

Artistic freedom of expression

This is a summary of parts of the Finnish-language guide [Taiteen sananvapaus](#) (January 2023).

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1 ARTISTIC FREEDOM OF EXPRESSION AND FREEDOM OF THE ARTS

Artistic freedom of expression is part of the right to freedom of expression, protected by the constitution of Finland (12 §).

The right to freedom of expression includes the right to receive information, opinions and communications from others, including in the form of art.

The constitution also guarantees freedom of the arts (16 §), which is closely connected to artistic freedom of expression, but is a different type of right.

The comprehensive [Freedom of the arts as a fundamental right under the Finnish constitution](#) by Pauli Rautianen has an abstract in English on p. 76.

2 FREEDOM OF EXPRESSION ONLINE

Artistic freedom of expression is one area of freedom of expression. Others include press freedom, academic freedom of expression and freedom of expression online.

The growing importance of the internet and social media have created new opportunities, but also new challenges for artistic freedom of expression. For example, in 2020 Instagram did not accept images from an exhibition by [artist AdeY](#) at the Finnish Museum of Photography, because they contained nudity.

Multinational businesses and platforms, such as Meta, Alphabet (Google's owner) and TikTok (owned by ByteDance) often define the limits of freedom of expression online through their policies and decisions.

3 THE RIGHT TO FREEDOM OF EXPRESSION

3.1 Restricting freedom of expression

Freedom of expression is not an unlimited right.

Various laws, regulations and decisions can limit the right to freedom of expression, for example the Criminal Code's provisions relating to agitation against a population group.

Example: the Baltic Circle Festival and a nude 83-year old in central Helsinki

As part of the festival, organised by Q-teatteri in 2014, the intention was to exhibit work by artist Dries Verhoeven, which included a nude 83-year old woman sitting in a glass box in central Helsinki.

Relying on the Assembly Act, the police refused to allow this, unless the woman wore underwear. The performance went ahead with the woman dressed in underwear, in other words, not as planned.

Q-teatteri challenged this and in 2017 the Supreme Administrative Court [overturned](#) the decision, as not being an acceptable restriction of the right to freedom of expression.

3.2 International agreements

International agreements relevant to artistic freedom of expression include:

- [The International Covenant on Civil and Political Rights](#)
- [The International Covenant on Economic, Social and Cultural Rights](#)
- [The Convention on the Rights of the Child](#)
- [The Convention on the Rights of Persons with Disabilities](#)
- [The 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions](#)
- [The UNESCO 1980 recommendation concerning the status of the artist](#)

3.3 The European Convention on Human Rights and the European Court of Human Rights

The [convention](#) protects everyone's right to freedom of expression, including artistic freedom of expression (article 10).

In certain circumstances it is possible to apply to the [court](#) if a state has not complied with its obligations under the convention.

The Handyside case

The case of [Handyside v. the United Kingdom](#) from 1976 has been very important in defining the limits of the right to freedom of expression.

In the case the court found that freedom of expression applies not only to information or ideas that are favourably received or regarded as inoffensive or a matter of indifference, but also "... to those that offend, shock or disturb ...".

This does not mean that information or expressions that offend, shock or disturb are always protected.

The convention allows limitations of freedom of expression, on certain conditions. Limitations need to be based on law, relate to an aim mentioned in article 10 (for example protecting the rights of others) and the limitation must be necessary in a democratic society.

Cases involving artistic freedom of expression

- Large paintings of sex: [Müller and others v. Switzerland 1988](#)
- A satirical tragedy and religion: [Otto-Preminger-Institut v. Austria 1994](#)
- The nun and ecstasy: [Wingrove v. the United Kingdom 1996](#)
- Poetry or separatist propaganda: [Karataş v. Turkey 1999](#)
- A novel based on real events: [Alinak v. Turkey 2005](#)
- A collage of sex and a politician: [Vereinigung Bildender Künstler v. Austria 2007](#)
- A novel and the reputation of a far-right politician: [Lindon, Otchakovsky-Laurens and July v. France 2007](#)
- Frying eggs on the eternal flame of a soldiers' memorial: [Sinkova v. Ukraine 2018](#)
- Pussy Riot's performance in a cathedral: [Mariya Alekhina and others v. Russia 2018](#)

3.4 The Digital Services Act (DSA) and Digital Markets Act (DMA)

EU legislation has a significant effect on freedom of expression, including artistic freedom of expression, in Finland and other member states.

Increasing concerns about problems such as illegal content online and about the market effects of the dominance of multinational companies, such as Meta, were behind the EU:s adoption of the new legislation in 2022.

The [Digital Services Act](#) contains new rules about users' rights and the responsibilities of online platforms. For example, online providers need to provide clear reasons if they remove a user's content. Very large online platforms and very large online search engines with more than 45 million users have additional obligations.

The [Digital Markets Act](#) focuses on very large businesses, which meet the criteria of "gatekeeper". The act gives the EU commission powers to take measures to ensure compliance – including fines of up to 20 % of a company's worldwide turnover.

4 CHALLENGES FOR ARTISTIC FREEDOM OF EXPRESSION

Many factors and many actors can limit the right to freedom of expression, including states, the power of large businesses or for example terrorist organisations.

In 2013 Farida Shaheed, UN special rapporteur in the field of cultural rights, published a report on [The right to freedom of artistic expression and creativity](#), which is often mentioned.

4.1 Hate speech

Hate speech can mean different things to different people. Finnish law does not define either hate speech or hate crime.

However, according to the Criminal Code grounds for increasing punishment include a motive that is based on for example national or ethnic origin, religion or belief, or sexual orientation (chapter 6, 5 §).

The Council of Europe's Committee of Ministers adopted [a recommendation](#) in May 2022, which defines hate speech as:

“... all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as “race”, colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation.”

A footnote to the word “race” clarifies that the committee rejects theories based on the existence of different “races”. The term is used to ensure that persons who are wrongly perceived as “belonging to another race” are not excluded.

4.2 Targeted harassment

Targeted harassment involves someone encouraging others to for example send a large number of hostile messages to another person or make a large number of untrue postings about the person on social media.

The aim is often to silence the targeted person. For example artists, journalists, police and prosecutors have been subjected to targeted harassment in Finland.

4.3 Wrong information and misuse of information

Wrong and damaging information can spread very rapidly. It can involve what is often referred to as misinformation (unintentionally shared wrong information) or disinformation (intentionally shared wrong information).

These can be mixed and correct information can for example also be presented in a misleading context.

Responding to the spread of damaging information is challenging. Response measures can have far-reaching consequences for freedom of expression. Legislation and other measures are abused in many countries to silence journalists, artists and political opponents.

Artistic expression can spread damaging information, for example in the form of propaganda.

Art can also combat damaging information. For example, the Ugandan singer and politician Bobi Wine performed the song “[Coronavirus alert](#)” together with Nubian Li and encouraged others to use it freely, in an effort to tackle the spread of misinformation about COVID-19.

Googles Jigsaw has worked with Rhizomes artists to explore how [art might be able to subvert disinformation](#).

4.4 Personal safety of artists

In many countries artists and others working in the arts sector are murdered, jailed and threatened. See for example Freemuse's [State of Artistic Freedom 2022](#).

4.5 Self-censorship

Many factors can lead to self-censorship, for example fear of physical violence or of losing funding. The nature of self-censorship means that it is often hidden and its extent is difficult to assess.

A report by the Artistic Freedom Initiative published in 2022, [Cultural Control: Censorship and Suppression of the Arts in Poland](#), describes challenges, including self-censorship that has spread widely.

4.6 Art in public spaces

In her report special rapporteur Farida Shaheed drew attention to laws and regulations that limit artistic freedom of expression, including ones affecting public spaces and for example street theatre.

According to Shaheed use of public space for art is crucial as it allows people, including marginalised people, to freely access, enjoy and sometimes contribute to the arts.

The privatisation of public space has raised concerns.

Shaheed's successor Karima Bennoune addressed cultural rights and public spaces in a [report](#) published in 2019.

4.7 Terrorism and measures to counter terrorism

Terrorism is a severe threat in many countries. The satirical French magazine Charlie-Hebdo, which had published cartoons of the prophet Muhammed, was attacked by terrorists in 2015.

Measures to counter terrorism can be a threat to artistic freedom of expression.

The Council of Europe's Human Rights Commissioner Dunja Mijatović [warned](#) in 2018 of misuse of anti-terror legislation that threatens freedom of expression. She noted for example convictions of rap-artists in Spain for glorifying terrorism.

4.8 Cultural policies and market censorship

In her report special rapporteur Farida Shaheed raised concerns about the effects of cuts in financial support and about commercial pressures that result in “market censorship”.

4.9 Copyright

Farida Shaheed drew attention to challenges related to copyright, for example in relation to sampling in the context of hiphop and rap.

In 2014 she released a report on [Copyright policy and the right to science and culture](#).

The 2019 EU Copyright Directive

EU member states had strongly diverging views about the controversial [directive](#), which the European Parliament adopted by a vote of 348-274.

Member states should have implemented the directive through their own legislation by 7 June 2021, but many, including Finland, failed to do so.

The directive contains rules that aim to strengthen the rights of artists to fair payments, including in situations where online platforms have benefited from for example music or images without paying for them.

A central question in the negotiations concerned article 17 of the directive and freedom of expression online.

As a general rule online platforms had not been held liable for content that users uploaded, as long as the platform removed the content as soon as it was notified.

Article 17 of the copyright directive changed this, as it requires the online platform (for example YouTube) to have permission from the rightsholder.

Many freedom of expression organisations have been concerned about negative consequences for freedom of expression, as there is a risk that online platforms increase content removals significantly to avoid any possible risks of liability.

Online platforms already frequently remove content, including artistic content, that should be permitted.

4.10 Challenges for artistic freedom of expression online

Artistic content frequently gets removed online.

Organisations that defend artistic freedom of expression have created the [Don't Delete Art](#) website, with examples of content that has been removed.

Online platforms often use "trusted flaggers", whose notifications of illegal content are treated as a priority.

For example, the INHOPE network does immensely valuable work. The network, which combats child sexual abuse material (CSAM) online, has hotlines in many countries.

In 2020 freedom of expression organisation ARTICLE 19 and the US-based organisations National Coalition Against Censorship (NCAC), ProStasia Foundation and Comic Book Legal Defense Fund [warned](#) that several INHOPE member organisations had reported art as content that should be removed.

Meta's Oversight Board and the wampum belt

In 2021 the Oversight Board [overturned](#) a decision to remove art from Facebook for breaching its hate speech rules.

This was the Oversight Board's first case concerning artistic freedom of expression.

The user had shared an image of a wampum belt, a North American indigenous art form, with text. The text included "Kill the Indian/Save the Man" and "Residential School/Concentration Camp". The user wanted to raise awareness of the children's graves discovered at a residential school for indigenous children in Canada in 2021.

Meta's moderation processes identified the artwork as hate speech and removed it. The user complained, but did not succeed in getting the content reinstated. This process included review by human moderators.

When the posting was removed 4 000 users had seen it. It has been shared more than 50 times. No one had complained.

5 ART AS AN INSTRUMENT OF EVIL

The Nazis incited hate against Jews during the second world war, for example with films such as "Der ewige Jude". The CIA has [tortured terrorist suspects](#) with music.

In Rwanda songs incited hate and violence in the genocide directed at the Tutsi population in 1994, when [an estimated 800 000](#) people were killed in 100 days.

The singer and composer Simon Bikindi was [convicted](#) for direct and public incitement to genocide, for exhorting people to kill Tutsis when he travelled in a convoy in 1994.

The International Criminal Tribunal for Rwanda also considered three of Bikindi's songs. There was not sufficient evidence to convict him in relation to these, but the tribunal did not exclude the possibility that songs could constitute direct and public incitement to genocide or persecution as a crime against humanity.

The radio station Radio Télévision Libre des Milles Collines (RTL) had a central role in inciting the genocide, playing Bikindi's songs repeatedly. Félicien Kabuga, owner of the station, was found hiding in France in 2020. His [trial](#) is under way.

6 ARTISTIC FREEDOM OF EXPRESSION IN DIFFERENT COUNTRIES

6.1 The global situation

Artists and others in the arts sector work in very varied and often extremely difficult circumstances.

Freemuse's report on the [State of Artistic Freedom 2022](#) provides examples from many countries.

[Artists at Risk](#) was awarded the State Prize for the Social Impact of Art in 2022 for its work in providing safe residencies for artists from many countries.

In a [report](#) in 2021 Karima Bennoune, UN special rapporteur for cultural rights, warned that the COVID-19 pandemic could result in a "cultural catastrophe".

6.2 The United States

Although freedom of expression, including artistic expression, has strong protection through the First Amendment to the constitution, there are challenges.

The National Coalition Against Censorship (NCAC) has documented attempts to [limit artistic freedom of expression](#).

Intensifying campaigns against books

Attempts to remove or reduce access to books in schools and libraries are a growing concern.

PEN America has documented the growing problem in schools in a [report](#) published in September 2022.

The pace and growth of the movement against books is raising new concerns, although attempts to censor books are not new. For example, the award-winning children's book [And Tango makes three](#), published in 2005, has been the subject of repeated campaigns.

6.3 Europe

Freemuse's [Security, Creativity, Tolerance and their Co-Existence: The New European Agenda on Freedom of Artistic Expression](#), published in 2020, expressed concerns about developments that threatens Europe's cultural diversity and freedom of artistic expression.

Drill music in Britain

Freedom of expression organisations and experts have raised concerns about measures to restrict drill.

Gang violence, gun and knife crime are [serious problems](#), in particular in London.

Some view drill as inciting violence and crime. In Finland concerns [have also been raised](#) about ganstarap and drill.

Others view drill as describing the reality of life for many young people and in their view the authorities are criminalising the artistic expression of young black men.

Orders obtained by police have for example prohibited artists from mentioning certain names or required artists to inform the police in advance if they plan to release a new video. In 2019 [Skengdo and AM](#) received suspended jail sentences for performing a song despite a prohibition.

The Metropolitan Police in London collaborates with YouTube, which has increased [concerns](#) about measures behind the scenes that limit freedom of artistic expression.

Metas Oversight Board and British drill

In November 2022 the Oversight Board [overturned](#) a decision to remove a video clip from Instagram about a new song, Secrets not Safe, by artist Chinx (OS).

Meta had removed the clip at the request of London's Metropolitan Police on the basis that it contained a veiled threat related to gang violence.

A response to a freedom of information request by the Oversight Board at first indicated that the Metropolitan Police had sent 286 requests to social media and streaming services to review or remove drill content between June 2021 and May 2022. In January 2023 the police corrected this to 992 requests, of which 879 resulted in removals.

6.4 The Nordic countries

The report Freedom of Art and Culture in the Nordic Region ([summary in English](#)) drew attention to threats, hate and harassment.

Minority populations and cultures, such as the Sámi indigenous people, are in particularly challenging situations.

In 2021 the Federation of European Screen Directors and others drew attention to [film censorship](#) in the Faroes.

Denmark's commission on freedom of expression

Denmark's commission released its report in 2020 (in Danish: [links to report and annexes](#)).

Norway's commission on freedom of expression

Norway's commission released its report in 2022. [Summary in English](#) on p. 328.

The commission addressed a range of issues and also controversy related to artistic freedom of expression.

7 ARTISTIC FREEDOM OF EXPRESSION IN FINLAND

7.1 Examples of cases

Hannu Salamas novel Juhannustanssit (Midsummer Dance)

The characters in the book, published in 1964, drink, swear and have sex. One of them delivers a mock “sermon”, which resulted in Salama receiving a suspended prison sentence for blasphemy.

Harro Koskinen’s Sikamessias (swine messiah) and Sikavaakuna (swine coat of arms)

Pigs were a theme in Koskinen’s work. In 1969 he showed two pieces at an exhibition: one was a cartoonlike pig on a cross and in the other a pig replaced the lion on Finland’s coat of arms. Koskinen was convicted, including for blasphemy.

Teemu Mäki’s video, in which he kills a cat

In 1988 Teemu Mäki killed a cat in a video and masturbated next to its corpse. He was convicted for animal cruelty, because he struck the cat three times with an axe before succeeding in killing it.

Ville Ranta’s cartoons of the prophet Muhammed

Danish paper Jyllands-Posten’s publication in 2005 of cartoons of the prophet Muhammed led to controversy and violence. Finnish magazine Kaltio published Ville Ranta’s cartoons, which included the prophet Muhammed wearing a mask and Finnish political leaders burning Denmark’s flag. This caused considerable controversy.

In 2022 police reportedly began investigating a complaint that cartoons by the award-winning Ranta had involved agitation against a population group and breach of the sanctity of religion.

Ulla Karttunen's installation Neitsythuorakirkko (the Virgin-Whore Church)

In 2008 the police shut down Ulla Karttunen's installation Neitsythuorakirkko.

It included hundreds of pictures of sexually posed young women and girls. In many of them the subjects were recognisable, because the images had not been treated by for example covering the subjects' faces. Karttunen had downloaded the images from the internet.

Karttunen stated that her intention was to encourage debate about child sexual abuse, but she was convicted of possessing and distributing sexually obscene pictures depicting children, although not punished.

She applied to the European Court of Human Rights, but the court did not see reasons to examine the case.

Vantaa city and graffiti artists

In 2017 authorities in the city of Vantaa covered and partly removed graffiti on a wall that was intended for graffiti. The graffiti criticised the use of public funds by a city-owned company, depicting individuals linked to the company and mentioning names.

The Parliamentary Ombudsman found that the criticism, addressed in artistic form, concerned matters of public interest and that Vantaa city had failed to respect the artists' freedom of expression. As the parties had agreed on moving the artwork to a museum, no action was required.

Kivinokka summer theatre's play about Uppo-Nalle and vaccine resisters

In 2021 the theatre became the target of serious harassment and threats.

In the children's play about teddy bear Uppo-Nalle, a decades old classic, the bear gets a vaccination. Vaccine resisters interpreted this as an attempt to encourage people to be vaccinated against COVID-19.

Following harassment and threats, the theatre director chose to remove the scene, to avoid problems and possible violence.

7.2 Challenges in Finland

Many challenges can be greater in a small country, including for language- and cultural minorities, such as the Sámi indigenous people.

Although the state of artistic freedom of expression is generally good in Finland, self-censorship and economic censorship can be largely hidden problems.

In Finland's small market and small artistic circles some challenges can be heightened.

Growing commercial expectations, for example that books should be written so that they are also suitable as audio books, are a concerning trend, which narrows artistic freedom of expression.

The criminalisation of breach of the sanctity of religion

According to the Criminal Code (chapter 17, 10 §), breaching the sanctity of religion can result in a fine or up to six months imprisonment.

The provision includes blasphemy, or otherwise offending what is considered sacred by a church or a religious community, and also disturbing a religious service.

Experts and freedom of expression organisations have repeatedly pointed out that these are not acceptable restrictions of freedom of expression.

The committee that monitors how countries implement the International Covenant on Civil and Political Rights raised this in their [report](#) on Finland in 2021, stating that Finland should take steps to decriminalise breach of the sanctity of religion.