

FREE TO CREATE: ARTISTIC FREEDOM IN EUROPE



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

Provisional version

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Sara Whyatt

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CHAPTER 1

INTRODUCTION

” Restrictions on freedom of expression and artistic freedom affect the whole of society, bereaving it of its pluralism and the vitality of the democratic process. The ecosystem of artistic freedom affects education, cultural development, socio-economic standards, well-being, quality of life and social cohesion.¹

On 10 November 2020 the Council of Europe Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era was launched, drawn up as a contribution by the Steering Committee for Culture, Heritage and Landscape (CDCPP) to the 70th anniversary of the European Convention on Human Rights and in response to concerns about consistent and varied attacks on freedom of artistic expression in Europe, and to remind and encourage member states to uphold and protect this right. At the heart of the manifesto is the principle that freedom of expression and of artistic expression is a core human right that requires protection from attack and threat.

Endorsing the manifesto, the Secretary General of the Council of Europe, Marija Pejčinović Burić stated:

Freedom of artistic expression is part of freedom of expression, protected by Article 10 of the European Convention on Human Rights. The Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era is a political commitment to promote the right of artists to express themselves freely even under difficult circumstances.

Freedom of artistic expression is facing growing pressure. More and more artists, experts and cultural professionals who hint at problems, spell out uncomfortable truths, make the unseen visible are subject to pressure, censorship, intimidation and harassment.

Moreover, the Covid-19 crisis has severely affected the working conditions and income of artists and the cultural and creative sector as a whole.

The Manifesto draws attention to these risks and sends a clear political signal to protect openness and creativity, which are essential ingredients of our democracies.²

Already under acute pressure when the manifesto was drawn up, artistic freedom remains under threat today, and has in some cases worsened under multiple challenges – political extremism, economic collapse, a global pandemic, threats from digitisation, an emerging environmental catastrophe and the return of war within Europe – all crises with major impacts on human rights across society. As Council of Europe Secretary General Marija Pejčinović Burić wrote in her 2021 Annual report: “With democracy under great pressure, the key role of arts and culture as powerful means for maintaining constructive dialogue in democratic and open societies becomes ever more evident. The right to freedom of artistic expression is a key to this and ensures the pluralism and vitality of the democratic process.”³ In these worrying times, many rights are under stress, among them artistic expression, making it doubly important to continue to monitor the state of artistic freedom and find solutions to ameliorate areas of its decline.

Artists, artistic mobility and artistic freedom are strategic resources for society, able to help overcome fragmentation and addressing today’s global challenges. (Bjørn Berge, Council of Europe Deputy Secretary General)⁴

Considering this, it is time to review the state of play in the field of artistic freedom, record the extent and patterns of suppression of artistic freedom, identify good practices, advise on what measures need to be taken to address existing problems and find solutions for the future.

1. Council of Europe (2020a).
2. Council of Europe (2020d).
3. Council of Europe (2021e).
4. Council of Europe (2021c).

In July 2022, 20 artists and cultural practitioners – visual and performance artists, writers and cultural commentators – from 12 European countries met at the Bunker cultural centre in Ljubljana, Slovenia. The aim was to discover their perspectives on artistic freedom where they are based and work and to feed these into this study. The meeting exposed the wide range of elements that prevent artists from across Europe from fully expressing and sharing their creativity. These included the “above the radar” attacks, such as imprisonment, physical threat and litigation, as well as the more prevalent and widespread yet less evident “under-the-radar” pressures that create a subtle climate of repression that blocks artists in their creativity or leads them to self-censorship.

This report reflects, *inter alia*, the work carried out by the Council of Europe, other regional and international intergovernmental organisations promoting freedom of expression and human rights, and by non-governmental, civil society and cultural organisations concerned with artists’ and cultural rights, as well as the experiences and perspectives of the artists who came together in Ljubljana. It reviews the patterns of abuse of freedom of artistic expression and developments in relevant legislation, monitoring and advocacy. It concludes with recommendations for what we can all do to protect artistic freedom, from intergovernmental institutions such as the Council of Europe through to the cultural sector and artists themselves.

METHODOLOGY

This report is based on desk research using dedicated sources on arts freedom as well as human and cultural rights monitors, media rights groups, media coverage and data collected by the author in her practice. The focus is on events in the period 2019 to 2022. Comments and observations by participants at the Ljubljana meeting, alongside suggestions for actions, form a significant element of this report. Following established practice of the Council of Europe Secretary General’s reports on the state of democracy, human rights and the rule of law in Europe, this report does not identify member states where there are infringements of artistic freedom or other rights unless when referring to commentary and statements already published by the Council of Europe.

CHAPTER 2

THE COUNCIL OF EUROPE AND THE DEFENCE OF FREEDOM OF ARTISTIC EXPRESSION

” It is frequently the artists, experts and cultural professionals who hint at problems, spell out uncomfortable truths, speak the unspoken and make the unseen visible – using their artistic and cultural means, and creating spaces for societal debate within and beyond the mainstream bodies of political discourse and in social media.⁵

Since it was founded in 1949, the Council of Europe has recognised the role of culture as a significant factor in the effective delivery of its core mission: to promote human rights, the practice of democracy and the rule of law among its member states. Specifically, its mission in the cultural field is described as:

promoting culture as the “soul of democracy” as a means to strong cultural policies and governance that include transparency, access, participation and creativity, respect for identity and diversity, intercultural dialogue and cultural rights – as the basis for respectful and tolerant living together in an ever-more complex world.⁶

These aims are put into practical effect through the Council of Europe’s Steering Committee for Culture, Heritage and Landscape (CDCPP), which oversees projects that range from studies on culture’s contribution to democracy, the impact of digitisation and artificial intelligence (AI) on culture and of Covid-19 on the culture and creative sector. It also runs cultural policy advisory missions in the form of peer policy reviews and has established the Compendium of Cultural Policies and Trends that monitors developments in cultural policy across a broad range of topics, providing a public database of information, including single and comparative study reports on all member states. Next to this, the CDCPP implements a number of projects around the Council of Europe’s unique conventions in the cultural heritage and landscape sector.

THE MANIFESTO ON THE FREEDOM OF EXPRESSION OF CULTURE AND THE ARTS IN THE DIGITAL ERA

In recent years, the right to freedom of artistic expression has become of growing importance as democracy in Europe declines. The importance of this right was recognised by the Council of Europe’s launch of the Manifesto on the Freedom of Expression of Culture and the Arts in the Digital Era to mark the 70th Anniversary of the European Convention on Human Rights (the “Convention”). The manifesto spotlights the need for a concise and valid political commitment to safeguard artistic freedom in Europe today, to be used as a common basis for understanding the core value of democracy among member states.

5. Council of Europe (2020a).

6. www.coe.int/en/web/culture-and-heritage/culture.

Council of Europe Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era

10 November 2020

Human rights are indivisible. Freedom of expression is a core human right.

Freedom of expression needs to be protected, be it from abuse of technological developments, attempts to muzzle dissenting voices in a society or misuse of the freedom of expression to foster divisive narratives, intolerance and hate.

Artistic and creative expression is a part of the freedom of expression and artists must be protected against censorship and any form of pressure or intimidation. Any limitation should be in line with the European Convention on Human Rights and the case law of the European Court of Human Rights.

Restrictions on freedom of expression and artistic freedom affect the whole of society, bereaving it of its pluralism and the vitality of the democratic process. The ecosystem of artistic freedom affects education, cultural development, socio-economic standards, well-being, quality of life and social cohesion.

It is the diversity in cultures, languages, art forms and free artistic expressions that nourishes intercultural dialogue and co-operation. Freedom of expression is reflected in a diverse and stimulating artistic and cultural environment and contributes to mutual understanding and living together.

Artistic freedom is associated, *inter alia*, with curiosity, creativity, innovation, self-realisation, critical thinking and those competences that will be increasingly required for mediating between humans and technologies: arts and culture are central for paving the human-centred way to the future that may be marked by machine-intelligence and man-machine interaction.

Arts and culture emphasise, express, communicate and anticipate the human reaction to social changes, and provide connections between economic/technological logics and sustainable development. Creativity and diverse cultural expressions, enabled and stimulated by artistic freedom and freedom of expression, are then catalysts for creating sustainable development planning and policies.

The power of artistic expression to communicate and open up for new perspectives and ideas makes the artist, artistic mobility and artistic freedom strategic resources for society, helping to overcome fragmentation and addressing today's planetary challenges.

In these difficult times marked by the Covid-19 crisis and where artists' and the cultural and creative sector's revenue generation is severely affected by confinement measures and where at the same time the importance of arts and culture becomes ever more visible as societal resources to keep people included, connected and inspired, it is important to include artists and the cultural sector as beneficiaries of economic support packages made available by states.

Today's artists and cultural workers are producing the heritage of tomorrow, frequently linking the past, present and future in their acts and products. Their work inspires by anticipating, reflecting on society and memorialising, strengthening individual and collective identities and raising democratic consciousness.

Neglect, damage, falsification and destruction of cultural heritage, especially in times of crisis, affect human rights. The protection, conservation and enhancement of cultural heritage is essential to the freedom of expression of human societies

To pay tribute to the key role of arts, culture and the work of artists in the ongoing endeavour to uphold Human Rights, Democracy and the Rule of Law, and in line with the 30th Council of Europe Art Exhibition "The Desire for Freedom: Art in Europe since 1945" (2012-15), the Organisation is invited to dedicate a digital #exhibition to showcase works of art and culture from its member States that speak directly of the ongoing quest for freedom of expression and that feature artists as critical agents for the survival of vibrant democracies in the globalised society of today.

FREE TO CREATE, CREATE TO BE FREE

The launch of the manifesto was accompanied by an online exhibition of works by artists from Council of Europe member states, “Free to Create, Create to be Free”,⁷ reflecting on artistic freedom. The exhibition builds on the Council of Europe’s legacy of art exhibitions and provides a fresh view and an innovative means to communicate the Council of Europe’s values, and its recognition of artists’ roles as agents of the survival of vibrant democracies in the globalised and changing society of today. The initiative follows in the footsteps of the 30th Council of Europe Art Exhibition “The Desire for Freedom: Art in Europe since 1945” (2012-15). Reflecting growing anxieties about pressures on European unity, the exhibition toured Berlin, Tallin, Milan and Krakow between 2012 and 2014, featuring work that explored artists’ reflections on human rights, equality and democracy.⁸ For almost 70 years, the Organisation has shown its commitment to the arts and culture through a series of arts exhibitions, the first held in 1954, the aim of which was to “increase knowledge and appreciation of European art as one of the highest expressions of Europe’s culture and common values”. The exhibitions aim to show culture and the arts as vectors of shared European values in response to current political events and challenges.⁹

This new “Free to Create, Create to be Free” exhibition is presented in a novel and widely accessible digital format that targets a wide audience and focuses on participative processes in the form of “not-curated curating”: it is not a top-down exhibition by an appointed person, who identifies artists and draws the lines of content and narratives, but is open for all member states of the Council of Europe to contribute with up to two artistic works on a topic and in a format they feel relevant to the overall issue. As of the end of 2022, Germany, Poland, Austria, Azerbaijan, Lithuania, Serbia, Georgia and Armenia had participated in the project, with Luxembourg and Norway preparing their contributions. Addressing the links between democratic growth, art, culture and human rights, this digital exhibition also shows the potential, power and perspectives that artistic freedom in democracies could offer in local neighbourhoods, or on national and global scales. The ambition is that after successively receiving artworks from all 46 member states, the growing platform will unfold as a living archive of artistic freedom of the 21st century in Europe.

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Council of Europe is a membership organisation working under its statute to promote human rights, democracy and the rule of law among its member states. It focuses on addressing shared concerns by common agreement and action rather than by judgment and penalty setting. The Council of Europe has no legislative power and its recommendations, guidelines and declarations serve as “soft law”. Yet, by signing conventions, states recognise their value and are bound to abide by the principles spelled out in such international treaties. It is this collaborative, as opposed to adversarial, approach where the Council of Europe brings a unique value to the field of protecting artistic freedom.

The most well-known of the Council of Europe’s treaties is the European Convention on Human Rights, the key rights mechanism within Europe protecting the rights of people within the countries that are members of the Council of Europe. As for the United Nations rights conventions, it refers to and adds to the protections within the 1948 UN Declaration on Human Rights, key among them the right to freedom of expression. Complaints about breaches of the Convention can be brought before the European Court of Human Rights (the “Court”) and if the Court finds that a state has violated these rights, they are required to provide redress and compensation (see also below). The key Convention article relevant to artistic freedom is Article 10 that protects the freedom of expression:

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. (European Convention on Human Rights, Article 10)¹⁰

The Steering Committee for Culture, Heritage and Landscape (CDCPP) is responsible for the activities within the Council of Europe’s work relating to culture, and the manifesto and digital exhibition are CDCPP initiatives. Thus, the focus on protecting freedom of artistic expression falls under a framework that has substantive

7. <https://freetocreate.art/>.

8. Council of Europe (n.d.).

9. www.coe.int/en/web/culture-and-heritage/art-exhibitions, accessed 10 August 2022.

10. Council of Europe (2022a).

and long-standing recognition of all member states and is dedicated to protecting and promoting cultural diversity:

diversity of cultures, the arts, and cultural heritage are essential to the development of a genuine openness of mind and basic rights, and where open and interactive processes and practices of culture that combine to help us deal with the complexities of living with ourselves and one another.¹¹

THE EUROPEAN COURT OF HUMAN RIGHTS

In most member states, there are robust judicial processes that protect freedom of expression. In others, these protections are weaker, and even in strong democracies there are instances where the sometimes complex issues around freedom of expression can bring them in breach of the European Convention on Human Rights.

Comprised of a team of 650 lawyers, the Court rules on violations of the Convention, with political and civil rights being central to its work, notably the right to life, fair trial, freedom of thought, religion and expression. It also rules on allegations of torture, degrading treatment, unlawful detention and discrimination.

Individuals can turn to the European Court of Human Rights only after having exhausted all legal avenues for redress at home, and where the applicant's appeal before the highest instance court of the member state has been rejected.

Cases brought before the Court must meet four criteria to be considered.

1. The complaint has been made against a Council of Europe state member.
2. All domestic legal avenues have been exhausted including through the highest national court.
3. The case is presented to the Court within six months of the final domestic court decision.
4. The applicant has suffered a "significant disadvantage" through the violation of their rights.

If a case meets these criteria, a lengthy process is set in train, with investigations into claims, often taking several years, to enable the collection of evidence and to prepare a decision for the judge to decide on. If the Court rules in favour of the complainant, then the state concerned is obliged to act on its decision. This could be to end the violation, to pay compensation and to ensure that there are no further abuses.

The key Convention article relevant to artistic freedom is Article 10 that protects the freedom of expression. Other articles that have been referred to in this context are Article 6 (right to fair trial), Article 3 (to be free from torture and ill-treatment) and Article 14 (prohibition of discrimination). Although artistic freedom is not specifically referred to, with Article 10 of the Convention guaranteeing the right to freedom of expression as a whole, the European Court of Human Rights case law does recognise artistic freedom, noting that "artists' works offer the opportunity to take part in the exchange of cultural, political and social information and ideas of all kinds, which is essential for a democratic society".¹² The Court has adjudicated on a number of cases where artistic freedom has been challenged over the years, some examples of which are given in this report.

Around 40% of all applications to the European Court of Human Rights relate to Article 6 (fair trial), and there are relatively few cases overall of press freedom under Article 10, and fewer relating to artistic expression. There are a number of reasons for this. Foremost is that there is a relative lack of understanding generally of the nature of repression of artistic freedom and of consistent monitoring, advocacy and support to networks to promote artistic freedom and to protect artists at risk against attacks on this right (discussed elsewhere in this report). The lack of knowledge within the cultural sector of the European Court of Human Rights and its benefits within the cultural sector is another factor. Added to this is the complex process that must be followed in making an application to the European Court of Human Rights. A Council of Europe handbook, "Protecting the right to freedom of expression under the European Convention on Human Rights", provides detailed guidance on these processes and is a useful training tool for cultural workers and lawyers representing artists at risk.¹³ Avant-Garde Lawyers is an organisation that works to assist artists at risk by providing legal support and encouraging lawyers to provide them with pro bono legal advice and defence. In 2022 it ran "The 'art' of defending artists" online capacity-building course for key stakeholders in the domain of artistic freedom, including lawyers, students and cultural rights activists, to equip them with the knowledge, skills and tools to engage with international and regional mechanisms in order to defend artists. One of these

11. www.coe.int/en/web/culture-and-heritage/home.

12. European Court of Human Rights (2011).

13. Bychawska-Siniarska (2017).

modules focuses on the European system, including an overview of the Council of Europe, the Convention and filing admissions to the European Court of Human Rights.¹⁴

Yet a positive European Court of Human Rights decision sets precedents and standards that can be referred to by others, not only in the country concerned but also beyond, and governments may be disinclined to repeat offences that could lead to them being penalised. Landmark cases concerning Article 10, such as those involving journalists, have not only benefited individual complainants but have also led to an expansion in freedom of expression rights overall in the state concerned (see, for example, *Unifaun Theatre Productions Limited and Others v. Malta*; see Chapter 6.4 below).

Possibly the most significant deterrent to individuals turning to the European Court of Human Rights is the cost of legal defence, with financial, time and sometimes emotional costs. An artist likely to have already endured long-winded court hearings domestically may not have the resources or stamina to consider turning to the European Court of Human Rights. To embark on taking a case through the European Court of Human Rights requires a level of altruism not just from lawyers, who may at times take on a case pro bono, but also from the artists themselves, who may take on the case not just for redress for themselves but for the wider good and artistic community as a whole. One example is the successful appeal to the European Court of Human Rights against the banning of a play in Malta which ultimately played a role in the removal of blasphemy laws and revisions to the country's film and theatre classification board, removing from it the possibility of censorship (see the Unifaun Theatre case in Chapter 6.4 below). Yet the financial burden was such that the theatre company is no longer in existence despite its legal success.¹⁵ A lawyer interviewed for this report who has dealt with freedom of artistic expression noted that going to the European Court of Human Rights "is so expensive, that I think that it is a burden of censorship in itself."

The European Court and the challenge of protecting "contentious" art

Topics tackled by artworks can be contentious, and at times deliberately so, such as when using satire against a public figure to expose their failings. It can be difficult to judge where lines can or should be drawn. Article 10.2 of the Convention lists exceptions to freedom of expression, referring to:

duties and responsibilities ... [that] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of 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.

Concepts such as "interests of national security" and "protection of the rights of others" have been interpreted by some governments and jurisdictions in such ways as to prohibit legitimate expressions, as described below. Often artists will deliberately create work that challenges those concepts, as described by this theatre director:

I do theatre to push the envelope. I aim to challenge the status quo, and my audience knew what I was about to do. It's not that they came without knowing what the play was about. They came to see one of my plays, and they knew they were in for something that pushed that envelope.¹⁶

It has been noted that European Court of Human Rights' case law on freedom of artistic expression does not provide for any concise definition of artistic expression and that Article 10 was designed to protect political discourse and thus artistic expression is less relevant against this background.

In some cases where it has deliberated on censorship of art, the European Court of Human Rights has considered the limited impact of the expression at stake and its "relatively narrow public", ruling in favour of complaints against censorship on these grounds. One such historic case was that involving a poem, in which the Court commented that while it could have been seen as a direct call to violence if read literally, the work was artistic in nature, appealed to a minority of readers and therefore had a limited impact (*Karataş v. Turkey*).¹⁷ While this may be so for certain artworks with limited audiences, many artforms reach out to a broad audience, having an impact and reach beyond other forms of expression. While the argument of artworks having limited reach has been used in favour of the defendant, it also signals the low level of importance and understanding that some representatives in the legal profession give to the actual impact of the arts. There is

14. Avant-Garde Lawyers (2022).

15. Interview with the Director of the Unifaun Theatre, Malta, 6 September 2022.

16. Ibid.

17. *Karataş v. Turkey*, Application No. 23168/94, 8 July 1999

a danger that the kind of view shown in the above European Court of Human Rights decision contributes to the undervaluing of the role of art in raising awareness of injustices and driving change. As an arts historian at the Ljubljana meeting noted, under the authoritarian regimes of the 20th century, avant-garde art flourished and was ignored by the authorities because it did not speak out explicitly. It could be at the same time “very silent and very outspoken”.

CHAPTER 3

INTERNATIONAL CONVENTIONS PROTECTING ARTISTIC FREEDOM

” Freedom of artistic expression is protected under most regional and international human rights treaties, although usually often under the broader remit of freedom of expression in general.

UNITED NATIONS “MECHANISMS”

Article 19 of the 1948 Universal Declaration of Human Rights protects the right to freedom of expression. States declare their commitments to the principles in the declaration through signing the UN International Covenant on Civil and Political Rights (ICCPR), which expands on the original declaration, including in Article 10 protecting freedom of expression. Another is the UN International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 15 of which protects the rights to take part in cultural life and freedom of creative activity. All European states are signatories or have ratified both these covenants. There are also a range of “mechanisms”, notably the Special Rapporteurs on freedom of expression and in the field of culture, to whom individual complaints can be made through set procedures, and who may then raise these with the relevant governments.¹⁸ Also, UN member states are required to report to the UN Council on Human Rights every five years on their adherence to the ICCPR under the Universal Periodic Review procedure, giving other member states, as well as NGOs, an opportunity to highlight deviations from the convention.¹⁹

United Nations International Covenant on Civil and Political Rights

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

United Nations International Covenant on Economic, Social and Cultural Rights

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

18. www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

19. www.ohchr.org/en/hr-bodies/upr/upr-main.

UNESCO

Protection of freedom of artistic expression lies within the Guiding Principles of the UNESCO 1980 Recommendation Concerning the Status of the Artist, which recommends member states protect and defend artists in their freedom to create, and that they be given the full protection of their rights as provided under human rights law.²⁰ Freedom of expression is also referred to as a fundamental right within the UNESCO 2005 Convention on the Promotion and Protection of the Diversity of Cultural Expressions.

State signatories to the 2005 convention, in 2021 numbering 150 countries and the European Union, are required to report on their adherence to it every four years in what is known as the Quarterly Periodic Review process. Governments are required to consult with civil society organisations, with one of the areas for reporting being artistic freedom.

UNESCO's 1980 Recommendation on the Status of the Artist, which covers a wide range of issues and provides recommendations to address the professional, social and economic status of artists, also calls on states to defend and assist artists in their freedom of creation.

European Parliament resolution on the status of the artist

In October 2021, the European Parliament passed a comprehensive resolution on the status of the artist that provides a framework for improving working conditions for artists that replicates and expands on the UNESCO 1980 Recommendation on the Status of the Artist.²¹ The resolution calls for fair pay and access to social and economic rights, cross-border mobility, copyright income and, pertinent to this report, defence of artistic freedom. Specifically, the resolution:

urges all Member States 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, and urges the Commission to sanction those Member States that fail to comply with their obligations; invites the Commission to carry out further research into the topic and prepare a roadmap for achieving better protection of freedom of artistic expression in Europe; calls on the Member States to jointly establish a structured dialogue among artists, legal experts and relevant stakeholders to determine common standards for freedom of artistic expression and develop and implement relevant guidelines.²²

A caveat

While the UN human rights treaties and European Convention on Human Rights give protection to freedom of expression, it is worth noting that both contain "exceptions" and that restrictions can be applied to expressions that damage "the rights and reputations of others" and that threaten "national security or public order" or "public health or morals".

While few would argue that there should not be some boundaries set to freedom of expression where lives and security could be at threat, there is vagueness and broad interpretation of what can be considered a danger. This has led to instances where legitimate expressions have been shut down by governments referring to these exceptions. These have included works of art exploring the roots of attraction for young people joining Daesh as promoting terrorism, satirical portrayals of people in power as being damaging to reputations, themes on LGBTI and women's rights as undermining morals and, more recently, challenges to government policy on Covid-19 as endangering health, and so on.

20. UNESCO (1980).

21. Culture Action Europe (2021a).

22. European Parliament (2020).

CHAPTER 4

DEFINITIONS OF FREEDOM OF ARTISTIC EXPRESSION

” Art can be activist. It can mould something, create a language, then put it out into the world ... What we want is to be in a society where artistic freedom is not only okay but is wanted and this should be the aim when we talk about freedom of art, and how we want to live within a society. (Artist speaking at the Ljubljana meeting)

Although artistic freedom is not specifically referred to in Article 10 of the Convention guaranteeing the right to freedom of expression as a whole, the European Court of Human Rights case law does recognise artistic freedom, noting that: “Artists’ works offer the opportunity to take part in the exchange of cultural, political and social information and ideas of all kinds, which is essential for a democratic society”.²³

Having previously tended to come under the broader definition of freedom of expression, the recognition of freedom of artistic expression as a right in itself has been growing in recent years. Historical neglect has led artistic freedom to be poorly represented in international and regional human rights forums, and not to be fully understood and acknowledged by governments, academia, the public or even the cultural sector itself. The reason for this neglect is partly explained by the fact that cultural rights are the least developed of all rights. It is only just over a decade since the United Nations created a post of Special Rapporteur in the field of culture. Another important reason is that arts and cultural organisations themselves lack the expertise and resources to document, authenticate, monitor and advocate artistic freedom.

The result has been that monitoring of artistic freedom has been challenged by a lack of knowledge of the subject and by artists themselves, who may not understand their rights or the avenues through which to report violations and advocate justice. This situation is exacerbated in some cases by the lack of sufficient knowledge of artistic freedom and the cultural sector when representing artists before the national courts and the European Court of Human Rights.

We are fighting for visibility while censorship is against it. (Artist at the Ljubljana meeting)

Artists must travel a complex landscape through which they can find their creativity stifled from several perspectives. Add to this the fact that much creativity is suppressed “under the radar”, in addition to the “above the radar” attacks such as legal cases, imprisonment, removal of work from public spaces and physical attacks. Unseen suppression is epitomised by self-censorship, which, by its nature, is impossible to measure. Comparatively small, superficial, insignificant actions by states and society also erode creative freedom. For example, ostensibly reasonable administrative practices are applied – intentionally or not – in a way that suppress rather than support works that may be challenging or are created by communities that are outside the margins. These practices can be hard to pin down as targeting certain works or individuals. In addition to this, there is the overall precariousness of work in the sector that can dissuade artists from creating works that may bring them trouble and loss of future opportunities and income.

The idea of art not having any value, like it’s just for fun – it’s so f***ing absurd. (Artist at the Ljubljana meeting)

Running alongside these challenges is the common perception among governments and public that arts and culture play a minor role in forming and influencing transformational change. The view among many is that artists’ work is play, a labour of love, something that is done for one’s own pleasure. This view can have a corrosive effect on the status of the artist itself. This in turn makes artists and artwork more vulnerable.

23. European Court of Human Rights (2011).

However, over the past decade, these perceptions have been changing, and the understanding of the importance of protecting artistic freedom is increasing and receiving higher recognition, and more initiatives to promote and protect this right at national, regional and global levels are being set up.

Key to this change is the seminal 2013 report by the former United Nations Special Rapporteur in the field of culture, Farida Shaheed. In an in-depth study of the right to freedom of artistic expression and creativity, the first of its kind to be published by the UN, she makes the argument:

Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.²⁴

UNESCO, noting that a minority of its member states have reported on artistic freedom in their quarterly periodic reviews of their commitments to the 2005 Convention on the protection and promotion of cultural expressions, put in place strategies to encourage states to report more effectively on this issue. These include clearer definitions of what artistic freedom is and measurement criteria in the reporting processes, alongside training packages, reports and presentations by experts. It defines the six elements of artistic freedom as:

- ▶ the right to create without censorship or intimidation;
- ▶ the right to have artistic work supported, distributed and remunerated;
- ▶ the right to freedom of movement;
- ▶ the right to freedom of association;
- ▶ the right to the protection of social and economic rights;
- ▶ the right to participate in cultural life.²⁵

24. Shaheed F. (2013).

25. UNESCO (2017).

CHAPTER 5

WHO PROTECTS ARTISTIC FREEDOM? – STATES, CIVIL SOCIETY AND CULTURAL ORGANISATIONS

STATES

In recent years, notably since 2015, there has been a growing interest in and initiatives for artistic freedom among states and civil society. In 2015, 53 states signed a statement at the UN Human Rights Council pledging support for artistic freedom.²⁶ The same year saw the passing of a new artistic freedom law in France that specifically protects the right to not only creative freedom but also to disseminate works.²⁷ More recent positive developments include Georgia noting in its 2020 report to UNESCO on its adherence to the 2005 Convention that its constitution specifically prohibits “interference in the creative process and censorship in the field of creative activities” and restrictions on dissemination of creative work.²⁸ Germany’s Basic Law Article 5 also protects artistic freedom and this was reaffirmed in a statement of the German *Länder* ministers of culture in March 2019 stating that freedom of arts and culture underpins their joint activities.²⁹

In May 2016 the Nordic Ministers of Culture issued their Declaration Promoting Diversity of Cultural Expressions and Artistic Freedom in a Digital Age, stating that artistic freedom of expression is an integral part of the human right to freedom of expression.³⁰ This statement was reinforced in May 2022 when the Nordic ministers maintained the necessity for freedom: “art, media and culture must be allowed to operate, create and disseminate freely”, adding that:

For democracy to function effectively, it’s crucial that art is free to reflect on, provoke, and challenge societal structures. Together, we must demonstrate the Nordic countries’ work to support artistic freedom, which is an important prerequisite for an open and democratic society. Freedom of expression is a fundamental value that we share in the Nordic Region, and the need to safeguard the free role of artists and cultural practitioners is important at a time when we see that these values are under pressure. (Anette Trettebergstuen, Norway’s Minister of Culture and Equality, and chair of the Nordic Council of Ministers for Culture, in 2022)³¹

There is also a European Union-wide move towards greater offering protection, for example in October 2021, when addressing the situation for artists and cultural workers during the Covid-19 pandemic and the post-pandemic cultural recovery, the European Parliament delivered a resolution to the European Commission. The requested action on the status of the artist listed a range of measures from strengthening artists’ social economic status to freedom of artistic expression.³²

These and other initiatives show a growing recognition of and momentum towards the need for protection and promotion of artistic freedom. This is no doubt inspired by the experience of the Covid-19 epidemic that saw the closure of public spaces and where arts, much forced online, provided entertainment and comfort to people under lockdown. The arts also played a crucial role in helping spread information and health advice on the pandemic, as well as challenging misinformation and some governments’ policies to halting the virus.

26. Article 19 (2015).

27. Lin A. (2015).

28. <https://matsne.gov.ge/en/document/view/30346?publication=36>, accessed 30 September 2022.

29. UNESCO (2019).

30. Nordic Ministers of Culture (2016).

31. Nordic Co-operation (2022b).

32. European Parliament (2020).

Yet care needs to be taken not to take legal protections at face value. In 2016, the French senate, as part of its preparations to amend its existing legislation to enhance artistic freedom, published a list of 22 states worldwide that included this right in their constitutions.³³ Among them were those with poor records of supporting these very protections, often to the extent of violation, revealing in some cases a gap between rhetoric and practice. Conversely, there are states with good protection of freedom of expression for artists, but which do not specify these in their constitutional or legal frameworks.

Whether or not a state has explicit protection for artistic freedom in its constitution (if not, it should be looking to ensure that it is included), the questions that it should be asking to ensure creative freedom are:

1. Is there an official policy relating to protecting artistic freedom?
2. What challenges exist that prevent the full practice of artistic freedom?
3. Are there bodies in the country that monitor violations and receive complaints?
4. What legal or other mechanisms exist to which complaints can be addressed?
5. Are public funding programmes transparent and free from political influence?
6. Are there initiatives to protect artists at risk, such as safe havens and safety guidelines?³⁴

To be able to answer these questions, identify problems and find joint solutions, dialogue with national and regional legal, human rights and cultural bodies, and not least artists and cultural workers themselves, is essential.

CIVIL SOCIETY: HUMAN RIGHTS DEFENDERS, MEDIA FREEDOM ADVOCACY GROUPS AND ARTISTIC FREEDOM

A decade ago, there were very few organisations that were specifically working for artists at risk and artistic freedom. Most notable among them was Freemuse,³⁵ established in 1998 to support musicians at risk and which has since expanded its mandate to all art forms. PEN International,³⁶ founded in 1921, is one of the oldest freedom of expression organisations with a focus is on literature, including but not solely focused on creative writing.

Since 2015, new organisations dedicated to promoting and protecting artistic freedom on an international level have been created. These include Artists at Risk Connection,³⁷ a New York-based project of PEN America, and the Artistic Freedom Initiative,³⁸ also US-based and which has extended its work from assisting artists at risk to relocate to the USA, to carrying out in-depth country studies. The Helsinki-based Artists at Risk³⁹ organisation also has a focus on providing relocation while engaging in advocacy. Avant-Garde Lawyers was established in Paris in 2019 to provide training to lawyers and pro bono support for artists on trial.⁴⁰ The bulk of the work of these global organisations tends to be at the extreme end of abuses against artists: arrests, trials, physical attack and even killings, attacks which are thankfully less prevalent in Europe than elsewhere. There are as yet no artistic freedom organisations with a Europe regional focus.

There are also projects based in Europe that provide support for artists at risk in need of relocation to safe places. Best known is the International Cities of Refuge Network (ICORN) of around 80 host cities, over half of which are in Nordic countries, with other cities in Europe hosting exiled writers and artists including in Belgium, Spain, Italy, Slovenia, Poland, France, Iceland, the Netherlands and the UK. In October 2022, the city of Strasbourg, the home of the Council of Europe, became the latest city to join the ICORN network. These normally provide two-year placements for writers, journalists and artists who have to leave their countries under threat. The above-mentioned Artists at Risk, based in Finland, also provides similar support through its networks in Europe. As for arts freedom monitoring and advocacy groups, and for the same reasons, the bulk of cases where relocation is provided are from outside Europe.

33. Sénat Français (2016).

34. Taken from UNESCO questionnaire for its member states reporting to the Quarterly Periodic Review on their adherence to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

35. www.freemuse.org.

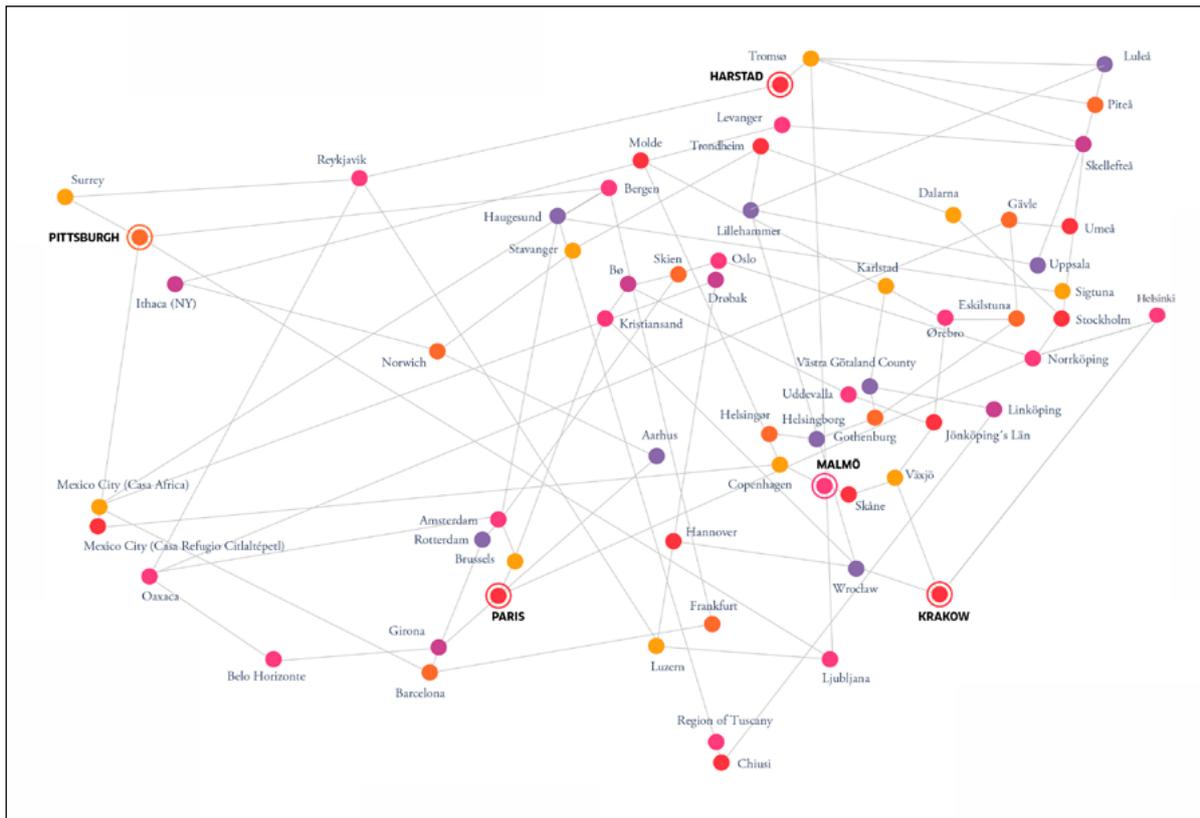
36. www.pen-international.org.

37. <https://artistsatriskconnection.org/>.

38. www.artisticfreedominitiative.org.

39. <https://artistsatrisk.org/about/>.

40. <https://avantgardelawyers.org/>.



International Cities of Refuge Networks worldwide (2019) (source: ICORN)

Cities and other relocation centres are in some cases literally a life saver, places of refuge that can be turned by artists whose lives are threatened, who are at imminent risk of imprisonment or in other acute situations. However, many of these placements are long-term and some artists may not wish to be seen as having been given political asylum, an identity that they may not feel appropriate or want. Placements at foreign cultural institutions, arts universities and cultural centres, however, can provide an environment where the artists can continue to create, share and learn from others around them, which they may see as a better “fit”. These institutions should be encouraged and supported to provide placements to artists who need respite and can continue to practise.

While there are few organisations dedicated fully or in part to protecting artistic freedom, there is a plethora of organisations, international, regional and local, that do so for human rights defenders and for media workers. Everyone whose work entails critique, commentary and exploration of topical issues, from artists to journalists and human rights defenders to academics, can find themselves prosecuted under the same laws, attacked by the same state and non-state groups and are similarly susceptible to self-censorship. The topics that they raise and are targeted for are also broadly similar.

Media and human rights defender organisations by necessity focus on the communities they protect, and this means that they do not generally include artists in their advocacy unless there is a link to journalism or the artist can be defined as a human rights defender. However, these organisations have a wealth of expertise that can be made available to artists, given that the types of persecution faced and remedies for justice overlap. In turn, artists can bring their perspective and knowledge to other rights organisations.

One such organisation is Article 19,⁴¹ the London-based organisation that monitors free expression, lobbies governments and provides legal analysis as well as support to non-governmental organisations and others defending free expression. The bulk of its work is on media freedom, although it has on occasion included artistic freedom. It is a source of expertise on the legal and international standards that protect free expression, notably its guides on hate speech, safety and engaging with the UN human rights mechanisms.

41. www.article19.org/.

Collaboration and information exchange between media and human rights organisations and those working in arts and culture should be encouraged, to enable them to work together to protect freedom of expression in general as well as artistic freedom in particular. The Council of Europe's own Platform to promote the protection of journalism and safety of journalists could also be looked to as a partner and for advice on developing a monitoring and advocacy instrument.⁴²

CULTURAL ORGANISATIONS

While support of and collaboration with human rights defender organisations and media rights advocates can be essential, they are in general not well acquainted with the cultural sector. Information on the “above the radar” attacks on artistic freedom is relatively easy to gather and to monitor through the mainstream media in the most dramatic cases, or through the arts media, or where the attack involves physical threat or imprisonment that comes under the orbit of human rights organisations.

Other forms of “under-the-radar” censorship that specifically affects creative content and does not entail physical assault, imprisonment or even litigation are often unreported and misunderstood outside the cultural sector. These threats are wide and varied, including undue government pressure on cultural institutions, artists “blacklisted” because of their commentary on politics, gender, minority rights, religion or criticism of public figures, discriminatory funding policies, etc. Cultural figures who have been critical of government policy may find their contracts terminated or even dismissed from their posts. Outspoken artists may be excluded from awards and grants or from being featured at festivals and sponsored events, the organisers, openly or not, not wishing to be associated with their work for fear of losing their own sponsorship or reputation. There is also the pressure from people who may or may not be affiliated to governments, who block works, sometimes through threat and violence.

It is national and regional artists' networks, cultural associations and sectoral professional bodies that are best placed to recognise these examples of suppression of artistic freedom, know where they are happening and to find means of addressing and protecting them.

On a regional level, while there are no organisations wholly devoted to protecting artistic freedom in Europe, there is an increased interest and engagement in the issue in the cultural sector. Among them is Brussels-based Culture Action Europe,⁴³ a network of cultural organisations, artists, activists and policy makers providing a platform for debate on arts and cultural policy in the EU. It is an inter-sectoral network, bringing together representatives from all practices, including community centres and activist groups. Artistic freedom has been among its focal points; as in 2021, for example, when it published the study “Freedom of Artistic Expression in the European Union”,⁴⁴ which recommends that this right should be protected within the EU framework.

Other regional arts organisations that have acted on artistic freedom issues include the European Music Council, the European Federation of Film Directors, the Federation of Screenwriters in Europe and the International Network for Contemporary Performing Arts. These were among 14 organisations who in September 2020 co-signed a statement calling on the EU to ensure that artistic freedom has a prominent profile in the European Commission's European Democracy Action Plan.⁴⁵

Artists and cultural institutions, often led by well-known cultural figures and joined by members of the public, frequently publicly condemn attacks against fellow artists and institutions whose work has been censored or came under attack by non-government groups. Their response is often creative, such as copying and sharing the “offending” artwork, using online memes and holding arts events outside venues and galleries, and has created media attention, raised public awareness and, in some cases, led to a reversal of the censorship. However, these artist-led movements rarely become permanent, and there are few national organisations that consistently watch out for and act on further attacks on creative freedom.

Arts Councils are also increasingly referring to artistic freedom as a right that needs strengthening and supporting. The International Federation of Arts Councils and Cultural Agencies (IFACCA)⁴⁶ will be holding its ninth World Summit in Stockholm in Uppsala in May 2023 on the theme of safeguarding artistic freedom. In

42. <https://fom.coe.int/en/accueil>.

43. www.cultureactioneurope.org.

44. Culture Action Europe (2021b).

45. Federation of European Film Directors (2020).

46. <https://ifacca.org/>.

2021, the Swedish Arts Council, an IFACCA member, launched its Programme for Artistic Freedom,⁴⁷ a grants programme providing support to improve conditions for artists to be able to practise freely, including capacity building and networking, and projects that improve legislative protection. Although the programme's focus is outside of Europe, with beneficiaries in Africa and the Americas, it is hoped that this will inspire similar arts-focused human rights support projects within Europe.

Even among the most well-resourced culture and arts associations, there is little expertise on documenting, analysing, monitoring and advocating artistic freedom. The reason is that the main sphere of activity of these organisations is promoting the needs and requirements of their constituencies as a whole, of which artistic freedom is just a small part. This means that it has a low priority until there is an attack. Add to this the fact that cultural activities are typically under financial pressure, making room in the budget or raising funds for artistic freedom is also not a priority. This can mean that when an artwork comes under attack, there are few or no avenues to which an artist or cultural institution can turn for support. In these cases, working with national human rights commissions and NGOs, regional and international arts freedom monitors can be immensely useful, alongside the support of arts and cultural organisations in other countries helping to raise awareness, lobby and find restitution.

Yet in some cases it is the cultural institutions themselves who are seen to be a hindrance to artistic freedom, acting in the interests of governments rather than for artists and creative freedom and thus being considered as an arm of repressive regimes. This in turn leads to lack of trust among artists in the very institutions whose role is to enable their work.

47. Swedish Arts Council (n.d.).

CHAPTER 6

STATE OF ARTISTIC FREEDOM IN EUROPE 2020-2022

The birth of the Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era came at a time described by Council of Europe's Secretary General, Marija Pejčinović Burić in her 2021 annual report as a "picture of democracy in distress". She adds that "the democratic environment and democratic institutions are in mutually reinforcing decline"⁴⁸ It was, and remains, a period where freedom of expression is suffering a litany of erosions in an environment plagued by increasing violence against journalists, shrinking of civil society space, rising online hate speech and xenophobia, and discrimination against asylum seekers and organisations that support them. The Secretary General refers to the role of rising populism and authoritarian nationalism in Europe in recent years as having a darkly negative impact on freedom of artistic expression, suffering restrictions and interference. These concerns are echoed among rights monitors across Europe with frequent references to a "shrinking space" for freedom of expression. A strongly worded memorandum to the Slovenian government issued by Council of Europe Commissioner for Human Rights, Dunja Mijatović, in June 2021 also raised this issue, referring to the situation at that time of being one of "hostile public discourse, as well as smear campaigns and intimidation targeting civil society activists and those who express critical opinions [that harms] free expression and can have a chilling effect on media freedom".⁴⁹

Similar alarm has been raised by media monitors, such as the media monitor Article 19 that noted that the state of freedom of expression globally is at a particularly low ebb, having taken a steeper dive with the arrival of the pandemic in 2020, a health crisis that some governments have used as a pretext to clamp down on dissent. In its 2021 report, Article 19 uses data from the V-Dem (Varieties of Democracy) Institute, an independent research institute that gathers data to gauge the state of democracy across the globe using 10 measurement criteria, including government attempts at censorship, internet censorship, harassment of journalists, political killings and academic and cultural freedom. It shows that while there has been an overall decline in Europe, it is not as marked as elsewhere. All but one of the top 10 countries for protection of freedom of expression are in Europe, with just two featuring in the bottom 10. Of the 44 European states listed, 24 are defined as being "open" societies, 12 "less restricted", four "restricted" and four "in crisis". Yet only one European country has seen a significant rise in freedom of expression in recent years, lifting it from restricted to open. Worryingly, seven have seen significant declines.⁵⁰ A Council of Europe report on freedom of expression in 2021 showed a 61% rise in attacks against journalists that year compared to the previous year, as reported to the Council of Europe.⁵¹ These trends are a warning not only to the media but to others against criticising governments and power mongers.

48. Council of Europe (2021e).

49. Council of Europe (2021a).

50. www.v-dem.net. Note that the V-Dem data are collected from both Council of Europe states and those states outside Europe, including in Central Asia.

51. Council of Europe (2022b).

The impact of populism on arts freedom

The Ljubljana group of artists spoke of finding themselves caught in the middle of political factions, between extremists on the left and on the right, of nationalist narratives that lie behind attempts to instrumentalise art for the politicians' own purposes. They noted that governments refer to culture serving the public; but, they asked, who is that "public"? "We are told we should be for everyone – but that 'everyone' does not exist", noted one artist, adding that there are different "publics" with diverse opinions and needs. This "invisible public" discourse is difficult to navigate. The result is that, as one artist noted, "there are no winners".

The question needs to be asked, "Who should we blame for this act of censorship? Who benefits from the censorship? Who does it serve? Who gets hurt by it and how can we react as artists?" (Ljubljana group)

Many countries in Europe have experienced volatile governments in recent years, with political leadership swinging from one ideology to another. Yet the changes implemented by one political party can be hard to shift once they are out of power, with restrictions implemented by a former government being embedded under a new government. The Ljubljana meeting participants from countries that had seen such a change noted that although the political climate had improved for artistic freedom, the consequences of the policies of the former government remained. Another ongoing consequence was that directors of cultural institutions that had been appointed by the previous government remained installed even if the politicians who had put them in place had changed. Funding that had been cut or removed for political reasons was not always reinstated.

One interviewee noted a correlation between the demise of a government in his country that had been heavily influenced by the far right and a sharp drop in attacks on artists, performances and galleries by extremists inspired by the previous government's ideology. It is evident that the tenor of a government can either promote creative freedom or encourage certain groups to make threats and even carry out violence, sometimes with the apparent blessing of the country's leadership. When there is new governance that is more open, the more radical elements of the former tend to lose their impetus.

Even at times of benign government, it is important not to be complacent, and the opportunity should be seized to review legislation and administrative processes that restrict freedoms to ensure their future protection. Given the flux in European politics today, it is wise to "seize the moment" and lobby to ensure that protective measures are embedded in legislation and practice regardless of the inclinations of future governments.

ARTISTIC FREEDOM IN NUMBERS

What we want is to be in a society where artistic freedom is not only okay but is wanted and this should be the aim when we talk about freedom of art, and how we want to live within a society ... [in which] it is important that there should be works that have different perspectives, even critical perspectives of the state. (Artist at the Ljubljana meeting)

In late 2019, the arts freedom monitor Freemuse published a report focusing on artistic freedom in Europe: *Security, creativity, tolerance and their co-existence*. Published as the Council of Europe was formulating its manifesto on artistic freedom, it recorded 380 violations carried out in 28 European countries in the 22-month period from January 2018 to October 2019. Among them were 31 artists in prison, a further 50 in detention awaiting trial and 21 more on trial. Others experienced harassment, censorship and travel bans.⁵² Two years later, Freemuse reported that in the 12 months of 2021, the numbers had risen to 402 attacks in the arts and cultural sectors in 28 countries in Europe, representing 32% of the global total.⁵³

Freemuse report on artistic freedom in Europe – January 2018 to October 2019

380 reported violations

28 countries

31 imprisoned

50 detained awaiting trial

21 on trial

52. Freemuse (2019b).

53. Freemuse (2022).

Freemuse report on artistic freedom in Europe – January to December 2021

402 reported attacks

28 countries

32% of all reported attacks globally

Monitoring and documenting the state of artistic freedom is still at an evolutionary stage, and coverage is not consistent, particularly so in authoritarian states where freedom of expression is suppressed. While physical attacks, litigation and imprisonments tend to be well reported, threats to artistic freedom are often “under the radar” and difficult to measure. As Freemuse notes as a caveat to its annual report’s statistics, there are situations where there may be no direct bans but there exists a self-censorship reflex responding to fears of losing grants, nominations for awards, access to performance space, etc. Physical threat by non-government actors, media smears and a social media backlash can also have an impact on an artist’s capacity to continue their work, as they may have to think twice before dealing with topics that may elicit a negative response. Freemuse encourages readers to consider statistics as a “temperature gauge” of where, what types of attacks, against whom and for what reasons, rather than a definitive measurement.

ANTI-TERROR AND NATIONAL SECURITY LAWS TO SILENCE LEGITIMATE COMMENTARY

Anti-terror laws have long been a source of concern for freedom of expression monitors for the lack of clarity in law of definitions of “terrorism”, which is often broadly defined and vague. This has led to people who have made legitimate commentary on issues such as on minority rights or who have criticised state policy on security issues finding themselves prosecuted and even imprisoned. The problem of ambiguous and sometimes fluid definitions of terrorism when applied to expression was the focus of correspondence between Council of Europe Commissioner for Human Rights Dunja Mijatović and the Spanish government. A March 2021 public letter from the Commissioner to the Spanish Minister of Justice raised concerns about the growing convictions under terrorism and insult to the crown laws against artists for their controversial lyrics and performances. In her letter, Mijatović urged Spanish legislation to be amended to be brought in line with Article 10 of the European Convention on Human Rights. Ms Mijatović noted that:

the offence of glorification or justification of terrorism as defined in Article 578 of the [Spanish] Criminal Code appears to be problematic from the point of view of legal certainty because of its ambiguous and imprecise wording. The lack of a clear definition of some of the notions enshrined in it has generated diverging – sometimes contradictory – interpretations of [these] provisions by Spanish courts, some of them at odds with international standards on freedom of expression.

She referred to “catch-all labels” used to punish statements that are not an apology of terrorism or a call for violence but are “simply are non-consensual, shocking or politically embarrassing”.⁵⁴

The Spanish government responded in March 2021, concurring that “the regulation of certain offences related to the freedom of expression continues to pose difficulty, not least because of the imprecision with which some forms of criminal conduct are defined”. It added that there would be a review of any necessary reforms to legislation that conflicts with freedom of expression, notably on glorification of terrorism.⁵⁵

High levels of media attention and public concern in Spain about the sentencing of two rappers, alongside the questions raised within the Council of Europe and rights monitors, will have contributed to the Spanish authorities’ decision. Pablo Hasél is a rapper serving sentences totalling two years and nine months following his arrest in February 2021 on charges of promoting terrorism and insult to the state. Another rapper, Valtonyc, went into exile in Belgium in 2018 after being given a three-and-a-half-year sentence, also for glorifying terrorism and slandering the monarchy. His arrival in Belgium has also brought public attention to Belgium’s own archaic lese-majesty laws and calls for them to be reviewed.

Artists from minority groups, notably those engaged in struggles for autonomy, have found themselves tarred with accusations of siding with terrorism, even if their work does not “glorify” or call for violence. Criticisms of government policy and exposés of human rights abuses carried out by armed forces or police in conflict areas are deemed as propaganda. Artists have faced court cases, bans and restraints on performing,

54. Council of Europe (2021d).

55. Ibid.

their cultural centres closed down, staff dismissed and taken over by government officials. Performances and publications in minority languages have been banned, cutting these communities off from their cultural heritage. As one Ljubljana participant joked of the seizures of books from his community: “We say we have our largest archive of books in the police station!” The effect is, as one Ljubljana artist described, the “erasing of our ancestral history and art.”

European Court of Human Rights – Türkiye: an expression of deep distress or a call to violence?

Türkiye is the country that has had the highest number of cases brought to the European Court of Human Rights, with more than 15 000 pending cases as of the end of 2021, 21.7% of the total number for the whole of Europe. It also holds the record for the number of cases in which the Court has judged a violation of freedom of expression as protected under Article 10 of the Convention – over 40%.⁵⁶ Among the few European Court of Human Rights rulings specifically on artistic freedom appeals in Türkiye, two relate to the misapplication of anti-terror laws. The first, an appeal against the terrorism conviction of an author whose novel was based on real events, was upheld in 2005 by the Court that stated that the work could be read as a work of fiction, “an expression of deep distress in the face of tragic events, rather than a call to violence”. (*Alinak v. Turkey*)⁵⁷ The second, relating to minority linguistic rights, the decision not to allow a play in Kurdish to be performed in municipal theatres, was overturned by the European Court of Human Rights as a violation of Article 10. (*Ulusoy and Others v. Turkey*)⁵⁸

In a pattern noted by Freemuse in the aftermath of horrific terror attacks, such as those at the Bataclan Theatre in Paris in 2015 and the Manchester Arena in the UK in 2017, there can be, arguably, understandable haste to be seen to be responding to a public security crisis. This has led to measures that were introduced ostensibly to protect national security, but which have inadvertently introduced restrictions that infringe the right to freedom of expression. Examples are a film festival showing films that could be seen as supportive of terrorism or to feature content that could be seen as insensitive at that time, as well as exhibitions of works and theatrical performances that have been taken down or stopped by authorities from being shown in the aftermath of these crimes.

“MOCKING” THE POWER MONGERS

Every person has the right to protect their reputations when untruths are told about them and to be able to turn to the civil courts for redress against defamation. Yet it is recognised that persons who hold political power should expect to tolerate higher levels of scrutiny and criticism than other citizens. The European Court of Human Rights has ruled against criminal defamation in such cases for this reason:

The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. (*Lingens v. Austria*)⁵⁹

Yet in many European countries, criminal defamation laws that carry sanctions, including imprisonment and fines, are used by those in power to silence their critics. In a significant number of countries there also exists legislation that specifically protects heads of states and public officials, and even the monarchy (known as “lese-majesty”).

In defamation cases, the argument centres on whether the statement in question is based on truth. In insult cases, the truth is not necessarily at issue, but is where the complainant is defending their honour or dignity. A president or other leading official may find satirical depictions of themselves, typically in cartoons, comedy sketches or in song lyrics, harmful to their public standing and turn to insult laws to ban such depictions. The nature of creative works, especially activist and political art, makes artists particular targets.

At one time most European states had laws that penalised insult and defamation, but over time many have been repealed or amended. So, it is somewhat surprising to see that a significant number of European states still have laws that penalise insult to the head of state, monarchs and, in some cases, even to foreign leaders.

56. Statistics of the European Court of Human Rights available at: www.echr.coe.int/Pages/home.aspx?p=reports&c.

57. *Alinak v. Turkey*, Application No. 40287/98, 29 June 2005.

58. *Ulusoy and Others v. Turkey*, Application No. 73062/16, 6 September 2022.

59. *Lingens v. Austria*, Application No. 9815/82, 8 July 1986.

Insulting state symbols such as flags, emblems and national anthems can also be prosecuted in some states. In most cases these are laws that have not been used for some decades, legal anachronisms, statutory remnants of previous governments and theories, but they are still available and a threat to artistic freedom. In some countries, these insult laws are still actively levied against artists who mock their leaders and sometimes foreign leaders too. Even in countries where the laws have lain dormant for decades, they have re-emerged when a public figure has found it expedient, such as in Germany in 2016 when a rarely used law on insulting a foreign head of state was applied against a comedian whose television sketch show included a poem containing derogatory remarks against the Turkish president.⁶⁰ The public outcry against the law resulting from this incidence led to its abolition in 2017. This incident shows that although such laws often lie forgotten in the courtroom archives, there is the danger that they can be found and dusted off as a tool of repression by future leaders, making it important that they are abolished.

States that have laws criminalising insult to the head of state and officials include Andorra, Belgium, Bulgaria, Denmark, France, Germany, Greece, Iceland, Italy, Malta, Monaco, the Netherlands, Poland, Portugal, San Marino, Slovenia, Spain and Sweden. Those that include penalties for insult to state symbols include Austria, Croatia, Malta, Poland and Serbia.⁶¹ Some recent cases of insult a singer facing charges for “mocking” the national anthem in song, paintings withdrawn from gallery walls for images insulting a flag and the removal of an artwork from an exhibition for insulting a state emblem.

European Court of Human Rights

Patricio Monteiro Telo de Abreu v. Portugal

The right to satire v. right to reputation – Portugal

In June 2022, the European Court of Human Rights ruled in favour of a Portuguese municipal councillor who had been convicted in 2014 of defamation against another councillor for republishing three cartoons on his blog. The decision was complicated by the perceived misogynistic nature of the images. The complainant had objected to one that portrayed her as a pig in sexually suggestive clothing, saying that the cartoon had damaged her reputation and honour. The Court judged that the images consisted of political satire and was not a comment on the councillor’s private life, noting that political representatives should be expected to be exposed to political satire and accept a greater degree of tolerance.

However, the case raised a dilemma in that one right, that of freedom of expression protected under Article 10 of the Convention, conflicted with the right not to be subject to discrimination, as protected under Article 14. While the Court ruled that the blog owner’s right to freedom of expression under Article 10 of the Convention had been breached, it recognised that the published image showed “regrettable stereotypes relating to women in power”. In its decision, the Court reflected: “Gender stereotypes pave the way for contempt and discrimination against women in professional life, and particularly in political life. While their use should generally not be the subject of criminal prosecution, all State authorities must show sensitivity in cases where women are the victims of such stereotypes, whether in serious publications or satire. They should also be aware of the ‘chilling effect’ that such use could have on other women wishing to enter or pursue a political career.”⁶²

BLASPHEMY AND DEFAMATION AGAINST RELIGIONS

Religious communities and leaders in many states have an influence on state policies, some to a greater extent than others. Artworks that tackle abuse by religious figures or question the role that religion plays within the power structures can be deemed by those in authority to be undermining not just religion but also wider society itself, and challenging traditional family values. The destruction and banning of works that explore the dynamic between religion and state, and religion and sexuality and gender, are portrayed as a defence of the “ordinary person” against a “bohemian”, entitled elite whose aim is to destabilise national values and who, by extension, ultimately, are traitors to the state. This can bring not only legal consequences but also the ire of religious groups stoking violence and media vitriol.

60. *Erdogan v. Böhmerman*: globalfreedomofexpression.columbia.edu/cases/erdogan-v-bohmermann/, accessed 30 September 2022. Note also that the court ruled that Böhmerman had made gratuitous insults to the president or his behaviour, unrelated to actual criticisms or reality, and that these were not protected by the right to artistic freedom or freedom of expression.

61. Sources: [legaldb.freemedia.at/legal-database/](https://legaldatabase.at/legal-database/) and www.politico.eu/article/european-countries-where-insulting-head-of-state-can-land-prison-belgium-denmark-france-germany/.

62. *Patricio Monteiro Telo de Abreu v. Portugal*, Application No. 42713/15, 7 June 2022.

In June 2020, the European Humanist Federation issued a statement calling on 21 European states to abolish their legislation penalising blasphemy,⁶³ describing those laws as largely archaic and, with some notable exceptions, mostly unused. Indeed, as Freemuse noted in its 2020 annual report, religion was the third most likely rationale to be used to prosecute artists after politics and indecency. In several of these states the legislation deals with denigration of religions and has been used mainly to penalise speech that targets the religious beliefs of minority groups. In these cases, these laws blur into other laws protecting minorities against hate speech, where it could be argued such offences are more rightly placed.

In the few European countries where blasphemy laws are enthusiastically applied, artists are commonly the targets of these laws. In the period 2020-2022, some examples included the court case against a painting depicting the Virgin Mary as a gay icon, the detention of a singer for making a joke about religious leaders and the removal from display of a painting satirising a cardinal.

Unifaun Theatre Productions Limited and Others v. Malta

In 2018, the European Court of Human Rights found that the banning of a theatrical production in Malta of the play *Stitching* by Scottish playwright Anthony Neilson was a violation of the right to freedom of expression. The ban was issued by the Maltese Board for Film and Stage Classification because the play was deemed to be blasphemous, insulting to the victims of Auschwitz and portraying dangerous sexual perversion. The play tells the story of an unfaithful couple, who spend part of the play debating whether to have a child before Abby falls pregnant. They decide to have the child to save the relationship but, sometime later, when the child dies, their relationship disintegrates. Described as an extreme and unsettling work, the play is of a genre of works by playwrights who present vulgar, shocking and confrontational material on stage as a means of involving and affecting their audiences.

The ban was subsequently upheld by the Constitutional Court of Malta, ending any further possibility for redress domestically, and the theatre company turned to the European Court of Human Rights. The Court found that the law relied on to ban the production was unclear and that the regulations allowed for unfettered power in the film board's classification of stage productions. In his findings, the ruling Judge Kūris questioned the board's capacity "to rule on the 'literary, artistic or educational merit' of productions, 'if any', and to ban some of them as 'not fit for exhibition'. This privilege, so indiscriminately worded, smells of discretionary censorship".⁶⁴ Since the judgment of the European Court, in September 2018, the play was performed by the theatre company in Malta for the first time since it was banned with no significant public outcry.

The case had a wider, positive impact, with the protests against the ban playing a part in the removal of blasphemy as a crime in 2016 by a new government less influenced by religious bodies. The Maltese Board for Film and Stage Classification was also replaced by a Film Age Classification Board that would no longer be able to censor works.

There has been a positive trend in recent years towards abolition of blasphemy laws, notably in Ireland (2021), Greece (2019) and Malta (2016). While retaining blasphemy in law had been enthusiastically campaigned for in these countries by governments and religious leaders professing to be speaking for "the public", it transpired that they were actually at odds with public opinion. In Ireland, a 2018 referendum on blasphemy laws was overwhelmingly for its removal, with nearly 65% of voters calling for its abolition. When the play *Stitching* was eventually staged in Malta 2018 after the lifting of the ban, it was to a sell-out audience with no public or other adverse reaction. The director of Unifaun said:

One reviewer came up to me and asked "What was the fuss all about?" He thought he was watching a trimmed down script because there was nothing, absolutely nothing that one could object to. It was hard. It was harsh but nothing out of the ordinary, nothing that should lead to banning the play.⁶⁵

There has been no major public reaction to the removal of the blasphemy law in Greece, despite the many attacks on artworks by the right wing just a few years earlier. It would appear that states professing to be speaking on behalf of public opinion in maintaining blasphemy laws have been found to be mistaken, and that support for such laws comes from a minority, be it an influential one.

63. OSCE (2020).

64. *Unifaun Theatre Productions Limited and Others v. Malta*: globalfreedomofexpression.columbia.edu/cases/unifaun-theatre-productions-limited-others-v-malta/, accessed 30 September 2022.

65. Interview with the Director of the Unifaun Theatre, Malta, 6 September 2022.

The removal of references to blasphemy from the Statute Book is not an attack on belief nor is it intended to privilege one set of values over another. It is a simple acknowledgement that the meaning of the concept of blasphemy is unclear and that the concept is rooted in a past where fealty to the State was conflated with fealty to a particular religion. (David Stanton, Minister of State to the Department of Justice and Equality, speaking to the Seanad Éirean (Senate of Ireland) in September 2019)

There is a fine balance between insult to religion and incitement to religious hatred, requiring that such controversial works need to be considered carefully. Indeed, incitement to hatred, in whatever form, should be subject to criminal sanctions, which is the case in most European states. However, as the Venice Commission stated in a call for the abolition of religious insult and blasphemy laws: "it is neither desirable nor necessary to have an offence of insult to religion where there is no element of incitement to hatred".⁶⁶

VIOLENCE AND INTIMIDATION

A Council of Europe information document published in November 2021 noted a worrying trend in obstruction and interference in public gathering and protests. This included police intimidation, excessive use of force, arrests and in some cases criminal proceedings against journalists. Private and unidentified individuals also contributed to acts of violence and intimidation against protestors.⁶⁷

Although reports of oppression of the right to peaceful protest largely focus on the maltreatment of journalists attempting to cover demonstrations, media reports have made frequent reference to the participation of artists, be they displaying placards staging performance pieces during the demonstrations or musicians singing protest songs and encouraging demonstrators. By using their art forms to amplify the concerns of the protestors, they are highly visible among the protestors and find themselves targets for arrest and attack by police or private individuals. With the return of war in Europe, artists have similarly played a significant role in anti-war protests, some overt, such as poetry readings and performance art featuring anti-war slogans, and others more subversive, such as subliminal messaging in unexpected places. In 2022, many artists were arrested, beaten and in some cases brought to trial for their anti-war protests, mostly in Russia.

Mob violence, sometimes inspired, encouraged and at times orchestrated by politicians, is often not properly investigated. With no justice for the victims, this can lead to distrust in police and government and the belief that these acts can be carried out with impunity. Some instances of such attacks on arts in the past two years include mob assaults on an art gallery, documentary film makers set upon as they attempted to film, and online attacks against a satirical TV show.

Some media have played a role in heightening the dangers against artists in smear campaigns, which in turn leads to public attacks. There have been instances where artists who explore issues such as gender, minorities or religion or who question the status quo find their work labelled in the media as "treacherous" or threatening religious and traditionalist sentiment. This has stoked a public backlash, including demonstrations outside arts and culture spaces. The knock-on effect can be to deter theatres, venues and galleries from featuring similar works in future and funders and sponsors reconsidering what kind of work they are willing to support. The staging of a musical featuring a boy who decides to become a ballet dancer was forced off some stages following a combined aggressive media campaign condemning the work as promoting homosexuality and led to subsequent government policy aimed at banning such content. Unless governments take positive action to support artworks that come under such attacks and condemn statements that exacerbate them, they can be seen at best to be ignoring the threats and at worst to be in collusion.

Following her visit to Slovenia in 2021, Council of Europe Commissioner for Human Rights Dunja Mijatović issued a hard-hitting memorandum including comments on the negative impacts of a hostile public discourse on freedom of expression in the country, noting that "public debate in Slovenia has increasingly been marked by hostile, intolerant, and downright disrespectful communication. This is visible in public statements by politicians, articles in traditional media, as well as comments by the public on the internet and on social media".⁶⁸ This is a trend that has been noted elsewhere in Europe.

It should also be noted that some media have come out in support of artworks that have been censored. For instance, when a video by a feminist artist was removed from a gallery for reasons of "obscenity", mass public protests took place outside the galleries where images inspired by the contentious video were displayed and humorous memes featuring the artwork appeared on social media. This eye-catching and good-humoured

66. Venice Commission (n.d.).

67. Council of Europe (2021b).

68. Council of Europe (2021a).

mass response received good media coverage and led to the reinstatement of the video. In another country, public protests at the closure of theatres and the dismissal of arts teachers at universities led to thousands of protests by actors, students and others in the cultural sector, locally and internationally. However, while this was widely covered in the media, both positive and less so, this did little to reverse the government policy.

GENDER, SEXUALITY AND “FAMILY VALUES” – CONSERVATIVE TARGETS

I feel so restricted. The work I do [at home] is very different from the work I do [outside the country]. I have to think about the audience. I have to think about religion. Religion puts a different aspect on the female body ... I don't want my body to be oppressed in that way or covered that way. (Dancer at the Ljubljana meeting)

Traditionalism and conservatism are growing trends across Europe alongside the rise of populism. This has had a negative impact on the ability to create art on issues around LGBTI, women's rights, religion and other works challenging traditional norms. This trend is illustrated through several cases of the banning of LGBTI-themed performances, festivals and books, and legislation against expressions seen to be “promoting homosexuality”. Attempts to ban and suppress LGBTI expression are typically led by conservative and orthodox religious leaders, often openly supported by heads of state.

Mounting anti-LGBTI rhetoric and actions against the community and the instrumentalisation of homophobia by populist governments to gain votes or cement their power is of grave concern. In January 2022, Council of Europe Commissioner for Human Rights, Dunja Mijatović, noted the “political manipulation of the human rights of LGBTI people is on the rise in Europe and symptomatic of a more general attack on and disregard for human rights”. She referred to a planned national referendum in Hungary on children's access to information on sexual orientation and gender identity held in April 2022.⁶⁹ The previous year, legislation was passed that restricts material on homosexuality from libraries and media that can be accessed by minors. The, ultimately unsuccessful, referendum was considered to be aimed at cementing the government's anti-LGBTI policy, seen by the Council of Europe and others as political instrumentalisation of homophobia.⁷⁰

Two years earlier in a memorandum on Poland in 2020, the Commissioner had also noted negative trends in the country targeting LGBTI people and activities in a “visible rise in hateful rhetoric” by public officials and prominent figures in society. This was contributing to “stigmatising and hate speech that [carries] a real risk of legitimising violence”.⁷¹

Feminist art and artists have also come under attack, with works brought to trial for “obscenity” and attempts to remove public art celebrating women's achievements as being too “political”. Added to this is the fact that women artists are also disproportionately attacked and threatened on social media, and work exploring women's issues and sexuality are taken down from online sites for breaching internet service providers' community guidelines. Recent cases of attacks on gender-related artworks include an installation featuring nudes removed for “obscenity”, an artist prosecuted for her “body positive” drawings, works relating to anti-abortion movements removed from an exhibition and a bookshop fined for selling an illustrated book depicting a gay family.

Through movement I can use censorship as a tool. If I don't use words, I can still make a work about abortion, about being in the female body, about being oppressed or of the covering of women. If I don't call it that but on a physical level I can transcend and shift ... It is words they are scared of. (Dancer at the Ljubljana meeting)

“NUISANCE” CASES – STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION

In countries where the judicial system is robust, as explained by a lawyer interviewed for this report, when an artist is charged for their creative work, the tendency is that the court will decide in their favour, sometimes dismissing the case at first hearing. Yet there is a phenomenon, known as strategic lawsuits against public participation (SLAPPs), of vexatious cases taken by wealthy, powerful individuals and private companies in the knowledge that their complaint is likely to fail. The aim is not necessarily to win a case, but to eat up the time and money of their critics, forcing them ultimately to abandon their criticism. Journalists, the main targets of these actions, have been intimidated into dropping investigations. For artists whose work challenges the powerful and big business, they are also a threat, and particularly so given the relative financial weakness of people working in the cultural sector. For example, a leading public figure who is the subject of a satirical play could decide to turn to the courts by alleging accusations of insult or defamation. Their

69. The referendum was deemed invalid after more than half the ballots cast had been spoiled, part of a campaign led by pro-LGBTI NGOs.

70. Mijatović D. (2022a).

71. Mijatović D. (2022b).

sole aim could be to intimidate without any real expectation of winning the case, leading to a wider chilling effect on creativity. The SLAPPs phenomenon has been identified by the Council of Europe Commissioner for Human Rights,⁷² which has led to a committee of experts made up of representatives of member states and independent experts being subsequently set up, tasked with drafting a recommendation on SLAPPs by the end of 2023.⁷³

THE COVID-19 PANDEMIC AND CREATIVE FREEDOM

The coronavirus (Covid-19) pandemic is a cataclysm for cultural rights. (UN Special Rapporteur in the field of culture, Karima Bennouna, February 2021)⁷⁴

Arts and culture played a crucial role during the pandemic, helping to build resilience, promote public health messaging, mental health and well-being, and combat intolerance. For many, the arts were a lifeline, providing entertainment and stimulation and helping to prevent isolation. Performers unable to take to the stage, and their audiences unable to see them perform, were able to turn to digital platforms to show and enjoy music and theatre, usually at no cost to the audience. Artists also went online giving classes ranging from life drawing to choir singing. On a practical level, arts and crafts people rallied, using their studios and tools to produce protective clothing and masks and other essential protective equipment. Cultural institutions used their buildings' facades to display health messages and others gave over space for vaccination centres.

Yet the cultural sector, already one of the least supported sectors, was also one of the hardest hit, with artists suddenly unemployed and without income and museums, theatres and galleries abruptly closed down. When the pandemic began to lift, it was one of the last to be able to return to normal as restrictions on gatherings continued.

The "shrinking space" for freedom of expression in general under the crisis saw existing problems in the arts and cultural sector enlarged and accentuated. During the crisis, emergency measures were put in place that went beyond what the situation called for and which tended to target existing critical voices. Across the world, the pandemic provided a "cloak" for human rights abuses, censoring and criminalising artists with already dissenting views. These include being more likely to have emergency powers disproportionately applied against them, such as restrictions on gatherings and curfews, or their messages criticising government handling of pandemic banned on grounds of creating public unrest.

In a conflation of attempts by foreign governments to exert control over creative freedom in a European country and commentary on the Covid-19 pandemic, in January 2020 the Danish government refused to accede to the Chinese government's demand for an apology for a cartoon published in Denmark depicting a virus with the Chinese flag.⁷⁵

At the time of writing this report, the Covid-19 pandemic has receded, as has the often-heated debates on what measures should be taken to combat it. However, should the virus re-emerge, or another health crisis arise in the future, note should be taken about the importance of free and open debate in promoting better understanding and building confidence in government and medical professional advice and restrictions.

ONLINE DANGERS AND THREATS

Digital technologies, notably social media platforms, have transformed the creative sector, providing platforms where artists can display and promote their work, share work for the public to enjoy and raise revenue for themselves. Online platforms are also used to circumvent censorship in countries where certain topics are off limits and where physical displays and performances are banned or are met with violence. At the same time, digital surveillance by governments has led to penalties against artists.

There is often a backlash from other online users especially on issues around gender, transgender and homophobia, immigration, antisemitism and challenges to religion, among others. "Trolling" and threats from other online users can intimidate artists into withdrawing their work, their platforms being overwhelmed with negative and violent commentary. The full extent of the impact of online violence and threats to self-censorship is not fully known.

72. Council of Europe (2020b).

73. Article 19 (2022).

74. OHCHR (2021).

75. www.bbc.co.uk/news/world-europe-51295225, accessed 30 September 2022.

Artists are also among the many people who have been brought to trial or threatened with penalties for their posts on issues ranging from criticism of politicians through to support for minorities and for LGBTI and women's rights.

Another threat comes from the digital platforms themselves through their censorship mechanisms, called "community guidelines" or "standards of behaviour". These rely in large part on artificial intelligence to identify what is inappropriate, such as promotion of violence, hatred or obscenity. These mechanisms are clumsy and artificial intelligence is inclined towards misinterpretation of legitimate imagery and comment, notably on nudity and exploration of controversial topics. Denial of an online presence can be particularly harsh for artists who rely on the Web to connect with their audience and as a means of income generation, so the taking down of their social media sites can be calamitous.

Female artists are especially targeted online, suffering misogynistic threats and abuse especially for works exploring sexuality and inequality. In its 2019 report on the challenges faced by women artists in the digital sphere, Freemuse paints a picture of "a breeding ground for online gender threats and abuse". The report includes interviews with women who talk about the impact this has had on their creativity.⁷⁶ The Council of Europe has also identified women as being particularly exposed to such violence, affecting them disproportionately and discouraging them from entering the digital world. State condemnation of these attacks and bringing to trial those who use the internet to intimidate women, and indeed other minorities, is essential to curb the threat.⁷⁷

Guides for artists on how to handle online threats are a useful tool, such as PEN America's "Safety Guide for Artists", which includes a chapter on digital safety.⁷⁸

Don't Delete Art is an online platform where artists can submit work that has been removed from their social media accounts under community guidelines as being objectionable, such as obscene, offensive or sexually explicit. These guidelines are often unclear and artists face difficulties in finding out the reasons for the removal or having their work reinstated. Much of the removed material features nudity that is hard to define as "obscene". Curated by artists and independent experts, the aim of the project is to get social media companies to review and amend their guidelines on regulating art online to ensure artistic freedom and allow art to circulate freely. www.dontdelete.art

76. Freemuse (2019a).

77. www.coe.int/en/web/cyberviolence/cyberviolence-against-women, accessed 30 September 2022.

78. artistsatriskconnection.org/guide/safety-guide-for-artists, accessed 25 January 2022.

CHAPTER 7

DEVELOPMENTS WITHIN EUROPE – “UNDER THE RADAR”

The impact of populist politics in Europe on freedom of expression, including artistic freedom, has been growing in recent years. This is manifested through government actions, hostile media reporting and civil society groups claiming to be acting on and responding to public grievances. The media plays a significant role in promoting nationalist, anti-immigrant and traditionalist viewpoints, often stoking public antipathy towards democratic principles. In countries that in the past had relied on security forces to control free speech, these are being replaced by state-controlled or state-reliant bodies, a new and subtle, but effective, form of censorship.

Information on the “above-the-radar” attacks on artistic freedom is relatively easy to gather and to monitor, such as arrests, prosecutions and imprisonments, which tend to be reported on in the national media and often become causes célèbres. While, thankfully, killings of artists for their work are rare in Europe – none have been reported in recent years – physical threats by police or mobs are also often well reported. The cases of artists who are prosecuted for their writing or commentary on social media may also be taken up by media freedom groups.

It is the “under-the-radar” threats that are less well recorded, if at all, yet it is these that have an impact as much, if not more so, on artists’ ability to create freely. These are wide ranging and include undue government pressure on cultural institutions, artists “blacklisted” because of their political viewpoints, their gender, minority or other status, and so on. There is also the pressure, sometimes overtly violent but often not, by people who may or may not be affiliated to governments. These may appeal to nationalistic instincts, referring to works as “unpatriotic”, and may come from organisations such as those representing the families of soldiers or war widows’ associations who appeal to public “patriotism” to close down art works that are seen as anti-war.

Just as subtle, but at times difficult to pin down, are the administrative restrictions that are applied more harshly against some artworks than others. These may be regulations that might otherwise seem reasonable but are being more frequently applied to work that is critical of those in power or created by certain groups. These measures have included health and safety regulations used as excuses to close down an event and denial of performance in a public place that would otherwise be granted to other artists. Curfews and decibel restrictions have been applied to music seen to be political or that upsets traditional values. Limits on the type of advertising that can be displayed, such as bans on alcohol advertising for religious reasons, may not be directly linked to a performance but can remove important sponsorship in the name of protection against immoral behaviour. The denial of production and presentation spaces is another aspect of subtle censorship, as are local authorities evicting cultural sector tenants working on critical topics. There have been instances where governments have implemented “nuisance” measures, such as implementing repeated audits to shut down an organisation for a time, extended by detailed information requests, with tax or other officials ensconced on their premises for long periods while these checks are carried out.

This “gentler” censorship has made the repercussions for transgressing boundaries of what can or cannot be said more unclear compared to when “heavier” legislation is applied. This makes traversing the terrain of creative freedom in some ways more perilous. As a participant at the meeting in Ljubljana said, “Subtle political pressure or barriers are worse than being able to see the enemy clearly.” Another expanded on this: “We always know which subjects are sensitive, but we never know clearly where the lines are drawn, and you never know how things are going to be interpreted [by those who are in power or don’t agree].”

The Ljubljana artists referred to a recent phenomenon where governments are reacting to “cancel” culture, where arts and academic institutions deny platforms to individuals to take part in debates, show or perform their work. These are usually applied on grounds of racism, political or religious extremism, although sometimes for more contentious reasons, and it is most often applied by groups of a left-wing or liberal persuasion. In countries led by right-wing or populist governments, there is an adverse reaction to this “de-platforming”, where the authorities paint themselves – as one artist described it – as being victims of minorities. In one country, a state-sponsored museum hosted a deliberately provocative exhibition of work by right-wing artists including those banned in other countries for their antisemitic and racist works in an open challenge to liberal artists.

INSTITUTIONAL SELF-CENSORSHIP – MUSEUMS, CULTURAL AND ACADEMIC INSTITUTIONS

The influence of populist and authoritarian nationalism on freedom of expression, including artistic freedom, is manifested through undue government influence on the leadership and policies of museums, broadcasters and other cultural institutions. This pressure has been direct, including dismissals and terminations of contracts of museum directors and withdrawal of funding, or more subtle, where a climate of public criticism in the media and ostracisation has led to others to decide to leave their posts. Added to this, many cultural spaces – theatres, venues, galleries – are government or church owned, and in some smaller states, alternative spaces are limited as are the opportunities to stage works that may not conform to dominant political or religious ideologies.

Curators and directors of cultural institutions are particularly targeted, as has been seen in several countries across Europe, and are under pressure not only from governments but from other forms of influence across the political spectrum. Some who have ignored government demands to remove or not display works have suffered the consequences. Others have found themselves in trouble when, for instance, an artist who has been commissioned to include their work in an exhibition has not informed the curator of its contentious content. The curator and the artist may indeed not have been aware that the work was likely to create a negative reaction, officially or publicly. While usually it is not the creator of the work that is penalised, it is the directors or curators who take the brunt of censorship and are dismissed or forced to resign when the artists themselves may not be castigated.

For people employed in institutions under political pressure, there is the quandary of when to submit to demands not to feature work, whether it is more useful to fight from within or to resign. The Ljubljana artists noted that it was at times a question of resigning or waiting to be fired. A participant at the meeting told of a situation in a gallery they were running in a small town. For an exhibition at that gallery an artist had been interviewing Jewish people who had left the country for Israel some years earlier. Local neo-Nazis heard of the project and expressed their antipathy to it, such that the gallery director, fearing for their safety, asked for a security company to be present at the exhibition opening. Pressure escalated as the neo-Nazis staged a campaign demanding that the exhibition feature their alternative antisemitic narrative. Instead of supporting the gallery, the local authority questioned the date of the opening event as it coincided with a regular visit to the town by religious figures. This felt to the gallery director to be an excuse for shutting down the event rather than protecting it from attack. “It felt like a toxic relationship; it is like being gaslighted by an abusive partner.” She considered staying in her job, but eventually realised that “this is only the beginning” and decided to resign soon after the exhibition closed.

The threats against cultural institutions are such that some have safety training programmes for dealing with aggression by activists, at times a sadly necessary measure. However, one participant at the Ljubljana meeting, herself a curator and museum director, noted that these can have the unintended consequence of making directors think twice about inviting risky work into their institutions. Similarly, advice from police forces that cultural institutions shut down performances and exhibitions threatened by angry mobs can be heavy handed. Demands that police protection be paid for by the institution can be unaffordable. It brings a dilemma of balancing the authorities’ duty to protect artistic freedom with protecting public safety.

State interference in and the acquiescence of public institutions has led to distrust among some artists who have turned to commercial, private, fringe and alternative venues. However, these too are not free from political pressures and may also be looking over their shoulder for possible litigation, loss of funding, a publicity backlash and other repercussions similar to those faced by state institutions.

The Council of Europe has passed several statements and recommendations over the years on the importance of protecting the independence of public broadcast services as an essential element of a healthy democracy⁷⁹ A large number of people working in the film and television production industries are reliant on commissioned work from public broadcasters. There are concerns that these are subject to political interference similar to that seen in cultural institutions, setting limits on the type of content that can be produced. Screenwriters in one country who were interviewed for a study by the Federation of Screenwriters in Europe on creative freedom in the television and film industry said they would not consider approaching their public broadcaster to commission material that included content on topics that did not chime with the leading party ideology. Notably, when working on publicly broadcast popular historical screenplays or documentaries that had been commissioned, they spoke of having to edit out references that did not conform to the official narrative on the country's history.⁸⁰

“Astonishing, sometimes nearly absurd” – Political interference in museum policy

In June 2022, a report was commissioned by the International Council of Museums, the International Committee for Museums and Collections of Modern Art (Cimam) and the International Committee for Museum Management on museum governance management. Entitled “Museum watch governance management project”,⁸¹ the report found “a pattern of astonishing, sometimes nearly absurd, cases of primary interference of politics in museum governance, virtually annihilating the capacity of the institutions ... These interventions are often framed ideologically, but actually are often incidental to a degree that makes them almost aleatory [random],” according to Bart De Baere, chair of the Museum Watch programme and director of the Museum of Contemporary Art in Antwerp. The report will serve to shape a set of guidelines on how to guard against political intervention, to be considered by the International Council of Museums.⁸²

A common complaint among artists and cultural workers about government appointees in cultural institutions is that many do not have experience in the culture field, having been appointed for their political allegiance. A Ljubljana participant described them as “mediocre and incompetent”. This is also picked up by the Museum Watch report which noted that political representation can create often sizeable boards of directors on which people sit who are not necessarily in touch with the sector and the mission of the organisation. This perceived lack of competence serves to further erode artists' trust in and increase their unwillingness to engage with these institutions.

Yet the tendency to believe that politicians should be kept out of cultural institution governance denies the importance of government support for culture, and by extension, the right to artistic freedom. What needs to be done, as the Museum Watch report suggests, is to ensure that boards “work” for the institutions rather than for external stakeholders.

One artist at the Ljubljana meeting spoke of an underlying and undisclosed climate of institutional censorship which makes it feel that these organisations “are against artists”, some of whom may approach an institution to publicise their work, at first receiving encouragement from that institution, only for it to then censor the project in the final stages because they are suddenly afraid of the consequences: “So, there is this lack of transparency, and this lack of being on the same page that creates self-censorship within the institutions.” Another artist noted that in their country the cultural institutions are in effect the economic arm of politics and an independent artist may not wish to have any connection with them: “Everything is centralised, and the government has its hand on it. So, you don't want to touch [it] at all.” This, they added, means that there are few opportunities with institutions for those artists who wish not to be associated with the politics of their governments.

Lack of trust in and not wishing to be associated with governments, or a refusal to amend work to suit the demands of that government mean that many artists cannot or do not wish to apply for state funding and will boycott government-led institutions, preferring to find alternative spaces and sources of funding, even if this means working “underground”. Yet the financial imperatives are such that this is not always possible.

79. The Council of Europe website includes a useful page on public service media: www.coe.int/en/web/freedom-expression/public-service-media.

80. Whyatt S. (2022).

81. CIMAM (2022).

82. Pryor R. (2022).

“Victory is not an option” – Preparing for and handling controversy

Training and preparation for handling possible negative reactions to a controversial artwork can help to inspire debate within an informed and safe environment and avoid division. The “Victory is not an option” exhibition by the controversial Italian artist, Maurizio Cattelan, held at Blenheim Palace in the UK is a case in point. In 2019, Cattelan was invited to produce work for an exhibit at Blenheim Palace, a venue known for bringing contemporary art to a historical palatial setting, one built in the 1700s to celebrate military achievement. Cattelan is known for his satirical, often controversial work with a satirical take on nationality, power and wealth. The exhibit included some controversial pieces, such as a taxidermal horse slung from the ceiling, a figure of the pope struck by a meteorite and a golden lavatory. As the palace is a popular tourist site for visitors wishing to explore British military history, many would not necessarily expect to see such work in those surroundings and would feel uncomfortable when confronted with it. Expecting a negative response from visitors and media, and amid concerns from museum guides about how they could handle this, the museum held workshops for staff, providing them with guidance on how to respond to visitors, including a documentary about the artist and the artist’s own explanation of his work. Information booklets addressing the controversial work and Cattelan’s intention were given to visitors, alongside disclaimer warnings for the most difficult pieces. Curators and information assistants were on hand to answer questions and provide opportunities for feedback. While visitor reaction was split evenly between negative and positive, the exhibition turned out to be one of the most popular held at the palace. Controversy did not lead to extreme action, although, the curators noted, it was a piece that they had not predicted as problematic that caused the most upset – Cattelan’s placing a British flag on the walkway into the building, requiring visitors to walk on it. Interestingly, it was mainly US and Canadian visitors who felt most uncomfortable doing so, and not British visitors, revealing that insult to national symbols is perceived differently by different nationalities.⁸³

UNDERREPRESENTED GROUPS

Hostility towards immigrants, ethnic and other minorities is prevalent in Europe, and has been accompanied by ugly scenes of violent protests, hate speech and online and physical abuse. This has long been a standing concern for the Council of Europe, and through its European Commission against Racism and Intolerance (ECRI)⁸⁴ it monitors and makes recommendations for tackling hate speech. The European Court of Human Rights has also adjudicated on hate speech issues, notably in relation to artworks that have been used to promulgate racial violence, as in the case of French comedian M’bala M’bala. He turned to the European Court of Human Rights to protest against his censorship on the grounds of antisemitism and holocaust denial. His appeal was overruled and the judicial action against him deemed legitimate.⁸⁵

Anti-terror legislation, as referred to above, is disproportionately used against minorities, notably in Türkiye, as Council of Europe Commissioner for Human Rights Dunja Mijatović found during her July 2019 visit to investigate the state of human rights in the country. She issued a strongly worded press release, stating her alarm at what she found. Human rights defenders, lawyers and journalists, she said, were being silenced by judicial and administrative actions, particularly in terrorism-related cases. She noted an “unprecedented disregard for even the most basic principles of law, such as the presumption of innocence”. She also noted the hostile environment evoked by a “virulent and negative political discourse”.⁸⁶ The hostile environment described by Mijatović has, according to cultural rights commentators, had a severe impact on Kurdish culture, with theatres and cultural centres closed or taken over by Turkish government officials. As noted by one of the Ljubljana participants, the linking of Kurdish expression with terrorism has also meant that the Kurdish diaspora across Europe has been tainted as “supporters of terrorism”, which has an impact on their capacity to access the Kurdish language and culture outside of Türkiye. They observed that cultures and the cultural heritage of minorities are being eaten away because of conflicts, nationalism and populism both at home and elsewhere.

83. Index on Censorship (2020).

84. www.coe.int/en/web/european-commission-against-racism-and-intolerance/.

85. *M’bala M’bala v. France*: <https://globalfreedomofexpression.columbia.edu/cases/mbala-v-france-no-2523913/>, accessed on 30 September 2022.

86. Council of Europe (2020c).

It was noted in Ljubljana that racism is still unacknowledged within the cultural sector in some parts of Europe, with, for example, the use of black face and derogatory depictions of Romani people in theatres going unquestioned. These are rarely challenged within some arts communities and minority rights are little discussed even among people who are otherwise engaged in confronting authoritarianism, gender and LGBTI rights. The perception is that minority rights remain of lesser concern in the creative and arts communities in several countries.

In addition, migrant and minority group artists often find that they are subject to repression from within their own communities for holding traditional and religious values or for bringing with them the political conflicts of the countries they have left. This can be especially isolating for a person who has fled a repressive regime in the hope that they will be able to practise their art in safety, only to find that they continue to be endangered in their new homes and are unable to practise their art for fear of retaliation from their community, alongside having to endure more general discrimination.

Structural injustice in the arts, as elsewhere, is largely invisible, except to those who are affected. (Artist at the Ljubljana meeting)

There are few studies on the state of artistic freedom among minority and immigrant communities in Europe as a whole. Part of the reason for this is the structural inequalities embedded in the cultural sector. These “under-the-radar” issues are encapsulated in a study from March 2022 by Culture Action Europe, “Promoting the Inclusion of Europe’s Migrants and Minorities in Arts and Culture”⁸⁷ It describes how the diversity of cultures in European cities are:

not always mirrored in cultural institutions such as museums, galleries, theatres, concert halls, and festivals – both in terms of who leads and designs them, and what these institutions offer or display ... even well-intended efforts to celebrate ethnic and cultural diversity through art and culture have frequently overemphasised differences and folkloric elements, exoticizing minority groups rather than contributing to the normalisation of diversity within the broader society.

The impact on artists from underrepresented groups to create freely is difficult to measure, because of these invisible structural injustices. The inequalities span the cultural value chain, from access to education and recognition of qualifications to inclusion in all sections of production, either publicly or behind the scenes, and visibility in leading policy-making roles. As the European Parliament resolution on the status of the artist notes:

Artists and cultural professionals from marginalised communities, including women, representatives of racial, ethnic and geographic minorities, people with vulnerable socio-economic backgrounds, persons with disabilities and LGBTI people, have less access to artistic and cultural careers and fewer opportunities to develop long-term careers in the sector. (European Parliament resolution, 2021)⁸⁸

Another subtle yet important restraining factor discussed in Ljubljana is the considerable pressure some artists face to be a spokesperson for an entire community, whether that be a community of people of colour, a specific ethnic group or people who share the same gender identification. It was felt that the media were lazy, repeatedly asking the same individuals to speak on behalf of others, when in fact those communities include within them diversities of opinions and experiences. This is connected to the “fetishisation” of artists whose stories of victimhood are the only stories that those who publish or present them wish to hear. This in turn limits the ability to produce and share work that may not necessarily fit within those favoured narratives.

This constant need to be the spokesperson is a burden and negates diversity. The spokesperson feels isolated, without support and ... it is almost always a request to be represented for free (without payment). (Artist at the Ljubljana meeting)

Cultural policy makers in many European countries focus on increasing diversity and access to culture, issues that are wider than the remit of this report. The impact on artistic freedom of structural, social and economic inequalities should be factored into policy making.

87. Culture Action Europe (2022).

88. European Parliament (2020).

STATUS OF THE ARTIST – SOCIAL AND ECONOMIC RIGHTS

Art brings with it insecurity and vulnerability (Artist at the Ljubljana meeting)

Financial uncertainty in the sector is a hidden cause of self-censorship that is difficult to quantify. Much creative work is a collaborative endeavour needing the support and backing of many parties: other artist collaborators, production companies and broadcasters, publishers and theatres, art gallery administrators and festivals, and so on. As referred to elsewhere in this report, work that challenges mainstream narratives, notably on interpretations of history, immigration, gender rights and traditional values, may bring the artists responsible to the attention of governments, elicit a hostile public reaction or result in reputational damage that can lead to a loss of grants and exclusion from awards, nominations and future employment. Typically, creative work that explores social and political issues is reliant on government funding and public sponsorship, which may be influenced by the dominant political or social ideologies. Cultural institutions of all sorts are wary of losing sponsors, publishing deals or access to display and performance spaces and also face the threat of public attack by government and in the media when presenting works that diverge from the mainstream. Avoiding such a fate can lead to under-the-radar removal from the public sphere of “difficult” material. Such undisclosed censorship violates no laws, so is difficult to identify and therefore to oppose.

Adjusting creative output or even choosing not to take on certain topics is intrinsic to the creative sector, where work is amended to meet the needs, interests and demands of the audience, funders, sponsors and commissioners. This is reasonable pragmatism. The question is, where does this tip over into self-censorship? Can being overly cautious lead to important and challenging ideas and expressions never surfacing?

The public perception of artists’ work as frivolous and self-regarding, playing an insignificant role in the health of the economy, serves to denigrate the profession as a whole. This in turn undermines the social and economic status of the artist, forming the view that creative work can be done for little or even no pay. Life as an artist or cultural worker in many societies is a precarious one, typified by a struggle for income, irregular employment under shaky or non-existent contracts, poor working conditions and lack of access to social benefits, among other things. If not already deterred from entering the profession under these conditions, many artists are unwilling or unable to take risks that could further undermine their livelihoods, and this limits the kind of work that can be created.

Much of the cultural sector, both for individuals and institutions, is reliant on support from governments and private sponsorship under which structural inequalities, such as discriminatory funding systems, are widespread even in the most democratic states. This discrimination includes only supporting work that concurs with the prevalent political ideology and excluding, deliberately or not, certain minority groups and unpopular expressions and art forms. Some artists see no point in applying for grants at all and those that already have such support may fear having it removed if they step out of line.

That government-funded institutions are paid for out of public taxpayers’ money leads to the rationale for excluding certain work that does not chime with the wishes of “the public”. Yet there are no clear measures of the extent of either public support or antipathy for certain artworks, and decisions are made through political imperatives. As one artist at the Ljubljana meeting said, “Public money’ is used as an excuse for not funding something or someone. This instrumentalises the public.” Another told of how she has to stop apologising for working on something that she thinks is for the common good, but then has to ask herself, what is the “common good”?

I have to fight for the right to a just and open society, yet also not to become hungry, which means we have to fight against this idea of not being worthy of receiving money and that we are only parasites, which has been put into our minds by a lot of politicians ... The perception of cultural workers and artists is that we are like sucklings on the breasts of the country, and the thing is that over time it gets to grow on you. This idea that you are actually a parasite, and you are not worthy of getting funds or that you should not have this special privilege of getting the money for your work. (Cultural centre leader at the Ljubljana meeting)

So, even without direct bans or harsh censorship, the overall impact of this insecurity and lack of regard for art and culture is to deny a truly diverse and pluralistic cultural life, one that reflects the various interests, needs and viewpoints of the whole of society.

Commercial work also comes with its restrictions, although not necessarily politically motivated. A mural artist at the Ljubljana meeting who creates murals for commercial clients told of the need to consult with a variety of parties: “You need to get commissions, talk to the guys who own the building, etc. You then need to curate the things you can show. It has to be positive. I can’t be critical and have to make what is expected.” On the other hand, he says: “There are fewer consultations when doing murals for schools, for example, but

then you can't make big political statements ... This economic climate makes you say, should I make that? Shouldn't I make that? How do I create work that can make a bigger impact?"

There was agreement in Ljubljana that in order to survive as an artist, to pay rent and to eat, artists need to be accepted by governments, society and people in general, and to accept that to go against the mainstream can be a long and lonely journey. As one writer reflected "If we stop expecting support and love all the time – and artists always want to be loved and supported and admired – if we just cut this out, maybe our life would be easier ... [but] maybe the outcome of our work would be more significant."

I have personally suffered for not fitting in or not doing things they want to be done. (Artist at the Ljubljana meeting)

One attempt to tackle the structural problem of reluctance to, as one participant described it, "feed the people who don't earn", is being made in Ireland, where in April 2022 the Irish government put in place a Basic Income for the Arts pilot scheme under which artists receive a weekly €325 payment under the programme that will be reviewed after three years. Inevitably there were far more applicants than grants – more than 9 000 artists applied for 2 000 grants – yet anonymity and the fact that grants were chosen at random ensured fairness and tackled discrimination.⁸⁹

What we are proposing to do in Ireland goes further than any other support I know of internationally, in that a basic income will be offered to artists and creative arts workers, not as a social protection support, but instead in recognition of the intrinsic value of artistic practice allowing artists and creatives to focus on their practice and be compensated appropriately for it. (Catherine Martin, Irish Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media)

SELF-CRITICAL VIEWS FROM THE NORDIC REGION – CULTURAL FUNDING AND ARTISTIC FREEDOM

In most European countries there is state support for arts and culture, although this is a small proportion of their overall national budgets. The funding aims range from subsidising and promoting "traditional" heritage; other forms of funding serve as instruments through which to promote government policies and perspectives. Some are clear in their objectives to support art that is innovative and that challenges established customs, recognising that these expressions are not simply provocations, but play a part in a healthy democracy. Yet there is concern that some funding bodies have become increasingly policy driven, inadvertently hindering creative freedom, for instance by favouring projects that have societal relevance and impacts that fit with the government's priorities. This has affected artists' access to support for work that may not fit within these priorities. In some cases, demands, such as a clumsily framed focus on diversity in programming and recruitment, have had an unintended restraining effect, even on the communities that the funding intends to support.

The role of funding bodies in inadvertently hindering creative freedom is starting to be acknowledged. A June 2021 study by the Swedish Agency for Cultural Policy Analysis (Kultur Analys) reviewed grant allocations and operations management at state, regional and municipal levels. Entitled "Så fri är konsten: Den kulturpolitiska styrningens påverkan på den konstnärliga friheten" (Art is free: the influence of cultural political governance on artistic freedom),⁹⁰ the review includes a survey carried out among artists and cultural workers from across the sector which found that some state grants negatively affected artistic freedom through their allocation and implementation. The primary reason was the suggestion that grant-making institutions valued certain perspectives in artistic content. This included institutions such as the Swedish Arts Council and its commitments to horizontal perspectives on issues such as diversity, LGBTI and interculturality. One example given is film funding criteria that led applicants to feel that there was undue influence on who can be represented in front of and behind the camera. Half of the artists surveyed for the report said that they had adapted their work on occasion towards perceived expectations. Around a third had abstained from applying at all for this reason. Many questioned how the Arts Council could live up to its ideal of artistic freedom in light of this. Similarly, regional and municipal grant-making authorities' requirements that art contribute to local attractiveness, the economy, public health and sustainability was seen to have undue influence on artistic freedom. The Swedish Minister of Culture, Jeanette Gustafsdotter, responded to the report in an interview on Swedish radio, saying that "artistic freedom is paramount to every activity", and made it understood that

89. Minister Catherine Martin speaking at the Basic Income for Arts Pilot Scheme Launch: www.gov.ie/en/speech/176c9-minister-catherine-martin-td-speaking-at-the-basic-income-for-the-arts-pilot-scheme-launch/.

90. Kultur Analys (2021).

self-censorship in cultural life must be removed and that her department would be revising their directives to those organisations dealing with grants for arts and culture.

In May 2022 the Nordic Ministers of Culture issued a report, “Konstens och kulturens frihet i Norden” (Freedom of art and culture in the Nordic region), in which it notes the power and influence that politicians and political bodies hold over the arts and cultural sector. It sees some failures in the “arm’s length” policy of funding to ensure separation of cultural policy from other policy areas, and in effect the “instrumentalisation” of culture towards other policy objectives.

Freedom of expression is a fundamental value that we share in the Nordic Region, and the need to safeguard the free role of artists and cultural practitioners is important at a time when we see that these values are under pressure. (Anette Trettebergstuen, Norway’s Minister of Culture and Equality)⁹¹

The report also asks that when arts and culture are used to achieve objectives in other policy sectors, there should be consideration of how this affects artistic freedom. Do the expectations that artists should contribute to democratic development, economic growth, a sustainable environment and other issues risk having an impact on creative freedom? It advises that cultural policies should refrain from narrow definitions of the boundaries on culture and arts, which can hamper creative development. Cultural policy should also be sensitive to the risks to artistic freedom from expectations that culture and arts contribute to other societal expectations and goals.⁹²

In both the Nordic Council and Swedish reports, the principles of the role of culture and the arts in influencing positive change was not questioned, and it was underlined that demands and expectations can have positive effects. However, the lack of clarity in the application and granting process needs to be addressed, such as improved communications on the assessment criteria and restraints on being seen to promote or encourage specific perspectives. The reports also recommend that to limit political influence, there should be non-political representation on the boards and other bodies that decide on cultural policy and funding.

Participants at the Ljubljana meeting made an important point that should be borne in mind when revising grant-making processes: complicated application forms that align not with cultural but with political needs add to the difficulties faced by applicants, especially for those who are not used to writing applications. This can particularly be the case for applicants from working-class and migrant backgrounds where the language used in the process can be cryptic, adding to their exclusion.

A note – Where self-censorship is not driven by fear

Some self-censorship is unavoidable and not always generated by fear of official or mob repercussions. It could be an artist’s respectful choice not to use figures of expression that could be offensive or harmful to others, driven by an awareness of the harm that problematic expressions bring. This may span hate speech, racism, xenophobia, anti-immigrant rhetoric and direct or indirect calls to violence. The lines between what is appropriate and what is not are often blurred and an awareness of this should be part of the consideration when creating works of art. More prosaically, there is also the pragmatism behind deciding to self-censor that is driven by the awareness that one needs to pick and choose one’s battles, to reserve energy and resources for what would have the most meaningful and effective outcome.

91. Nordic Co-operation (2022b).

92. Nordic Co-operation (2022a).

CHAPTER 8

NETWORKING, SOLIDARITY, “SAFE EXITS” AND BUILDING PUBLIC UNDERSTANDING – ARTISTS ADVISE

” The work of constantly being vigilant, fighting for one’s rights and values and so on is exhausting, draining and even boring. Artists and arts workers are criticised by both left and right. Some don’t see the reason to fight anymore. (Artist at the Ljubljana meeting)

In the face of the multiple challenges to freedom of artistic expression, networking and working collectively with other artists and institutions can combat exhaustion and demoralisation, and this was a focal point of the meeting in Ljubljana. As one participant said: “it is not always about government support but about networks of people who give each other trust and some kind of transparency as well. Nationally and internationally, even something local.” Another noted that the silo mentality that exists in the sector needs to be eschewed, and solidarity developed between artistic genres as well as institutions.

Competition between artists can be a block to collaboration that needs to be broken. One artist saw that “there is division and polarisation between artists ... It is so competitive and so many artists are working against each other. How can we make it about creating shift and focus?” Conversely, one of the arts sector’s strengths is its diversity, as another artist noted, but that also means it is not so easy to speak with one voice. However, when there are shared concerns, even where there are disagreements on other issues, it is possible to act in solidarity.

When artists come together to act collectively and in solidarity we are empowered. We have to act together or else we will be broken. (Artist at the Ljubljana meeting)

Networks can be vocal in demands for support, in gathering information on artistic freedom and in providing insights into the impact of repression on creativity. They can articulate why a challenging work has been produced and must be supported, can monitor the situation and provide support – moral and political – for other artists and institutions under stress. They can bring news of attacks on artistic freedom to international attention, broadening solidarity and support, and taking it beyond a local environment where the media may have its own algorithms and sometimes conservative agendas.

If there is no access to the institutions and the cultural elite in one’s own country, an artist can feel lonely but can get strength from the international community, described as “intellectual immigration out of your country”, by taking up placements and invites to events.

We need to dig for value somehow and to dig for connections within these bubbles of different kind of groups in the cultural sector and to start collaborations with people in spaces [independent of finance] or institution support to channel the energy of people who don’t want to cry anymore about the situation and instead to see it as a thing to be proud of. (Artist at the Ljubljana meeting)

Participants in the Ljubljana meeting called for the creation of a Council of Europe artistic freedom monitoring platform, similar to the existing platform on media freedom. Through this, or other mechanisms, there could be arts freedom alerts sent, critical cases could be flagged up and shared, with suggestions for joint advocacy, or, where appropriate, by using the Council of Europe’s bodies to raise issues directly with the states concerned.

SAFE SPACES AND “EMERGENCY EXITS”

In one country where staff and leaders of an arts educational institution were forced to resign and were replaced by government-approved staff, an “emergency exit” programme was created where academic institutions abroad offered places to the students who no longer wished to be taught under the new leadership. Staff who had been sacked also formed their own “free” university, which was privately funded and offered alternative teaching space within the country. The Ljubljana meeting suggested that these “emergency exit” projects could be replicated across the sector and in other countries that have come under similar pressures. Such international support, solidarity and generosity towards students and academics in crisis came with the outbreak of the war in Ukraine, when universities across Europe offered placements to enable them to continue their studies without having to apply for refugee status.

One suggestion raised in Ljubljana was that there could be a foundation set up to create a collection of works on artistic freedom in Europe, work that may be highly critical and that may not fit into the commercial art market. Such a project would support artists to be able to continue such work and to create an archive of collective knowledge that can be shared worldwide.

RESPONDING TO SCANDALS, SMEAR CAMPAIGNS AND APATHY – ARTS FREEDOM AND THE MEDIA

The media is central to building public understanding of the importance of art in society, including those works that challenge society and politics. Limited coverage of the arts in general, especially non-commercial work, was discussed in some detail at the Ljubljana meeting. Its absence from mainstream discourse contributes to the public perception that art is intimidating or inconsequential, and this lack of understanding and exposure to more difficult ideas makes challenging work more vulnerable to misunderstanding and attack.

Some media play an aggressive role in promoting antipathy towards “difficult art”, with smear campaigns and cooked up “scandals” over works, typically labelling their creators as “traitors” or accusing them of aiming to destroy religious and traditional values. Yet it is also for more mundane reasons that mainstream media do not cover arts. It may be that there is not sufficient money or space to cover non-commercial arts or the absence of well-informed arts critics. This lack of coverage is, in effect, noted one artist in Ljubljana, a form of censorship, creating a void of understanding between artists and the public. “Ignorance from the people and government can destroy freedom of expression, and because of this, your work in is vain.”

Ways should be found by artists to obtain coverage of arts freedom in the mainstream media. One way is to offer their own commentary on the more “scandalous” or controversial works, explaining why it had been produced and what structures it is criticising. This entails building good relationships with journalists and editors, and, as one Ljubljana meeting participant put it: “We should recognise that we share similar voices to those inside our countries, and not to always place ourselves as the outsider.” It was also acknowledged that raising a “scandal” in the mainstream press can backfire, and the possibility of a harsh response needs to be considered and prepared for. This could mean liaising with communities who may find such work challenging and having an open discussion with them on the reasons for its production. Legal advice may also be sought, as well as communication with police if there is a possibility of an aggressive response from pressure groups. Alongside this, consideration should be given to what the work aims to achieve, and whether playing provocateur at that moment is appropriate and beneficial.

Being asked in the media as to which [political] side are you on is not [a question] you feel you want to answer ... It’s a question of whether we fight the fight or fight only for ourselves. (Artist at the Ljubljana meeting)

Creating artists’ own independent media spaces, including online, where challenging art can be discussed openly, with artists and critics alike, examining supporting and opposing viewpoints, was another suggestion. The challenge is to counter the tendency for such specialist media to “preach to the converted”, and to reach out to the more mainstream media. This entails artists and specialists being proactive in approaching journalists to offer interviews and insights on contentious work.

The challenge remains that in states where the media is under governmental control and where freedom of expression is restrained in general, even sympathetic publications may not want to risk penalties or a public backlash themselves.

LEARNING ABOUT ARTISTIC FREEDOM

Education and training on artistic freedom is central to promoting understanding about artistic freedom, what it entails and why it is important. Few academic arts and culture institutions include modules on artistic rights covering the forms of protection that exist in national and international human rights legislation, how to manage risk or issues such as hate speech. This education should start early. As one artist in Ljubljana commented:

There is a need for sharing what has been done, for making the history of the struggle accessible to a younger generation so they can see what others have been doing before them. [It should be noted that] sometimes the change that you make is not today or tomorrow, but in the next generation ... The history of the struggle can inspire younger people; they don't have to start from the beginning ... In order to make change, one has to stop the discontinuity between generations.

To have artistic freedom is to be free to be oneself ... Artistic work should not just be a reaction to something from outside but [must] come from deep within; one needs to feel free and to see the artistic process as a playground, and this is something that audiences want too. (Artist at the Ljubljana meeting)

CHAPTER 9

RECOMMENDATIONS AND WAYS FORWARD

As this report shows, pressure on freedom of creation comes from a multitude of sources and means and affects many, from governments to civil society and cultural organisations to the artists themselves. Each are impacted by the suppression of artistic freedom and each can act to improve freedom of artistic expression.

The overarching aim is to ensure the fundamental right to freedom of expression is respected, for artists and the public alike, to create, share, participate in and enjoy culture. This requires a better understanding of how artistic freedom can be protected and promoted and what actions need to be taken to ensure it.

STATES

States should ensure that their constitutional or regulatory frameworks safeguard the right of artists to create without censorship or intimidation, to disseminate and/or perform their artistic works and for all citizens to freely enjoy artistic works both in public and in private.

The following key indicators act as gauges of how states can fulfil their obligations in this respect.

- ▶ States should respect the European Convention on Human Rights and the European Social Charter, as well as the judgments of the European Court of Human Rights.
- ▶ Legislation should conform with regional and international standards protecting freedom of expression, which specifically or *de facto* include the right to artistic freedom:
 - UN International Covenant on Civil and Political Rights (Article 19 on freedom of expression);⁹³
 - UN International Covenant on Economic, Social and Cultural Rights (Article 15 on the right to take part in cultural life and freedom of creativity);
 - Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, Article 10 – Freedom of Expression).
- ▶ Legislation that restricts freedom of artistic expression should be reviewed, with a view to abolishing or amending it where it prohibits artists from practising their right to freedom of expression. This includes:
 - laws that penalise insulting heads of state, national symbols and institutions, and leading political figures;
 - laws relating to insults to religion, ensuring that they are not used to suppress legitimate comment;
 - abolishing blasphemy laws;
 - removing the capacity of laws and other measures aimed at countering terrorism to suppress artistic freedom;
- ▶ States should promptly, effectively and impartially investigate cases of violence exercised against artists based on their sex, race, sexual orientation and gender identity.
- ▶ States should investigate and prosecute swiftly and independently threats and violence against artists and cultural workers.
- ▶ States should have independent bodies in place to receive complaints and to monitor and investigate violations of artistic freedom.
- ▶ Public authorities should develop and support initiatives to protect artists at risk or in exile.

93. All European states have ratified the ICCPR.

- ▶ States must ensure the independence of cultural institutions from political interference, including in appointments to boards and leadership positions.
- ▶ Measures should be in place to ensure transparency in government funding of grants and awards and to prevent political bias.

CIVIL SOCIETY AND CULTURAL ORGANISATIONS

Civil society, cultural organisations and organisations that work to protect freedom of expression and human rights should be encouraged to:

- ▶ ensure the inclusion of the concerns of artists and cultural professionals in their activities and policy making;
- ▶ share expertise and joint action in support of artists and cultural workers facing repression of their right to freedom of expression;
- ▶ include the right to protection of artistic freedom in their engagement with the relevant bodies at international, regional and local levels.

EMERGENCY PROGRAMMES AND SAFE PLACES

- ▶ Organisations providing safe places and relocation for individuals at risk should consider arts and cultural workers within their remit.
- ▶ Arts and cultural institutions should provide placements and platforms for artists and cultural workers at risk.
- ▶ Such safe spaces should provide areas in which artists and cultural workers can continue to practise, develop, and share their work.
- ▶ A database should be created, detailing the emergency funds available for artists at risk and ensuring it is accessible.

EDUCATIONAL AND ACADEMIC INSTITUTES

- ▶ Arts and cultural academic institutions should include modules that provide students with an understanding of artistic freedom, its importance, the challenges to it and the legal protection available, both domestically and internationally, as well as guidelines on how to anticipate and respond to adverse reactions.

LEGAL PROFESSION

- ▶ Legal practice needs to evolve to include support for artists and cultural workers prosecuted or otherwise attacked for practising freedom of artistic expression.
- ▶ There needs to be collaboration and an exchange expertise across national jurisdictions on the protection of artistic freedom.
- ▶ Where possible and appropriate, pro bono support should be provided for artists in recognition of their precarious social and economic status.
- ▶ Support and guidance should be provided to artists and the cultural sector to elevate cases to the European Court of Human Rights when all domestic avenues of appeal have been exhausted.
- ▶ Local and regional databases need to be created listing lawyers and other legal experts who specialise in cases involving artistic freedom and freedom of expression, which artists can turn to for support and advice.

FUNDING BODIES

- ▶ Funding should be provided for arts, cultural and advocacy organisations to monitor, document and advocate artistic freedom.
- ▶ An “arm’s length” approach should be adopted to grant allocations and funding, to avoid unnecessary demands that may restrict artistic freedom.
- ▶ The design and implementation of funding and grant directives should be led by independent cultural bodies.

ARTISTS

Artists and institutions need to:

- ▶ work together to monitor attacks on artistic freedom in their own countries, take collective action and provide moral support;
- ▶ work with other local and regional networks in the fields of culture, freedom of expression and other fundamental rights to share experiences and ideas for action;
- ▶ collaborate with regional and international freedom of expression and human rights groups to inform, monitor and advocate artistic freedom;
- ▶ work with mainstream media to encourage better coverage of arts freedom issues and to create their own media platforms for discussion and debate on challenges to the arts;
- ▶ work to create a public understanding of the importance of artistic freedom, its role in strengthening society and its part in a healthy democracy through all available means, including awareness raising in schools, at public events, in cultural centres, in the national media and at exhibitions.

COUNCIL OF EUROPE

The Organisation should:

- ▶ recognise the importance of the role of artistic creation and the cultural industry in promoting a democratic society, and to extend the protection of freedom of expression provided under Article 10 of the European Convention on Human Rights to freedom of artistic expression;
- ▶ promote the Manifesto on the Freedom of Expression of Culture and the Arts in the Digital Era among member states, making it available in all national languages;
- ▶ make clear that it is the responsibility of governments to ensure freedom of artistic expression and to refrain from attempting to limit the full expression of views, experiences and perspectives that make up a properly functioning cultural and artistic sector;
- ▶ include freedom of artistic expression in all relevant debates, mechanisms and formulations focusing on freedom of expression;
- ▶ publicly condemn attacks on artistic freedom through political support, public statements and other actions;
- ▶ provide platforms and opportunities for exchange between artists and arts and culture organisations, and for cross-sectoral exchange and collaboration, including between member states, international NGOs, human rights NGOs, the media and academic and cultural institutions;
- ▶ consider establishing a platform for artistic freedom similar to its safety of journalists platform where key cultural and artistic rights organisations can share alerts on creative freedom attacks;
- ▶ create a database of organisations engaged with artistic freedom, media freedom and human rights that can be turned to by artists and cultural workers for help in their own countries and across Europe.

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On 10 November 2020, the Council of Europe launched its Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era, to mark the 70th anniversary of the European Convention on Human Rights and to respond to concerns about consistent and varied attacks on freedom of artistic expression in Europe.

This report gives a comprehensive overview of the challenges that European artists and cultural workers face in the practice of their right to freedom of artistic expression. These range from laws that curtail creative freedom, attacks from non-governmental groups and online threats to the “under-the-radar” pressures that contribute to self-censorship.

It reflects the work carried out by the Council of Europe, other international intergovernmental organisations promoting freedom of expression and human rights, and non-governmental, civil society and cultural organisations concerned with artists’ and cultural rights, as well as the experiences and perspectives of artists. It concludes with recommendations on what can be done to protect artistic freedom, by international institutions such as the Council of Europe and by the cultural sector and artists themselves.

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The Council of Europe is the continent’s leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.