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# Art and Freedom of Expression in a Time of Conflict in Ukraine

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*Cedos*

## Introduction

Freedom of expression is an integral component of democracy in any society, as it promotes the continuous exchange of ideas and opinions between people. Works of art such as literature, visual artwork, and satire contribute to the free exchange of information and opinions on controversial cultural, political, and social issues. Article 19 of the International Covenant on Civil and Political Rights states that freedom of expression “includes the freedom to seek, receive and disseminate all kinds of information and ideas, regardless of [...] artistic form.”<sup>1</sup> The United Nations’ (UN) expert on the freedom of expression made clear in a 2020 report that Article 19 covers “expression through any media, including artistic forms, regardless of how art itself is defined or evaluated.”<sup>2</sup> The European Court of Human Rights (ECtHR) also notes that Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) “ensures the protection of free ‘creative’ and ‘cultural’ expression.”<sup>3</sup>

In 2014, Ukraine faced an urgent national security threat from Russia, including its unilateral annexation of the Crimean Peninsula and support to armed separatists in Ukraine’s far east. Russia’s aggression was accompanied by information warfare tactics such as cyberattacks, and the distribution of propagandistic narratives meant to undermine Ukraine by Kremlin-backed media. In moving quickly to

counter Russia’s campaign of information warfare, authorities made several “rather ambiguous decisions,”<sup>4</sup> resulting in controversial bans on the broadcast of Russian films and import of Russian books, as well as the creation of an official list of individuals who allegedly pose a threat to Ukraine’s national security.<sup>5</sup> It has been widely recognized among human rights defenders, international experts,

1 “Міжнародний пакт про громадянські і політичні права” [International Covenant on Civil and Political Rights], *Verkhovna Rada of Ukraine*, ratification date: October 19, 1973, [https://zakon.rada.gov.ua/laws/show/995\\_043](https://zakon.rada.gov.ua/laws/show/995_043).

2 *Research Report on Artistic Freedom of Expression*, David Kaye. Available at: <https://digitallibrary.un.org/record/3874876>.

3 *Cultural rights in the case-law of the European Court of Human Rights*, Council of Europe/European Court of Human Rights, January 2011 (updated January 17, 2017), [https://www.echr.coe.int/Documents/Research\\_report\\_cultural\\_rights\\_ENG.pdf](https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf).

4 Dmytro Vlasenko, “Свобода слова: і зловживання, і непропорційні обмеження,” [Freedom of speech: abuse and disproportionate restrictions], *Kharkiv Human Rights Protection Group*, March 1, 2019, <http://khpg.org/index.php?id=1551437144>.

5 Yevhen Zakharov, “Виступ на дискусії «Хто і навіщо цензурує українське мистецтво?»,” [Presentation on discussions “Who censors Ukrainian art and what for?”], *Kharkiv Human Rights Protection Group*, April 20, 2019, <http://khpg.org/index.php?id=1555757567>.

and even the Ukrainian public that these measures pose significant threats to freedom of expression.<sup>6</sup>

Despite Ukraine's formal legal and international obligations to uphold freedom of expression, as well as the widespread public consensus around the importance of protecting creative freedom, there have been several cases of pressure, bans, censorship, and other disproportionate restrictions on creative industries over the past decade. This phenomenon was highlighted in public events held jointly by Freedom House and PEN Ukraine in 2019, which identified key actors – including civic activists, museum and gallery directors, members of radical groups, and officials and lawmakers – who have created barriers to the enjoyment of artistic freedom of expression in Ukraine over the past 10 years.<sup>7,8</sup> These and a number of other discussions among art and human rights circles on the protection of freedom of speech, bans, and self-censorship in Ukraine are ongoing and are often reignited in response to developments in the country.<sup>9</sup>

This analysis seeks to assess the state of freedom of artistic expression in Ukraine, analyze the various modes of censorship which have been imposed on different forms of art, and identify the actors responsible for restrictions on creative freedom in recent years. The analysis will devote particular attention to determine the extent to which such restrictions are justified and proportionate given Ukraine's national security interests and international obligations to uphold human rights.

## Creative Freedom and its Limitations: The Legal Dimension

Freedom of artistic expression is protected by international human rights standards. According to the United Nations Educational, Scientific and Cultural Organization (UNESCO), freedom of expression in art and academia, or “creative freedom,” includes a wide range of protected human rights and freedoms.<sup>10</sup> In a special report, former United Nations (UN) Special Rapporteur on Cultural Rights Farida Shaheed noted that a wide variety of societal actors are in a position to create barriers to freedom of expression. The first among them are state authorities. However, non-state actors, such as private corporations, the media, radicals, representatives of traditional or religious communities, and civil society groups such as parent associations,<sup>11</sup> also play an important role. Restrictions can take many different forms, including threats, intimidation, assaults, damage to works of art, and the creation of unequal conditions or norms for the distribution and display of art. As noted in a recent UNESCO report on the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, “The role of the judiciary in these situations, as a safeguard to the application of the law, and therefore also to the respect for relevant human rights standards adopted by countries, is key in upholding artistic freedom.”<sup>12</sup>

This analysis will consider the role that representatives of government bodies and the leadership of artistic and academic institutions have played in restricting artistic freedom of expression in Ukraine in recent years. The analysis will also consider the impact of radical groups that use violence to pressure or persecute artists, and otherwise censor their work.

Ukrainian legislation does not include formal definitions for the “freedom of expression” or “artistic freedom;” nevertheless, the national legal framework offers both general and specific guarantees of these rights. Articles 15 and 34 of the Constitution of Ukraine prohibit censorship and provide guarantees for “the right to freedom of thought and speech, to freely express one's views and beliefs,” respectively. Further, Article 54 states that “citizens are guaranteed

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6 For example, according to a survey from the NaUKMA School for Policy Analysis, nearly 32 percent of respondents fully or partially agreed with the need to lift the ban on broadcasting Russian films and series made after 2014. *School of Political Analysis of the NaUKMA*, April, 2020, [https://spa.ukma.edu.ua/wp-content/uploads/2020/04/pres\\_23.04\\_Humanitarna.pdf](https://spa.ukma.edu.ua/wp-content/uploads/2020/04/pres_23.04_Humanitarna.pdf).

7 PEN Ukraine (Facebook), “Дискусія ‘Хто і навіщо цензурує українське мистецтво?’” [Discussion “Who censors Ukrainian art and what for?”] Facebook, April 23, 2019, <https://www.facebook.com/watch/live/?v=2137675229603019>.

8 Freedom House Ukraine (Facebook), “Дискусія «Мистецтво (по)за політикою: Коли держава має право на цензуру?»” [Discussion: “Art by/for politics: When does the state have the right to censor?”], Facebook, October 29, 2019, <https://www.facebook.com/182472885417421/videos/686305768529498/>.

9 For example, following a pressure campaign by local officials in the summer-autumn of 2019 against the curators of the “Denede” initiatives and contemporary artists known as “Chytayuchi Ulamky” [Reading Debris] at the Kmytiv Museum of the Zhytomyr region, the curator Yevgeniia Moliar faced pressure from authorities as well. Her attempts to reconsider heritage and the role of Soviet art in Ukraine have provoked new discussions regarding “decommunization laws.” *Ukrainian Public Broadcasting Service*, December 19, 2019, <https://suspinne.media/6135-ak-kmitivskij-muzej-imeni-i-bahancuka-vzaemodie-z-sucasnim-mistectvom/>.

Additionally, in April 2020, PEN Ukraine's discussion on the ethics of the partnership with Russia in the artistic sphere was canceled following backlash from veterans. This launched a discussion of self-censorship among Ukrainian authors and cultural managers, Facebook, April 30, 2020, <https://www.facebook.com/marianna.kijanowska/posts/3156126374420133>

10 According to UNESCO, artistic freedom is the freedom to imagine, create, and distribute diverse cultural expressions free of governmental censorship, political interference, or the pressures of non-state actors. It embodies the following bundle of rights protected under international law: the right to create without censorship or intimidation; the right to have artistic work supported, distributed, remunerated; the right to freedom of movement; the right to freedom of association; the right to protection of social and economic rights; and the right to participate in cultural life, UNESCO, [https://en.unesco.org/creativity/sites/creativity/files/artistic\\_freedom\\_pdf\\_web.pdf](https://en.unesco.org/creativity/sites/creativity/files/artistic_freedom_pdf_web.pdf).

11 Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed. Available at: <https://digitallibrary.un.org/record/755488>.

12 Freedom & creativity: defending art, defending diversity, special edition, Laurence Cuny. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000373357>.

freedom in literary, artistic, scientific and technical creativity, [as well as] protection of intellectual property, their copyrights, and moral and material interests arising in connection with various types of intellectual activity.”<sup>13</sup>

As a UN member state, Ukraine is also committed to upholding the international human rights guarantees enshrined in the Universal Declaration of Human Rights<sup>14</sup> and the International Covenant on Civil and Political Rights, among other UN conventions, resolutions, and mechanisms to which Ukraine is a party.<sup>15</sup> This includes the Convention on the Protection and Promotion of the Diversity of Cultural Expression, ratified in 2010.<sup>16</sup> Based on the principle of protecting human rights and fundamental freedoms and a recognition of the economic value of the cultural sector for developing countries, the Convention provides a framework for developing open, transparent, and inclusive approaches to participation and governance in the field of culture.

As a Council of Europe member state, Ukraine is also under the obligation to comply with the provisions of the European Convention and the ECtHR to resolve disputes. Article 10 of the Convention<sup>17</sup> lists the bases upon which it is acceptable to restrict the human right to the freedom of expression, including in the form of art: if the interference is prescribed by law, aims to protect one of the interests listed in the Article<sup>18</sup> and is “necessary in a democratic society.” The case law of the ECtHR also introduces the requirement that there be a proportionate relationship between the restriction and its legitimate objectives.<sup>19</sup> Passing this so-called “three-part test” of legality, legitimacy, and necessity is a key condition for any restrictions to meet international standards. As ECtHR case law shows, necessity and proportionality are usually the most difficult to evaluate.<sup>20</sup>

## Government Restrictions on Freedom of Expression

In response to the 2014 outbreak of armed conflict, Russian occupation of Ukrainian territory, and Russia’s information warfare tactics, Ukrainian authorities began to impose restrictions on freedom of expression. This began in 2015–2016, with the adoption of several legislative amendments for laws relating to television and radio broadcasting,<sup>21</sup> cinematography,<sup>22</sup> and printed materials.<sup>23</sup> The new legislation introduced the concept of the “aggressor state” to Ukrainian law, banning the broadcast of films produced on the territory of Russia, as well as films or videos which “popularize the authorities of the aggressor state,” regardless of the country of origin. The new regulations also restricted access to printed materials containing allegedly “anti-Ukrainian content” including “content aimed at eliminating the independence of Ukraine, changing the constitutional order by force, violation of the sovereignty and territorial integrity of the state.” A range of other legislation has also been introduced regulating content, including reasonable bans of the promotion of war and violence.

The Law “On the Protection of the Information Television and Radio Broadcasting of Ukraine” established the grounds for the creation of a list of individuals deemed to pose a threat to national security.<sup>24</sup> Distribution of films or other audiovisual works featuring these individuals is prohibited in Ukraine, with the exception of informative materials. The Ministry of Culture and Information Policy of Ukraine compiles and reviews this list in response to requests from Ukraine’s National Security and Defense Council, the Security Service of Ukraine (SBU), and Ukraine’s National Council on Television and Radio Broadcasting. However, there is

13 “Конституція України” [Constitution of Ukraine], *Verkhovna Rada of Ukraine*, version dated January 1, 2020, <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

14 “Загальна декларація прав людини” [Universal Declaration of Human Rights], *Verkhovna Rada of Ukraine*, adoption date: December 10, 1948, [https://zakon.rada.gov.ua/laws/show/995\\_015#Text](https://zakon.rada.gov.ua/laws/show/995_015#Text).

15 Recommendation concerning the Status of the Artist, *UNESCO*, adoption date: October 27, 1980, [http://portal.unesco.org/en/ev.php-URL\\_ID=13138&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13138&URL_DO=DO_TOPIC&URL_SECTION=201.html); Convention on the Protection and Promotion of the Diversity of Cultural Expressions, *UNESCO*, adoption date: October 20, 2005, <https://en.unesco.org/creativity/convention>; United Nations Sustainable Development Goals and relevant targets, *UN*, adoption date: September 25, 2015, [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E).

16 “Конвенція про охорону та заохочення розмаїття форм культурного самовираження” [Convention on the Protection and Promotion of the Diversity of Cultural Expression], *Verkhovna Rada of Ukraine*, ratification date: January 20, 2010, [https://zakon.rada.gov.ua/laws/show/952\\_008](https://zakon.rada.gov.ua/laws/show/952_008).

17 The European Convention on Human Rights, [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf).

18 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.

19 Janneke Gerards, “How to improve the necessity test of the European Court of Human Rights,” *International Journal of Constitutional Law*, Volume 11, Issue 2, April 2013, 466–490, <https://doi.org/10.1093/icon/mot004>.

20 Tetiana I. Fuley, “Застосування практики Європейського суду з прав людини при здійсненні правосуддя: Науково-методичний посібник для суддів” [The Application of European Court of Human Rights Case Law in the Administration of Justice: A Scientific and Methodological Guide for Judges], *OSCE*, 2015, <https://www.osce.org/uk/ukraine/232716?download=true>.

21 “Про внесення змін до деяких законів України щодо захисту інформаційного телерадіопростору України” [On Amending Some Laws of Ukraine on the Protection of the Information Television and Radio Broadcasting of Ukraine], *Verkhovna Rada of Ukraine*, adoption date: May 2, 2015, <https://zakon.rada.gov.ua/laws/show/159-19>.

22 “Про внесення зміни до статті 15-1 Закону України ‘Про кінематографію’” [On Amending Article 15-1 of the Law of Ukraine ‘On Cinematography’], *Verkhovna Rada of Ukraine*, adoption date: March 29, 2016, <https://zakon.rada.gov.ua/laws/show/1046-viii>.

23 “Про внесення змін до деяких законів України щодо обмеження доступу на український ринок іноземної друкованої продукції антиукраїнського змісту” [On Amending Certain Laws of Ukraine Concerning Restricted Access of Anti-Ukrainian Content to the Ukrainian Market for Foreign Printed Products], *Verkhovna Rada of Ukraine*, adoption date: December 8, 2016, <https://zakon.rada.gov.ua/laws/show/1780-19>.

24 A list of individuals deemed to pose a threat to national security, *Ministry of Culture and Information Policy*, last updated on October 18, 2019, [http://mincult.kmu.gov.ua/control/uk/publish/article?art\\_id=245331003&cat\\_id=244966805](http://mincult.kmu.gov.ua/control/uk/publish/article?art_id=245331003&cat_id=244966805).

a serious lack of transparency regarding the Ministry's procedure and decision-making process for adding and removing names from the list, as well as the mechanism for and extent of its cooperation and consultation with business, civil society, and human rights defenders. The lack of clear procedures or criteria for amending the list significantly complicates the work of Ukrainian radio and film companies; inclusion on or exclusion from the list impacts their ability to obtain licenses to rent and circulate audiovisual materials in Ukraine, as well as the ability of their audiences to access information and art that they produce.

The case of Russian actor Fyodor Dobronravov has come to exemplify the issues surrounding the Ministry of Culture and Information Policy's ban list. In November 2017, the SBU banned Dobronravov from entering Ukrainian territory for three years based on allegations that he had toured Russian-annexed Crimea and publicly made "anti-Ukrainian statements."<sup>25</sup> The Ministry of Culture and Information Policy subsequently added Dobronravov to its ban list and prohibited his television series *Matchmakers* from screening in Ukraine. However, the Ministry unexpectedly reversed this decision and removed Dobronravov from the list in 2019, following a court judgment nullifying the SBU's original ban.<sup>26</sup>

The Law "On the Restricted Access of Anti-Ukrainian Content to the Ukrainian Market for Foreign Printed Products" endowed the State Committee for Television and Radio Broadcasting (*Derzhkomtelevizoradio*) with the authority to monitor and evaluate published materials, as well as to compile a list of publications that are not recommended for import into Ukraine. In contrast to the Ministry of Culture and Information Policy's list, *Derzhkomtelevizoradio* publicly shared the composition of its expert council entrusted with compiling the list and later changed it more than seven times.<sup>27</sup> Members of the expert council include scholars, officials, a representative of the publishing house Fountain of Fairy Tales, as well as journalists, and activists from the "Information Resistance" and "Cultural Resistance" movements who openly support government policies to limit such materials. Important questions remain regarding the body's procedures for selecting members, the mechanisms for its formation, and its decision-making and review processes. While *Derzhkomtelevizoradio* has also published its criteria for the evaluation of books, the definitions are broad and leave room for arbitrary interpretation.<sup>28</sup> For example, the criteria call for the banning of

materials that contain "imperial geopolitical doctrines that argue for the unification of peoples around the aggressor state, its state language, culture, dominant religious denomination, [or] serve as the ideological basis for the return of Ukraine into the sphere of domination of the aggressor state."

Lack of information on these subjects seriously hinders the ability of the Ukrainian public to answer important questions about why and how published materials are censored in Ukraine. Moreover, it indicates that *Derzhkomtelevizoradio* is authorized to censor cultural works on the basis of expert analysis conducted outside official judicial proceedings. In 2019 alone, the agency prohibited the import of more than one million copies of books and other publications allegedly containing "anti-Ukrainian content," and rejected 151 permit applications to distribute printed materials in Ukraine.<sup>29</sup>

Ukraine began implementing a more consistent approach to tackling Russia's information warfare tactics with the introduction of the "Doctrine of Information Security of Ukraine," via Presidential Decree No. 47/2017,<sup>30</sup> which entered force in February 2017. According to the Decree, the Ministry of Culture and Information Policy, the State Agency of Ukraine for Cinema, the National Council of Ukraine for Television and Radio Broadcasting, and the State Committee for Television and Radio Broadcasting of Ukraine "are involved in ensuring the protection of the Ukrainian information space from Russian propaganda, [in the form of] both audiovisual and printed materials." However, the Decree only defines the strategic directions that agencies can take to protect Ukraine's "information security" from the "hybrid war" by Russia, lacking definitions of these concepts and critical details on the appropriate mechanisms for implementation, including in the sphere of culture and the arts.

The appropriateness and necessity of the restrictions established by these laws and decrees demand review, especially as it relates to Ukraine's obligations to adhere to international human rights standards on the freedom of expression. For example, restrictions imposed by the Ministry of Culture and Information Policy and *Derzhkomtelevizoradio* on distributing a wide range of printed and audiovisual materials cannot be accurately described as a "proportional" restriction of freedom of expression. Media law experts have repeatedly noted that "the prohibition of the distribution of Russian audiovisual works in Ukraine's information space is a

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25 Mariia Shtohrin, "Чому в Україні заборонили 'Сватів'?" [Why was 'Matchmakers' banned in Ukraine?], *BBC Ukraine*, November 30, 2017, <https://www.bbc.com/ukrainian/features-42177506>.

26 "Актор 'Сватів' Добронравов зник із 'чорного списку' Мінкульту" ["Matchmakers" Actor Dobronravov disappears from the Culture Ministry's "Black list"] *Ukrinform*, June 6, 2014, <https://www.ukrinform.ua/rubric-culture/2721312-aktor-svativ-dobronravov-znik-iz-cornogo-spisku-minkultu.html>.

27 "Наказ Про затвердження складу експертної ради Державного комітету телебачення і радіомовлення України з питань аналізу та оцінки видавничої продукції щодо віднесення її до такої, яка не дозволена до розповсюдження на території України," [Order on the Approval of the Composition of the Expert Council of the State Committee for Television and Radio Broadcasting of Ukraine on the Analysis and Evaluation of Publishing Products to Classify them as Not Permitted for Distribution on the Territory of Ukraine], *State Committee for Television and Radio Broadcasting*, January 27, 2017, [http://comin.kmu.gov.ua/control/uk/publish/article?art\\_id=141778&cat\\_id=141645](http://comin.kmu.gov.ua/control/uk/publish/article?art_id=141778&cat_id=141645).

28 "Про затвердження Критеріїв оцінки видавничої продукції, що дозволена до розповсюдження на території України" [On the Approval of Criteria for Assessing the publishing products permitted for distribution on the territory of Ukraine], *Verkhovna Rada of Ukraine*, adoption date: March 3, 2017, <https://zakon.rada.gov.ua/laws/show/z0586-17>.

29 "Через антиукраїнський зміст не пропустили 151 видання з Росії" [151 publications from Russia banned due to anti-Ukrainian content], *Ukrayinska Pravda*, January 14, 2020, <https://www.pravda.com.ua/news/2020/01/14/7237321/>.

30 "Указ Президента України №47/2017" [Decree of the President of Ukraine Number 47/2017], *Office of the President of Ukraine*, February 25, 2017, <https://www.president.gov.ua/documents/472017-21374>.

radical measure that does not justify its purpose.<sup>31</sup> Such bans are not only disproportionate restrictions on freedom of expression but also contradict Ukraine's obligations to guarantee the rights and freedoms of people in Ukraine in accordance with its Constitution and international human rights standards. Similarly, bans on the import of printed materials on the basis of the deliberations of *Derzhkomtelradio's* expert council are opaque and vulnerable to abuse, calling into question their necessity and proportionality in a democratic context. For these reasons, there is a sound basis to label current restrictions on cultural works and freedom of expression in Ukraine as violations of the European Convention and international human rights standards.

## Institutional Restrictions on Freedom of Expression

In addition to cases in which officials and lawmakers impose legal restrictions on artistic freedom of expression, the leadership of museums, art galleries, and academic institutions also act as agents of censorship. In such cases, institutions interfere with the work of artists by controlling the distribution of resources, leading to barriers to freedom of expression. This practice is problematic when an organization is subordinate to state bodies or is financed by the state budget. According to artist Mykyta Kadan, "this form of censorship, along with the censorship of violence and self-censorship, forms the cultural landscape of Ukraine."<sup>32</sup>

The motivations driving institutional restrictions on freedom of expression can vary greatly, from protecting "religious feelings," to suppressing political disagreements, to protecting children from "harmful influences." These kinds of restrictions usually occur via so-called "aesthetic censorship" – when certain forms or styles of art are considered unacceptable in a particular cultural space. Such "aesthetic censorship," which may be objectionable when undertaken by private gallery owners or other non-state actors, transforms into state censorship and infringement of the freedom of expression when done by a state-sponsored museum, library, or university. An illustrative example occurred in 2018 at the Drahomanov National Pedagogical University's SKLO [Glass] Student Gallery regarding an art exhibition that highlighted violence in public and cultural events. The exhibition was organized in response to an incident at the University in which members of far-right groups attacked the feminist student group, Gender Club. The

University's administration prematurely closed the exhibition for "technical reasons."<sup>33</sup> The exhibition's co-curator, Alona Mamai, later reported to the police that the artwork had been damaged. After the forced closure attracted the attention of the public and media, the University explained that the exhibition was closed in response to a written appeal by several students, who argued that the artwork offended the "patriotic feelings of the student body" and contained pornographic images.<sup>34</sup> The decision to close the exhibition was made without proper investigation into the allegations – although an internal commission was formed at the University to investigate, it was highly flawed and only reviewed the testimony of students who had signed the aforementioned letter.

Ukraine's experience in this and similar instances clearly contradicts ECtHR precedent that establishes the right to freedom of expression in democratic societies to include the right to express ideas that shock or cause indignation or concern.<sup>35</sup> Thus, Ukraine is likely in violation of its obligation, as a Council of Europe member state, and should respect this principle in its national legislation. In addition, it is part of the state's role in protecting and supporting artistic expression by "accepting a variety of narratives and world views in the programming of national museums and cultural institutions."<sup>36</sup> It is not appropriate for the administration of an educational institution to interfere with the freedom of artistic creation of students or others who exercise their right to hold a cultural event or exhibition on a sensitive topic. It is also not appropriate for such an institution to take advantage of its influence to censor material according to the administration's tastes. Such interference was objectionable in this case because the institution in question was affiliated with the state and was primarily state-funded.

To avoid imposing disproportionate restrictions on freedom of expression, public institutions can instead promote active public discussion of controversial cases and involve civil society – especially associations relating to culture and the arts – in the decision-making processes. The charity group Method provided a good example of this approach when it launched a crowdfunding campaign in 2018 to sponsor the development of an education program to raise legal awareness among the artistic community. Method collected information on cases of Ukrainian artists whose rights had been violated, using them as a basis to develop tools to protect artists' rights and improve labor protections. For example, Method's lawyers developed template contracts for agreements between artists and cultural institutions.<sup>37</sup>

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31 "Позиція Інституту Медіа Права щодо закону про заборону російських фільмів" [The Media Rights Institute's Position on the Law on the Prohibition of Russian Films], *Center for Democracy and Rule of Law*, September 24, 2015, <https://cedem.org.ua/news/pozytsiya-institutu-media-prava-shhodo-za-2/>.

32 PEN Ukraine (Facebook), "Дискусія 'Хто і навіщо цензурує українське мистецтво?'" [Discussion "Who censors Ukrainian art and what for?"] Facebook, April 23, 2019, <https://www.facebook.com/watch/live/?v=2137675229603019>.

33 "Університет Драгоманова не пояснив раптовий демонтаж виставки та усунув керівницю арт-простору 'SKLO'" [Drahomanov University did not explain the sudden dismantling of an exhibition and dismissed the head of the "SKLO" art space], *Zmina.Info*, April 17, 2018, [https://zmina.info/news/universitet\\_dragomanova\\_ne\\_pojasniv\\_demontazh\\_khudozhnoji\\_vistavki\\_ta\\_usunuv\\_kuratoroku\\_artprostori/](https://zmina.info/news/universitet_dragomanova_ne_pojasniv_demontazh_khudozhnoji_vistavki_ta_usunuv_kuratoroku_artprostori/).

34 The citation from the interview with Aliona Mamai was organized for this analytical paper by the author.

35 *Handyside v. the United Kingdom*, 5493/72 (ECHR 1976), <http://hudoc.echr.coe.int/eng?i=001-57499>.

36 *Freedom & creativity: defending art, defending diversity*, special edition, Laurence Cuny. Available at: <https://unesdoc.unesco.org/ark:/48223/pf0000373357>.

37 "Judicial Documents," Establishing the Fact of Censorship, 2018, <https://thefactofcensorship.wordpress.com/%D1%8E%D1%80%D0%B8%D0%B4%D0%B8%D1%87%D0%BD%D1%96-%D0%B4%D0%BE%D0%BA%D1%83%D0%BC%D0%B5%D0%BD%D1%82%D0%B8/>.

Method's campaign also included financial and public relations support for the legal proceedings of artist Volodymyr Kuznetsov, whose work "Koliivshchyna: The Last Judgement," was destroyed on the eve of its public debut in 2013 by order of the former executive director of state-sponsored Mystetskii Arsenal in Kyiv. Kuznetsov's case is one of the only examples in recent Ukrainian history in which an act of restricting artistic freedom of expression has been considered in court. According to Kateryna Badianova, founder and executive director of Method, the organization chose to support this case to prompt the court to recognize the act of censorship. According to Badianova:

“ It was important for us that this case set a precedent and that it be made clear that there can be consequences for those who commit acts of censorship. It seems to us that this is one of the ways to address the lack of independent or consolidated rights protections. And we also hope for greater solidarity in the cultural field.<sup>38</sup>

Commenting on the destruction of Kuznetsov's murals, Hanna Tsyba, an independent curator and expert in contemporary art, noted the need for greater respect for expertise in the field of art criticism:

“ Administrators [and] top managers [...] made this decision by themselves, rather than delegating it to experts who work in these fields. For example, the curators of [the Mystetskii Arsenal] exhibition would never have allowed censorship to take place. The problem is that administrators [and] heads of institutions make decisions on their own and don't listen to experts.<sup>39</sup>

Following the outbreak of armed conflict with Russia in eastern Ukraine, restrictions on freedom of artistic expression by both state and non-state actors diversified and became more common. Challenges to artistic freedom of expression, which existed previously, are now intertwined with legislative, institutional, and social restrictions related to the conflict. In this climate, institutional restrictions to free expression have the potential to create an atmosphere where artists choose to practice self-censorship and refrain from openly expressing their views. To avoid this extreme outcome and reduce censorship by artistic and academic institutions, civil society representatives and human rights defenders should work to strengthen the role of independent cultural experts in developing policy solutions, legislative initiatives, as well as in the decision-making process for the licensing of cultural products; offer broad support to artists by supporting art residencies, cultural exchange and improving

tax and funding regimes; and systematically monitoring cases in which institutions or authorities restrict freedoms.

## Restrictions on Freedom of Expression through Violence

In February 2017, a group of unknown individuals broke into the Center for Visual Culture in Kyiv and destroyed a newly opened exhibition by artist Davyd Chychkan. Thanks to recordings from the Center's surveillance cameras, the details of this attack became widely known. Fourteen masked men attacked a security guard, stole three paintings, and caused significant damage to the rest of the works in the exhibition and the Center itself. Police arrived at the scene too late, failing to detain the attackers. Later, law enforcement opened a criminal investigation for hooliganism; however, as of autumn 2020, those responsible for the attack have not been identified.

Chychkan's "Lost Opportunity" exhibition featured a series of graphic works that offered a critical look at the expectations and the results of the protests in late 2013 – early 2014, also called "The Revolution of Dignity." The artist explained, "It depicts the kind of Maidan I would have liked to see and what it was like."<sup>40</sup> In an interview on the eve of the exhibition's opening, Chychkan noted that he had repeatedly come into conflict with right-wing radicals, observing that, "They are not reacting to the work itself," but to the fact that someone is choosing to speak out on this sensitive subject. Hanna Tsyba, who worked at the Center and was inside the building during the attack, noted:

“ What's important is how the discussion takes place, and the problem here is violence. The problem isn't that someone has these views, and someone else has other views, but [rather] the fact that people with right-wing views very often resort to violence. They don't discuss, they come to events to shout, disturb, intimidate, [and] disrupt. They aren't interested in dialogue.<sup>41</sup>

Another notable incident occurred in May 2018. Representatives of the Khudrada association of art curators held a one-day event on St. Michael's Square in Kyiv, in which they assembled a wooden recreation of a living space in a Roma camp that was destroyed by right-wing radicals. The installation aimed to draw attention to the challenges faced by persecuted communities.<sup>42</sup> Khudrada member Yevheniia Bielorusets said that the organizers received threatening messages the day before the installation opened, as well as on the

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38 The citation is from an interview with Kateryna Badianova that was organized for this analytical paper by the author.

39 The citation is from an interview with Hanna Tsyba that was organized for this analytical paper by the author.

40 Anna Moskovchenko and Oksana Horodivska, "«Як перевірити, чи нації достатньо слави?» — художник Давид Чичкан про свою зруйновану виставку" ["How to check if a nation has enough glory?" — artist Davyd Chychkan on his ruined exhibition], *Hromadske*, February 8, 2017, <https://hromadske.ua/posts/hudozhnik-david-chichkan-pohrom-vistavki-vtrachena-mozhlyvist>.

41 The citation is from an interview with Hanna Tsyba that was organized for this analytical paper by the author.

42 Olga Komarova and Roman Rebrii, "Як в центрі Києва встановили ромську «халабуду»: дивна історія" [How a Roma 'khalabud' was installed in the center of Kyiv: a strange story], *Radio Svoboda*, May 18, 2018, <https://www.radiosvoboda.org/a/29236157.html>.

day of the event when they faced provocation and law enforcement agencies refused to act.<sup>43</sup>

Many other cultural and artistic events have been obstructed by violence in recent years, including open lectures, meetings, and book presentations that address controversial and sensitive topics concerning politics, gender, LGBT+ rights, and national identity, among other areas. In September 2017, two book presentations at the Publishers' Forum in Lviv – about diverse types of families, including LGBT+ families, and on European left-wing social movements – were disrupted due to pressure and threats from right-wing radicals.<sup>44</sup> In September 2019, former lawmaker and political expert Oleksandr Donii was attacked in Kharkiv before a planned lecture on human rights, tolerance and inclusion of LGBT+ rights, and rights of other minorities in the Ukrainian national idea.<sup>45</sup>

It is important to note that censorship resulting from the threat of violence and censorship committed by institutions can be interrelated. Institutions may refuse to cooperate with artists after receiving threats, such as from representatives of radical right movements; an example of this occurred in 2017 when organizers of the Lutsk Art Festival canceled Olha Herasimuk's book presentation due to threats that it would be disrupted.<sup>46</sup> Although the book was about the crimes committed during the Soviet times under Stalin's rule, Herasimuk's support of LGBT+ rights and participation in the Equality March earlier that year was considered problematic.

Tsyba believes that the increase in the frequency of violence against artists, the destruction of artwork, and bans on events are the result of an inadequate response by law enforcement agencies:

“This is all happening under the eyes of the authorities. In fact, our state gives them [this] right, because it depends entirely on the state. If at least one of these cases was punished, they wouldn't happen anymore.”<sup>47</sup>

The physical security of artists and their ability to exercise their right to freedom of expression depends on the ability and willingness of law enforcement to respond quickly and appropriately. If a state seeks to develop democratic institutions and the pluralism of ideas, it must establish the rule of law so that those responsible for offenses are fairly punished according to and within the boundaries of the law.

## Conclusions

Ukrainian policy on the publication, broadcast, and distribution of media has undergone significant changes since 2014. Responding to pressures to protect national security, new laws have strengthened the state's control over freedom of expression and imposed bans and other restrictions on cultural works associated with Russia. The frequency of right-wing radical groups perpetrating “censorship through violence” has also increased. In addition to artists and works related to Russia, artists who work as activists and offer critical interpretations of political issues – particularly those related to how inequality and discrimination affect vulnerable groups – regularly face restrictions on their freedom of expression.

This analysis highlights several opportunities to reduce censorship, which should be carried out systematically and simultaneously by the Ukrainian government, in close cooperation with human rights defenders, art critics, and other members of the public:

First, the regulations imposed by the Verkhovna Rada of Ukraine as well as decisions and decrees of the Ministry of Culture and Information Policy and *Derzhkomteledradio* should be improved and standardized in accordance with international human rights standards. Laws “On the Protection of the Information Television and Radio Broadcasting of Ukraine,” “On Cinematography,” and “Concerning Restricted Access of Anti-Ukrainian Content to the Ukrainian Market for Foreign Printed Products” should be revised to remove any broad-based content-related restrictions imposed on artistic freedom and freedom of expression. In case of the necessity to limit certain kind of content related to Russian aggression, it should be decided by courts on a case-by-case basis, in accordance with the ECtHR's best practices and the aforementioned three-part test of legality, legitimacy, necessity, including the adherence to the principle of proportionality.

Also, the authorities should ensure the transparency of decision-making processes in the cultural and creative sectors. The list of individuals deemed to pose a threat to national security serves as a dubious and non-transparent tool for the law enforcement and public authorities to interfere with the editorial decision-making processes of movie theaters, radio stations, TV channels, and event managers. The authorities should either clarify the Ministry of Culture and Information Policy's procedure and decision-making process for adding and removing names from the list or rather remove this requirement from Ukrainian legislation at all.

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43 According to the curator of the initiative Yevheniia Bielorusets and media reports, law enforcement, at first, tried to stop the action from happening. Then as soon as artists finished their installation, opponents, allegedly from hate group C14, asked several homeless people to use the wooden recreation of a Roma camp as their new living space. Homeless people also got bottles of vodka and started to provoke organizers despite the presence of police forces.

44 “Форум видавців: у Львові “тітушки” зірвали презентацію книги” [Publishers' forum: “titushki” disrupt book presentation in Lviv], *Ukrinform*, September 17, 2017, <https://www.ukrinform.ua/rubric-society/2306767-forum-vidavciv-u-lvovi-titushki-zirvali-prezentaciu-knigi.html>.

45 “Політичний експерт Доній заявив про напад через лекцію про толерантність у національній ідеї” [Political Expert Donii talks about the attack over the lecture on tolerance in the national idea], *Radio Svoboda*, September 12, 2019, <https://www.radiosvoboda.org/a/news-doniy/30161333.html>.

46 “Презентацію ‘Розстрільного календаря’ сталінських репресій зірвали через участь авторки у ‘Марші рівності’” [Presentation of the “shooting calendar” from Stalin's repressions disrupted due to author's participation in “equality march”], *Zmina.info*, August 8, 2017, [https://zmina.info/news/prezentaciju\\_rozstrilnogo\\_kalendarja\\_stalinskih\\_represij\\_zirvali\\_cherez\\_uchast\\_avtorki\\_u\\_marshi\\_rivnosti-2/](https://zmina.info/news/prezentaciju_rozstrilnogo_kalendarja_stalinskih_represij_zirvali_cherez_uchast_avtorki_u_marshi_rivnosti-2/).

47 The citation is from an interview with Hanna Tsyba that was organized for this analytical paper by the author.

Second, civil society organizations such as PEN Ukraine, Method, Center for Visual Culture to name a few, as well as donor institutions supporting art and culture development in Ukraine should join forces to support artists, systematically monitor cases and forms of censorship, and strengthen the role of cultural experts and scholars within the government and in public institutions, such as exhibition centers and institutions of higher education. This will require building strategic partnerships between human rights defenders and representatives of the art community.

Finally, law enforcement agencies must improve their capacity and determination to respond to pressure and attacks on artists, especially when they are targeted by members of far-right groups.

Ukrainian authorities such as the Ministry of Internal Affairs should consider creating special training programs for law enforcement officials and develop and disseminate protocols on how to ensure protection from violence targeting artists, their work, or cultural institutions. Moreover, law enforcement should take the problem of impunity for violence conducted by radical groups seriously and respond appropriately.

Without implementing such measures, the challenges to artistic expression described in this paper will negatively affect the diversity and creativeness of the cultural and art sector in Ukraine, resulting in limitations on the right to the freedom of expression, and undermine democratic development in Ukraine.



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