

## The Council of Danish Artists: Answers to the Questionnaire on the Right to Artistic Freedom

1

Is the right to artistic freedom expressly protected under the Constitution in your country? If so, please provide the relevant provisions, or if needed, a translation of these provisions.

No. Artistic freedom is not expressly protected under the Constitution of Denmark, but it is protected under the freedom of speech. The Constitution expressly forbids censorship, so no one can prevent people from expressing anything.

However, you are responsible for what you have said, and you can later be confronted in the courts.

2

If relevant, please provide a brief summary of important decisions to artistic freedom adopted by judicial authorities in your country over the last ten years.

One of the High Courts handed down a significant decision in 2011 that improved the legal standing of artistic freedom.

An author wrote a novel in which another artist exists as a character. These two artists had worked closely together for several years, they knew each other very well and this was well known to the public.

The novel contains pieces of sensitive personal information about this character, Thomas Skade-Rasmussen, who claimed that his privacy was violated.

The task for the High Court was to balance the importance of Article 8 of the European Convention on Human Rights (ECHR) (about the right to privacy and family life) emphasized by Thomas Skade-Rasmussen, to Article 10 of the ECHR (about the right to freedom of expression), emphasized by the author and the publisher.

The High Court decided that, although some information about the character was sensitive and private, the novel was fiction and found that the regard to artistic freedom had to be given preference.

Denmark had an extensive public debate of “artistic freedom” in connection with the international incident of the Muhammed caricatures, but no judicial decisions were made.

It was never questioned whether the cartoonists and the newspaper had “the right” to do this, but what became obvious was that it could be connected with endangering life to use your right.

One can say that the state took the responsibility to protect the artists who had executed their artistic

freedom and that the state chose to defend artistic freedom. But then again, it was a political reaction – not a judicial decision.

Several cities in Denmark have chosen to join the International Cities of Refuge Network (ICORN). Once again, you could say that the politicians show that they are concerned about artistic freedom, but you cannot say that artistic freedom has been adapted as a judicial term.

3

Has your country adopted any official policy relating to art and artistic freedom?  
If so, please provide a summary of the main elements included in such a policy.

As stated under point 1, there are limitations to what people can express without the risk of being legally prosecuted. People are not allowed to express views that threaten people or to insult them because of race, skin color, national or ethnic origin, religion or sexual orientation, and people can be penalized for blasphemy.

We dare not say that it is an official policy, but the public generally assumes that artistic expression will be more broadly tolerated judicially than non-artistic expression would. The above-mentioned decision by a High Court seems to confirm this assumption.

4

Is there a legal definition of “artist” in your country? If so, does this definition have any bearing on the status of artists, as well as their artistic freedom? Do organizations of artists agree with such definition?

The only official definition of which we are aware is written in the tax laws, and we do not think this is what is meant. Artists are defined as people who receive income from the arts, and under certain conditions they may spread their taxable income over more than one year (a form of income averaging).

5

Is there an official definition of “artisans” and craftsmen/women? If so which consequences does this definition have on the status of artisans and craftsperson in terms of their artistic freedom? Do organizations of artisans/craftswomen agree with such definition?

No.

6

In your view, what are the main impediments encountered by artists in their work in your country?

Artists encounter no special impediments in their work that would not be experienced in another profession.

However, there are barriers that make it difficult for artists to enjoy equal benefits from general social and welfare arrangements. Examples include pension schemes and unemployment insurance.

7

In this regard, what measures are required to combat these impediments?

8

What support is provided by State authorities, including public institutions and semi-autonomous bodies to artists, in particular financial support for artistic creations and exhibitions? What are the specific mechanisms to ensure that those benefiting from State support enjoy artistic freedom and that all artists compete equally for State resources, without discrimination based on, for example, gender, ethnic origin, location in State territories, political opinion or belief?

Denmark's Ministry of Culture supports libraries, museums, theatres, orchestras, concert halls and film production, and it offers grants that can be applied for by authors, visual artists, composers, craftspeople, architects, composers and film directors.

The public support for artistic purposes is administered based on arm's-length principles.

The Parliament decides in some cases to allocate money directly to large institutions of national importance, but the managers of these institutions have full autonomy to administer the funding – often with the guidance of a board.

The councils administering grants for individual artists have some members appointed by the Ministry and some appointed by artists' organizations.

The only measure to prevent discrimination is transparency in the decisions. All decisions are publicized.

9

Under national law, what kind of legitimate restrictions can be imposed on artistic freedoms? Please provide information on most recent relevant cases in your country, if any.

None.

10

Are there any legal provisions or traditions in your country which restrict certain art forms, including the use of instruments and songs, or public display/performances? If so, do such restrictions apply to certain categories of people, for example on the ground of, gender, ethnic origin or age?

People who want to carry out public concerts or theatre performances in the street need a permit from the police, but this is hardly what is meant here.

11

Please indicate whether specific bodies or institutions, either state or non-state, are mandated to decide on possible restrictions to be imposed on artworks (e.g. film censor boards). If so please

- (a) Provide information about the membership, terms of reference and appointment procedures of these bodies;
- (b) Indicate whether these bodies disclose information publicly and to what extent they are held accountable for their decisions and to whom; and
- (c) Indicate whether an appeal mechanism judicial, quasi-judicial or other, is in place.

We are only aware of a film censorship board that restricts children under a certain age from seeing certain movies.

12

Please provide information on the possibilities for artists to perform street art and/or to use public spaces in general for their artistic performances, such as public gardens. What are the approval procedures for this?

They have to apply the police for a permit.

13

Please provide a short summary of any public debates that may have taken place at the level of legal / policy making bodies relating to the impact of free market policies on artistic freedoms, and/or on achieving the balance between private / public sponsorship.

Denmark recently had a debate about a documentary book focusing on the hippie generation of the 1960s. The book had several photographs of nude hippies.

There was no trouble with the hard copy, but when the author wanted to publish the E-book through the Apple App Store, Apple refused. When the author later modified the photos by placing pictures of apples over the genitals, Apple first accepted the book but subsequently decided to reject it.

It is the general opinion in Denmark, that Apple here – as a market-controlling actor – has violated the artistic freedom of the author. It is difficult to imagine that any company can be obligated by law to sell a certain product, but politicians want to discuss the topic within the EU, since Apple has such a dominant position on the E-book market.

14

Does your country have an independent artists' council, representing professional artists? If so, does the state consult the council on matters related to the status of artists or has the state developed channels of regular communication (through for instance consultations, debriefings, public hearings etc.) between relevant authorities and independent organizations representing artists?

Yes. This response is from the Council of Danish Artists, an umbrella organization of 24 independent organizations of artists.

15

Are there any State or artists' organizations in your country established to collect the income from artistic creations/performances for re-distribution to artists? What is the annual in- and outflow of money to and from such organizations?

Yes. Denmark has three major rights-management societies. They are owned solely by artists or jointly with producers. We estimate that they collect €200 million per year, and we estimate that they distribute about half this amount to artists and the other half to producers.