

CODE OF ACADEMIC FREEDOM AND RESPONSIBILITY

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Introduction

Research is committed to the truth: This is why there is an inscription on the face of the main building of the University of Würzburg that reads 'Veritati'. At the same time, research serves the interests of society: This is why the Alma Julia has chosen 'Science for Society' as its motto. The aim of finding truth and the aim of producing results that are of benefit to society define the boundaries within which research unfolds.

The serious and systematic search for truth is inherent to all forms of academic enquiry. In this context, 'truth' is an open concept that marks a goal that is defined differently depending on the issue under investigation. The truth is like a horizon that widens with each new finding that we make. This is why everyone who conducts research in an effort to find the truth is constantly exposed to contradiction. Research needs freedom to be able to perform its function of finding the better solution through an exchange of arguments. Setting the boundaries for this exchange, which is in line with the ideal of a debate that is free from domination, is the responsibility of the university. The latent tension between academic freedom and the need of research for organisation must be rebalanced constantly in daily practice, and the potentially restrictive effect of the institution must be measured against the postulate of freedom.

Research at universities is not conducted in an 'ivory tower'. Society has legitimate expectations of universities as institutions that are financed from public funds. This is why transfer represents a third mission of universities alongside the traditional missions of research and teaching. External interests are legitimate as long as they do not lead to disproportionate restrictions on academic freedom. In addition, competing claims to truth are found not only within the academic debate but also within society. And then, researchers and teaching staff themselves are part of this society, have interests and specific attitudes. The convictions and cultural backgrounds of individuals affect where the limits are of what can be investigated in academic research and of what can be said.

In this conflict situation, research has a responsibility to ensure that it uses its freedom in a responsible manner. Academic freedom is a privilege and an obligation at the same time. It has to be interpreted on a case-by-case basis but not in a way that could lead to academic freedom itself being opened up to question. Rather, academic freedom is a principle that all rules of negotiation will have to follow and against which internal and external attempts at interference will have to be balanced.

It is in the nature of pluralistic societies that issues raised by research are discussed by a range of stakeholders and that, occasionally, non-academic considerations come into play that attempt to restrict or even eliminate academic freedom. Here, it will be necessary to defend the personal protection of researchers as well as the organisational and structural safeguards for the right to freely engage in research activities and, consequently, the research system as a whole. In an effort to do so, Julius-Maximilians-Universität Würzburg has adopted the following six principles.

Principle 1 – Enjoyment of basic rights

Every natural person who carries out academic activities at a university is guaranteed the academic freedom enshrined in Article 5 (3) of the Basic Law for the Federal Republic of Germany (*Grundgesetz für die Bundesrepublik Deutschland*). Universities and their independent organisational units can also be holders of the right to academic freedom, provided that they carry out academic activities, but at the same time, they are also bound by the basic rights.

At universities, all those involved in research and/or teaching and all students who are acting independently in this regard can invoke academic freedom.

Legal persons, such as Julius-Maximilians-Universität Würzburg, can also be holders of the right to academic freedom, provided that they carry out academic activities. The term ‘academic activities’ does not only refer to the actual research and teaching activities, which can only be carried out by a natural person alone or together with others, but also to the organisation and funding of research, e.g. by employing non-academic support staff or providing the necessary infrastructure. Consequently, academic freedom, by its nature, also applies to universities and their independent organisational units. With respect to the institutional guarantee of self-government, the university can invoke academic freedom.

Unlike private individuals, who are only entitled to basic rights, a state university not only enjoys basic rights but is also bound by them. It has to promote and protect the academic freedom of the researchers and teaching staff working at the university. In addition, it has a duty to ensure that the university is organised in a way that, while protecting the right of individuals to academic freedom, ensures the efficiency and operability of the university. This means that the university has to guarantee that those who carry out academic activities have appropriate participation in the research community and has to fend off threats to academic freedom. As regards personnel, this duty of the university applies without exception: It covers all persons working at the university who exercise their academic freedom regardless of their status.

Principle 2 – Freedom of research and teaching

Academic freedom applies to every attempt at finding the truth which, considering its content and form, can be regarded as serious and systematic as well as to the communication of the findings to others. The objective of research as an intellectual activity is to generate new findings in a methodical and verifiable manner. The purpose of academic teaching is to communicate to others the findings made and methods used so that they can serve as a basis for independent and critical reflection.

Research is aimed at gaining knowledge, it is rational, verifiable and open-ended and complies with the minimum methodological standards of the discipline concerned. The freedom of research and teaching is different from the freedom of opinion, the exercise of which is not subject to any academic standards and which covers value judgements of any kind and about any issue.

The freedom of research and teaching applies to all processes, ways of behaviour and decisions employed and made while conducting research, including while interpreting the findings made and while communicating them to others in academic publications and presentations as well as in the classroom, which are based on the autonomy of research.

Academic activity does not only encompass searching for fundamentally new findings; it also encompasses re-evaluating existing findings in light of new ones and refined methods as well as developing such methods. Academic activity also includes applied and purpose-driven research that generates new findings as it pursues its objectives.

As the research process, by its nature, is open and subject to rapid change, the freedom of research and teaching also includes the freedom to challenge established research approaches and assumed truths and to draw different conclusions from observations or sources. Even if the methods used and conclusions drawn prove faulty in light of findings made at a later point, the original research conducted remains covered by academic freedom, provided that it complied with the minimum standards of the discipline concerned. What is not covered by academic freedom is the systematic misinterpretation or selection of findings with the intention of producing preconceived results. This is also true if moral, political, ideological or religious reasons are offered for doing so.

Only those who are open and transparent concerning the methods used by them, who ensure that their findings can be verified and who are willing to accept constructive criticism can claim the privilege of academic freedom. The reputation a researcher may have gained does not release them from the obligation to allow their work to be the subject of debate.

Research is pluralistic and diverse. All disciplines enjoy equal academic freedom, provided that they comply with the standards of knowledge orientation, openness and transparency. Consequently, the methods and minimum standards that are specific to one discipline cannot be applied to other disciplines without further reflection. Covering a wide range of disciplines, universities play a major part in the continuous development of the (cross-disciplinary) criteria for what is considered an academic activity. The connection of research and teaching found at

universities encourages the self-reflection of research through a debate between teaching staff and researchers.

Principle 3 – Responsible conduct of research

Academic freedom always carries with it the duty of the institutions and individuals involved in the research process to act responsibly. The responsible conduct of research is more than compliance with legal requirements; it also includes evaluating critically whether the research carried out is ethically justifiable. In addition, the responsible conduct of research encompasses the idea of re-evaluating theoretical and methodical assumptions as well as empirical evidence in a manner that is self-critical and, basically, open to all points of view.

Academic freedom releases neither academic institutions nor the individuals who research and teach at these institutions from the obligation to take accountability for their own actions and the conditions and contexts of these actions as well as for their actual, expected or merely possible consequences. A critical evaluation of whether the research carried out is ethically justifiable is required, in particular, in cases where the research in question may lead to far-reaching political or societal changes and consequences. Here, the responsible conduct of research is more than merely abiding by the restrictions imposed by law; it also includes conducting a comprehensive assessment in particular of the aspects of the actions or omissions attributable to academic institutions or individuals that appear problematic or negative.

The critical evaluation of one's own actions takes the form of autonomous reflection guided by factual and ethical considerations; it is fundamentally different from a heteronomous influence of authorities from outside the research community. Although the latter may raise issues relating to responsibility in research and may be a point of reference for processes of reflection, they cannot determine critical reflection.

In addition to the critical engagement with ethically problematic practices, institutional and personal responsibility in research also encompasses the epistemic commitment to the openness of the academic debate. This includes the right to bring all rational points of view to the debate, to challenge existing findings, to problematise them using academic methods and to draw attention to new findings and justifications. Since all claims to knowledge are subject to verification according to methodical standards, this requirement also includes being open to one's own positions being rejected or proved wrong. Criteria for prohibited conduct in the academic debate are a lack of self-criticism, unconcern for the state of the relevant debate or making claims without stating any grounds, but not the challenging of supposedly self-evident facts or generally accepted views.

Principle 4 – Limits to academic freedom

Academic freedom is not absolute. In cases of conflict, it will have to be balanced in a considerate manner against conflicting constitutional interests, in particular the basic rights of third parties. In addition, the obligation for loyalty to the constitution applies where teaching is concerned.

The Basic Law for the Federal Republic of Germany does not explicitly require a statutory basis for imposing restrictions on academic freedom, yet academic freedom is not guaranteed without restriction. Interference from the state may be justified in order to protect conflicting constitutional interests. These include, but are not limited to, the basic rights of third parties, i.e. other researchers and students as well as individuals from outside the research community. When medical research is conducted at a university, the basic rights of the persons who are being treated may, for example, conflict with the academic freedom of the researchers. Another limitation is set by the general right of personality, e.g. the right to informational self-determination in the context of data protection. The national objectives of environmental protection and animal welfare, too, have an inherent limitation function, which may take effect, for example, in the context of genetic engineering experiments or animal research activities.

In addition, interference may be justified in order to protect the functioning of research as such and the institutional framework within which it is conducted. Procedures to ensure compliance with the standards for good practice in research do not constitute prohibited interference according to the rules, since they ensure the reliability and credibility of research and counteract abuse. Evaluations can be justified in light of the fact that the state is the budget owner and with regard to quality assurance in research and teaching. In particular cases, traditional principles of the professional civil service, such as official secrecy, may also limit academic freedom.

However, the importance of research that is free from the need to be useful to society or to serve a political purpose should not be underestimated. In light of this, civil clauses are proving to be just as precarious as using researchers to reach politically desired goals. The ethical justifiability of the research carried out, in particular with regard to the possibility of misuse by third parties of the findings generated, is the subject of a researcher's autonomous self-reflection but does not, in itself, represent a ground for imposing restrictions on academic freedom.

In cases of conflict, academic freedom will have to be balanced in a considerate manner against conflicting constitutional interests. The conflicting legal positions will have to be reconciled in such a way that each of them is as effective as possible. Consequently, restrictions on academic freedom must be limited to the extent that is absolutely necessary with regard to the type and degree of the harm potentially caused to other interests. Whenever a conflict arises within the university, in normal circumstances, there will first have to be an attempt to resolve this conflict through a dialogue between the parties involved (with the help of a facilitator if needed) before the competent governing bodies are consulted in accordance with the procedures foreseen for this purpose.

A special restriction applies to the freedom of teaching: the obligation for loyalty to the constitution. The purpose of this restriction is to counteract the abuse of the freedom of teaching

to agitate against the free democratic basic order. The restriction does not eliminate the possibility of subjecting even the constitution itself to academic criticism in order to stimulate the debate.

Principle 5 – Research and institution

The university has a responsibility to facilitate, encourage and protect free academic debate. It creates a suitable institutional framework for this purpose that is characterised by rules, structures and processes that are appropriate for the academic world.

With the physical, workforce and digital infrastructure as well as the organisational and legal framework it provides, the university creates key conditions to allow researchers and teaching staff to exercise their academic freedom.

In addition, it takes measures to encourage free research and teaching. In addition to providing a basic budget financed from the university's budgetary resources, these include offering additional funding opportunities to also allow researchers to freely choose their research topics and to conduct open-ended research independently of external funding sources. In this way, the carrying out of basic research and a diversity of disciplines, which is essential for academic freedom, are guaranteed without precluding unavoidable prioritisation in the funding of research and teaching.

The university takes a variety of measures to protect academic freedom from internal and external threats and interference. In addition to putting in place clear and transparent decision-making processes, these include creating ethics and compliance structures, as well as introducing rules and procedures, in all relevant areas of academic self-governance. Some examples of this are ensuring the transparency of search procedures for professorial staff and transparency regarding third-party funding as well as adopting a code of good practice in research and procedures for the investigation of misconduct in research. The overall structure should be designed to prevent impairments.

Whenever researchers or teaching staff become the subjects of personal attacks, the institution and its members will have to show their solidarity. Everyone experiencing such attacks needs to feel assured that they will receive protection regardless of their status or the type of their employment relationship.

Principle 6 – Research and society

Research and society interact in a variety of ways. And the logic of research is not necessarily in accordance with the way in which it is presented in the media or perceived by the public. Researchers will therefore have to be able to endure criticism and be willing to allow their work to be the subject of debate.

Integrity, openness, a responsible use of the findings generated and a responsible communication of these findings to others are fundamental values of research and an integral part of its self-commitment.

The more people feel that progress in research brings changes to their lives, the more they feel the need to be informed, involved and convinced. This is accompanied by a reduction in the distance between research and society in the sense of constructive science communication that promotes mutual understanding. At the same time, progress in research may create insecurity, scepticism or, in the worst case, fears among the public.

Nonetheless, the expectations of society must not be a yardstick for research. We will have to endure and resolve the existing tension between independent research and how it is perceived by the public in a time of societal change. Asking researchers to justify their positions does not constitute an attack on academic freedom; rather, it is an integral element of the debate, an appeal to researchers to act responsibly. Universities spark debates and conduct them objectively and fairly. They consider it their responsibility to protect science communication.

Inconvenient questions, critical debates and even a lack of understanding due to differing values are acceptable, but defamation, personal accusations and the instrumentalization of research and the people who are involved in it are not. The university keeps the space for critical debate open even if, because of established beliefs, the public or individual groups within society react with irritation or even indignation to an issue being called into question.

In accordance with the motto of Julius-Maximilians-Universität Würzburg – ‘Science for Society’ – we will have to engage in constructive dialogue to make visible the knowledge gained.

Bibliography

Literature

- Albers, Marion and Jörn Behrens, Matthew Braham, Dagmar Felix, Andreas Guse, Eileen Lübcke, Ute Lübcke, Florian Lucks (coord.), Michael Moxter, Stefan Oeter, Daniela Rastetter, Birgit Recki, Hans-Heinrich Trute (chair) and Olaf Walther (2022), *Kodex Wissenschaftsfreiheit der Universität Hamburg*, Hamburg.
- Ash, Mitchell G. (2022), *Diskurskontrolle an deutschen Universitäten – Bedrohung der Wissenschaftsfreiheit?* Berlin.
- Gärditz, Klaus F. (2024), 'Akademische Selbstverwaltung', In: Wolfgang Kahl and Markus Ludwigs (ed.), *Handbuch des Verwaltungsrechts*, Band VII, § 205, Heidelberg (forthcoming).
- Gärditz, Klaus F. (2019), 'Kommentierung von Artikel 5 Abs. 3 des Grundgesetzes (Freiheit von Wissenschaft, Forschung und Lehre)', In: Günter Dürig, Roman Herzog and Rupert Scholz, *Grundgesetz-Kommentar*, Bd. I, 103. EL 2024, Munich.
- Gärditz, Klaus F. (2018), 'Die äußeren und inneren Grenzen der Wissenschaftsfreiheit', *Wissenschaftsrecht*, Jg. 51, H. 1, p. 5-44.
- Grimm, Dieter and Lothar Zechlin, Christoph Möllers and Uwe Schimank (2021), *Wissenschaftsfreiheit in Deutschland: drei rechtswissenschaftliche Perspektiven*, Berlin.
- Krüper, Julian (2023), 'Kommentierung von Artikel 5 Abs. 3 des Grundgesetzes (Wissenschaft)', In: Horst Dreier, *Grundgesetz-Kommentar*, Bd. 1, 4. Aufl., Tübingen.
- Oetker, Arend and Ernst-Ludwig Winnacker, Hubert Mackl, Klaus Landfried, Detlev Ganten, Hans-Jürgen Warnecke, Winfried Schulze, Frank Pobell and Hans Wohlfahrt (1999), *Memorandum 'Dialog Wissenschaft und Gesellschaft'*, Bonn.
- Paulus, Andreas L. (2024) 'Kommentierung von Artikel 5 des Grundgesetzes', In: Peter M. Huber and Andreas Voßkuhle (ed.), *Grundgesetz-Kommentar*, Bd. 1, 8. Aufl., Munich.
- Ruffert, Matthias (2006), 'Grund und Grenzen der Wissenschaftsfreiheit', *Veröffentlichungen der Vereinigung der Deutschen Staatsrechtslehrer*, Bd. 65, p. 146-216.
- Sachs, Michael (2013), 'Grenzen der Forschungsfreiheit und Aufnahme einer Zivilklausel in die Grundordnung', *Wissenschaftsrecht*, Jg. 46, H. 3, p. 201-211.
- Schmid-Petri, Hannah (2021), 'Krisenkommunikation in der Wissenschaft – Die Reaktion auf Anschuldigungen und der Umgang mit Skandalen', *Beiträge zur Hochschulforschung*, Jg. 43, H. 1-2, p. 172-183.
- Wendt, Rudolf (2021), 'Kommentierung von Artikel 5 des Grundgesetzes', In: Ingo von Münch and Philip Kunig, *Grundgesetz-Kommentar*, Bd. 1, 7. Aufl., Munich.

Case law

- Federal Constitutional Court, judgement of 29 May 1973 – 1 BvR 424/71, 325/72, BVerfGE 35, 79
- Federal Constitutional Court, order of 1 March 1978 – 1 BvR 333/75, 174, 178, 191/71, BVerfGE 47, 327
- Federal Constitutional Court, order of 11 January 1994 – 1 BvR 434/87, BVerfGE 90, 1
- Federal Constitutional Court, order of 26 October 2004 – 1 BvR 911, 927, 928/00, BVerfGE 111, 333
- Federal Constitutional Court, judgement of 24 November 2010 – 1 BvF 2/05, BVerfGE 128, 1
- Federal Administrative Court, judgement of 25 February 1971 – II C 11/70, BVerwGE 37, 265