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Freedom of artistic expression —

Art, the European Court of Human Rights and Forms of silencing in Europe

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Table of contents

Abstract I

I List of Figures II

II List of Abbreviations III

1 Introduction 1

1.1 Relevance of the topic 1

1.2 Aim of the work 2

1.3 Structure of the work 3

2 How can Art contribute to Human Rights (awareness) 5

3 Legal framework 10

3.1 The Council of Europe 10

3.2 The European Convention on Human Rights 11

3.3 The European Court of Human Rights 11

3.4 The Universal Declaration of Human Rights 12

4 How do Human Rights contribute to Art 14

5 The freedom of expression under Article 10 ECHR 17

5.1 Freedom of artistic expression and its scope 19

5.2 Limitations prescribed by law 20

5.2.1 Article 10 (2) ECHR and the three-part test 20

5.2.2 Article 17 ECHR 23

5.3 Admissibility criteria 25

5.3.1 Different forms of artistic expression 25

5.3.2 Domestic remedies exhausted 26

5.3.3 Victim status 27

5.3.4 Absence of significant disadvantage 28

6 Relevant case-law and judgments 30

6.1 The beginnings (landmark cases) 30

6.2 Recent relevant case-law 35

6.2.1 Vereinigung bildender Künstler v. Austria 2007 35

6.2.2 Ehrmann and SCI VHI v. France 2011 39

6.2.3 Karttunen v. Finland 2011 40

6.2.4 Sinkova v. Ukraine 2018 42

6.2.5 Dickinson v. Turkey 2021 45

6.2.6 Patrício Monteiro Telo de Abreu v. Portugal 2022 47

6.3 Overview 49

7 Common conflicts 52

7.1 Religion 52

7.2 Public morals 55

7.3 Political speech: terrorism & national security/government critics ____ 58
7.4 Respect for private life, reputation and rights of others _____ 60
8 The margin of appreciation doctrine _____ 63
9 Conclusion _____ 66
III Bibliography _____ IV
IV Declaration of Academic Integrity _____ XV

Abstract

The aim of this thesis is to determine whether the freedom of artistic expression under the European Court of Human Rights (ECtHR) is under threat. Bearing in mind that the countries under its jurisdiction are widely known for their cultural diversity, it is often overlooked that human rights violations also occur within the member-states of the Council of Europe (CoE). Nevertheless, some of the member-states are generally known for frequent human rights violations, especially concerning the freedom of expression.

To be able to determine the overall status of freedom of artistic expression within the member-states of the CoE, previous and current judgments of the ECtHR and their rationales are looked at in more detail. This analysis also includes determining what the ECtHR has ruled to be covered by the term 'artistic freedom' and what has not been included. Furthermore, the margin of appreciation doctrine as well as the three-part test are considered more closely, to see how the ECtHR approaches conflicting situations and to what extent freedom of artistic expression is jeopardized in that context. The paper, on the basis of case-law, investigates how the ECtHR's decisions developed over time and if profound changes are visible in its ruling.

The results of the research suggest that although positive developments are visible in recent years, there are also serious restrictions in individual member-states, which are in particular due to conservative attitudes in the exercise of the margin of appreciation.

Even if the ECtHR has evolved in many respects, there is still a need for a common approach by the member-states to prevent the less progressive among them from limiting artistic freedom by misusing the margin of appreciation granted by the ECtHR.

I List of Figures

Figure 5.2.1-1: Ukraine Street Art Project by TVBoy 7
Figure 5.2.1-2: Banksy's Les Misérables in front of the French embassy in London 8
Figure 5.2.1-3: Pablo Picasso's Guernica 1937 9
Figure 6.2.1-1: Apocalypse Painting 1 of 3 36
Figure 6.2.1-2: Apocalypse Painting 2 of 3 37
Figure 6.2.1-3: Apocalypse Painting 3 of 3 38
Figure 6.2.2-1: La Demeure du Chaos 39
Figure 6.2.5-1: Michael Dickinson and his artwork 47
Figure 6.2.6-1: Overview of recent case-law 50

II List of Abbreviations

CoE ..... Council of Europe
CoM ..... Committee of Ministers of the CoE
ECHR ..... European Convention on Human Rights
ECtHR, the Court ..... European Court of Human Rights
EU ..... European Union
INGO's ..... international non governmental organizations
PACE ..... Parliamentary Assembly
UDHR ..... Universal Declaration of Human Rights

1 Introduction

‘Art is not always about pretty things. It's about who we are, what happened to us and how our lives are affected’ (Elizabeth Broun in Janofsky, 2006, p. 4).

This reflection by Elizabeth Broun, the former Director of the Smithsonian American Art Museum in Washington, does not only give a raison d'être to critical artwork in general (Janofsky, 2006, p. 4). In particular, it highlights the interaction between art and human rights. Due to the importance of arts for human rights and vice versa, it is indispensable to take a closer look at its censorship. The present work deals with this issue.

1.1 Relevance of the topic

Particularly in recent years, political interference has caused a threat to freedom of expression in all forms, including in Europe (SIR Agenzia d'informazione, 2023). The dynamic digital transformation fueled this development. Even social media censors art now (Whyatt, 2023, pp. 31,32). As art is one of the main forms to raise human rights issues and therefore its free exercise corresponds to the presence of human rights, this alarming situation raises the need to take a closer look at this development to keep democracy and pluralism alive (SECRETARY GENERAL, 2023). Disregarding the trend of limiting the freedom of artistic expression can severely threaten the rule of law (Apelblat, 2020). This has been recognized by the Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era (Andel, J., De Francesco, G., Krasznahorkai, K., Wyatt, S. & Kharatishvili, L., 2020, p. 1-4) in November 2020, which was elaborated by the Council of Europe (CoE) (COUNCIL OF EUROPE (a), 2020).

The importance of the freedom of artistic expression has also been recognized at the European Union Conference on Artistic Freedom and Cultural and Creative Industry, which took place in Umeå, Sweden from 16th to 17th February 2023 (Swedish Presidency of the Council of the European Union (a), n.d.), as Sweden has the presidency over the CoE from January to end of June 2023 (Swedish Presidency of the Council of the European Union (b), n.d.).

Such events show that the freedom of artistic expression cannot be taken for granted. It takes effort and dedication to maintain it in order to preserve a democratic society.

1.2 Aim of the work

The present thesis deals with freedom of expression according to Art. 10 of the European Convention on Human Rights (ECHR) and therein refers specifically to the freedom of artistic expression (COUNCIL OF EUROPE (b) 2021). It focuses on the role of critical visual arts in human rights regarding the raising of human rights awareness and its advocacy as well as the consequences of censoring it through the judgments of the European Court of Human Rights about whether a limitation is justified or not. When it comes to the censorship of art in accordance with ECtHR judgments, the process unfolds in the following manner: initial censorship is carried out by national bodies, and subsequently, the ECtHR evaluates whether such censorship can be deemed as a justified restriction on artistic freedom, while considering the margin of appreciation. The influence that censorship has on the art's contribution to human rights awareness needs to be considered in more detail. Therefore, the research question on which the present thesis will elaborate is: Where does the ECtHR stand in the freedom of speech debate? More precisely: to what extent does the ECtHR protect artistic expression and what are the peculiarities with respect to its general approach to freedom of expression?

To be able to answer this question, the effectiveness of the protection of artistic freedom in the member-states of the CoE under the current legal framework as well as existing case law must be evaluated.

The famous quote, ‘Art is what you can get away with’, which is assigned to Marshall Mc Luhan and that was later quoted by a famous artist, Andy Warhol, can among other things be applied to the interaction between critical art and censorship in Europe (Lakin, 2021, p. 1). It is up to the relevant jurisdiction to assess what constitutes art and to what extent art can be constrained. This jurisdiction is based on the perception that a work of art does not comply with the premises of freedom of expression. The ECtHR interprets, under consideration of the ECHR, whether the work in question falls under the scope of the respective article and thereby determines if it is art. (SECRETARY GENERAL, 2023, p. 8) Nevertheless it must be remarked that this does not necessarily imply that it amounts to art.

The aim of the thesis at hand, therefore, is to assess the circumstances of censorship in visual arts and thereby detect contemporary trends in the judgments of the ECtHR to find out what the limits of artistic freedom are and if there should be any at all. The thesis further aims to analyze significant case-law regarding art and the right to freedom of

artistic expression to demonstrate which challenges are emerging and thereby help the reader to obtain the basic knowledge to form a strategy with regard to the preservation and protection of freedom of artistic expression. The present research aims to reveal if a fair balance has been struck between artistic expression and other rights such as the right to respect for private and family life according to Art. 8 ECHR, the right to freedom of thought, conscience religion according to Art. 9 ECHR, and the prohibition of discrimination which is embodied in Art. 14 of the ECHR as well as further rights as set forth in the ECHR (Council of Europe (b), 2021, pp. 11, 13).

To elaborate on this balance, the restrictions of the right to freedom of artistic expression according to Art. 10 ECHR are discussed in relation to the perspectives of religion, morality, politics, national security, public order as well as the respect for private and family life, which may cause a dilemma.

Hence, the thesis will explore the most common cases of limitations amounting to censorship regarding arts under the ECtHR and the justifications that were made use of.

1.3 Structure of the work

The thesis is divided into nine chapters. The first chapter is the introduction, which deals with the relevance of the topic as well as the structure and goal of the thesis. It is intended to give the reader a basic understanding of the subject.[1] In the second chapter the art's influence on human rights, more specifically the influence that art has to freedom of expression and its practice, is explained.

In the third chapter, the legal framework concerning freedom of expression is introduced. Firstly, the institution of the CoE is looked at more closely. Secondly, the ECHR and its contents are explained in more detail. Thirdly, the ECtHR and its role in implementing the ECHR is briefly discussed. Next, the relationship between the ECHR and the Universal Declaration of Human Rights is considered.

The fourth chapter shows how human rights contribute to art. This refers in particular to its role in drawing attention to human rights issues.

The fifth chapter defines the freedom of artistic expression and sets out its scope as well as its limitations and the admissibility criteria.

[1] For reasons of content focus and functionality, the language form of the generic masculine is used in places in this paper. This is either done wherever a gender-neutral term is not available or where a gender-neutral term is available, but a lexical and grammatical consideration of both genders would draw the attention in the wrong direction. In these cases, the masculine is to be understood as a linguistically neutral form that includes all gender identities equally. Wherever persons are meant in their individuality, specific forms are used.

Subsequently, relevant case-law and judgements as well as their rationales are presented. The first few landmark cases as well as more recent cases will be explained. The seventh chapter deals with the common conflicts and dilemmas that arise when balancing different provisions of the ECHR. A particular focus is given to issues of religion, moral, critics of government and the respect for private and family life.

The eighth chapter consists in the explanation of the margin of appreciation doctrine as well as the three-part test. In sum, an overall picture emerges, through which in the ninth and final chapter it can be assessed what the current situation regarding artistic censorship in Europe is and how it is dealt with in different conflicting situations.

The focus of this thesis is not making a generally applicable recommendation for action, but on identifying possible problem areas and how they developed over the years. This knowledge is not only decisive for the formation of a strategy, but also for supplementing and expanding the current legal situation in various respects in the future. The thesis is supposed to be of help in being able to see the current legal framework from different angles and maybe through this change in future improve or evolve this framework. The ninth chapter, therefore, comprises a conclusion, consisting of a summary of findings and final considerations.

The present work is interdisciplinary, as it contains legal aspects as well as contributions from the field of political science. The thesis undertakes an analysis of implications arising from the current development of legal judgments within the field of artistic expression in Europe, exploring both the impact on freedom of expression and the corresponding limitations. Furthermore, existing concepts will be approached philosophically.

The existing legal framework will be critically examined. The sources used to elaborate the present thesis are mainly the relevant provisions of the ECHR and case-law, statements of opinion, as well as relevant legal doctrines and legal literature.

2 How can Art contribute to Human Rights (awareness)

The following section deals with the importance of art for human rights. Its significant contribution lies especially in raising awareness about human rights issues (European Union Agency for Fundamental Rights, 2017, p. 11). It is important to know to what extent art plays a role in safeguarding human rights in order to subsequently understand the design of the legal framework and to be able to understand it in full depth. Many well-known philosophers and artists have already debated about the meaning of art.

Picasso for example has coined the following quote: 'No, painting is not made to decorate apartments. It's an offensive and defensive weapon against the enemy' (Chipp et al., 1996, p. 487). Seen in the context of critical art, such quotes can also be related to the field of human rights and make it clear that art is more than pure aesthetics. The enemy in this case can be interpreted to mean the human rights issue in question that is being called to attention. Hence, it can be concluded that the meaning of art partly consists in drawing attention to the promotion and protection of human rights.

Thereby it becomes clear that art provides a venue for human rights activism. It is a space, where human rights statements can be made and where individuals can advocate for human rights. This is especially the case when something cannot be expressed by any other means for different reasons. The cause for this is that art offers the opportunity, to tell a story without really telling it, e.g. by using the stylistic device of abstraction. Thus, for example, if criticism of a person, a government or a state measure is to be voiced, the ambiguity that arises through abstraction can be skillfully used to avert possible consequences that could arise from it.

Besides, art leaves space for interpretation and therefore it triggers a different feeling in everyone who looks at it (Stecker, 1994, p.1). Since broadly spread opinions can lead to a well-thought-through solution faster, this can be seen as a chance for human rights development. Art has three purposes: '[…] to intensify, to clarify, to interpret' (O'Gorman, 1966, p. 42). It can therefore bridge diplomatic or communication barriers (European Union Agency for Fundamental Rights, 2017, p. 12).

Art contributes to reaching the goal of human rights advocacy, namely breaking cultural barriers and other barriers depending on differences of the frame of mind such as preconceptions regarding origin, belief, sexual identity, peer group, citizenship and persona. It does that by engaging a re-discourse that challenges biased points of view and outlooks (European Union Agency for Fundamental Rights, 2017, p. 6).

Art does not only raise awareness for grievances and deficiencies. Besides, it also helps in mobilizing protests. By drawing attention to the problem at hand, art can contribute to the transformation of human rights and thereby lead to change. (Vélez-Vélez & Villarrubia-Mendoza, 2019, p. 116)

The freedom to lodge a protest is an essential part of freedom of expression and commonly takes the form of opposition to human rights infringements. It can motivate individuals to stand up for human rights. An example is the AIDS crisis in the 1980's. Since this issue was mainly surrounded by ignorance at the beginning, protests as a form of artistic expression ensured that AIDS received sufficient attention. (European Union Agency for Fundamental Rights, 2017, p. 12) The crucial factor of art is, however, that '[…] its meaning can be explained only in terms of itself' (O'Gorman, 1966, p. 41).

Additionally, art can contribute to overcoming trauma that occurred because of human rights infringements (European Union Agency for Fundamental Rights, 2017, p. 12). Especially in children and teenagers, it can be observed how art heals their traumas (Carey, 2006, p. 12). For instance, it is used with children that had been fleeing their home countries (Krinninger, 2015).

But this healing can also be observed in adults. Consequently, one can state, that regardless of age, art contributes to overcoming human rights issues (Carey, 2006, p. 12). For example, art programmes can help to acclimatize and re-socialize and teach prisoners (Clarke, 2020, p. 31). All in all, art makes sure that our human rights are preserved and through the creation of art, it is ensured that they can be acted out. In order to get a better understanding of what this statement is about, some works that draw attention to issues regarding human rights will be presented on the following pages. Furthermore, their meaning will shortly be explained. This should help readers develop their own sense of how visual art contributes to human rights as well as human rights awareness.

Figure 5.2.1-1: Ukraine Street Art Project by TVBoy
source: Efrem Lukatsky in Outlook Publishing India Pvt. Ltd, 2023

TVboy is an Italian urban artist (Anadolu Agency, 2022). He went to Ukraine to do murals to protest against the ongoing war (TvBoy© S.L.U, 2022). One of his murals which was created in this context depicts a girl facing a soldier at eye level who is pointing a gun at her with a raised pointing finger. This painting can be interpreted as the younger generation urging the older generation to peace, especially since the current young generation will later suffer the most serious consequences of this devastating war. It is to be understood as a sign for peace, especially on behalf of the youth and their future.

Banksy is a famous street artist from the UK (Ellsworth-Jones, 2013). Banksy's mural 'Les Misérables', which is located in front of the French Embassy in London shows the well-known fictional character Cosette from Victor Hugo's novel Les Misérables crying. Behind her, the French flag is shown. On the floor in front of her, there is a CS bottle, that disperses a smoking cloud of teargas that covers her body. The mural is part of a collection of paintings that criticize the European measures in regard of the refugee crisis, more specifically the French government's action in this context. On January 5 and 6 of 2016, the French police used amongst other weapons, teargas in a refugee camp to ensure order. This is also the reason, for which Banksy chose this specific placement for his mural. (Superlative Creative, 2021)

Figure 5.2.1-2: Banksy's Les Misérables in front of the French embassy in London
source: Superlative Creative, 2021

But art has not only recently been used for human rights. Already several generations ahead of street artists like TVBoy or Banksy, painters have used their art to draw attention to human rights issues, which can be seen on the following page in Pablo Picasso's work Guernica.

Figure 5.2.1-3: Pablo Picasso's Guernica 1937
source: UNESCO, 1980, p. 16

The famous painter Pablo Picasso was born in Spain in 1881 (The Solomon R. Guggenheim Foundation, n.d.). His painting Guernica was created after 1936, when the Spanish Civil War broke out. The painting is named after the city Guernica in the North of Spain. It depicts the bombing of it during the war. It calls for love and humanity in times of war. (UNESCO, 1980, pp. 11-18)

His work shows that art has an influence on human rights. Art can call to stand up for human rights and remind the people of their importance when their value gets forgotten.

3 Legal framework

In the following chapter, the legal framework regarding freedom of expression in member-states of the Council of Europe will be presented. For this purpose, the various legal sources and institutions responsible for their implementation are outlined. In this context, the main players are the CoE, the ECHR and the ECtHR.

3.1 The Council of Europe

When speaking of human rights, one must first be clear about the framework in which they are considered, as different treaties and conventions exist among different organizations. Therefore, in order to thoroughly apprehend the present thesis, it is necessary to introduce the CoE.

The CoE is a human rights organisation founded in 1949. It consists of 46 member-states. Out of these, 27 are members of the EU. After the decision by the CoM on March 16, 2022, the Russian Federation is not a member of the CoE anymore. (Council of Europe (d), 2023)

Next to human rights, its values comprise democracy as well as the rule of law (Council of Europe (e), 2023). The Rule of Law consists of: '[...] legality[,] [...] legal certainty [,] [...] prevention of abuse or misuse of power [,] [...] equality before the law and non-discrimination [as well as] access to justice' (Venice Commission, 2014).

The CoE consists of the Secretary General, Marija Pejčinović Burić (Council of Europe (f), 2023), a Committee of Ministers, the PACE, a Congress of local and regional authorities, the Human Rights Commissioner and the conference of INGO's. It cooperates with other governments as well as globally. The ECtHR is the judicial body of the CoE (Council of Europe (g), 2023).

The CoE is, among other things, a promoter of freedom of expression (Council of Europe (e), 2023).

In 1950, the first treaty, the ECHR, was adopted by the CoE. It became effective in 1953. Signing it is a precondition for accession to the CoE. The EU ratifying the ECHR was an important achievement toward the safeguarding of human rights standards in Europe. (Council of Europe (h), 2023).

In 2009, the Treaty of Lisbon opened up this opportunity for the EU (European Union, n.d.). Next to the ECHR, over 200 international contracts, addressing a broad variety of topics, have been signed between the member-states of the CoE (Council of Europe (i),

2023). Some of them are also open to other interested countries. (Council of Europe, n.d.).

3.2 The European Convention on Human Rights

To make it possible to fully understand the work at hand, the following section presents the ECHR.

The ECHR was contracted by the CoE in 1950. It aims to make sure that human rights as well as fundamental freedoms are safeguarded within Europe. All of the CoE's member-states have signed the ECHR. Under the Convention, the ECtHR was instituted. Its purpose is to safeguard individual persons from human rights breaches, therefore, for the first time, any individual whose rights under the ECHR have been infringed by a member-state can take the matter to the ECtHR. The decisions of the ECtHR are mandatory for the member-states, which is controlled by the CoM. (European Union, n.d.) The member-state in question must provide just satisfaction to the applicant in case an infringement of any right as set in the ECHR is found by the ECtHR. In addition, it has to ensure that such incidents do not recur by taking appropriate measures. In parallel with this process, the rights enshrined in the ECHR are protected in a variety of manners in the individual states, such as the decisions of domestic courts, national legislation as well as further decisions of local institutions. (Council of Europe (j), 2023)

To be able to appeal at the ECtHR, however, the domestic remedies have to be exhausted (Council of Europe (j), 2023).

Next to the ECHR, attached are numerous protocols, that modify its content (European Union, n.d.).

The ECHR itself comprises 59 articles in three sections, of which Art. 2 to Art. 18 in Section I contain the key rights. In the present work, Art. 10 is particularly relevant, as it includes the right to freedom of expression. (COUNCIL OF EUROPE (b), 2021)

Nevertheless, there is no such thing as a nominal prioritization or order among the rights as set forth in the Convention (Mendel, n.d., p. 2).

3.3 The European Court of Human Rights

The ECtHR is established by Art. 19 ECHR (COUNCIL OF EUROPE (b), 2021). Since its establishment, it has been a core actor in the execution of the human rights scheme as set forth by the ECHR (Mendel, n.d., p. 2).

The total of judges sitting in the ECtHR corresponds to the total of countries that signed the ECHR. They are independent and therefore do not act on behalf of any member-state.

In handling appeals, the ECtHR is backed by a so-called registry composed by lawyers recruited from all of the different members. Nevertheless, they are autonomous and do not stand for their state or applicants coming from their state. (European Court of Human Rights/Council of Europe, n.d., p. 3)

The ECtHR is located in Strasbourg. It is responsible for monitoring the enforcement of the ECHR in the respective state parties. (Council of Europe (h), 2023)

To file an application, it is not necessary to be a citizen of one of the member-states, the violation complained of only needs to have been carried out by any of the members against an individual subject to its competence, meaning on the national ground of one of those countries. Furthermore, not only private persons but also institutions such as companies are allowed to file an application. A generic complaint or a complaint for another individual are not possible, the applicant has to be an immediate and direct subject of the infringement. (European Court of Human Rights/Council of Europe, n.d., pp. 5-6)

The admissibility criteria provides that the lodge of a complaint about a human rights infringement at the ECtHR can only be done after all local remedies have been exhausted (Council of Europe (h), 2023). The deadline to file a complaint is four months after the judgment at the National Court (European Court of Human Rights/Council of Europe, n.d., p. 6). After the complaint is found admissible, the ECtHR argues whether there has been a violation and comes to a decision, which is recorded in the form of a judgment (European Court of Human Rights/Council of Europe, n.d., p. 4).

A judgment of the ECtHR is final and therefore legally binding as soon as three months after the information of the judgment to the applicant has passed, as during this period he can ask for the case to be brought before the Grand Chamber for reconsideration (European Court of Human Rights/Council of Europe (a), n.d., p. 7).

3.4 The Universal Declaration of Human Rights

The UDHR was declared by the United Nations General Assembly in 1948, serving as a shared benchmark for the accomplishments of all individuals and nations. It introduced essential human rights that are meant to be universally safeguarded. The UDHR is widely acknowledged for its influential role in inspiring and laying the foundation for the adoption of over seventy enduring human rights treaties at both global and regional levels, all of which make reference to the UDHR. (United Nations, n.d.)

This is also the case for the ECHR. (COUNCIL OF EUROPE (b), 2021, p. 5)

Art. 27 UDHR reads as follows:

> '1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
>
> 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author' (United Nations, 1948, pp. 7-8).

Thus, Art. 27 of the UDHR establishes the right to freely participate in the cultural life of the community, including the freedom to access and enjoy the arts. It guarantees the entitlement of all individuals to actively engage in the cultural affairs of their community, share in scientific progress and its advantages, and receive recognition for their own contributions. While the UDHR does not explicitly mention artistic expression, the ECtHR's interpretation and application of Article 10 of the European Convention on Human Rights safeguards freedom of expression and encompasses artistic and creative activities. Therefore, it can be said that ECtHR considers artistic freedom as an essential aspect of freedom of expression. Thus, the connection between Art. 27 UDHR and Art. 10 ECHR lies in the recognition and protection of art as an integral part of the society which is safeguarded by international human rights standards.

4 How do Human Rights contribute to Art

According to Becker:

> ’States, and the governmental apparatus through which they operate, participate in the production and distribution of art within their borders. Legislatures and executives make laws, courts interpret them, and bureaucrats administer them. Artists, audiences, suppliers, distributors—all the varied personnel who cooperate in the production and consumption of works of art—act within the framework provided by those laws. Because states have a monopoly over making laws within their own borders (although not over the making of rules privately agreed to in smaller groups, so long as those rules do not violate any laws), the state always plays some role in the making of art works. [...]’ (Becker, 2008, p. 165)

Becker's statement shows that human rights, or the institutions behind it, have a major impact on the art world.

Human rights can make it easier to create environments where creators and their work can thrive and grow by acknowledging and safeguarding their freedom to be. They are due to anyone that is involved in arts, no matter in what kind of way, ranging from crafting to selling art. This concerns numerous art forms, such as e.g. poetry, composition or graphic arts. (European Union Agency for Fundamental Rights, 2017, pp. 6, 7)

The notion of human rights, that is rooted in liberality, is linked to the basic idea of art (Young-Hyun & Hye-Kyoung, 2015, p. 5).

In the ECHR, especially Art. 10 ECHR, dealing with freedom of expression, enables this. Art. 10 ECHR states that: ‘[...] Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. [...]’ (COUNCIL OF EUROPE (b), 2021, p. 12).

Thus, applying and safeguarding human rights leads to artworks being able to expose uncomfortable facts. Through them, artists can transmit the inexpressible and make the imperceptible transparent.

Freedom of expression is the sign that manifests human rights and at the same time the essence of human rights in the context of art. Moreover, human rights have created the possibility to expand their external framework and take people's ideas one step further. (Young-Hyun & Hye-Kyoung, 2015, p. 5).

Overall, it can be stated, that without human rights, there would be no opportunity to enjoy arts, be it creating or admiring them.

This can especially be observed when looking at countries, where human rights are undermined. Because in such countries, artists are not free to express their views in their artwork. (Duggan, 2022)

An example of such a country is, among others, the CoE member-state Turkey. Out of 402 acts of violations that occurred in 28 European countries in 2021, 160 such restrictions of artistic freedom took place in Turkey. Another top offender in this area was France, where 41 such incidents occurred in 2021. (Freemuse, 2022, p. 15)

19 artists were imprisoned in Turkey in 2021 for a variety of reasons. It is not always just the artwork itself that is involved; in some cases, the artists' non-artistic activities also lead to imprisonment. (Freemuse, 2022, p. 16)

Moreover, 49 artists were persecuted in Turkey in 2021. This number is higher than in any other country. The reasons for persecution varied also in these cases. Of the 49 persecuted artists, 31 were persecuted for their art and 18 for political engagement or activities on social media. For 34 artists, persecution was based on political grounds, with 21 of them persecuted for terrorism charges and 13 for defamation of public figures. (Freemuse, 2022, pp. 18-19)

Furthermore, in Turkey in 2021, 20 artists were detained (Freemuse, 2022, p. 20).

These numbers show clearly that in Turkey human rights, and among them especially the freedom of artistic expression, are in danger.

The contribution of human rights to arts, therefore, lies mainly in providing a venue, where views can be disclosed without unjustified or unreasonable restrictions or even bans. If these rights did not exist, there would be no framework in which the free expression of art in all its facets would be possible.

As Irene Khan, the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression, said:

> ‘Imagine what the world would miss if there were no artists, actors, musicians, or painters, no comedy, cartoons, or satire. How can we shape new narratives, explore new ideas and discover new perspectives if those who dare to express themselves differently are suppressed? Without freedom to create, we cannot ensure that diverse expressions are heard, seen, enjoyed and appreciated by all. Creativity nurtures diversity. It is the essence of freedom, not only of the individual but also of

democratic, inclusive societies' (Irene Khan in UNESCO, 2022, Re|Shaping Policies for Creativity: Addressing culture as a global public good, 2022, p. 279).

5 The freedom of expression under Article 10 ECHR

In the following, the freedom of expression according to Art. 10 ECHR is introduced. Thereafter the central form of expression under the framework of this work, the artistic expression will be looked at closer.

The norm at the heart of this work, Art. 10 ECHR, specifies that:

> '1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary' (COUNCIL OF EUROPE (b) 2021, p. 12).

As mentioned before freedom of expression refers to three main activities: '[...] [the] hold[ing] opinions and [...] receiv[ing] and impart[ing] information [...]' (COUNCIL OF EUROPE (b), 2021, p. 12). The right to freedom of expression is not an absolute, but a qualified right (Mendel, n.d., p. 3). This means, that interferences with the freedom of expression can be allowed under certain circumstances. Nevertheless, these must comply with the legal provisions, and be: 'necessary in a democratic state for public order, public health or morals, national security, or public safety' (European Commission, n.d.).

Therefore, Art. 10 ECHR outlines freedom of expression widely. This is both in order to include as many forms of expression as possible as well as to ensure that the possible infringements of this right are not defined too narrowly. Thus, the scope of protection can be interpreted particularly broadly. However, Art. 10 ECHR already mentions certain interferences that are justified. By these, the member-states can assert restrictions. This deems in particular to ensure that the other rights contained in the ECHR are not undermined. (Mendel, n.d., p. 3)

However, the ECtHR draws attention to the fact that:

> '[...] [its] supervisory functions oblige it to pay the utmost attention to the principles characterising a "democratic society". Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. [...]' (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 18 para 50).

Not only natural persons but also legal entities are the subject of protection under Art. 10 ECHR. Already the first case in which the ECtHR found a violation of Art. 10 ECHR included different subjects of protection. (Mendel, n.d., p. 6)

Among them were a newsprint publisher, a legal entity and some private journalists (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 1 para 1). The case concerned a pharmaceutical company in England that distributed a drug that caused deformities in the children of pregnant mothers who were taking this medicine (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, pp. 3-4, para 8). As a result, numerous parents filed a lawsuit against the company (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 4, para 9).

While they were still in settlement negotiations, the Sunday Times published an article about these negotiations, including an announcement regarding a follow-up article on this case. As a result, the pharmaceutical company sought an injunction against the newspaper. However, when this was lifted, the newspaper published said article. (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, para 11-16) Ultimately, the Sunday Times claimed an undue interference with their right to freedom of expression under Art. 10 ECHR (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 22, para 42). In this case, the ECtHR ruled that an injunction prohibiting the Sunday Times newspaper from reporting on the negotiations between the pregnant women concerned and the company violated Article 10 ECHR. Finally, the ECtHR found that there was an interference with the Sunday Times' right to freedom of expression. (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 35, para 68)

According to the ECtHR, this interference was prescribed by law and pursued a legitimate aim. This legitimate aim was to maintain an objective judiciary and the

potential recourse that the pharma company could find in the courts. (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, pp. 26-27 para 53; pp. 32-33 para 64)

Nevertheless, the ECtHR concluded that such interference was not necessary within a democratic society because '[...] [it] [...] did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of the Convention. [...]' (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 35, para 67). Finally, the ECtHR found by eleven votes to nine that there had been an infringement of Art. 10 ECtHR (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, p. 38, para 1). Since then, the ECtHR has already issued rulings on the most diverse forms of the spreading of expressions of opinion (Mendel, n.d., p. 6).

5.1 Freedom of artistic expression and its scope

The following discusses in more detail the freedom of artistic expression according to Art. 10 ECHR. In particular, its scope and limitations will be examined more closely. In addition, the admissibility criteria for filing an application with ECtHR in cases dealing with freedom of artistic expression will be explained. However, at the outset it must be said that artistic freedom is not explicitly mentioned in Art. 10 ECHR.

Therefore, in relation to art, Art. 10 ECHR does not only focus on specific types of artistic expression; it includes various artworks, independent of their matter and shape. Thus, the extent of protection is subject to a wide definition of the term art and its meaning and characteristics. (Grabenwarter, 2014, pp. 258-259)

This was likewise confirmed in the case Müller v Switzerland (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 1-29), where it was stated:

> ‘Admittedly, Article 10 (art. 10) does not specify that freedom of artistic expression, in issue here, comes within its ambit; but neither, on the other hand, does it distinguish between the various forms of expression. As those appearing before the Court all acknowledged, it includes freedom of artistic expression - notably within freedom to receive and impart information and ideas - which affords the opportunity to take part in the public exchange of cultural, political and social information and ideas of all kinds. Confirmation, if any were needed, that this interpretation is correct, is provided by the second sentence of paragraph 1 of Article 10 (art. 10-1), which refers to "broadcasting, television or cinema

> enterprises", media whose activities extend to the field of art. Confirmation that the concept of freedom of expression is such as to include artistic expression is also to be found in Article 19 § 2 of the International Covenant on Civil and Political Rights, which specifically includes within the right of freedom of expression information and ideas "in the form of art"' (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 14, para 27).

Hence artistic freedom can refer to a wide variety of artistic performances and representations and as a result undisputedly falls within the ambit of freedom of expression. Therefore, it is protected.

5.2 Limitations prescribed by law

In the ECHR, there are only three Articles that constitute four absolute rights. Absolute means, that a limitation of these rights is not possible under any circumstances. Those rights are enshrined in Art. 3 ECHR, the prohibition of torture, Art. 4(1) ECHR, the prohibition of holding someone in slavery or servitude, Art. 7(1) ECHR, the prohibition of punishing someone of a crime that did not amount to a crime under national or international law when it was carried out, as well as not to be punished with a harder sentence than the one that was foreseen at the time of carrying out the crime. There is no basis for a deferral or restraint on them. (Greer, 1997, pp. 5, 44-45)

Furthermore, some rights within the ECHR may be described as qualified rights. Nevertheless, they are not derogable in practice because it is improbable that conditions, that will make a legitimate deferral under Art. 15 ECHR on the derogation in time of emergency possible, occur. (Greer, 1997, pp. 5, 45)

However, most of the rights contained in the ECHR are qualified rights. Therefore, their extent and practicability may be subject to restrictions by argumentative evaluation. (Greer, 1997, p. 5) Art. 10 is neither an absolute nor a non-derogable right. It is a qualified right. Therefore, its provisions can be lifted, restricted or limited under specific circumstances. The following sub-chapters put the limitations on freedom of expression that are prescribed by law into focus. These conditions originate from Art. 10(2) and Art. 17.

5.2.1 Article 10 (2) ECHR and the three-part test

Many of the before-mentioned limitations arise from the second paragraphs of the articles enshrined in the ECHR, which constitute ‘legitimate purposes’ in the interest of the individual and the society to restrict the first paragraphs of the respective article. This is

also the case with the freedom of expression according to Art. 10 ECHR. (Greer, 1997, pp. 6-7)

Art. 10 (2) ECHR states: ‘2. The exercise of these freedoms [...] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in [certain public or private] interests [...]‘ (COUNCIL OF EUROPE (b), 2021, p. 12).

In other words, in order to restrict a right on the basis of a legitimate purpose, there must be an encroachment or constraint that is prescribed by law or is consistent with the rule of law; further, it must be necessary in a democratic society (COUNCIL OF EUROPE (b), 2021, p. 12).

This necessity is also requisite for the pursuit of one or more of the objectives mentioned in paragraph 2 of Art. 10 ECHR, namely:

> ’[...] national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’ (COUNCIL OF EUROPE (b), 2021, p. 12).

Following these criteria, it can be seen that the most frequent conflicts in relation to artistic freedom occur in four areas in particular: national security, public morals, religion and privacy. These will be examined in more detail in the course of this thesis.

The main objective of the ECHR is that the national courts of the respective member-states make sure that the content of the ECHR as evolved in the ECtHRs’ case-law and judgments is put into practice. Therefore, they are the primary and most powerful force to make sure that the freedom of expression is safeguarded. Furthermore, their responsibility is to have ensured, that any limitation is in accordance with Art. 10 (2) ECHR as elaborated and advanced by the ECtHR. The ECtHR conversely is the last instance of decision-making. (Bychawska-Siniarska, 2017, p. 31)

In determining, whether there has been a legitimate or non-legitimate encroachment with the right to freedom of expression according to Art. 10 ECHR, the ECtHR applies the so-called ‘three-part test’ (Bychawska-Siniarska, 2017, p. 32).

Thus, in specific cases prescribed by Art. 10(2) ECHR, member-states may restrict the right under Art. 10 (1) ECHR. This allows member-states to legitimately limit the right to freedom of (artistic) expression. The right to freedom of (artistic) expression may be

restricted by a member-state if this restriction serves to protect one of the other rights as laid down in the ECHR. An example of this may be the interest of others in national security. The three-part test used to ensure whether such a restriction is legitimate is strictly applied by the ECtHR. (Mendel, n.d., p. 3)

The three-part test consists in verifying if the encroachment with the freedom of (artistic) expression according to Art. 10 (2) ECHR is lawful, follows legitimate interests and was necessary in a democratic society (Council of Europe/European Court of Human Rights, 2020, p. 19). The practical implementation of the three-part test shows, that in most of the cases, the ECtHR decides on grounds of the last part of the test, consisting of an evaluation on whether the limitation at hand is essential in a democratic society (Mendel, n.d., p. 39).

This proportionality test is the final step in the assessment. This test serves to find out whether the measure is suitable to achieve the desired goal or whether the state could also use an alternative, less decisive means to achieve the goal. (Casarosa, 2021, p. 10)

In the past, the ECtHR has ruled differently regarding its view of proportionality. This suggests that despite applying the same test, different rulings lead to distinct outcomes even in comparable initial circumstances. (Woods, 2006, p. 376)

In the case where the restriction is due to a conflict with a right equally protected in the ECHR, the ECtHR seeks to strike a balance between the two conflicting rights. The interference of one right with another in cases of conflict is legitimate if the public interest prevails or a legitimate objective is pursued, such as the safeguarding of the rights of other individuals or groups. Cases that involve freedom of expression often require a balance with other rights. The reason for this lies not only in the legitimate restrictions as laid down in Art. 10(2) ECHR and therefore, freedom of expression being a qualified right, but also in the fact that there is no hierarchy of norms between the rights contained in the ECHR. (Casarosa, 2021, p. 11)

In this context, the rights of others include e.g. the right to privacy according to Art. 8 ECHR, as well as the right of others to be protected by hate-speech under the scope of Art. 17 ECHR or the right to respect for religious feelings according to Art. 9 ECHR.

Nevertheless, the ECtHR gives member-states a broad margin of appreciation t to decide whether or not to restrict the right to (artistic) freedom in a specific case. This decision is based on factors such as their inherited cultural values, their respective histories, and their national legal systems. (Mendel, n.d., p. 3)

With this margin of appreciation, the ECtHR limits its decision-making power by its own hand. By giving the member-states a margin of appreciation, the ECtHR has found a solution to deal with the differences between the respective member-states. In matters concerning morality, this leeway is broad, in those concerning political statements or criticism of the judiciary, it is narrower. This also leads to different results in different cases when applying the same test. Moreover, the margin of appreciation shows that in the assessment of freedom of expression, there is the possibility of balancing two rights. It furthermore confirms the presence of judicial discretion. (Casarosa, 2021, p. 11) In chapter 8 of this thesis, the margin of appreciation which accompanies the three-part test is discussed in more detail.

5.2.2 Article 17 ECHR

Beyond the possibility of limitation of artistic expression contained in Art. 10 (2) ECHR, there is a further possibility of limitation by law. These are such cases that fall under Art. 17 ECHR. Art. 17 refers to the prohibition of abuse of rights and reads:

> 'Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention' (COUNCIL OF EUROPE (b), 2021, p. 14).

Thus, in cases that fall under Art. 17 ECHR, freedom of expression is not protected in the first place and following this, the speech in question is also not protected by Art. 10 ECHR. Therefore, in these cases, there is no need for the ECtHR to review whether the restriction on freedom of expression is justified by Art. 10 (2) ECHR; it is already excluded from protection by virtue of Art. 17 ECHR. (Mendel, n.d., p. 10)

The ECtHR has already found in some cases regarding freedom of expression that Art. 10 ECHR does not apply, as the protection had already been excluded by Art. 17 ECHR (Council of Europe/European Court of Human Rights, 2020, p. 14).

One of these cases, the case M'Bala M'Bala v. France (CINQUIÈME SECTION DÉCISION Requête no 25239/13 Dieudonné M'BALA M'BALA contre la France, 2015, pp. 1-20), is an example that explicitly refers to freedom of artistic expression. (Council of Europe/European Court of Human Rights, 2022, p. 18).

In this judgment, it was confirmed that Art. 17 ECHR, although in principle only applied to explicit statements in past judgments, must also be applied in cases where hatred and

anti-semitism are expressed covertly through an artistic performance or satire, since the degree of danger is equivalent here. (Council of Europe/European Court of Human Rights, 2015, p. 2)

Furthermore, also the European Commission of Human Rights has decided on grounds of Art. 17 ECHR in the past. This was the case in German Communist Party (KPD) v. Germany and Glimmerveen and Hagenbeek v. the Netherlands. (Council of Europe/European Court of Human Rights, 2022, pp. 16, 17)

The European Commission on Human Rights existed from 1953 to 1998. Its members were elected by the CoM for a period of six years. They had an independent role not tied to the state. Their task was to advise the ECtHR and to determine whether a petition was admissible before the ECtHR. If a petition was admissible, they investigated the case and tried to help reach a friendly settlement. If this was not possible, a report was prepared, as well as an opinion on the existence of a violation. The question of admissibility was decided by a three-member committee, and a large chamber consisting of seven people was consulted in more complicated cases. However, following a restructuring of the ECtHR, the European Commission on Human Rights became redundant and was thus abolished. (United Nations High Commissioner for Refugees, 2023)

The main reason for a limitation through Art. 17 ECHR is that speech can be used to jeopardize other human rights. In consequence, also artistic speech and the art standing behind it can be used in a way of infringing human rights. (European Union Agency for Fundamental Rights, 2017, p. 15)

In most of the cases, Art. 17 ECHR was applied in matters of racist speech, that is used to undercut the principles of the ECHR, such as the non-discrimination principle (Mendel, n.d., p. 10).

However, it was also applied in other cases, which can be distinguished by the following characteristics:

> ’a general and vehement attack on a particular group [...], for instance, linking the group as a whole with a particular grave criminal act [...]; radical and far-reaching character of the prohibited aims and measures proposed in pursuit thereof [...]; repetitive and/or systematic displays of prohibited aims [...]’ (Council of Europe/European Court of Human Rights, 2022, p. 18).

Further limitations, next to Art. 10(2) ECHR and Art 17 ECHR can be seen in Art. 6 ECHR, the right to a fair trial, as well as Art. 14 ECHR which enshrines the non-

discrimination principle. In this context, Art. 6 ECHR can lead to a limitation in cases where e.g. for the time of a trial a work of art is censored in order to keep the trial fair according to the provisions of Art. 6 ECHR. Regarding Art. 14 ECHR, it must be said, that a work of art can be censored if it has discriminatory content.

Accordingly, until the guilt of the perpetrator is proven, no preliminary conviction of the same may take place, which leads to a limitation in time. Furthermore, freedom of expression may not be used to discriminate. (Hirche, 2001) Hence, a work of art can be censored for limited for a certain amount of time, namely until the reason why it is limited is proven to be wrong and a limitation is not justified anymore. This is e.g. the case when an exhibition is prohibited, but afterwards it comes out that it should not have been prohibited because there was no legal reason for it.

5.3 Admissibility criteria

In the following, the admissibility criteria to be able to examine a case under Art. 10 ECHR are explained in more detail. There are four main criteria: the case must concern one of the different forms of artistic expression, the domestic remedies must be exhausted according to Art. 35(1) ECHR, the victim status must persist according to Art. 35(3a) ECHR and there must be no significant disadvantages according to Art. 35(3b) ECHR (Council of Europe/European Court of Human Rights, 2020, pp. 12-18).

5.3.1 Different forms of artistic expression

As previously noted in chapter 5.1, the ECtHR through the Müller case (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 14, para 27) made clear, that freedom of expression concerns the most various and diverse forms of expression. Thus, art is generally included in its scope of protection. Initially it must be stated that art can appear in different forms. Therefore, the scope of protection of Art. 10 ECHR is not clearly defined. However, when looking at the judgments of the ECtHR, it can be stated that two main forms can be distinguished in the field of artistic freedom. Art can be used to express political opinions. It should be noted that despite the principle that all rights are equal, in practice art that does not always promote political opinion and thus does not always contribute to public discussion. Therefore, it attaches a lower level of protection than so-called political art. In such cases, in particular, it is especially difficult for the ECtHR to recognize that the art in question falls within the scope of protection of Art. 10 ECHR. (Nieuwenhuis, 2012, pp. 110-112)

First of all, in order to be admissible, the artwork in question must be considered by the ECtHR as a form of expression, and therefore subsequently as one of the different forms of artistic expression. As is generally known, the question of whether something is to be considered art or not is not always straightforward. Furthermore, there is no legal definition of art to which the ECtHR can orient itself. Therefore, the ECtHR, through its judgment, decides in each specific case whether Art. 10 is concerning artistic freedom, or not. In doing so, it has no template, it is only a matter of argumentation.

Art can come in a variety of forms, such as: 'the visual arts, music, digital art, architecture, cinema, sculpture, crafts, literature, fashion and photography [...]' (European Union Agency for Fundamental Rights, 2017, p. 6-7).

5.3.2 Domestic remedies exhausted

Art. 35(1) ECHR on the admissibility criteria states: '1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken. [...]' (COUNCIL OF EUROPE (b), 2021, p. 21). Thus, the case in question must have gone through national proceedings, before being able to be brought before the ECtHR.

The reason for this was explained by the ECtHR in Fressoz and Roire v France (CASE OF FRESSOZ AND ROIRE v. FRANCE, Application no. 29183/95, 1999 p. 15, para 37-39). The aim was to give the member-states a chance to prevent infringements or to put them right. Furthermore, the ECtHR explained within this case, that this is supposed to be a bendable rule, where it is enough that the national formal as well as time requirements are met, to be able to lodge the complaint at the ECtHR afterwards. If this is not the case, the ECtHR will declare the matter in question inadmissible on grounds of non-exhaustion of domestic remedies. This happened e.g. in the case Aydar v Turkey (FIRST SECTION PARTIAL DECISION AS TO THE ADMISSIBILITY OF Application no. 32207/96 by Selahattin AYDAR against Turkey, 1999, pp. 3-4, para 2), where the time-limit of six months was not respected by the applicant. (Council of Europe/European Court of Human Rights, 2020, p. 14)

For example, in the case Yılmaz et Kılıç v. Turkey (Yılmaz et Kılıç v. Turkey - 68514/01) the ECtHR it was sufficient to assume that the applicants would have invoked their right to freedom of expression if they would have had the opportunity to do so. In this case it was further stated that it is sufficient for national courts to refer to the right to freedom

of expression on their own for an applicant to have exhausted national remedies. (Council of Europe/European Court of Human Rights, 2008, p. 1)

In the case of Karácsony and Others v. Hungary (CASE OF KARÁCSONY AND OTHERS v. HUNGARY, 2016, pp. 1-61) The case revolved around members of parliament who were the subject of proceedings for their conduct during a parliamentary hearing. They had not taken advantage of the domestic remedies, in this case a constitutional complaint. However, this was due to the fact that in this case there are no such domestic remedies provided by a constitutional complaint under Hungarian law that could lead to an improvement or rectification of the sanctions imposed on them, so the ECtHR finally accepted their case as admissible and did not dismiss it due to non-exhaustion of domestic remedies. (Council of Europe/European Court of Human Rights, 2020, p. 14).

5.3.3 Victim status

Art. 35(3a) ECHR determines:

> '3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or [...]' (COUNCIL OF EUROPE (b), 2021, p. 22).

The Articles 33 and 34 ECHR entail the persons who are entitled to submit an application. These are the contracting parties as well as individuals or groups of individuals and legal persons. Individuals play a major role in cases of freedom of artistic expression, as they are the ones to create artworks.

The lack or loss of a victim status thus can appear when the ECHR's provisions or the provisions of the Protocols to the ECHR are breached (Council of Europe/European Court of Human Rights, 2020, p. 15). This was e.g. the case in WIKIMEDIA FOUNDATION, INC. v Turkey (DEUXIÈME SECTION DÉCISION Requête no 25479/19 WIKIMEDIA FOUNDATION, INC. contre la Turquie), where the national court, the Turkish court, had already provided just satisfaction to the victims, in acknowledging the infringement of Art. 10 as well as compensating the damage (European Court of Human Rights, 2022, pp. 3-4).

Furthermore, the right of an application is abused and will be affirmed inadmissible for that reason when the applicant gives untrue information to the ECtHR, like e.g. acting

under a false name or giving out other dishonest documents as well as not keeping the ECtHR well-informed about the current progresses of the situation at stake that are relevant for the judgment. This could e.g. be a judgment that has a positive outcome for the applicant. Other reasons for the inadmissibility of a case are the use of offensive language as well as violating the obligation of confidential negotiations for the outcome of a friendly settlement. (Council of Europe/European Court of Human Rights (b), 2015, p. 3)

An application can nevertheless be manifestly ill-founded, although the formalities regarding the victim status that were mentioned before are in good order. This may be the case if there is no trace of an infringement as well as when there are former cases that entailed the same or similar circumstances that ended up not stating an infringement of a right. Another reason could be that the argumentation provided by the applicant regarding the application in general or the infringement of the right concerned is not satisfactory enough or unclear so that the ECtHR cannot work with it. Furthermore, vague and made-up accusations end up being manifestly ill-founded. In Addition, the ECtHR cannot second-guess the outcome of the national court that derives from national jurisdiction. Thus, an application aiming at that will also be manifestly ill-founded. (Council of Europe/European Court of Human Rights (b), 2015, p. 5)

5.3.4 Absence of significant disadvantage

Art. 35(3b) ECHR reads:

> ‘3. The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that: [...] (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits (COUNCIL OF EUROPE (b), 2021, p. 22).

Thus, the applicant must have suffered a significant disadvantage to be able to lodge his application. This is not the case for applications regarding small and therefore insignificant amounts of money. The infringement at stake must be serious enough to be a matter at the ECtHR. Anyhow, there is two exceptions to this. Cases involving small sums of money can for example be accepted if the main question of the case is not about the money but on the substance of it. An example where the ECtHR accepted a case like this was in the first case following an amendment of domestic law. Furthermore, cases involving small sums of money can also amount to a significant disadvantage if the case

was already properly examined by a national court, but the law did not offer adequate redress. (Council of Europe/European Court of Human Rights (b), 2015, p. 5)

However, it must be taken into account that since the Protocol 15 to the ECHR became effective, the second exception is no longer possible. The Protocol 15 is an amendment to the ECHR that became effective in August 2021. It entailed significant changes for the procedure of filing an application at the ECtHR.

Applications that are deemed by the ECtHR to not have entailed a significant advantage are nevertheless rare in matters regarding freedom of expression (Council of Europe/European Court of Human Rights, 2022, pp. 17).

However, once an application is found admissible the ECtHR, examines the case according to Art. 38 ECHR and decides whether there has been an infringement of a right as entailed in the ECHR or not (COUNCIL OF EUROPE (b), 2021, p. 23).

Following this, the CoM monitors the execution of the judgement by the member-state concerned (Europe's Human Rights Watchdog, 2014, p. 1).

It might be, that the ECtHR does not have to examine the case further, because the parties decided upon a friendly settlement according to Art. 39 ECHR (COUNCIL OF EUROPE (b), 2021, p. 23-24).

6 Relevant case-law and judgments

The following chapter provides a broad overview of the ECtHR's landmark jurisprudence regarding freedom of artistic expression. It is particularly important to have sample cases at hand, as these are rare in the field of artistic freedom. Further, the circumstances in which the ECtHR grants or limits the freedom of artistic expression, and through this the freedom of speech, are investigated. This makes it possible to assess the extent of protection that is granted to artists by the ECtHR and shows how the ECtHR approaches such matters.

6.1 The beginnings (landmark cases)

Cases concerning artistic freedom are not only rare, but also became an issue only late in the history of the ECtHR. (Polymenopoulou, 2016, p. 517). One of the most influential judgments was the judgment in the Handyside case (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 1-34) from 1976. It has been referenced by courts all over the globe as convincing guidance and evidence of freedom of speech. Although it did not entail a violation of Art. 10 ECHR, the reasoning in this case was pathbreaking. This is because it also established examination criteria in the field of freedom of artistic expression that are still being applied at present. (Columbia University, n.d.)

The applicant was the holder of a publishing company named 'Stage 1', which published 'The Little Red Schoolbook', written by Søren Hansen and Jesper Jensen. (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 3, para 9-11)

Since the book, which the publisher intended to circulate, contained detailed references to sex and was envisioned as a kind of encyclopedia on the subject of sex, it was subject to the Obscene Publications Act of 1959, as amended by the Obscene Publications Act of 1964 (p. 6, para 20-24). Therefore, the applicant saw his right according to Art. 10 ECHR infringed and applied to the ECtHR.

Following this, the ECtHR applied its three-part test, focusing on the criteria of necessity in a democratic society.

Regarding the necessity in a democratic society, the ECtHR held that freedom of expression according to Art. 10(2) ECHR:

> '[...] is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which

> there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued. [...]'. (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 18 para 49)

Thus, proportionality between the sanction imposed and the aim pursued must be given. Furthermore, in this judgment, the ECtHR once again expressly endorsed a margin of appreciation (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 17-18 para 48, 49).

Stating that:

> '[...][i]n particular, it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the "necessity" of a "restriction" or "penalty" intended to meet them. [...]' (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 17 para 48).

In this case, an infringement of Art. 10 ECHR could not be found by the court. In this context thirteen votes were opposing one. Additionally, there were two dissenting opinions. (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 26, para 1, p. 27) Nevertheless, two things can be derived from the judgment, the application of the proportionality test as well as the conceding of a margin of appreciation.

Another influential judgment was delivered in 1988 the Müller case. It was the first judgment considering visual arts within the area of protection of Art. 10 ECHR. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 1-29)

The visual art piece at stake was a painting consisting of three parts, which depicted various sexual acts (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 4 para 11, 5 para 14).

It is surprising in view of the familiar statement, that freedom of expression according to Art. 10(2) ECHR: '[...] is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to

those that offend, shock or disturb the State or any sector of the population. [...]' (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 18 para 49), that neither in the Müller nor in the Handyside case a violation was found.

However, it should be noted that this ruling was the first of its kind, and more conservative views were in vogue at the time. This conservative view can especially be recognized by the fact, that the applicants' conviction was deemed right by six votes to one and the confiscation of the pictures by five votes to two (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 21, para 1,2). There was only one dissenting opinion, as well as a partly concurring and partly dissenting opinion (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 21). Nevertheless, this case is of great importance for artistic expression, as it is the first time that the ECtHR has recognized that art is an expression of freedom of expression under Art. 10 ECHR (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 14 para 27).

Another seminal case was the case Otto Preminger v Austria (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, pp. 1-22). The case concerned the banning of a film that was scheduled to be shown in the applicant's cinema in six screenings that were intended to be open to the public. The film, called 'Liebeskonzil', meaning 'Council in Heaven' by Werner Schroeter, was considered to be blasphemy. (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, pp. 3-4, para. 9-12) The film issue is a good example of how the margin of appreciation is applied by member-states.

The movie is based on a theatrical play by Oskar Panizza, who in 1985 was found guilty of blasphemy in connection to it. His play critically depicts God, Jesus and Virgin Mary, who ally with the devil in order to punish the humanity with syphilis. The movie shows scenes of Panizza's trial and the performance of his play. (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, pp. 6-7, para. 20-22)

The ECtHR did not find any violation of Art. 10 ECHR in this case (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 17, para 3).

The Austrian courts seized the movie, as they saw it as an assault on the Roman Catholic religion, which is the most common religion in Austria and especially in the region of Tyrol. (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 15, para 51-52).

The ECtHR upheld this ruling but emphasized that:

> '[...] Those who choose to exercise the freedom to manifest their religion, irrespective of whether they do so as members of a religious majority or a minority, cannot reasonably expect to be exempt from all criticism. They must tolerate and accept the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith. However, the manner in which religious beliefs and doctrines are opposed or denied is a matter which may engage the responsibility of the State, notably its responsibility to ensure the peaceful enjoyment of the right guaranteed under Article 9 (art. 9) to the holders of those beliefs and doctrines. Indeed, in extreme cases the effect of particular methods of opposing or denying religious beliefs can be such as to inhibit those who hold such beliefs from exercising their freedom to hold and express them. [...]' (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 13, para 47).

However, since Austria's seizure was aimed at protecting its citizens in terms of good order of the society as well as in terms of being offended in their religious sentiments, the ECtHR finally accepted this as a legitimate goal (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 14, para 48).

It held by six votes to three that there had been no infringement of Art. 10 ECHR in connection with the seizure of the film (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 17, para 3). Nevertheless, there was a joint dissenting opinion by three judges (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 18). On the one hand, they emphasized that the margin of appreciation, in cases involving freedom of expression, should not be interpreted broadly but narrowly (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 19 para 3), and on the other hand, that an entrance fee was charged for the film and that there was an age limit, which, in contrast to the Müller case, limited the circle of the public (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 20, para 8-10). Therefore, they deemed the proportionality between the restriction and the aim pursued not to be achieved and consequently that the restriction violated the freedom of expression (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, p. 20, para 11).

Not only there was dissent on the part of the judges involved, but the issue of the case on whether Art. 9 ECHR should be interpreted broadly or narrowly was also discussed extensively in the literature.

In contrast to the dissenting judges, scholars Klatt and Meister held that broad definitions are more appropriate out of several reasons. On the one hand, broad definitions acknowledge the need to balance rights. On the other hand, they argued, that narrow definitions of rights can be confusing, as they blend what the right covers and the reason for limiting it. Furthermore, they argued that narrow definitions create uncertainty in law as they are based on concealed balancing, whereas broad definitions are clearer, as they do not consider competing factors, such as conflicts with other rights. In addition, Klatt and Meister are of the opinion, that broad definitions provide extensive initial protection that leads the respective state to clearly justify infringements. Through this sufficient reasoning for interventions is given by the state. (Klatt/Meister, 2012, pp. 700-702).

Nevertheless, according to Stavros Tsakyrakis, if there is no recognized right to have one's religious sentiments protected, then the concept of balancing loses its meaning since there is nothing to counterbalance freedom of speech against (Tsakyrakis, 2008, p. 481). Similarly, George Letsas held, that there is no inherent right to be shielded from offense regarding one's religious emotions, which he considered to be a normative claim (Letsas, 2009, p. 16-19).

The case of Wingrove v. UK had a similar outcome (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, pp. 1-28). It also dealt with blasphemy in the context of artistic freedom (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 13, para 34), as well as referred to the margin of appreciation of the respective member-state (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 17, para 53). The ECtHR in addition has resorted to the Otto Preminger case in its reasoning (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 16, para 46). Finally, the ECtHR found by seven votes to two, that there had been no infringement of the applicants' right according to Art. 10 ECHR (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 21). However, there were two dissenting opinions. One argued that a refusal to issue a classification certificate amounts to a prior limitation of freedom of expression (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 26). The second dissenting judge argued that the necessity in a democratic society would not hold, since only the protection of the Catholic belief, not that of other beliefs was

intended (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, p. 27). Regarding the content of the judgments, it can be stated that these initial judgments show that society was still closed to freedom of expression in the artistic field. Therefore, the ECtHR avoided to make concessions to the subject of religion, which could have caused an uproar in the broad public. Overall, it can be observed from the cases described above that several of them refer in their reasoning to cases previously adjudicated by the ECtHR, which shows that the jurisdiction of the ECtHR in the area of freedom of artistic expression has developed step by step and builds on or advances reasoning that has been elaborated in the past.

6.2 Recent relevant case-law

In the following, some more recent cases that have enriched the discussion on freedom of artistic expression and are likely to have an impact on subsequent judgments are presented. This serves to show how the ECtHR assessment has evolved in more recent times in terms of artistic freedom. This is intended to enable the reader to understand the argumentative developments, which are based in particular on the changes in society and its values.

6.2.1 Vereinigung bildender Künstler v. Austria 2007

In the case of Vereinigung bildender Künstler v. Austria (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, pp. 1-22) the work of art at issue was a painting by Otto Mühl. The painting labeled Apocalypse consisted of a compilation depicting various well-known characters such as politicians as well as religious personalities in intimate intercourse. Their bodies were drawn by the artist, but their facial expressions were attached using cutouts of actual photographs of these persons extracted from magazines. Only for a few of them, the eye area was censored in black. For Mr. Meischberger, an Austrian politician, this was not the case. Instead, together with another Austrian politician, Mr. Haider, as well as Mother Theresa he was depicted performing an explicit vulgar sexual act. (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, pp. 1-2)

On the following pages, the three paintings concerned are shown:

Figure 6.2.1-1: Apocalypse Painting 1 of 3
source: FIRST SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 68354/01 by VEREINIGUNG BILDENDER KÜNSTLER against Austria, 2005, p. 8

Figure 6.2.1-2: Apocalypse Painting 2 of 3
source: FIRST SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 68354/01 by VEREINIGUNG BILDENDER KÜNSTLER against Austria, 2005, p. 9

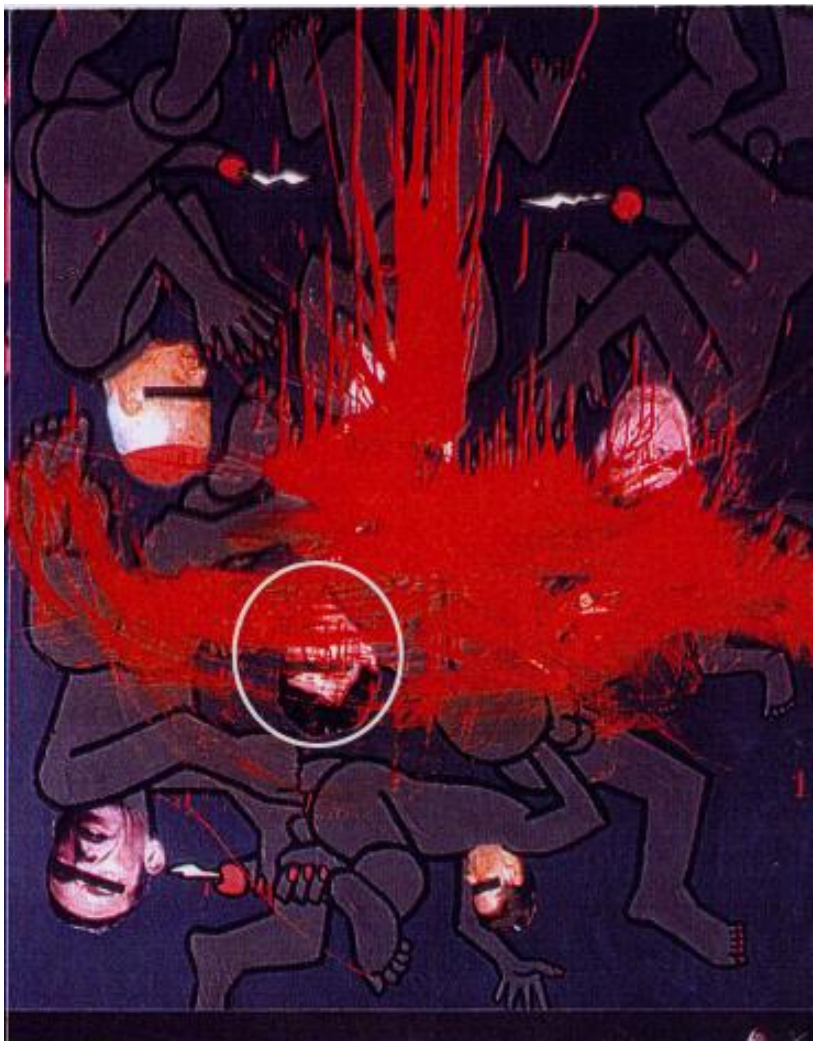

Figure 6.2.1-3: Apocalypse Painting 3 of 3
source: FIRST SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 68354/01 by VEREINIGUNG BILDENDER KÜNSTLER against Austria, 2005, p. 10

Meischberger sought an injunction against the association on the grounds that the painting diminished his image in the public, the Austrian Court ruled that they could not display the painting in their exposition anymore (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, pp. 3-4, para 16).

Therefore, the applicants, the association, Vereinigung Bildender Künstler argued that their right to freedom of expression according to Art. 10 ECHR is infringed (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, p. 1, para 1-3).

The ECtHR was of the opinion, that the exposition ban and the protection of Meischberger's personal rights was not proportionate to the freedom of expression in a democracy, as the work of art was satire and added to wider discourse (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, p. 9, para 38).

ECtHR has also emphasized the importance of freedom of expression (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, p. 7, para 26) and has therefore aligned with the Müller judgment (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 1-29). Finally, the Court ruled, by four votes to three, that the applicant's right to freedom of expression according to Art. 10 ECHR had been infringed (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, p. 11, para 1).

6.2.2 Ehrmann and SCI VHI v. France 2011

In the case Ehrmann and SCI VHI v. France (CINQUIÈME SECTION DÉCISION SUR LA RECEVABILITÉ de la requête no 2777/10 présentée par Thierry EHRMANN et SCI VHI contre la France, 2011, pp. 1-17) one of the two applicants was an artist. As part of an art project, he turned a former farmhouse into an artists' habitation and an outdoor museum with over 3000 artworks, the so-called ‘La Demeure du Chaos’, which means ‘The house of chaos’ translated from French. (Council of Europe/European Court of Human Rights, 2011, p. 1)

A picture of the building can be seen in the following:

Figure 6.2.2-1: La Demeure du Chaos
source: Thierry Ehrmann, 2010

The building, which is open to the public, has since fascinated many visitors and has been the subject of frequent public reports. It is owned by the second applicant, who is a real estate company of which the first applicant holds most shares. It is located within sight of two protected buildings, a church, and a mansion building. The first applicant had already been sentenced to fines for violation of urban planning rules and unauthorized work on the enclosing wall as well as the front wall of the property. The French courts found that the changes made to the enclosing wall of the property and to the front wall were in complete contradiction with the neighborhood houses, which had been built with conventional aesthetics. Compared to this the changes made by the artist were too modern and therefore did not match the environment anymore. The first applicant was given nine months to return the house to its former state. In case he did not, a daily fine was due. The second applicant had to pay the sum of one euro to the local commune as a co-debtor. Before the court, they mainly claimed that the fines they had to pay were a disproportionate intervention with their freedom of artistic expression according to Art. 10 ECHR. (Council of Europe/European Court of Human Rights, 2011, p. 1)

The special thing about this case is that it was not about the work of art itself, which is the exterior facade, but in particular about its location. This differs the present case from most other cases involving artistic freedom.

The ECtHR stated, that contrary to many other cases the dispute did rather concern the controversy between freedom of artistic expression and maintenance of public order than morals (European Court of Human Rights, 2011, p. 11).

For the ECtHR, the fine was proportionate, legitimate and: ‘necessary in a democratic society’ (European Court of Human Rights, 2011, p. 13).

Therefore, ultimately, the ECtHR found that the case is inadmissible as it was manifestly ill-founded (European Court of Human Rights, 2011, p. 13).

6.2.3 Karttunen v. Finland 2011

The case Karttunen v Finland (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 1-7) concerned the artwork ‘the Virgin-Whore Church’ in an exhibition in Helsinki, Finland that was opened for two days in 2008. It consisted of several hundred images that had been taken from gratis websites on the internet and showed young, in part minor, girls during sexual activities or poses. Among them were

also vulgar and humiliating pictures. On the second day of the exhibition, the police confiscated the photographs, closed the event and confiscated the artist's computer. (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, p. 2, para 3-4)

As a result, the Helsinki District Court convicted the artist of owning and spreading indecent images showing minors.

Citing Art. 10 ECHR, the court held that everyone has the right to freedom of expression and freedom of art, provided that the exercise of these rights does not constitute a criminal offense. According to the ECtHR, the applicant's conviction was nevertheless justified for the guard of public morals. Moreover, the fact that the faces of many of the depicted were easily identifiable, was particularly serious, as their image and privacy right should be safeguarded. Even if the artist did not aim to commit a crime, but on the opposite wanted to draw attention to the difficult issue of child pornography, what she did was nevertheless a criminal act by definition. It is important to punish these acts, as this is the only way to prevent abuse. Nevertheless, the punishment of the artist took into account that her intention was different, which is why in the end only a confiscation of the pictures was ordered, but no further punishment. The applicant then appealed and requested that the case be dismissed. She argued that her job as an artist was comparable to the one of a journalist or academic and that she, therefore, had validation for owning and sharing the photographs. The Court though confirmed the ruling, arguing that the importance of the safeguarding of children's privacy overweighs the artists right to free expression. The artist further appealed to the Supreme Court on the same grounds, who also dismissed the appeal. (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 2-3, para 6-10) Finally, the applicant held that according to Art. 10 ECHR her right to freedom of artistic expression had been infringed.

According to her, including the photographs in her exhibition was to stimulate a public discussion and draw attention on the fact of how common and easily reachable child pornography contents are. She argued that the characters aim to have plenty of viewers and that this is why their right to privacy does not overweigh her freedom to artistic expression. (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF

Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 4, para 15)

While the Court found that there was an interference with the freedom of expression, it pursued a legitimate objective and was required by law. Moreover, it was necessary in a democratic society to protect the rights of minors. Sanctions other than the confiscation of the photos were still not imposed due to the well-meant aim of the artist. (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 4-6, para 16-26)

The ECtHR commonly decided for the application to be inadmissible (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, p. 7, para 26).

6.2.4 Sinkova v. Ukraine 2018

In the case of Sinkova v. Ukraine (CASE OF SINKOVA v. UKRAINE, 2018, pp. 1-28), the applicant, Anna Sinkova claimed that, amongst others, her right under Art. 10 ECHR was infringed (CASE OF SINKOVA v. UKRAINE, 2018, p. 1, para 3).

This was in 2010, when, as a part of the artistic ensemble St Luke Brotherhood, together with other members of the ensemble she visited the 'Eternal Glory' memorial for the fallen of WW II at which the graves of about thirty soldiers are located. At the eternal flame near the grave of one of them, an unidentified soldier, she fried eggs in a pan. She was accompanied by two others, that were grilling sausages over the eternal flame. They were admonished by two police officers that their behavior was inappropriate. However, the officers took no further action. The scene was filmed and later on published on the internet in the name of the St Luke Brotherhood by another member of the ensemble. (CASE OF SINKOVA v. UKRAINE, 2018, p. 1-2, para 6,7)

Together with the video they posted the following text:

> 'Precious natural gas has been being burned, pointlessly, at the Glory Memorial in Kyiv for fifty-three years now. This pleasure costs taxpayers about 300,000 hryvnias [UAH] per month. And this is only one 'eternal flame' pagan temple, whereas there are hundreds or even thousands of them throughout Ukraine. On 16 December the St Luke Brotherhood reacted to this by an act of protest in the Glory Park in the capital. It showed that people should use the 'eternal flame'. We suggest to the outraged representatives of the Communist Party of Ukraine to follow the example of ancient Roman vestal virgins and to carry out around-the-

> clock duty at the ‘eternal flames’, keeping the fire lit manually by wood. There is no doubt that communists will have no problems with fulfilling this task, because they already have experience of taking care of the Lenin monument in Kyiv and their financing is much better than that which the vestal virgins had.‘ (CASE OF SINKOVA v. UKRAINE, 2018, p. 2, para 7)

The text should serve as a demonstration against the waste of natural gas resources (CASE OF SINKOVA v. UKRAINE, 2018, pp. 15-16, para 87).

Furthermore, the video was accompanied by the well-known song ‘The battle is going on again’ from 1974 which is dedicated to the triumph of the revolution in 1917 and spreads joy about a future communist government (CASE OF SINKOVA v. UKRAINE, 2018, p. 2, para 8).

Several complaints reached the police regarding the video (CASE OF SINKOVA v. UKRAINE, 2018, p. 3, para 9).

In 2011 Anna Sinkova was arrested and imprisoned for three months. This was prior to criminal proceedings for grave desecration. Following this, she was condemned according to the accusation and a probationary sentence was set out. (European Court of Human Rights, 2018, p. 1) Therefore, Anna Sinkova finally inquired, mainly under Art. 10 ECHR, that her sentence was an infringement of her freedom to state her opinion that the resources used to sustain the flames of those memorial sites should be used to enhance the life quality of the veterans instead (European Court of Human Rights, 2018, p. 2).

The ECtHR held that the detention did not take place because of her statement or the video posting, but because of her behavior at the gravesite. This was indeed justified due to the general prohibition to behave in an inappropriate manner at gravesites. Regarding this, the ECtHR was furthermore of the opinion, that she could have found a more appropriate way to express her opinion that did not involve the breach of criminal law or disgrace the monument of a soldier. In addition, she did not serve her suspended jail sentence. (European Court of Human Rights, 2018, p. 3) Anyhow, the ECtHR found that the sentence she was fined with because of her statement regarding the soldiers’ gravesite breached her right to freedom of expression, but that this breach was proportionate under the national jurisdiction (European Court of Human Rights, 2018, p. 1). Ultimately, the ECtHR decided that her right to freely express herself according to Art. 10 ECHR has not been infringed by four votes to three (CASE OF SINKOVA v. UKRAINE, 2018, p. 22, para 6).

The Ukraine was nevertheless condemned to pay Anna Sinkova 4000 Euros as a compensation for non-pecuniary damages because of a violation of Art. 5(5) ECHR (CASE OF SINKOVA v. UKRAINE, 2018, pp. 12-15, para 61-84; p. 22, para 7). The three dissenting judges prepared a joint partly dissenting opinion (CASE OF SINKOVA v. UKRAINE, 2018, pp. 23-26). Within this opinion, they found a breach of Art. 10 ECHR (CASE OF SINKOVA v. UKRAINE, 2018, p. 23). They criticized the national courts, saying that: '[...] the analysis by the domestic courts was deficient for its failure to address the purpose of the applicant's performance and its satirical nature. [...]' (CASE OF SINKOVA v. UKRAINE, 2018, p. 23). They further found that: '[...] neither domestic courts nor this Court commented on the satirical nature of the performance. [...]' (CASE OF SINKOVA v. UKRAINE, 2018, p. 25). It is important to mention, that:

> '[...] [they] [found] some inconsistency in the Court's concern over the "severe sanction" of a suspended sentence in Dmitriyevskiy, and the position of the majority as to the same sanction in the present case, where the applicant committed no criminal damage, nor any breach of the peace. [...]' (CASE OF SINKOVA v. UKRAINE, 2018, p. 26).

They concluded by stating that:

> '[...] given the lack of adequate assessment by the national authorities of the applicant's performance from the standpoint of Article 10 of the Convention, and the complete disregard of its satirical nature, in addition to the disproportionate sentence, [they] believe that Article 10 was violated in the present case. [...]' (CASE OF SINKOVA v. UKRAINE, 2018, p. 26).

The dissenting judges furthermore noted that: '[...] [t]here is a real risk of eroding the right of individuals to voice their opinions and protest through peaceful, albeit controversial, means' (CASE OF SINKOVA v. UKRAINE, 2018, p. 26). Following the reasoning of the dissenting judges, the case at hand truly poses a threat to subsequent cases should it be applied as a precedent.

The general rule is that the Court follows previous decisions, but it can make exceptions and go against them if there is a good reason. Nevertheless, usually, the Court keeps building its case law without completely throwing away previous decisions. Instead, it adapts and changes over time. (Wojtyczek, 2022, pp. 240, 249)

Thus, in this case, in line with the arguments presented by the dissenting judges, there would be a serious limitation of the freedom of expression if the reasoning of this ruling is applied to further cases.

6.2.5 Dickinson v. Turkey 2021

The case of Dickinson v Turkey (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24) demonstrates a great progress for freedom of artistic expression involving political speech in Turkey (Columbia University (a), n.d.).

The applicant in this case was Michael Dickinson, a citizen from the UK, who was living in Turkey, working as a professor at two universities in Istanbul while also being an artist at the time of the events. He was prosecuted for having offended the former prime minister, Recep Tayyip Erdoğan, through an art piece he created and later on displayed. The first publication of the collage took place in an exhibition that was part of the so-called 'Peace Fair'. The Peace Fair was an organized demonstration in Istanbul in 2006. His artwork consisted in a picture of a dog that showed Erdoğans' head instead of the dogs' head. Furthermore, the dog was held on a leash, which was painted with the colours of the US flag and had the sentence: 'We Will not be Bush's Dog' written on it. (European Court of Human Rights, 2021, p. 1)

Dickinson wanted to portray his displeasure regarding Erdoğan's political activities. In doing so, he referred in particular to the political sustenance for the invasion of Iraq by the military. (Voorhoof, 2021, p. 1)

After this event, first, the responsible for the demonstration was criminally prosecuted by the authorities. On the day of the proceedings against the responsible, Dickinson once again displayed his collage. He showed it in the Court building as well as in front of journalists with cameras and more people outside the Court building. In turn, he was put in pre-trial detention for four days, after which according to Art. 125 of the Turkish criminal code he was prosecuted for offending the prime minister. Only five years later, in 2015 his sentence, the payment of around 3000 Euros, was set out. This was because the domestic court had suspended the delivery of its decision for this amount of time. (European Court of Human Rights, 2021, p. 1)

In late 2015, the court vacated its judgment and ordered that the criminal proceedings be terminated. The court noted that he had not committed any other intentional crimes during the five-year suspension period. He had thus fulfilled the conditions attached to the supervision order ordered by the Court. Following the events, Mr. Dickinson applied

to the ECtHR, claiming that his right to freedom of expression according to Art. 10 ECHR had been breached. (European Court of Human Rights, 2021, p. 2)

The ECtHR agreed with the applicant that Art. 10 ECHR had been breached. In particular, it argued that the five years during which negotiations were suspended had had a discouraging effect on artistic freedom and freedom of expression. During this time, and possibly afterwards, there was a pervasive fear of condemnation, which could have prevented further artistic or political expression in accordance with freedom of expression under Art. 10 ECHR. The ECtHR emphasized that a violation of Art. 10 ECHR also exists when someone has solely been prosecuted, but a conviction has not (yet) taken place. Furthermore, the ECtHR found that a public person, like a politician, has to take more in regards of being criticized by others, particularly, when the criticism is being made through satire. The ECtHR found without doubt that the intervention was legally prescribed and served the purpose of protecting the image and reputation of another person, namely Erdoğan, but the ECtHR could not find a necessity in a democratic society. The work of art was a political statement corresponding to a value judgment. Furthermore, it consisted of a subject that contributes to the public debate. According to ECtHR, such a debate started through the contribution of artists and their work is indispensable for a democratic society. Irony and satire in this case are means of expression. According to the ECtHR, the proportionality between the aim pursued and the means used was not given, as milder means than the threat of detention and a pre-trial detention could have been used to protect Erdoğans' image. Unfortunately, it must be noted that Dickinson did not live to see the decision of the ECtHR, as he died before the judgment was announced. The ruling was made unanimously. This is especially important and impressive because, as described in chapter 4 of this thesis, Turkey can be a particularly dangerous country for artists who make political statements. It is also particularly striking that the ECtHR found Art. 10 ECHR violated, although ultimately no legal consequences followed for the applicant. This ruling serves to prevent a discouraging impact on people who want to express themselves and their view on the world through the means of art and the so-called 'self-censorship' on artists. Another important point to take away from the judgment is the fact that people who are in the public spotlight, so-called celebrities as well as politicians, have to put up with much more when it comes to criticism of their person, since they attract a greater public interest with their public position. (Columbia University (a), n.d.)

Lastly, attention must be drawn to the fact that the ECtHR constantly finds violations in relation to Art. 10 ECHR in Turkey. This causes a threat to freedom of artistic expression in Europe. Case-law like the Dickinson judgment gives hope for a change. (Ó Fathaigh & Voorhoof, 2021)

In the following a picture of Michael Dickinson together with his artwork can be seen:

Figure 6.2.5-1: Michael Dickinson and his artwork
source: Agence France-Presse, 2021

6.2.6 Patrício Monteiro Telo de Abreu v. Portugal 2022

The case of Patrício Monteiro Telo de Abreu v. Portugal (AFFAIRE PATRÍCIO MONTEIRO TELO DE ABREU c. PORTUGAL Requête no 42713/15, 2022, pp. 1-34) had its roots in 2014, when Monteiro, the Portuguese party member, who also served as a city councilor of Elvas at that time, was sentenced under national law to a fine for defamation. The reason for this was that he had published three caricatures of an artist on his blog, which would have caused moral damage to a female councilor. The cartoons depicted several animals with human-like appearance, including a pig with sensual characteristics and a donkey dressed in a suit. The first pig being depicted wearing strap stockings, lace nylons and high heels. The two animals were surrounded by ‘undressed’

pigs. The pigs had armbands with the initials 'CMR', which stands for Câmara Municipal de Rondónia, the Municipality of Rondonia. Furthermore, according to the national court, the pig with the sensual attributes had strong similarities with the female councilor, and the donkey with the major of the city of Elvas. According to the national court, the defendant intended to express a political criticism of the executive power by publishing the cartoon on his blog. Nevertheless, they also found that the sow with the sexual attributes amounted to a prostitute, and by placing it next to the donkey an intimate relationship or affair had been indicated between them. This had traumatic consequences for the councilor and therefore went beyond mere political criticism. The national court consequently found Monteiro guilty of defamation. The Court of Appeals also upheld the guilty verdict. Consequently, Monteiro appealed to the ECtHR. He invoked Article 10 ECHR and found his right to freedom of expression violated. (Balzaretti, 2022)

According to the ECtHR, the domestic courts failed to take into account the background of the cartoon's creation in enough detail as they did not consider that the cartoons were part of a satirical series, involving prior publications of cartoons, that concerned the municipality's politics. Furthermore, the ECtHR was not of the opinion that an intimate affair was depicted in the cartoons, because the animal that stood for the councilor and the animal that stood for the mayor did not show intimate behavior, such as kissing or similar. (Council of Europe/European Court of Human Rights, 2022, p. 1)

Since the councilor was a woman, the topic of violence against women arose additionally in the context of the right to respect for private life. (Balzaretti, 2022)

The ECtHR, nevertheless, did not see such violence, as the context in which the applicant published the cartoon did not give indications of that. According to the ECtHR, he did not criticize her attributes but indeed as a political rival criticized the executive power of its rivaling municipality. Besides, the woman was not the only figure portrayed naked, nor was she the only figure portrayed by an animal obviously associated with negative attributes, as the other pigs were also naked and the donkey, an animal not associated with the greatest intelligence, was portrayed gray-haired. (Council of Europe/European Court of Human Rights, 2022, pp. 1-2)

According to the ECtHR, the domestic Court did not only fail to consider the political background of the cartoon but also did not consider that people who are in the public eye, such as politicians, in terms of satirical criticism, have to take on more than the ordinary citizen next door. The ECtHR also considered it positive that the applicant had taken the

cartoon off his website directly after the councilor's accusation, indicating that he had acted in good faith. From all the forthcoming arguments, the ECtHR ultimately found the fine Monteiro had to pay disproportionate and found that his punishment could have a chilling effect on similar artistic expressions. Therefore, they found that Art. 10 ECHR had been violated. (Council of Europe/European Court of Human Rights, 2022, p. 2)

Three judges nevertheless filed two concurring opinions. In doing so, they focused on the aspect of violence against women and the fact that stereotyping portrayals contribute to that very violence, especially in the political work environment. (Voorhoof, 2022, p. 3)

Ultimately, this case clearly shows the difficulties between artistic freedom of expression and the fine line between the same and hate-speech. It is therefore important to reiterate that in weighing whether it is satire or pure hate-speech, it always depends on the individual case, as hate-speech could also be used satirically, which makes a distinction more difficult. However, it is disturbing and surprising in this case that only the concurring opinion has addressed the issue of violence against women, and broadly speaking gender-based hate-speech. Consequently, there is a need for improvement in this regard on the part of the ECtHR. While I do not necessarily believe that the court made an incorrect decision, it is important to address the multi-faceted issue of violence against women in art - through a broader and more nuanced discussion, we can explore the various dimensions, implications, and potential consequences of such depictions and ultimately promote a more informed and comprehensive understanding of this complex issue.

6.3 Overview

To provide a clearer overview of the recent cases, on the following page, in
a table. The table contains information on the year of the decision, the form of art, the dilemma at stake, the raised issue or concerned topics, the outcome of the ECtHR's decision regarding the existence of a violation of Art. 10 ECHR, the votes of the judges as well as the public accessibility of the artwork in question. The table furthermore serves to provide a quick overview on the most recent influential case-law.

Case & Year of Decision	Form of Art	Dilemma	Raised issue/ concerned topic	Decision of the ECtHR (Violation yes/no)	Votes of the Judges	Public Accessibility
Vereini-gung bildender Künstler v Austria 2007	Painting	Blasphemy, Political speech	Religion, Right to respect for private life	yes	Four votes to three, one dissenting opinion and one joint dissenting opinion by two judges	Yes, exhibition open to the public, afterwards painting displayed in almost all Austrian newspapers & on television
Ehrmann v France 2011	Mural	Public Order	Not content related, but matter of location and aesthetics	in-admissi-ble	manifestly ill-founded	Visible from the street
Karttunen v Finland 2011	Collage	Morals, Right to respect for private life	Child pornogra-phy	in-admissi-ble	manifestly ill-founded	Exhibition first open for invited guests, then open for the public
Sinkova v Ukraine 2018	Perfor-mance	Political speech (Satire)	Morals	no	Four votes to three, the three dissenting judges prepared a joint partly dissenting opinion	Yes, on the internet
Dickinson v Turkey 2021	Collage	Political speech (satire)	Chilling effect	yes	Un-animously, one partly concurring and partly dissenting opinion	Yes, on the exhibition, lateron in front of the Court building as well as on television
Patrício Monteiro Telo de Abreu v Portugal 2022	Cartoons	Political speech (satire)/ sexist hate-speech/ right to respect for private life	Chilling effect	yes	Un-animously, two concurring opinions by three judges	Yes, on the internet, deleted after criminal complaint was lodged

Figure 6.2.6-1: Overview of recent case-law
source: This figure is based on the cases described previously under '6.2 Recent Cases'

It can be seen from Figure 6.2.6-1 that an important and often questioned topic is political expression. The distinction as to whether something is satire or irony is still a matter of interpretation, as it depends on the external circumstances. With regard to the form of art, it can be seen that Art. 10 ECHR concerns the most diverse forms of art. It does not depend on the fact that something is visible on a piece of paper, on the contrary: whole buildings (facades) can be affected. Furthermore, it derived from the table that the decisions of the ECtHR are mostly not unanimous. In addition, the column public accessibility shows that in practice public accessibility often has no influence on the outcome of a judgment, as it is only one of many criteria that are examined. The accessibility of a work, whether it is accessible to the general public or limited to specific individuals or groups, appears to be generally immaterial to the judgment at hand. Furthermore, the table shows that in the last five years cases concerning artistic freedom have been decided more frequently at the ECtHR than before. On the one hand, this is a positive sign, as it proves once again that art is within the scope of protection of Art. 10 ECHR and in general within the scope of the ECHR. On the other hand, however, it can also be interpreted negatively, because the more cases concerning artistic freedom end up in court, the more it becomes clear that freedom of artistic expression, and with it freedom of expression in a broad sense, are in danger.

7 Common conflicts

In the following, the most common reasons for conflicts with the freedom of artistic expression, that lead to restriction of the right according to Art. 10 ECHR are considered in more detail. These are mainly cases concerning religion, morality, politics or respect for private life. Other cultural rights except for arts, as well as issues such as public order, and hate-speech likewise have great potential for conflict. Nevertheless, the focus of this study is set on the aforementioned areas, as these are the main topics that were at stake in the cases presented in chapter 6. From those cases it also became clear, that even if artistic expression is a right guaranteed under Art. 10 ECHR, it is not excluded that in case of conflict the right to artistic freedom may not override other rights. There are many reasons for this. What weighs particularly heavily is that art mostly carries with it a meaning. Therefore, art itself brings with it the potential for conflict. Therefore, as already explained in chapter 5.2.1, the ECtHR follows the three-step test in such a balancing exercise. What matters is whether the interference with the right under Article 10 ECHR, i.e. the conflict, is prescribed by law, follows a legitimate aim and if an interference with the freedom of expression is necessary in a democratic society. The legitimate aims that are discussed below namely are: the protection of religion and beliefs, public morals, critics of government and respect for private life or image and reputation of others. Some of them are explicitly mentioned in Art. 10 (2) ECHR, others are in question when a balance has to be struck between two rights. This is especially the case in conflicts between Art. 10 ECHR and Art. 9 ECHR or Art. 8 ECHR. In the following, examples are analyzed, both on the rights directly mentioned in Art. 10 (2) that may conflict, and on conflicts between Art. 10 ECHR with Art. 8 ECHR or Art. 9 ECHR. This serves to provide a broad perspective on the topic of conflict.

7.1 Religion

Numerous of the before-mentioned cases, such as the case of Vereinigung bildender Künstler v. Austria (CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, pp. 1-22), the case Otto Preminger v Austria (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, pp. 1-22) and the case of Wingrove v. UK (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, pp. 1-28) deal with the dilemma between art and religion.

Not only artwork can bring with it the potential for conflict, but religion is a factor to this as well. Because of the various existing beliefs, it is not particularly difficult to raise

discontent in someone when art depicts religion. Therefore, such cases are likely to cause dissent.

Despite religion being such a contradictory topic, the right to freedom of thought, conscience and religion is protected in the ECHR just as the right to freedom of artistic expression.

Art. 9(1) ECHR on freedom of thought, conscience and religion states:

> ‘1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance’ (COUNCIL OF EUROPE (b), 2021, p. 11).

Like Timothy Garton Ash has noted: ‘We respect the believer but not necessarily the content of the belief’ (Ash, T.G., 2016, p. 253). Thus, religious criticism is likely to occur.

As already explained in chapter 6.1 of the thesis at hand, since Handyside v UK (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 1-34) it is clear, that freedom of expression according to Art. 10(2) ECHR: ‘[...] is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. [...]’. (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 18 para 49)

In fact, generally, the ECtHR is of the opinion, that religious criticism should be practicable in a democracy even though it could be taken as offensive or insulting by someone else. (COUNCIL OF EUROPE (c), 2017, p. 1)

According to Art. 10(2) ECHR:

> ‘2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary’ (COUNCIL OF EUROPE (b), 2021, p. 12).

Thus, Art. 9 does not give itself broader protection to religious beliefs than to any other right, on the contrary, in certain circumstances it also contains the obligation to accept and allow views on religion that might be critical.

Nevertheless, there are limits to practicing such religious criticism. One of those limits can without any doubt be the commitment to minimize or prevent extensive statements that unfoundedly affront others and do not encourage open discussion and therefore do not serve a legitimate aim or are necessary in a democratic society. When disputes due to the clash between artistic freedom and religion arise, the member-states get a wide margin of appreciation in taking action to protect the freedoms according to Art. 9 ECHR. The ECtHR has generally recognized that it may be appropriate to penalize undue assaults directed against religious devotion, as long as the penalty or limitation is proportionate to a legitimate aim sought to be achieved. However, such artworks that do not correspond to hate speech should remain unpunished. Therefore, the imposition of any compensation should be grounded, reasonable and proportionate to the legitimate aim followed. This is to safeguard freedom of expression in any form. (COUNCIL OF EUROPE (c), 2017, p. 1)

This is very concerning as other forms of individual sights or beliefs that are protected by Art. 9 ECHR do not enjoy the same safeguarding in terms of level of protection and it seems as if other provocative expressions cannot be inherently limited, but only to the extent that they qualify as hate-speech. Religion seems to be elevated above all other thoughts and beliefs. The ECtHR emphasizes religion as shaping the identity of believers and meanwhile overlooks that individuals, including believers, may assign equal or greater significance to other parts of their identity. (Munivrana-Vajda, 2019, p. 287)

In view of the wide margin, however, there is reason to be concerned that the member-states misuse the wide margin of appreciation given by the ECtHR by limiting artistic expression more than necessary.

This is because the wide margin could enable the member-states to solely argue that a limitation of the artistic freedom is needed out of reasons of social necessity, but not in fact because religious values are in danger. Further, the possibility to exercise such broad subsumption takes the monitoring role away from the ECtHR. Therefore, it would safeguard the right to freedom of artistic expression and the equal protection of the rights contained in the ECHR, if member-states would be responsible to show the presence of a danger and demonstrate, that the restriction of the right to artistic expression is the

mildest way to minimize this risk. In addition, the ECtHR should reduce the margin of appreciation given to the member-states to retain its monitoring function. (Rosenberg, 2012, p. 228)

7.2 Public morals

A common feature of the cases involving a conflict between morality and artistic expression is the involvement of religion. This can e.g. be seen in cases such as Otto-Preminger-Institut v Austria (CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, 1994, pp. 1-22) and Wingrove v UK (CASE OF WINGROVE v. THE UNITED KINGDOM, 1996, pp. 1-28), that were described in chapter 6.1. The reason for this connection is that religion is a particularly delicate issue, in which the most diverse moral concepts clash. Therefore, artworks involving religious speech or references to religion are potentially blasphemous.

Furthermore, next to blasphemous works of art, cases concerning public morals can involve obscene artwork (Kearns, 2013, p. 45). As an example for this, the case of Karttunen v. Finland (FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 1-7), that was described in chapter 6.2.3 can be mentioned.

However, determining what morality is is difficult, as it depends on the goal that is to be achieved (Gert, B., & Gert, J., 2020). In Addition, as explained in chapter 6.1:

> ’[...]it is not possible to find [...] a uniform [...] conception of morals. The [...] requirements of morals var[y] from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject. [...]’ (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, p. 17 para 48).

The Court usually leaves a wide margin of appreciation when consensus on a certain matter is not given, as it would not be expedient to give strict guidelines in this regard (Radačić, 2010, p. 604).

In the case of Sunday Times (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, pp. 1-62), which was explained in chapter 5, the ECtHR reiterated in this regard. Morals, unlike the: ’[...] "authority" of the judiciary [do not] [...] reveal a fairly substantial measure of common ground [...]’ (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, pp. 29-30, para 59). Because of this in cases concerning public morals a broad margin of appreciation is given to the member-

states, as morality cannot be seen in a neutral way. (CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM (No. 1), 1979, pp. 29-30, para 59)

Therefore, because there is no common ground on what immorality is exactly, usually the ECtHR does not see the ECHR violated in such cases. (Radačić, 2010, p. 604-605)

The standard practice of the ECtHR is to keep the margin of appreciation wide, in order to follow the member-states' assessment. (Radačić, 2010, p. 603)

Cases such as the Müller case (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 1-29) from 1988 involve the dilemma between arts and public morals.

The work of art at issue was an artwork named ‘Drei Nächte, drei Bilder‘, which is German for ‘Three Nights, Three Pictures’ consisting of three paintings. The paintings depicted various sexual practices. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 4 para 11, 5 para 14)

Because this case is one in which there is no consensus on the existence of immorality or obscenity, the ECtHR decided that an infringement of Art 10 ECHR is not given. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 13 para 25)

While the ECtHR tried to define what obscenity is, it noted that it is a term whose meaning and scope are constantly evolving and therefore changing. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 23) Thus, a conclusive, all-encompassing definition could not be given in this case either, only a definition applicable to the case at hand.

The reason for this was furthermore, that the exhibition in question was open to the public. Therefore, the intervention was proportionate to achieve the pursued aim. Ultimately, the artwork was confiscated. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 23 para 9)

Nevertheless, the Müller case has also provided a positive outcome for the freedom of artistic expression. For the first time, artistic expression was recognized as a sub-form of expression as protected under Art. 10 ECHR. (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, p. 14 para 27)

The ECtHR reiterated its statement from the 1976 Handyside Case (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 1-34) and stated that: '[...] Subject to paragraph 2 (art. 10-2), it is applicable [...],[...] also to [information or ideas]

that offend, shock or disturb the State or any section of the population. [...]' (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 17, para 33).

Especially due to this finding of the court, the result seems surprising. The reason for this, however, is that as mentioned before obscenity is a term that can be defined differently over time. Since the judgment in the Müller case (CASE OF MÜLLER AND OTHERS v. SWITZERLAND, 1988, pp. 1-29) dates back a quarter of a century, there were accordingly different moral concepts at that time.

Of course, it cannot be reliably said how the case would be decided today, i.e. if it would be decided differently. Nevertheless, cases such as Akdaş v. Turkey 2010 (AFFAIRE AKDAŞ c. TURQUIE Requête no 41056/04, 2010, pp. 1-8) where the translation of an erotic novel in Turkish language should be seized for reasons of obscenity and immorality, despite its available translations in many other languages (Council of Europe/European Court of Human Rights, 2010, p. 1), show that social change has a high impact on the dilemma between morality and artistic expression.

Indeed, in this case, a violation of Art. 10 ECHR was found (AFFAIRE AKDAŞ c. TURQUIE Requête no 41056/04, 2010, p. 6, para 2).

Still, it must be noted, that in this case a specific form of artistic expression, namely literature was at stake. This makes it difficult to give this judgment a universal meaning. Indeed, the case Sinkova (CASE OF SINKOVA v. UKRAINE, 2018, pp. 1-28), which was explained in chapter 6.2.4, where no violation of Art. 10 ECHR was found by the ECtHR can be seen as an alarming backlash in the matter of public morals in modern times. It shows that for cases in which culture or even religion are involved the evaluation on whether an interference is necessary in a democratic society, the protection of morals overweighs the protection of artistic freedom. Depending on the circumstances, this can jeopardize the freedom of artistic expression.

A problem that leads to such an outcome is, among the issue of the definition of morals, that the ECtHR is additionally not unanimous on what art is. This can be seen in the joint dissenting opinion in the case of Sinkova, where the judges held, that: '[...] The applicant's satire had done exactly what this art frequently does: it transferred the viewer's attention from an object to its social context. An artistic gesture might demonstrate the conditionality of established value boundaries, but it does not reject them. [...]' (CASE OF SINKOVA v. UKRAINE, 2018, pp. 24). (Djajić & Lazić, 2021, p. 115)

When it comes to the dilemma of balancing public morals and artistic expression, member-states enjoy a broad margin of appreciation, which grants their domestic courts flexibility within their jurisdiction. This flexibility is guided by the prevailing sensitivities of the society, allowing for a wide range of interpretations and considerations. While the scope is in fact not actually unlimited as it is still subject of the ECtHRs supervisory function, this function can indeed be as diverse as the assessment of the domestic courts. (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 17-18, para 48, 49)

Ultimately, this circumstance can pose a threat to freedom of artistic expression, especially in countries where liberal values have not yet fully arrived.

7.3 Political speech: terrorism & national security/government critics

As seen in chapter 6.2, political speech in art is an issue that arises on a regular basis. In this context, the decision as to whether or not there has been a violation of Art. 10 ECHR may vary. In the case of Leroy v. France 2009 (AFFAIRE LEROY c. FRANCE Requête no 36109/03, 2008, pp. 1-20) the applicant was a cartoon artist. Said artist drew a cartoon depicting the twin tower attack of September 11, 2001, which was published two days later in the weekly edition of a newspaper. Together with it he inserted the quote: ‘We have all dreamt of it... Hamas did it'. Through this publication, the applicant wanted to express the crush of America through the terrorist attack. After this publication, he as well as the publisher were sentenced to a fine of 1500 euros per person due to the glorification of terrorism and the deaths caused by it. His appeal was rejected on grounds of Art. 17 ECHR. The argument was that it would not fall in the area of responsibility. However, the ECtHR deemed it to be admissible. (Council of Europe/European Court of Human Rights (b), 2008, p. 1)

Consequently, the ECtHR examined, if the applicants' right according to Art. 10 ECHR was breached. It found that the limitation was prescribed by law, followed a legitimate aim, namely public security, and had been necessary in a democratic society. Furthermore, the measure used to reach this aim was not held to be disproportionate. The ECtHR emphasized, that the timing of the applicant's satire was raised his accountability in this issue. This was because there were only a few days between his cartoon and the terrorist attack, which had even more devastating effects for the victims' relatives as well as those affected by the attack. Finally, the ECtHR held, that there had been no violation

of Art. 10 ECHR in this case. This decision was taken unanimously. (Council of Europe/European Court of Human Rights (b), 2008, p. 2)

This case demonstrates that the ECtHR treats cases regarding terrorism and national security with an adequate amount of respect and does not let the freedom of artistic expression in the form of satire prevail. It could be argued, that this limits the freedom of artistic expression more than necessary, as the artist claimed that he only wanted to draw attention to the incident, but did not want to call for terrorism or glorify it. This has also been acknowledged by the ECtHR (Council of Europe/European Court of Human Rights (b), 2008, p. 2). Nevertheless, it can be stated in this case that despite the lack of actual danger to the nation in practice, when balancing artistic freedom and national security, the second should prevail in any case, since without national security the basic pillars of the ECHR as well as all its contents are futile.

However, as the cases Dickinson v. Turkey (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24) and Patrício Monteiro Telo de Abreu v. Portugal (AFFAIRE PATRÍCIO MONTEIRO TELO DE ABREU c. PORTUGAL Requête no 42713/15, 2022, pp. 1-34) that were described in the chapters 6.2.5 and 6.2.6 have shown, that cases involving politics in connection with art can also look different. It does not always require a direct call to terrorism for artists to be denied their artistic freedom. Criticism of the government in pictorial form can be sufficient. In the end, however, the ECtHR recognized in these two cases that there was a violation of Art. 10 ECHR.

A somewhat different case in the context of politics is the case of Stern Taulats et Roura Capellera v. Spain (AFFAIRE STERN TAULATS ET ROURA CAPELLERA c. ESPAGNE Requêtes nos 51168/15 et 51186/15, 2018, pp. 1-16). In this case, it was not the artistic work itself that gave rise to a condemnation by the national authorities, but the way in which it was displayed. The two applicants Enric Stern Taulats and Jaume Roura Capellera have set fire to a photo of the Spanish king, holding it upside down, during the king's visit to the Catalan city of Girona in 2007. Therefore, they were sentenced due to insult of the crown by the national authorities. Their punishment was the following: either they paid a fine of 2700 euro each, or they had to serve a prison sentence. However, they filed a complaint with the Constitutional Court. The Constitutional Court held the performance not to fall under the scope of the right to freedom of expression as it would amount to incitement to violence as well as to hate

speech. Therefore, the applicants filed a complaint at the ECtHR, claiming, among others, that their right according to Art. 10 ECHR had been infringed. (Voorhoof, 2018, p. 1)

The ECtHR held that, the performance was not aimed at influencing people as to violently act against the king, although they burned his photograph. Indeed, the king in this case was not aimed at personally, but as a representative for the monarchy, and therefore, central to the public eye. The ECtHR did furthermore not classify the performance as incitement to violence, arguing, among others, that it did not lead to any acts of violence. It could further not identify the performance as an act of hate-speech. The current judgment of the ECtHR underlined, that the condemnation to a prison sentence was not proportional to the aim pursued as well as not necessary in a democratic society. Therefore, a violation of Art. 10 ECHR was found. This decision was taken unanimously. (Council of Europe/European Court of Human Rights, 2018, p. 2)

Moreover, because of his neutral political position and his position as mediator and representative of the country's unity, the king according to the ECtHR, cannot be spared criticism by nature. Consequently, he, too, can be the subject of criticism because he is a public figure and therefore in the public interest. (Council of Europe/European Court of Human Rights, 2020, p. 43 para 217)

The previously examined ECtHR rulings show that in matters of artistic freedom and politics, it depends on the specific facts of each case whether the right to artistic freedom under Art. 10 ECHR dominates in dilemma situations against one of the other rights in the ECHR. However, the case law of the ECtHR has already made some fundamental, generally applicable statements in past rulings. These include, e.g., that public figures and the government are not generally uncriticizable. Moreover, satire in politically motivated art is also not generally excluded from artistic freedom.

7.4 Respect for private life, reputation and rights of others

The respect for private and family life is a huge factor when it comes to conflicts in critical art. This is because the corresponding right, as well as the right to artistic freedom, is enshrined in the ECHR. The right to respect for private and family life is enshrined in Art. 8 of the ECHR.

A special characteristic of Art. 8 ECHR is that it explicitly refers to the individual, i.e., certain persons and their families, and not to society as a whole.

Art. 8 ECHR reads as follows:

> '1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others' (COUNCIL OF EUROPE (b), 2021, p. 11).

Thus, it amounts to a possible legitimate aim to pursue in cases of a limitation of artistic freedom of expression. Nevertheless, all rights enshrined in the ECHR are equal, as theoretically there is no hierarchy among them (Casarosa, 2021, p. 11). Therefore, the court, however, has to balance the two rights according to the concrete circumstances at stake. In doing so, it has established several principles in its case-law over the time.

Next to interferences with the private life of others, cases concerning the reputation of others are common. In this context, the ECtHR has established the principle of distinction between facts and value judgments. This principle derives from the judgment in the case Lingens v. Austria (CASE OF LINGENS v. AUSTRIA Application no. 9815/82, 1986, pp. 1-20), where it says: 'In the Court's view, a careful distinction needs to be made between facts and value-judgments. The existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof' (CASE OF LINGENS v. AUSTRIA Application no. 9815/82, 1986, p. 15 para 46).

Furthermore, the ECtHR reaffirmed in the case Dickinson v. Turkey (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24), that one must distinguish between private and public persons when deciding whether critical speech amounts to a jeopardization of another individuals' right or reputation. Hereby, it must be noted, that cases including people who are standing in the public eye are handled differently by the ECtHR than others. This is because in cases where public figures are affected, the general public interest prevails, because a discussion could possibly arise through the artistic expression or as a consequence of it and such discussions are the basis of a democratic society. Nevertheless, consequently this is not the case for all matters concerning the public person, therefore publications that refer to the public persons' private live and do not relate to a matter of general importance but to pure curiosity of

the audience, are not included. (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 13-14 para 50, 51)

Therefore, this aspect can be decisive in evaluating if the freedom of artistic expression according to Art. 10 ECHR prevails another right as enshrined in the ECHR or not.

Another aspect of the cases Dickinson v. Turkey (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24) and Patrício Monteiro Telo de Abreu v. Portugal (AFFAIRE PATRÍCIO MONTEIRO TELO DE ABREU c. PORTUGAL Requête no 42713/15, 2022, pp. 1-34) except their political dimension which was explained in the chapters 6.2.5 and 6.2.6 was the respect for private life.

In its judgments thereto, the ECtHR demonstrated, that the benefit of satire to the public debate prevails, as it found a violation of the freedom of expression in each of the cases. A limitation of the freedom of artistic expression was therefore not deemed necessary in a democratic society. (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24, AFFAIRE PATRÍCIO MONTEIRO TELO DE ABREU c. PORTUGAL Requête no 42713/15, 2022, pp. 1-34)

8 The margin of appreciation doctrine

The following explains the Court's practice in resolving conflicts between various provisions found in the Convention. In particular, the margin of appreciation doctrine and the three-part test have become established in this regard. As mentioned in chapter 4, according to Becker, state institutions and the government have a huge influence on the freedom of artistic expression (Becker, 2008, p. 165). This derives especially from the ECtHR's approach of granting a margin of appreciation to the member states (Greer, 2000, p. 5). Indeed, in cases concerning the freedom of artistic expression, the Court leaves a wide margin of appreciation to the member-states (Bakircioglu, 2007, p. 730). This can e.g. be seen in the Handyside case, which was explained in chapter 6.1, where the ECtHR found that:

> 'The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights [...]. The Convention leaves to each Contracting State, in the first place, the task of securing the rights and liberties it enshrines. [...] State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements [...] Nevertheless, Article 10 para. 2 (art. 10-2) does not give the Contracting States an unlimited power of appreciation. The Court, [...], is empowered to give the final ruling on whether a "restriction" or "penalty" is reconcilable with freedom of expression as protected by Article 10 (art. 10). The domestic margin of appreciation thus goes hand in hand with a European supervision. [...]' (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 17-18 para 48, 49).

The margin of appreciation mirrors the principle of subsidiarity. This is also laid down in the preamble of the ECHR, and reads as follows:

> '[...] Affirming that the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in this Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by this Convention, [...]' (COUNCIL OF EUROPE (b), 2021, p. 6).

Thus, the member-states retain the responsibility in safeguarding human rights in their countries whereas the ECtHR solely has a monitoring position and does not replace the member-states' task.

However, there are no particular procedures enshrined in the ECHR by which this goal should be achieved. Therefore, the member-states are open to act in the way they want, as long as they consider their national legal rules, as well as the historical, political and cultural background of their countries and its current economic development. The way in which they safeguard the contents of the ECHR has to be successful. Thus, the ECHR sets up minimum basic principles regarding human rights for the member-states that must be enjoyable by the individuals that are subject to it. (Mendel, n.d., p. 2).

The main cases of application of the margin of appreciation, i.e., the cases in which the ECtHR accords better judgment to national authorities, provided that they have carried out a test of proportionality, are two. One of them is the balancing of rights against each other or against other pressing concerns like e.g. emergency situations, public security or the national economic prosperity. The other one is the before-mentioned embedding of the legal norms into the domestic historical, political and cultural background. (Follesdal, 2018, pp. 10-11)

In all of these cases, the ECtHR appears to use the margin of appreciation as a tool to affect the stringency of the requirements set for the member-states. If the margin is small, the resulting standards or requirements for the member-states are higher, if it is broad, the member-states can deviate more easily from them. (Kratochvíl, 2011, p. 330) The decision on how wide or narrow the margin of appreciation is depends on numerous factors (Follesdal, 2018, pp. 3-6). One of these factors consists in the importance of the right itself (Brems, 1996, 266).

When weighing absolute and qualified rights, the absolute right prevails; e.g. in the case of weighing the right to life according to Art. 2 ECHR with the right to freedom of expression according to Art. 10 ECHR, its importance outweighs that of the right to freedom of expression, as the right to life is an absolute one and the right to freedom of expression a qualified one.

Another factor is the significance of the social interest. Many of them are enshrined in the second paragraphs of the Art. 8-11 ECHR. Some significant social interests, which allow the limitation of the right in the corresponding Article, are mentioned there. (Follesdal, 2018, p. 4)

Thus, looking at Art. 10 ECHR, the margin of appreciation comes into play in cases where the proportionality of limitations on qualified rights, found in Articles 8-11 ECHR, is considered, as well as in other scenarios where rights need to be balanced or interferences justified. (COUNCIL OF EUROPE (b), 2021, p. 12).

Furthermore, the states must prove that they act in good faith in their argumentation during the balancing act. Therefore, the Court will only grant a state a margin of appreciation if it is satisfied that the state authorities have in fact engaged in such balancing and argumentation. (Follesdal, 2018, pp. 4-5)

When weighing up different issues, the margin of appreciation depends on the subject of the conflict (Follesdal, 2018, pp. 4-5).

In cases regarding morals the ECtHR may allow the member-states a wide margin of appreciation, like in the Handyside case (CASE OF HANDYSIDE v. THE UNITED KINGDOM, 1976, pp. 1-34). In cases regarding religion, the granted margin may be wide as well, as the differences upon the member-states vary a lot. (Aladağ Görentaş, 2016, p. 204)

Cases regarding the right to a private life may be subject to a narrow margin of appreciation (Brems, 1996, p. 267). Poltical speech is mainly granted a narrow margin, because of the general public interest in political matters, as seen in Dickinson v. Turkey (AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24). In addition, it depends on the proportionality between the measures used and the goal pursued (Follesdal, 2018, pp. 4-5).

However, another factor is the harmony between the member-states regarding a certain issue. In cases, where a consensus is apparent or it may raise the burden of argumentation besides the member-state, the ECtHR may agree upon a narrow margin of appreciation. This is part of the ECtHR's attempt to incorporate the dynamic development of the ECHR's contents. (Follesdal, 2018, pp. 5-6) Overall, whether the ECtHR allows broad or narrow discretion depends on an interplay of these many factors.

9 Conclusion

In the following, a general conclusion on the ECtHR and its approach to artistic expression is drawn. This thesis had the aim to elaborate answers to the following questions:

(1) To what extent does the ECtHR protect artistic expression and what are the peculiarities with respect to its general approach to freedom of expression?

(2) What are contemporary trends in the ECtHR judgments?

(3) Is there a fair balance between artistic expression and other rights?

(4) Which are the most common instances of state censorship regarding arts under the ECtHR and what are the justifications that were made use of?

In the following, these questions are analyzed one by one and tentative conclusions are given. In addition, final considerations on whether the ECtHR takes artistic freedom sufficiently into account are drawn.

Taking into account the results of the findings in this thesis the questions as introduced in chapter 1.2 can be answered in the following way: **(1) To what extent does the ECtHR protect artistic expression and what are the peculiarities with respect to its general approach to freedom of expression?**

It can be said that in the years considered in more detail, 2007 to 2022, the recognition and consideration of the protection of the freedom of artistic expression has increased. On the one hand, this is due to the fact that newer forms of art, such as murals and performances, are becoming more and more common, and thus play a role more often in cases concerning the freedom of art. This also makes the number of cases including art speech increase. On the other hand, Europe has become more liberal over the years, which has also increased the awareness of the importance of art in the context of human rights in the member-states of the CoE and therefore the will to enforce one's right to freedom of artistic expression.

(2) What are contemporary trends in the ECtHR judgments?

It can be stated that the first cases concerning artistic freedom were considered rather cautiously by the ECtHR, whereas in the more recent cases from 2007 to 2022 interferences with national circumstances can be recognized more readily. The implication here is that in the past the ECtHR aimed to prevent the establishment of precedents that could give rise to future additional disputes, specifically related to cultural differences. This careful approach was adopted to circumvent disputes that could

have arisen from the arguments put forth in the judgments of these prior cases and thus to prevent potential conflicts in future cases. To reiterate as previously mentioned in chapter 6.2.4, it is important to note that the Court generally adheres to the principle of following previous decisions. Nevertheless, the Court does have the flexibility to deviate from these decisions under certain circumstances, provided there is a valid justification. However, typically, the Court maintains a progressive approach by continuously developing its case law while still valuing the relevance of past decisions. Rather than discarding them entirely, the Court adapts and evolves over time to align with the changing dynamics of society.

In relation to the conflict with religious views, it can be said that nowadays more emphasis is placed on the differences regarding fundamental issues in the various member-states and the margin of appreciation given by the ECtHR in this regard is becoming wider. Regarding the conflict between art and morality, it can be stated that it is recognized by the ECtHR that morality is something that is constantly changing, hence even in cases concerning public morals a wide margin of appreciation is becoming the rule. In society, the importance of the debate on artistic freedom has been recognized and there is an awareness of the importance of public debate and the need to criticize, in particular political issues. In such cases, the ECtHR has opted for a lower margin of appreciation in order to meet this public interest. Likewise, there is a lower margin in relation to privacy, which has gained in value and importance, especially in times of ongoing digitalization. Nevertheless, it can also be observed, that the ECtHR limits artistic expression in order to safeguard other, prevailing interests.

(3) Is there a fair balance between artistic expression and other rights?

Upon careful examination, it is evident that the analysis of whether a fair balance exists between artistic expression and other rights reveals a complex and nuanced landscape within legal discourse. Out of the six cases considered, two cases that were manifestly ill founded, two of the six cases were decided unanimously, and the remaining two were each decided by a very split court, by four votes to three. Nevertheless, it must be said that in one of the unanimously decided cases, two concurring opinions were written by three judges, and in the other, a partly concurring and partly dissenting opinion was written. While some cases showcase a semblance of agreement, the presence of concurring opinions and partly dissenting views within the court underscores the ongoing debate and absence of a definitive consensus. It is essential to acknowledge that the

examined cases represent a limited sample, and alternative cases could yield divergent outcomes. The concept of a broad agreement is contingent upon specific contexts and circumstances. Therefore, it becomes imperative to consider additional legal precedents and diverse perspectives to foster a more comprehensive understanding of the pursuit for a fair equilibrium between artistic expression and other rights.

(4) Which are the most common instances of state censorship regarding arts under the ECtHR and what are the justifications that were made use of?

The most common instances of state censorship occur in judgments concerning public morals or religion. Hence, in most cases involving conflicting situations, the preservation of public morals and religion are objectives that, according to the ECtHR, are prioritized over the safeguarding of artistic freedom. This implies that the ECtHR in such cases grants a wider margin of appreciation based on local circumstances to the member states. Conversely, in cases involving the protection of personal rights or public order this decision is more dependent upon the specific context, resulting in a narrow margin of appreciation on the part of the member states.

In closing, final considerations on whether the ECtHR takes artistic freedom sufficiently into account in its judgments are drawn. Unfortunately, it must be said that the ECtHR underestimates the complexity of art. Basically, it does not sufficiently consider the scope of art and its actual contribution to human rights and its awareness. The ECtHR only focuses on the importance of art for the exchange of information, e.g. its value for communication. However, the ECtHR still limits this exchange due to factors such as morality and religion. This shows that the ECtHR has difficulty classifying the complexity of art and is still mainly focused on aesthetic factors. This is also relevant, but not the only factor of art that contributes to democracy.

However, the ECtHR is not the sole responsible within the framework of the ECHR. The ECHR represents a minimum standard. This means, on the one hand, that member-states must ensure this level of protection, but on the other hand, member-states can increase the level of protection on their own initiative.

Besides, they are granted a margin of appreciation in certain matters. This, however, is supervised by the ECtHR, because of its supervisory function and its position as a neutral intermediary between the state and the citizen. Thus, different interests play a role, those of the citizen and those of the state. The ECtHR must find a compromise between these interests.

Such a margin may lead to differences in the level of protection in different countries. Nevertheless, it is indispensable when it comes to considering and uniting the different interests. Therefore, it is in the interest of all if a common goal, that of a human rights violation-free coexistence, is to be achieved.

Finally, we need to bring art, law and decision making together, to safeguard the benefits that artistic freedom has for society. The ECtHR already contributes largely to this aim.

III Bibliography

Cases

CASE OF Dickinson v Turkey, AFFAIRE DICKINSON c. TURQUIE Requête no 25200/11, 2021, pp. 1-24.

CASE OF Ehrmann and SCI VHI v. France CINQUIÈME SECTION DÉCISION SUR LA RECEVABILITÉ de la requête no 2777/10 présentée par Thierry EHRMANN et SCI VHI contre la France, 2011, pp. 1-17.

CASE OF FRESSOZ AND ROIRE v. FRANCE (Application no. 29183/95), 1999, pp. 1-26.

CASE OF German Communist Party (KPD) v. Germany, Commission decision, COMMISSION EUROPÉENNE DES DROITS DE L'HOMME EUROPEAN COMMISSION OF HUMAN RIGHTS DECISION BY THE COMMISSION ON THE ADMISSIBILITY of Application Nr. 250/57 lodged by the German Communist Party, 1956, pp. 1-5, https://hudoc.echr.coe.int/eng?i=001-110191.

CASE OF Glimmerveen and Hagenbeek v. the Netherlands, Commission decision, APPLICATIONS/REQUETES N° 8348/78 & 8406/78 (joined/jointes) J . GLIMMERVEEN and J. HAGENBEEK v/the NETHERLANDS / J . GLIMMERVEEN et J . HAGENBEEK c/PAYS-BAS DECISION of 11 October 1979 on the admissibility of the applications / DÉCISION du 11 octobre 1979 sur la recevabilité des requêtes, 1979, pp. 1-22, https://hudoc.echr.coe.int/eng?i=001-74187.

CASE OF HANDYSIDE v. THE UNITED KINGDOM, Application no. 5493/72, 1976, pp. 1-34.

CASE OF KARÁCSONY AND OTHERS v. HUNGARY (Applications nos. 42461/13 and 44357/13), 2016, pp. 1-61.

CASE OF Karttunen v Finland, FOURTH SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 1685/10 by Ulla Annikki KARTTUNEN against Finland, 2011, pp. 1-7.

CASE OF LEROY V. FRANCE, AFFAIRE LEROY c. FRANCE Requête no 36109/03, 2008, pp. 1-20.

CASE OF LINGENS v. AUSTRIA Application no. 9815/82, 1986, pp. 1-20.

CASE OF M'Bala M'Bala v. France (dec.), CINQUIÈME SECTION DÉCISION Requête no 25239/13 Dieudonné M'BALA M'BALA contre la France, 2015, pp. 1-20.

CASE OF MÜLLER AND OTHERS v. SWITZERLAND, Application no. 10737/84, 1988, pp. 1-29.

CASE OF OTTO-PREMINGER-INSTITUT v. AUSTRIA, Application no. 13470/87, 1994, pp. 1-22.

CASE OF Patrício Monteiro Telo De Abreu v. Portugal, AFFAIRE PATRÍCIO MONTEIRO TELO DE ABREU c. PORTUGAL, Requête no 42713/15, 2022, pp. 1-34.

CASE OF SINKOVA v. UKRAINE, Application no. 39496/11, 2018, pp. 1-28.

CASE OF STERN TAULATS ET ROURA CAPELLERA v. SPAIN, AFFAIRE STERN TAULATS ET ROURA CAPELLERA c. ESPAGNE Requêtes nos 51168/15 et 51186/15, 2018, pp. 1-16.

CASE OF THE SUNDAY TIMES v. THE UNITED KINGDOM, (Application no. 6538/74), 1979, pp. 1-62.

CASE OF VEREINIGUNG BILDENDER KÜNSTLER v. AUSTRIA, 2007, pp. 1-22.

CASE OF WIKIMEDIA FOUNDATION, INC. v Turkey, DEUXIÈME SECTION DÉCISION Requête no 25479/19 WIKIMEDIA FOUNDATION, INC. contre la Turquie, 2022, pp. 1-16.

CASE OF WINGROVE v. THE UNITED KINGDOM, (Application no. 17419/90), 1996, pp. 1-28.

Council of Europe/European Court of Human Rights (2008, July) Information Note on the Court's case-law No. 110 Yılmaz et Kılıç v. Turkey - 68514/01 Judgment 17.7.2008 [Section III], pp. 1-2.

Council of Europe/European Court of Human Rights (b) (2008, October) Information Note on the Court's case-law No. 112 Leroy v. France - 36109/03 (pp. 1-3).

Council of Europe/European Court of Human Rights (2010, February) *Information Note on the Court's case-law No. 127 Akdaş v. Turkey - 41056/04* (pp. 1-2).

Council of Europe/European Court of Human Rights (2011, June) *Information Note on the Court's case-law No. 142 Ehrmann and SCI VHI v. France (dec.) - 2777/10* (pp. 1-2).

Council of Europe/European Court of Human Rights (2015, November) *Information Note on the Court's case-law 190 M'Bala M'Bala v. France (dec.) - 25239/13* (pp. 1-3).

Council of Europe/European Court of Human Rights (2018, March) *Information Note on the Court's case-law 216 Stern Taulats and Roura Capellera v. Spain - 51168/15 and 51186/15* (pp. 1-2).

Council of Europe/European Court of Human Rights (2022, June) *Information Note on the Court's case-law 263 Patrício Monteiro Telo de Abreu v. Portugal - 42713/15* (pp. 1-3).

FIRST SECTION DECISION AS TO THE ADMISSIBILITY OF Application no. 68354/01 by VEREINIGUNG BILDENDER KÜNSTLER against Austria, 2005, (pp. 1-10). Retrieved March 17, 2023, from https://hudoc.echr.coe.int/fre?i=001-69805.

FIRST SECTION PARTIAL DECISION AS TO THE ADMISSIBILITY OF Application no. 32207/96 by Selahattin AYDAR against Turkey, 1999, pp. 1-4.

Academic Literature

Aladağ Görentaş, I. (2016). The Effects of Margin of Appreciation Doctrine on the European Court of Human Rights: Upholding Public Morality over Fundamental Rights. Akademik İncelemeler Dergisi, 11(2). https://doi.org/10.17550/aid.43200.

Andel, J., De Francesco, G., Krasznahorkai, K., Wyatt, S. & Kharatishvili, L. (2020). *Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era* (pp. 1-4). Council of Europe. https://rm.coe.int/manifesto-on-the-freedom-of-expression-of-arts-and-culture-in-the-digi/1680a056a2.

Ash, T. C. (2016). *Free Speech: Ten Principles for a Connected World*. Yale University Press.

Bakircioglu, O. (2007). The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases. German Law Journal, 8(7), 711–733. https://doi.org/10.1017/S2071832200005885.

Becker, H. S. (2008). Art Worlds. University of California Press. Chapter 6: Art and the State, p. 165).

Brems, E. (1996). *The Margin of Appreciation Doctrine in the Case-Law of the European Court of Human Rights*. Heidelberg Journal of International Law 56: (pp. 240-314).

Bychawska-Siniarska, D. (2017). *PROTECTING THE RIGHT TO FREEDOM OF EXPRESSION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (pp. 1-126). Council of Europe. https://rm.coe.int/handbook-freedom-of-expression-eng/1680732814.

Carey, L. (2006). *Expressive and creative arts methods for trauma survivors* (1st ed., pp. 1-224). Jessica Kingsley Publishers.

Casarosa, F. (2021). *Freedom of expression and countering hate speech: Handbook on techniques of judicial interaction in the application of the EU charter*. European University Institute.

Chipp, H. B., Selz, P. H., & Taylor, J. C. (1996). Theories of modern art: A source book by artists and critics (26 [print.]). (pp. 1-688). Univ. of California Press.

Clarke, A. (2020). *EUROPEAN PRISON ARTS* (pp. 1-41). European Prison Education Association. https://www.epea.org/wp-content/uploads/Research-Into-The-Impact-Of-Arts-In-European-Prisons-by-Dr-Alan-Clarke.pdf.

COUNCIL OF EUROPE (b) (2021, August 1). *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11, 14 and 15* (pp. 1-63). https://www.echr.coe.int/documents/convention_eng.pdf.

COUNCIL OF EUROPE (c) (2017, September). *FREEDOM OF EXPRESSION AND RESPECT FOR RELIGIOUS BELIEFS: STRIKING THE RIGHT BALANCE* (pp. 1-12). https://rm.coe.int/factsheet-on-freedom-of-expression-and-freedom-of-religion-15september/1680748443.

Council of Europe/European Court of Human Rights (2020, March 31). *Guide on Article 10 of the European Convention on Human Rights Freedom of expression* (1st ed., pp. 1-128). Council of Europe/European Court of Human Rights. https://rm.coe.int/guide-art-10-eng/16809ff23f.

Council of Europe/European Court of Human Rights (2022, August 31). *Guide on Article 17 of the European Convention on Human Rights Prohibition of abuse of rights*. Council of Europe/European Court of Human Rights. Retrieved April 24, 2023, from https://www.echr.coe.int/Documents/Guide_Art_17_ENG.pdf.

Council of Europe/European Court of Human Rights (b) (2015). *The admissibility of an application* (pp. 1-6). Council of Europe/European Court of Human Rights. https://www.echr.coe.int/Documents/COURtalks_Inad_Talk_ENG.PDF.

Djajić, S., & Lazić, D. (2021). Artistic expression: Freedom or curse?: Some thoughts on jurisprudence of the european court of human rights from the theoretical perspective of visual and performance arts and rationales behind freedom of political expression. *The Age of Human Rights Journal*, *17*, 97–124. https://doi.org/10.17561/tahrj.v17.6269.

Europe's Human Rights Watchdog (2014, March 1). *The judgments of the Court* (p. 1). Europe's Human Rights Watchdog.https://www.europewatchdog.info/en/court/supervision-execution-judgments/#.

European Court of Human Rights (2011, July) *FIFTH SECTION DECISION ON ADMISSIBILITY (Extracts - Translation) Application no. 2777/10 Thierry EHRMANN and SCI VHI against France* (pp. 1-13) Retrieved March 28, 2023, from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114684%22]}.

European Court of Human Rights (2021, February 2). *Press Release:* Judgments of 2 February 2021 (pp. 1-2). European Court of Human Rights.

European Court of Human Rights (February 27, 2018) *Student's conviction for frying eggs on a war memorial did not breach her freedom of expression, but her detention pending trial was unlawful* (pp. 1-4).

European Court of Human Rights. (2022). Ruling on an application by the Wikimedia Foundation concerning a blocking order against its website, the Turkish Constitutional Court acknowledged the violation of Article 10 of the Convention and afforded appropriate redress, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7293454-9940966&filename=Decision%20Wikimedia%20Foundation, (pp. 1-4).

European Court of Human Rights/Council of Europe (a). (n.d.). *European Court of Human Rights The ECHR in 50 Questions (pp. 1-9).* European Court of Human Rights/Council of Europe. https://www.echr.coe.int/documents/50questions_eng.pdf.

European Court of Human Rights/Council of Europe. (n.d.). *European Court of Human Rights Questions & Answers* (pp. 1-9). European Court of Human Rights/Council of Europe. https://www.echr.coe.int/Documents/Questions_Answers_ENG.pdf.

European Union Agency for Fundamental Rights. (2017, May 19-20). EXPLORING THE CONNECTIONS BETWEEN ARTS AND HUMAN RIGHTS (pp. 1-20). Report of high-level expert meeting. Retrieved March 17, 2023, from https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017_arts-and-human-rights-report_may-2017_vienna.pdf.

Follesdal, A. (2018). Appreciating the Margin of Appreciation (Vol. 1). Oxford University Press. https://doi.org/10.1093/oso/9780198713258.003.0017.

Freemuse (2020). *SECURITY, CREATIVITY, TOLERANCE AND THEIR CO-EXISTENCE: THE NEW EUROPEAN AGENDA ON FREEDOM OF ARTISTIC EXPRESSION* (pp. 1-65). Freemuse. https://www.live-dma.eu/wp-content/uploads/2020/01/SECURITY-CREATIVITY-TOLERANCE-AND-THEIR-CO-EXISTENCE.pdf.

Grabenwarter, C. (2014). *European Convention on Human Rights: Commentary*. C.H. Beck ; Hart ; Nomos ; Helbing Lichtenhahn.

Greer, S. (1997). *Human rights files No. 15 The exceptions to Articles 8 to 11 of the European Convention on Human Rights* (pp. 1-67). Council of Europe Publishing. https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-15(1997).pdf.

Greer, S. (2000) *Human rights files No. 17 THE MARGIN OF APPRECIATION: INTERPRETATION AND DISCRETION UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS* (pp. 1-60). Council of Europe Publishing. https://www.echr.coe.int/librarydocs/dg2/hrfiles/dg2-en-hrfiles-17(2000).pdf.

Hirche, T. F. (2001). Art. 10 EMRK - Im Spannungsfeld zwischen Meinungsfreiheit und Ehrenschutz, München, GRIN Verlag, https://www.grin.com/document/99400.

Kearns, P. (2013). *Freedom of artistic expression: Essays on culture and legal censure*. Hart Publishing.

Klatt M., Meister M., *Proportionality—a benefit to human rights? Remarks on the I·CON controversy*, International Journal of Constitutional Law, Volume 10, Issue 3, July 2012, pp. 687–708, https://doi.org/10.1093/icon/mos019.

Kratochvíl, J. (2011). *The Inflation of the Margin of Appreciation by the European Court of Human Rights*. Netherlands Quarterly of Human Rights, 29(3), 324–357.

Letsas, G. (June 1, 2009). Is there a right not to be offended in one's religious beliefs?, 1-22, http://dx.doi.org/10.2139/ssrn.1500291.

Mendel, T. (n.d.). *A Guide to the Interpretation and Meaning of Article 10 of the European Convention on Human Rights*. pp. 1-91.

Munivrana-Vajda, M. (2019). *The right to mock, ridicule and criticize religion exploring the limits of free speech in democratic and just society*. Gonzaga Journal of International Law, 23(2), 273-290.

Nieuwenhuis, A. J. (2012). *The protection of artistic expression under article 10 of the European Convention on Human Rights*. KUR. Kunstrecht und Urheberrecht, 14(3/4), 110-115. http://kurjournal.de/index.php?action=ausgaben&ausgaben_id=58&issueName=3/4&teaser_id=218&d ateExtension=12.

O'Gorman, P. (1966, March). The Meaning of Art (pp. 41-45). Caribbean Quarterly. Retrieved March 17, 2023, from https://www.jstor.org/stable/40652954.

Polymenopoulou, E. (2016). Does One Swallow Make a Spring? Artistic and Literary Freedom at the European Court of Human Rights: Human Rights Law Review, 16(3), 511–539. https://doi.org/10.1093/hrlr/ngw011.

Radačić, I. (2010). *THE MARGIN OF APPRECIATION, CONSENSUS, MORALITY AND THE RIGHTS OF THE VULNERABLE GROUPS* (27th ed., pp. 599-616). Zb. Prav. fak. Rij. https://rm.coe.int/factsheet-on-freedom-of-expression-and-freedom-of-religion-15september/1680748443.

Rosenberg, M. (2012). *Drawing outside the Lines: The European Court of Human Rights' Interpretive Limitation of the Freedom of Artistic Expression and the Role of Religion*. Sw. J. Int'l L., 19, 207.

Stecker, R. (1994). Art Interpretation. *The Journal of Aesthetics and Art Criticism*, *Vol. 52* (No. 2), (pp. 193-206). Retrieved March 24, 2023 from https://doi.org/10.2307/431166.

Tsakyrakis, S. (2008). Proportionality: An assault on human rights? International Journal of Constitutional Law, 7(3), 468–493. https://doi.org/10.1093/icon/mop011.

UNESCO (1980). Pablo Picasso Guernica 1937 (pp. 1-52) Retrieved March 17, 2023, from *https://unesdoc.unesco.org/ark:/48223/pf0000043022?posInSet=3&queryId=290ab2dc-e4e1-41d1-99be-ca863f58cbce.*

UNESCO (2022). *Re|shaping policies for creativity: Addressing culture as a global public good* (pp. 1-328). UNESCO. https://unesdoc.unesco.org/ark:/48223/pf0000380474.

United Nations (1948). Universal Declaration of Human Rights (pp. 1-8). United Nations General Assembly. https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf.

Vélez-Vélez, R., & Villarrubia-Mendoza, J. (2019). Interpreting mobilization dynamics through art: A look at the DREAMers Movement. Current Sociology, 67(1), 100–121. https://doi.org/10.1177/0011392118807517.

Voorhoof, D. (2018). *European Court of Human Rights: Stern Taulats and Roura Capellera v. Spain* (pp. 1-2). Human Rights Centre, Ghent University and Legal Human Academy.

Voorhoof, D. (2021). *European Court of Human Rights: Dickinson v. Turkey* (pp. 1-3). Human Rights Centre, Ghent University and Legal Human Academy.

Voorhoof, D. (2022). European Court of Human Rights: Patrício Monteiro Telo de Abreu v. Portugal (pp. 1-5). Human Rights Centre, Ghent University and Legal Human Academy.

Whyatt, S. (2023, March). *FREE TO CREATE: ARTISTIC FREEDOM IN EUROPE Council of Europe report on the freedom of artistic expression Provisional Version* (pp. 1-53). Council of Europe. https://rm.coe.int/free-to-create-council-of-europe-report-on-the-freedom-of-artistic-exp/1680aa2dc0.

Woods, L. (2006). Freedom of Expression in the European Union. European Public Law, 12(Issue 3), (pp. 371–401). https://doi.org/10.54648/EURO2006026.

Wojtyczek, K. (2022). Precedent in the system of the European Convention on Human Rights. In M. Florczak-Wątor, Constitutional Law and Precedent (1st ed., pp. 233–250). Routledge. https://doi.org/10.4324/9781003264262-15.

Young-Hyun, S., & Hye-Kyoung, L. (2015). The Interrelationship of the Arts and Human Rights. Indian Journal of Science and Technology, 8(26). https://doi.org/10.17485/ijst/2015/v8i26/80469.

Internet Sources

Agence France-Presse (2021, February 2). Europe Court Faults Turkey Over British Artist's Conviction. Courthouse News Service. Retrieved July 13, 2023, from https://www.courthousenews.com/europe-court-faults-turkey-over-british-artists-conviction/.

Anadolu Agency (2022, February 3). *Italian street artist TVBoy visits Ukraine, paints anti-war graffiti on the walls in Kyiv region*. Retrieved July 13, 2023, from https://www.aa.com.tr/en/pg/photo-gallery/italian-street-artist-tvboy-visits-ukraine-paints-anti-war-graffiti-on-the-walls-in-kyiv-region/0.

Apelblat, M. (2020, January 25). *Artistic freedom in Europe under threat*. The Brussels Times. Retrieved July 13, 2023, from https://www.brusselstimes.com/91818/artistic-freedom-in-europe-under-threat.

Balzaretti, S. (2022, September 14). *POLITICAL SATIRE AND SEXIST STEREOTYPES: A CRITICAL INSIGHT ON THE CASE OF PATRÍCIO MONTEIRO TELO DE ABREU V. PORTUGAL*. Retrieved July 13, 2023, from https://strasbourgobservers.com/2022/09/14/political-satire-and-sexist-stereotypes-a-critical-insight-on-the-case-of-patricio-monteiro-telo-de-abreu-v-portugal/.

Columbia University (a) (n.d.). *Dickinson v. Turkey*. Global Freedom of Expression. Retrieved July 13, 2023, from https://globalfreedomofexpression.columbia.edu/cases/dickinson-v-turkey/.

Columbia University (n.d.). *Handyside v. United Kingdom*. Global Freedom of Expression. Retrieved July 13, 2023, from https://globalfreedomofexpression.columbia.edu/cases/handyside-v-uk/.

Council of Europe (n.d.). *Participation of Non-member States*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/conventions/participation-of-non-member-states.

COUNCIL OF EUROPE (a) (2020, November 13). *Newsroom Manifesto on Freedom of Expression of Arts and Culture in Digital Era*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/portal/-/manifesto-on-freedom-of-expression-of-arts-and-culture-in-digital-era.

Council of Europe (d) (2023). *The Council of Europe in brief Who we are*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/about-us/who-we-are.

Council of Europe (e) (2023). *The Council of Europe in brief What we do Values*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/about-us/values.

Council of Europe (f) (2023). *Secretary General*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/secretary-general/home.

Council of Europe (g) (2023). *The Council of Europe in brief What We do Structure*. Retrieved July 13, 2023, from https://www.coe.int/en/web/about-us/structure.

Council of Europe (h) (2023). *The European Convention on Human Rights*. Retrieved July 13, 2023, from https://www.coe.int/en/web/human-rights-convention.

Council of Europe (i) (2023). *Impact of the European Convention on Human Rights*. Retrieved July 13, 2023, from https://www.coe.int/en/web/impact-convention-human-rights#/.

Council of Europe (j) (2023). The European Convention on Human Rights - how does it work?. Retrieved July 13, 2023, from https://www.coe.int/en/web/impact-convention-human-rights/how-it-works.

Duggan, T. J. (2022, December 15). *The Power of Human Rights in Art and Why You Should Care*. The Rolling Stone. Retrieved July 13, 2023, from https://www.rollingstone.com/culture-council/articles/power-of-human-rights-in-art-and-why-you-should-care-1234647144/amp/.

Ellsworth-Jones, W. (2013, February). *The Story Behind Banksy*. Smithsonian Magazine. Retrieved July 13, 2023, from https://www.smithsonianmag.com/arts-culture/the-story-behind-banksy-4310304/.

European Commission (n.d.). *EMN Asylum and Migration Glossary fundamental rights*. Migration and Home Affairs. Retrieved July 13, 2023, from https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/fundamental-rights_en.

European Union (n.d.). *European Convention on Human Rights (ECHR)*. EUR-Lex Access to European Union Law. Retrieved July 13, 2023, from https://eur-lex.europa.eu/EN/legal-content/glossary/european-convention-on-human-rights-echr.html.

Gert, B., & Gert, J. (2020, September 8). *The Definition of Morality*. Stanford Encyclopedia of Philosophy. Retrieved July 13, 2023, from https://plato.stanford.edu/entries/morality-definition/.

Janofsky, M. (2006, June 26). *Smithsonian Museums Reopen, Telling America's Story Through Ideas and Ideals*. The New York Times. Retrieved July 13, 2023, from https://www.nytimes.com/2006/06/27/arts/design/27smit.html.

Krinninger, T. (2015, October 18). *Helping Syrian children cope with trauma*. Deutsche Welle. Retrieved July 13, 2023, from https://www.dw.com/en/using-art-to-help-syrian-refugee-children-cope-with-trauma/a-18784348.

Lakin, M. (2021, May 25). *A Coming-Out Party for KAWS at the Brooklyn Museum*. The New York Times. Retrieved July 13, 2023, from https://www.nytimes.com/2021/02/24/arts/design/kaws-brooklyn-museum-review.html.

Ó Fathaigh, R., & Voorhoof, D. (2021, March 19). *YES, PRIME MINISTER (BIS): PROSECUTION FOR SATIRICAL COLLAGE CRITICISING TURKISH PRIME MINISTER'S FOREIGN POLICY VIOLATED ARTIST'S FREEDOM OF EXPRESSION*. Strasbourg Observers. Retrieved July 13, 2023, from https://strasbourgobservers.com/2021/03/19/yes-prime-minister-bis-prosecution-for-satirical-collage-criticising-turkish-prime-ministers-foreign-policy-violated-artists-freedom-of-expression/#more-5223.

Outlook Publishing India Pvt. Ltd (2023, January 31). *In Pictures: Artwork By Famous Artist TvBoy In War Ravaged Ukraine*. Outlook Publishing India Pvt. Ltd. Retrieved July 13, 2023, from https://www.outlookindia.com/international/in-pictures-artwork-by-famous-artist-tvboy-in-war-ravaged-ukraine-photos-258196?photo-6.

SECRETARY GENERAL (2023, February 15). *Free to Create: Report on Artistic Freedom in Europe*. Council of Europe. Retrieved July 13, 2023, from https://www.coe.int/en/web/portal/-/free-to-create-report-on-artistic-freedom-in-europe?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news.

SIR Agenzia d'informazione (2023, February 16). *ARTISTIC FREEDOM IN EUROPE Council of Europe: "Free to Create" Report, freedom of artistic expression threatened. Need for rules, protection, resources*. AgenSIR. SIR - Servizio Informazione Religiosa. Retrieved July 13, 2023, from https://www.agensir.it/quotidiano/2023/2/16/council-of-europe-free-to-create-report-freedom-of-artistic-expression-threatened-need-for-rules-protection-resources/.

Superlative Creative (2021). *Les Misérables, January 2016*. Banksy Explained. Retrieved July 13, 2023, from https://banksyexplained.com/les-miserables-2016/.

Swedish Presidency of the Council of the European Union (a) (n.d.). *Free to Create – European Union Conference on Artistic Freedom and Cultural and Creative Industries*. Sweden2023.eu. Retrieved July 13, 2023, from https://swedish-presidency.consilium.europa.eu/en/events/free-to-create-european-union-conference-on-artistic-freedom-and-cultural-and-creative-industries-16-172/.

Swedish Presidency of the Council of the European Union (b) (n.d.). The Swedish Presidency programme. Sweden2023.eu. Retrieved July 13, 2023, from https://swedish-presidency.consilium.europa.eu/en/programme/programme-of-the-presidency/.

The Solomon R. Guggenheim Foundation (n.d.). *Pablo Picasso*. Peggy Guggenheim Collection. Retrieved July 13, 2023, from https://www.guggenheim-venice.it/en/art/artists/pablo-picasso/?gclid=EAIaIQobChMI3ffhtcr0_QIV2weLCh3jtQ08EAAYASAAEgK1jfD_BwE.

Thierry Ehrmann (2010). *Folgen Abode of Chaos from above - La Demeure du Chaos vue du ciel P1050021*. Flickr. Retrieved July 13, 2023, from https://www.flickr.com/photos/home_of_chaos/4830744147/in/set-72157624460145909/.

TvBoy© S.L.U (2022). *UKRAINE STREET ART PROJECT*. Tvboy. Retrieved July 13, 2023, from https://www.tvboy.it/.

United Nations (n.d.). *Universal Declaration of Human Rights*. Retrieved July 13, 2023, from https://www.un.org/en/about-us/universal-declaration-of-human-rights.

United Nations High Commissioner for Refugees (2023). *Council of Europe: European Commission on Human Rights*. United Nations High Commissioner for Refugees. Retrieved July 13, 2023, from https://www.refworld.org/publisher/COECOMMHR.html.

Venice Commission (2014). *Rule of Law*. Council of Europe/Venice Commission. Retrieved July 13, 2023, from https://www.venice.coe.int/WebForms/pages/?p=02_Rule_of_law&lang=EN.

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