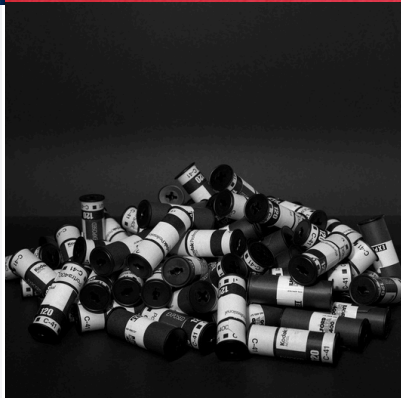
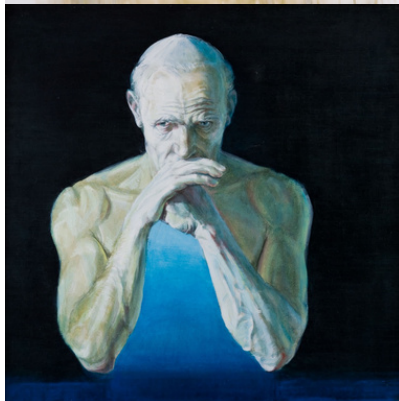


# FREE TO CREATE

DEFENDING ARTISTIC FREEDOM  
IN TIMES OF CONFLICT AND CRISIS



**Council of Europe report  
on the freedom of artistic expression**

# **FREE TO CREATE | CREATE TO BE FREE**

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**Sara Whyatt**

# FREE TO CREATE|CREATE TO BE FREE

## DEFENDING ARTISTIC FREEDOM IN TIMES OF CONFLICT AND CRISIS

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## 1. Introduction: the Free to Create|Create to be Free initiative

The Council of Europe's Free to Create|Create to be Free (F2C) initiative provides a discursive space identifying and handling threats to artistic freedom in Europe today, a right that is essential to ensuring an environment of resilient and strong democracies.

With this initiative, the Council of Europe targets the question of artistic freedom as a core human right as part of the protection of the freedom of expression, and an accelerator and link between political and cultural policies and actors, actively involving artists' first-hand experience and knowledge on this matter. Channelling the visual presence of artworks with the digital exhibition, the message of the Manifesto on the Freedom of Expression of Arts and Culture in the Digital Age aims to stimulate the interaction with relevant actors, and the reports on the freedom of artistic expression serve as a basis of knowledge dissemination on this burning issue. The Free to Create|Create to be Free initiative of the Council of Europe is truly unique among those of other transnational organisations targeting this topic.

The F2C initiative has three pillars: 1) the Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era (the Manifesto) 2) the Free to Create|Create to be Free digital exhibition, and 3) the "Free to Create|Create to be Free" reports.

### 1.1 Manifesto on artistic freedom

The Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era was launched by the Council of Europe's Steering Committee for Culture, Heritage and Landscape (CDCPP) in November 2020. It underscores the need for a political commitment among Council of Europe member states to protect artistic freedom in Europe as a core value. It further stresses the importance of artistic and cultural freedom as central to democratic societies, especially at this time when we are all facing cultural, political and technological challenges.<sup>1</sup>

### 1.2 Free to Create|Create to be Free – digital exhibition and platform

The launch of the Manifesto was accompanied by an online exhibition of works by artists selected by the member states' appointed representatives, such as cultural institutions or museum curators. Artworks were proposed and submitted to the digital exhibition that refer to the overall topics of artistic freedom addressed in the Manifesto. The digital exhibition is not curated by a single expert, but is the joint effort of the member states of the Council of Europe currently presenting 11 states. The aim is to get all 46 member states involved and to create an ever-growing archive showing the perspectives on artistic freedom echoing artists' voices in light of the member states' approach. The exhibition now features 17 artworks from 11 countries<sup>2</sup>. Discussions and steps have been initiated on how this digital exhibition can be accompanied by a platform that will provide an online discursive space for developments and main events on artistic freedom.<sup>3</sup>

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<sup>1</sup> The text of the Manifesto can be found here: [www.coe.int/en/web/culture-and-heritage/manifesto-on-the-freedom-of-expression-of-arts-and-culture-in-the-digital-era](https://www.coe.int/en/web/culture-and-heritage/manifesto-on-the-freedom-of-expression-of-arts-and-culture-in-the-digital-era)

<sup>2</sup> <https://freetocreate.art>

<sup>3</sup> Read more about the digital exhibition here: [www.coe.int/en/web/culture-and-heritage/free-to-create-create-to-be-free](https://www.coe.int/en/web/culture-and-heritage/free-to-create-create-to-be-free)

The present report and the first Report on the State of Artistic Freedom in Europe (see below) should be seen in the context of the implementation of Article 10 of the European Convention on Human Rights that protects freedom of expression, to ensure that artistic freedom is included, to further debate and exchange on this essential right among artists, cultural organisations, civil society organisations and policy makers, and, of course, member states. From this to then identify and put in place policies and actionable projects to ensure enfolding creativity and artistic freedom for artists across Europe.

### 1.3 The Free to Create|Create to be Free report 2023

In February 2023, the Council of Europe published its first Report on the State of Artistic Freedom in Europe - *Free to Create: Artistic Freedom in Europe* (Whyatt, 2023) (hereinafter referred to as “the 2023 Report”) - that reviewed the work of the Council of Europe and other international bodies working towards human rights and freedom of expression in the field of culture, alongside the work done by civil society and cultural organisations working towards the same aim.

The 2023 Report is centred around the definition of artistic freedom as summarised by UNESCO:

- the right to create without censorship or intimidation;
- the right to have artistic work supported, distributed and remunerated;
- the right to freedom of movement of cultural professionals;
- the right to freedom of association in the cultural sphere;
- the right to the protection of social and economic rights of cultural professionals;
- the right to participate in cultural life.<sup>4</sup>

The 2023 Report also details the various international human rights standards that protect the right to artistic freedom, either under the mantle of broad freedom of expression, or explicitly, such as: the UN Universal Declaration (Article 19) on Human Rights; UN International Covenant on Civil and Political Rights (Article 19); UN International Covenant on Economic, Social and Cultural Rights (Article 15); the UNESCO 2005 Convention on the Promotion and Protection of the Diversity of Cultural Expressions; and, especially pertinent to this report, the European Convention on Human Rights (Article 10). (Whyatt, 2023, pp. pgs 13-14)

At the core of the 2023 Report were the insights provided by a group of artists from 12 European countries who came together in Ljubljana, Slovenia in July 2022 to share perspectives on the factors that prevent them from being fully able to practice their creativity. These included “above the radar” impacts such as litigation, at times leading to imprisonment, overt censorship and physical attacks. Although these are a significant factor in some artists’ experience, more prevalent are the “under-the-radar” elements that create an underlying chilling effect that can lead to self-censorship, and which are widespread across Europe. The precarious professional, social and economic status of artists in an often-unregulated sector are additional factors that make the sector susceptible to these types of pressures.

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<sup>4</sup> UNESCO (2018), *Re/Shaping Cultural Policies: Global Report 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (p. 211), available at: <https://uis.unesco.org/sites/default/files/documents/reshaping-cultural-policies-2018-en.pdf>, accessed 18 October 2024

***“Today, we have to recall again that culture has been defined in the founding documents of the Council of Europe as an instrument that has the power to reconcile the wounded continent after WWII. Until recently, no one would have expected that this eminent role of culture would be as burning and urgent as it is today.”*** Dr Katalin Krasznahorkai, Lead Curator & Scientific Advisor at “Free to Create|Create to be Free” <sup>5</sup>

In celebration of the 70<sup>th</sup> anniversary of the European Cultural Convention, the Free to Create|Create to be Free project hosted **The Other Session** at the 60<sup>th</sup> Venice Arts Biennale<sup>6</sup> in April 2024 in collaboration with the Experimental Observatory on Artistic Freedom. During the event, artists, curators and members of the Council of Europe discussed the challenges faced for creative freedom, with insights and performances from a Roma artist and another from Belarus of their experiences of working in conflict situations, exclusion and discrimination.

## 1.4 Methodology

This report follows up and refers to the publication in February 2023 of the Council of Europe report *Free to Create: Artistic Freedom in Europe*. Information on developments since its publication is based on media reports, including arts media with additional material from freedom of expression and human rights monitors, as well as from the exchanges at the 2<sup>nd</sup> workshop on artistic freedom held in Ljubljana, Slovenia, in October 2023.

Central to this report are the exchanges and observations gathered at the October 2023 Ljubljana workshop. Some 20 visual and performance artists, writers, and cultural commentators from 12 European countries met with experts on artistic freedom and Council of Europe staff for a 2-day meeting hosted by the Bunker cultural centre in Ljubljana. The workshop followed on from a similar event held in July 2022, also hosted by Bunker, and from where artists’ observations formed the basis of the 2023 Report. This 2nd meeting reviewed the findings of the 2023 Report, making additional observations and with the specific purpose of finding solutions to the problems that could form actionable recommendations to Council of Europe member states and others engaged in promoting artistic freedom.

**“I get energy from you. It’s tiring doing it alone.”** Participant in the Ljubljana meeting, October 2023

**Acknowledgements:** the author is grateful to the many people who contributed to this report and to the Free to Create|Create to be Free project notably Mary Ann DeVlieg, Katalina Krasznahorkai, Olivia Solis, the team at Bunker, Ljubljana and all the artists who contributed to the workshops.

## 2. Threats to creative freedom

Democratic backsliding in Europe is a trend that has been ongoing in recent years, and which has taken on traction notably since the invasion of Ukraine by Russia, excluded from the Council of Europe in 2022. This, as the then Secretary General, Marija Pejčinović Burić, noted

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<sup>5</sup> Kravchuk, d (2023) Interview “FREETOCREATE.ART - Initiative launched by the Council of Europe”.art magazine available at: <https://art.art/blog/freetocreateart-initiative-launched-by-the-council-of-europe>, accessed 2 November 2023

<sup>6</sup> [www.coe.int/en/web/culture-and-heritage/-/the-council-of-europe-on-the-occasion-of-the-venice-biennale-20-april-2024](https://www.coe.int/en/web/culture-and-heritage/-/the-council-of-europe-on-the-occasion-of-the-venice-biennale-20-april-2024)



in presenting her annual report in Reykjavik in May 2023, is illustrated by increased violence and intimidation against journalists, new laws and misuse of existing ones to limit civil society, including undue restraints on demonstrations, restrictions on NGOs, and legislation applied to undermine political opposition. All this in a “polarised political environment” that fosters hate speech, notably against women, minorities and vulnerable groups.<sup>7</sup> This climate also includes threats to artistic freedom, as shown in the continuing pattern of attacks on arts and culture, and as described by artist participants in the Council of Europe workshops in 2022 and 2023. In August, Dunja Mijatović, the then Council of Europe Commissioner for Human Rights, expanded on these concerns:

**“...there are alarming signs of a wider tendency among member states towards failing to uphold our Organisation's human rights standards. This requires serious attention and decisive action. In many states, the space for civil society and the exercise of fundamental freedoms increasingly continues to be restricted. State and non-state actors are repressing dissent and critical voices, resulting in severe restrictions on the freedoms of expression, assembly, and association.”<sup>8</sup>**

This decline in the state of freedom of expression is qualified by the V-Dem (Varieties of Democracy) Institute that gathers data on the state of democracy worldwide. In a study it carried out for the media freedom organisation Article 19's *Global Expression Report 2024* published in May 2024 V-Dem tracked the status of 49 European states (Article 19, 2024). While noting that there had been little change in the year 2022-2023, it found that when looking back over the decade 2013-2023, the situation had declined markedly with over half of the countries seeing a deterioration in that period. While ten countries in Europe that have for many years topped the global records for protecting freedom of expression have retained their status, the situation had deteriorated in 25 countries with seven listed as being in “crisis”.<sup>9</sup>

Within this environment, reports of suppression of creative freedom in 2023 and 2024 included new criminal cases against artists. The same problematic legislations and interpretations of law are present in the cultural field as those relating to anti-terrorism and national security laws that are used to restrict legitimate commentary or expression. In addition, there are instances where those in power have turned to defamation and insult laws to stifle criticism and satire against them. Trials against artists and cultural workers continued, some of which had been going on for years, lengthy sentences were passed, and new cases initiated. The tenuous nature of such trials is, in some cases, illustrated by decisions by judges to acquit artists on appeal who had been convicted of terrorism and who had served time in prison after ruling that the works of at the centre of the convictions could not be considered as promoting terrorism.

**“To be provocative is an important thing to do to open conversations, to break the status quo of the world we live in.”** Participant at the Ljubljana meeting, October 2023

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<sup>7</sup> Council of Europe (2023), *Secretary General calls for action against democratic backsliding in annual report* 5 May 2023, available at: [www.coe.int/en/web/portal/-/secretary-general-calls-for-action-against-democratic-backsliding-in-annual-report](https://www.coe.int/en/web/portal/-/secretary-general-calls-for-action-against-democratic-backsliding-in-annual-report)

<sup>8</sup> The Slovenia Times (2023) *Recognizing and addressing the erosion of human rights and democracy in Europe: a way forward* n.d. available at: <https://sloveniatimes.com/39577/recognizing-and-addressing-the-erosion-of-human-rights-and-democracy-in-europe-a-way-forward>

<sup>9</sup> Note that the V-Dem report includes Russia, Belarus and other states that are not members of the Council of Europe.

## 2.1 Fragile democracies, democratic backsliding and political censorship

Increasingly fragile democracies and the trend of democratic backsliding means that there are growing pressures on artists' ability not just to create works but to show, distribute and perform. Artists at the Ljubljana 2023 meeting spoke of how being politically engaged and identified as a "troublemaker" can have a devastating effect on an artist's capacity to earn, and how this can lead to self-censorship compounded by the arbitrary nature of political attacks adding to uncertainty and more self-censorship. Laws and administrative procedures governing arts are often unclear, frequently indiscriminately enacted and sometimes applied disproportionately against people from minority communities. Wrongful arrests, bans, blocking of performances and other forms of censorship can have detrimental financial costs. For example, a performing artist spoke of having invested money in production costs, such as hiring studios and equipment and paying performance fees, before their work was cancelled by police. Wrongful arrest or cancellation rarely, if ever, leads to financial compensation.

**"You can become a criminal without even knowing it."** Participant in the Ljubljana meeting, October 2023

Artists branded as troublemakers can also lead to their fellow artists refusing to work with them, fearing that they too will be tarnished with the same brush. Even those who had previously worked with them may no longer wish to take the risk of being associated. Furthermore, it becomes more difficult to find sponsors, access to performance space and collaborators for new projects.

Thus, state policies (or their implementation) can result in a reduction in, or even no income earning possibility for the artist or arts worker, leading to loss of professional contacts and professional development, loss of arts profile and the possibility of professional networking.

Artists from small states noted that the instinct to self-censorship is particularly marked where societies are closely interconnected, and it is difficult to maintain anonymity with decision makers to maintain a truly arms-length approach to decision making. There was reference to instances where those aiming for positions of authority in the cultural sector may no longer feel able to be involved in works that may cause them difficulties in their new roles, and who distance themselves from their former colleagues.

**"Democracies now are very weak. We must defend the space we have. If we don't, it is hard to get it back."** Participant in the Ljubljana meeting, October 2023

Artists working in the film sector spoke of filmmakers having additional challenges, experiencing delays or refusals to provide film certification, denying screenings at festivals or in public cinemas. Another method of putting obstacles of arts organisations is where undue financial and administrative audits are misused beyond the intention of ensuring good administration. An example mentioned in the Ljubljana 2023 meeting was of a cultural institution undergoing several financial audits in the space of one year, an action that was apparently punitive.

## 2.2 Role of populism and historical revisionism

A major and consistent concern for artists is that populist media play a negative role that has led to individual artists and their work being vilified, permeating public perceptions of works,



and influencing court hearings and decisions against artists and artworks. Populist politicians have added to this by “performing” for the public, exaggerating threats and creating fake issues against artists who tackle such themes as gender, LGBTI, abortion and immigration. This stereotyping and stigmatisation can result in fewer - or the removal of - resources that would otherwise be available to individual artists and cultural institutions.

Artists at the 2nd meeting in Ljubljana also identified historical revisionism as having a major impact on what kind of work that they can produce. Government funding of the cultural sector in some countries is increasingly focused on ancient history, past historical victories - most often portrayed as glorious and neglecting the stories of suffering inflicted on others - the loss of lives and the experiences of marginalised peoples. History books are being revised in some European countries, often introducing new mythologies alongside the old, finding new “heroes” where they did not exist before, and erasing the less edifying of the past histories. This also diminishes the capacity of artists to create their own works which may not feature these histories, or which offer alternative narratives. With shrinking possibilities for grants, some artists are making compromises so as to earn an income, even if these topics are not what they would choose, adding to the undercurrent of self-censorship.

In August 2021, the then Council of Europe Commissioner for Human Rights, Dunja Mijatović, commented on how politicians manipulate homophobia and transphobia for political gain: **“Scapegoating LGBTI minorities has become a tactic applied by ultra-conservative and nationalist politicians posing as defenders of so-called ‘traditional values’ to strengthen their base and gain or stay in power.”**<sup>10</sup> This pattern continues with artists finding their work instrumentalised for political purposes when they tackle, not only LGBTI issues, but also, for example, support for migrant workers, examining nationalism, and other tropes often adopted by public officials as part of their anti-minority rhetoric, that in turn, can fan hatred.

Fake news and misinformation ranges from anti-immigrant/anti-minority sentiments, objections to contemporary culture, through to pressure groups calling for the cancellation of artists and the removal of artworks that they see as disparaging and undermining certain communities. This is especially prevalent in the digital sphere, where threats and internet “pile-ons” can have a deep, detrimental impact on artists’ work. Artists at the Ljubljana meetings saw the need for better support for artists and activists to counter disinformation and to become better equipped to make communications more secure, protecting anonymity and more knowledge about open-source cyber security tools, among others.

**“The government states that there should be one nation, one ideology and everyone should think in the same way and try to be a good citizen, and you can’t even joke about it because it is forbidden!”** Participant at the Ljubljana meeting, October 2023

## 2.3 Laws on blasphemy, insult to religion and to the state a continued threat to artistic freedom

The 2023 Report identified laws that penalise “blasphemy” or “insult to religion” as a one of the key rationales for censoring artworks, notably those that relate to religious beliefs of minority groups. Prosecutions of artists, banning of artworks and attacks by extremists on works seen

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<sup>10</sup> Council of Europe (2021) *Pride vs. indignity: political manipulation of homophobia and transphobia in Europe* 16 August 2021 available at: [www.coe.int/en/web/commissioner/-/pride-vs-indignity-political-manipulation-of-homophobia-and-transphobia-in-europe](https://www.coe.int/en/web/commissioner/-/pride-vs-indignity-political-manipulation-of-homophobia-and-transphobia-in-europe)

to be “blasphemous” or insulting to religion continued in 2023-2024. An example in 2024 is that of an artist who was found guilty and convicted to a suspended sentence after a three-year trial that had been instigated by a politician who claimed that their religious feelings had been offended.

The Council of Europe’s freedom of expression standards imply that, even if an artwork is perceived as offensive, legislation protects individuals, not beliefs nor religions. These principles were underscored in a June 2024 European Court of Human Rights decision (*Sokolovskiy v. Russia*)<sup>11</sup> that found the prosecution in Russia of a person who posted videos deemed to be offensive and insulting to religion to be in contradiction of the right to freedom of expression. In the ruling, The Court noted Article 10 of the European Convention on Human Rights “*applies not only to ‘information’ or ‘ideas’ received favourably or considered inoffensive or indifferent, but also to those which offend, shock or worry: this is what pluralism requires, tolerance and the spirit of openness without which there is no ‘democratic society’*” (para 99i). It added “*that the simple fact that a remark may be perceived as offensive or insulting by certain individuals or groups of individuals does not mean that it constitutes ‘hate speech’*” (para 101). Extending protection for the form of expression, the Court stated that: “*Offensive language may escape the protection of free speech if it amounts to gratuitous denigration, but the use of vulgar expressions in itself is not decisive in assessing an offensive expression, because it can very well be used for purely stylistic purposes. Style is part of communication as a form of expression and is protected as such in the same way as the substance of the ideas and information expressed.*” (para 101)

*“We were aware that we were [...] provoking debate with this installation. If we have hurt people’s religious feelings, we are sorry, but I strongly condemn this violent act of destruction, the refusal to engage in dialogue and the attack on the freedom of art.”* Episcopal vicar responds to the beheading by vandals of a sculpture depicting the Virgin Mary giving birth to Jesus that had been commissioned by the church and placed in a cathedral. The artwork had been subject of angry condemnation among some Catholic groups worldwide.

## 2.4 Insult to national symbols and leaders

Insult to religions, denigration of state symbols – flags, emblems, anthems and iconic figures for example – is similarly protected by human rights law as legitimate expression. Yet national symbols evoke political and emotional reactions and changing or subverting them can be seen as provocative, whether intentional or not. In many cases the artists using national symbols and images of state leaders in their work do so as a direct critique or challenge to authority, or to spark debate. Other artists have found themselves inadvertently thrown into a storm of outrage for an image that they had no intention of being challenging. An example of this arose in 2024 when a graphic designer was commissioned to redesign their government’s logo for use across its official websites. Inspired by the colours of the country’s flag, the designer produced a simple image more suited to online reproduction than the more intricate original emblem. It was not intended to replace the existing flag. However, when the logo appeared on government websites, right-wing nationalists claiming to be outraged at the “woke” and “unpatriotic” image led to an online hate campaign, including death threats against the artist.

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<sup>11</sup> Columbia University (n.d) *The Case of Ruslan Sokolovsky*, Columbia University Global Freedom of Expression, available at: <https://globalfreedomofexpression.columbia.edu/cases/case-ruslan-sokolovsky>

Whereas in this case there was no judicial action taken against the designer, the violent rhetoric and threats are likely to deter others against reimagining official icons.

With most European countries having robust judicial systems, very few religious or state insult trials against artists end with convictions. Yet these trials are often protracted, at times taking months or even years. Most end in acquittal, minimal non-custodial penalties, or are even dismissed by judges at early stages as inadmissible. In this way, such laws could be considered as Strategic Lawsuits Against Public Participation (SLAPPs), where cases are taken in the knowledge that successful prosecution is unlikely, but the aim is to intimidate and curtail criticism. (Whyatt, 2023, pp. 30-31) Those launching such cases are usually able to afford the costs of litigation, and in some cases it is apparent that they are instigated by well-financed political or religious groups, while their targets, notably artists, are unable to bear the financial and emotional toll, as well as to be taken away from their practice to fight the cases within court rooms. In April 2024, the Council of Europe's Committee of Ministers adopted a Recommendation urging states to counter and take action against the use of SLAPPs, referring to their chilling effect, not only on the media, but also rights defenders and academics.<sup>12</sup> The Recommendation applies also to "cultural actors and creative industry actors" whose work, for example, satirises or comments on the actions of those in power.

**"When we are talking about freedom of speech, whose freedom of speech are we protecting? Freedom of speech for everyone? How do we create dialogue? Everyone should be able to express their ideas. It won't make those controversial ideas disappear if they are suppressed."** Participant at Ljubljana meeting, October 2023

## 2.5 Undue government influence

Instances of governments attempting to influence or take control of cultural and arts institutions also continued through interventions, such as ordering or pressuring the removal of leaders of cultural institutions who had been government critics and replacing them with those whose views and policies are more aligned with their own. In many cases, these moves have been strongly criticised by other cultural leaders. Attacks have also come from radicals who object to the focus on contemporary arts to the perceived detriment of traditional and national work, and, in at least one case, forcing the resignation of a leading cultural figure, an example of a growth of culturally conservative and nationalist pressure on cultural freedom.

There were also instances where works were curtailed because of funding and other support being withdrawn. In one case, a museum director resigned after he had been informed that all government funding for his institution's 2024 programme would be revoked with immediate effect. This was soon followed by a notice that all staff contracts would end within four months. These measures followed often heated announcements by senior members of the country's cultural ministry that projects featuring LGBTI content would not be supported by the government, citing their perceived need to preserve national social values. The museum was known for its promotion of contemporary arts and work with community projects, including LGBTI. Another worrisome instance is that of a prestigious film festival that was cancelled when jury members and participants removed their work in protest at the removal of

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<sup>12</sup> Council of Europe (2024) *SLAPPs: abusive lawsuits aimed at silencing journalists must be stopped*, 5 April 2024, Available at: [www.coe.int/en/web/portal/-/council-of-europe-urges-member-states-to-counter-abusive-lawsuits-aimed-at-silencing-journalists-and-other-watchdogs](https://www.coe.int/en/web/portal/-/council-of-europe-urges-member-states-to-counter-abusive-lawsuits-aimed-at-silencing-journalists-and-other-watchdogs)

government support for the festival because of its objections to the inclusion of a critical documentary, which was then subsequently banned from the programme.

Action was also taken against works celebrating diversity, where politicians and public figures attempted to censure artists whose work portray the plight of migrants and other vulnerable communities. In one instance, a filmmaker was subject to harsh criticism, threats and possible prosecution for their work focusing on refugees, a film seen by some politicians as being an attack against the state. A museum director was subject to threats and calls for his dismissal for a scheme extending participation by giving favourable entrance terms for members of a minority community whose history was the focus of an exhibition.

Another topic of consistent concern to artists who took part in both Ljubljana meetings in 2022 and 2023 is that the domination of pro-government, conservative, revisionist and xenophobic influences are extending to governing boards of cultural institutions, the structure of award juries and open calls for opportunities. There were added concerns that people elected to boards often do not have artistic expertise and have gained their positions through their political connections. This can mean governance that lacks understanding of artistic works, necessary safeguards and a tendency towards conservative views. This has a particularly detrimental effect in ensuring representation of works by minority and marginalised communities who are not fully represented in decision-making bodies, and whose creative contributions are excluded from exhibitions or are misrepresented, as discussed further below.

**“It is about freedom of speech versus cultural capital. It is about who is running the institutions, who is giving the funds, who they choose to give the funds to, and it ends up in practice that not everyone is having the same freedom of speech.”** Participant at the Ljubljana meeting, October 2023

Fears of violence by members of the public led to arts institutions removing or demoting works that celebrate diversity. These included the relocation of portraits of people from minority groups from a prominent position in the building where they were to be exhibited alongside historical figures, to a location which was considered less problematic after criticism from local leaders. Works focusing on cultural diversity can bring with them threats and attacks by radical groups, such as the police protection needed to safeguard a museum hosting a workshop linked to an exhibition on colonialism. Concerns about anti-Muslim sentiments led to the moving of an exhibition depicting veiled women, a critique of the death in custody in Iran of a young woman accused of not wearing the mandatory hijab, to a less prominent place in a gallery for fear of attacks by extremists.

## 2.6 Policing public events

Public events celebrating minority and marginalised groups have been shut down, ostensibly on safety grounds, but where organisers believe that government and pressure groups opposed to the aims of the events were the real cause for their closure. Gatherings in public spaces are especially vulnerable to attack by terrorists and by extremist, radical and criminal elements, as illustrated by the many deaths and injuries of people who had become victim to appalling acts of terrorism such as that at the Bataclan Theatre in Paris in 2015 and the Manchester Arena in 2017. Therefore, protecting audiences from harm is an essential role for police, security services and relevant cultural bodies, in liaison with the organisers of performance and exhibition spaces. However, health and safety concerns have been cited as reasons to shut down events where the threats were low or could have been contained under appropriate security measures, enabling them to proceed. In 2024, there were instances where

festivals bringing together different cultural communities have been banned for security reasons following online anti-minority rhetoric and hooligans threatening violence at the events. Rather than condemning and acting against those who made the threats and ensuring that the events could proceed with adequate protection, police ordered that the festivals be banned. In these cases, the authorities are seen to have bowed to pressure from radical groups in denying space for multi-cultural events. As a result, organisers of future events could be dissuaded from organising such events. This is a loss for society, as festivals and cultural events celebrating a diversity of communities play an important role in helping to build understanding and will for inclusion between people and communities, in turn promoting respect and harmony and reducing conflict.

### Dealing with the Past for a Better Future

In November 2023, the Council of Europe's Office of the Commissioner for Human Rights published an issue paper "Dealing with the past for a better future"<sup>13</sup> that explores measures taken following the wars in former Yugoslavia to tackle impunity for gross human rights violations. The report underlines the role of civil society, including artists and cultural workers, in providing inspiration in post-conflict societies to address a violent past. Initiatives cited in the report include creative storytelling and documentaries, and works such as the "Thinking of You" installation in Kosovo<sup>14</sup> (with 5 000 donated skirts and dresses hung from washing lines) that attempted to confront the stigma surrounding sexual violence. The lessons learned from the Yugoslav conflict of the 1990s remain relevant today. As the report notes: *"A lack of intercultural contact is likely to result in less tolerance of diversity, lack of respect for religious and cultural differences and could exacerbate attitudes of racism, discrimination and exclusion among the youth."* (p. 76) It also noted that *"Memorialisation helps foster respect for the human rights of other groups and promotes peace, justice and reconciliation"* and that such memorialisation includes methods involving creative and cultural methods, from building memorials to museums. (p 93)

## 2.7 "Foreign Influence" laws threat to artistic freedom

In 2023-2024, concerns gathered apace about a growth in the implementation of laws that curtail or even criminalise funding from abroad. This represents an acute threat to media and civil society organisations that cover rights issues, such as immigration, gender and LGBTI. While the focus has been on the impact of these laws on media and civil society organisations, artists and cultural associations that rely on funding and other support from abroad to programme and create works on such "contentious" issues, could also fall victim. This has, for instance, been seen in Russia, where its "foreign agent" law, the inspiration behind similar laws being enacted elsewhere, has led to artists to be brought to trial and lengthy prison terms served against them.

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<sup>13</sup> Council of Europe (2023) *Dealing with the Past for a Better Future - Resolute efforts on dealing with the violent past are required in the region of the former Yugoslavia* 23 November 2023 available at: [www.coe.int/en/web/commissioner/-/dealing-with-the-past-for-a-better-future-resolute-efforts-on-dealing-with-the-violent-past-are-required-in-the-region-of-the-former-yugoslavia](https://www.coe.int/en/web/commissioner/-/dealing-with-the-past-for-a-better-future-resolute-efforts-on-dealing-with-the-violent-past-are-required-in-the-region-of-the-former-yugoslavia)

<sup>14</sup> Tran, Mark (2015) *Dresses on washing lines pay tribute to Kosovo survivors of sexual violence* 11 June 2015 available at: [www.theguardian.com/world/2015/jun/11/kosovo-sexual-violence-survivors-art-dresses](https://www.theguardian.com/world/2015/jun/11/kosovo-sexual-violence-survivors-art-dresses)



## 2.8 Art at times of heightened tensions

The current climate of instability and uncertainty, heightened tensions and conflicts, such as the continuous war of aggression of the Russian Federation against Ukraine<sup>15</sup> and other multiple crises related to climate, security, the rising power of disinformation and armed conflicts ongoing in different regions, lately escalating in the Middle East, can make work of artists and expression of their opinions difficult. As in the past, artists and their art works remain prominent in public protests and are likely to be censored, even arrested, or have to flee for the legitimate expression of their views, or to be targets of physical assault.

Cultural institutions and individual artists react quickly and strongly at times of crisis such as, for instance, the continued aggression of the Russian Federation against Ukraine. Since 2022 Russian artists have been deprived of the possibility to express their anti-war opinions in Russia, have been persecuted or many have chosen to leave the country. Yet, those who had lived outside of Russia for some time and had made clear their feelings against the war sometimes had performances and exhibitions cancelled and contracts curtailed as part of a wider context of sanctions against Russia. Such actions, whether by government sanctions or decisions of cultural institutions, are the cause of anxiety and concern, with artists and others often choosing to self-censor for fear of retribution.

The brutal Hamas attack against Israel, and the Israeli government launching a war against Hamas, with the resulting loss of thousands of lives and massive displacement of civilians in Gaza<sup>16</sup> brought about strong reactions in the public sphere across Europe, with artists among them expressing their opinions on social media and through their work. From the start of the conflict to date there have been many instances where European artists have seen their exhibitions and performances and invitations to attend public events cancelled, and awards withdrawn because of their commentary on the crisis.<sup>17</sup>

The crisis was highlighted in the Council of Europe's European Commission against Racism and Intolerance's (ECRI) 2023 annual report published in June 2024 which identified alarming levels of anti-Muslim racism, and soaring anti-Semitism across Europe as a result of the conflict, identifying it as a situation that needs resolute action.<sup>18</sup> It should be noted that, in this climate, creative works have also been used in a manner that have had harmful consequences, such as perpetuating negative stereotypes of minority and marginalised communities, anti-immigration sentiments, and at times direct calls for violence. In such cases, the application of laws aimed to tackle hate speech, xenophobia and incitement to criminality and violence is an appropriate response to dealing with such issues.

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<sup>15</sup>Cf. the decisions of the Council of Europe Reykjavik Summit of Head of States and Governments on support to Ukraine ([www.coe.int/en/web/portal/fourth-council-of-europe-summit](http://www.coe.int/en/web/portal/fourth-council-of-europe-summit)).

<sup>16</sup> Parliamentary Assembly Resolution 2524 (2024) *Recent developments in the Middle East: Hamas' terrorist attack on Israel and Israel's response* Available at: <https://pace.coe.int/en/files/33326/html>

<sup>17</sup> Cf. Secretary General's statement on the alarming rise in antisemitic incidents across Europe and the fight against antisemitism and all forms of hatred, including anti-Muslim hatred, in Europe ([www.coe.int/en/web/portal/-/rise-in-hate-speech-and-hate-incidents](http://www.coe.int/en/web/portal/-/rise-in-hate-speech-and-hate-incidents))

<sup>18</sup> ECRI (2024) *News of the European Commission against Racism and Intolerance (ECRI) 20 June 2024* available at: [www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/key-challenges-of-2023-and-beyond-dire-situation-of-people-displaced-by-war-the-rise-of-antisemitism-and-anti-muslim-racism-as-a-result-of-the-current-middle-east-conflict](http://www.coe.int/en/web/european-commission-against-racism-and-intolerance/-/key-challenges-of-2023-and-beyond-dire-situation-of-people-displaced-by-war-the-rise-of-antisemitism-and-anti-muslim-racism-as-a-result-of-the-current-middle-east-conflict)



In this context, concern about the impact on freedom of expression came soon after the outbreak of the conflict in Gaza on the international scene. For instance, in a statement published by the UN on 23 November 2023, UN experts expressed their alarm about “the wave of attacks, reprisals, criminalisation and sanctions” levied “against those who express solidarity with the victims of the conflict between Israel and Palestine.” Artists, they noted, are among them, targeted for their art or political messaging, with some “having to change topics of art expression, labelled as troublemakers or as indifferent to the suffering of one side or the other.” They have been “deprogrammed, lost jobs, silenced or sidelined by their own cultural organisations and artistic communities.” The UN experts urged that, at times of conflict, free expression is especially important and urged for a safe place for expressions of solidarity with Israelis or Palestinians.<sup>19</sup>

## 2.9 Climate protests

In June 2023, the then Council of Europe High Commissioner for Human Rights, Dunja Mijatović, commented that environmental pollution and climate change are urgent, existential threats to humankind and human rights, and that this has led to new forms of peaceful protest. She noted that environmental protests, which by their very nature and design tend to be disruptive, have been for the most part, with very rare exceptions, peaceful and non-violent. Yet, they are increasingly being met with repression, criminalisation and stigmatisation and that laws and regulations governing public protest have become increasingly restrictive.<sup>20</sup> Harsh penalties are starting to be levied against climate protestors for acts that have not involved violence or physical harm, and which include significant prison terms will serve as a further deterrent.

This is having an erosive effect on arts, as Bridget McKenzie Founder of Climate Museum UK and Co-Founder of Culture Declares writes. On the one hand, artists feel impelled to set aside their creative practices to get involved in local organising or direct action. However, at this time of precarity and conservative politics, they struggle to find funding for work which is seen as disruptive or be labelled as such. She adds: **“Activists working within organisations can feel unable to express radical views and, as living costs rise, many can ill afford to lose salaried roles. In turn, many cultural organisations avoid active statements due to fears of accusations of hypocrisy, or because the media paints climate activism as ‘beyond the pale’.”**<sup>21</sup>

## 2.10 Instrumentalisation and funder criteria

The 2023 Report refers to funding policies as an inadvertent dampener on artistic freedom, an issue picked up by the participants in the 2nd Ljubljana meeting which brought additional insights by representatives of minority and marginalised communities.

Concerns centred on conditional funding that is tantamount to instrumentalisation of artists and their work, geared towards the agenda of the funder rather than the needs of the creators. Access to, or a lack of (at least public) funding to certain types of work and communities, is

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<sup>19</sup> United Nations (2023) *Speaking out on Gaza / Israel must be allowed: UN experts*, 23 November 2023, available at: [www.ohchr.org/en/press-releases/2023/11/speaking-out-gaza-israel-must-be-allowed-un-experts](https://www.ohchr.org/en/press-releases/2023/11/speaking-out-gaza-israel-must-be-allowed-un-experts)

<sup>20</sup> Council of Europe (2023) *Crackdowns on peaceful environmental protests should stop and give way to more social dialogue*, 2 June 2023, available at: [www.coe.int/en/web/commissioner/-/crackdowns-on-peaceful-environmental-protests-should-stop-and-give-way-to-more-social-dialogue](https://www.coe.int/en/web/commissioner/-/crackdowns-on-peaceful-environmental-protests-should-stop-and-give-way-to-more-social-dialogue)

<sup>21</sup> McKenzie, Bridget (2023) *Arts activism and the earth crisis?*, The Arts Magazine, 5 October 2023, available at: [www.artsprofessional.co.uk/magazine/369/feature/arts-activism-and-earth-crisis](https://www.artsprofessional.co.uk/magazine/369/feature/arts-activism-and-earth-crisis)

seen as censorship. The artists noted that, more often than not, this replicates the policies of governments, whether through overt suppression, or by excluding support for works that do not align with political doctrine, or, inadvertently, by demanding focuses that may not align with those of the creators. Ill-designed funding for minorities, arising from lack of inclusion of these groups in decision-making and consultation, alongside opaque and overly complex funding processes, is a burden for all artists, and is especially discriminatory against those from outside of the prevailing culture.

**“We have worked with the ministry of foreign affairs and ministry of culture, but through our understanding of the topic, and not how they want us to fit. Of course, sometimes we compromise, but not if it goes against our principles.”** Participant, Ljubljana meeting October 2023

These lacks lead to artists being unable to access funds if their projects do not fit these criteria, or having to subvert their projects to enable them to access these funds. Exasperation at these demands was expressed by one artist saying that they felt instrumentalised by corporate funders who wanted to show that they have “leftist ideas”. Another explained that **“The funders choose the topics, and you have to transform yourself and your priorities in order to fulfil the open call that is in front of you. You have to play that game all the time.”** While on the one hand, this could be seen as an inevitable aspect of grant-making with funders having requirements towards their own mandates, and that adapting projects or not applying at all can be a pragmatic response, it can also be seen as self-censorship. The result is that it favours creative works that meet the demands of those who hold the purchasing power, rather than reflecting the panoply of creativity.

**“I don’t want to have anything to do with politics or economics. I just want to create. And this is my freedom, but I think it’s so naive at this moment that this then becomes the kind of thing which is manipulated by others and by funding structures.”** Participation in Ljubljana meeting, October 2023

Conversely, it was also recognised that in countries where there is arbitrary application of laws impacting on artistic freedom, and other attacks as described earlier, the generalised fear extends to private foundations and funders who may hesitate or stop funding critical works so as to protect themselves.

**“Artists should have the right to know why the money goes where it goes, and who decides on that, and who decides on positions of power in the arts field.”** Participant at the Ljubljana meeting, October 2023

The relationship between arts and cultural organisations and funders is a topic that is explored in a report published in April 2024 by the Institut für Auslandbeziehungen (ifa) entitled *The Fragile Triangle of Artistic Freedom* focusing on the challenges of documenting and artistic freedom. It concludes that there is a need for more systematic, efficient and sustainable collaborations between CSOs, states and that funders should ensure that their requirements of recipients do not interfere with artistic freedom, and that applications and reporting systems are simplified to adjust to applicants’ realities. (Reitov & Whyatt, 2024)

It is worth noting that, in the European Parliament resolution on the situation of artists and the cultural recovery in the EU mentioned earlier, the problems posed by funders are directly addressed with calls on EU member states to reduce the administrative burdens in the application and reporting processes, and for greater transparency in decision making, as well

as taking into account the unique situation of artists from marginalised groups in the development and administration of all policies.<sup>22</sup>

## 2.11 Minority exclusion – tokenism and infrastructural shortcomings

Funder bias is an issue that is especially pertinent to artists and creative workers from minority communities where, as mentioned above, decisions are made by funders providing support to these communities without their proper inclusion in the design of the projects or the way they are funded. A participant spoke of how funders have a preconceived idea of what an outcome should be based on outdated, several decades-old ideas of their community and rather than the issues that affect them today. These ill-informed and patriarchal ideas colour the projects that they are willing to support, and they are unwilling to consider those that do not fit those perceptions. An example was given where a project providing children from a marginalised community resulted in work that was critical of the donors and staff overseeing the project, and where there was reluctance to accept the outcome. It was noted that one can be **“Invited to validate something, but when you come up with your truth, then it is not accepted.”**

Another spoke of good practice when a potential funder met with the minority community to discuss projects which then led to a programme that was “90% perfect”. They added such communication and exchange between funders and the communities they wish to support leads to **“better art, because people communicate better.”** This extends to those with disabilities, where audience needs are, for example, met in terms of access to venues, audio enhancements and other support, yet behind the scenes there is less accessibility for arts workers with disabilities. This can include basic steps, such as making sure that as much care is taken behind stage to remove obstacles and ensure free movement for workers with physical disabilities, or using voice mails for those with dyslexia or sight impairment. It was pointed out that it is only when creative workers with disabilities meet together with managers and policy makers, that questions that need to be asked are raised, and ways for addressing issues that block participation can be found.

An artist from a minority group on the impact of working with a project that recognised their disability, and another that did not, said **“It's interesting to see the difference on me as a human. With one I felt so free ... this is so cool. And the other one, I was like, I just want to go home.”**

While many institutions endeavour for greater inclusion from minority and marginalised communities, infrastructural lacks can undermine this aim. An arts administrator spoke of the situation in their country, where people not from the prevailing cultural backgrounds who were selected to directorial posts, found themselves demoted or forced to step down after a short time. This was because the institution did not have a robust underlying policy for diversity that worked from the bottom up, and so it remained resistant to another perspective or intention, leading to conflicts. This, in turn, has had the consequence of chauvinistic backlash, where it is the people who “failed” who are seen as being at fault, and not that the institutions were not fit, having inbuilt structural lacks. They observed that some people from diverse communities no longer want to apply for those jobs because they do not want to risk their career. An artist with a minority background agreed, speaking of having been elected to committees to represent diversity but **“I feel like an alibi, a token. It's like you have to be thankful to society for giving you the space. You become representative for all people of a minority**

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<sup>22</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.html) rec. 35 and 32 respectively

**background, so if you do something good, then everyone sees that as expected, but if you fail, it affects the whole community.”**

“Classism” was an issue running through the discussion with marginalised social status identified as a core threat to artistic freedom running against equality principles. The rights of under-represented groups in society entering the field of arts and culture have the additional challenge of conquering “elitism” and breaking through “closed circles”. It also weakens faith in arts and culture as an area in society where equal rights are guaranteed, and where recipients’ access to artistic work and processes are anchored as a core democratic principle of empowerment and participation essential for lively and diverse democracies. Otherwise, culture branded as “elitist” loses its power to overcome populist, autocratic and revisionist cultural policies which are otherwise more easily accessible to the public.

### 3. New initiatives to protect artistic freedom – 2023-2024

Although the landscape for artistic freedom in Europe faces numerous challenges, initiatives aimed at raising awareness and finding solutions to these challenges have proliferated in 2023 and 2024, alongside those of the Council of Europe. Many have been within the context of the status of the artist and strengthening their social and economic rights in general. These include:

- **Council of Europe May 2023 Summit and the Reykjavík Declaration**

In May 2023, at the 4th Summit of Heads of State and Government held in Reykjavik, Iceland, the essential role of the Council of Europe in international standard setting on freedom of expression, notably on media freedom was identified as a priority. This includes the determination to continue collective efforts for the safety of journalists and other media actors. For the first time in such a high level meeting, artistic freedom was specifically referred to as among fundamental freedoms in stating that the Reykjavik Principles shall: **“ensure the right to FREEDOM OF EXPRESSION, including academic freedom and artistic freedom, to hold OPINIONS and to receive and impart information and ideas, both online and offline. Free, independent, plural and diverse media constitutes one of the cornerstones of a democratic society and journalists and other media workers should be afforded full protection under the law.”**<sup>23</sup> The inclusion of artistic freedom is welcome indeed. However, it should be noted that there is no other reference in the Principles to either academic or arts freedom, and more needs to be done to put in place practical, actionable measures can ensure that this right is extended to these sectors.

**“We have a common responsibility to fight autocratic tendencies and growing threats to human rights, democracy and the rule of law. Those core values are the bedrock of our continued freedom, peace, prosperity and security for Europe.”** Reykjavik Declaration, May 2023<sup>24</sup>

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<sup>23</sup> Steering Committee on Democracy – Council of Europe (2023) *Reykjavík Principles for Democracy Appendix III* available at: [www.coe.int/en/web/steering-committee-on-democracy/10-principles-for-democracy](https://www.coe.int/en/web/steering-committee-on-democracy/10-principles-for-democracy) Capitals as in original text.

<sup>24</sup> Council of Europe (2023) *Reykjavík Declaration: United around our values* (preamble) May 2023, available at: <https://edoc.coe.int/en/the-council-of-europe-in-brief/11619-united-around-our-values-reykjavik-declaration.html>

- **Council of Europe work on Artificial Intelligence (AI)**

Concerns and challenges about artificial intelligence, and its impact on artistic freedom, are being addressed by the Council of Europe's Steering Committee on Culture, Heritage and Landscape (CDCPP) which is currently working on policy guidelines in the field of AI and its impact on Culture, Creativity and Heritage. Recently, the Council of Europe Framework Convention on artificial intelligence and human rights, democracy, and the rule of law ([CETS No. 225](#)) was opened for signature during a conference of Council of Europe Ministers of Justice in Vilnius. It is the first-ever international legally binding treaty aimed at ensuring that the use of AI systems is fully consistent with human rights, democracy and the rule of law<sup>25</sup>.

- **European Parliament adopts framework to strengthen the Status of the Artist**

In November 2023, the European Parliament adopted a report that identified legislative actions needed to create an **EU framework to improve the living and working conditions for cultural and creative workers**. It follows a study published in 2021 on the situation of artists and cultural workers and the post-COVID cultural recovery plan (Damaso, et al., 2021). The key elements of the proposed framework are 1) a directive on decent working conditions and clarification of employment status, 2) to create a European platform for exchange of best practice among member states, and 3) to adapt EU programmes that fund artists to ensure compliance with EU, national or collective labour and social obligations.

Key among the recommendations is the importance of defending artistic freedom with member states urged to **“fulfil their responsibility and obligation to foster and defend artistic freedom in order to uphold the fundamental right to freedom of expression and to ensure that EU citizens can freely enjoy artistic creations and participate in culture.”** It urges that the Commission sanction member states that fail to comply with their obligations.

- **EU Council on Education, Youth, Culture and Sport conclusions on artists at risk**

The importance of creative and cultural rights and the need for their protection was highlighted during the meeting on 16 May 2023 of the EU Council of Education, Youth, Culture and Sport under the Swedish presidency. Among the initiatives from the meeting was the Council's conclusions on displaced and at-risk-artists that stated: **“..artists globally play an important role in the life, development and resilience of society and individuals, and that they should be able to do so while preserving their creativity and freedom of expression”**. It urged EU member states to provide safe havens for endangered artists from wherever they are, and more generally to: **“take measures, through all relevant channels, to uphold and protect artistic freedom and the rights of artists globally, including the right to create without censorship or intimidation”**.<sup>26</sup>

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<sup>25</sup> Council of Europe (2024) *Council of Europe opens first ever global treaty on AI for signature*, 5 September 2024, Available at: [www.coe.int/en/web/portal/-/council-of-europe-opens-first-ever-global-treaty-on-ai-for-signature](http://www.coe.int/en/web/portal/-/council-of-europe-opens-first-ever-global-treaty-on-ai-for-signature)

<sup>26</sup> Council of Europe EYCSC (2023) Meeting 15 May 2023 Available at: [www.consilium.europa.eu/en/meetings/eycs/2023/05/15-16](http://www.consilium.europa.eu/en/meetings/eycs/2023/05/15-16)

- **International Federation of Arts Councils and Cultural Associations (IFACCA) World Summit**

Also in May 2023, was the hosting of the World Summit of the International Federation of Arts Councils and Cultural Associations (IFACCA) in Stockholm, in partnership with the Swedish Arts Council. The theme of the Summit was “Safeguarding Artistic Freedom”, one of the largest events on the issue in recent years, bringing together over 400 delegates from 90 countries: policymakers, cultural leaders, academics and other stakeholders. A wide range of panel debates, workshops and other events covered topics under the broad mantles of understanding artistic freedom, barriers and threats, and identifying opportunities and responsibilities.<sup>27</sup>

- **Salzburg Global Seminar – On the front lines: Artists at Risk, Artists Who Risk**

In February 2023, the Salzburg Global Seminar, a non-profit organisation that convenes programmes on health care, education, culture, finance, technology, public policy, media, human rights, hosted a programme devoted to artistic freedom, *On the Front Lines: Artists at Risk, Artists Who Risk*. More than 50 artists, cultural workers and experts gathered to explore the intersection of art, activism, research, technology, ethics and organising, among others. The Seminar gave space for artists to debate, reflect and exchange from a diversity of perspectives. From the Seminar came the *Salzburg Statement on Supporting Artists on the Front Line*, which included recommendations for concrete actions towards creating a sector that promotes artistic freedom and cultural rights, and for these to be included in international policy. It called for a study of factors that inhibit and restrict artistic freedom, as well as good practices to identify and support artists at risk.<sup>28</sup>

- **Compendium of Cultural Policies and Trends focus on “Right to Culture”**

Hosted by Arts Council Malta in October 2023, the Compendium of Cultural Policies and Trends, International Cultural Policy Conference theme was on the “Right to Culture” with panels on Artistic Freedom, Cultural Diversity & Accessibility, and Cultural Democracy. The Compendium has recently extended its country analyses to include artistic freedom, and in April 2024, published a report on the issue followed by a survey on artistic freedom in September 2024.<sup>29</sup>

- **Artistic freedom focus at the 5<sup>th</sup> European Conference on Democracy and Human Rights, Kristiansand, Norway**

The focus of the 5<sup>th</sup> European Conference on Democracy in Europe, co-hosted by the Kristiansand municipality and the Council of Europe, was “Sustain and defend Democracy and Human Rights in Europe 2024”.<sup>30</sup> The conference included an evening programme of

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<sup>27</sup> IFACCA (2023) *Report on the 9th World Summit on Arts and Culture*, IFACCA, 19 July 2023, available at: [www.artsummit.org/summit-report](http://www.artsummit.org/summit-report)

<sup>28</sup> Salzburg Global Seminar (2023), *On the Front Line: Artists at Risk, Artists Who Risk*, March 2023, available at: [www.salzburgglobal.org/multi-year-series/culture/pageId/10529#people](http://www.salzburgglobal.org/multi-year-series/culture/pageId/10529#people)

<sup>29</sup> Compendium on Cultural Policies and Trends (2024) *Freedom to Artistic Expression in Europe | Survey Results* 5 September 2024 available at: [www.culturalpolicies.net/2024/09/05/freedom-to-artistic-expression-in-europe-survey-results](http://www.culturalpolicies.net/2024/09/05/freedom-to-artistic-expression-in-europe-survey-results)

<sup>30</sup> Details of the European Conference on Democracy and Human Rights 2024 are available at: [www.kristiansander.no/the-european-conference](http://www.kristiansander.no/the-european-conference)



discussions with artists and rights activists on the challenges faced to protect creative freedom. The event also included a half-day workshop for local artists, hosted by arts freedom monitor Freemuse, that explored threats to artistic freedom, how this right is protected by international law, how to identify self-censorship and measures that can be taken to counter attempts to stifle creative freedom. There have been other events and initiatives taken by other bodies, an indication of the growing interest in the field. However, it is noticeable that, at a regional and inter-governmental level, there appears to be little liaison and sharing of initiatives, which can lead to duplication of efforts, and ineffective use of resources.

### 3.1 Positive legislative changes: Malta and Ireland

- *Malta's Charter on the Status of the Artist secures artistic freedom as standalone right and legislation revised to protect "satire"*

In June 2024, Arts Council Malta published its draft Charter of the Status of the Artist, opening it for public consultation prior to its completion later in 2024. Described as providing *"a dynamic frame of reference for any legislation, policy, or initiative which directly or indirectly impacts artists and CCSs<sup>31</sup>, ensuring that any action is aligned with the ultimate long-term vision of elevating the status of artists in Malta in line with their tangible value to society"*. The Charter's seven general principles - artistic freedom, freedom of association and representation, right to social security, fair practices, access to funding, intellectual property and recognition of skills - align with the overarching objectives laid down in Strategy 2025, the country's national cultural strategy. The Charter identifies artistic freedom as a standalone right within the national rights framework, underlining that artists should be free from government censorship or intimidation, whether from official or non-state actors, and that these rights should be granted irrespective of gender, belief, age or political opinions.<sup>32</sup> This Charter provides a comprehensive protection for artistic freedom, with principles that can be emulated elsewhere.

In July 2023, in a measure further strengthening freedom of artistic expression, its House of Representatives approved an artistic freedom bill that introduces new provisions to the Criminal Code and the Electronic Communications Act, stating that the law *"shall not hinder artistic, satirical or comic expression"*. Only works that contain threats and insults that are considered *"credible and realistic"* can be taken to court. Further statements published online will not be penalised if they are considered to be part of *"artistic, satirical or comic expression and do not include credible and realistic threat to the personal liberty or security of any person or to a person's property"*.

In a press release announcing the changes, the Maltese government stated: ***"the [Maltese] government believes that artists should be allowed to express themselves in the broadest possible manner when it comes to their cultural expression"*** and that

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<sup>31</sup> CCS – Cultural Creative Sector

<sup>32</sup> Full text of the draft Charter on the Status of the Artist can be found here:

<https://creativesunite.eu/article/arts-council-malta-launches-draft-charter-of-the-status-of-the-artist-for-public-consultation>

***“the justice system should not become a tool in the hands of those who want to stifle the arts and freedom of thought”.***<sup>33</sup>

- *Ireland’s Basic Income for the Arts Scheme shows positive impact*

The precarity of work in the creative sector is a key contributor to artists’ self-censorship, causing reluctance to take on topics that may lead to loss of earnings or exclusion. The 2023 Report welcomed the Basic Income for the Arts pilot scheme introduced in Ireland in 2022, where artists are provided with a weekly income of €325 with no conditions on the recipients. Early research findings on the first six months of the scheme published in January 2024 found that the artists on the scheme had more time and resources for their arts practice, alongside a drop in anxiety and depression. Welcoming this news, Ireland’s Minister of Tourism, Culture, Gaeltacht, Sports and Media, Catherine Martin, said *“It shows that the scheme has had a positive impact during the first six months of payments and has the potential to transform creative practice.”*<sup>34</sup>

**“What happens if you go against the mainstream political correctness you may as a freelance artist not get persecuted, but you may end up losing money or your job.”**  
Participant in the Ljubljana meeting, October 2023

### 3.2 Artists and cultural workers take public stand in defence of artistic freedom

Artists are especially well placed to bring attention to and counter censorship, and to raise awareness of issues affecting the wider society. They use imaginative artistic creation to get around obstacles or make them visible. An example given at the Ljubljana 2023 meeting was replacing posters for films that had been censored with banners that read “censored by the [...] film Board”, or playful reinterpretations of banned work shared on social media and on the streets. Artist-led “Emergency Exit” projects provide space for institutions that have been closed down or taken over by government to be able to continue their work, using buildings donated by others, or to restage exhibitions in a region where there are fewer restraints. Institutions under pressure have been supported by arts education institutions outside of the country who have provided academic support and accreditation for works that may not have received this because of censorship and repression at home.

## 4. Recommendations and ways forward

This further study, based on additional research to the 2023 Report, as well as inputs from the participants of the 2nd Ljubljana meeting in October 2023, brings new perspectives, comments and recommendations to the Council of Europe. Paramount is the call on the Organisation’s member states to reinforce artistic freedom by making the Manifesto on the Freedom of Expression of Culture and the Arts in the Digital Era as the core reference towards the following initiatives. The 2023 Report made Recommendations addressed to Council of Europe member states, CSOs, funders, educational institutions and artists themselves ranging from legal

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<sup>33</sup> Compendium of Cultural Policies and Trends (2023) *New Bill to Strengthen Freedom of Artistic Expression in Malta*, 10 August 2023, available at: [www.culturalpolicies.net/2023/08/10/new-bill-to-strengthen-freedom-of-artistic-expression-in-malta](http://www.culturalpolicies.net/2023/08/10/new-bill-to-strengthen-freedom-of-artistic-expression-in-malta) - note also that Malta abolished its blasphemy law in 2016 as referred to in the Council of Europe February 2023 report.

<sup>34</sup> Gov.ie (2024) *Early research findings of Basic Income for the Arts pilot scheme show positive impact on recipients* 28 January 2024, available at: [www.gov.ie/en/press-release/26562-early-research-findings-of-basic-income-for-the-arts-pilot-scheme-show-positive-impact-on-recipients](http://www.gov.ie/en/press-release/26562-early-research-findings-of-basic-income-for-the-arts-pilot-scheme-show-positive-impact-on-recipients)

protections for artistic freedom to information sharing (see Appendix I).<sup>35</sup> This report expands on those recommendations with the following:

- **Freedom to Create website as space for exchange on artistic freedom**

Developing the Freedom to Create website as a hub or discursive space for information on artistic freedom, including what freedom of artistic expression entails, why it is important for democracies, the state of artistic freedom in Europe, initiatives implemented by Council of Europe and other intergovernmental bodies, as well as civil society and arts/cultural organisations.

- **Platforms for exchange across rights sectors**

For states to encourage and support monitoring and complaints processes in their own countries – enabling existing civil society and human rights organisations, national human rights commissions and others working on freedom of expression/artistic freedom.

Such platforms to bring together civil society, human rights, academics, and lawyers to share expertise and collaborate with arts and cultural organisations to promote artistic freedom. Essential to these platforms is the inclusion of minority group participation, including at leadership and decision-making levels.

- **Database or observatory on artistic freedom**

Although there has been growing interest and engagement in promoting artistic freedom, there remains a general lack of understanding of what this right entails, and what international and regional mechanisms exist to protect and to stand up for these rights. An easily accessible database or hub where this information could be available to artists, states, lawyers, advocates, academics, media and all interested in artistic freedom could serve to address this lack. It could also serve as an archive of trends and of good practice and initiatives by governments, as well as by artists and cultural institutions themselves. How such a database could be managed, and by whom, and how to ensure that it fully addresses the needs of those most affected, the artists themselves, is an important consideration in planning such a project.

- **Places for exchange**

The success of the Ljubljana meetings was that they enabled often complex and difficult issues to be identified and explored, which shows the importance of having regular places for exchange of expertise and experience, training and knowledge building across the cultural and rights sectors, be they online or in person.

The Council of Europe's open minded and creative approach to defending artists' freedom, placing the artists themselves at the centre, be it through the Free to Create exhibition, the Manifesto, the reports and workshops, is much appreciated. To enable continued exchanges, it was suggested that there be a dedicated focal point on artistic freedom at the Council of Europe.

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<sup>35</sup> These Recommendations can be found in the Free to Create: Artistic Freedom in Europe Report (2023) pages 45-47 available at: [www.coe.int/en/web/portal/-/free-to-create-report-on-artistic-freedom-in-europe](https://www.coe.int/en/web/portal/-/free-to-create-report-on-artistic-freedom-in-europe)

- **Education on artistic freedom**

The lack of understanding of artistic freedom across various professional groups and within the arts and cultural sectors requires a strengthening of understanding. This could be achieved by providing programmes/study modules for education on artistic freedom for schools, arts and cultural studies at higher education, and training programmes for cultural institutions, lawyers and human rights advocates, among others.

- **Democratic governance**

A study on democratic governance for cultural organisations, funding bodies and other institutions supporting the cultural sector would address the problems of political and other undue interference in decision making. It could tackle the question of “instrumentalisation” of the arts and its impact on freedom of artistic expression, and how to ensure full “top to bottom” inclusion of minority and other marginalised groups in decision making through concrete and effective equality, diversity and inclusion policies. Such a study would include topics as safeguards for appointments of people with decision-making roles, such as leaders of cultural institutions, municipal officials, and professional organisations. This study to provide guidelines for good practice and could refer to those already existing in the Council of Europe, such as on the audio-visual sector. It should make special reference to the inclusion, or lack of, minority artists and cultural workers within decision making.

- **Collective actions**

Artists as their own agents of change was mentioned throughout the meetings, with examples of collective actions taken by artists themselves to address, and at times successfully overcome censorship. Sharing of these experiences through networks and information hubs, is highly valuable. This extends to the collective bargaining through artists unions for better contracts, pay and working conditions.

- **Funding arts freedom**

Recognising the role that funders – government and private – play in supporting freedom of artistic expression, it should be underlined that funding bodies themselves need to have greater transparency on leadership/decision making as a prerequisite for artistic freedom. Arms-length funding, and awareness of the challenges that “instrumentalisation” presents to creative freedom should be encouraged. It is also recommended that there be education on cultural bias for funders and gatekeepers to ensure that minority groups have realistic input into curation and funding decision making.

***“The concept of artistic freedom seems to be gaining traction notably in the past five years. What lies behind this could be due to a mix of reasons, from a post-Covid reassessment of the fragile situations of artists, the increasing visibility of artists fleeing conflicts in Syria, Afghanistan or Ukraine, or the heightened public sensibility of a globe reeling from the ‘polycrisis’. Artistic freedom is in the air, with increasing numbers of arts residencies and organisations offering concrete actions, funders opening new support schemes and even EU ministers of culture releasing ‘conclusions’ about its importance. ... What we need to be vigilant about, as always, is that our actions are conceived and implemented in total collaboration with artists. As organisations, we cannot afford to observe and guess what might be useful or needed. We need artists to speak from their unique perspectives. Policy trends move on. We need to ensure we get it right before they do.”***  
Mary Ann DeVlieg, co-leader of the meetings in Ljubljana in 2022 and 2023.

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## APPENDIX I

### **Recommendations from the Free to Create: Artistic Freedom in Europe Report, February 2023**

***The Free to Create: Artistic Freedom in Europe Report* published in February 2023 made recommendations and suggested ways forward to Council of Europe member states in summary:**

#### **States were called on to ensure artistic freedom by:**

- Respecting the European Convention on Human Rights and European Social Charter, alongside the judgments of the European Court of Human Rights
- Ensuring legislation conforms with regional and international standards protecting freedom of expression or *de facto* artistic freedom
- Investigating and prosecuting attacks and threats against artists and cultural workers
- Having independent bodies to receive complaints, monitor and investigate violations of artistic freedom
- Supporting initiatives for artists at risk or in exile
- Ensuring the independence of cultural institutions from political interference, and transparency in government funding

#### **The Council of Europe to:**

- Extend initiatives and programmes protecting freedom of expression to include artistic freedom
- Promote the Manifesto on Freedom of Expression of Culture and Arts in the Digital Era
- Make clear to states their responsibility to protect artistic freedom, and to refrain from limiting the full expression of views, experiences and perspectives of the cultural sector
- Provide platforms of exchange between arts and cultural sectors, member states, NGOs, human rights, media and others

#### **Civil Society and Cultural Organisations were encouraged to:**

- Ensure inclusion of concerns of arts and cultural professionals their remit
- Share expertise and joint actions in support of artists and cultural workers facing attacks

#### **Emergency programmes and safe places to:**

- Include artists and cultural professionals in their remit
- Provide areas where artists and cultural workers at risk can continue to practice and develop their work

#### **Educational and academic Institutes and the legal profession to:**

- Provide awareness raising and training on the understanding of artistic freedom and the challenges faced by artists and cultural workers
- Extend practice to artists and cultural workers at risk
- Collaborate and exchange expertise across institutions and jurisdictions

**Funding bodies to:**

- Support initiatives protecting and promoting artistic freedom
- Adopt an 'arm's length' approach to grant making and funding
- Ensure the design and implementation of funding and grant directives are led by independent cultural bodies

**Artists and cultural workers to:**

- Work together to monitor and take collective actions against attacks on artistic freedom
- Work with local and regional networks in the fields of culture, human rights, freedom of expression, media and other related rights
- Work to gain better public understanding of the importance of artistic freedom, raising awareness at schools, public events, exhibitions and the national media.

*Full details of the recommendations can be found on pages 45-47 of the Free to Create: Artistic Freedom in Europe report.*