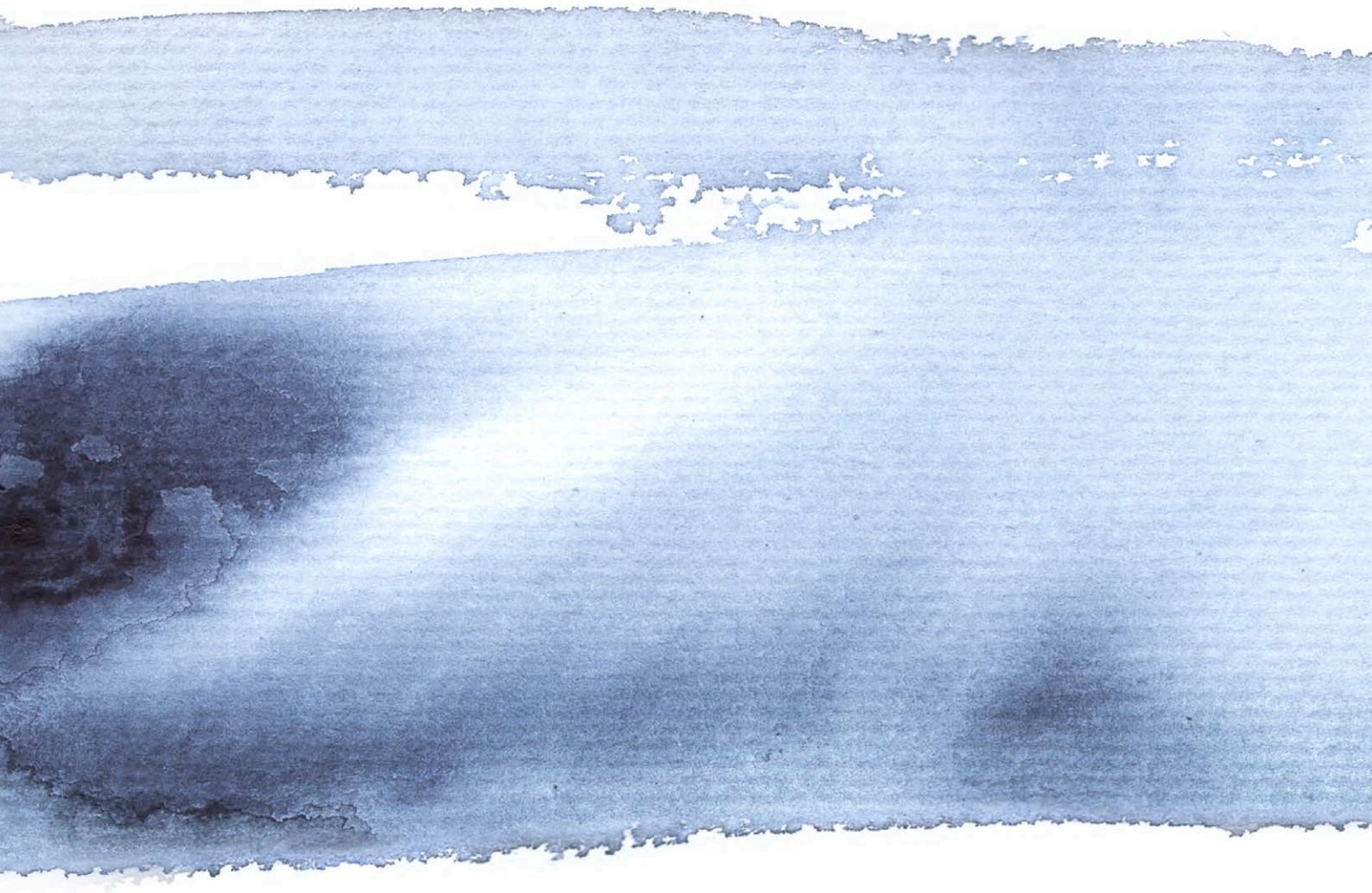
SECURITY, CREATIVITY, TOLERANCE AND THEIR CO-EXISTENCE:
THE NEW EUROPEAN AGENDA ON FREEDOM OF ARTISTIC EXPRESSION



FREEMUSE

Freemuse is an independent international organisation advocating for and **defending freedom of artistic expression.**

We believe that at the heart of violations of artistic freedom is the effort to silence opposing or less preferred views and values by those in power – politically, religiously or societally – mostly due to fear of their transformative effect. With this assumption, we can address root causes rather than just symptoms – if we hold violators accountable.

Our approach to artistic freedom is human rights-based as it provides an international legal framework and lays out the principles of accountability, equality and non-discrimination, and participation.

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Freemuse thanks the informants who spoke to us for this report, especially the artists who took risks to take part in this research. We also thank everyone who stands up for the human right to artistic freedom.

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of January 2020. Nevertheless, Freemuse cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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FREEMUSE

ABBREVIATIONS

AfD	Alternative für Deutschland/Alternative for Germany
ASP	Alternativa Sindical de Policía
BDS	Boycott, Divestment and Sanctions
FRA	Fundamental Rights Agency
CDDH	Steering Committee for Human Rights
CESC	Committee on Economic, Social and Cultural Rights
CJEU	Court of Justice of the European Union
CSO	Civil Society Organisations
CoE	Council of Europe
EC	European Commission
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
ENORB	European Network on Religion and Belief
EUCO	European Council
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LGBTI	lesbian, gay, bisexual, transgender or intersex
LSDDP	Lietuvos socialdemokratų darbo partija/Social Democratic Labour Party of Lithuania
LVŽS	Lietuvos valstiečių ir žaliųjų sąjunga/Lithuanian Farmers and Greens Union
MMA	Magyar Művészeti Akadémia/Hungarian Academy of Arts
NCAC	National Coalition Against Censorship
PiS	Prawo i Sprawiedliwość/Law and Justice (political party)
PHAS	Portsmouth & Hampshire Art Society
PKK	Partiya Karkerên Kurdistanê/Kurdistan Workers' Party
SNS	Srpska napredna stranka/Serbian Progressive Party
SPD	Socialdemokraterne/Social Democratic Party
TEU	Treaty of the European Union
UPR	Universal Periodic Review
QPR	Quadrennial Periodic Report

CONTENTS

EXECUTIVE SUMMARY

"Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations."

UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY, 2 NOVEMBER 2001, ARTICLE 1 CULTURAL DIVERSITY: THE COMMON HERITAGE OF HUMANITY.

The protection and promotion of freedom of artistic expression is crucial to both ensure that artists can express themselves freely through various artforms and for audiences to be able to enjoy diverse cultural expressions, including having their beliefs and opinions challenged by others. Unnecessary and illegitimate restrictions are often placed on fundamental rights and freedom of expression in times of uncertainty and securitisation, most recently through anti-terror legislation. Freemuse believes that it is the protection of the fundamental right to freedom of expression, rather than unnecessary restrictions, that ensure sustainable and long-lasting security. The role that artistic expression plays in this context in addressing socially pertinent issues as part of vibrant and functioning democracies cannot be underplayed or understated. Arts and culture are central to shaping communities at the local, regional and national level, as they represent narratives and conversations that can contribute to a wider feeling of belonging and social cohesion. However, as stipulated by former UN Special Rapporteur in the field of cultural rights, Farida Shaheed during her term, *"Artists, like journalists and human rights defenders, are at particular risk as their work depends on visibly engaging people in the public domain. Through their expressions and creations, artists often question our lives, perceptions of ourselves and others, world visions, power relations, human nature and taboos, eliciting emotional as well as intellectual responses"*[1]

European[2] democracy is dependent on a shared vision of its culture and values. And it is the integration of culture—and therefore artistic freedom by inference—which is crucial to European societies. With the 1992 Treaty on the European Union (the Maastricht Treaty), the role of culture was introduced as a policy area in Europe, making it binding for European Union members to contribute to *"the flowering of the cultures of the Member States."*[3] The Treaty also stipulates that, among other areas, action shall be aimed at supporting and supplementing states in the area of artistic and literary creation, as well as the improvement of knowledge and dissemination of European the culture and history.[4] This commitment, recognition and understanding was reiterated in a communication issued by the European Commission in May 2018[5] as part of the New European Agenda for Culture in which it emphasised how, "Europe's rich cultural heritage and dynamic cultural and creative sectors strengthen European identity, creating a sense of belonging. Culture promotes active citizenship, common values, inclusion and intercultural dialogue within Europe and across the globe."

States carry the legal responsibility to *respect, protect* and *fulfil* obligations to artistic freedom—a responsibility that needs to be fully implemented to ensure artistic freedom is ultimately and implicitly free. Human rights that are guaranteed by national constitutions and/or ratified through international agreements are in many cases not implemented in practice. Freemuse's documentation highlights that State authorities play the most dominant role in the suppression of artistic creativity within the region.

Security, Creativity, Tolerance and their Co-existence: The New European Agenda on Artistic Freedom of Expression is an analysis of the human right to freedom of artistic expression based on monitoring of legal and policy development and individual cases of violations of artistic freedom in Europe over the past two years (January 2018 to October 2019).

Freemuse's analysis demonstrates the growing tendency by governments to prosecute musicians and particularly rap artists under anti-terrorism legislation for their lyrical content on grounds that they contain forms of expression which "praise" or "glorify" terrorism. Such incidents often occur despite weak prosecutorial evidence. Freemuse's observations suggest that musicians with dissenting or politically oppositional views (which may also be expressed through their music) are disproportionally targeted.

Freemuse has found a number of cases in which artists are tainted by allegations of intention to hurt "religious feelings" or are likely to be subjected to censorship if their work is considered "blasphemous" or obscene. This report finds that all artists documented within are largely unable to freely exercise their right to express themselves artistically without repercussion when commenting on religion. Offending religion or hurting religious feelings of others—including through art—is prohibited by blasphemy laws currently existing in at least 14 European countries.[6] Research has established that European states are increasingly resorting to laws that prohibit and criminalise insults to the stat, including national symbols. Those found guilty of such charges can face hefty fines and/or imprisonment.

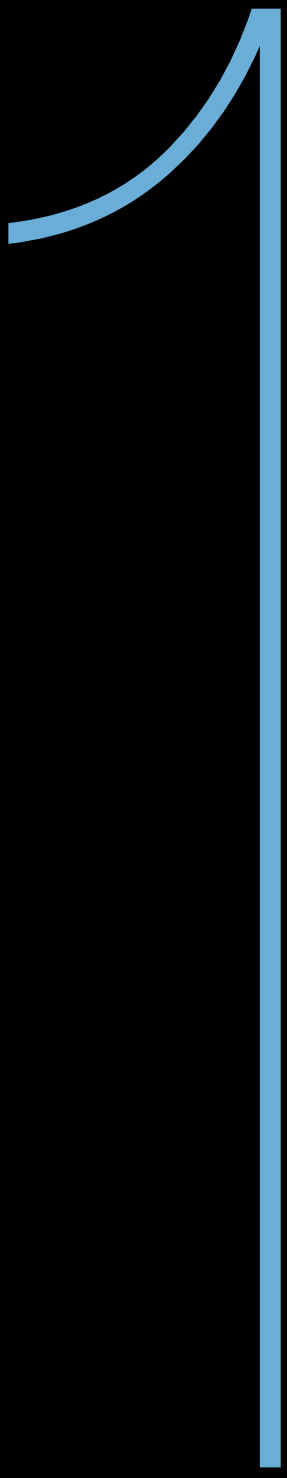
Freemuse also notes attempts by governments to take administrative control of national museums and cultural institutions to ensure that they favour artworks with nationalistic or pro-government messages in their exhibitions. In some instances, museums or institutions have been coerced into complying with certain measures to avoid withdrawal or restrictions of State funding sources. In other instances, staff in leadership positions are replaced with pro-government personnel. The attempt to silence or marginalise opposing or less-preferred views is central to all of these measures. It is largely framed within narratives by the government which label dissenters as threats to national security, national community and traditional history. The deliberate interference in the programming and leadership of cultural and arts institutions inadvertently places undue restrictions on the rights of those accessing the arts.

In a growing backlash, Freemuse has documented cases where artworks which either feature LGBTI themes or are produced by LGBTI artists are subjected to restrictions under laws that prohibit spreading "anti-homosexual propaganda" (for example, in Russia and Lithuania).

By providing analyses of regional and international legal frameworks, and laying out the principles of accountability, equality and non-discrimination, and participation, Freemuse aims to inspire awareness and structural change. This report outlines the international, regional and national instruments that protect freedom of expression, and specifically, artistic freedom to which European states are legally bound. The recommendations listed at the end of this report are directed at relevant international bodies, regional bodies belonging to the European Union, governments and civil society organisations.

> 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.

THE RIGHT TO FREEDOM OF ARTISTIC EXPRESSION AND CREATIVITY, REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED**, HUMAN RIGHTS COUNCIL, 14 MARCH 2013, A/HRC/23/34, PARA 3.



CHAPTER 1: INTRODUCTION

WHAT IS **ARTISTIC FREEDOM?**

UNESCO defines artistic freedom as, *"the freedom to imagine, create and distribute diverse cultural expressions free of governmental censorship, political interference or the pressures of non-state actors. It includes the right of all citizens to have access to these works and is essential for the wellbeing of societies."*[7]

Artistic freedom falls under the broad remit of freedom of expression that is granted to all persons under various international human rights instruments including Article 19 of International Covenant on Civil and Political Right, as well as Article 15 (3) of the International Covenant on Economic, Social and Cultural Rights—protecting fundamental freedoms. Freedom of expression is also guaranteed under the 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions.

The protection of artistic freedom encompasses a range of fundamental rights, such 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; and
- the right to participate in cultural life.[8]

UNESCO's 1980 Recommendation concerning the Status of the Artist elaborates on the conditions conducive to enabling artists to exercise their rights fully. It outlines how *"the arts in their fullest and broadest definition are and should be an integral part of life and that it is necessary and appropriate for governments to help create and sustain not only a climate encouraging freedom of artistic expression but also the material conditions facilitating the release of this creative talent".* The Recommendation further necessitates: *"All necessary steps to stimulate artistic creativity and the flowering of talent, in particular by adopting measures to secure greater freedom for artists, without which they cannot fulfil their mission, and to improve their status by acknowledging their right to enjoy the fruits of their work."*[9]

Artists are particularly vulnerable to various forms and levels of ostracization which significantly impacts their right to practice their passion or profession fully. The impact of such responses can be particularly acute for artists as they are heavily reliant on engagement with and support from institutions—both government and private—which includes monetary grants and the provision of performance space. Performance and visual artists, whose work require them to be physically present on stage or in public spaces, are especially vulnerable when faced with hostility or violence. So too are their audiences. As examples show, in the current global climate of rising populism and extremism, artists whose work challenges the status quo are often targeted by these regressive tendencies.

There is growing concern among international bodies and organisations that the universality of human rights is currently under attack from governments, political ideologies and some non-state actors around the world and in Europe. Most notably, in recent reports issued by the UN Special Rapporteur in the field of cultural rights Karima Bennoune,[10] as well as former UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein, concur that, *"The universality of rights is being contested across much of the world. It is under broad assault from terrorists, authoritarian leaders and populists who seem only too willing to sacrifice, in varying degrees, the rights of others, for the sake of power. Their combined influence has grown at the expense of liberal democratic order, peace and justice."*[11]

The former UN Special Rapporteur in the field of cultural rights, Farida Shaheed highlights the importance of vitality of the arts for "the development of vibrant cultures and the functioning of democratic societies".[12] The former UN Special Rapporteur points out that freedom of artistic expression is not only for the benefit of artists and creative professionals, but is equally crucial for the general public and their right to access and enjoy culture. She elaborates that freedom of artistic expression cannot be dissociated with all people's rights to enjoy the arts and that in denying access to specific artworks (in most cases unlawfully), the public are restricted from the right to make their own judgement of creative expressions.[13]

"Cultural diversity goes beyond ethnicity and religion to include all human diversity - resulting from gender, age, relationship with nature, social and economic background, political opinion, geographical origin, migration and other forms of social mix..."

'UNIVERSALITY, CULTURAL DIVERSITY AND CULTURAL RIGHTS', REPORT BY THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **KARIMA BENNOUNE,** 25 JULY 2018, A/73/227, PARA 59.

EUROPE IN THE GLOBAL CONTEXT OF **THREATS TO ARTISTIC FREEDOM**

In its global State of Artistic Freedom report 2019, Freemuse recorded over 670 cases where artistic freedom came under threat in 80 countries, affecting over 1,800 artists. Artists have been subjected to grave physical attacks, faced imprisonment often for crimes based on unreliable evidence, unduly faced heavy financial duress and undue restrictions on travel as well as other forms of censorship. A recent Freemuse report[14] also shows that women are more vulnerable to online threats and attacks because of their gender—facilitated in part by the design of these platforms.

Over the course of 2018 until October 2019, Freemuse noted an alarming use of restrictions on artistic freedom in European countries. Those contained within this report only represent a small fraction of the total number of cases registered in Europe. European states have used heavy prison sentences or extreme measures to criminalise artists. Court cases or statutory orders have been issued, creative works have been forcibly withdrawn on the order of state bodies from public view and state authorities have exerted undue control over content in cultural programs target civil society actors. The looming presence of authoritarianism is a recurring feature across this region, a trend that Freemuse believes is tightening its grip over free debate and expression.

Historically, European governments and rights organisations have largely focused their scope on restrictions to artistic expression taking place outside of Europe. However, Freemuse believes that emerging trends in Europe represent a real danger, which include the undermining of the region's cultural diversity. Rising populism is taking a stronger hold of states within the region. The growing rhetoric adopted by these movements—which often enforces traditionalist values embedded in a conservative idea of what constitutes nationalism—is also providing a groundswell in which limits on freedom of artistic expression are legitimised. This pattern has become pronounced in the wake of the 2008 global financial crisis, the 2015 European refugee crisis, and the series of violent attacks across Europe, driving far-right populist parties whose political ideologies are heavily based on the division of people in society.[15] These events are being used as part of a burgeoning political narrative, which is largely intolerant of debate and expression—particularly those debates in which cultural diversity and plurality are promoted and celebrated.

The leveraging of "traditional" values, largely based on concepts of homogeneity—whether this be religious, subcultural, cultural, sexual or political, is becoming prevalent across parts of the globe, as well as in Europe.

Artistic freedom—a right encompassed under the broader remit of freedom of expression—has not featured with any prominence within European human rights practice. The predominance of civil, political, social and economic rights means that cultural rights, including artistic expression, have largely remained outside the scrutiny of civil society organisations. Only the most high-profile incidences where these rights are breeched tend to be reported and acted on; others have only been afforded inconsistent attention.

The deterioration of freedom of expression overall is paralleled by deliberate strategies to diminish the space for debates in civil society. In a context where cultural rights already receive low priority and monitoring of cultural expression and rights remain weak, artistic freedom in Europe is plunging into new dangerous territory. The following chapters detail this deterioration by focusing on case studies in several European countries. The last chapter identifies solutions and presents practical recommendations for key decision and policy makers in order to successfully reverse this alarming trend.

> “In recent years, respect for cultural diversity has been threatened by those who deny this human reality and seek to impose monolithic identities and ways of being, by those who advocate various forms of supremacy and discrimination, and by diverse populists, fundamentalists and extremists.”

‘UNIVERSALITY, CULTURAL DIVERSITY AND CULTURAL RIGHTS’, REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **KARIMA BENNOUNE**, 25 JULY 2018, A/73/227, PARA. 7.

CHAPTER 2: INFOGRAPHICS

INTOLERANCE AND VIOLENCE

FREEMUSE HAS EXAMINED **380** CASES OF VIOLATIONS OF ARTISTIC FREEDOM IN **28** EUROPEAN COUNTRIES FROM JANUARY 2018 TO OCTOBER 2019.

IMPRISONED:

31 **ARTISTS IMPRISONED IN 4 COUNTRIES:** 14 IN SPAIN, 12 IN TURKEY, 4 IN RUSSIA, 1 IN THE UNITED KINGDOM.
20 musicians, 4 actors, 3 visual artists, 2 writers, 2 filmmakers.

DETAINED:

50 **ARTISTS DETAINED IN 5 COUNTRIES:** 23 IN TURKEY, 18 IN RUSSIA, 6 IN BELARUS, 2 IN GEORGIA, 1 IN POLAND.
17 actors, 13 cultural workers, 12 musicians, 4 visual artists, 2 writers, 1 filmmaker, 1 dancer. 14% related to anti-terrorism.

PROSECUTED:

21 **ARTISTS PROSECUTED IN 5 COUNTRIES:** 12 IN TURKEY, 3 IN RUSSIA, 3 IN BELARUS, 2 IN SPAIN, 1 IN THE UNITED KINGDOM.
38% of artists were prosecuted for political reasons.

THREATENED/ HARASSED:

20 **ARTISTS WERE THREATENED OR HARASSED IN 10 COUNTRIES.**
Main reasons for threats were related to politics (45%). 30% of the cases where artists were threatened or harassed were committed by government authorities.

TRAVEL BAN:

AT LEAST 9 **ARTISTS EXPERIENCED TRAVEL BANS IN 4 COUNTRIES:** 6 IN UKRAINE, 1 IN RUSSIA, 1 IN TURKEY AND 1 IN SERBIA.

CENSORED:

179 **ACTS OF CENSORSHIP IN 27 COUNTRIES**

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ARTFORMS SILENCED

MUSIC:
148 DOCUMENTED VIOLATIONS IN **22** COUNTRIES

Leading countries: Russia – 28%, Turkey – 21%, Spain – 12%, United Kingdom – 9%

Main grounds for violations: 24% related to anti-terrorism, 23% for opposing governments' policies or practices

VISUAL ARTS:
74 DOCUMENTED VIOLATIONS IN **17** COUNTRIES

110 visual artworks were censored in 12 countries.

37% of the violations took place in Russia and the United Kingdom.

LITERATURE:
22 DOCUMENTED VIOLATIONS IN **7** COUNTRIES

At least **212** were censored in **7** European countries

DANCE:
3 documented violations in **3** countries

FILM:
42 DOCUMENTED VIOLATIONS IN **10** COUNTRIES

50% of violations were due to artists opposing a government's policy or practice

25 films and **2** festivals were censored or cancelled in **9** European countries

THEATRE:
78 DOCUMENTED VIOLATIONS IN **13** COUNTRIES

65% of these cases were committed for opposing the governments' policy or practices

2/3 of the violations took place in Russia, Turkey and the United Kingdom.

ARTISTS AND ARTISTIC FREEDOM DEFENDERS SILENCED:

TURKEY: 13 cultural workers were arrested at Anadolu Kültür (Anatolian Culture) advocating for artistic rights and cultural diversity. Charges were "creating chaos and mayhem" and "seeking to overthrow the government" for supporting the 2013 Gezi Park protests.

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MAIN **VIOLATOR**

GOVERNMENT AUTHORITIES WERE RESPONSIBLE FOR 275 OF THE DOCUMENTED VIOLATIONS: **(72%)**

MAIN GROUNDS FOR VIOLATIONS BY GOVERNMENT AUTHORITIES INCLUDE:

40% **ARTISTS OPPOSING GOVERNMENTS' POLICIES OR PRACTICES**

16% **CONFLICT-RELATED VIOLATIONS**

12% **ON GROUNDS OF ANTI-TERROISM**

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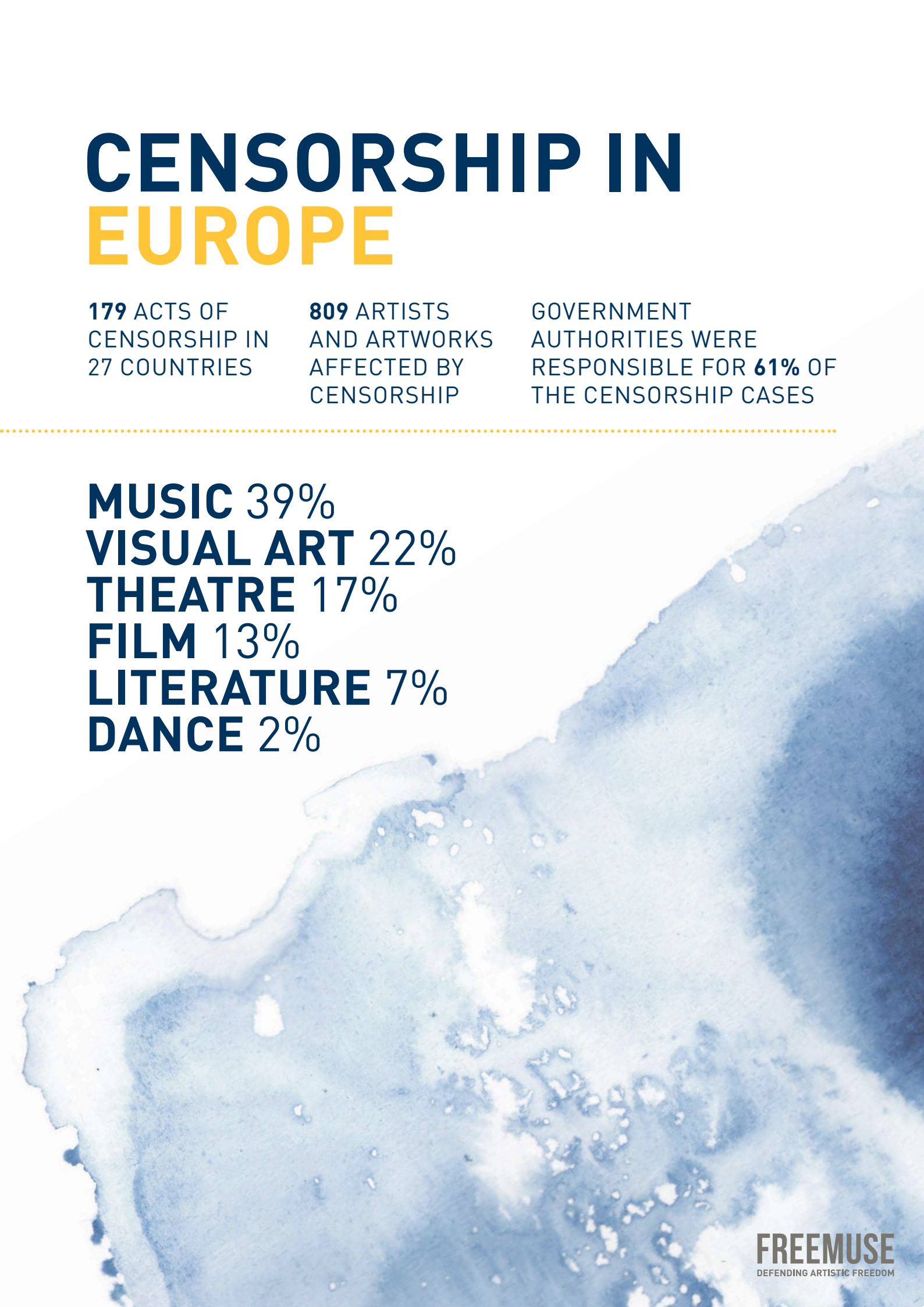
CENSORSHIP IN EUROPE

179 ACTS OF CENSORSHIP IN 27 COUNTRIES

809 ARTISTS AND ARTWORKS AFFECTED BY CENSORSHIP

GOVERNMENT AUTHORITIES WERE RESPONSIBLE FOR **61%** OF THE CENSORSHIP CASES

MUSIC 39%
VISUAL ART 22%
THEATRE 17%
FILM 13%
LITERATURE 7%
DANCE 2%



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> “The exercise of cultural rights enables each person to freely develop and contribute to the creation of cultures, including through the contestation of dominant norms and values.”

‘UNIVERSALITY, CULTURAL DIVERSITY AND CULTURAL RIGHTS’, REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **KARIMA BENNOUNE**, 25 JULY 2018, A/73/227, PARA. 46.

3

CHAPTER 3: LEGAL FRAMEWORK

International and regional legislation defends and promotes artistic freedom through two key frameworks: 1) civil and political rights (under provisions governing freedom of expression) and 2) legislation protecting cultural rights (which focuses on, among others, the right to take part and enjoy the arts). Political and civil rights and cultural rights should be collectively considered in order to address artistic freedom most effectively.[16]

Artistic freedom is crucial in enabling the space for open and fearless debate in democratic societies. As the UN Special Rapporteur in the field of cultural rights, Karima Bennoune, states, art and culture also have a transformative power and can contribute to fulfilment of *all* human rights.[17] It is therefore paramount to protect and promote artistic freedom with the same level of importance as other rights.

As nationalism is becoming more predominant, artistic freedom is increasingly challenged by debates about public morality, insults and incidents of defamation cases. Its role in initiating and catalysing debate in democratic societies requires states to carefully consider any restrictions on artistic freedom in line with the specific nature of artistic expression. The UN Special Rapporteur in the field of cultural rights elaborates that, *"through their expressions and creations, artists often question our lives, perceptions of ourselves and others, world visions, power relations, human nature and taboos, eliciting emotional as well as intellectual responses."*[18]

This report highlights key regional legislative developments which Freemuse believes have placed undue restrictions on artists when exercising their right to artistic expression. This chapter focuses on existing international and regional (European) legislations that promote and protect artistic freedom and scrutinises the uneven application of these legislations in the region.

INTERNATIONAL LAWS AND THE **MECHANISM OF THE UNITED NATIONS**

Article 27 of the 1948 Universal Declaration on Human Rights (UDHR) is relevant when discussing freedom of artistic expression. It states that, *"everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share scientific advancement and its benefits."*[19]

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) addresses the right to freedom of opinion and expression including artistic *expression.*[20] Article 19 is the provision most commonly applied when dealing with the expression of artistic freedom, yet it is important to take note of other relevant pieces of legislation that deal with the right of the public to access and enjoy the arts. The legislation found in Article 15(3) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) relays that states are under an obligation to ensure and respect the freedom indispensable for creative activity.[21] Both sets of rights are understood to be inclusive and mutually reinforcing in protecting artistic freedom. At the same time, Article 20 of the ICCPR establishes limits to expression by stipulating that, *"advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."*[22]

Although many countries have ratified these international legislations, not all states have implemented the incumbent legal amendments at the national level necessary for aligning domestic legislation with their international commitments. Without such amendments, artists and civil society organisations (CSOs) are unable to actualise any of these vital protections.

UNITED NATIONS MECHANISMS TO **MONITOR IMPLEMENTATION OF LEGISLATION**

Within the UN 2030 Sustainable Development Agenda, artistic freedom is mostly commonly identified under Goal 16: *"Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".*[23] Artistic freedom is of critical importance in the monitoring of this goal on sustainable development. In ensuring that artistic freedom is fully implemented, it urges states to *"ensure public access to information and*

protect fundamental freedoms, in accordance with national legislation and international agreements."[24]

The UN Treaty Bodies are committees that are tasked with overseeing the implementation of various international human rights laws. The Human Rights Committee (HRC), among others, monitors the implementation of Article 19 of the ICCPR and the Committee on Economic, Social and Cultural Rights (CESC) monitors Article 15 of ICESCR. Under the Universal Periodic Review (UPR), the HRC undertakes an assessment of how a state has fulfilled its human rights obligations and commitments. Civil society actors, national human rights institutions and regional organisations are all invited to participate and submit reports to the mechanism.

The UPR is a relatively recent mechanism introduced by the UN to enable better scrutiny of states and their compliance with human rights standards. CSOs, national human rights organisations and regional organisations are similarly invited to participate and submit reports as part of the process.

> *"The adoption of the 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions was a milestone in international cultural policy. Through this historic agreement, the global community formally recognised the dual nature, both cultural and economic, of contemporary cultural expressions produced by artists and cultural professionals."*
>
> THE 2005 CONVENTION ON THE PROTECTION AND PROMOTION OF THE DIVERSITY OF CULTURAL EXPRESSIONS, *UNESCO*.

In addition to the UPR procedure, more than 40 states in the European region have ratified the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[25] Artistic freedom has always been part of the 2005 Convention, but with new reporting requirements since 2019, states are now explicitly under obligation to report on the state of artistic freedom and measures taken to promote and protect this right. Known as Quadrennial Periodic Reports (QPRs), states must submit a report every four years on the policies and measures they have adopted and the challenges they have encountered in implementing the Convention.

These mechanisms constitute the key instruments by which artists and CSOs can substantively engage with government officials in protecting artistic freedom.

ARTICLE 10 OF THE **EUROPEAN CONVENTION ON HUMAN RIGHTS**

At the regional level, the European Convention on Human Rights (ECHR) is a human rights treaty between the 47 states (including Russia and Turkey) that are members of the Council of Europe (CoE). Article 10 of the ECHR is often referred to by courts and artists when addressing and safeguarding artistic freedom.[26] The Article guarantees the right of everyone to freedom of expression including the freedom to *"hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".*[27] The European Convention does not explicitly protect cultural rights, but becomes relevant through the interpretation of other Articles which are included in the ECHR, such as Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion) of the Convention and Article 2 of Protocol No. 1 (right to education).[28]

The creation of the ECHR led to the establishment of the European Court of Human Rights (ECtHR) in 1959. This provided additional recourse for complaints filed by individuals (and sometimes states) where appellants believed their rights had been denied in national courts. Judgements made by the Court are legally binding on states ensuring that the Convention and the Court provide a strong and effective instrument which impact and influence the laws and practices of the European governments.[29] The EU and its Member States are, as such, subject to the ECtHR—established as the CoE's court of law—making it one of the key mechanisms for protecting artistic freedom in Europe. However, whilst these decisions are binding, national governments fail to ensure proper

implementation of court judgements.[30] Despite the potential of Article 10, scholars and human rights organisations argue that although recognition is granted to artistic expressions, the ECtHR often rules in favour of states, leveraging a narrative in which the need to protect public morals and to avoid insults, defamation and hurting the reputation of others is prioritised over the need to protect and promote artistic expression.[31] As a result, individuals or groups taking direct action, or taking part in various forms of protests, are increasingly facing challenges when this is expressed through artistic means. Few determinations adjudicated on by the European Court have recognised violations of freedom of expression—including artistic freedom—in its interpretation of what constitutes a violation under Article 10 of the Convention.[32]

One example is the case of Sinkova v. Ukraine in which an artist was convicted for staging a performance-art protest at a war memorial in central Kiev. Despite recognising that the artist belonged to an artistic group known for its provocative public performances, the nature of its artistic expression in commenting on social issues was not determined to be significant enough to rule that Article 10 had been violated.[33] The Sinkova v. Ukraine ruling has also been criticised internally by dissenting judges who expressed concern that these determinations risk an erosion of the rights of dissenting individuals and artists to voice their opinion and stage peaceful protest. They concluded that such *"criminal penalties are likely to have a chilling effect on satirical forms of expression relating to topical issues".*[34]

The inconsistencies in ECtHR rulings become prominent when analysing determinations—particularly those in which the courts have ruled in favour of artists. For example, the ECtHR has found governments including Spain, Russia and Moldova guilty of violating Article 10 regarding activist expression. Respectively, this includes burning an effigy of the Spanish King,[35] the punk rock group Pussy Riot performing from the altar of a Moscow cathedral[36] and an activist erecting large wooden genitalia outside of a prosecutor's Office.[37]

Article 10 of the Convention does not distinguish between the various types and forms of expression protected within it and has been interpreted to include artistic forms. Article 10(2) stipulates that the exercise of freedom of expression *"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."*[38]

Furthermore, the vaguely formulated restrictions under Article 10 do not enable sufficient protection to artists whose contribution to public debate—which in some cases means embracing satire and political humour—is pivotal. As earlier mentioned, former UN Special Rapporteur in the field of cultural rights, Farida Shaheed, stated in her 2013 report on artistic expression that, *"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."*[39] In order to ensure that the parameters of debate remain open and that due tolerance towards all forms of artistic expression is exercised more consistently, it is crucial that the ECtHR understands the role of controversial art in society.

Article 11 of the Charter of Fundamental Rights of the European Union (CFREU) directly reaffirms the intention and objectives set out in Article 10 of the ECHR in its understanding of freedom of expression and information. Article 11 stipulates that it is every person's right to, *"hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers".*[40] The charter aims to strengthen the protection of fundamental rights by making those rights more visible and more explicit for citizens of EU countries.[41] As such, it contains a provision which limits its application solely to EU institutions and bodies, to be invoked when scrutinising the implementation of EU legislation in Member States.

ARTICLE 7 OF THE **TREATY ON EUROPEAN UNION**

With the Amsterdam Treaty, a new sanction mechanism (Article 7 of the Treaty) was created to ensure that the fundamental values presented in Article 2 of the Treaty are lawfully respected by EU Member States. These values are *"respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."*[42] Article 7 allows the EU the right to impose sanctions and the power to intervene in instances where Member States are found to be responsible for a "serious and persistent breach" of these values.[43] This mechanism has only been applied in rare cases, as it requires consent from the European Parliament for a majority of the Member States to firstly determine such a breach. This is based on a hearing of the Member State by the Council. It subsequently involves a lengthy process of negotiation between the Council and the Member State in question.[44]

Although in effect since 1999, the procedure was first activated by the European Commission against Poland despite ongoing negotiations with its government spanning over two years under the Rule of Law Framework.[45] The Commission grew concerned about the corrosion of judicial independence—following moves by the Law and Justice Party to bring judicial reforms under its control in December 2017.[46] It was once again triggered against Hungary in September 2018. In this instance, the European Parliament raised concerns of the erosion of democratic principles including the undermining of democratic institutions by the Hungarian government. In its triggering of the Article, the European Parliament pointed to 12 issues which were of key concern, including corruption, the independence of the judiciary, freedom of expression and religion and academic freedom.[47] The Article 7 proceedings are still ongoing[48] and in September 2019 the Council of the European Union—currently under the Presidency of the Finnish government—was still continuing formal hearings on the matter.[49] It remains to be seen how effective the triggering of this mechanism will be.

THE PRINCIPLES OF **NECESSITY AND PROPORTIONALITY**

International law stipulates that any restrictions on artistic freedom should only be carried out in accordance with international human rights standards. More specifically, any restrictions (including censorship of art) can only be justified if it is in accordance with a law, serves a legitimate aim and is necessary for the protection or promotion of the legitimate aim, according to Article 19(3) of ICCPR.[50] These requirements have been devised to determine whether restrictions introduced by the government on freedom of expression are legally justified and can also be extended to assess whether restrictions imposed on artists and their right to *artistic* freedom are lawful. More specifically, the legitimate aim that restrictions of artistic expression may be subjected to have to be provided by law and be necessary for: (a) respect of the rights or reputations of others and (b) the protection of national security or of public order (ordre public), or of public health or morals, according to Article 19(3).[51] Moreover, as stipulated in General Comment 34 to the Human Rights Committee, "Restrictions are not allowed on grounds not specified in paragraph 3, even if such grounds would justify restrictions to other rights protected in the Covenant. Restrictions must be applied only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated."[52] When assessing the possible impact on freedom of expression, a restriction must also be proportionate against the benefits of the restriction, *"where the harm to freedom of expression outweighs the benefits, the restriction cannot be justified."*[53]

The enforcement of restrictions on artistic expression due to concerns over 'public morality' need further scrutiny as they continue to inform and impact the types of—often arbitrary—restrictions that artists face. In many cases, artworks are censored, and artists are persecuted, imprisoned or threatened for creating art that is subjectively considered a danger to "public morality". Governments and courts should apply the principles of necessity and proportionality consistently when addressing artistic freedom.[54]

"Culture takes diverse forms across time and space. This diversity is embodied in the uniqueness and plurality of the identities of the groups and societies making up humankind. As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature. In this sense, it is the common heritage of humanity and should be recognized and affirmed for the benefit of present and future generations."

UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY, 2 NOVEMBER 2001, ARTICLE 1 CULTURAL DIVERSITY: THE COMMON HERITAGE OF HUMANITY.

DEVELOPMENTS IN NATIONAL **LEGISLATIONS AND GOOD PRACTICE**

Provisions within a range of existing legislation are commonly used to criminalise artists. For example, provisions within existing counter-terrorism and state security laws, as well as laws intended to prevent the hurting of religious sentiments and laws criminalising defamation, have been used to suppress various forms of artistic expression.[55] Whilst artists may not have initially been intended for inclusion in the scope of targets when formulating this legislation, artists have inadvertently been caught under its ambit. The probability of artists being charged within this scope becomes more acute when their expression is understood to belong to the wider spectrum of civil society—including journalists and human rights organisations—which are critical of the state and its policies.

Some positive developments have been witnessed in several European countries—including in the United Kingdom, Norway, Iceland, Denmark and Malta—where governments have repealed blasphemy laws. These states have previously restricted artistic freedom in numerous cases when undesirable artworks have been deemed to "offend the religious feelings of others."[56]

The criminalisation of defamation has been misused and enabled states—including heads of state—to initiate prosecutions against dissenting individuals. The former UN Special Rapporteur in the field of cultural rights has stated that such motivations for restricting artistic freedom raise concern and points out that states should *not* prohibit such forms of criticism.[57] A 2017 OSCE report observes recent progressive moves by a number of European countries to decriminalise defamation and insult laws.[58] Other countries have abolished imprisonment as punishment for defamation and some European countries have repealed laws criminalising insult to heads of states and foreign heads of state.[59] Despite these developments, the International Press Institute notes the continuing existence of defamation laws in countries such as Ireland, Italy and Romania, who have lagged in their commitment to align national laws with international standards, in clear breach of the right of freedom of expression under Article 10 of the ECHR, as well as Article 19 of the ICCPR.[60]

"In our increasingly diverse societies, it is essential to ensure harmonious interaction among people and groups with plural, varied and dynamic cultural identities as well as their willingness to live together. Policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace."

UNESCO UNIVERSAL DECLARATION ON CULTURAL DIVERSITY, 2 NOVEMBER 2001, ARTICLE 2 FROM CULTURAL DIVERSITY TO CULTURAL PLURALISM.

According to a 2016 study conducted by the French Senate, eleven countries in Europe explicitly protect artistic freedom and creative expression.[61] These

countries include Austria, Bulgaria, Spain, Latvia, Turkey, Croatia, Hungary, Poland, Portugal, Serbia and Slovenia. However, it is important to note that despite these recent steps, many of the same states continue to curtail artistic freedom through censorship and other means.

The legislative framework in Turkey protects artistic freedom, but has been consistently undermined under the current regime in what observers note as an escalating and intensifying series of violations undermining the right to freedom of expression.[62] Turkey is signatory to many international instruments including the ICCPR, ICESCR and the 2005 Convention, as well as the ECHR. However, vague provisions within domestic laws relating to anti-terrorism, defamation and insult have all been used to silence dissenting voices—including those belonging to artists.

Freemuse notes developments in France where specific legislation was introduced in 2016 to protect artistic freedom and a monitoring body comprised of lawyers, trade unions, individual members (including artists) has also been established to examine its implementation.[63]

> “Obstacles to artistic freedoms impact on the enjoyment of rights by a wide range of people: the artists themselves, whether professionals or amateurs, as well as all those participating in the creation, production, distribution and dissemination of artwork. (...). It is important to recognize the artistic freedoms of all persons when they participate in cultural life or wish to engage in creative activities.”

'THE RIGHT TO FREEDOM OF ARTISTIC EXPRESSION AND CREATIVITY', REPORT OF THE SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED**, 14 MARCH 2013, A/HRC/23/34, PARA. 42.

CHAPTER 4: CHALLENGES TO ARTISTIC FREEDOM IN EUROPE

Artists across Europe have had their rights violated as a result of their legitimate expressions of political dissent, their vocal opposition to governments or royal families, their articulation and representation of religious doctrines and symbols, allegations that their expression insults officials or state symbols and for artistically expressing support for LGBTI rights. Deliberate attempts to exercise control over cultural and arts institutions have ensured that only those artworks found to suit the mainstream political narrative have been exhibited. These restrictions on freedom of expression negatively affect other rights, such as freedom of thought, conscience and religion and weaken protection from discrimination *"on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status,"*[64] as prohibited by the ECHR. This report provides insights into some of the challenges existing in Europe with the regards to artistic freedom.

"The multifaceted character of restrictions and obstacles to artistic freedoms needs to be acknowledged so as to provide a better understanding of the obligations of States to respect, protect and fulfil these freedoms and develop good practices."[65]

THE UN SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED**, 14 MARCH 2013

ANTI-TERRORISM LEGISLATION USED TO SILENCE DISSENT

In 2018, the CoE raised concerns about how the misuse of anti-terror legislation has become a prevailing threat to freedom of expression in Europe, underlining how history had previously demonstrated the fallibility of such strategies; *"restrictions to freedom of expression have never demonstrated their efficiency in fighting terrorism."*[66]

The response to terrorism and recent attacks across Europe have resulted in European governments introducing measures ostensibly meant to enhance public security. However, governments have also used such pretexts to legitimise their own repressive measures, unduly restricting legitimate freedom of expression. In some cases, these restrictions have inadvertently emerged from immediate, and arguably hasty, reactions to terrorist atrocities. In other cases, these newly introduced, or existing, counterterrorism measures have been used as a tool to crush various forms of political dissent and critical expressions which are targeted at governments. Journalists and human rights defenders, among others, have invariably been subjected to spurious charges, as well as imprisonment, without clear proof of criminal activity. Freemuse has observed how civil society actors have also been prosecuted for opinions expressed online in countries such as Turkey, France, Spain and the UK.[67]

"The rise of far right nationalist parties, anti-refugee sentiment, stereotyping and discrimination against Muslims and Muslim communities, intolerance for speech or other forms of expression – risk that these emergency powers will target certain people for reasons that have nothing at all to do with a genuine threat to national security or from terrorism-related acts. Indeed, this is happening in Europe already."

'DANGEROUSLY DISPROPORTIONATE – THE EVER-EXPANDING NATIONAL SECURITY STATE IN EUROPE', *AMNESTY INTERNATIONAL*, 2017

Artists who openly oppose governments and whose artistic expression has been inordinately equated with glorifying terrorism are among those affected. Consequently, many face criminal prosecutions and even imprisonment.

AN ILLEGITIMATE **MECHANISM OF CENSORSHIP**

In Turkey, artists have been imprisoned for political reasons due to accusations of having links to the proscribed Kurdistan Workers' Party (PKK). Turkey's ethnic minority populations—especially its largest, the Kurds—have been particularly targeted and exposed to censorship in the publishing and entertainment sectors.[68]

> *"I am not a member of any organisation. I am merely an artist doing art."*
>
> TURKISH ACTRESS **HOZAN CANÊ**, KURDISTAN24, 14 NOVEMBER 2018.

In November 2018, a Turkish court in Edirne, northwest Turkey, sentenced German-Kurdish singer Hozan Canê (real name Saide Inac) to six years and three months in jail on charges of "being a member of a terrorist organisation". In a Twitter post, Canê appeared posing with alleged Kurdish rebels. Prosecutors accused Cane of spreading PKK propaganda based on this image.[69] However, the picture was reportedly taken from the film 'The 74th Genocide in Sinjar' which Canê both directed and played the lead role in. The prosecution also relied on other content that the singer shared on her Facebook and Twitter profiles between 2014 and 2018, such as a photo showing the imprisoned PKK leader Abdullah Öcalan—despite Canê asserting that she did not own the profiles on which the images had been shared.[70] Canê expressed in an interview that in several instances her lawyers were prevented from refuting the allegations and proving her innocence, believing that the court had already passed judgement before the proceedings.[71]

In discussions with Freemuse, a spokesperson of the organisation Arrested Lawyers Initiative outlined how freedom of expression in Turkey has deteriorated to unprecedented levels impacting all sections of the media (mainstream and independent), as well as other segments of civil society. They further elaborated that owners of mainstream media companies have carried out orders from the government to fire staff critical of President Erdoğan[72] reportedly to avoid Erdoğan's ire.[73] The ambiguity within provisions in anti-terrorism laws has also been leveraged by the authorities as a legitimate means to conceal the deliberate and relentless crackdown on the press. This is further mirrored in the breadth of scope and opaqueness in the application of the law allowing for anyone critical of the government to be labelled by the authorities—without any due process—as a "terrorist" or as someone jeopardising national security.[74]

> *"Whenever a criticism occurs against the ruling authorities, President Erdogan and his government, then the owner of that criticism pays the price of free expression either by sacking or even imprisonment."*
>
> ARRESTED LAWYERS INITIATIVE, *FREEMUSE* INTERVIEW, 25 JULY 2019.

IMPRISONED FOR **PAINTING REALITY**

In February 2019, Kurdish journalist, women's rights activist and artist, Zehra Doğan, was released after being imprisoned for three years. Dogan was found guilty of three separate charges. These included "spreading terrorist propaganda" based on a news article she wrote, her social media activity and a painting she created that was inspired by a photograph depicting a scene from a military operation that the Turkish military carried out in the largely Kurdish city of Nusaybin.[75] In 2015, a two-and-a-half year peace accord that had seen a period of relative peace in southeast Turkey was broken and the conflict returned between the Turkish military and the PKK. The following year saw bitter fighting which lead to the deaths of over 1,700 people and the displacement of thousands of civilians.[76] The Turkish government accused the PKK of resuming violence, supported by the Gülen movement led by the exiled scholar and preacher Fetullah Gülen who had been accused of masterminding the 2016 coup attempt. Since the coup attempt, anyone even loosely associated with the Kurdish movement

has been affected by charges of being a terrorist. This is met with counter claims by the Kurdish movement which accuses the government of using unsubstantiated allegations as an excuse to weaken the PKK in a concerted effort to marginalise Kurdish political identity and instead enforce its nationalist agenda.[77]

"They believe that the state must control everything and punish those who do not obey it. However, art does not accept control. What makes art is that it is uncontrolled, a free expression, a criticism and challenge of what exists and aims at looking at life through a different perspective. This is one of the main challenges in Turkey."

ZEHRA DOĞAN, *FREEMUSE* INTERVIEW, 3 AUGUST 2019

Zehra Doğan. Credit: Image curtesy of Zehra Doğan.

In an interview with Freemuse, Doğan expands on how her artwork was prompted by the way in which the conflict had transformed her hometown Nusaybin and the surrounding area into a battlefield. She comments that being forced to stay inside her house because of the conflict for five months made her feel like she was living in prisonlike conditions with limited access to electricity, water and food. The painting for which Doğan was convicted was based on a military photograph taken after the clashes ended in Nusaybin, in which the state forces hung Turkish flags on ruined buildings and posed in front of them. The artist said some media outlets published the photo online with the title: 'Turkish soldiers' victory in Nusaybin'. She told Freemuse that her painting titled 'The destruction of Nusaybin' simply mirrored the photo, which she had seen on a pro-government newspaper's Twitter feed. Turkish authorities deemed her painting an act of terrorist propaganda and she was arrested on 21 July 2016.[78]

"When they saw reflected in the mirror that they had done wrong by hanging flags on ruined buildings and that posing for a photo in military uniforms was something fascists would do, they threw the blame on me."

ZEHRA DOĞAN, *FREEMUSE* INTERVIEW, 3 AUGUST 2019.

Doğan believes that she was punished because there was a belief amongst the authorities that she depicted the flags deliberately to instigate hatred against the armed forces.[79] In his verdict, the judge determined that the painting was "beyond the limit of criticism of the operations done by the security forces in order to restore public order and it [was] propaganda for the Kurdistan Workers' Party's (PKK) barricade and trench policy."[80]

The artist was charged with spreading terrorist propaganda under Article 7 of the Anti-Terror Law (Act Nr. 3713),[81] which states that, *"Any person making propaganda for a terrorist organisation shall be punished with imprisonment from one to five years."*[82] The law is currently framed in a manner

that does not specify what exactly constitutes propaganda for an alleged terrorist organisation.

Kurdish cultural institutions were particularly affected by the 2016-2018 state of emergency, during which hundreds of art houses, workshops, institutions and art centres in the Kurdish south-east were forcibly taken over by government appointees. Scheduled arts programs were coerced into cancelling their projects. Performances using Kurdish language were particularly targeted. Several artists and cultural workers were also dismissed,[83] all of which contributed to the marginalisation of Kurdish culture and history.

Doğan's widely publicised imprisonment led to a global campaign for her release, drawing support from renowned artists including Banksy and Ai Wei Wei. She was subsequently granted a residency in the UK where her work has been featured in the Tate Gallery. Freemuse remains concerned by the widespread and ongoing intimidation of artists in Turkey, including state harassment, the application of disproportionate fines and penalties which have been imposed on them or their work and their forced removal from jobs often based on allegations that their criticism of government policies or defence of Kurdish rights is tantamount to support for terrorism.

ARTISTIC FREEDOM STIFLED BY **PROHIBITING THE "GLORIFICATION OF TERRORISM"**

Several restrictions have been placed on the right freedom of expression in Spain. These have entailed the introduction of problematic legal provisions under amendments made to existing laws. In 2015, amendments to the *Basic Law on the Protection of Public Security*—also referred to as the "gag law" by critics—introduced a number of undue restrictions on the right to peaceful assembly, as well as the right to freedom of opinion and expression in Spain. In 2015, the authorities also broadened the scope of Article 578 of the Spanish Criminal Code, increasing penalties for anyone considered to have "glorified terrorism" or "humiliated the victims of terrorism or their relatives." The move was considered draconian by international human rights organisations[84] as well as several UN experts.[85]

The current absence of an internationally accepted definition of what constitutes a terrorist or a terrorist organisation, and alleged membership of such, also enables governmental abuse and misuse of anti-terrorism legislation. In 2015, the OSCE issued a Joint Declaration on Freedom of Expression and Responses to Conflict Situations to call on all states to refrain from undue applications of restrictions on freedom of expression using the pretext of vague concepts such as "glorifying", "justifying" or "encouraging" terrorism.[86] In the same year, a group of UN human rights experts reiterated their concerns about the "too broad and vague" provisions relating to the "glorification" of terrorism in Spain's Penal Code.

"As drafted, the anti-terror law could criminalise behaviours that would not otherwise constitute terrorism and could result in disproportionate restrictions on the exercise of freedom of expression, amongst other limitations."[87]

THE UN SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, DAVID KAYE, 23 FEBRUARY 2015

SPANISH RAPPER **REMAINS IN EXILE**

Given its political commentary, rap is often equated with being controversial. The means that rappers can be disproportionally subject to punitive action. In February 2017, Spanish rapper Valtonyc (real name Josep Miquel Arenas Beltran) was sentenced to three years and six months in prison after having been found guilty of insulting a politician and members of the Spanish Royal Family and for praising terror groups in his song lyrics.[88] The charges were brought under Article 578, 579 and 169.2 of the Spanish Criminal Code.[89] The rapper appealed the sentence, pleading his right to freedom of expression. However, his appeal to the

Constitutional Court was rejected, as his lyrics were rendered as constituting hate speech and were found to be personal rather than political criticism. Valtonyc subsequently fled to Belgium, prompting the Spanish National Court to issue a European and international arrest warrant against him. In September 2018, a Belgian court ruled against the request for his extradition on the basis that it did not consider his lyrics as incitement to terrorism under Belgian law.[90] At a press conference held in Brussels in response to the request for extradition, Valtonyc asserted, *"I haven't done anything but singing, my crime is being left-wing, communist, pro-independence and in Spain this is not legal and for this you're pursued and put in jail."*[91] In September 2019, at a hearing held in the Court of Justice of the European Union (CJEU) in Luxembourg, the European Commission held that the arrest warrant for the singer issued by Spain was unlawful. On 26 November 2019, the European Court of Justice's advocate general Michal Bobek confirmed that the arrest warrant could not be enforced, allowing for the possibility that Valtonyc's extradition order may not be granted.[92]

Valtonyc. Credit: Josep Valtonyc on youtube.com.

> *"I am very happy as finally we have found justice. We have been looking for it for a long time, and in Spain we did not get it."*
>
> **VALTONYC** AFTER FLEEING TO BELGIUM, *REUTERS TV.*

Rappers apart from Valtonyc have been similarly affected because of their artistic expressions; in two separate instances, 12 rappers from the group La Insurgencia and Catalan rapper Pablo Hasél (real name Pablo Rivadulla) received separate jail terms and fines for exalting terrorism and insulting the Spanish state and royal institutions. The group averted jail because their sentence was reduced to six months.[93] Hasél's sentence was later reduced from two years to nine, preventing him from imprisonment[94] on the condition that he does not commit a second offence within the term in accordance with Spanish law.[95]

The use of measures primarily intended to counter terrorism has been extended to suppress forms of artistic expression, including peaceful political commentary unduly restricting the rights of artists.[96] Since June 2018, Spain has elected a new government led by Prime Minister Pedro Sánchez. Freemuse will closely monitor any developments and advocate for change to ease the restrictions on fundamental freedoms.

TERRORISM CHARGES **ENABLING PRIOR CENSORSHIP**

Being charged on the grounds of anti-terrorism measures impacts artists in a multitude of ways. The impact on their professional careers can be particularly acute—at times affecting artists beyond prison sentences that they may be compelled to serve. On 4 July 2019, a concert by rap metal band Def Con Dos was cancelled the day before its scheduled performance by the Madrid City Council on grounds that the band leader, César Strawberry (real name César Augusto Montaña), had previously been charged with committing a terrorist offence.

In 2017, the artist was charged with exalting terrorism for comments he had posted on his Twitter account in 2013-2014. He was subsequently sentenced to one year in prison. In some of the Twitter messages, Strawberry was charged for using what he referred to as "irony" in comments about Ortega Lara, the founder of the new far-right party Vox. In his comments, he vocalised sentiments that Lara should be kidnapped. In a reply to an online question about what Strawberry would give the King for his birthday, he wrote "a roscón-bomb" (Roscón is a traditional Spanish pastry), which is also one of the six messages cited in Strawberry's sentence.[97] The musician is awaiting the court's verdict to decide on whether or not to appeal his sentence at the European Court of Human Rights in Strasbourg, where he strongly believes he will be acquitted.[98]

"Discriminated, persecuted, slandered and stigmatised."

CÉSAR STRAWBERRY COMMENTING ON HOW THE CANCELLATION OF HIS CONCERT MADE HIM FEEL, *FREEMUSE* INTERVIEW, 21 SEPTEMBER 2019.

Unsatisfied by the punishment meted out to Strawberry, and despite the sentence being suspended, the Mayor of Madrid City Council, José Luis Martínez Almeida, stated that he does not consider it "worthy of an institution that represents all Madrid residents" to host the performance of a group whose singer has been convicted by the Supreme Court for extolling terrorism.[99] In an interview with Freemuse, Strawberry explained that the decision to cancel the concert happened in "an absolutely arbitrary and illegal way" by applying "prior censorship"—which is prohibited by the Spanish Constitution under Article 20.2. This domestic provision stipulates that the right to literary, artistic, scientific and technical production and creation "may not be restricted by any form of prior censorship".[100]

Strawberry believes that his prosecution represents just one of many examples of how the political terrain and freedom of expression in Spain is deteriorating.

"Since the 2011 legislature of the ultraconservative Mariano Rajoy until 2018, the Popular Party unleashed an illegal strategy to cut fundamental rights (freedom of expression, freedom of information, freedom of demonstration and assembly) that has prosecuted and condemned many rappers to prison terms, activists, tweeters, documentary filmmakers and independent journalists for purely ideological issues, initiating a witch hunt similar to that developed in Erdogan's Turkey."

CÉSAR STRAWBERRY, *FREEMUSE* INTERVIEW, 21 SEPTEMBER 2019.

PREVALENT USE OF ANTI-TERRORISM **LEGISLATION AGAINST CREATIVE EXPRESSIONS**

The rise of nationalist discourses across Europe, which scapegoat social ills on immigrant communities, paralleled by the prevalence of narratives extolling terrorism on the other, give rise to a complex landscape in which the negotiation and balancing of the right to free expression, artistic expression and counter-terror measures become precarious.

Judicial action taken against the Centre for Political Beauty (Zentrum für Politische Schönheit, ZPS)—a German collective known for its controversial art and public performances—was prompted following a stunt the collective enacted in November 2017. Although Article 5 of the German constitution guarantees freedom of artistic expression, a criminal investigation of the ZPS was launched by the Thuringian state prosecutor in November 2017 and lasted for nearly 500 days. The investigation was initiated when the collective placed a replica of Germany's national Holocaust memorial outside the home of a far-right member of the Alternative for Germany (AfD), Björn Höcke. The act was intended to shame Höcke for comments he made

Centre for Political Beauty. Credit: @politicalbeauty on Twitter, 28 November 2017.

in 2017 in which called the memorial a "monument of shame."[101] The collective was charged under Article 129 of the German Criminal Code which allows the authorities to investigate individuals for their alleged membership of criminal groups and terrorist organisations.[102] The criminal investigation was dropped in April 2019 when no clear evidence of its membership was found. The collective writes:

> *"We need every kind of solidarity to ensure that this break with the constitution does not go unnoticed. Attacking artistic freedom equals attacking the constitution."*[103]

In February 2019, the Counter-Terrorism and Border Security Act 2019 came into force in the UK.[104] The Act has come under heavy criticism from civil society organisations, as well as the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, on several grounds. Some of the criticism relates squarely to the manner in which the law has been framed—essentially limiting the right to freedom of expression, but also access to information both online and offline.[105] Amidst this opposition, one organisation highlights how, *"How this deeply concerning piece of legislation will work in practice remains to be seen. We fear that vague and overbroad provisions lead to arbitrariness and discrimination affecting human rights defenders, journalists, or ethnic minority groups on the grounds of mere suspicion."*[106] Freemuse remains concerned that the law makes it an offence in the UK to view terrorist material online even if it has only been searched for on one occasion regardless of whether there is proof of criminal intent. This is reaffirmed by observations from other NGOs; *"Viewing or clicking on offensive content should not be criminalised absent a clear link to inciting, preparing, or carrying out an unlawful act."*[107] Provisions with this Act remain highly inconsistent with the UK government's obligations under the ECHR, which upholds the freedom to receive and express opinions and information even if they offend, shock, or disturb.

In addition, the UK's Terrorism Act 2006 prohibits statements that are likely to be understood as indirectly "encouraging terrorism" and are punishable with imprisonment. The prohibition is broad and wide-ranging and also includes statements that glorify the commission or preparation of such acts or offences as well as statements where *"members of the public could reasonably be expected to infer that what is being glorified is being glorified as conduct that should be emulated by them in existing circumstances".*[108] As such, a person or group can commit an offence despite the person making the statement not intending to incite others to commit terrorist acts, which might affect the legitimate exercise of the freedom of expression when it comes to fiction or non-fiction writings about real or imagined acts of terrorism.[109]

Prior to ending its state of emergency in 2017 (declared after the November 2015 Paris attacks in which 130 people were killed), the French authorities introduced a new counter-terrorism law called "Strengthening Internal Security and the Fight Against Terrorism" (SILT law), which grants police increased investigative powers. The law authorises the police to raid houses without a warrant, detain and question terrorism suspects bypassing procedural safeguards and enshrining many of the special provisions enacted during the state of emergency into ordinary law. According to UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the law contains provisions that could harm the rights to liberty, security, freedom of assembly and freedom of religion.[110]

"A democracy must not fear debate, even on the most shocking or anti-democratic ideas. It is through open discussion that these ideas should be countered and the supremacy of democratic values be demonstrated. Mutual understanding and respect can only be achieved through open debate. Persuasion, as opposed to ban or repression, is the most democratic means of preserving fundamental values."

ON THE RELATIONSHIP BETWEEN FREEDOM OF EXPRESSION AND FREEDOM OF RELIGION, *VENICE COMMISSION*, 23 OCTOBER 2008.

Additionally, a criminal provision enacted in November 2014 prohibits individuals from expressing any sentiments which may appear to be an "apology for terrorism". This has been criticised by international human rights organisations who report that since the introduction of the law, French prosecutors have been pursuing anyone who speaks positively of a terrorist act or group—even if their proven intention is not to incite violence or promote the group or even where the individual expresses fundamental disagreement with their ideology.[111] Legal moves to challenge this provision have been rejected by the courts which are in clear violation of France's international obligations. These laws reflect a disturbing development in how governments across Europe, and particularly in France (a country that is often seen as the bastion of free speech), have and can enforce and justify such exceptional measures under the pretext of countering terrorism.

RELIGIOUS VALUES OVERRIDING ARTISTIC FREEDOM

Whilst the right to freedom of expression and the right to freedom of religion are both recognised within international treaty law, there are several cases in Europe which exemplify how these rights can be seen as in conflict with each other. In some European countries, blasphemy laws prohibit insult or hurting the religious feelings of others. These laws have often been interpreted in a manner by the courts which inevitably limit the scope of artistic expression, confining and restricting the manner in which artists can touch on or engage with religious themes. In 2008, however, the CoE's advisory body on constitutional matters (the European Commission for Democracy through Law—the Venice Commission), submitted a report about European legislation on blasphemy and religious insult. It examined and concluded on the extent to which respect for religious beliefs should legitimately be allowed to limit the freedom of expression framework. It found that, *"it is neither necessary nor desirable to create an offence of religious insult (that is, insult to religious feelings) simpliciter, without the element of incitement to hatred as an essential component."*[112] It also concluded that the offence of blasphemy should be abolished.

Freemuse spoke with Alan Murray, the President of the European Network of Religion and Belief (ENORB), which works to promote the rights and freedoms enshrined in the EU Charter on Fundamental Rights and in other international human rights conventions. Murray expressed his concerns about the general rise of populism and the far-right giving rise to negative perceptions of human rights, furthering a political agenda based on a rhetoric of fear about the need for traditional values. Murray attributes the rise in Islamophobia (often embodied within hate speech) and hate crimes on this narrative in which LGBTI communities, women and non-Christian religious and ethnic minorities are projected as the root cause of problems within European society.[113] The role of artists in challenging conventional social norms—which are invariably intended to limit the rights of already vulnerable groups—is particularly pertinent in the current political climate. However, it is the right to challenge these discriminatory political narratives, as well as the importance of showing tolerance for artistic expression (even controversial artworks) relating to religious practise or religious doctrine which must be carefully balanced.

POLITICAL INTERESTS **INTERFERING WITH PUBLIC ART**

In 2017, a 52-foot obelisk was created by Nigerian-born, US-based artist and writer Olu Oguibe, titled 'Monument to Strangers and Refugees'. Initially hosted as part of Documenta—a contemporary art show in the City of Kassel in Germany—it was subsequently moved to one of the town's squares in Königsplatz. Oguibe dedicated the monument to refugees around the world and inscribed it with "I was a stranger and you took me in", a Biblical quote from the Book of Matthew which he translated into Turkish, Arabic, English, and German. In a local newspaper, Thomas Materner, a member of Kassel's city council and member of far-right party Alternative für Deutschland (AfD), was quoted as opposing the monument on grounds that the art was "disfiguring". Another politician claimed this term was reminiscent of Nazi condemnation of so-called "degenerate" art that did not conform to their ideology and was subsequently destroyed.[114]

The city administration came under considerable political pressure from far-right politicians to remove the Obelisk. Responding to the mounting pressure, the artist issued a statement.

> *"Recently, I received a note from a senior official of the city's ruling party, the SPD [Socialdemokraterne/the Social Democratic Party], stating that if the Obelisk is not removed from the Königsplatz they would have problems with members of the right wing. Surely, I do not think that art works should be removed simply to avoid problems with members of the right wing."*[115]
>
> **OLU OGUIBE,** PRESS STATEMENT REGARDING THE KÖNIGSPLATZ OBELISK, 28 MAY 2018

In September 2018, the monument was taken down by the city. It was later reinstalled in a different location in the town.

Freemuse believes that such examples are emblematic of an emerging trend in which the margins of what constitutes acceptable art is narrowing. The political climate in Europe is leveraging a context in which artworks—either with religious themes or social themes—are being labelled controversial or provocative. In some cases, this has led to demands for its removal, even in cases where the artwork cannot even remotely be accused of inciting hatred.

The deliberately conservative interpretation of religious texts—set against a political backdrop of growing nationalism—means that art that contains either LGBTI themes or strong feminist ideas can be perceived or projected as a threat to traditional family structures. The growing number of populist nationalist politicians in Europe, who propagate a "static" and monolithic view on religion built on heteronormative ideals and also places limits on women's rights and restrictions on immigrants, is gaining political ground. In these contexts, Freemuse has observed how politicians are proclaiming themselves as guarantors of a stable social order and of morals. Contemporary political populism in which an "us" versus "them" argument is consistently and relentlessly propelled, largely consists of a rejection of social and cultural pluralism and is built instead on the idea of an imaginary homogenous people.[116] This political strategy has leveraged fear amongst its constituents which, *"means erecting fences, turning Europe into a fortress, more police against crime, provisions against the utilisation of the welfare state, fighting for the cultural purity of the Western world and through it against Islamisation".*[117]

Observers believe that a rise in secular fundamentalism[118] is similarly threatening democracy in Europe, propagating the view that religion should not play any role in society.

"PROTECTING RELIGIOUS FEELINGS" **USED TO RESTRICT FREEDOM OF EXPRESSION**

According to the former UN Special Rapporteur in the field of cultural rights, artistic creations that are targeted involve those that are *"questioning*

religion or the sacred, proposing an unorthodox or non-mainstream interpretation of symbols and texts, adopting a conduct deemed not to follow religious precepts, addressing abuse of power by religious leaders or their linkage with political parties or criticising religious extremism."[119] In her reflections upon the growing worldwide concern that artistic voices are silenced, the former UN Special Rapporteur emphasises that restrictions on artistic freedom involve artists being accused of "blasphemy" or "insulting religious feelings" through their art.

"This is something that is unbelievable for me in the 21st Century in the center of Europe. Nobody should be excluded from society. Sexual orientation is not a sin or a crime and the Holy Mother would protect such people from the Church and from priests who think it is okay to condemn others."

ELŻBIETA PODLEŚNA, *BBC NEWS* INTERVIEW, 14 MAY 2019,

Freemuse has found that some LGBTI-themed artworks, including artworks which invoke or depict religious deities such as Virgin Mary, are censored on the grounds that they constitute "blasphemous" acts which are anti-Christian. Freemuse believes that this narrative is deliberately used to restrict LGBTI activism and is part of a wider campaign to restrict freedom of artistic expression. Many artists who create these artworks are also subjected to threats (in both the online and offline sphere), are detained or face the possibility of imprisonment for hurting the religious feelings of others.

In the early hours of May 2019, Polish human rights defender and activist Elżbieta Podleśna was arrested after neinwoken by police officers wanting to search her apartment in Warsaw. The police confiscated her electronic equipment, including her laptop, mobile phone and memory cards. The police initiated the search and arrested her because she, together with two other activists, had distributed images in the city of Plock in central Poland to protest the Catholic Church's call for the exclusion of LGBTI people from mainstream society.

However, it is widely believed that Podleśna was not only being targeted because of her role in sharing the image, but is part of a wider campaign of harassment and state intimidation against her. This is reportedly "common against outspoken activists and human rights defenders" in Poland.[120]

In Poland, a growing resentment towards LGBTI communities has been publicly reinforced by statements from public officials and senior members of the Church. In August 2019, the Archbishop Stanislaw Gadecki of Poznan commented on the ongoing disputes between church leaders and LGBTI groups in the country. In a damaging statement he asserted:

> *"Respect for specific people cannot lead to accepting an ideology which aims at a revolution in social norms and interpersonal relations. This revolution in custom and morals, as Pope Francis stresses, often brandishes a flag of freedom, while in reality inflicting spiritual and material devastation."*[121]

The ruling party, Prawo i Sprawiedliwość (Law and Justice—PiS), has targeted the Polish LGBTI community and used anti-LGBTI messages in an attempt to gain voters ahead of the 2019 national election for many years. This strategy became particularly prevalent after LGBTI rights were pushed up the political agenda with the emergence of the political party Wiosna (Spring)—a progressive party founded in February 2019.[122] Attempts to restrict artistic expression in Poland have been paralleled by the government's wider agenda to diminish freedom of expression. This is illustrated by its relentless attempts to inject political propaganda into the messages carried by the media and the introduction of regulatory changes to increase its control of the public service media. There have similarly been concerted attempts to restrict the independent functioning of the judiciary, as well as various national institutions, as part of the government's efforts to muzzle "unpatriotic" views.[123]

In an interview with Freemuse, Podleśna explained that she distributed the artwork titled 'Maria of

Equality' to protest the Catholic Church's increasing interventions in school programmes through discourses only tolerant of "traditional" family structures and values. In her opinion, the Church is relentless in its campaign to build negative narratives about the LGBTI community and the threat it poses on religious morals as a whole.[124] Catholic faith in Poland is deeply entrenched in the country's history, tradition and culture, and has subsequently become an integral part of the educational system.[125] In Poland, the religious components of school curriculums is decided by authorities of a church or religious association, and the programmes and textbooks used in religious education are first submitted to the Minister of Education for approval before being introduced at the schools.[126] The images Podleśna distributed depicted the Virgin Mary with a rainbow halo and were created by an artist who wishes to keep their identity anonymous.[127] The distribution of the art piece took place during the celebration of "Rainbow Friday"—an event where more than 200 schools in Poland engage in creative activities with the theme of promoting tolerance for LGBTI students. However, following the anti-LGBTI sentiments expressed by the Church, the Minister of Education, Anna Zalewska, issued a similar warning calling on principals to refrain from hosting such events in their schools. She warned that failing to do so would result in negative consequences.[128] Amidst this growing pressure, observers have noted that many schools have cancelled their scheduled activities as part of Rainbow Fridays in 2018.[129]

Soon after Podleśna's arrest, the Polish Minister of Interior under the ruling PiS government, Joachim Brudziński, praised the police for its actions in identifying and detaining Podlesna. In a Twitter post, Brudziński stated:

> *"All that nonsense about freedom and 'tolerance' does not give ANYONE the right to insult the feelings of the faithful."*[130]

In a growing trend which draws parallels with other parts of Eastern Europe, far-right parties in Poland are increasingly taking public that align with the Church. This leveraging of conservative religious norms—which also align and mirror those the political parties are advocating—means that they are becoming part of mainstream political discourse subsequently validating state interventions under the pretext of needing to "protect" the nation.

Podleśna was not informed of who complained and triggered the investigation. However, she said her experience only mirrors the political situation in Poland, in which people are much more afraid to talk openly about their views on issues (sometimes controversial) than they were two years ago. She adds how she and others she knows are increasingly advised to soften their expression and opinions and to conceal their human rights leanings (including support for LGBTI rights), particularly in the lead up to the Polish parliamentary election held in October 2019. This also involves any views on the Church's increasing domination of domestic politics. The artist elaborates that progressive opinions are interpreted as also lending support to the pro-abortion movement,[131] a contentious issue in which the ruling PiS party—supported by the Catholic Church—has ensured a continuing ban on abortions (granted only in exceptional circumstances).

"Persuasion through open public debate, as opposed to ban or repression, is the most democratic means of preserving fundamental values."

THE VENICE COMMISSION, 'BLASPHEMY, INSULT AND HATRED: FINDING ANSWERS IN A DEMOCRATIC SOCIETY', SCIENCE AND TECHNIQUE OF DEMOCRACY, NO. 47, PARAGRAPH 44.

Podleśna was subsequently charged under Article 196 of the Criminal Code, which prohibits offending "the religious feelings of other persons by outraging in public an object of religious worship or a place dedicated to the public celebration of religious rites".[132] Human rights organisations have criticised the investigation into her actions, claiming that she is being targeted for her human rights activism.[133] She is currently awaiting her trial in court and faces a possible fine or imprisonment for up to two years.

Abolition of "blasphemy laws" has taken place in recent years in countries including Norway, Iceland, Malta, France and Denmark.[134] Yet, some EU Member States still penalise insults to religion. This is despite

conclusions from a report on the relationship between freedom of expression and freedom of religion adopted by the Venice Commission (which provides legal advice to its Member States) that the offence of blasphemy should be abolished. However, in a regressive stance, Poland has not been willing to repeal the law. Instead, in 2015, the Polish Constitutional Court determined that Article 196 does not violate freedom of expression and that insults to subjects of religious worship cannot be accepted in a democratic state.[135]

The LGBTI community has similarly been projected as a threat to traditional family norms and religious sentiments in Romania (where more than 80 per cent of the population declare themselves as Orthodox Christians). Artistic expression related to LGBTI themes has been labelled as "blasphemous" and anti-Christian, as seen in June 2019 when the Church called for a ban on the gay-themed theatre play 'I am Too. So What?' staged during Pride Week in the city of Cluj located in north western part of the country. It described the play as "an act of ideological anti-Christian propaganda",[136] and claimed that it violated Article 13(2) of the 2006 law on the Freedom of Religion and the General Status of Denominations. The law prescribes that, "Any form, means, act or action of religious defamation and antagonism, as well as public offending of religious symbols are forbidden in Romania."[137] The Cluj Pride Week organisers rejected the claim that the play intended to denigrate Christianity and its values and proceeded with staging it as planned.

NUDITY DEEMED INAPPROPRIATE **AMONG RELIGIOUS WORSHIPPERS**

Calls to censor artwork—either scheduled for display or already exhibited in public spaces—become acute when it contains nudity. Those who engage in attempts to censor artistic works often do so on the pretext that such nudity, and its creative expression, is offensive to their religious beliefs and thus also unsuitable for display for others. Classical and historical artworks that have been publicly acknowledged and accepted as part of our understanding of ancient civilisations also face challenges similar to contemporary pieces of work subject to calls for removal.

In August 2018, four paintings created by artist Joe Greenwood were removed from the Portsmouth & Hampshire Art Society's (PHAS) summer show held at Portsmouth's Anglican cathedral in England. In response to media pressure, the cathedral said it had asked exhibition organisers to withdraw the paintings because worshippers had expressed "distress" at the images which included figurative nudes. According to PHAS publicity officer, Irene Strange, members of the cathedral's congregation had also complained that the images were too "in your face."[138]

"This was my first proper exhibition, so it makes me sad my paintings have been misconstrued in this way. (...). Nudity itself is not a sexual thing, it's just a human form, and there is a lot of it in religious art - look at the Sistine Chapel for example."

JOE GREENWOOD, *THE TELEGRAPH* INTERVIEW, 3 AUGUST 2019.

Novosibirsk. Credit: @russiaspeaks on Twitter, 23 August 2018

Rome. Credit: @aspeciale on Twitter, 26 January 2016.

Attempts at censorship where the work contains nudity have also been imposed at the behest of religious authorities or carried out in order to avoid offending such bodies. In August 2018, the Novosibirsk State University of Architecture and Design (NGUADI) covered naked sculptures with fabric to avoid hurting the feelings of visiting representatives of the Russian Orthodox Church.[139] In a similar episode, nude statutes were covered with boxes ahead of an official visit to Rome's Capitoline Museum in 2016 as a sign of respect towards Hassan Rouhani, the President of the Islamic republic of Iran.[140]

ARTWORK CENSORED IN RESPECT TO **RELIGIOUS FEELINGS**

This censorship is also extended to artworks not containing nudity, but similarly alleged to contain themes, or expressions which are offensive to religious feelings. In Oslo, Norway, an artwork created by a student at the Olso adult education centre in Helsfyr (Oslo VO Helsfyr) was removed because of its inclusion of scriptures and symbolic expressions belonging to several religions, including Hinduism, Christianity, Judaism and Islam. The artwork prompted protests from the local Muslim community, according to Norwegian news media.[141] Principal Torunn Thomassen and centre management subsequently decided to remove the artwork from the exhibition and instead hung it in Thomassen's office. Following public protest at the decision to remove the artwork, the principal defended her decision.

> *"Removing the image is not a prostration to religion, but an acknowledgment of the right of our adult students to think about what decoration they want to have in their most important learning arenas."*[142]
>
> **TORUNN THOMASSEN,** *RESETT* INTERVIEW, 5 JUNE 2019

Allowing such perceptions to control or impact which artworks are accessible to audiences endangers the core of freedom of expression. As the UN Special Rapporteur in the field of cultural right states:

> *"Freedom of artistic expression and creativity cannot be dissociated from the right of all persons to enjoy the arts, as in many cases restrictions on artistic freedoms aim at denying people access to specific artworks. Hence, removing creative expressions from public access is a way to restrict artistic freedom."*[143]
>
> UN SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED,** 14 MARCH 2013

INSULT TO THE STATE AND ITS SYMBOLS

It is little known that across Europe there are a number of countries that have within their jurisdictions archaic insult laws that, broadly speaking, make it an offense to insult the state including its symbols and emblems, (such as flags and national anthems, for example), public institutions or officials, and even in some cases foreign heads of states. *'Lèse majesté'* laws[144] are also applied in monarchist states to protect their royal families from insult. Mostly these laws have remained unused, often for decades, and are in effect moribund. They remain law simply because their repeal has not been a priority.

***European countries** offering special protection to the reputation and honour of the head of state: Andorra, Belarus, Belgium, Denmark, Germany, Greece, Iceland, Italy, Malta, Monaco, the Netherlands, Poland, Portugal, San Marino, Slovenia, Spain, Sweden, Turkey and Russia. **EU Member States** offering special protection to the reputation and honour of the head of state: Belgium, Denmark, Germany, Greece, Italy, Malta, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden.*[145]

Growing nationalist, populist and authoritarian tendencies in governments lead to fears that there will be an increase in the use of these laws, as illustrated in Spain, Poland, Turkey and Germany, for example. This is compounded by the difficulty of accurately assessing or measuring what is or what is not insulting or offensive. For this reason, artists are particularly vulnerable to prosecution, especially visual and performing artists who use humour, satire, parody, and even invective (often with strong language), to express their message. This makes it imperative that states which retain such legislation carry out a review and remove the danger of these laws being used to stifle legitimate commentary and dissent.

INSULT TO HEADS OF **STATES AND ROYALTY**

A comprehensive 2017 OSCE study[146] found a startling number of European states with laws that protect their leaders and even their nation states and emblems from insult, many of them carrying not just fines, but also prison terms. In 24 European countries, insults to the head of state can lead to imprisonment.[147] Among them are six states where insult to the monarchy is penalised, including Denmark, Spain, the Netherlands, Belgium, Sweden, and Monaco.[148] These laws are very rarely used, but notably in Spain, these have been recently applied. Rapper Valtonyc, who, in addition to misapplied charges of terrorism (see page 31), was charged with insult to the monarchy for his lyrics that implicated the Spanish King in the murder of his brother.[149] Another rapper, Pablo Hasél (see also page 32) was similarly accused of terrorism alongside insulting the Spanish royalty in his tweets.[150] It is worth noting that the Spanish Constitution Article 20 explicitly protects not only freedom of expression,[151] but also artistic creation, which implies that artworks and commentary that satirise or explore contentious issues are similarly protected.

INSULT TO FLAGS AND **NATIONAL EMBLEMS**

The OSCE report also refers to 36 countries where artworks depicting national emblems, notably flags, and especially those that are expressing a political message, can invite prison terms.[152]

In November 2018, the Olsztyn-Południe District Prosecutor's Office in Poland initiated an investigation into two paintings displayed in the Dobro Gallery in Warsaw. The painting were a part of an exhibition titled *Polacy Europy (Poles of Europe)* and contained phallic motifs stylised around Poland's coat of arms and a crucified Jesus Christ. According to the ruling PiS party, these were seen to represent "obscene-pornographic provocation".[153] It was examined whether there was an insult to the Polish emblem, an offense of religious feelings and whether the director of the Municipal Culture Center (MOK) failed to fulfil his duties by not removing the images.[154] At the time of writing, the paintings have been confiscated and the artists are awaiting the prosecutor's decision.

In Spain, Dani Mateo, a comedian, averted prosecution for insult to the Spanish flag when a case under Article 543 of the Spanish Criminal Code was dropped. Article 543 relates to insult to national emblems and carries a maximum one-year fine. The charges arose from a 31 October 2018 sketch that was aired on the satirical television show 'El Intermedio' in which Mateo blew his nose on the

Spanish flag. This to a series of outraged social media posts and threats.[155] The artist appeared before a court in Madrid on 26 November 2018 to hear charges of insult to the state after Alternativa Sindical de Policía (ASP), a police labour union, issued a complaint that Mateo had "offended Spain, its symbols, and thereby, the entire democratic society".[156] The ASP is a relatively small organisation, representing less than 5 per cent of the police force and whose leadership has been accused of populist tendencies, even within its own membership.[157] Mateo's show, which was scheduled to take place later in Valencia, was reportedly cancelled. Another that went ahead in Ciudad Real, was marred by nationalist protests.[158] The case was dropped in January 2019 on the grounds that while Mateo's actions had been "challenging", he had no intention of inciting hatred through this act which was "within the prism of freedom of expression".[159] Although the decision is welcome, this case is another example of how populists can turn to the law to penalise artists who speak out. And while these cases may not be upheld, they serve as a deterrent to others and may contribute to artists self-censoring their legitimate expression.

"As a citizen of this country, I'm worried because we are taking a clown to court for doing his job; and that worries me due to the image it creates of my country and my flag."

UN SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, **FARIDA SHAHEED,** 14 MARCH 2013

THE **JAN BÖHMERMANN** CASE

In its 2017 report on defamation laws in Europe, the OSCE listed a surprising 18 states where insult to a foreign head of state is criminalised,[160] implemented most recently in March 2019 in Russia.[161]

One well known incident from March 2016, involved the German satirist and television presenter, Jan Böhmermann. Böhmermann read out what he called his 'Defamatory Poem', a lampoon of Turkey's President Erdoğan, on his 'Neo Magazin Royale' show on neo ZDF, a branch of the mainstream ZDF broadcast service. The poem contained extremely crude language, including suggestions that President Erdoğan engaged in bestiality and paedophilia. Soon after, President Erdoğan demanded that the German government bring Böhmermann to court under Section 103 of the German Criminal Code that made it an offense to insult a foreign head of state[162] and which carried a five-year maximum sentence. Until then, few were aware of the existence of this law which had been promulgated in 1871 and had not been used in recent decades. Acknowledging that such a judicial action could be taken under German law, Chancellor Angela Merkel agreed to the request while noting that she would also recommend that Section 103 be repealed. Some press reports suggested that she had been under pressure to accede to the demand while she was in negotiations with the Turkish president about the refugee deal between the EU and Turkey.[163]

In October 2016, the case against Böhmermann was rejected by the Mainz prosecutor's office stating that "criminal activity could not be proven with sufficient certainty." Referring to Böhmermann's defence argument that the poem was an "exaggerated portrayal" of the president that "any listener should immediately recognise ... that it was a joke or a piece of nonsense", the prosecutor's office added that, *"This stance is supported by the objectively verifiable circumstances, namely the content of the piece, its origins, and the manner of the delivery".*[164] The case was closed.

In January 2017, German lawmakers voted for repeal of Section 103, and one year later, on 25 January 2018, it was abolished as being "dispensable" and that it was "no longer appropriate in this day and age to think that representatives of a foreign state require any greater protection of their honour".[165] It should be noted, however, that criminal defamation remains on statutes to which members of foreign government can still turn.[166] Meanwhile, President Erdoğan had simultaneously brought another case against Böhmermann under civil law, and in 2016, the Regional Superior State Court in Hamburg ruled all but six of the 24 lines of the poem be banned from

being recited,[167] a ban that was upheld in February 2017.[168] (The full text of the poem with the banned sections outlined in red is available).[169]

This case is a stark example of how archaic laws, which have not been implemented for decades, can be unearthed at a later stage, necessitating the need for urgent legal review and appeal.

THOUSANDS **TRIED FOR "INSULT"**

There is no country in Europe that presently uses its insult laws to prosecute those who criticise a head of state more than in Turkey. Article 299 of the Turkish Penal Code provides sentences of up to four years for "insulting the president". In 2016, the Venice Commission recommended the law be repealed on grounds that it constituted a denial of freedom of expression, adding that its use was "excessive and growing".[170] This concern is echoed in human rights organisations' reports. One such report notes that while this law had been rarely used until 2015, prosecutions had risen rapidly from 132 in 2014, the year that Erdoğan became President,[171] to a staggering 6,000 prosecutions and over 2,000 convictions, in 2017.[172] Among those who have been convicted under these laws are numerous artists—musicians, actors, cartoonists and writers among them. In many cases, the sentences are suspended or converted into fines.

Singer Zuhal Olcay received a deferred sentence of eleven months and 20 days for insulting the President in July 2018. The sentence came after an anonymous complaint regarding her song entitled 'Boş Vermişim Dünyayı' (I Let Go of the World) which she had adapted to include a reference to President Erdoğan. She was also accused of using an "unidentified but repeated hand gesture" that the court deemed "offensive by society" during her public performance of the song. The sentence was suspended for 18 months.[173]

Whether it results in charges of criminal defamation or insult, the application of such laws is in breach of the right to freedom of expression, be it under Article 10 of the ECHR or Article 19 of the ICCPR. There is also wide acknowledgement that Turkish public officials and figures of authority must bear a wider tolerance of criticism and refrain from turning to the courts to reprimand those who challenge them.[174]

UNDUE GOVERNMENT INFLUENCE ON MUSEUMS AND ARTS INSTITUTIONS

Several of Europe's governments, notably nationalist or far-right, are increasingly attempting to take control of national museum and cultural institution programming and leadership. Typically, the demands are for content to reflect nationalist rhetoric (for example, views of history), or objections to content that run counter to populist narratives, such as on refugees and immigration, religion and social values. At times, pressure has been direct, including dismissals and terminations of

"The world can and should learn much from Poland's rich and diverse culture, sophisticated cultural institutions and vibrant cultural life with which the Special Rapporteur was deeply impressed. At the same time, all these achievements are currently challenged by attempts at official cultural engineering aimed at reducing cultural expression to reflect a monolithic vision of contemporary society and a simplistic and exclusionary version of Polish history both of which undermine the enjoyment of human rights, including cultural rights."

UN SPECIAL RAPPORTEUR IN THE FIELD OF CULTURAL RIGHTS, KARIMA BENNOUNE, END OF MISSION STATEMENT, OCTOBER 2018

contracts of museum directors and withdrawal of funding. In other more subtle instances, a climate of public criticism is created through the media and professional ostracization has led others to decide to leave their posts. Notably among them are foreign nationals who are targeted by nationalists who wish to see a return of their cultural institutions to people from their own countries, as part of a nationalist project.

As UN Special Rapporteur in the field of culture rights has noted the rise of right-wing nationalism in Europe as part of a global trend that is having a "deleterious effect on the enjoyment of cultural rights". She adds that the "apparent normalisation and increasing mainstreaming of some of these views", including by some government officials, is an issue that must be urgently addressed.[175]

Specific to how this trend is impacting on museums, these views are echoed in a statement issued in March 2018 by the International Council of Museums[176] that noted museums are "spaces for cultural transmission", "inter cultural dialogue" and that "regardless of their funding sources or governance model, museums should maintain control of the content and integrity of their programs".[177] These concerns are paralleled by closer examination of museum and cultural institutions in Europe that have recently been impacted by this trend.

POLITICAL ORDER **"EMBEDDED" IN CULTURE**

Hungarian government rhetoric, interference in cultural institutions and the presence of right-wing press all serve to overshadow and contradict Hungary's constitutional protection of artistic freedom. At his annual summer speech in July 2018 to celebrate his re-election to a third term earlier in April, Prime Minister Viktor Orbán reiterated the pledge that had secured his victory among his populist supporters: that Hungary "has the right to defend its Christian culture, and it has the right to reject the ideology of multiculturalism". This policy, he added, would be further embedded through "a new intellectual and cultural approach".[178] One of the government's first initiatives after taking office in 2010 was to rewrite Hungary's basic law, changes that came into force on 1 January 2012. The preamble, titled 'the National Avowal', lists a series of proclamations that underline Hungary as a Christian state, the importance of nationhood and religious values and of "promoting and safeguarding" Hungarian culture.[179] Orbán's Fidesz government is increasing its far-right, anti-immigrant rhetoric, even at one time openly describing his policy as "Illiberal Democracy" and now as a "Christian democracy" that is battling a Europe besieged by outsiders.[180]

One practical impact of the 2012 amendments on cultural practice is Article X (1) of the Law that states that "Hungary shall ensure the freedom of scientific research and artistic creation…". Article (3) then adds that "Hungary shall defend the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts"(MMA).[181] The singling out of the MMA, which prior to 2010 had been a relatively small organisation, has placed it in a privileged position, now attracting a disproportionately large share of government funding and reducing what is available to other institutions that wish to stage programs including works that challenge government views. At the same time, there are concerns that the leadership of key arts institutions have been deliberately taken over by government appointees, ranging from the National Theatre, cultural funds, film and performing arts sectors, leaving the independent sector neglected and side-lined.[182]

These sentiments are part of what has been termed as a "culture war" between the populist government and liberal arts professionals who have been under attack for their left-leaning views or criticism of the government. Orbán has made it clear that political order should be "embedded into a cultural era."[183]

This rhetoric has been heightened by pro-government media demands that cultural leaders should reflect national interests. The pro-government newspaper 'Magyar Idők' has issued a series of attacks on the directors of arts and cultural institutions for their programming of works deemed to be digressive. This includes those touching on religion, LGBTI and left-wing politics. Some cultural institution leaders have since resigned or been dismissed (among them also

party loyalists) and their positions replaced by pro-government individuals.[184] In one such high-profile case, Gergely Prőhle, the Director of the Petőfi Museum of Literature—who had formerly worked closely with the Orban government in the foreign ministry—lost his job after being criticised in Magyar Idok for providing financial support to poets and novelists critical of the government. Similarly, the Balassi Institute which promotes Hungarian culture internationally came under fire for promoting the presence of liberal authors at its literary events and not bringing enough pro-Orban novelists.[185]

"Museums are spaces for cultural transmission, intercultural dialogue, learning, discussion and training. Therefore, museums play an important role in education, social cohesion and sustainable development and have great potential to raise public awareness of the value of cultural and natural heritage and of the responsibility of all citizens to contribute to their care and transmission. Regardless of their funding source or governance model, museums should maintain control of the content and integrity of their programs, exhibitions and activities. Income-generating activities should not compromise the standards of the institution or its public."

INTERNATIONAL COUNCIL OF MUSEUMS MARCH 2018

One of the best-known outcomes of Magyar Idők's campaigns was to force the closure of 15 out of 44 planned performances of the musical 'Billy Elliot' that the newspaper claimed promoted a deviant way of life and could "turn children gay". It added that, "the propagation of homosexuality cannot be a national goal when the population is getting older and smaller and our country is threatened by invasion",[186] by which it is referring to fears of refugees being allowed entry to the country, although the actual numbers are extremely low.[187]

LACK OF TRANSPARENCY AND MARGINALISATION

Populist-government influence is also present in the cultural sphere in Serbia, where persons loyal to the government have been allocated positions on arts juries and committees and independent civil society organisations struggle to find out how decisions are made or to be represented on leading institutions. There are also suggestions that "fake" organisations have been set up to access government cultural funds, and that some applications are made to "disappear", getting lost in lengthy and opaque funding processes.[188] There are concerns within the EU that Serbia is heading towards increased authoritarianism, with press freedom in decline, electoral fraud and corruption, and the growing marginalisation of critical voices under the populist President Aleksandar Vučić and his Srpska napredna stranka (Serbian Progressive Party—SNS). A May 2019 European Parliament briefing paper describes a climate where:

> *"The tone of verbal attacks by [the ruling] Serbian Progressive Party (SNS) politicians and their allies on independent media, the political opposition and civil society is often virulent. Criticising government policy is framed as betrayal of Serbian interests. The aim seems to be to marginalise critical voices while concentrating power in the hands of the SNS-led government".*[189]

While there have been no recent prosecutions of government critics, other means of penalising dissent is used. In 2014, the Serbian labour law was revised, ostensibly to simplify the procedures for hiring and dismissing employees.[190] In its 2018 report on the state of artistic freedom, Freemuse refers to the termination of contracts of a leading playwright, Bojana Ivanov Đorđević. She believes she was dismissed because she was not a member of the SNS. Actor, Saša Stojković, who as a journalist has written on government corruption, was also dismissed from the theatre where he worked.[191]

Serbia's constitution specifically includes protection of artistic freedom within Article 46:

> *"The freedom of thought and expression shall be guaranteed, as well as the freedom to seek,*

*receive and impart information and ideas through speech, writing, **art** or in some other manner."*

Furthermore, Article 73 states that there should be unrestricted freedom of artistic creativity.[192] Serbia should ensure that its administrative practices do not place undue control on the rights to artistic freedom and access to culture that are protected within its own Constitution.

POPULIST GOVERNMENT **REASSERTS CONTROL OVER MUSEUMS**

In Italy, after four years of decentralised governance of its arts and cultural sector, the government reasserted control in a move that reflected the populist 'Italians First' sentiments of its right-wing following. In 2015, under the reformist government of then Prime Minister Matteo Renzi, there was a shakeup of the administration of Italy's cultural and arts aimed at injecting fresh ideas and energy into what was seen to be a failing sector. Directorships of leading arts and cultural institutions were opened to foreigners, budget controls were loosened and the institutions were given greater freedom on the content in exhibitions and what could be loaned abroad. Of the twenty new posts filled since 2015, seven were taken by curators and directors from outside of Italy. This era of independence had swift success with visitor numbers increasing significantly and revenues rising by up to 30 per cent.[193] In June 2018, a populist coalition government came to power and in January 2019, Alberto Bonisoli, Minister of Cultural Heritage and a member of the anti-immigrant 5-Star Movement, then in government alongside the nationalist League Party, announced that foreign cultural institution heads would not have their contracts renewed, adding that there was sufficient talent in Italy to fill those jobs.[194] The new regulations[195] were signed into law in mid-August 2019, which also took back budgetary control and decisions on re-hanging of exhibitions and on which items could be loaned abroad.[196] Reflecting the rapid twists and turns in Italian politics, only a few weeks later, the sudden collapse of the coalition government saw the 5-Star Movement drop its alliance with the League Party and form a new coalition with the left-leaning Democratic Party. This led to the reinstatement of Dario Franceschini as Minister for Cultural Heritage and Tourism. Franceschini had put the original plan in place to allow non-Italian directors to run Italy's cultural institutions and the threat to the employment of foreign leaders in cultural institutions was lifted.[197] While this reversal was welcomed, it serves to underline how arts and culture can be instrumentalised and exploited for political ends.

Italy's cultural heritage is a source of great national pride, a sentiment that appears to be manipulated to populist anti-immigrant and anti-EU ends. This was illustrated when in 2018, Italy, under the then-populist coalition, threatened to reverse a decision to loan works by Leonardo Da Vinci to the Louvre for its blockbuster exhibition opening in autumn 2019 and marking 500 years since the artist's death. Government officials protesting the loan reported that "Da Vinci is Italian" and that the exhibit would place Italy at the margins of a major cultural event.[198] Although the dispute was resolved in September 2019 with the agreement that Italy would loan the works of Da Vinci in exchange for the loan of works from the Louvre for an exhibition on Raphael in Italy in 2020,[199] it is another example of how looming nationalism could impact the arts in Italy.

The furore in August 2018 around a poster by the world-renowned Serbian artist, Marina Abramović, is a case that illustrates populist attempts to censor artworks on political grounds. The poster had been commissioned by the organisers of Italy's annual Barcolana regatta (one of the world's largest sailing events) and depicts Abramović waving a flag with the slogan "We're in the same boat". This led the deputy mayor of Barcolana, Paulo Polidori, also a member of the nationalist League Party, to label the poster as "political propaganda" and demand it be withdrawn. He also threatened to withdraw city council funding from the regatta. The organisers refused, pointing out that the message on the poster was about the environment, stating: "Even on different boats, when we compete for the best result, we sail on the same planet, which needs to be guarded and protected daily."[200]

Polidori had apparently instead interpreted the poster as an implicit criticism of the League Party's

"I've slowly been affected by many decisions being made on the federal level in Austria. It's about a slow shift in civil society. For example, NGOs, especially those working with refugee aid, are being slowly divested of power. That is connected and also responsive to the implications of governmental decision-making. So is the work of a Kunsthalle, whose mission is to show international contemporary art and promote and communicate discourse, and this art is often socio-political. But then are we, a Kunsthalle, the right instrument for resistance? I don't wish to instrumentalize art this way either. It's a contradiction in itself."

NICOLAUS SCHAFHAUSEN, FORMER OF KUNSTEHALLE WIEN, IN AN INTERVIEW WITH *FRIEZE* MAGAZINE ON THE REASONS FOR HIS RESIGNATION, MAY 2018

decision to close Italy's ports to refugee boats. Ultimately, the censorship threat did not materialise, but is indicative of attempts by far-right politicians to have artworks that are critical of their stance—actual or implied—removed from public view.

These developments should be seen in light of both a deterioration in freedom of expression overall in Italy in 2019[201] amidst its volatile politics in which the populist narrative continues to gain steady ground.

REINTERPRETING HISTORY

The "culture war" is also being waged in Poland. In 2017, the Polish Ministry of Culture and National Heritage announced its plans to merge the Museum of World War II with the Museum of the Westerplatte War of 1939, the building of which has not commenced. The government's plan to expropriate the land on which it will be built from the city of Gdansk has been widely criticised.[202] The Battle of Westerplatte near the Polish port-city Gdansk was the first field of battle of WWII and marked the start of the war. The decision has been criticised in Poland and internationally as a move towards the nationalist government's contemporary narrative of Poland's war-time experience other than the Museum of World War II's focus on the impact of war more widely in Europe. The Museum opened in 2017 and focuses on the sufferings of civilians, not only in Poland, but also elsewhere in Eastern Europe and the Jewish genocide.[203] The director of the Museum, Polish historian Paweł Machcewicz, was dismissed just a month after the museum opened in March 2017.[204] A new government-appointed director has made changes to the exhibits, including amending the display highlighting the numbers of deaths in each country to show that Poland proportionately suffered more deaths than others. The new director has also replaced a video on the history of wars since 1945, including in Ukraine and Syria, and on refugees, with one that features Polish soldiers in combat—a commemoration of patriotic glory.[205]

In April 2019, the Malta Festival Poznán, a leading annual international theatre festival, won a legal case against the Ministry of Culture and National Heritage for having removed contractual funding of its 2016 programme. It had brought the case against the Ministry jointly with the Polish branch of the Helsinki Human Rights Foundation. The case contested the rescinding of an approximately 70.000 euro grant that was part of a three-year contract between the Festival and the Ministry. The grant was withdrawn in retaliation at the Festival's appointment of the controversial Croatian theatre director, Oliver Frljić as co-director of the 2017 festival.[206] In April 2019, the Warsaw District Court decided in favour of the Malta Festival and ordered that the Ministry pay 300.000 PLN (around 70.000 euro) plus legal fees.[207] An acclaimed dramaturge, Frljić's work is deliberately provocative, tackling religion and nationalism. When it was staged in Warsaw in early 2017, the play titled, 'The Curse' (a polemic against the relationship between Church and state and the lack of investigation into accusations of paedophilia by Church officials), led to clashes between religious and far-right groups and supporters of the play.[208] On learning of the court's decision, Culture Minister Piotr Gliński, who had ordered the withdrawal of the grant, defended his decision reiterating that Frljić's

appointment as curator was inappropriate because of his controversial worked clearly aimed, as he saw it, at provoking social conflict.[209]

In a statement following her visit to Poland in September 2018, UN Special Rapporteur in the field of cultural rights noted that the Culture Ministry's influence over decision-making on budgets, projects and programs of Poland's cultural institutions gives it a "large influence on the orientation of the content of cultural and artistic programming". She also referred to members of the ruling party criticising directors in the media, at times leading to dismissals, as creating a climate of self-censorship and coercing some cultural leaders to leave the country. This situation, she concludes, is having a negative impact on the right to artistic freedom and to a rich cultural life that is not moulded by "the political orientation of cultural programming".[210]

The Polish government's interventions in the cultural sector contravene several articles in its own Constitution, as pointed out by the aforementioned UN Special Rapporteur. This includes Article 6.1 of the Polish Constitution that ensures people's access to the products of culture "which are the source of the Nation's identity, continuity and development". Also, notably Article 73, which specifically guarantees the right to artistic freedom and to "enjoy the products of culture".[211]

In Austria, Nicolaus Schafhausen, director of Vienna's Kunsthalle contemporary art museum announced in May 2018 that he was to leave his post in March 2019, three years before the end of his contract. In a statement on the museum's website announcing his resignation, Schafhausen referred to a "resurgence or nationalist politics" as motivating his decision.[212] He further explained in a later interview that he had been troubled by the numbers of other museum directors who had been fired or decided to step down and wished to be able to leave his post on his own terms. He also referred to growing resentment against Germans such as himself working in public institutions and saw this as a form of ostracization. During his seven years at the Kunsthalle, Schafhausen had staged politically charged exhibitions such as 'Political Populism' in 2015/16 and 'How to Live Together' in 2017.[213]

In the Czech Republic in May 2019, the Interior Minister requested that then Culture Minister Antonín Staněk resign following protests at Staněk's dismissal of Jiří Fjat, director of the Prague National Gallery, and Michal Soukup, head of the Museum of Art in the eastern city of Olomuc. Staněk had accused the directors of financial mismanagement, a claim that was widely disputed, leading to a petition of 6,500 signatures against the dismissals[214] and a letter of protest signed by 40 directors of the world's most renowned museums, who cited Fjat as an *"esteemed colleague [a] role model and source of inspiration".*[215] Yet, three months later in August 2019, no replacement had been agreed as the appointment of a new minister became a political football that threatened the dissolution of the fragile coalition government.[216]

ARTISTS WHOSE SUPPORT FOR **THE BDS MOVEMENT IS SANCTIONED**

In Germany, arts and cultural organisations who host artists supportive of the Boycott, Divestment and Sanction (BDS) movement are under threat of withdrawal of municipal funding. This has led to concerns of breaches to freedom of expression. BDS is a global movement that is campaigning for sporting, academic and cultural boycotts of Israel, alongside sanctions and divestment of foreign organisation funds held in the country.[217] Several German cities have placed bans on the public hosting of BDS events and have threatened to withdraw funding from those that do. One high-profile example from June 2018 centred on Stefanie Carp, director of the Ruhrtriennale[218] international arts festival held in the Ruhr region of Germany. The festival announced it would remove the Scottish hip hop/rap group, the Young Fathers, from that the 2018 program. In August 2017, the band had been among several to withdraw from Berlin's Pop Kultur festival in protest of Israeli government funding of some of the artists.[219] Ruhrtriennale requested that the band distance itself from the BDS a performance condition, something that the band refused to do. As a result, Carp came under a barrage of online criticism in which she was accused of succumbing to Israeli pressure and effectively censoring the

band. Then, on 21 June 2018, Carp issued a press release saying that after some reflection, she would re-invite the Young Fathers to perform, adding that while she remained anti-BDS, nevertheless she believed:

> *"That we need to allow the different perspectives and narratives, because this openness is the dramaturgic credo of our programme. I therefore have to defend the freedom of the arts, and do not, under any circumstances, even indirectly, wish to exercise censorship."*[220]
>
> STATEMENT BY RUHRTRIENNALE'S ARTISTIC DIRECTOR **STEFANIE CARP**

She added that the Festival would host an event where the controversy could be aired and debated.[221] However, the Young Fathers remained unmoved and refused the re-invitation.

Carp's dilemma should be seen within the context of a trend in Germany, where anti-Semitism is a felony, and has become more pronounced with the rise in anti-Semitic attacks in recent years. Several German cities have placed bans on the public hosting of BDS events and have withdrawn subsidies for organisations supporting BDS. In May 2019, the German Bundestag passed a motion labelling BDS as "anti-Semitic", a move widely condemned as wrongly conflating criticism of Israel with anti-Semitism[222] and a position that has questionable legal legitimacy. The Administrative Court in Cologne ruled against a ban on a women's group supporting an Israeli boycott. They noted of this action, and the Bundestag statement, that *"motions alone [that] cannot justify, from any legal perspective, the restriction of an existing legal right".*[223]

More recently, in July 2019, American rapper Talib Kweli cancelled his tour to Germany after he had been disinvited from the Open Source Festival in Düsseldorf for refusing to disavow his support of the BDS. The festival had explained that it would lose municipal funding if it included pro-BDS artists in its program.[224] In September 2019, the city of Dortmund rescinded its 15,000 euro Nelly Sachs Prize (awarded annually) that had been granted to the British-Pakistani author, Kamila Shamsie, on learning of her support for BDS. The removal of the award led to a petition of protest signed by hundreds of writers.[225] Soon after, yet another artist, Lebanese painter Walid Raab, had the prestigious Aachen Art Prize 2018 worth 10,000 euros rescinded in early October after the organisers of the award found that he was a supporter of the BDS movement.[226]

> *"The idea that a German festival and the government by proxy is saying that 'Talib Kweli has to disavow BDS before he's allowed on our stage, regardless of whether he's going to speak on BDS or not,'.... Anyone who supports the arts, regardless of how they feel about Palestine, should be against this decision."*
>
> **TALIB KWELI,** US RAPPER, SPEAKING TO *UPROXX* MAGAZINE, 9 JULY 2019,

The inability to call for boycott is a clear violation of freedom of expression, especially when it is being enforced through law, official blacklisting and denial of access to performance space, as in Germany. Freemuse believes that it is the responsibility of the German authorities in such cases to ensure that they openly communicate with relevant entities working in the arts and culture industry that artists and supporters associated with BDS should not have their rights undermined because of their political association. It should also be noted that, conversely, artists who wish to perform in Israel have faced ferocious online abuse, often by other artists, and have felt "bullied" and intimidated into not going. Among those are leading international artists, such as Radiohead's Thom Yorke and the musician Nick Cave, who, when interviewed on their decision to defy the boycott, accused their detractors of trying to stop them from practising their rights to freedom of artistic expression.[227] Whilst Freemuse supports the rights of BDS artists and supporters to peacefully

advocate their campaign objectives, their pressure on other artists must not violate the artist's right to choose where they perform nor must it result in online or offline abuse.

LGBTI ARTISTS AND ARTWORKS TARGETED

The extension of nationalist narratives is especially felt by lesbian, gay, bisexual, transgender or intersex (LGBTI) artists or those producing artwork containing LGBTI themes. These narratives emphasise the role of family values, essentially promoting heteronormative ideals across Europe. Historically marginalised, LGBTI experiences of inequality, discrimination and intolerance from state actors and non-state actors are further reinforced in the current political climate.

The introduction of anti-LGBTI laws prohibiting "promotion" and supportive expressions for the LGBTI community have proven particularly popular as political tools and are leveraging violations of artistic freedom. Artworks which feature LGBTI topics are also censored on the pretext of protecting minors from so-called "inappropriate" content and laws that have been implemented to protect viewers have resulted in restrictions on information to children that shows same-sex relationships.

"ANTI-HOMOSEXUALITY PROPAGANDA" LAWS AND ARTISTIC FREEDOM

The attempts to limit any public discussion on issues relating to LGBTI issues, including artistic expression, have been marked particularly in Eastern European countries. In recent years, countries in this region have sought to introduce legislation prohibiting propaganda of non-traditional sexual relations. In 2013, a Russian law was signed prohibiting propaganda of "non-traditional sexual relations".[228] In a regressive move, people have been arrested under this law simply for holding signs saying that being gay is normal. Homophobic legislation in Russia has triggered similar movements and calls for legislation in other neighbouring countries to adopt legislation imitating the Russian law.[229]

These laws have largely been enacted, amidst looming narratives which centre on the need to actively promote traditional family values in order to protect the morality of children. Their enactment has also signalled impunity for acts of violence committed against LGBTI individuals, intentionally fostering and entrenching stigma and prejudice towards them.[230]

In 2017, the ECtHR concluded that legal provisions contained within Russian "gay-propaganda" law violates Article 10 as well as Article 14 of the ECHR. It held that these provisions do not advance the legitimate aim of the protection of morals and might even be counterproductive in achieving the declared aims, as adopting such laws will reinforce *"stigma and prejudice and encourage homophobia".*[231] This ruling parallels the 2013 opinion of the European Commission for Democracy through Law (the Venice Commission) specifically on the issue of prohibition of "propaganda of homosexuality". It considered that the statutory provisions of such prohibitions are incompatible with the ECHR and international human rights standards by being ambiguous and *"blanket restrictions aimed at legitimate expressions of sexual orientation".*[232] These restrictions which have been held as incompatible with the freedoms protected and promoted through European legislation also place significant limitations in the promotion of cultural diversity and pluralism.

CENSORSHIP OF LGBTI CONTENT TO PROTECT THE "THE HEALTH OF MINORS"

When Lithuania became member of the European Union in 2004, authorities implemented the anti-discrimination legislation as stipulated by the European Commission.[233] However, in November 2018, the Lithuanian pop band SKAMP—whose lyrics are renowned for their oppositional content and sentiments—were informed that their music video for their song 'Love Me Like There's No Tomorrow' would not be featured on national television. The

video was censored because it featured scenes of same-sex couples kissing. In an anticipatory move, the broadcaster prevented the screening of the video because of his belief that it would violate the Lithuanian Law on the Protection of Minors Against the Detrimental Effect of Public Information, which has been used to restrict information to children containing same-sex relationships.[234] The law classifies any information which "denigrates family values" or "encourages a concept of marriage and family other than the one stipulated in the Constitution or in the Civil Code".[235] Specifically, Article 38 of the Constitution proclaims that marriage shall be concluded *"upon the free mutual consent of man and woman".*[236] As part of their joint submission to the UPR, LGBTI rights organisations assert:

> *"The Lithuanian authorities claim that this discriminatory interference with the right to freedom of expression is necessary to protect the "emotional, spiritual, psychological development and health of the minors", thus creating a chilling effect on talking publicly about LGBT issues in Lithuanian society".*[237]

Furthermore, Article 38 of the Constitution of the Republic of Lithuania delegitimises LGBTI identities by explicitly promoting marriage which is, *"concluded upon the free mutual consent of man and woman".*[238] The deliberate promotion of heteronormative concepts in Lithuania has ensured that LGBTI individuals have felt unable to express their sexuality in most public and private arenas and has had a chilling effect on all forms of LGBTI expression.

ARTISTS DETAINED FOR **"QUESTIONING TRADITIONAL FAMILY VALUES"**

Under the authoritarian regime of Belarus where Alexander Lukashenko has served as President since 1994, civil society activists, lawyers, rights groups, and independent media continue to face arbitrary harassment and pressure by the state solely because of their peaceful expression.[239] Lukashenko exercises overarching control over Belarusian politics and is known to only fill senior posts with those who show him personal loyalty, prevent alternative power and restrict the organisation of mass protests.[240]

This state control has also been exerted over any form of expression—artistic or otherwise—related to LGBTI issues. In May 2016, parliament adopted a bill to protect children from "information harmful for their health and development" which entails provisions that can be used to restrict dissemination of information on LGBTI topics which are understood as "discrediting the institution of the family."[241] The law allows for a broad interpretation by authorities and has been used to disable and stifle not only artistic expression ,but any form of support which could be misconstrued as promoting LGBTI rights. Artists are likewise restricted in exercising their right to expression particularly as it relates to social issues which they either wish to raise awareness on or when it involves voicing any kind of political dissent. Freemuse has documented several incidents where peaceful protests against the discriminatory treatment meted to LGBTI people in Belarus has inviably led to clashes with the police.

In May 2018, a friend of activist Viktoria Biran took a photo of her in front of government buildings including the Ministry of Interior holding a sign inscribed with the message, "YOU are fake" and posted it on social media. Biran's stunt was enacted in protest against an anonymous article on the Interior Ministry site in which the struggle for the LGBTI community and its rights were labelled as "fake." This article was allegedly a reaction to the display of a rainbow flag by the British Embassy in Belarus hung in support of LGBTI people in the country. Biran was subsequently found guilty of violating Article 23.34 of the Code of Administrative Offenses of Belarus which prohibits the organization of or holding of mass events. Biran was sentenced to a fine of 367.5 Belarusian roubles (approximately 160 euros).[242] Commenting on the folly of the ruling in which Biran was protesting and standing alone only for the seconds during which the photos were taken prompted human rights organisations into commenting on how- this prosecution of peaceful a LGBTI activist has put a spotlight on the Belarusian authorities 's record on human rights once again.

Belarus Free Theatre. Credit: @BFreeTheatre on Twitter, 28 June 2018.

In June 2018, three protesters from the underground theatre group Belarus Free Theatre's Studio Fortinbras school were detained for 24 hours in Minsk for an artistic stunt performed by the members of the theatre group and other protestors. The peaceful stunt involved painting rainbow-colored footprints and placing flowers in front of a statue of a policeman outside the Ministry of Interior. The theatre performed the stunt to call out homophobia following the statement from the Interior Ministry.[243] They were subsequently informed they would be fined for "disobeying police".

In her discussions with Freemuse, Assistant of Director of the Belarus Free Theatre, Svetlana Sugako, reinforces how shows touching upon LGBTI topics are increasingly being perceived as taboo in Belarus where people are afraid to protest LGBTI issues because of possible retaliatory violence from state authorities including the police.[244] Although the arrests were made because protestors were charged under provisions banning illegal protest, Svetlana is convinced that they were actually motivated because the protests were highlighting LGBTI issues.

RESISTANCE AGAINST LGBTI ARTISTS

Even in the absence of laws criminalising any expression relating to sexual orientation and gender identity, LGBTI artists across the continent similarly experience verbal abuse and threats on social media and other digital platforms. 19-year-old gay singer Bilal Hassani qualified to represent France in the Eurovision song contest in Israel in May 2019 with his song "Roi" (King). Prior to performing in Tel Aviv, Hassani received several death threats, abusive comments as well as messages in which anonymous users on Twitter threatened him with violence because of his sexuality. He was also simultaneously subjected to acute pressure from within the Muslim community who wanted him to cancel his trip because they believed he was "denigrating his Muslim (Moroccan) heritage".[245] Despite not knowing the identities of the perpetrators, Hassani's attorney, Étienne Deshoulières, filed a suit against the homophobic threats made against his client's life. The initiation of a civil action against the persons whose identities could possibly be revealed over time during the criminal investigations, result in six years imprisonment and a fine of 45,000 euros, according to French law.[246]

In September 2018 and amidst growing hostility directed at LGBTI individuals in Turkey, the broadcasting of a music video "Secrets" by Grammy-award singer Pink resulted in a 17,000 Liras (about 2700 euros) fine. The West-Turkish local broadcaster AS TV were informed by the regulatory body the Turkish Radio and Television Supreme Council - that they were penalised because the video included from the scenes of a same-sex couple kissing. According to news media, the council fined the broadcaster for "featuring erotic dance figures of a homosexual nature" and for showing the music video during hours when children and young people could watch and be negatively influenced.[247]

Viktoria Biran. Credit: Bira Vikan on Facebook, 24 May 2018.

RECOMMENDATIONS

Freemuse addresses the following recommendations to governments, EU bodies and institutions, international bodies, including relevant bodies of the United Nations, and civil society organisations.

Freemuse acknowledges the universality and indivisibility of human rights in all of these recommendations. Freemuse will continue to monitor the extent to which these recommendations are implemented, given that violations of artistic expression are on the rise across Europe as well as globally.

ALL GOVERNMENTS:

Must ensure that all relevant legislation is brought in line with international obligations under Article 19 of the ICCPR, Article 10 of the ECHR and other instrument and ensure that these standards are particularly upheld in cases where artists are from vulnerable and already marginalised groups, such as women, minorities and LGBTI groups;

- Should justify any restrictions (including cases in which art is censored) in accordance with provisions within the law, ensure that they serve a legitimate aim, and be proven necessary for the protection or promotion of the legitimate aim, according to Article 19(3) of ICCPR;
- Must also be proportionate against the benefits of the restriction when assessing the possible impact on freedom of expression;
- Should establish a hotline centre in cooperation with relevant national human rights bodies, where artists can report unlawful restrictions of artistic freedom of expression. This centre should have the mandate to examine complaints and the mandatory power to refer the cases to relevant agencies for legal and other appropriate actions. The number and nature of these complaints should be made public for further policy analysis and development;
- Should encourage a plural and diverse political environment by strengthening the mandates of relevant cultural institutions and entities to maintain their independence, as well as ensure transparency in decision making, ensuring that these bodies are overseen by independent cultural institutions and entities to check upon the potential misuse of power;
- Should consult with civil society organisations and other relevant stakeholders working in the field of freedom of expression and artistic freedom before drafting and submitting their Quadrennial Periodic Reports (QPR) submissions to UNESCO;

ON **CULTURAL** RIGHTS:

- Should "fully support artistic creativity and the establishment of cultural institutions accessible to all. Public agencies should function as a financial backup that do not attract corporate sponsors, based on the understanding that they cannot interfere with contents" in accordance with the recommendation made by the UN Special Rapporteur in the field of cultural rights;

ON THE **RIGHT TO PROTEST:**

- Should take into consideration the nature of artistic creativity, as well as the right of artists to dissent, to use political, religious, economic and national symbols as a counter-discourse to dominant powers, and to express their own belief and world vision, in accordance with the recommendations of the former UN Special Rapporteur in the field of cultural rights. The use of imaginary and fiction must be understood and respected as a crucial element of the freedom indispensable for creative activities;

ON THE **RIGHT TO INSULT:**

- Ensure that public debates about public morality do not lead to undue or arbitrary restrictions on artists when exercising their right to artistic freedom and in such cases;
- Should not allow that the offence of insult to religious feelings be used as a vehicle for repressing freedom of expression in accordance with Venice Commission findings, as well as the UN Special Rapporteur in the field of cultural rights' 2013 report findings, that artistic expression and creativity may entail the re-appropriation of symbols including religious (figures, symbols, venues) as part of a response to the narratives promoted by states, religious institutions or economic powers unless it is found that the work contains an element of incitement to hatred as an essential component;
- Must review and repeal laws or provisions penalising insult to heads of states, including against foreign heads of states, national institutions and emblems;

ON LGBTI **ANTI-PROPAGANDA** LAWS:

- Must uphold the findings of the 2013 Venice Commission in which it found statutory provisions of LGBTI anti-propaganda laws incompatible with the European Convention on Human Rights (ECHR) and international human rights standards by being ambiguous and blanket restrictions aimed at legitimate expressions of sexual orientation;
- Must urgently review all laws, introduced with the intention of protecting children from "information harmful for their health and development" which entail provisions that can be used to restrict dissemination of information on LGBTI topics;
- Must ensure that all laws governing hate speech are in line with international standards and that senior government officials condemn the use of hate speech by officials and non-state actors towards LGBTI persons;

ON **COUNTER-TERRORISM** LEGISLATION:

- Should urge states to conduct transparent periodic reviews of counter-terror legislation to evaluate the impact on human rights and to ensure judicial oversight in all states of emergency power to ensure that the application of provisions are not imposed on individuals in an arbitrary or discriminatory way, in line with the call of the current UN Special Rapporteur in the field of cultural rights and UN Special Rapporteur on the promotion and protection of human rights while countering terrorism;
- Must ensure that no provisions within domestic counter-terror legislation violate state obligations under international human rights law and standards, specifically Article 19 of the ICCPR. These laws should only criminalise expression that encourages others to commit a recognisable criminal act with the intent to incite them to commit such an act with a reasonable likelihood that they would carry it out, and there is a casual link between the statement made and the criminal act;
- Must ensure that artists reasonably suspected of involvement in a recognisable terrorism-related crime are investigated, and where enough evidence exists, charged and prosecuted in an ordinary criminal proceeding that meets international fair trial standards.

THE EUROPEAN PARLIAMENT:

- Must ensure that it is explicit in its communications about the need for Member States to implement their obligations as stipulated under the ECHR, which upholds the freedom to receive and express opinions and information even if they offend, shock, or disturb and to meaningfully engage with Member States to address any obstacles in doing so;
- Must prioritise artistic freedom and strive to create a common European framework towards artistic freedom. Specifically, CULT and LIBE Committees should include artistic freedom in

their monitoring, discussions and formulation of policies on freedom of expression and media freedom;
- Must ensure that in its examination of the annual report on the application of the Charter of Fundamental Rights that artistic freedom and rule of law is encompassed within the broader framework of fundamental freedoms;
- Must ensure that in its communications with Member States, urge them to ensure that they instruct local authorities to ensure compliance with international standards on freedom of expression as deliberated upon in judgements of the European Court of Human Rights and ensure that these standards are particularly upheld in cases where artists are from vulnerable and already marginalised groups such as women, minorities and LGBTI groups;

ON **COUNTER-TERROR** LEGISLATION:

- Should raise questions with relevant governments in cases where artistic expression has been criminalised, particularly under the pretext of countering acts of terror where artists are faced with spurious charges of belonging to a terrorist organisation and/or creating terrorist propaganda where no other material evidence exists of any link with a terrorist organisation and in the absence of any call or apology for violence;
- Should call on governments to ensure, in such cases, that artists reasonably suspected of involvement in a recognisable terrorism-related crime are investigated, and where enough evidence exists, be charged and prosecuted in an ordinary criminal proceeding that meets international fair trial standards;
- Must urge all governments to ensure that no provisions within domestic counter-terror legislation violate states obligations under international human rights law and standards, in particular Article 19 of the ICCPR. These laws should only criminalise expression that encourages others to commit a recognizable criminal act with the intent to incite them to commit such an act with a reasonable likelihood that they would carry it out, and there is a casual link between the statement made and the criminal act;

ON THE **RIGHT TO INSULT:**

- Must raise concerns with EU Member States about the nature and impact of laws governing blasphemy, insult and hurting the religious feelings of others with relevant governments as part of a concerted, coordinated effort to push for legal review and possible repeal of such laws.

THE EUROPEAN COMMISSION AND EUROPEAN COUNCIL:

- Must ensure that Member States meet their obligations to respect, protect and fulfill the right of every person to freedom of artistic expression and creativity; and that this must be the core driver of all developments of law, policy, measures related to freedom of expression and creativity;
- Should review and strengthen all EU mechanisms relating to fundamental rights and freedom of expression and ensure that it is made clear that artistic freedom is encompassed within the broader framework of fundamental freedoms and freedom of expression;
- The European Commission: Should include artistic freedom in the Creative Europe program 2021–2027 with appropriate budget allocated alongside media freedom;
- The European Commission: Should strengthen cultural rights in their 2030 Agenda for Sustainable Development that builds on the United Nation's Sustainable Development Goals (SDGs) as part of its commitment to the 2030 Agenda for Sustainable Development;
- Must actively support civil society organisations in their work defending and promoting artistic freedom;
- Should provide technical assistance to Member States to establish a national centre gathering and coordinating complaints from artists as part of a wider effort to ensure regional policy development;
- Should provide technical assistance where legal frameworks governing freedom of expression and artistic expression need strengthening to ensure

member states are able to bring their legislation in line with relevant international standards;
- Should create platforms for dialogue and exchange among Member States on good practices relating to the promotion and protection of artistic freedom and cultural rights. These exchanges should be based on solid research analysis and findings–compiled by independent civil society organisation's–and be used to assist member state to implement the EHRC (and other relevant provisions) related to freedom of artistic expression. These platforms should allow member states to exchange good practices, premising its approach on the need for cultural diversity and plurality, to fully understand committing the differing nature of artistic expression, encouraging them to embrace tolerance particularly in relation to controversial artforms such as political satire, political cartoons;
- The European Commission: Should ensure that in its publication of the annual report on the application of the Charter of Fundamental Rights that artistic freedom is encompassed and included within the broader framework of fundamental freedoms;

ON **COUNTER-TERROR** LEGISLATION:

- Must ensure that the use of measures primarily intended to counter terror are not used to suppress forms of artistic expression including peaceful political commentary and that particular attention is given to ensuring the protection of vulnerable groups, such as women and minority artists, protecting them from all forms of discriminatory treatment which may otherwise lead to censorship of their artwork because of their political expression;
- Must ensure that counter-terror measures are not used to target artists who remain particularly vulnerable to prosecution, especially visual and performing artists who use humor, satire, parody, political commentary and even invective, often with strong language, to project their message;

ON THE **RIGHT TO INSULT:**

- Must ensure that the offence of insult to religious feelings should not be used as a vehicle for repressing freedom of expression in accordance with the conclusions of the Venice Commission as well as the 2013 report of the UN Special Rapporteur in the field of cultural rights;
- Must ensure that acts which are thought to constitute defamation should not be prohibited and these charges should not be privy or open to criminal action and that national laws governing defamation are aligned with international standards, ensuring that they not in breach of Article 10 of the ECHR as well as Article 19 of the ICCPR.

EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

- Should play a role of in:
  - Providing platforms for meaningful exchanges between state members and CSOs;
  - Support EU Member States to identify and document best practices of alternatives to censorship and restriction of freedom of artistic expression;
  - Develop or outsource expertise and provide technical support to EU Member States so they can amend their legal instruments in line with European and international human rights standards.

INTERNATIONAL BODIES

UNITED NATIONS:

ON **COUNTER-TERROR** LEGISLATION:

- Freemuse reiterates the call of the UN Special Rapporteur on the promotion and protection of

human rights and fundamental freedoms while countering terror made in her submission to the UN Human Rights Council in March 2019 that, "The UN Counter-Terrorism Committee and its Executive Directorate must engage more proactively with Governments on the way in which national implementing measures may breach international human rights law, particularly measures that affect civil society, including the definition of terrorism and the criminalisation of legitimate expression and opinion." This should be further extended to include legitimate forms of artistic expression.

THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE:

- Should ensure that they remind its 47 Member States of their obligations under the ECHR, which upholds the freedom to receive and express opinions and information even if they offend, shock, or disturb;

ON **ANTI-TERROR** LEGISLATION:

- Should monitor steps taken by CoE Member States to ensure that no provisions within domestic counter-terror legislation violate states obligations under international human rights law and standards, in particular Article 19 of the ICCPR, in line with the findings CoE's December 2018 report, in which it highlights how the misuse of anti-terror legislation has become a prevailing threat to freedom of expression in Europe.

ON **LGBTI RIGHTS** AND THE **RIGHT TO PROTEST:**

- Should monitor steps taken by CoE Member States to implement anti-propaganda laws which impact the rights of LGBTI groups, ensuring that they are in compliance with rulings from the European Court of Human Rights in upholding not only the rights of children and adults to freedom of expression but also freedom of association as well as the right to protest.

CIVIL SOCIETY ORGANISATIONS:

- Should strengthen engagement with the global and regional counter-terrorism architecture, including UN and EU agencies and bodies traditionally seen as dealing with security-related issues including the European Commission, Directorate-General (DG) for Migration and Home Affairs, the European Parliament Civil Liberties, Justice and Home Affairs LIBE Committee, the European Council the Counter-Terrorism Coordinator and Europol in coordination with the European Counter Terrorism Centre (ECTC) and other government and inter-governmental agencies at European and national levels that work on anti-terrorism;
- Should take part in joint advocacy, campaigns and actions aimed at removing obstacles to the protection and realisation of the right to freedom of artistic expression;
- Should take part in an artistic freedom forum which Freemuse and partners have initiated recently to enable collective thinking, planning and implementation of projects to advance artistic freedom in Europe;
- Should continue to monitor, document, and raise awareness of the impact of anti-terrorism measures, and other undue restrictions in laws and practices in a systematic manner;
- Should strengthen their engagement with relevant authorities at international, regional and national level to expose illegitimate restrictions on artistic freedom.

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Freemuse is an independent international organisation advocating for and **defending freedom of artistic expression.**

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Working with partners, artists and activists in the global south and north, we **campaign for and support** individual artists, focusing on women artists and other vulnerable groups of artists. We facilitate and grow locally-owned **national coalitions** in their campaigns and capacity building to monitor and defend artistic freedom.

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