

# ACCESS TO CULTURE



**A fundamental right of all citizens**

## **SUPPORTING LEGAL FRAMEWORK**

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## Policy Guidelines

### Annex I - supporting legal framework

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# 1 OUTLINE OF INSTRUMENTS

There are many international legal instruments that include, directly or indirectly, references to access to culture (see the list of legal instruments herewith). Most Member States of the EU are parties to these treaties, which bind them in drafting their national legislation and policies.

## International human rights instruments

International human rights instruments include several rights that are relevant to access to culture. The right to take part in cultural life is the most explicit right in this regard, which is included in the *Universal Declaration of Human Rights* (Article 27)<sup>1</sup> and the *International Covenant on Economic, Social and Cultural Rights* (Article 15(1))<sup>2</sup>. Taking part in cultural life requires access to cultural life: without access to culture one is not able to participate in cultural life.

Other relevant human rights included in international treaties are, for instance, the right to freedom of expression, the right to information and the right to education. Central to all human rights and also essential for access to culture is the principle of equality. It is important to note, however, that having equal rights is not the same as being treated equally. In fact, equality also entails the recognition of diversity. Equality not only implies that equal situations should be treated equally, but also that unequal situations should be treated unequally. Consequently, difference in treatment is allowed, as long as the criteria for differentiation are reasonable and objective and serve a legitimate aim. In terms of access to culture, it means that States can or even should differentiate in their policies between different groups according to their specific situations.

## International instruments on culture or cultural diversity

There are also a number of international legal instruments that deal specifically with culture or cultural diversity, such as the *Universal Declaration on Cultural Diversity* (2001)<sup>3</sup> and the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*<sup>4</sup>. There are also many conventions on cultural heritage, such as the *UNESCO Convention on the Protection of the World Natural and Cultural Heritage*<sup>5</sup> and the *UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage*<sup>6</sup>, as well as the *Council of Europe Convention on the Value of Cultural Heritage for Society*<sup>7</sup>. Furthermore, there are international instruments on specific groups, notably minorities and indigenous peoples, in which access to culture is incorporated. Instruments such as the *UN Declaration on the Protection of National or Ethnic, Religious and Linguistic Minorities*<sup>8</sup>, the

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1 United Nations, *Universal Declaration of Human Rights*, 10 December 1948. See <http://un.org/Overview/rights.html#a27>.

2 United Nations, *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entry into force 3 January 1976. See [http://www.unhcr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhcr.ch/html/menu3/b/a_ceschr.htm).

3 UNESCO, *Universal Declaration on Cultural Diversity*, adopted on 20 November 2001. See [www.unesco.org, legal instruments](http://www.unesco.org/legal_instruments).

4 UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted on 20 October 2005 and entry into force on 18 March 2007. See [www.unesco.org, legal instruments](http://www.unesco.org/legal_instruments).

5 UNESCO, *Convention on the Protection of the World Cultural and Natural Heritage*, adopted on 16 November 1972 and entry into force on 17 December 1975. See [www.unesco.org, legal instruments](http://www.unesco.org/legal_instruments).

6 UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, adopted on 27 October 2003, entry into force 20 April 2006. See [www.unesco.org, legal instruments](http://www.unesco.org/legal_instruments).

7 Council of Europe treaty series, no. 199, *Framework Convention on the Value of Cultural Heritage for Society*, Faro, 27 October 2005, not yet in force (7 ratifications, 10 needed). See <http://conventions.coe.int/Treaty/EN/Treaties/Html/199.htm>

8 United Nations, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 92nd plenary meeting, 18 December 1992, A/RES/47/135. See <http://www.un.org/documents/ga/res/47/a47r135.htm>.

UN *Declaration on the Protection of Rights of Indigenous Peoples*<sup>9</sup>, the Council of Europe *Framework Convention on the Protection of National Minorities*<sup>10</sup> and the Council of Europe *European Charter on Regional and Minority Languages*<sup>11</sup> include important rights related to culture, the UNESCO *Recommendation concerning the status of the artist*<sup>12</sup> addresses the issue of professional recognitions for artists.

## EU instruments

Article 151 of the EU *Treaty*<sup>13</sup> states that the EU should contribute to the flowering of the cultures of the Member States as well as foster the common European cultural heritage. Action by the EU should focus on improving knowledge on and protection of the European cultural heritage, encouraging cultural exchanges and artistic creation. However, Article 151(5) prohibits the EU from harmonizing national laws. It is only allowed to act through incentive measures, which means that the Member States themselves remain the prime actors in developing cultural policies. Also worth mentioning is Article 22 of the *Charter of Fundamental Rights* of the European Union which stipulates the need for respect for cultural diversity. After the *Lisbon Treaty*<sup>14</sup> enters into force, the EU will also become a member of the *European Convention on Human Rights*<sup>15</sup>, which means that, apart from the Member States, the EU institutions will also be bound by this treaty. A number of Recommendations of the European Parliament represent key references for artists: the *Resolution on the social status of artists* (7 June 2007)<sup>16</sup>, the *Resolution on the importance and dynamics of the theatre and the performing arts in an enlarged Europe* (15 July 2002)<sup>17</sup> and the *Resolution on the situation and role of artists in the European Union* (9 March 1999)<sup>18</sup>.

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9 United Nations, Declaration on the Rights of Indigenous Peoples, Adopted by General Assembly Resolution 61/295 on 13 September 2007. See <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

10 Council of Europe, Framework Convention for the Protection of National Minorities, Strasbourg, 1.II.1995, ETS n° 157. See <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

11 Council of Europe, European Charter for Regional or Minority Languages, Strasbourg, 5.XI.1992, ETS n° 148. See <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

12 See [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)

13 European Union, Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community, 29.12.2006, Official Journal of the European Union, C 321 E/1. See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF>.

14 European Union, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, Official Journal of the European Union, C 306, Volume 50, 17 December 2007. See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

15 Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4.11.1950, CETS n° 005. See <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>.

16 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0236+0+DOC+XML+V0//EN>

17 <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2002-0264+0+DOC+XML+V0//EN>

18 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:175:0042:0048:EN:PDF>

## 2 LIST OF LEGAL INSTRUMENTS

### International human rights instruments

United Nations, *International Covenant on Economic, Social and Cultural Rights*, adopted by General Assembly resolution 2200A (XXI) of 16 December 1966 and entry into force 3 January 1976. See [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm)

United Nations, *Universal Declaration of Human Rights*, 10 December 1948. See <http://un.org/Overview/rights.html#a27>

### International instruments on culture or cultural diversity

Council of Europe, *European Charter for Regional or Minority Languages*, Strasbourg, 5.XI.1992, ETS n° 148. See <http://conventions.coe.int/Treaty/EN/Treaties/Html/148.htm>.

Council of Europe, *Framework Convention for the Protection of National Minorities*, Strasbourg, 1.II.1995, ETS n° 157. See <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>.

Council of Europe treaty series, no. 199, *Framework Convention on the Value of Cultural Heritage for Society*, Faro, 27 October 2005, not yet in force (7 ratifications, 10 needed). See <http://conventions.coe.int/Treaty/EN/Treaties/Html/199.htm>

UNESCO, *Convention for the Safeguarding of the Intangible Cultural Heritage*, adopted on 27 October 2003, entry into force 20 April 2006. See [www.unesco.org](http://www.unesco.org), legal instruments.

UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted on 20 October 2005 and entry into force on 18 March 2007. See [www.unesco.org](http://www.unesco.org), legal instruments.

UNESCO, *Convention on the Protection of the World Cultural and Natural Heritage*, adopted on 16 November 1972 and entry into force on 17 December 1975. See [www.unesco.org](http://www.unesco.org), legal instruments.

UNESCO, *Universal Declaration on Cultural Diversity*, adopted on 20 November 2001. See [www.unesco.org](http://www.unesco.org), legal instruments.

United Nations, *Declaration on the Rights of Indigenous Peoples*, Adopted by General Assembly Resolution 61/295 on 13 September 2007. See <http://www.un.org/esa/socdev/unpfii/en/drip.html>.

UNESCO *Recommendation concerning the status of the artist*, 27 October 1980  
See [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)

United Nations, *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*, 92nd plenary meeting, 18 December 1992, A/RES/47/135. See <http://www.un.org/documents/ga/res/47/a47r135.htm>.

## EU instruments

*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world*, Brussels, 10..5.2007, COM(2007) 242 final.

See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0242:FIN:EN:PDF>

Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4.11.1950, CETS n° 005.

See <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=005&CL=ENG>.

European Union, *Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community*, 29.12.2006, Official Journal of the European Union, C 321 E/1.

See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF>

European Union, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, signed at Lisbon, 13 December 2007, Official Journal of the European Union, C 306, Volume 50, 17 December 2007.

See <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>.

*Key Competences of Lifelong Learning*

See doc. 2006/962/EC of 18 December 2006.

<http://eur-lex.europa.eu/Notice.do?val=438336:cs&lang=en&list=438336:cs,429124:cs,&pos=1&page=1&nbl=2&pgs=10&hwords=&checktexte=checkbox&visu=#texte> or <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:394:0010:0018:EN:PDF>

European Parliament, *Resolution of the European Parliament on the importance and dynamics of the theatre and the performing arts in an enlarged Europe* (15 July 2002)

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A5-2002-0264+0+DOC+XML+V0//EN>

European Parliament, *Resolution of the European Parliament on the social status of artists* (7 June 2007)

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0236+0+DOC+XML+V0//EN>

European Parliament, *Resolution on the situation and role of artists in the European Union* (9 March 1999)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:1999:175:0042:0048:EN:PDF>