

# Silencing Dissent?

## On Barriers to Freedom of Artistic Expression

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## Preface of the Compendium Coordinator

According to Karima Bennoune (then UN Special Rapporteur in the field of cultural rights) in her Report of 25 July 2018, the free "exercise of cultural rights... including through the contestation of dominant norms and values" via artistic expressions, is a precondition for cultural development. However, she also noted that:

*"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."*

The latter – still aggravating – trends do not only endanger democratic processes, in general, but often the work and sometimes even the very existence of artists, writers and arts institutions or businesses, in particular. And: Europe has not been spared from related disturbing developments, which is why the Council of Europe has reinforced its activity in this domain, including with a [Manifesto of Freedom of Expression on Arts and Culture in the Digital Era](#) (2020). To complement these efforts, the *Compendium* Coordinator team, together with the Board of the *Compendium Association*, decided 2022 to take a closer look on underlying conditions and current challenges for freedom of expression in the cultural sector and discuss results with stakeholders and experts. Fresh perspectives gained through this exercise also helped preparing the 2023 *Compendium* Conference in Malta, where cultural rights had been the main topic. In the course of 2023, an experts' survey on the topic has also been conducted; hopefully, it will contribute to further research efforts.

In order to make this fact-finding and evaluation effort manageable, the *Compendium* team decided to focus on barriers to artistic freedom or rather, as we will learn, to freedom of artistic expressions. It asked Andreas Joh. Wiesand to study, introduce and discuss important issues of this topic; Wiesand is the co-editor (with Kalliopi Chainoglou, Anna Śledzińska-Simon and Yvonne Donders) of the 2016 handbook "Culture and Human Rights – The Wroclaw Commentaries". His findings were published 2023 in the *Compendium* as a series of several articles, which are now presented in an integrated version focusing on the following issues: **A Few Clarifications: Definitions, Instruments and Stakeholders, Barriers to Freedom of Artistic Expressions, Political climate** (influencing/restricting this freedom), **Censorship** (from institutionalised to self-censorship) and **Social and community pressures** (some of which started, or are fuelled, in social media bubbles).

## Introductory notes by the author

In these times of heated, often antagonistic debates on various channels, it may be appropriate to remind readers that the following text was researched and written in 2022/23 i.e., before the *Hamas* massacres of 7 October 2023 in Israel, during which over 1000 civilians were brutally murdered and others kidnapped. Military action against the aggressor followed in the Gaza Strip, with disastrous 'collateral damage', including many more casualties and starvation, and again primarily affecting uninvolved civilians in that area. The author of this essay does not wish to hide his current assessment of this conflict, not only because it is increasingly affecting freedom of expression and thus could have been an issue in our research exercise: The *Hamas* attack and other incidents around the world clearly call for more national and international efforts to combat terrorism of all kinds - sometimes state-inspired. Anti-Semitism, and indeed any discrimination based on ethnic, national or religious background, must be effectively fought in accordance with European and international human rights instruments. The human dignity of all inhabitants of the Middle East region must be safeguarded and mutual respect for an inclusive culture of remembrance promoted. So far, hatred and fundamentalist ideologies, as well as personal and geopolitical ambitions, have often prevailed over empathy, compassion and consolation in the weeks and months following the attack.

While these and related positions alone will not suddenly stop the "cruel cycle of violence, almost biblical and apocalyptic in its ferocity" ([Seyla Benhabib, 2023](#)), they could at least be seen as prerequisites for future human security and peaceful solutions in the region, at best in two democratic states that do not question their right to exist.

Of course, scholars, artists and other cultural practitioners should be free to express their own views on how to address this long-standing, tragic conflict. But let me add my own experience, including during the war in Yugoslavia three decades ago, which has shown that boycotts or lockouts to prevent dialogue or cooperation often hit the wrong people, namely those in the arts and academia who are open to change or even actively seeking it. Especially for developments in Germany, the position of Meron Mendel (Anne Frank Academy, Frankfurt) is relevant to the topic of my report:

*"In the context of the Middle East conflict, artistic freedom is being attacked from at least two sides: by pro-Palestinian activists who blow up events and shout people down... And on the other side, by cultural officials who want to exclude Palestinian and pro-Palestinian voices from the public sphere. Both sides use the logic of boycott."* (Süddeutsche Zeitung, 3 April 2024).

As political and legal change is always possible, some points of this report – partly more an essay – could later be qualified. To give just one example: The Polish elections of October 2023 resulted in the defeat of the conservative-nationalist PiS government, with the consequence that previous policies and restrictions affecting freedom of artistic expression (FoAE) are now gradually being lifted. Nevertheless, related evidence in the following text may still be relevant, given that similar policies and measures can be found elsewhere in Europe.

This potential learning effect from the cases and citations mentioned in my report led to the decision to keep the original wording of the *Compendium* articles, except that some references had to be clarified and harmonised for the now integrated version. In order to

assist the reader, internet links are used as much as possible instead of traditional academic references.

As this publication is again available on the *Compendium* platform, the text and the examples focus on developments in Europe. For the most part, quotations not available in English have been translated by the author of the report.

The following arguments and examples were selected in order to clarify specific viewpoints that merit further debates. In other words: During the preparation of the text, I did not focus on spectacular new revelations. Instead, I wanted to highlight a few, mostly recent cases and positions that could help to ask the right questions and bring us closer to appropriate answers, hoping that these could be of use for the development of future cultural policies in Europe (or for the correction of existing ones). In the course of this *tour d'horizon*, some personal experiences have not been tuned out.

Clearly, all arguments and conclusions are those of the author(s) and do not bind the *Compendium* Association and Coordinator or its partners in any way. I appreciate alternative views and additional facts that could qualify, or add to, what is presented in the next five sections of this report.

Cologne, April 2024

Andreas Joh. Wiesand

## 1. A Few Clarifications: Definitions, Instruments and Stakeholders

Originally, this exercise was supposed to shed light on "**artistic freedom**", both as a human right and as a political promise. As a matter of fact, that term is often used to describe a right to unobstructed or uncensored creation or other artistic activity by individuals, especially professionals; in some interpretations, the right to the free performance, dissemination and enjoyment of all types of works of art is added and may include not only artists but larger sections of the public. As long as we consider only a single country, like the UK, and only use the term in the English language, these are indeed possible interpretations.

However, in the context of the *Compendium of Cultural Policies & Trends* we are dealing with over 40 countries as well as with many languages and different legal, political or cultural traditions. In that respect, the term "artistic freedom" seems less convincing, not least because in some other languages a literal translation can lead to different meanings. For example, in German this would be "künstlerische Freiheit", for which the English language uses another, not so well-known term, namely "**artistic license**". The latter means indeed something other than freedom of art(ists) from political or social constraints. It describes the, widely recognised, freedom of artists or writers to do something with artistic means that diverges from common contemporary practices, factual biographies or historical meanings; as well, it includes the freedom to create something that is not at all found in reality. But let's not forget: from the perspective of an individual artist, this "license" can occasionally e.g., under conditions of censorship, make up for codified but unkept legal promises of freedoms one is not in a position to fully enjoy or even recognise (as shown, for example, in some movies of Jan Prohaska or Miloš Forman during the 1960s in former Czechoslovakia or currently in Russia and Turkey).

We must also be aware of the fact that the term artistic freedom is sometimes used in an extended way, encompassing much more than cultural rights in the strict sense. For example, UNESCO – a main institutional stakeholder in this domain – proposes in a flyer (published 2019) an interpretation that is closely related to positions it has developed since the adoption, in 1980, of its [Recommendation concerning the Status of the Artist](#). Therefore, some of the following items could also figure under the title 'proactive policies for professional artists':

### **UNESCO 2019 on 'Artistic Freedom'**

*Artistic freedom embodies the following bundle of rights protected under international law:*

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

Several of these rights, some of which advanced during the period of the COVID-19 pandemic, relate to the basic, all-encompassing principle of **human dignity** – labelled frequently as a "mother right", because other human rights can derive from it (Aharon Barak, [Human Dignity](#), 2015) – and some also to the development-oriented concept of

**human security** ([UNDP](#), 1994). Both national constitutions and international human rights documents often mention human dignity first when enumerating protected rights, including freedom of expression. In its jurisdiction, the European Court of Human Rights relies heavily on this concept; as well, human dignity is highlighted as one of the core values of the European Union in its Lisbon Treaty. However, one needs to be aware of the fact that we are still far from guaranteeing cultural and social or professional rights like those mentioned in the above UNESCO definition. Even in Europe, some of them are not met today while others were achieved only in recent times.

In her foreword to UNESCO's 2005 [Convention for the Protection and Promotion of the Diversity of Cultural Expressions](#), the Director General underlines this broader approach, stating that policies aiming at (more) diversity will only be effective if they are "meaningful for civil society, for individual creators, for groups of cultural entrepreneurs and for citizens. Governments must help ensure 'space' for artistic creation and for freedom of expression and association."

The [9th World Summit on Arts and Culture](#) has been held 2023 in Stockholm under the main theme "Safeguarding Artistic Freedom" by the *International Federation of Arts Councils and Culture Agencies* (IFACCA) and the Swedish Arts Council. In a preparatory discussion paper, the organisers of the event stated that the above UNESCO definition "aligns with the four nodes of the cultural value chain – creation, presentation, distribution, and participation – all of which must be considered and recognised as interconnected if we wish to create and implement effective cultural policies." However, they also acknowledge "the different meanings and weights given to each [of these nodes] in various contexts around the world". To overcome or harmonise such differences, they suggest the following basic definition:

*"Artistic freedom is the ability to express oneself freely or to present an artistic vision without fear of persecution or for one's life; it is the ability to access resources and platforms that do not discriminate, whether based on gender, sexuality, ability, age, race, culture, belief or citizenship; and the ability to see oneself reflected in society and the public domain. "*

Considering the terminological differences and the diversity of issues at stake, I propose to use another, a bit more precise wording for the topic of our exercise, namely: **Freedom of Artistic Expressions (FoAE)**, and to focus especially on potential restrictions. In this overview and in later fact-finding efforts, that term will simplify cross-border comparisons, e.g., when assessing monitoring reports or the content of country profiles found in the *Compendium*.

Different from Artistic Freedom, FoAE has the advantage that it corresponds better to rights highlighted and protected by international legal and policy instruments, such as those of the **United Nations**, and here already 1948 by the [Universal Declaration of Human Rights](#) (UDHR) with its famous Article 19. Freedom of relevance for artistic work is also recognised in other human rights instruments, particularly in Article 15(3) of the [International Covenant on Economic, Social and Cultural](#)

**ICCPR 1966, Article 19(2)**

*Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

[Rights](#) (ICESCR, 1966) which asserts, though a bit vaguely, that the authorities of states "...undertake to respect the freedom indispensable for... creative activity". In addition, strong links exist with article 19(2) of the [International Covenant on Civil and Political Rights](#) (ICCPR 1966), which mentions specifically works of art as forms of protected expressions.

It should be noted that this provision protects not only the originators of expressions "of all kinds" including artistic ones, but likewise the larger public as "receivers" or distributors of them – an early step into the direction of cultural democracy and participation. While some fear today that "the entire UN system went into decline" ([Branko Milanovic](#), 2022) and cannot live up any more to its political promises, it is nevertheless true that, during the last eight decades, important standards have been set which national policies and legislation need to respect and for whose compliance authorities should be held accountable.

In the "Wroclaw Commentaries" (Culture and Human Rights, 2016), [Annamari Laaksonen](#) explains that freedom of expression is indeed a precondition for the democratic right of everyone to take part in cultural life, according to his or her own choice:

*Freedom of expression is considered an elemental aspect of democratic societies and both a 'fundamental' and a 'foundational' human right. In particular, freedom of expression is necessary for the realisation of participatory, multi-stakeholder governance systems and essential for artistic creativity, investigative journalism and other activities in the wider cultural domain.*

In the same publication, [Jordi Baltà Portolés](#) sees FoAE as a precondition for cultural policies:

*Freedom of artistic expression involves the right of artists to express beliefs and ideas in any creative form, free from private or public restriction. It is enshrined in international human rights law... and closely linked to several other human rights. Ultimately, respect for freedom of artistic expression is essential for the development of a sustainable cultural sector.*

However, we should not overlook that UN treaties like the ICCPR also permit explicit or implicit restrictions of freedom of expression.

**ICCPR 1966, Article 19(3)**

*The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*

*(a) For respect of the rights or reputations of others;*

*(b) For the protection of national security or of public order (ordre public), or of public health or morals.*

Should governments or parliaments still be in charge of "public morals"? No doubt, that such general provisions (which exist also in European treaties) can be – and sometimes are – used to influence, steer or curb the public discourse, including to the detriment of media freedom and a free flow of artistic expressions.

Addressing this problem, Farida Shaheed (then UN Special Rapporteur in the field of Cultural Rights), delivered in 2013 a very comprehensive report entitled "[The right to freedom of artistic expression and creativity](#)". Inter alia, it highlighted **specific challenges**



**to freedom in the arts** and the danger of excessive legal restrictions or even persecution. In particular, she urged States to consider "the specific nature of artistic expressions and creations" because:

*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. Artistic expression and creativity may entail the re-appropriation of symbols, whether national (flags, national anthems), religious (figures, symbols, venues) or social/economical (a certain brand for example), as part of a response to the narratives promoted by States, religious institutions or economic powers. States, religions, corporate companies and social groups also use art to propagate their ideas and promote their interests, including concepts of right and wrong to create homogeneity of belief and behaviour... Artistic expressions and creations do not always carry, and should not be reduced to carrying, a specific message or information. In addition, the resort to fiction and the imaginary must be understood and respected as a crucial element of the freedom indispensable for creative activities and artistic expressions: representations of the real must not be confused with the real, which means, for example, that what a character says in a novel cannot be equated with the author's personal views. Hence, artists should be able to explore the darker side of humanity, and to represent crimes or what some may consider as 'immorality', without being accused of promoting these. While policies designed to attract wider audiences to art should be encouraged, this should not exclude controversial works because unprepared audiences may be put in contact with them. Rather, it is imperative to enhance arts education, which can be seen as a strong and efficient alternative to censorship. (HRC, 2013. p. 8/9)*

Indeed, artists and intellectuals can, and often do, play a crucial role in times of political unrest and as promoters of societal change, as could recently be seen e.g., in Belarus or Turkey and earlier during the process of German re-unification. Frequently artists and intellectuals are **role models for human rights defenders**, as underlined in the 2020 UNESCO report [Freedom and creativity: defending art, defending diversity](#). However, this can have consequences, when protests do not succeed or are crushed by the authorities. With reference to the UNESCO paper, human rights expert Kalliopi Chainoglou (University of Thessaloniki) clarifies in a statement for this report that, in a contemporary view of human rights, artists could be considered as a "sui generis vulnerable group: they become marginalized because of their profession, i.e. when art is provoking governmental policies or oligarchs, when art is alarming citizens about human rights violations, etc." As well, "the impact of restricting artists' expressions is to the detriment of other persons, groups or communities: their right to participate in cultural life is violated." (2022).

Turning to our European environment we can note that the **Council of Europe** has recently reinforced its activity in this domain, including with a [Manifesto of Freedom of Expression on Arts and Culture in the Digital Era](#) (2020) and with a report of Sara Whyatt [Free to Create: Artistic Freedom in Europe](#) (2023). As well, the emphasis on free cultural

expressions in the above and other international compulsory legal instruments made it easier for the **European Court of Human Rights** (ECtHR, Strasbourg) to highlight, via [case-law](#), how important it is for democratic societies to specifically safeguard also FoAE – and this despite the fact that the [Convention for the Protection of Human Rights and Fundamental Freedoms](#) of the Council of Europe (ECHR, 1950) protects only freedom of expression in general (Article 10), while cultural rights or freedoms are not explicitly mentioned; efforts to correct this deficit have been futile.

#### **A case at the European Court of Human Rights, 2007**

Among the many ECtHR cases concerning freedom of expression has been that of the [Vereinigung Bildender Künstler vs. Austria](#). It dealt with rulings of Austrian courts against the public exhibition of a painting that depicted a politician of the Austrian Freedom Party FPÖ in an unfavourable manner. The ECtHR decided, that such a prohibition (actually an ex-post censorship) was "disproportionate to the aim it pursued and therefore not necessary in a democratic society within the meaning of Article 10 § 2 of the Convention"; it also reminded the national authorities that satirical works "naturally aim to provoke and agitate", to which bans may not be the proper answer.

In the **European Union**, freedom of expression is protected by the [Charter of Fundamental Rights](#) both as regards freedom of speech (Article 11) and of the arts and science (Article 13), the latter of which states: "The arts and scientific research shall be free of constraint". In 2017, the EU Agency for Fundamental Rights (FRA) organised a high-level expert meeting ("[Exploring the connections between arts and human rights](#)"), which included also representatives of civil society organisations focusing on FoAE. The proposals of this conference could be relevant in later debates.

Among the stakeholders for FoAE one should not forget scientists working in universities or other **research institutions**. A number of them are based in the Nordic countries, but this topic is increasingly taken up in other European countries, including in Central and Eastern Europe. For example, the University of Hildesheim re-launched, in 2017, the "[Arts Rights Justice Program](#)", which intends to understand, protect and defend freedom of artistic expression and artists at risk. Another example: Research at the University of Fribourg (Switzerland) intended to make "cultural rights" more explicitly part and parcel of the universal human rights protection system – which, admittedly, had long been neglected. In particular, the 2007 [Fribourg Declaration on Cultural Rights](#) became very influential in European and international policy circles. Based on the concept of human dignity, it addresses also FoAE:

#### **Fribourg Declaration on Cultural Rights 2007**

*Article 5.b ...The freedom to develop and share knowledge and cultural expressions, to conduct research and to participate in different forms of creation as well as to benefit from these;*

*Article 7. Within the general framework of the rights to freedom of expression, including artistic freedom, as well as freedom of opinion and information, and with respect for cultural diversity, everyone, alone or in community with others, has the right to free and pluralistic information that contributes to the full development of one's cultural identity.*

These and other statements suggest wider and more enforceable concepts of human rights and human dignity, which should comprise social and cultural dimensions, in addition to physical integrity.

It is true: obstructions of FoAE rarely reach the level where court decisions, parliamentary interventions or decisions of governments and other authorities could lead to direct remedies. Therefore, professional unions and associations as well as (inter)national civil society organisations and autonomous arts councils can be considered, together with watchful media and Internet platforms, to be particularly well-suited to publicize and potentially address related conflicts. **Stakeholder organisations** like [Freemuse](#), [PEN International](#) and the [Artists at Risk Connection](#) deserve special mention, in that respect, since they regularly publish reports or 'stories' about FoAE violations which we will discuss at a later stage of this exercise. *Freemuse* has been, together with *Fritt Ord*, the organiser of the ground-breaking conference on artistic freedom of expression "[All that is Banned is Desired](#)", held October 2012 in Oslo. [Culture Action Europe](#) (CAE) tries to raise attention for FoAE on the level of the European Union. From 2012–2017, CAE contributed to the ARJ (Arts Rights Justice) EU Working Group and in 2021 it partnered with the Greens/European Free Alliance Group at the European Parliament, in order to publish "a preliminary study for a better common understanding of the relevant legal framework": [Freedom of Artistic Expression in the European Union](#). Inter alia, this study proposed guidelines for a better protection of FoAE at the EU level, including general indicators to monitor the state of freedom of artistic expression.

Clearly, the standards set by international legal instruments are important for these types of interventions and one should not forget that several European and UN human rights treaties, such as CESCR, provide access to individual or civil society complaints mechanisms, some of which are not yet adequately known or used.

Finally, we can identify **national differences in the interpretation of FoAE** across Europe. For example, during the last 25 years this topic has played a major role in official cultural policies of the Nordic countries. Legislative efforts going beyond international conventions or more general provisions for the freedom of the arts in national constitutions have been made in other countries.

**'Conditionnalités': A French Law on the freedom of artistic creation, 2016**

A specific law has been passed by the French Parliament in July 2016: [LOI n° 2016-925 relative à la liberté de la création, à l'architecture et au patrimoine](#). It aims to support, inter alia, artistic creation ("*en particulier la création d'œuvres d'expression originale française*") and new talents, to guarantee artistic diversity, especially in public arts and media services, and to promote the free choice of cultural practices and forms of artistic expression (art. 3). Provisions of this law address, above all, public arts and heritage institutions and intend to shape their work according to ecological, participatory, anti-discriminatory and health policy objectives.

However, such conditionality imposed by the state has also been met with criticism because of its potential impact on artistic content (Guy Saez in [l'Observatoire](#) No 59, 2022).

As we will see later, the repeal of outdated laws e.g., on blasphemy or defamation, can be considered another instrument to free FoAE from obsolete restrictions. Iceland and some of the Baltic countries have tried to take up specific new challenges on freedom of

expression e.g., those posed by new technologies, in particular as regards the Internet and social media as well as connected commercial or political interests (some of this may currently be qualified facing the Russian war against Ukraine).

Evidence of these and other national and European FoAE developments can also be found in the *Compendium*, which shows that issues around the status of artists have gained some importance after the turn of the century (A. J. Wiesand in an empirical [presentation at the 2018 ENCATC Congress](#) in Bucharest, 2018). However, a fully-fledged trend analysis covering the last 25 years of this platform cannot be presented here, because the *Compendium* grid underwent meaningful changes a few years ago: Since then, national experts are asked, more explicitly, to consider issues of artistic freedom in their country profiles.

## 2. Barriers to Freedom of Artistic Expressions

Our investigations focused on main potential barriers to Freedom of Artistic Expressions (FoAE) as well as on actions, frameworks, strategies and instruments that are relevant in this context. First, we can learn more about the development of the "political climate" in Europe and its influences on FoAE, followed by a discussion of more or less open censorship and, finally, by a look on social and community pressures that could impair artists and their work. Because of the *Compendium* context, this will be done mainly in a European perspective via an assessment of existing studies, an examination of cases and evidence found in the media.

*As a dog returneth to his vomit, so a fool returneth to his folly.* Proverbs 26:11, King James Bible, 1611

### 2.1 Tired of Democracy? Political climate trends and their impact on FoAE

Will autocratic governments, uncontrolled populism or so-called "illiberal democracies" soon become a regular feature – or even a norm – we have to live with in Europe? Is the idea of a common – and at the same time: diverse – European cultural space an outmoded concept, incapable of winning a majority of the citizens on our continent?

Let me start with a few methodological caveats: With the aim to provide relevant empirical evidence for this exercise, hopefully even regularly collected facts that could enable trend analyses, I checked the literature, Internet platforms and had discussions with a number of specialists. However, a true **FoAE monitoring** proved to be a very difficult task, because it requires specific data that are raised, aggregated and evaluated in a uniform, comparable format over time in many, if not all, European countries. As well, due to recent structural updates of the *Compendium* country profiles, they could probably be used for FoAE content trend analyses only in 5 or 6 years. Clearly, that's still a long way off, so this and the following article(s) rely more on **case- or country-based information**.

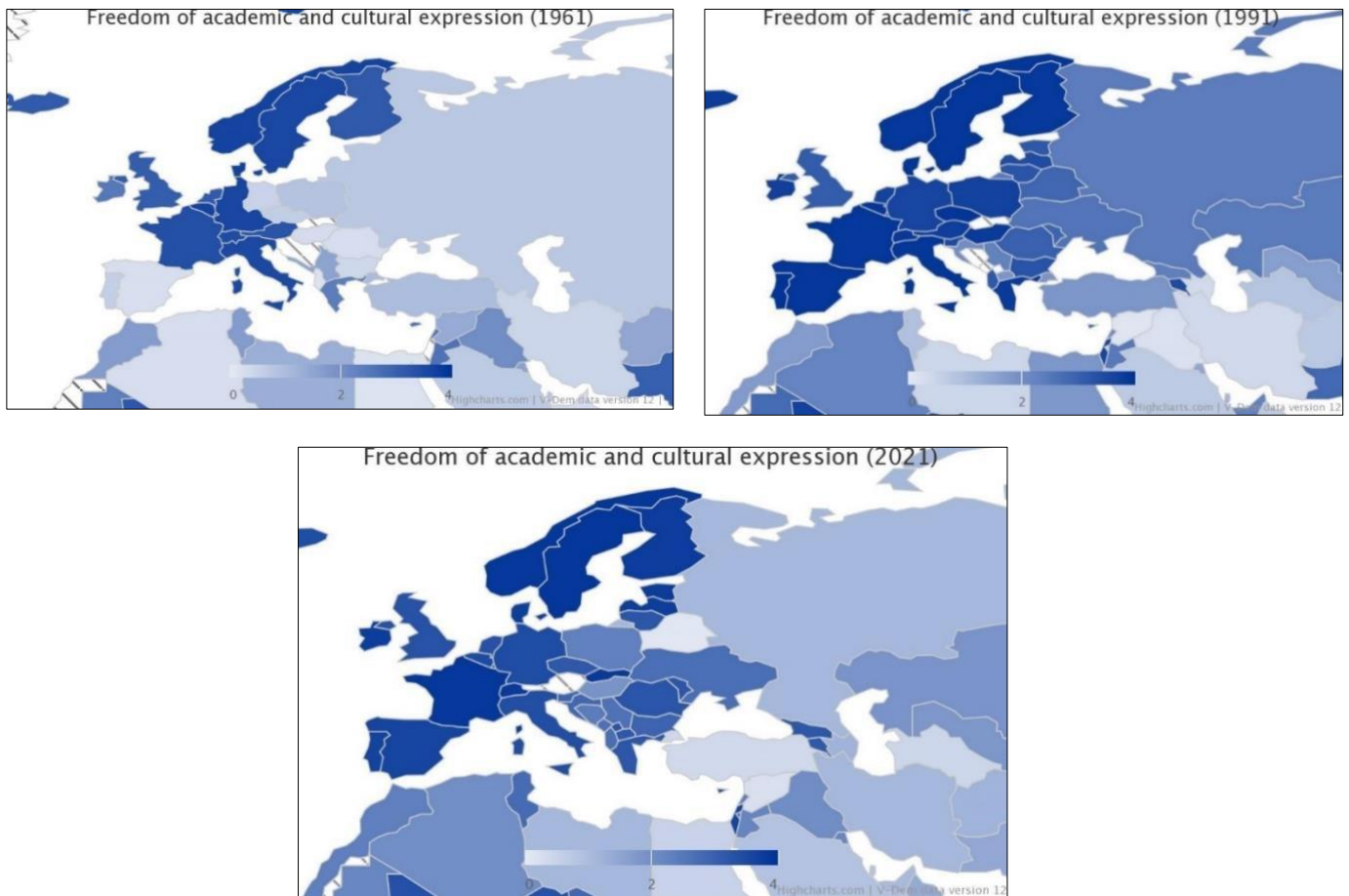
A few remarks on some of the resources consulted for this article:

- **Freedom and Governance index systems** such as e.g., the [Human Freedom Index](#) frequently follow libertarian ideas. The latter has a sub-index on "Freedom of Expression & Information", which ranks Switzerland, Norway and Ireland on top and Turkey at the end of the list of European countries. However, here and in other index systems we face the problem that related indicators focus mainly on media freedom of expression, which does not fully cover our topic. A similar example: The [Bertelsmann Foundation Transformation Index](#) (BTI) 2022 lists, for the first time, more autocracies than democracies worldwide. In Central/Eastern Europe, we still find a majority of democratic countries, but more than half of them were considered in the BTI as "defective" or "highly defective democracies"; some post-Soviet states such as e.g., Russia and Belarus, are classified as autocracies.

The only trend index that seems to come closer to our topic – and covers the whole

of Europe – is **Varieties of Democracy (V-Dem)**, based at the University of Gothenburg, Sweden, assisted by over 3,700 scholars and other country experts. It consists of a large global dataset on democracy indicators with over 30 million data points for 202 countries. Among its many sub-indexes is one on "Freedom of academic and cultural expression (C) (v2clacfree)", managed by Svend-Erik Skaaning. It merits further investigations, but the following maps based on the V-Dem data already suggest first culture-related trends from 1961 to 2021, which coincide with other information gained during our research. The scale ranges between dark 4 (freedom fully respected by public authorities) to light 0 (no such respect at all). It looks as if we are heading back towards the worst times of the Cold War...

### Long-term Trends of Academic and Cultural Freedom in Europe



Source: Based on 2022 data of the V-Dem Institute for 1961, 1991 and 2021

Other potential sources for comparative data consulted for this report include, inter alia:

- **Professional organisations** in European countries often collect and publish information on policy developments and protest against cases of repression, albeit according to their own national priorities, which impedes comparisons over time.
- As an alternative, I looked for evidence at the trans-national **PEN International**. In the [2020 version](#) of its annual "case lists" (data in the latest [2021 list](#) is not compatible) of imprisoned, detained, indicted or otherwise threatened writers 220 verified cases are specified, 50 of which in Europe/Central Asia. Whether this situation could be compared with the – much higher (1320!) – figures in the two 2010 lists is doubtful and requires further investigation. In addition to such reports, the PEN and its partners provide support and advocacy for harassed authors and try to protect translation and linguistic rights.
- In 2022, the **Council of Europe** published its regular [Report on FREEDOM OF EXPRESSION IN 2021](#). However, this "assessment of the state of freedom of expression in Council of Europe member States" focuses again on the overall environment for independent and pluralistic media as well as on threats against the safety of journalists. Other recent documents investigate [FoE in times of conflict](#). These reports, though important, provide only limited chances for a specific FoAE trend analysis.
- Similar to the CoE, **UNESCO** recently intensified its efforts to promote FoE in the Internet "at a time when the digital ecosystem offers new opportunities but also multiplies challenges for freedom of expression" ([Freedom of Expression Online](#), 2023).
- **International Advocacy bodies** like [Article 19](#), [Index on Censorship](#) or [Freemuse](#) deliver additional facts. The latter focused originally on artists in the music domain, but since the last decade it has gradually expanded its scope with the aim to cover all artistic professions. As a well-established advocacy body based in Europe, it tries to influence also cultural policies on this continent: In 2020, it published the inventory [Security, Creativity, Tolerance and their Co-Existence: The New European Agenda on Freedom of Artistic](#)

**Nedim Türfent, journalist and poet, (from Van High Security Prison/Turkey)**

*Your efforts are invaluable in being the voice of the voiceless[...] If I didn't hereby reiterate my thanks to PEN's efforts as the primary liberating locomotive of literature and arts, I wouldn't be able to rest my head on my "pillow" on this iron bunkbed with ease.*  
(PEN INTERNATIONAL IMPACT AND LEARNING REPORT 2015-2019)

**The COVID-19 pandemic – a further chance to silence dissidents?**

*Looking outward, even as our annual Global Expression Report in 2020 showed that over half the world was living in a crisis of expression, we are painfully aware of how governments have used the pandemic to entrench repression. We foresee further declines this year. But, as the Chinese artist and activist Ai Weiwei has urged, it is in extraordinarily challenging times that we need to hold more than ever to common principles of freedom of speech and expression.*

Paddy Coulter, Chair of the Board of ARTICLE 19  
(Global Expression Report 2020)

[Expression.](#)

For our research and future debates on its topic, an assessment of the annual reports of *Freemuse* (now published under the title "The State of Artistic Freedom" with the support of public bodies and NGOs in Sweden and Norway) is particularly useful because of their emphasis on violations of artists' security and on the suppression of FoAE – a unique feature in comparison with many other resources. That's why I will highlight empirical information from these reports both in this and in the next article.

In its latest [Report from 2022](#), *Freemuse* examined 1251 acts of violation against artists and their FoAE in 103 countries and in the online space in 2021:

**Cases of repression against artists and their work 2021**

Forms of repression	Units*	Cases (%)	Countries
<b>Killed</b>	A	38 (3%)	12
<b>Imprisoned</b>	A	119 (10%)	24
<b>Detained</b>	A	253 (20%)	38
<b>Prosecuted</b>	A	133 (11%)	34
<b>Abducted</b>	A	3 (0.2%)	3
<b>Attacked</b>	A & E	24 (2%)	18
<b>Persecuted</b>	P	138 (11%)	43
<b>Threatened/Harassed</b> (incl. Online)	A	75 (6%)	34
<b>Art or Venue destroyed/Damaged</b>	W & V	127 (10%)	33
<b>Travel Ban</b>	A	13 (1%)	4
<b>Sanctioned/Fined</b>	A	31 (3%)	12
<b>Blanket Ban</b>	A	10 (0.8%)	7
<b>Censored</b> (incl. Online)	C	287 (23%)	57

\* Units: A = Artists; C = Censorship acts; E = Events; P = Persecution acts; V Venues; W = Works Source: Based on data from *Freemuse* (2022), *The State of Artistic Freedom*

Music (31%) still counts the largest number of cases, followed by visual arts (24%) and film (23%). 32% of the violations are reported from Europe – the largest numbers of cases in Turkey, Belarus and Russia – followed by North & South America (24%) and the Middle East & North Africa (17%).

Unfortunately, due to changes in categories and presentation, exact statistical comparisons with early *Freemuse* reports e.g., from 2015 or 2016, are difficult, but the general patterns seem to persist.

Despite these somewhat ambivalent results of our search for reliable empirical FoAE trend indicators, it produced evidence that could benefit the *Compendium* research project even in cases, where this evidence does not specifically address the arts and related freedom of expression. Adding to current critical challenges like the rapid climate change, the COVID-19 pandemic, growing and partly obscene social imbalances or the Russian attack on Ukraine, and often fuelled by these, some **general societal changes** (with chances to influence also FoAE) are mentioned in the latest UNDP [Human Development Report](#).



### A few trends highlighted in the 2021/2022 UNDP Human Development Report

- *Political polarization is on the rise across the world*
- *In a reversal from just 10 years ago, democratic backsliding is now the prevailing trend across countries.*
- *Recent declines on the Human Development Index (HDI) are widespread, with over 90 percent of countries enduring a decline in 2020 or 2021.*
- *Perceived human insecurity is increasing in most countries — even in some very high Human Development Index countries.*
- *Negative affect is increasing for everyone, with persistent inequalities between groups.*
- *The consequences of substituting the digital for the real are complex... Sometimes, that spills over into real-life violence or into real-life policy.*
- *Rigidities in their many dimensions — in ideas, in networks, in narratives — act as a vice on human creativity... Agency and freedoms are antidotes.*

To these results we could add comments from scholars and statements from advocacy bodies, observing a "creeping authoritarianism around the world" (Quinn McKew, Executive Director ARTICLE 19, 2020) and with it a political climate that works to the detriment of free creative work.

In that context: We should not be naïve in times when freedom of thought and expression appears to be endangered in some European countries. Related restrictions may indeed be disguised by practices that are not obviously "illegal" or do not restrict artists directly, at first sight. As will be discussed in the next article of our *Compendium* series, **indirect measures of mind control** such as, inter alia, financial restraints, a reorientation of arts institutions or the recruitment of partisan staff can easily replace open censorship or legal action against artists.

In the meantime, more empirical and theoretical research is available that addresses our topic of the relation between changes of the political climate and barriers to FoAE directly. The latest one examines developments in Poland: "Cultural Control: Censorship and Suppression of the Arts in Poland". This second report of the "Artistic Freedom Monitor" series, published in late 2022 by the Artistic Freedom Initiative, was funded by the SDK Foundation for Human Dignity. It has been prepared in partnership with the University of California Berkeley School of Law and Columbia University's Harriman Institute. Before going into details with specific policies and measures (cf. box), the Report first deals with the socio-political context in Poland and explains changes in the management of arts/cultural institutions.

### “Cultural Control: Censorship and Suppression of the Arts in Poland”, 2022

The Report details these main policies and instruments that constitute threats to FoAE:

- **Legal mechanisms of suppression.** Among these are Poland’s current legal provisions concerning *Blasphemy* (which punish deemed religious insults especially against the Catholic church and led, during the last 5 years, to hundreds of complaints and many court cases, often against artists); *Defamation* (executed primarily to protect politicians or positions of the ruling PiS party) and assessments of the *Holocaust* (which denies any Polish involvement in that crime against humanity). In that context, also “*LGBT-Free Zone*” *Charters* are mentioned: "In 2019, roughly 100 regions and municipalities in Poland passed resolutions declaring themselves to be free from LGBT ideology."
- **Bureaucratic interferences into arts and culture**, including staff and programmatic changes or financial cuts in museums, theatres, festivals, music events and academies, heritage institutions and cultural diplomacy.
- **Political control of the media and public opinion**, including pressures on artists and cultural producers.
- **Intimidations by non-State actors** such as right-wing organisations or individuals targeting artists or vulnerable groups, dissenters and LGBTQ+.
- **Other experiences**, including self-censorship and discrimination of LGBTQ+ artists and cultural producers.

Note: In 2022, the Artistic Freedom Initiative published a similar [Report on Hungary](#), "Systematic Repression", which we will take up again in Part II.2.

In political statements and increasingly in the literature, we can find a term that is now frequently associated with dangers to freedom of expression, namely "**illiberal democracies**".

#### Can democracies be "illiberal"?

*"Different governments in Europe are advancing corporatist mechanisms to foster a homogenizing and conservative understanding of culture. Illiberal practices framed within these policies include a delegated censorship and several measures based on xenophobic claims. Despite the importance of this phenomenon, the available literature on cultural policies has not adequately addressed it so far."*

Lluís Bonet and Mariano Martín Zamorano: Cultural policies in illiberal democracies (2020)

Bonet and Zamorano explain that, based on obsessive cultural, political and religious beliefs, a number of fine-tuned cultural policy instruments are served up again to support intended societal changes: Popular events and nationalistic or revisionist ideologies are to shape public mindsets and cultural policies at the expense of critical artistic work and open-minded arts education that does not evade problematic aspects of history. From the past e.g., during communist or fascist times, the practice of distinctive clientelism with special support or honours for loyal minions is already known and today traces of similar favouritism are claimed in some countries.

Often **Hungary** and its Prime Minister Victor Orbán, in particular, are being cited as striving for an "illiberal" form of democracy and as examples for a rebirth of nationalism in Europe during the last decades. Is that a correct observation?

**Excerpts from an [Address of Victor Orbán on 26 July 2014](#)**

In his speech to an ethnic Hungarian audience in Băile Tuşnad / Tusnádfürdő (Romania), Orbán proclaimed his intention to turn Hungary into a state *"that in character it is not of liberal nature."* Citing as models, he proclaimed his intention to *"abandon liberal methods and principles of organizing society, as well as the liberal way to look at the world [...]. Today, the stars of international analyses are Singapore, China, India, Turkey, Russia [...]. and if we think back on what we did in the last four years, and what we are going to do in the following four years, then it really can be interpreted from this angle. We are [...] parting ways with Western European dogmas, making ourselves independent from them. [...]. If we look at civil organizations in Hungary, [...] we have to deal with paid political activists here. [...] [T]hey would like to exercise influence [...] on Hungarian public life."*

As pointed out by scientific observers, our legacy of political and legal systems is diverse and still-existing remnants do not always correspond to prevalent narratives of how a proper democratic system in Europe should be looking like. According to Gábor Halmai of the European University Institute, Hungary can indeed serve as an example for "a new, hybrid type of regime, between the ideal of a full-fledged democracy and a totalitarian regime...".

**Gábor Halmai: ["Illiberal constitutionalism in Eastern and Central Europe"](#) (2021; excerpts)**

*The borders between democratic, authoritarian or dictatorial regimes are blurred, and there are a lot of different hybrid systems, such as the current Hungarian regime... The strengthening of populist and extreme nationalist movements across Europe is incompatible with the values of the liberal democracy... Unfortunately, an outsize fear of threats, physical and social, lately, for instance, the refugee crisis... strengthened illiberal systems, such as Turkey and authoritarian regimes such as Russia all over Europe, and in the case of Hungary even inside the EU... There is a growing gap between the old and the new Member States, and the support of populist parties has been strengthened even in the old Member States.*

Increasingly, these and developments in other countries alert artists, writers or critics in the media and networks, such as Stephen Pogány (Warwick University), who does not hesitate to call Hungary "Europe's Rogue State" ([Social Europe](#), 28 November 2022). They wonder what such tendencies could mean for a diverse culture that is often – despite the ambivalence of that term – labelled "liberal", and whether they may even help preparing a **return of (Neo-)Fascism**. Even more explicit – and pessimistic – has been the Hungarian philosopher Gáspár Miklós Tamás. In an interview, shortly before his death in January 2023, he described the political and cultural future of his country and Europe in the following words:

**Gáspár Miklós Tamás on Post-Fascism, 2022**

*"Where do I see fascism? Everywhere. Fascism, especially post-fascism, is not a dictatorship in the traditional sense. It is not carried out by the state, but by a population sympathetic to violence and exclusion. Post-fascism brings this terrifying, irrational momentum into the public sphere, the most important element of which is discrimination - see migration, see gender issues."* ([hvg 360°](#), 22 December 2022)

This verdict triggers a question on **future research regarding FoE**. In the social sciences, the category "trust" is frequently used when issues of governance, social cohesion and individual well-being are examined. Institutions, governments or the EU as well as the economy and certain professions are often in the focus of related studies. However, to what extent can we trust that our fellow citizens – including ourselves! – really accept democratic values, including respect for FoAE? Tamás' intervention suggests that a kind of early warning system on extremist positions might be helpful. At least we could try to fine-tune existing surveys and indicators to better catch the "trustworthiness" of whole populations, not least with regard to their susceptibility to neo-fascist cultural stereotypes. Just hoping for a next election may not be the best option.

Clearly, illiberal authoritarianism may not necessarily lead to a return of a fully-fledged fascism and recent power shifts or election results, for example, "the humbling of Johnson and Trump were encouraging signs not only of democratic resilience but also of the global retreat of the nationalist-populists", according to Jonathan Freedland. However, he has to admit that backlashes are possible like in the case of Benjamin Netanyahu, who "is back in power in Israel atop a coalition that includes those once shunned as part of the untouchable, racist right" ([The Guardian](#), 23.12.2022). And indeed, an "erosion of democracy" cannot be ruled out says Israeli philosopher Yuval Kremitzer in a recent interview ([taz](#), 29.10.2022).

The Italian writer and philosopher Umberto Eco discussed the question of neo-fascism already 25 years ago, after Silvio Berlusconi first brought post-fascists to power in 1994. He outlined a list of features "typical of what I would like to call **perennial or primordial fascism**. These features cannot be arranged into a system; many of them contradict each other and are also characteristic of other types of despotism or fanaticism. But it is enough that one of them is present, and fascism has a crystallisation point around which it can develop." Based on Eco's book *Cinque scritti morali* (Milano 1997), we can summarise his 14 indicators as follows:

**From 'illiberal democracy' to a new fascism? Umberto Eco's 14 characteristics, 1997**

1. **Cult of tradition** and of a traditionalism that also takes up myths of primeval revelations, which inevitably results in cultural "syncretism".
2. **Rejection of modernity**: "The rejection of the modern world masqueraded as a condemnation of the capitalist way of life, but it was primarily directed against the spirit of 1789 (and of course of 1776). The Enlightenment and the Age of Reason were seen as the beginning of modern depravity."
3. **Cult of action for action's sake**: "For an action to be beautiful in itself, it must take place without any prior reflection... Culture (is) suspect as soon as and insofar as it is identified with critical attitudes. Distrust of the intellectual world has always been a symptom of primal fascism, from the famous statement attributed to Goebbels 'When I hear talk of culture, I draw my revolver' to the frequent use of expressions such as 'degenerate pack of intellectuals', 'eggheads', 'radical snobs', 'rats and blowflies'."
4. **Rejection of criticism**: "In modern culture, the scientific community praises dissent as a means of increasing knowledge. For primal fascism, dissent is treason."
5. **Exploitation of fear of otherness and diversity**: "Ur-fascism grows and seeks consensus by exploiting and deepening the natural fear of otherness ... Therefore, Ur-

*fascism is by definition racist."*

6. **"Appeal to the frustrated middle classes...** *who suffered from economic crisis and/or political humiliation and were afraid of pressure from subaltern social groups."*
  7. **Obsession of a conspiracy:** *"The followers must feel besieged. The easiest way to conjure up a conspiracy is through an appeal to xenophobia. However, the conspiracy must also come from within; therefore, Jews are usually the best target, since they offer the advantage of being both inside and outside at the same time."*
  8. **A sense of humiliation** *from openly demonstrated wealth and the strength of enemies: "However, the followers must also be convinced that they can defeat the enemies."*
  9. **Armageddon complex:** *"Since the enemies must and can be defeated, there must be a final battle..."*
  10. **Contempt for the weak and strengthening of the feeling of a mass elite:** *"Ur-Fascism can only preach folkish elitism: Every citizen belongs to the best people in the world..."*
  11. **Education to heroism:** *"The Ur-Fascist hero longs for heroic death, which is preached to him as the best reward of a heroic life."*
  12. **"Machismo** *(which means not only contempt for women but also rejection and condemnation of all non-standard sexual habits, from chastity to homosexuality)"*
  13. **Qualitative populism:** *"For primal fascism, individuals have no rights as individuals, while the 'whole of the people' is conceived as a quality, a monolithic entity expressing the common will of all... In our future, a TV or internet populism could base on the emotional response of a group of selected citizens being presented and accepted as the 'voice of the people'."*
  14. **Newspeak** *modelled on Orwell's '1984': "We must be prepared to identify other forms of newspeak, even if they take the innocent form of a popular talk show."*
- Eco warns: *"Primal fascism can come in the most innocent of garments. It is our duty to expose it and point the finger at each of its new forms - every day, all over the world."*

Perhaps not everyone will share Eco's criteria and fears. Let's face it: even artists and writers are not always immune to some of the ideological temptations mentioned by Eco. Especially with regard to democratic processes, cultural diversity and freedom of artistic expressions, a constant, objective monitoring and examination of political and legal changes is indicated, for which the *Compendium* can provide important foundations.

This article cannot end without a look at **Russia**. When on 24 February 2022 Russian soldiers invaded Ukraine in what was called a "special military operation", President Vladimir Putin justified this step inter alia with the need for a "denazification" of the neighbouring country. Later on, Russian state-sponsored narratives about Ukraine being a "fascist state" were frequently used to "de-legitimise Ukraine's right to self-defence" ([Institute for Strategic Dialogue](#), 2022). At the same time, dissidents questioning this rhetoric were persecuted in Russia; many artists and intellectuals have chosen to emigrate (and could not always count on a warm welcome in their exile countries). Today it seems that the above label of a "fascist" Ukraine could actually backfire on the originators, especially when it is perversely combined with anti-semitic stereotypes or with statements like that of the Russian Foreign Minister Sergei Lavrov, who compared the US and

European support for Ukraine with Adolf Hitler's "final solution" to eradicate the Jews ([Reuters](#), 18 January 2023). Indeed, UK Defence Secretary Ben Wallace – in a speech at the National Army Museum in London following the invasion of Ukraine – compared Putin, his inner circle and generals with the fascism and tyranny of 70 years ago, repeating the mistakes of totalitarian regimes of the last century ([linkiesta.it](#), 20 May 2022). How to assess this war of words and the implications Russia's attack for the future of cultural cooperation in Europe?

Karl Schlögel, the veteran historian of Eastern Europe, is considered as one of the best experts on Russia and its history – and has even been respected as such in that country: In 2014, he was to receive the Russian *Pushkin Medal*, but did not accept it because of the Crimea occupation in that year. Following the war against Ukraine, he had to thoroughly reorient himself and, in an open letter 2022, warned of a potential genocide.

### **Russia: Fascism or 'Putinism'?**

Excerpts from an interview of Karl Schlögel with *Süddeutsche Zeitung*, 3 January 2023: How would you describe the Russian system?

*There are different approaches or models. Some emphasise the mafia state, others the kleptocracy in which social and state property is redistributed into the hands of oligarchs. There is the view that today's Russia is an autocracy, the revival of the tsarist legacy, while others speak of a postmodern order or even fascism.*

And what does Karl Schlögel say?

*I believe that the terms I have just mentioned name essential aspects of the system, but that Putinism is something new. A lot of things come together: the power-centredness and the weakness of Russian civil society, the absence of the middle class, the staging of power in the public sphere, the sophistication in the handling of public relations, which is not just a synchronisation but a game with the power of the media, these people all have Hollywood behind them. And then there is the sound of holy Russia next to the medal ceremony for the murderers of Butscha.*

Where is Putin in this picture?

*He is almost a syncretic figure. Think of the famous picture of him with the candle in the Cathedral of the Saviour at Easter Vigil, the one with the Mussolini torso on horseback, his appearance in 2010 singing "Blueberry Hill" and strumming on the piano. And then again, the obsessive, bursting-from-the-inside hate speech on the eve of the attack - I believe that Putinism represents a new form that we have not had to deal with before.*

Some call the new system "Russism", in reference to fascism.

*Looking at fascism and Nazism in relation to the Russian system is instructive, but analogies are not quite appropriate because you are dealing with something specific and new for which you still have to find the terms. It is striking that the Russian-Soviet-Stalinist line, the specific Russian heritage, does not appear in this discussion. But how can this be faded out for a post-Soviet Russia? Putinism draws on an independent historical fund. Well-known practices are reactivated: show trials, forced self-criticism, targeted killings, unleashing denunciation against "enemies of the people" and "foreign agents", torture and the camp system. Even mobilisation followed old patterns. Mass deportations, resettlement, what the Nazis once called "Umvolkung".*

Now we know the ingredients of Putinism. What is the point of merging them?

*We don't know what this will lead to beyond the current police state. We don't even know yet whether Ukraine, whether Europe will withstand the Russian violence.*

Obviously, East-West stereotypes, geopolitical strategies and military challenges alone do not render proper answers to the question of how to communicate, now and in the future, with artists and other cultural actors from Russia. Schlögel gives a hint, when he reminds us of the fact that the Russian Federation is, despite reborn "imperial" ambitions, not composed of just a "Russian world" and actually a multi-ethnic state. In a FoAE perspective, it will be important to consider both cultural legacies and individual positions with regard to the acceptance of diversity, when one day the issue of rebuilding bridges to the, undoubtedly rich, arts and heritage of this country appears again on European cultural policy agendas.

*Give me the liberty to know, to utter, and to  
argue freely according to  
conscience, above all liberties.*  
John Milton (in a 1644 protest  
against censorship)

*We like speaking truth to power. We say  
that the emperor is in his birthday suit, if he  
is without any clothes – because that is the  
truth, and people have the right to know.*  
Salil Tripathi (Chair, Writers in Prison  
Committee, PEN International, 2021)

## 2.2. State Affairs: Overt and Covert Censorship

Re-reading chapter 2.1 of my compilation of positions and empirical findings on Freedom of Artistic Expression (FoAE), I'm wondering whether I paid too much attention to the current "war of words" in an agitated and highly fragile European environment (including in military terms). Did I possibly overstate authoritarian phantasies or conspiracy myths? Should we not try to also explore, from a sincere, European research perspective, more of the still existing common ground on this topic or try to search for potential bridges between antagonistic positions? On the other hand, could such a de-escalation strategy really be of value for those professionals in the arts and media whose works are facing barriers such as censorship or who are currently experiencing personal attacks?

At the start of my approach to different manifestations of censorship, a brief conceptual digression with terminological implications may again be useful. FoAE is often seen as part of a larger group of "**cultural rights**" within the human rights system – even the European Court of Human Rights did so in its [collection](#) of culture-related rulings (2011). This – of course legitimate – view has its merits, especially from a development perspective ([UCLG](#), 2023). As well, it supports a traditional argument: that of the "**autonomy of the arts**", especially from political interference. However, given the multiple dependencies that influence literary and artistic work, both in the past and today, this autonomy is now widely contested. Drawing, inter alia, on a [book](#) by Wolfgang Ullrich (2021), Austrian expert Michael Wimmer concludes that "the tendency to subjugate art to market events triumphs over current attempts to once again give art a special relevance in the course of new political struggles" and that "the emancipatory potential that may once have lain in the claim of an autonomy of the arts has (temporarily) come to an end". In case of doubt, he sees a need to consider "the context in which art takes place" ([educult.at](#), December 2022). In contrast to Ullrich, artist Angela Fette insists (in "[Kunst braucht Eigensinn](#)", *taz* 22 April 2023) that art should try to escape the pinch of capital interests and identity debates: "The new identity-political pseudo-avant-garde is the most reactionary and conservative phenomenon to be found in the current art scenes."

Let's face it: Differences in the degree of exposure of, and even discrepancies between, some culture-related rights cannot be excluded. We should be aware, for example, that while contemporary artistic (and political!) expression may be censored, suppressed or similarly impeded in a country or region, specific cultural rights, such as language rights or protected cultural traditions of ethnic minorities, may still exist, at least nominally or superficially. The same can be said for FoAE in relation to policies that support a "**right to culture**" in the sense of ample, often organised opportunities for larger sections of the population to attend artistic events or to participate in other – potentially less controversial – cultural activities. In other

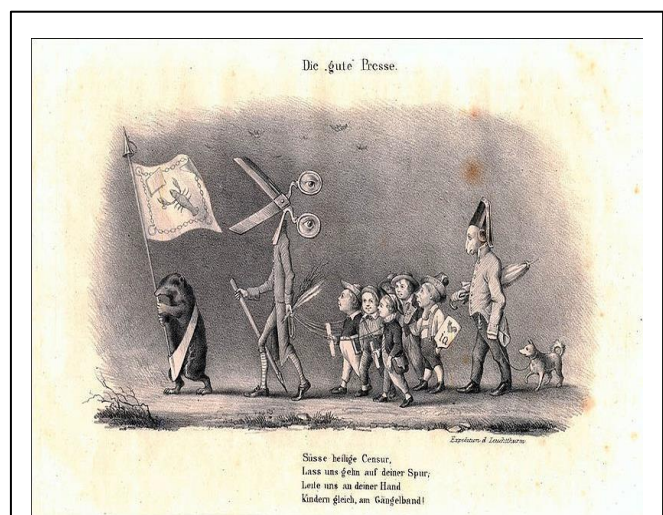


words: FoAE, and freedom of expression in general, tend to be at greater risk than, say, the right to cultural access and participation. Of course, the latter also faces problems here and there, but these are more related to political negligence and administrative or budgetary shortcomings and hardly comparable to the risk of personal threats or imprisonment. An alternative conceptual view – with which this author does not hide his sympathy – sees FoAE more in the context of "**civil liberties**". These underpin human dignity, are inherent to all human beings and are a prerequisite for democracy, as they include freedom of thought and expression. Actually, civil liberties have become "**civil rights**", because they are protected by national or international legislation, such as the *International Covenant on Civil and Political Rights (ICCPR, 1966)*. In the context of this exercise, we need only acknowledge that civil rights are not a privilege granted to specific groups or professions: It is not only artists who want to be free to express themselves, to have equal opportunities and to be protected from harassment or persecution. Could this interpretation be detrimental to creative professionals and FoAE? In my opinion, on the contrary, because it circumvents the sometimes-tricky question of whether certain expressions are really artistic works or just agit-prop. Moreover, we should bear in mind that artists often attract media attention; many of them serve as role models for larger segments of the population. Therefore, their struggle for freedom of expression may even inspire others to communicative action - towards building bridges rather than fuelling divides...

Among the risks to FoAE, the study of **overt or covert censorship** has been of particular interest to many researchers (cf. an [overview of references](#), 2014). This is due to the long history of censorship – indeed dating back to ancient civilisations such as China or Greece – and involving not only rulers and their bureaucracies but also powerful religious actors such as the Catholic Church. One of the most prominent victims of censorship has been the Greek philosopher Socrates (339 BC).

As we will see in a moment, **defining censorship** is a somewhat ambiguous exercise. Traditional definitions describe censorship as "a system in which an authority limits the ideas that people are allowed to express and prevents books, films, works of art, documents, or other kinds of communication from being seen or made available to the public, because they include or support certain ideas" ([Cambridge Dictionary](#)).

The motives for censoring such "ideas" can be political and security concerns, the protection of particular groups (e.g., children) or a response to alleged defamation, blasphemy, obscenity and other criminal charges. In the past, a distinction was made between *ex-ante* ('prior restraint') or *ex- post censorship* (after publication / performance). In the digital age,



*Anonymous lithograph taunting censorship: "The 'good' press", published 1847 by the satirical journal 'Der Leuchtturm' (The Lighthouse) in Leipzig / Germany. A procession of publishers and authors is led by a blind mole carrying a banner with a crab (a backward moving animal) and the censor. The poem below says, roughly translated: "Sweet holy censorship, please be our guide, for like children, we can't decide".*

however, the often-simultaneous production and distribution of content on the Internet may call this distinction into question.

A more realistic distinction, also from a policy point of view, might be between **institutionalised overt censorship** e.g., by legally mandated state agencies, and different forms of **indirect or hidden censorship**, effectuated via e.g., laws in different areas, political conditionalities or societal content control (partly orchestrated by social or commercial actors and the media), as well as **pre-emptive or reactive "self-censorship"** (which is difficult to detect and monitor with empirical methods).

In their ARTS RIGHTS JUSTICE Study on [Protecting and Promoting Artistic Freedom](#) (2019), Sara Whyatt and Ole Reitov, the latter a long-time head of *Freemuse*, point out that while many still see censorship as a mainly state-orchestrated "straightforward manipulation of or ban on artistic expressions, it ultimately turns out to be a mixed bag", especially when hatred or violence orchestrated by certain social groups are involved which, by the way, can also provoke preventive action by state authorities. They conclude: "Although this may not be censorship in the traditional sense, such attacks have the same effect, in that the attacked artist (at least for some time) may be silenced, forced into exile or may simply stop producing out of fear".

50-60 years ago, works of European artists, writers and filmmakers were often censored or prosecuted on the grounds of "[obscenity](#)" or "[blasphemy](#)". Such accusations still play a role in a few countries and also on social platforms, but they can now be mixed with – or are succeeded by – restrictions and the persecution of artists whose **dissident political convictions or opposition to current rulers** influence their artistic work (including being suspected of such motives by the authorities).

In a European context where, according to most of the *Compendium* country profiles, at least official ex-ante censorship carried out by state institutions seems to have all but disappeared over the last five or six decades, it is obviously important to consider also related forms of restrictions. It should be remembered, however, that the dismantling of official, but often church-inspired, state censorship in Western Europe did not happen by accident: it was only possible because of pressure from bodies such as UNESCO and the Council of Europe, because of the case law of the European Court of Human Rights (ECtHR) and because of protests and legal action by many dedicated NGOs and individuals.

#### 'Public Order' in Belarus

*"Koly nastane den, zakinchytsya viyna..." [When the day comes, the war will be over], — young singer Meriem Herasimenka sang the song of the famous Ukrainian band Okean Elzy in the cozy yard of a popular bar in Minsk. Hundreds of people around sang along and lit up their phones. Next day, Herasimenka was detained by the police and has still not been released. Currently she is accused of organizing action that 'undermines public order'...*

Alesia Rudnik in: [Baltic Worlds](#) 3-4, 2022

#### The Council of Europe on 'Blasphemy'

*Blasphemy, as an insult to a religion, should not be deemed a criminal offence. A distinction should be made between matters relating to moral conscience and those relating to what is lawful, and between matters which belong to the public domain and those which belong to the private sphere.*

Parliamentary Assembly of the Council of Europe, Recommendation 1805 (2007)

Chapter 2.2 of the *Compendium* profile on [Malta](#) provides a brief description of such efforts over the past decade (which have only recently been largely successful). A concrete example can be found in a timeline published by the [International Anthony Burgess Foundation](#): Since 1970, the renowned author (inter alia, *Clockwork Orange*) has battled censorship by Maltese authorities, who charged him with obscenity and other offences, destroyed parts of his library and made his working life on the island increasingly uncomfortable.

**Monitoring bans: a difficult task ([Freemuse 2022](#))**

*Threats to artistic freedom are frequently 'under the radar' and escape the attention of rights monitors. There are situations where there may be no direct bans but there exists a self-censorship reflex responding to fears of losing grants, nominations for awards, access to performance space, etc. Physical threat by non-government actors, media smears, and a social media backlash can also impact artist's capacity to continue their work, as they may have to think twice before dealing with topics that may bring a negative response.*

As noted in the previous article in this series, a full empirical case and trend monitoring of FoAE and censorship is currently difficult to obtain. The latest Freemuse report explains that self-censorship is often the last resort for artists and writers trying to survive in a hostile environment. In its earlier Report on FoAE in Europe (2020), the watchdog collected and analysed 179 acts of censorship in 27

European countries, involving 809 artists or artworks. 39% concerned the domain of music, followed by the visual arts (22%), theatre (17%), film (13%), literature (7%) and dance (2%). Government authorities are reported to be responsible for 61% of these cases of censorship.

This last finding motivated me to focus this chapter on forms of, actual or potential, 'censorship' in the broadest sense, where the **state or public institutions** are in different ways involved, whether as direct actors, as legislators or as funders and venues. The next chapter will then conclude this exercise with some thoughts and examples on societal content control and the resulting threats to FoAE, including in the form of physical attacks.

About 20% of the articles in [Culture and Human Rights: The Wroclaw Commentaries](#) (2016) deal with freedom of expression and how it can be threatened by state (in)action. Based mainly on the findings of the international experts of this handbook, we could distinguish three main categories:

- *Punitive laws*, sometimes based on politico-moral fundamentalism or "official orthodoxies";
- *Protective provisions*, ranging from age classifications or language rights to some copyright rules;
- *Regulatory measures* with associated "conditionalities", especially with regard to arts funding.

There is not space here to cover all related issues, but some examples and well-publicised cases could possibly help to lay the ground for further debate, including on possible alternatives.

**'Naming Rights' overrule FoAE**

A satirical video of the artists' collective *Peng!* announcing alleged benefits for refugees has been published 2018 on YouTube. In January 2023, the Berlin District Court (Az: 15 O 140/21) judged the video an "*unauthorised performance of an official act*", because it included the logo of the Federal Ministry of the Interior. The Court ruled that the naming rights of the Ministry take precedence over artistic freedom.

In that context, we must first consider the legal doctrine "margin of appreciation" developed by

the ECtHR and now widely used in international human rights law. It intends to assess whether limitations to human rights, including freedom of expression, imposed by national authorities are justified (or not). In recent decades, several states have used this margin of state discretion to impose specific limits for FoE in order to defend, for example, national security and honour, 'social cohesion' or the protection of religious feelings and public morals. Sometimes these restrictions are inspired or supported by societal institutions and groups (cf. II.3).

Indirect measures of content and thought control include administrative and financial restrictions that have the potential to impede artistic work or limit its accessibility, including when state-funded arts institutions and funding bodies are administratively reshaped, films are removed from festivals on bureaucratic grounds (cf. cases reported by Siyah Bant in Turkey) or theatre plays and exhibitions have to be postponed or cancelled due to a lack of public funds. The silencing of independent and potentially dissenting voices in the arts and literature has a long tradition, whether through blanket cuts in public subsidies (in countries such as Hungary, Italy, The Netherlands or the UK that were governed by conservatives or technocrats a decade ago, with political undertones, as claimed in an article of The New York Times on 24 March 2012) or in the guise of efficient management policies with the potential to discourage the production of "difficult" programmes (a hot issue, for example, in the 2008 struggle of the Czech initiative Za Prahu kulturni against a reform of municipal support for arts institutions based on their economic success in the previous year).

However, the results of a comprehensive FoAE analysis of developments in Hungary carried out by the US-based Artistic Freedom Initiative (see box next page), suggest that reshaping arts and cultural policy along ideological priorities of the FIDESZ party does not necessarily have to be enforced through targeted budget cuts: Control of the cultural sector can also be gained through personnel and administrative changes that facilitate the redirection of funds towards the desired ends.

### **Hungary: A new management and funding strategy to silence potential artistic dissent**

*In Hungary, the past decade has seen a gradual escalation of government oversight and control of the arts and cultural sector. This heightened interference into cultural production has been accomplished through a FIDESZ-initiated three-part scheme:*

- (1) The creation of centralized management structures governing the arts and cultural sector;*
- (2) the strategic placement of government loyalists into seats of authority within those structures; and*
- (3) the realignment of funding towards FIDESZ-aligned artists and cultural institutions...*

*In the words of Hungarian art historian Edit András, where there is centralized government control of arts and cultural organizations, 'there is then no further need for official censorship, since this process automatically guarantees the proper ideological content.'* [[ARTMARGINS](#), 2013]...

*In 2010, Hungary also centralized control over the National Culture Fund (NCF), a hitherto independent institution, funded through a tax on the national lottery. ... The FIDESZ party effectively possesses majority control over disbursements from the Culture Fund, which provides considerable budgetary support to cultural institutions nationwide...*

*The Culture Bill, passed in 2019, expanded federal control over the arts and cultural sector, largely through the creation of the National Cultural Council (NCC). This bill transfers considerable managerial control of theaters to the federal government...*

*Upon consolidating administrative control of the arts and cultural sector, the FIDESZ government has set out to remake Hungary's cultural institutions and artistic spaces along political lines, employing two strategies towards this end: the placement of government loyalists into seats of authority within arts and cultural institutions and the reorienting of funding towards FIDESZ-aligned programs, artworks, or artists.*

Excerpts from [Artistic Freedom Monitor: Hungary – Systematic Suppression](#) (2021)

**Laws on 'Foreign Agents'** such as those in Russia and Hungary have been used, generally with success, to silence dissenting civil society organisations, including those in the arts, that receive international funding. A similar law was planned in Georgia, but had to be withdrawn after massive public protests. The Estonian paper *Postimees* (8 March 2023) noted the similarity with the Russian law of 2012, which "marked the beginning of the total suppression of free thought and the final downfall of Russia". If nothing else, this and similar laws proved to be important steps on the road to authoritarianism.

**Georgia: Impacts of a planned "Foreign Agents" law**

*Numerous NGOs and independent media receive funds from Western foundations and live off grants - this guarantees freedom of expression. The Georgian authorities will see this as espionage and as foreign agent activity. Yet this state could also see itself as a foreign agent since Georgia receives huge financial support from the EU and the US. Undoubtedly, the bill will make it possible to launch a witch hunt in Georgia to restrict rights and freedoms... a deliberate break with the EU. (Jekaterina Kodrikadse, Dozhd, 8 March 2023)*

With regard to **anti-terrorism laws**, a handy pretext for state repression including censorship, the new report [Free to Create: Artistic Freedom in Europe](#), written by Sara Whyatt and published by the Council of Europe in February 2023, addresses the problem of "ambiguous and sometimes fluid definitions of terrorism" when applied to artistic expression. In this context, it reveals a correspondence between the Council of Europe Commissioner for Human Rights, Dunja Mijatović, and the Spanish Minister of Justice from March 2021.

The Commissioner questioned criminal convictions based on Spanish terrorism and **insulting the crown laws**, using so-called "catch-all labels". According to her, they particularly endanger "non- consensual, shocking or politically embarrassing" lyrics and performances by artists, even if they cannot really be considered as apologies for terrorism or incitement to violence (cf. box next page). Mijatović therefore called on the Spanish legislature to revise such laws in line with Article 10 of the European Convention on Human Rights. In its response, the Spanish government acknowledged that "the regulation of certain offences related to the freedom of expression continues to pose difficulty, not least because of the imprecision with which some forms of criminal conduct are defined" and announced a review of the legislation.

**The CoE Commissioner for Human Rights to the Spanish Minister of Justice (2021)**

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

Age ratings and other **regulations aimed at protecting children/young people** from content deemed to be offensive in films, books, games and other media exist in almost every country of the world.

Sometimes they can have a spill-over effect on adult content. With regard to such classification procedures, the UN Special Rapporteur in the field of cultural rights ([A/HRC/23/34, 2013](#)) had called on States to ensure (a) the independence of classification bodies; (b) the participation of evaluators from the arts field; (c) transparent terms of reference, rules of procedure and activities; and (d) effective appeal mechanisms – desiderata that are not fully met in different countries. In contrast to measures that seek to control or suppress political views or religious beliefs, the above task can also be achieved with some success by replacing former state control mechanisms with binding industry standards such as age ratings for consumers. An example is

the [Pan European Game Information \(PEGI\)](#) content rating system that is now used in 38 countries and was supported by the European Commission. For example, of the 1,741 games rated in 2020, 63% had a "violence" content descriptor and for 31% "bad language" was reported. Interesting and worth checking: No cases were found for the "discrimination" descriptor.

Other issues related to both rights protection and to claims of censorship concern the state-regulated **area of authors' rights**. Authors, artists and designers – especially those who contribute to audiovisual works – often cannot rely on their creative expressions being recognised or remaining unchanged. In the Anglo-American doctrine of "copyright" they could fall into the category of "work for hire" and would then be at the mercy of commercial users of their works. More recently, conflicts over the ownership of digital works, such as [NFTs in the visual arts](#), are increasing due to a lack of regulation. Digital artists also have to be careful that their ["artistic IP"](#), their style and patterns, do not turn into a prey for new, VAC-like **AI tools** designed to imitate and commercialise their work. In general, there is a growing sense that "individual creativity is substituted by economic investment" and that our current copyright system "only marginally assists authors and artists and, instead, mainly benefits holders of exploitation rights to creative works" ([Suzanne Capiou](#) in: *Culture and Human Rights – The Wroclaw Commentaries*, 2016).

So-called **"moral rights"** – particularly established in the [continental European legal tradition](#) – aim to secure authorship and defend the creator's work against derogatory actions or falsifications. While useful in principle, they can become counterproductive after his or her death when the heirs and licensed marketers take over and are then entitled to make content-related decisions for the next 70 years of extended legal protection. This unrestricted inclusion of successors, who are not necessarily loyal or experienced, in legal provisions supposed to protect the creator's personality can indeed be questioned, as censorship lurks around the corner. To better understand the potential conflicts better, we need to distinguish between two scenarios: On the one hand, there are creative *works of art or literature*, where mainly the authenticity and integrity may be at stake, as in the case of the collected works of the politically engaged intellectual and poet Kurt Tucholsky (1890-1935), published in 1975 and co-edited by his widow, where some of the beautiful texts and poems he wrote for his girlfriends while in his Swedish exile were missing. On the other hand, there are works in the *performing arts and music*, for which a, more or less extensive, interpretation by other artists is required. With regard to the latter, some heirs and estates of deceased playwrights consider themselves entitled to suppress such new artistic interpretations, as in the case of Bertolt Brecht's heirs, who often rejected stage directors and actors whom they considered unfit to interpret and perform Brecht's plays on stage. If such an understanding of the 'right of disclosure', now part of moral rights, had been rigidly enforced over the centuries, it would have had serious "consequences for the audience and for culture more generally", writes Peter Baldwin in *The Copyright Wars* (2014, p.31, see box). Of course, artists and writers often change their existing works (and their minds) or have new ideas about how to promote them, but what is perfectly legitimate for a living creator seems much less convincing when it is done by heirs, and especially by descendants of heirs, or by third parties, many of whom have never had the opportunity to engage personally with the creator on artistic matters.

**P. Baldwin on results of 'eternal' or excessive 'Moral Rights' (2014)**  
*"...we would have lost Virgil's Aeneid, possibly Ovid's Metamorphoses, most of Kafka, all of Foucault's posthumous works, some of Philip Larkin, Sainte-Beuve, T.S. Eliot, Anatole France, George Sand... Emily Dickinson's poems would be known only in her family's heavily edited version."*

Other issues related to FoAE and copyright concern the **distribution of digital content** and have kept European and international legal bodies busy. For example, the Court of Justice of the European Union (in SCARLETT EXTENDED SA vs. SABAM, [CJEU C-70/10](#)) rejected the demands of a copyright collecting society to install an Internet content filtering system, because this "would involve a systematic analysis of all content and the collection and identification of users' IP addresses", which "could potentially undermine freedom of information". Similarly, in 2016, the UN Human Rights Council ([A/HRC/32/L.20](#)) reaffirmed its position that human rights enjoyed offline are also protected online and rejected measures to prevent or disrupt access to the Internet or specific platforms, while recognising the importance of access to information and online privacy for the realisation of the right to freedom of expression and opinion without interference. Fortunately, contemporary case law now seems to be more inclined to emphasise the need to strike a balance between conflicting rights, often in favour of the freedom of new artistic expression.

**Economic and contractual insecurity** due to lack of or insufficient revenue or government action can increase the risk of self-censorship. According to a [survey](#) conducted in 2023 among the members of the International Network for Contemporary Performing Arts (IETM), "laws allowing better working conditions and the creation of a basic income for artists, as well as unemployment and retirement schemes for freelancers" ranked high among proposals for changing working conditions. Insiders confirm that an insecure working environment for artists, characterised inter alia by short or fixed-term contracts for performers, typical in South-Eastern Europe as well as in Austria, France, Germany and Switzerland, limits the opportunities for free artistic development.

Europe is known for its linguistic diversity and the – more or less free – **use of a language or idiom of expression** is important not only for professionals in literature and journalism, but also for those working on stage, in popular music and, increasingly, in Internet communication. Depending on national or regional laws and other regulations governing the use or protection of language(s), this can lead to uncertainty or complications, and in some multilingual countries, such as Belgium, Moldova, Spain, Turkey or Ukraine, to conflict. Authors and artists who have grown up as part of a linguistic or ethnic minority, as well as refugees, often (have to) make the difficult choice of whether or not to communicate primarily in the dominant language. It is not possible in this chapter to cover all the critical issues involved, but there is a large body of literature including e.g., Will Kymlicka and Alan Patton (eds., 2003): [Language Rights and Political Theory](#).

In the absence of global legal instruments to protect linguistic rights and diversity – even UNESCO's *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005) treats the issue only marginally – NGOs such as PEN International played a leading role in developing the non-binding *Universal Declaration of Linguistic Rights* (1996) and the more explicit [Girona Manifesto for Linguistic Rights](#) (2011). On our continent, the [European Charter for Regional or Minority Languages](#) (1998) of the Council of Europe was an important step towards the recognition of the languages of traditional autochthone and national minorities. Some member states of the CoE (and the EU) such as Belgium, Bulgaria, France, Italy or Latvia, have not ratified this Convention for various reasons, indicating deficits in what we called "**cohesive diversity**" in a [2005 ERICarts project](#). Whether the CoE treaty should be extended to the – much larger – group of "new minorities" or to what extent it also benefits contemporary authors and artists, is controversial and deserves further investigation. A quick and dirty test of one of the Convention's monitoring reports, here exemplified by the one for Norway ([ECRML](#)

[\(2001\) 6](#), 36 pages), reveals that "writer(s)" or "author(s)" are not mentioned once, compared to over 90 mentions of the term "authorities" – which can, of course, be explained by the somewhat ceremonial style of language used in such official reports.

There is clearly a difference between the right to use a language, official restrictions on that use – which may fall under a specific category of censorship in the wider sense – and individual decisions to use it or not. As far as FoAE issues are concerned, we should be aware that laws and professional efforts alone can hardly compensate for the crucial **imbalance between large and smaller linguistic areas in Europe** and beyond. For authors from small countries, or for those who grew up in areas with minority languages, this may suggest taking a detour by using a dominant lingo in their writing in order to improve their chances of being published – which some could deplore as a loss of substance and 'identity' or of regional cultural experiences. On the other hand, a world famous playwright like Yasmina Reza ([God of Carnage](#)) confesses that the decision of her parents, both with a refugee background, to assimilate and adopt the French language actually had a lot to do with her chances to start a career as an author ([ttt](#), 26 March 2023). No doubt, we can hardly call this "self-censorship"...

A related issue involving public authorities concerns **media content regulations**. Despite or in addition to harmonised [rules of the European Union](#), some countries have found alternative, language-based solutions to protect their national cultural industries. For example, France circumvents an EU quota for films on public TV by adding a specification to the 60% quota of European productions, namely that 40% must be of [original French language content](#); similar rules exist for radio broadcasts regarding "*chansons d'expression française*"; additional quotas are prescribed for programme investment as well as for pay-tv or digital platforms. In Portugal, 60% of the music in radio programmes must be composed / sung in the Portuguese language. And Spain justifies its film quota with cultural policy arguments, namely with the goal to promote "cultural identity and diversity", a potentially understandable argument given the dominant marketing power of global media conglomerates. On the other hand, it could be argued that content quota systems function as a kind of "pre-ex ante censorship", since they potentially limit the market access of artists and SME producers from other countries in a supposed "European cultural space".

The just outlined dilemma – understandable intentions vs. undesirable side-effects – is of course a general problem of all policy-making efforts, but it can be aggravated as soon as freedom of artistic creation comes into play. This is basically the message of the French cultural policy expert Guy Saez, former director of the *Observatoire des politiques culturelles* in Grenoble, who notes in a [YouTube](#) lecture (2022) that the work of cultural institutions, producers and artists is increasingly affected by **political conditionality**. Some of them (have to) adopt such norms, which are usually not specific to culture, in order to secure public funding; others do so voluntarily in order to keep up with desired changes in society. Conditionality can be linked to issues such as non-discrimination and gender equality; environmental sustainability; decolonisation efforts; participation of disadvantaged groups; health norms etc. Some conditionality may be the result of specific laws or contracts, while others may be based more on currently popular goals and campaigns. Saez fears that the core mission of arts institutions may be qualified and artistic freedom subordinated to, undoubtedly important, political goals to which the arts can contribute only in a limited way. In his view, a mediation process involving state and non-governmental stakeholders could be helpful.

In most parts of Europe, 'neutral' beliefs are less associated with, or required of, individual artists and their work. Let's face it, many artists and writers are considered to be, above



average, stubborn and egotistical when it comes to their work, emotionally not very restrained or, due to often precarious working conditions, often envious of their more successful colleagues and quick to lash out at obnoxious critics, impresarios, the whole world... However, since **demands for non-controversial or "balanced" (political) positions** – or even for the support of governmental priorities – are often directed at public media (the [BBC](#) is a good example) and, in some countries, also at state or local arts institutions, this can of course have a negative impact on artists' chances of expressing themselves freely or presenting their work without fear.

One of the controversial issues in current public debates is whether or not the authorities should be allowed, or even obliged, to suppress opinions and expressions that challenge what is considered to be '**historical truth**'. In 17 European countries, for example, the law prohibits Holocaust denial, in some of them also the denial or trivialisation of the crime of genocide in general. The German Parliament only added the latter interpretation in 2022, extending Article 130 of the Penal Code to include the denial of all genocides and punishes with up to three years in prison anyone who "approves, denies or grossly trivialises" such crimes in a way that "disrupts the public peace". Like other experts, Elisa Hoven, a professor of criminal law, was not convinced by this reform, since the courts would have to prove the guilt of a defendant with regard to more or less well documented incidents all over the world: "It is a mystery to me how a German district court is supposed to cope with this task." (Die Welt, 22 October 2022).

What's more, the question of how to deal with cases in which artistic and literary works depict characters who adhere to such denials or generally reject "official orthodoxies" ([A. Gliszczyńska-Grabias](#), 2016) remains open at present.

The 2015 European Court of Human Rights (ECtHR) acquittal of a Turkish defendant convicted in Switzerland for denying a "genocide" of Armenians in Turkey 100 years ago cannot rule out future conflicts, but could be considered as a major step towards clarifying the ECtHR's criteria for tolerance of dissonant or extreme views and expressions.

Clearly, this case (see the main arguments of the ECtHR in the box next page) may be considered unsavoury by some readers of the judgement as well as by advocates of 'historical truth' laws. In this article, however, I'm not discussing opinions in terms of "truth" or empirical facts. Instead, I try to explore the extent to which freedom of expression is guaranteed, or at least tolerated, in democratic societies, and where there may be limits that could impact on FoAE.

**The ECtHR ruling of 2015 on criminalising free speech ([application no. 27510/08](#))**

*"Taking into account that the applicant's statements bore on a matter of public interest and did not amount to a call for hatred or intolerance, that the context in which they were made was not marked by heightened tensions or special historical overtones in Switzerland, that the statements cannot be regarded as affecting the dignity of the members of the Armenian community to the point of requiring a criminal law response in Switzerland, that there is no international law obligation for Switzerland to criminalise such statements, that the Swiss courts appear to have censured the applicant for voicing an opinion that diverged from the established ones in Switzerland, and that the interference took the serious form of a criminal conviction - the Court concludes that it was not necessary, in a democratic society, to subject the applicant to a criminal penalty in order to protect the rights of the Armenian community at stake in the present case."*

In this context, we should also consider **unresolved issues** such as whether Russian artists,

even those currently in exile following the attack on Ukraine, can be denied access to public venues. Or whether city officials are entitled to issue stage bans on former Pink Floyd hero Roger Waters, who is currently torn between [pro](#) and [con](#) campaigns over alleged anti-Semitism.

In his 2006 article [Beyond Tolerance and the Intolerable](#) for INDEX on CENSORSHIP, British-Indian author Kenan Malik dismantles common beliefs about **tolerable and intolerable views and expressions**, the latter being a potential target for censorship or repression from the perspective of insecure societies or authoritarian governments. For him, "censoring ugly ideas will not make them go away. It is simply a means of abrogating our responsibility for dealing with them" by expressing disagreement or challenging unfounded positions and myths. In his provocative article (extracts in the box), Malik insists on the legal distinction between words and actions, and rejects the idea that people will react like "robots" to racist or other forms of discriminatory expressions. His solution: only proven incitement to violence should be prosecuted.

**Kenan Malik on how to deal with "hate speech"**

*"Banning hate speech is actually to take the easy way out. Putting on the censor's hat suggests a striking lack of confidence in one's ability to persuade an audience of an alternative viewpoint, not to mention a certain contempt for people's capacity to consider the evidence rationally..."*

*Hatred, of course, exists not just in speech. Hatred has physical consequences. Racism can lead to racist attacks, homophobia to anti-gay violence... Isn't it important, then, to limit the fomenting of hatred to protect the lives of those who may be attacked? Simply by asking this question, we are revealing the distinction between speech and action: saying something is not the same as doing it. But in these post-ideological, post-modern times, it has become very unfashionable to insist on such a distinction...*

*Racists are, of course, influenced by racist talk. But it is they who bear responsibility for translating racist talk into racist action. Ironically, for all the talk of using free speech responsibly, the real consequence of the demand for censorship is to moderate the responsibility of individuals for their actual actions.*

*Having said that, there are circumstances where there is a direct connection between speech and action, where someone's words have directly led to someone else taking action. Such incitement should be illegal... Incitement to violence in the context of hate speech should be as tightly defined as in ordinary criminal cases."*

In recent years, Malik has often reiterated his radical stance on the primacy of freedom of expression, stating that this principle has historically been "at the heart of the fight for social justice" and against colonialism ([The Observer](#), 30 January 2022). It should not be forgotten, he says, "that the victims of censorship are more often than not minorities and those fighting for social change. From Indian [climate change activists](#) being charged with 'promoting enmity between communities' to British police [charging feminists with 'hate crimes'](#), censorship in the name of 'preventing hatred' is widely used to target social activists."

However, can language and other expressions, often transformed by ideological propaganda, not transform our minds for the worst (cf. Victor Klemperer's examination of the growing impact of Nazi- language: [LTI – Die Sprache des Dritten Reichs](#), 1947)? Is Malik's apparent confidence in the resilience of populations against anti-democratic movements really well-founded? Have not history and recent conflicts provided numerous examples of popular tides inspired by totalitarian rhetoric?

On the other hand, is a "no rules" (or "liberal") position on freedom of expression not the perfect motto for a FoAE campaign, especially with regard to **Internet communication**? No, says Alexandra Borchardt, Professor of Leadership and Digitisation at the *Munich Technical University*, because this technological environment should not be mistaken for an open, 'uncensored' forum that promotes the free flow – or battle – of individual expressions. According to her and many other critics, the Net platforms are shaped by the commercial (or political!) interests of the providers and therefore need rules and control. But is this not again another form of censorship? And who should be responsible for enforcing the "rules" she suggests for digital communication: Courts, national governments, perhaps the European Union?

**Borchardt: Freedom requires rules**

*The Silicon Valley Internet giants translate freedom in the Net with: 'Everybody can say what he or she wants'. As a consequence, the loudest and most brutal actors gain, with the friendly support of algorithms, very much attention while soft voices and differentiated positions get much less attention. In a way, this uncontrolled freedom leads into the nowhere. Freedom needs rules... In a communication environment that is technically managed, technical means of control and sanctions are likewise required... We urgently need ethical standards as well as the law and also more digital education.*  
(Kölner Stadt-Anzeiger, 24 November 2022)

Indeed: on 16 November 2022, the EU's new [Digital Services Act \(DSA\)](#) entered into force; it appears to address some of Borchardt's concerns, leaving member states in charge of smaller providers and has been welcomed by human rights organisations such as [Amnesty International](#). Freedom of expression as a right to be protected is mentioned 18 times in the act. However, a much-discussed [media exemption](#), which is important also for cultural content, was not adopted and politicians from member states, such as Hamburg's Senator for Culture, Carsten Brosda, warned that the Act could establish a "quasi-governmental media regulator at the European Commission". He goes on: If "we try to check what is true and what is right by means of supervision before publication, then we are declaring the public debate superfluous" (*Süddeutsche Zeitung*, 4 May 2022).

Clearly, these positions and possible alternatives deserve further examination, for example in *Compendium* debates currently being planned, and I will take up again issues of censorship and other restrictions e.g., on social media platforms in the next article in this series.

At the end of this piece, let's consider a recent, hotly debated example that illustrates the ambivalence of some cases – or claims – of censorship, namely that of the state-sponsored world art exhibition *documenta fifteen (D15)* that has been staged 2022 in Kassel. In this context, it may be useful to first reiterate again the difference between the *human right to cultural access and participation*, with its citizen- or user-oriented approach and the *human right to freedom of expression*, with its professional and artistic connotations.

In terms of the former, D15 could be considered a success, not only because of the 738,000 visitors who sought and found inspiration at the event, but also because of its community arts concept, which invited visitors to discuss the exhibits and participate in many related activities together with artists and artistic collectives (most of which based in the 'global south').

In terms of the latter and FoAE, D15 could be considered at least ambivalent because of the conflicts surrounding a few works critical of Israel, some of which were considered anti-Semitic.

According to an [open letter](#) by *documenta fifteen* participants and the curatorial team *Ruangrupa* (Indonesia), published at the end of the event on 10 September 2022, D15 came even close to a failure, because of "censorship" as well as "smearing attacks, humiliations, vandalism, and threats in major media outlets, as well as in the streets and in our spaces."

A correct interpretation of Human Rights, including FoAE, requires an open, communicative approach and, in cases of conflict, openness to mediation processes ([TYPOLOGIES – Les droits culturels en action](#), 2022). However, in the case of D15, mediation efforts were broken off or failed altogether.

In a more distant perspective, we may find that this was less a conflict over censorship and also no "clash of civilisations", but rather a "**clash of art perceptions**": works by individual artists vs. fluid artistic processes and manifestations, often with political undertones, presented by groups



Part of a large, later removed D15 poster of the artistic collective *Taring Padi* with controversial content (deemed to use anti-Semitic stereotypes)

**Möllers on the *documenta fifteen*: "It's fatal to put art under supervision".**

As a consequence of the *documenta fifteen* conflicts, the renowned legal scholar Christoph Möllers has been commissioned with an [expert opinion](#) by the Federal Minister of State for Culture. His task was to clarify how far artistic freedom extends and where the state must and can intervene. In an interview with *Süddeutsche Zeitung*, 10 January 2023, he explains his position:

*Every liberal constitution also protects expressions of opinion that seem horrible or obscene to us. Freedom of expression and artistic freedom can only be restricted to the extent that they violate other rights. The fact that one is allowed to make anti-Semitic or racist statements seems like a scandal against the backdrop of German history, but it is the scandal of a liberal order that does not legally sanction everything it condemns politically... The Federal Constitutional Court says: merely expressing a belief is not sufficient to punish someone or to ban the expression... Artistic responsibility works similarly to political responsibility. You give someone a creative opportunity, and then he is observed and judged. If he messes up, he can't be legally prosecuted for it, but he can be criticised, lose his fans, meet with contempt. The people of Ruangrupa didn't quite understand that...*

or collectives – the latter not very attractive to traditional Western art markets. This ambivalence, adding to the Israel/Palestine and perceived anti-Semitism issues, makes artists such as the Romanian D15 participant Dan Perjovci wonder: "Freedom of expression or responsibility of expression?" (statement in the German tv magazine [tft](#), 19 June 2022).

In the context of a more detailed analysis of the D15, we might possibly detect a lack of both empathy and knowledge of varying artistic, cultural and political experiences among all the parties involved in the controversy: artists, critics, politicians, etc. Or in the more diplomatic words of Max Jorge Hinderer Cruz, former Artistic Director of the *Academy of the Arts of the World*: "There exists a specific German perspective [on history], for which people coming from different contexts are occasionally not properly prepared. Likewise, there are Germans who find it difficult to face deviant perspectives." (*Kölner Stadt-Anzeiger*, 22 October 2022)

*What is freedom of expression?  
Without the freedom to  
offend, it ceases to exist.*  
Writer Salman Rushdie  
(Twitter Web App, 12 August  
2022)

*While it is true that nationalism and  
expressions of identity are on the rise, I think  
that there is still a need for art that challenges  
these ideas and pushes us towards a more  
global, interconnected understanding of  
humanity.*  
Author [Boris Groys \(or his avatar?\)](#), 2023

### 2.3 Social, commercial and religious pressures

This section of my research on Freedom of Artistic Expression (FoAE) deals mainly with societal challenges that often originate in, or are fuelled by, social media bubbles ('social' is actually a code word, since most of these posts have commercial or political godfathers). Since several of the examples in our chapter concern what is now often called '**identity politics**,' one might ask whether this

author is really best equipped to deal with the matter. Doubts may arise, among other things, because of his age (78), his gender or even his skin colour. His many studies monitoring the development of gender equality don't matter because of the author's lack of affiliation with the queer scene. What's more, he is not active on Facebook, Instagram or other popular platforms. The fact that he has written a book on cultural identity and the free flow of artistic ideas and people in Europe (see box) cannot excuse him in this respect, as the work is over 35 years old and its

#### **Identity – an ambivalent concept**

*Basically, we can only be in favour of using the term 'identity' if its Janus face is taken into account at the outset. From the perspective of a respective counterpart (someone from another culture, with a different mental attitude or political interest), this term can in principle mean the opposite of what is generally associated with it, namely non-conformity, living or thinking differently, the big or small alternative... For a cultural Europe, the concept of identity remains nevertheless an interesting category, despite its ambivalence. What will we ultimately find in common? Perhaps it is the many individuals who are searching for identity and whose selfhood could paint the overall picture.*

(A. J. Wiesand: *Kunst ohne Grenzen?* Cologne 1987, p.29)

arguments may therefore be outdated. Consequently, I must leave it up to the reader to decide, whether the following pages can at least provide food for thought and debate.

In addition to the **language issues** discussed already in the last chapter, there are a few other considerations that merit attention. As a living, ever-changing means of communication and, at the same time, cultural heritage, language tends to find solutions over time that reflect social transformations in terms of concepts and grammar. In this context, new language norms can emerge or be demanded, which have been the subject of heated debate in Europe for some years now. This is particularly true of "gendering," which was originally intended to contribute to equality between men and women, but which is now being questioned by some activists in the wake of the transgender debate.

The *Compendium's* country profiles provide details of current language regulations in many European countries. Attempts, mostly by conservatives, to stop or at least control language change should be met with scepticism: For example, after a majority in the French Senate passed a bill in late fall 2023 that aims to administratively protect the country's language from "excesses of an inclusive spelling," it is by no means guaranteed that this view will actually be respected by the population in everyday linguistic usage.

While we may agree that the freedom of writers and journalists to use and shape language according to their own intentions should not be interfered with, this goal can easily face stumble blocks these days. A recent study by sociologists at the Humboldt University in Berlin (Steffen Mau, Thomas Lux, Linus Westheuser: [Triggerpunkte](#), Suhrkamp 2023) shows that, on the one hand, there is widespread public agreement on the urgency of major societal challenges such as diversity and gender equality, migration. and climate change mitigation. On the other hand, this consensus can abruptly disintegrate as soon as certain codes of conduct and related terms emerge – what the authors call **“trigger points”**. Such triggers are activated when people realise that a 'can' provision could become a 'must' if consequences such as social isolation or the stench of discrimination are to be avoided.

In addition, in the arts, the media, as well as in education and academic settings, we can see a tendency to reject irritating or painful triggers, particularly terms or issues that challenge one’s own strongly held beliefs or those of the group or community with which one is associated. The avoidance, or even the attempt to banish, such disturbing views in public communication and artistic expression seems to be more prevalent among the younger generation; it has become, a common phenomenon in parallel with the rise of social media e.g., in many American universities, but can now also be found in European milieus.

Indeed, the use – or not – of certain expressions can put artists, writers or scientists who were once friends into opposite trenches in a **war of words** (the box, based on mentions in many texts, lists some of the currently prominent accusations on both sides). Artists and intellectuals were so far, for the most part, seen in the first group and their critique of ideology has long been an established field of social research.

Our focus here is therefore on the more recent, not yet fully researched 'trench' on the other side. A growing number of, equally 'progressive', artists and intellectuals, most recently the Dutch author [Ian Buruma](#) (2023), are now concerned about exaggerated identity politics, because connected campaigns can lead to new forms of social or self-censorship.

**Two trenches: A war of words in Western countries**

**Allegations of "progressive" critics, often including artists/intellectuals:**

Antisemitism – authoritarian mindsets –  censorship – cultural appropriation – fascism –  fundamentalism – islamophobia – LGBTQ+ hate – misogyny – neo- colonialism – patriarchal  moralism – (algo)populism – offensive terminology –  racial identity politics –  racism – white supremacy –  wokeness – xenophobia – etc.

**Allegations of "conservative" or "liberal" critics, increasingly also of artists/intellectuals:**

Antisemitism – cancel culture – social  censorship – de-platforming – elitism (of the well-educated) –  fundamentalism – hypocrisy – feminist  moralism – public confession rituals – puritanism –  racial identity politics – reverse  racism – tribalism – "third worldism" – wokeness – etc.

Some of the accusations, underlined in the box, can actually be found on both sides of the trench warfare. This suggests that the new moral outrage could also be addressed through established theoretical and empirical research techniques, including critiques of ideology studies. For reasons of space, however, this article can only deal with a few examples of particular relevance for FoAE, characterised by terms such as "cancel culture" and "wokeness".

Fortunately, others have begun to analyse these US-inherited political phenomena in depth, most recently *Susan Neiman* ("Left Is Not Woke", Hoboken 2023). The American philosopher concludes that the intellectual roots and resources of wokeism amount to tribal attitudes and thus may be at odds with the ideas – particularly the commitment to universalism and the clear distinction between justice and power – that have guided progressives over the past two centuries. This, she argues, could undermine their own goals and push them into a right-wing or reactionary corner. With regard to the universities, where such movements have often originated, Neiman points to the pernicious influence of two seminal twentieth-century philosophers, Michel Foucault and Carl Schmitt, whose work undermined ideas of justice and progress and portrayed social life as an "eternal struggle of us against them".

Let me start our tour d'horizon with a prominent recent witness against an increasingly common **"social (self-)censure" in the arts**, the Nigerian-American writer *Ngozi Adichie*. Some extracts from her BBC "Reith Lecture" can be found in the box.

**On valid criticism and social censure: [Ngozi Adichie's "Reith Lecture"](#)**

(BBC, 30 November 2022)

*One cannot help but wonder in this epidemic of self-censorship, what are we losing and what have we lost? We are all familiar with stories of people who have said or written something and then, faced a terrible online backlash. There is a difference between valid criticism, which should be part of free expression, and this kind of backlash, ugly personal insults, putting addresses of homes and children's schools online, trying to make people lose their jobs.*

*To anyone who thinks, 'Well, some people who have said terrible things, deserve it,' no. Nobody deserves it. It is unconscionable barbarism. It is a virtual vigilante action whose aim is not just to silence the person who has spoken but to create a vengeful atmosphere that deters others from speaking... This new social censure demands consensus while being wilfully blind to its own tyranny. I think it portends the death of curiosity, the death of learning and the death of creativity...*

*Literature deeply matters and I believe literature is in peril because of social censure. If nothing changes, the next generation will read us and wonder, how did they manage to stop being human? How were they so lacking in contradiction and complexity? How did they banish all their shadows?*

While museums and galleries in Europe are generally more tolerant today of exhibits that would have been considered illegal **pornography** 60 or 70 years ago, artists can still find themselves on thin ice when they deal with controversial issues and activists get involved. For example, the painting "Fuck abstraction" by the Swiss artist Miriam Cahn, which was exhibited at the Palais de Tokyo in Paris, caused controversy in 2023: Six associations filed a lawsuit against the painting for "glorifying child pornography". The work shows a frail, bound and kneeling figure performing fellatio on a large silhouette. However, the case against Cahn was rejected by the Paris Administrative Court ([dlfk](#), 29 March 2023), because the painting was shown in a context aimed at denouncing the horrors of war, including the use of sexual assault as a weapon in military conflicts.

In addition to community pressure groups, **commercial media companies and platforms** also play their part in acts of censorship, whether for marketing purposes or



political correctness. Two examples:

On 19 May 2020, an international coalition of arts and free expression organisations, including, the National Coalition Against Censorship (NCAC), IBEX Collection, Article19, PEN Americas Artists at Risk Connection (ARC), International Arts Rights Advisors (IARA) and Freemuse, launched a virtual gallery called [Don't Delete Art](#). It showcases artworks that are banned or restricted on social media. The gallery was originally created "in response to artists' increased reliance on social media platforms as the coronavirus pandemic forced global closings of physical art spaces." Social media can now be regarded as one of the world's most important art spaces and the initiative sees artists in a vulnerable position with regard to "the chaotic manner in which platforms, such as Facebook, Instagram, Tumblr and YouTube, remove and restrict art" that they vaguely define as "objectionable." Works deemed to be obscene clearly play a role in such decisions. The gallery can be seen as a tool to promote artists' self-reliance and describes itself as "part of a campaign calling on social media companies to adopt a clear set of notice and appeals principles guiding the regulation of art online and allowing art to circulate freely in the online environment."

Puffin Books, a British publisher, has changed or eliminated **words deemed "inappropriate"** in more than 100 passages in two works written by *Roald Dahl*, a famous writer of children's books. For

example, in the new edition of *Charlie and the Chocolate Factory*, revised with the consent of Dahl's heirs, a character is no longer described as "enormously fat" but simply as "enormous". As [The Guardian](#) explains on 18 February 2023, this move (backed by our current copyright rules) involves extensive changes including the deletion of words, defined as

#### **Roald Dahl censored by his publisher and heirs**

Martin Sommer in De Volkskrant (NL), 21 February 2023:

*Unlike publishers, children know very well that Roald Dahl's words are meant to be read aloud at story-time, and do not necessarily correspond to reality. It's the adults who no longer know what fiction is. The paternalistic encouragement to nurture only beautiful thoughts is not confined to children's souls. Sensitivity readers, who are supposed to protect sensitive minds from evil influences, are also on the rise in this country. No words are too strong in warning against this. Democracy only thrives with free thinking, and that includes bad thoughts.*

"non-inclusive" or "offensive" such as allegedly "small" and "dwarf". PEN and critics around the world are alarmed, not least because similar acts of social censorship have been going on for some time in other areas of the arts and media such as films or TV series. To quote [Kenan Malik](#) (2006) again: "Free speech does not mean accepting all views. It means having all views in the open so that we can challenge the ones we find unconscionable. Today, we do the exact opposite: ... To deem an idea 'offensive' is to put it beyond the bounds of rational debate."

Should artists adhere to the notion of social offensiveness and its attendant moral brakes? Should they respect the now widespread ban on certain, politically incorrect terms? On the contrary, says *Markus Reinhardt*, descendant of the French jazz legend *Django Reinhardt*, who [announces](#) in his concert programme for 2022 that he is proud to perform "gypsy music" (German: *Zigeunermusik*), and regrets that such terminological issues have always been decided over the heads of the people concerned.

A remarkable example might have helped – but ultimately did not – to answer the question of whether we are heading towards a **transformation of attentiveness or social respect into a culture of overprotection**. First the facts:

Not least because of its title: "[Strength of Hijab](#)", a sculpture by British artist *Luke Perry* attracted worldwide attention in September 2023, shortly before it was to be installed in Smethwick, West Midlands (UK). It is intended as a tribute to women who wear a headscarf and is believed to be the first artwork of its kind in the world.

The artist [hopes](#) his work will soon be "a beloved part of the community" and sees it as a contribution to greater social cohesion: "The future of our country is about what unites us, not what divides us". Precisely this vision – the contribution to 'social cohesion' – could be questioned, as the *hijab* is often seen as a patriarchal rewriting of religion. The sculpture in question also quickly led to protests:



[Megan Manson](#) of the British National Secular Society, for example, believes that the statue is "a slap in the face to every woman who rejects the *hijab* code", especially as it was unveiled just days after the first anniversary of the anti-*hijab* protests in Iran. It's as if it was timed as an act of triumph against Iran's brave women who dare to show their hair. It feels like a tribute to the morality police who crush women's rights under their heels every day." She adds: "At a time when the UK should be prioritising community cohesion and the basic human rights of all its citizens, its embrace of religious fundamentalism threatens to deepen divisions and push the already marginalised further out of public life."

Please, let's not get into a debate about eventual aesthetic merits of this statue. Rather, let us see how difficult it can be – not only for artists! – to live up to goals like 'social cohesion'. Indeed, the term itself can have different connotations that do not always correspond to 'progressive' interpretations. At present, similar expressions are also used, for example, in Russia or Hungary to justify the silencing of dissenting voices among artists and intellectuals. In Germany, we are still aware of the implications of supposedly harmonising concepts of the past, such as the Nazi 'Volksgemeinschaft' or, less dramatically in the 1960s, the 'Formed Society' (*Formierte Gesellschaft*), particularly for the arts and other unconventional forms of individual and social expression. Could we use the above example as an occasion for an open and respectful dialogue about the implications 'social cohesion' can have for artistic work?

Perhaps a concept such as 'Cohesive Diversity' ([ERICarts](#), 2008) might be an answer that better fits the task of addressing current conflicts (and their solution) in European societies.

A few words on **general developments in the media** that are relevant for our research, because especially the FoAE of creators who don't contribute to Internet formats could be endangered:

- Theorists identify a "simulation" of reality through traditional and new media (Jean Baudrillard, *Simulacra and Simulation*. Ann Arbor 2004);

- Intra-media diversity is increasingly being replaced by an exploding inter-media variety;
- Since the advent of new digital media, former consumers are trying to become producers, some of them with great success (especially in entertainment/gamification formats);
- Internet art and literary channels still largely reach minorities;
- The media are increasingly focusing on people or their lifestyles, rather than issues;
- Journalists in traditional media react with intermedial exploitation of real or fake incidents or issues related to people (Sören Kittel, *Berliner Zeitung* 26 November 2022).

More recently, *Chantelle Gray (The Conversation, 19 March 2023)* sees a "weaponisation of communication" or "[algopopulism](#)", based on algorithmic processes with the power to create "new, sometimes 'alternative', realities" that can shape our minds and feelings: "One reason algopopulism spreads so effectively is that it's very difficult to know exactly how our perceptions are being shaped. This is deliberate. Algorithms are designed in a sophisticated way to [override human reasoning](#)."

Perhaps we should aware that the more public outrage generated by controversial posts on social media platforms, the more the economic and political calculations involved are fulfilled. Might less, or less nervous, reactions be a potentially more appropriate remedy in such cases, as this might help to lower such expectations and make, for example, hate speech less attractive both to the authors of these posts and to the revenue plans of the platforms?

As mentioned in previous chapters, **people's born or chosen gender and sexual orientation**, including belonging to one of the LGBTQ+ communities, is often used as a pretext for discrimination or outright harassment. Particularly in smaller towns or certain neighbourhoods in some European countries, creators and intellectuals may also be affected if their behaviour or works are perceived to be

contrary to regional, national or specific cultural traditions. Our article cannot cover all the contradictions that characterise frequent conflicts in this area, but Eszter Kováts, who teaches political science at the University of Vienna and is a Central European University research fellow, mentions at least some of these problems and exaggerations in her philippic "When radical zealotry meets the polarising populists" (excerpts in the box).

#### **E. Kováts: Gender dogmatists of a "new secular religion"?**

*Views about social justice in certain contexts have become for certain activist-scholars such convictions that they can be compared to religious dogmas. For Magdalena Grzyb the 'queer version of LGBTQ+' is such a ['new secular religion'](#). Some claims and practices can indeed be compared to zealotry, 'such as the creation of rituals and acts of faith; confessions; the [legitimization of violence against opponents](#); the sacralization of concepts like the notion of gender identity, which is deceptively similar to the notion of the metaphysic Catholic soul; the exclusion of heretics (i.e., gay or transsexual people who express critical opinions ... as well as lesbians who oppose the deconstruction of the category of "woman"), and who are deemed [worse](#) than open enemies'. This religious approach can immunise against alternative arguments, while categorising interlocutors as faithful or heretical can be detrimental to academic inquiry and open political debate".*

[Social Europe](#) on 27 February 2023

Her concluding suggestion: "Academics and activists committed to social justice should adopt a more tempered and reflexive approach."

Legislative action, by the way, does not necessarily calm activists' nerves: In January 2023, Nicola Sturgeon of the Scottish National Party, then First Minister but resigning shortly afterwards, was heavily criticised by feminists because Scotland's new [transgender law](#) did not rule out the possibility of a transgender rapist being sent to a women's prison.

Ever since the author *Salman Rushdie* was threatened with death by Iran's Ayatollah *Khomeini* in 1989 for his book *The Satanic Verses* – and still is, as the 2022 attack in which he lost an eye demonstrates – or since the so-called "Danish cartoon conflict" in 2005 (following the caricatures of the Prophet Muhammad in a newspaper) and the horrific attack on the French magazine *Charlie Hebdo* in 2015, we must be aware that **breaking religious taboos** can be suicidal. Exercising (or not) one's freedom of expression in such cases can therefore become a difficult choice for artists and writers.

In some countries, writers and artists have more or less voluntarily stopped dealing with religion or church issues, be it with regard to Islam, Christianity or Judaism, etc. A well-publicised incident took place already 2006, at the *Deutsche Oper* in Berlin: The director cancelled performances of Mozart's *Idomeneo* because the heads of stage decoration icons of Jesus, Muhammad and other religious leaders were to be torn off in a particular scene. This came on the heels of the uproar following the Danish Muhammad cartoon row, so some argued that the director was simply trying to ensure the safety of opera-goers. Others spoke of self-censorship.

How could we deal with this issue from a European perspective? Drawing inter alia on the jurisprudence of the *European Court of Human Rights* (ECtHR), legal expert [Lorenz Langer](#) (in *Culture and Human Rights*, 2016) concludes that a balance of rights must be found in a secularised legal order: "Under a human rights approach, the religious sensitivities of the faithful may well be safeguarded; a religious creed or its prophets, on the other hand, are not protected." Can this position be a bridge, or could the issue of "sensitivities" once again serve as a gateway as a justification for censorship or even for **fundamentalist attacks**?

Obviously, there is no ready-made answer that covers all possible scenarios, either in terms of the actual or planned violation of a religious taboo or in terms of the potential outrage of fundamentalist adherents of the respective creed, which could endanger the public order or lead to casualties. In other words, serious empirical assessments will be required in all such cases.

However, in the context of the present study, we could conclude that **artistic intentions and means of communication** must be present when the right to FoAE is claimed. Blatant provocations without these or other relevant motives, such as the recent burning of copies of the Qur'an in Sweden, will probably not deserve this protection.

But let's not forget that 'fundamentalism' is not only associated with certain beliefs and practices in many world religions. According to [Montserrat Gas-Aixendri](#) (*Culture and Human Rights*, 2016), **secular fundamentalist positions** can also be identified which seek "to impose a secular (non-religious) lifestyle on all individuals entering the public sphere and advocate a limitation of religious expression in public". France has long been a protagonist of this political concept.

In the first article of our series, we looked at the freedom promised to artists and writers

by the principle of "artistic licence" which could serve as a potential remedy against censorship or calls for more "balanced" activities in cultural institutions. However, this remedy does not seem to work everywhere, as illustrated by **a recent theatre scandal in Munich: the "Birds" conflict**.

Because of its relevance, I'd like to go into a little more detail here:

In mid-November 2022, the privately run but city-supported *Metropoltheater* cancelled a play that had been running there since early October: "*Vögel*" (Birds) by *Wajdi Mouawad*. The play had previously been successfully staged worldwide, including in other German cities and in Tel Aviv. In 2018, it won the prestigious French *Grand prix de la critique* for the best play. It tells the story of Etan, a young Jewish bio-geneticist from Berlin, who falls in love with an Arab doctoral student in New York. Etan's parents disapprove of the relationship and accuse their son of betraying his own people. The couple travel to Israel to explore this complex identity conflict.

The cancellation followed [accusations of anti-Semitism raised by the Association of Jewish Students in Bavaria](#) (VJSB) and the Jewish Student Union Germany (JSUD); according to them, this should have consequences for the theatre, including with regard to public funding. Jochen Schölch, director of the Metropol theatre and of the play feared that stopping the play could lead to allegations of "censorship and as a restriction of freedom of expression and art".

Indeed, among the critics of the cancellation was the late Canadian historian Natalie Zemon Davis, who was actively involved in the Paris premiere of "Birds". According to her, the play's main message is "the importance of accepting people who are different from us, of being open to the other". She continued: "If such messages are not acceptable in today's Germany, then international observers like me must wonder what kind of ideas are still acceptable there." (*Süddeutsche Zeitung*, 22 November 2022). The directors of the NS Documentation Centre and of the Munich Jewish Museum responded to the cancellation with this message on 18 November 2022: "The memory of the Holocaust among Jews is multi-faceted – and different voices left their marks in the play 'Birds'... If cultural institutions were to avoid related topics in the future, this could send the wrong signal not only to a living culture of remembrance but also to the democratic forces on both sides of the Middle East conflict."

In his interview with Peter Laudenbach for the *Süddeutsche Zeitung* of 2 December 2022 (see excerpts in the box next page), Meron Mendel, born in 1976 in Israel and since 2021 Professor of Transnational Social Work at the Frankfurt University of Applied Sciences, sees a "generational" problem and considers the accusations of anti-Semitism against the play unjustified. For him it is a dubious perception of artistic expression when "people want to avoid being confronted with irritations, conflicts and possible injuries at all costs. This fails to recognise an essential quality of art, which of course can and must cause irritation."

**A cancelled play in Munich: "Feelings are not arguments"**

**SZ: Mr. Mendel, do you understand the allegation that Mouawad's play "Birds" is anti-Semitic?**

*Meron Mendel: No, because this accusation is based on two errors: On the one hand, the Jewish Students' Union criticises the play for not showing a representative, balanced picture of Israel. Secondly, it accuses the play of trivialising the Holocaust. The first accusation raises the question of whether it is the task of a play to show reality as representatively as possible. A play is not a university seminar, art is allowed to provoke. Not everything that individual characters say has to be politically correct and balanced. Theatre characters don't have to perform like the UN Secretary General. Yes, the play is not an objective portrayal of Israel, but that is not its task either. Statements made by characters in the play are brought forward as evidence for the second accusation. However, it is dishonest to interpret a message of the entire play into such, admittedly provocative, positions of a fictional character.*

**Does the play demagogically polemicise against Israel?**

*No, it is not polemical demagogy against the state of Israel or Judaism... It would be silly to demand that sympathy in a work of art be distributed evenly according to quotas among all the different groups, religions, genders, age groups or skin colours.*

**The French premiere of the play was shown at a guest performance in Tel Aviv. What was the reaction to it in Israel?**

*Predominantly positive. The collaboration of Jewish and Arab actors with a Lebanese-Canadian playwright at a French theatre was highlighted as something special. The production was even co-financed by the Israeli Foreign Ministry! Unfortunately, such projects have become rarer in recent years. The boycott movement BDS fights every form of cooperation... Those who now want to prevent the performance of the play are following the logic of the BDS movement.*

**The critics react to specific sentences said in the play which they find unacceptable. Do you agree?**

*No. There is a fundamental difference between character speech, the statements of individual protagonists, and the message of the play. Of course, in plays that are directed against fascism, such as those by Brecht or Horvath, characters can utter National Socialist slogans. If you don't understand and accept this difference, you can't really make theatre any more...*

**The students' union's harshest accusation is that the play "Birds" trivialises the Holocaust. Can you understand that?**

*Again, sentences said by a character in the play are hastily equated with its message. In a heated family argument, a character makes comparisons that one can find inappropriate. But this scene is about the difficult relationship between people from the generation of Holocaust survivors and their children and grandchildren. The scene shows precisely the continuing trauma of the Holocaust. It is absurd to see in it a trivialisation of the crimes of National Socialism. The audience is intelligent enough to understand these very emotional sentences of a theatre character in the context of the scene, and not to take them for a statement of the play...*

**The critics of the play demand [consequences], because the performance hurt their feelings.**

*Feelings are not arguments. Belonging to a minority group does not automatically mean that one has a monopoly on the truth...*

Occasionally, however, we also find **artist-led demands for restrictive measures** that could be associated with censorship. In 2022, an extreme example occurred again in Munich, at the *Pinakothek der Moderne*. Media reports across Europe highlighted protests by the renowned painter Georg Baselitz against the exhibition of Adolf Ziegler, one of Hitler's favourite artists ([The Times](#), 4 October 2022). Ziegler's 1937 triptych *The Four Elements*

had been placed by the museum's curators in their updated permanent exhibition, alongside works by painters who were persecuted by the Nazis, in order to stimulate learning processes among visitors. For Baselitz this was not the first such intervention: 45 years earlier, he was one of the main opponents of an inclusion of East-German artists in the world art show *documenta*.

One issue that is high on the political correctness agenda is the – of course, well-intentioned, but sometimes misunderstood – fight against what is termed "**cultural appropriation**".

According to the [Cambridge Advanced Learner's Dictionary & Thesaurus](#), this term describes "the act of taking or using things from a culture that is not your own, especially without showing that you understand or respect this culture". Basically, it intends to address unequal power relations between those who give and others who simply take, or rather: have taken in the past, especially during the period of colonialism (the concept has strong historical connotations). Commendably, it also includes practices and artefacts, from which someone can derive material or ideational benefits that are not shared with practitioners or creators of the originating culture. Current moves in some European countries to **return illicitly acquired museum's artefacts** – such as the 'Benin Bronzes' – to their countries or regions of origin relate to this concept.

While morally justified, the historical bearings of the concept can also be seen as contributing to some of its shortcomings, not least because it is now often applied in much broader forms in the everyday life of Europeans and around the world. For example, in children's processions during carnival, costumes depicting Native Americans or people from other world regions are now often a no-go, at least in Western Europe.

**Selaocoe: Mutual inspiration or 'cultural appropriation'?**

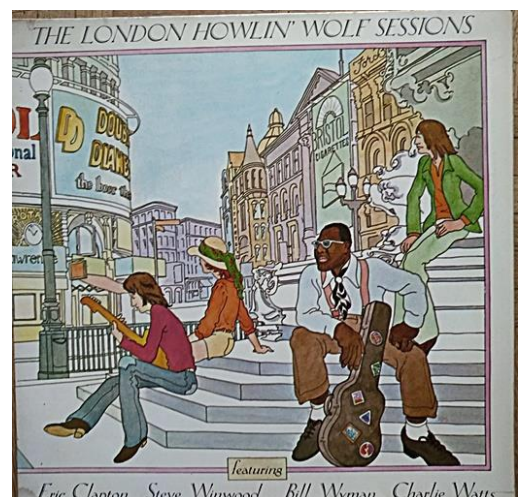
*Abel Selaocoe was born in a South African township, close to Johannesburg. His first cello teacher Kutlwano Masote taught him how the world of the European classics could be combined with the spirituality of African music. At the Royal Northern College of Music in Manchester he further developed this knowledge and recognised: "The physicalness of African music is quite similar to what I do when I play Baroque music on my instrument". This relationship can be verified when Selaocoe performs cello suites of Johann Sebastian Bach and connects them with his own songs that are closely rooted in the African musical culture. Listeners are excited about his talent to bridge the often-deep rift between African and European music and wander between the two worlds.*

(from a concert programme of the Cologne Philharmonic, November 2022)

Sometimes the concept is also applied to other human characteristics, be it gender, age, nationality or sexual orientation.

What's more, voluntary artistic and scholarly exchanges across continents, which used to be cherished as facilitators of mutual processes of learning and appreciation, may now come under scrutiny, when the protagonists belong to different ethnic groups. All of this could lead to the opposite of the original intentions and calls, in my view, for efforts to rethink – and update – the concept.

On a more personal note: I was privileged to grow up with

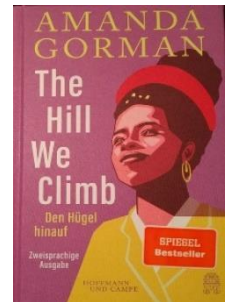


people like *Thelonius Monk*, *Howlin' Wolf* or *Muddy Waters*. My mother was a photographer at jazz and blues concerts and the musicians were often received at our home. From this experience, I have a specific, sort of 'insider's' view of the concept of appropriation. What I learned in my youth, six decades ago, is that these artists were very open and professional in their contacts with European colleagues. Howlin' Wolf's efforts to teach – far away from fears of 'cultural appropriation' – later famous British newcomers such as Eric Clapton, Steve Winwood or Charlie Watts how to play the blues can still be followed on [YouTube](#).

By the way, the success of such efforts was by no means certain for self-reliant colleagues like *Muddy Waters*, as he later said in an interview: "They ain't got enough soul"! At first sight, his sceptical view seems to contradict what could be considered positive outcomes of 'intercultural learning'. But no matter: In more than 50 years of culture-related research, I have learnt to live with all sorts of theses and anti-theses, including to particularly cherish the unexpected results...

International human rights conventions prohibit **judgment or discrimination on the basis of 'race'**. I have to admit that I was a bit shocked when, in the course of researching this study, I discovered that related attributions seem to be resurfacing in current 'social justice' discourses. This publication has space for two examples:

- **Amanda Gorman's** inaugural poem for US President Biden caused controversy when it was to be translated into German, Dutch and other languages. Activists argued – partly with success – that only "People of Colour" should be entitled to perform that task. Critics, on the other hand, saw the FoAE in danger.
- The sculpture **"Why Born Enslaved!"** (1873) by the French artist *Jean-Baptiste Carpeaux* had always been known for what its title suggests: an anti-slavery work – until the Metropolitan Museum (New York) decided to label it as part of a "white European power structure to oppress non-white people".



Two questions come to my mind: What should the *Compendium's* position be on issues of 'race' in cultural policies? And: Should curators be entitled to reverse the meaning of artworks against the creator?



### 3. A few personal conclusions

Clearly, my wanderings through the various aspects of freedom of artistic expression could not always provide clear-cut answers to all the questions raised in this exercise. While they may have provided insights into some of the issues involved, others had to remain unsettled. One of the reasons for this is that laws against 'censorship' and international treaties promising freedom of expression alone do not guarantee compliance in a changing political and technological reality. As we have seen, for example, in the case of certain traditions of authors' rights, protective regulations can even turn into the opposite.

In support of such doubts, I would like to mention a problem that could only be touched upon in this paper: We need to distinguish between **legal definitions and human perceptions**, be they individual or collective ones. This concerns the right to freedom of expression as well as other principles relevant in our context, including the prevention of 'discrimination'. Such distinctions can sometimes be quite difficult to make. For example, some people may feel discriminated against under the law if the focus is on their physical appearance rather than their personality or talents ('ableism' in the case of disability). Others, on the contrary, may see first signs of discrimination, when their appearance, gender or public behaviour (including, but of course not limited to, 'pride' of their sexual orientation) is not properly recognised or respected. In fact, both situations can sometimes exist in parallel, especially when it comes to artists or so-called 'visible minorities'.

In my first professional position as a press officer at a leading German publishing house (Rowohlt) in 1969/70, I experienced not only the power that heirs of deceased authors wield with regard to their own definition of the integrity of a life's work, but also learned that a '**shitstorm**' – in those days, before the Internet: a press scandal – can multiply the success of a publication. We could perhaps use this example to put today's, sometimes excessive and disturbing, manifestations of hate or 'cancel culture' into perspective.

Such manifestations now often come from so-called '**echo chambers**' of social media, where users' views are shaped or fears reinforced and where they do not have to face contradictions. This creates specific milieus made up of real people and, increasingly, avatars; which can be seen as a fertile ground for fake news and authoritarian fantasies. Traditional media education is struggling to deal with this phenomenon, which suggests that alternative, human-centred approaches may be more successful, where artists and journalists could play an important role.

There may come a time when we wish that Facebook, Twitter or X, TikTok etc. had never been invented, especially in their current, AI-powered versions. On the other hand, **artificial intelligence** companies are currently experiencing a boom, with even politicians calling for or promising investment, to secure national or European interests. A new gold rush? Or rather a challenge to legislators and all of us to tame the beast before it becomes unmanageable? The successful fight by screenwriters against the US media industry in 2023 is a signal that such efforts may not be in vain.

Let's face it, AI can potentially have, and already has had, beneficial effects, as seen in medical research during the last pandemic, but also in other areas, many of which of relevance for writers, artists and other cultural workers. It is therefore a good sign that the 2023 *Compendium* Assembly in Malta decided to focus on this issue in future research

activities.

Some guidelines can already be found in the UNESCO [\*Recommendation on the Ethics of Artificial Intelligence\*](#) (November 2021).

Another important issue was raised as an underlying question in some of the cases in this exercise, but could not be fully resolved: When discussing the freedom of artistic expression, are we dealing only with individual rights or do we also have to consider **group rights** (based on collective identities)? I am not a legal specialist in that field, but my humble opinion, and that of many experts in international human rights law, is that we need to broaden the previously narrow perspectives: extended community rights could be strengthened and possibly even brought before the courts, including to the ECtHR, in the future.

As we saw in the last chapter, this doesn't mean that we have to agree with everything that's currently being proposed or discussed in analogue or virtual communities. In this context, we could perhaps consider and debate the controversial idea of the anthropologist *Claude Lévy- Strauss* (in his last work *Le regard éloigné*, 1983) that, in order to **maintain cultural diversity and creativity**, it can be perfectly legitimate to "feel little attraction to the values of others" as long as "relative incommunicability" is not used as a pretext for oppression or destruction. Perhaps I should add that in such cases, symbolic gestures are also inappropriate if they are only intended to emphasise one's own moral or cultural superiority.

Artistic efforts and the media can help to clarify some of the ambiguities encountered in our research. For example, the 1999 historical film *Sunshine*, directed by István Szabó, depicts the conflicts, multiple ideological betrayals and the loss of identity of five generations of a Hungarian Jewish family, originally called *Sonnenschein* (German for sunshine), from the late 19th century of the Austro-Hungarian Empire to the mid-20th century with the 1956 Revolution against Stalinism. More explicitly, the 2007 object of the Estonian artist *John Phillip Mäkinen* (pictured on the right) captures in a nutshell the **multiple identities of a growing number of European citizens**, but can also be seen as an alert to warn us of judging others based on just one feature, be it a person's looks, nationality, creed, language, gender or the like.



At the International *Compendium* Conference 2023 in Malta, I tried to I resume possible consequences of my research, in particular:

- Return to **dialogues that tolerate (or value) diversity**;
- **Informed media use** can help to defuse disinformation or sectarian 'bubbles';
- More **research on 'sectional' vs. 'intersectional' discrimination** is needed;
- Be practical, **create alternative spaces** – examples:
- [\*Don't Delete Art\*](#) (the virtual gallery of artworks mentioned above);

- [Connected Artists in Transition \(ACT\)](#): A residency programme for artists in exile;
- **Learning, inspiring and collaborating.**

However, looking at these ideas now, I somehow feel that they address only half of the truth, or at least need to be expanded and differentiated. I must leave this task to all cultural policy experts and arts, media or heritage professionals with similar concerns and hope to learn from the ideas and solutions they may find appropriate.

For example, we could discuss whether mainly verbal or intellectual forms of communication, including using 'trigger' terms, actually contribute to some of the deadlocks we currently experience in intercultural exchanges and conflicts. Can other forms of interchange or different artistic means such as e.g., collaborative musical experiences, deliver promising alternatives in efforts to achieve more cohesive and, at the same time, diverse societies (as shown by the example of the [West-Eastern Divan Orchestra](#), founded by Edward W. Said and Daniel Barenboim)? Or, can cultural heritage

**Limits and chances of cultural policies**

*Culture is no remedy for all the illnesses in society. In place of “social engineering” efforts, a better objective of cultural policy in pluralist countries could be to seek means of governing our differences and managing conflict. This includes the ability of minorities to uphold what they consider important to maintain their collective and/or individual identity in another (dominant) culture, as well as the cultivation of a climate conducive to the creation of innovative works of art.*

A. J. Wiesand (2002), [Canadian Journal of Communication 27 \(2\)](#)

and related institutions play a greater role in that respect, if participative strategies are adopted or revised (as suggested in the conclusions of the recent [ESPON HERIWELL](#) project)? And, quite important in the *Compendium* context: To what extent can cultural policies achieve real

societal change – without curbing the freedom of artistic expressions?

Finally, to all readers who are concerned about civil liberties and, in particular, about their own freedom of expression: Protect your rights, but don't forget that you may not always be right. A little more empathy, here and there, might help.