



Freedom of Artistic Expression under Article 10 of the European Convention on Human Rights

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Preliminary remarks

The Convention and the Court's case-law does not define what is "art" or what constitutes an "artistic expression".

However, the Court has accepted that Article 10, which reads in its first paragraph: "*Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....*" applies to this form of expression (see *Marija Alekhina and Others v Russia*, §§ 202-206).



Scope of Artistic expression

So far, the Court has recognised as “artistic expression”:

- **visual art forms:** paintings (i.e. *Vereinigung Bildender Künstler and Others v Austria*, § 33); sculptures (i.e. *S. and G. v. the United Kingdom*) and cartoons (i.e. *Leroy v. France*, § 44);
- **literary art forms:** plays (i.e. *Kar and Others v. Turkey*, § 45); poems (i.e. *Karataş v. Turkey*); novels (i.e. *Lindon, Otchakovsky-Laurens and July v France*, [GC], § 47);
- **performance art:** such as protests at a war memorial (i.e. *Sinkova v. Ukraine*, § 107); performing a political song in a cathedral (i.e. *Marija Alekhina and Others v Russia*, § 206).



Satire, humour and parody

Article 10 of the Convention protects satire as a form of artistic expression and social commentary, that, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate. Accordingly, any interference with an artist's right to such expression must be examined by particular care (see *Vereinigung Bildender Künstler v. Austria*, § 33).

However, satire cannot go so far as to glorify terrorism (*Leroy v. France*) or to demonstrate blatant hatred (*M'bala M'bala v France*).



Satire, humour and parody

While humorous speech or forms of expression that cultivate humour are protected by Article 10 of the Convention, including when they result in transgression or provocation, and while they cannot be assessed or censored solely on the basis of the negative or indignant reactions, they are likely to generate, they are not exempt from the limits defined in paragraph 2 of this provision. The right to humour does not permit everything, and anyone who avails himself of freedom of expression assumes, in the words of this paragraph, “duties and responsibilities” (*C8 (Canal 8) v. France*, § 85).



Key principles

Freedom of expression includes freedom of artistic expression – notably within freedom to receive and impart information and ideas – which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence the obligation on the State not to encroach unduly on their freedom of expression (*Müller and Others v. Switzerland*, § 27).



Key principles

Artistic freedom extends to forms of expression that offend, shock or disturb the State or any section of the population, as is demanded by the pluralism and tolerance inherent in a democratic society (*Vereinigung Bildender Künstler and Others v Austria*, § 26).



Key principles

Artists and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10. Whoever exercises his freedom of expression undertakes, in accordance with the express terms of that paragraph, “duties and responsibilities”; their scope will depend on his situation and the means he uses (*Müller and Others v. Switzerland*, §§ 33-34).



Permissible restrictions

States may restrict freedom on artistic expression on the following grounds permitted by Article 10 paragraph 2, namely, national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.



Methodology – negative obligations

- Applicability
- Existence of an interference
- Prescribed by law
- Legitimate aim
- Necessity, including considerations of pressing social need, margin of appreciation, proportionality, procedural safeguards and relevant and sufficient reasons for any decisions involved.



Positive obligations

The key importance of freedom of expression as one of the preconditions for a functioning democracy is such that the genuine, effective exercise of this freedom is not dependent merely on the State's duty not to interfere, but may call for positive measures of protection, even in the sphere of relations between individuals (*Palomo Sánchez and Others v Spain* [GC], § 59).



Positive obligations

In particular, the positive obligations under Article 10 of the Convention require States to create, while establishing an effective system of protection of journalists, a favourable environment for participation in public debate by all the persons concerned, enabling them to express their opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion, or even irritating or shocking to the latter (*Khadija Ismayilova v. Azerbaijan*, § 158).



Sinkova v. Ukraine, 27 February 2018

- Conviction of an artist for protest at a war memorial constituted interference with her freedom of expression. It was lawful and pursued the legitimate aim of protecting the morals and right of others.
- Interference considered proportionate, given that it was a narrow one in respect of a particular conduct only, domestic courts' assessment of the applicant's conduct reasonable, alternative ways to express her views and the fact that the sentence was suspended (by 4 votes to 3).



Macatė v. Lithuania [GC] , 23 January 2023

- Temporary suspension of children's fairy tale book depicting same-sex relationships and its subsequent labelling as harmful to children under the age of 14;
- The Court ruled out the aims relied upon by the Government (i.e. protect children from sexually explicit content or content which promoted same-sex relationships as superior to different-sex ones) and considered that the intended aim was to restrict children's access to content which had presented same-sex relationships as being essentially equivalent to different-sex relationships. Where there is no basis to consider same-sex relationships to be inappropriate or harmful to children's growth and development, such an aim could not be accepted as legitimate under Article 10.



C8 (Canal 8) v. France, 9 February 2023

Sanctions imposed on a TV channel for content shown on a programme by national broadcasting authority, prescribed by law and pursued the legitimate aim of protection of others.

Having regard the nature of the footage, the fact that they were detrimental to the image of women but also stigmatising of homosexual people and an invasion of private life, impact on younger viewers in particular, history of regulatory breaches of the company, the procedural safeguards enjoyed and the wide margin of appreciation (entertainment oriented for commercial gain), the sanction did not infringe the right to freedom of expression.



Verzilov and Others v Russia, 29 August 2023

- A punk band (Pussy Riot) attacked by Cossacks, who had been assisting the police during the 2014 Winter Olympics, while performing a new song in the street.
- The State was responsible for the violent attack on the applicants by Cossacks, which prevented them from proceeding with their artistic performance. The Cossacks were involved in carrying out State service to assist the police in maintaining public order and the State was responsible for regulating their activities appropriately, and for their training and supervision in order to shield individuals adequately from ill-treatment, in particular when exercising their freedom of expression. Failure of the State to take reasonable and appropriate measures to enable the exercise of freedom of expression to proceed peacefully.



Kirkorov v. Lithuania, (dec.), 19 March 2024

- Entry ban on a popular Russian/Bulgarian singer on the basis of his opinions and conduct;
- The ban constituted interference given that it restricted the applicant's ability to impart information and ideas within that country;
- Measure was prescribed by law and pursued a legitimate aim, namely, national security and public order;
- On the facts, the Court was satisfied that the domestic authorities credibly demonstrated that the entry ban imposed on the applicant was necessary in the interests of national security, public safety, and/or the prevention of disorder and that it was proportionate to the legitimate aim(s) pursued.



Conseil national de la jeunesse de Moldova c. République de Moldova, 25 June 2024

- Refusal of the local authorities to allow the applicant NGO to display antidiscrimination illustrations on advertising panels, on the grounds that they depicted some social groups in an undignified and humiliating manner. Interference lawful and based on the aim of protecting others.
- Having regard to the illustrations, the text and the overall context, the Court considered that the intended goal was not to insult, ridicule or stigmatise or promote hate speech and intolerance. Rather it was a means of drawing the public's attention precisely to social stereotypes and to the discrimination experienced by them, while encouraging them to assert their rights. It found that the review of the domestic courts inadequate.



Thank you for your attention!

