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The logo for Arts Rights Justice, featuring the text "Arts Rights Justice" in white on a dark orange background.

CIVIL SOCIETY SUBMISSION to the UN Committee on Economic, Social and Cultural Rights (CESCR) – 6th State Report of Germany

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<https://cultureactioneurope.org/projects/arj-arts-rights-justice/>

Introduction

The Arts Rights Justice EU Working Group is an independent cross-sector working group (arts and human rights) set up in 2012 under the framework of the civil society dialogue platform, “Access to Culture” at the European Union. ARJ members are representing around 30 European Union and international associations, NGOs and networks from arts, free speech and human rights sectors. Since 2014, ARJ is working under the framework of Culture Action Europe, the Brussels based major European network of cultural organisations, artists, activists, academics & policy-makers.

ARJ advocates for artistic freedom and human rights. It provides input and submits cases to the UN Special Rapporteur in the field of cultural rights. In 2016 it launched a public toolkit on promoting and protecting freedom of artistic expression for use by arts and culture practitioners. It also organises hearings at the European parliament and participates in expert and legal debates to promote and protect artistic freedom.

In her report to the Human Rights Council of 14 March 2013 (A/HRC/23/34), the Special Rapporteur in the field of cultural rights recommended that national human rights institutions and non-governmental organizations:

- (a) Document more systematically violations of the right to freedom of artistic expression and creativity;
- (b) Submit their findings to relevant national and international bodies, in particular the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.

Following this recommendation we are hereby submitting information on article 15 of the International Covenant.

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Article 15 : Right to participate in cultural life and enjoy the benefits of scientific progress, and the right of authors to benefit from the protection of their interests

Legal background

The right to the freedom indispensable for artistic expression and creativity is protected under articles 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and 19 of the International Covenant on Civil and Political Rights (ICCPR).

Implicit provisions encompass those guaranteeing the right to freedom of expression or the right to take part in cultural life without specific reference to arts or creative activities. Relevant provisions include article 19 of the Universal Declaration on Human Rights, article 10 of the European Convention for the Safeguard of Human Rights and Fundamental Freedoms, articles 9 and 17 of the African Charter on Human and Peoples' Rights, and article 32 of the Arab Charter for Human Rights. In General Comment 21, the CESCR has stressed that the right to take part in cultural life entails rights of participation in, access to, and contribution to cultural life, and encompasses the right of everyone "to seek and develop cultural knowledge and expressions and to share them with others, as well as to act creatively and take part in creative activity ».

In Germany, Artistic freedom is expressly protected as a fundamental right by the Constitution (Basic Law) Article 5 para. 3 sentence 1 of the Basic Law that says: "Arts and sciences, research and teaching shall be free." Artistic freedom is also included in the constitutions of many of the Federal Länder. In its response to the 2012 questionnaire sent by the Special Rapporteur in the field of cultural rights Germany provided the example of Lower Saxony's State Constitution that states in its Article 6 "The Land, municipalities and rural districts shall protect and promote the arts, culture and sport. »

The information related to cultural education and the remit and role of cultural policy is contained in Annex 26. It affirms that « The overarching goal of cultural policy in Germany is to guarantee artistic freedom and ensure universal access to art and culture ». Efforts for education and for protecting and promoting the cultures of the national minorities living in Germany. Länder-initiated and funded projects also encourage people with immigrant backgrounds to take greater part in cultural life. (p. 77 to 79 of the annexes to the Sixth periodic report submitted by the Federal Republic of Germany under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights 2016 Reporting period: 2008 to the end of 2015 (mid-2016 in some cases)).

The Federal Republic of Germany thus possesses a good legal framework for the protection of artistic freedom. The implementation of the basic law is effective with a separation of powers into legislature, executive, and judiciary, as the *trias politica* model. It also had developed policy in this field through the support by the Foreign Ministry of Foreign Affairs of initiatives such as the Arts Rights Justice Programme at the University of Hildesheim and the Martin Roth-Initiative by Institute für Auslandsbeziehungen and Goethe-Institut.

Threats to artistic freedom

Recent cases collected by organizations monitoring artistic freedom show that threats to artistic freedom and censorship have mainly come from third parties, either commercial groups or

political groups. ARJ has also been informed that as in other countries, the confrontation between pro Boycott, Divestment and Sanctions Movement (BDS) and anti BDS is creating tensions within the artistic community and putting pressure on artists, curators, festival makers. (Example, Germany: Broadcasters refuse to promote musician's concerts, 18 December 2017, Source Freemuse). The German parliament created an anti-Semitism Commissioner post in January 2018 considering it holds « special responsibility » to fight anti-Semitism due to the Holocaust.

Recent cases

* On 7 February 2017 artist's Manaf Halbouni's 'Monument', a peace memorial inspired by the Syrian war gathered protestors from the AfD (Alternative for Germany) nationalist party and PEGIDA movement in Dresden. Dresden Mayor Dirk Hilbert had been placed under police protection due to receiving death threats after approving the piece of public art.

(Source : Freemuse / Germany: Right-wing groups protest installation in Dresden; threaten mayor, 3 April 2017)

* On 15 May 2018, the Hamburg Higher Court ruled to dismiss Turkish President Recep Tayyip Erdoğan's appeal to ban German comedian Jan Böhmermann's poem due to claims of insult and mockery. The court did uphold a ban regarding specific passages within the poem but it ruled that the poem could not be completely banned due to Germany's laws protecting free speech.

The Turkish president filed a case against the German-based comedian on the basis of Section 103 of the Criminal Code Act (Criminal Code Art. 103) which covers insulting a foreign head of state, or a member of a foreign government in Germany in official capacity, or the accredited head of a foreign diplomatic mission in Germany. The penalty is up to three years in prison or a fine. In the case of slander, the penalty is increased to three months to five years in prison.

(Source Freemuse, Germany: Court dismisses Turkish president's appeal to ban poem 21 June 2018)

The case of Jan Böhmermann shows that the procedures for protecting artist worked effectively : protection of the artist by police against existing and potential threats, clarification the case on the basis of existing law, sentence of the artist only after all legal procedures have ended.

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Recent threats to artistic freedom, especially in relation to the right-wing nationalist political uprisings in many European countries have prompted two German parliamentarians to initiate a petition called «Brussels declaration for the freedom of the arts» in July 2018 where they alert that «the right to free expression and the diversity and the liberty of the arts are threatened in Europe». They refer mainly to Austria, Hungary and Poland «But in Germany, too, right-wing nationalists are speaking of their desire to “clean up the cultural sector” and eliminate public funding for “leftist and liberal diversity ideology”.

Recommendations

The Arts Rights Justice Working Group reiterates the recommendation included in the 2013 UN Report that :

- States should abide by their obligation to protect artists and all persons participating in artistic activities or dissemination of artistic expressions and creations from violence by third parties. States should de-escalate tensions when these arise, maintain the rule of law and protect artistic freedoms. The police should not charge artists and cultural institutions for the costs of their protection; (A/HRC/23/34, recommendation e)

It further recommends that :

- Due to the increasing pressure on artists and cultural actors in the context of the Boycott, Divestment, Sanctions (BDS) movement measures, the State should facilitate dialogue between those concerned and create and/or support public forums for discussion and exchange.

It also strongly encourages the State to establish or support a mechanism for the systematic documentation of violations of the right to freedom of artistic expression and creativity. This mechanism would serve as a monitoring tool for the cases that arise in the next reporting period.