Teacher in Times of Rule of Law Crisis. The Dynamics and Prospects, on the Example of Academic Lawyer Teachers), the authors, dissecting the titular issue of the rule of law crisis, highlight the challenges posed by the time of crisis. These challenges focus around the choice of the role of the academic teacher, especially in the public sphere, as well as models of legal education. Exposing these issues sets the field for the discussion of the titular issue of academic freedom, with emphasis on the social position of lawyers-academics.

One possible proposal for framing the limits of academic freedom, is presented by Jakub Łakomy in the article: *Academic Freedom on the Frontlines of Culture Wars: Stanley Fish and the Freedom of Expression of a University Teacher*. This perspective is set by Stanley Fish's concept of neopragmatism. It covers, first of all, the question of the relationship between freedom of speech and academic freedom, as well as the morality of the role as a factor shaping the freedom of expression of the academic teacher. The choice of such a perspective is justified by the defence of academia and its integrity, especially in times of culture wars.

The topic of the relationship between academic freedom and freedom of speech is also a point of reference for Paweł Jabłoński in his article: *O wolności akademickiej. Komentarz do stanowiska Ronalda Dworkina* (On Academic Freedom. Commentary on Ronald Dworkin's Approach). Like Fish, Dworkin rejects the view that the former is an emanation of the latter. However, while Fish bases his justification of academic freedom on the idea of the integrity of academia, Dworkin proposes to justify this freedom on the basis of the idea of ethical individualism, the protection of which is presented as an important condition for preserving the axiological integrity of both individuals and society as a whole.

Above, we described several texts that draw on the work of specific American authors (Koçakgöl and Karacan make extensive references to Schauer, Fish is a central figure for Łakomy, while Dworkin plays that role for Jabłoński). The text by Przemysław Rybiński, *Wszystkie myśli dozwolone. W obronie (niemal) absolutnej wolności nauki* (No Thoughts Barred: In Defence of (Nearly) Absolute Academic Freedom) can be described as generally drawing on US debates related to the problem area in question. His article appears to directly address one of the issues mentioned above: the confrontation between what we called the traditional liberal (rights-based) approach and the professional-institutional approach. The author – somewhat contrary to the emphasis on the need for “certain protocols of discrimination between good and bad ideas” – leans rather toward the validity of the traditional liberal approach. Rybiński argues that the US discourse about freedom of speech may prove valuable when applied to discussions on the scope of academic freedom. Concluding his reflections, the author writes, among other things: “What most deeply motivates scholars to engage in research (on an existential and lived level) is closely related to the same inner forces that give rise to all human expression.”

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## Abstract

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### **Freedom of Speech of an Academic Teacher: Some Conceptual Clarifications and a Landscape of Challenges**

In presenting this special issue of the "Archiwum Filozofii Prawa i Filozofii Społecznej. Journal of the Polish Section of IVR", we would like not only to briefly introduce the contents of the individual articles that make up this volume but also to attempt to outline the field of research we are entering. We will pursue these tasks in the following order. In the introductory section (1), we present the reasons why we believe that it is important and necessary today to address the titular issue. After that, we move on to clarifying one of the terms in the title of this volume, namely "academic teacher" (2). Next, we discuss the relationship between the concepts of "freedom of speech" and "academic freedom," pointing out, in line with subject literature, that this relationship is much less obvious than it may seem at first glance (3). Subsequently, we propose dividing the spheres of academic expression into three complementary areas, while emphasizing the preliminary and provisional nature of the distinction introduced (4). In the following section (5), we outline one of the most fundamental disputes in the field of academic freedom, which can be described as the opposition between activism and passivism. In the last section (6), we review the contents of the articles included in this volume.

**Keywords:** freedom of speech, academic teacher, academic freedom