# CONTEMPORARY MATTERS OF CANCELLING CULTURE AND EU LAW

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## I. INTRODUCTION

It happened well over six decades before: On 6 April 1962, Leonard Bernstein was - as usually - on the podium for a NY Philharmonic Subscription concert, waiting for the soloist (pianist Glenn Gould) to arrive, in order to commence his interpretation of Brahms's 1st Piano Concerto. Right before things started, Bernstein -

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unusually - addressed the public and issued a short disclaiming speech, in which he depicted the different views between conductor and soloist around the matter of tempi to be used while executing the piece:[1]

*"I cannot say I am in total agreement with Mr. Gould's conception and this raises the interesting question: What am I doing conducting it? I'm conducting it because Mr. Gould is so valid and serious an artist that I must take seriously anything he conceives in good faith and his conception is interesting enough so that I feel you should hear it, too.*

*(...) This time the discrepancies between our views are so great that I feel I must make this small disclaimer. Then why (...) am I conducting it? Why do I not make a minor scandal – get a substitute soloist, or let an assistant conduct it? Because I am fascinated, glad to have the chance for a new look at this much-played work."*

He did not cause a scandal, he did not "cancel" a fellow musician's different approach; this episode mirrored why Leonard Bernstein belonged to the greatest artists of all time. He respected any different approach to cultural things; as a matter of fact, the particular execution of Brahms's 1st Piano Concerto has always been the author's personal favorite (despite the tempi...), bringing together a beloved conductor and a beloved soloist, playing a piece of a beloved composer under the auspices of the NYP.

In 2025, tolerating cultural (and other) differences seems to be much harder; the modern, more digitalized environment, *e.g.* of social media, allows for all kinds of hate speech to evolve, even globally. Also, culture as a whole seems to suffer (not only because of financial cuts), mirroring certain, quite negative developments in society.

## II. DESCRIBING A PATHOLOGY

The world seems to be out of order, certainly not being as harmonic as Brahms's 1st Piano concerto. Turmoil of all kinds, political and social unrest – there is literally not a single day in which news broadcasts do not bring melancholy to our life. Times as these, which seem to lack overall stability, would actually call for human beings getting closer to each other, for understanding each other better, for keeping an open mind about the respective other's specificities and possibly different views or approaches, for instance in the area of culture. But contrary to that, our times see an explosion

[1] Transcript of the speech by the author; Bernstein's speech was published, along with the Piano Concerto and a Glenn Gould radio interview, by Sony Classical CD, SK 60675 (1998).

of using social networks, which only at first sight bring people together. Each of them, besides other features, includes a comment section. These sections give users the brilliant opportunity to share their thoughts, which they express in a written way.

Ideally, sharing thoughts – if done so in a polite, open-minded and tolerant way – enhances discussions and may lead to fruitful ideas which, at the end of the day, may even improve society. So does culture and cultural diversity of course. Alas, it's not always like this, and especially social network comment sections have been misused for hate speech and comparable pathologies of society; some people are intrigued by the anonymity which the internet allows for, and obviously fear no sanctions for their behavior. Often, people are hurt by such – one should always consider an elder Greek saying: *"Η γλώσσα κόκκαλα δεν έχει και κόκκαλα τσακίζει"*, which literally means that a tongue has no bones but is capable of breaking them – therefore speech of any kind which might violate others' human rights can have gravely negative results, not only bilaterally, but also on a society as a whole.

So it appears as common that in the comment sections of various internet media, especially the aforementioned social networks, anger at everything and everyone is expressed in a rather, so to say, unchecked and thoughtless mode. Of course, freedom of expression, as we will see, protects also this type of expression. However, there is a borderline: The situation becomes pathological whenever such expressions call for discrimination, even for hostility and violence against people and groups, especially on the basis of racist attributions, religion, origin, skin color, gender, sexual orientation or gender identity, disability or illness, etc. International human rights bodies, as we're about to see, have been dealing with such hate speech for some time and are trying to define the extremely delicate distinction between freedom of expression - which must be protected and defended at all costs - and hate speech that is discriminatory and violates human dignity, which must be combated, again at all costs. Somewhere in the middle, as this paper will depict, would be the also delicate matter of cancel culture.

Many international bodies (for Europe, besides the EU, the Council of Europe, another international organization containing a considerable wealth of almost 50 Member States now, and the Organization for Security and Co-operation in Europe=OSCE would have to be mentioned here) are dealing with the described phenomenon. The Committee of Ministers of the Council of Europe, for instance, adopted a (soft law) recommendation on hate speech in

1997[2]: This contains a definition of hate speech that is still frequently referred to in connection with the topic today, including: Any expression that propagates, incites, promotes or justifies 'racial hatred', xenophobia, anti-Semitism or other forms of hatred based on intolerance, including the form of aggressive nationalism and ethnocentrism, discrimination and hostility towards minorities, immigrants and people of immigrant origin.

On the other hand, freedom of expression is a core human right, even compared to the situation in most countries of the world. It is considered essential for the exercise and protection of all human rights as well as for the functioning of a democratic constitutional state. Various international human rights treaties protect freedom of expression (for instance Article 19 of the Universal Declaration of Human Rights, Article 10 of the European Convention on Human Rights (ECHR) and last, surely not least, Article 11 of the EU Charter of Human Rights).

However, freedom of expression is not absolute. It can be restricted to ensure respect for the rights or reputation of others or to protect national security, public order, health or morals. The ECHR describes the conditions for restrictions even more precisely: According to its Article 10, paragraph 2 it can be subject to legal formalities or restrictions whenever it is deemed as being necessary especially for democratic society, national security, even public safety. Article 17 adds to this, by emphasizing the illegality of acting against the ECHR rights as a whole.

States have a duty to take positive measures in the area of prevention and awareness-raising. They should carry out public education and information campaigns on the issue and in particular encourage and support self-regulation of the media. They must also make politicians, opinion leaders, institutions and organizations responsible for combating hate speech. And they must have a clear point about cancel culture: the term might be understood empirically as the growing trend of socially ostracizing individuals or organizations that are accused of offensive or even discriminatory statements or actions. Anything that is not considered "politically correct" may no longer be said. It gets worse: Self-proclaimed advocates of diversity of opinion then act, using even censorship as a permissible (in their own eyes, or following their own opinion) means of restricting "free speech". But this is dangerous: Pathologies through applying the freedom of expression should not be handled like this. This limit is often drawn on social networks, and so called

[2] Recommendation No. R (97) 20 of the Committee of Ministers to member states (of the Council of Europe) on "hate speech", adopted on 30 October 1997.

"shitstorms" are unleashed, leading colleagues and friends to publicly distance themselves. But what's the borderline, and is cancel culture an *expressis verbis* part of corresponding law? We'll have a look on Europe's legal reality just down the stretch.

A parenthesis is in place here:

The described pathology is not only about what might have been said and dealing with it. The matter is also about what might have been done, or not, especially to culture, literally. The way in which a society behaves to its cultural heritage is a mirror of that society's status; and also a mirror for the quality and depth of bilateral human relationships. For instance, just recently, over 180 European cultural institutions appealed to the European Parliament in light of measures taken by right-wing governments in the EU against artistic freedom.[3] This appeal highlighted that through such calamities (which often include painful financial cuts) not only the reputation, but also the very existence of European culture in all its diversity would be at risk.[4] Therefore, cultural institutions and artists from across Europe seem to be alarmed by current cultural policy developments in various EU Member States, especially if one remembers politically motivated dismissals and budget cuts in Hungary and Slovakia as well as attacks on the audience at a premiere at the National Theater in Sofia.[5] To get things straight, one of the EU principles is not to intervene in the cultural policies of its various Member States, but only to support them in crises and unexpected challenges – that's why the mentioned appeal emphasized that

*"culture in Europe is in exactly such a crisis. (...) Because let's not kid ourselves: where open, non-partisan, cross-border culture disappears, the European unification and peace project itself will also disappear at some point".*[6]

A concrete answer or action by the European Parliament, as a reaction to the abovementioned, is still to be expected (or should be expected any time soon).

Having these elements in mind, one asks himself whether there are legal ways of protecting the EU society not only of hate speech itself, but also of cancelling culture, both metaphorically and literally.

Another corresponding matter which has to be addressed is the ever increasing grade of digitalization which adds to the quantity (it is highly questionable whether it adds further to the quality(?)) of public

[3] Cf. (no author mentioned), *"Kunstfreiheit in Gefahr": Appell an EU*, orf.at (November 20, 2024), https://wien.orf.at/stories/3283395/.
[4] Cf. *id.*
[5] Cf. *id.*
[6] Cf. *id.* (translation by this paper's author).

dialogue by opening new ways of exchanging opinions; by opening new ways of publicly expressing ourselves. The EU legislator tried to handle this delicate, but still ongoing topic through very 'fresh' secondary EU law: the EU Digital Services Act,[7] the EU Digital Markets Act[8] (which is more about the proper competition conduct of platforms between them, when providing services for the consumer, and therefore not in focus of this paper) and the EU AI Act[9]. These are unique worldwide, with other legislators still struggling to find adequate answers to contemporary issues of society. But it remains unclear and yet to be determined by reality whether the EU Acts in said area can be seen as adequate, themselves:

Digitalization is an important tool also for the abovementioned social networks. It shall enhance, among other, communication, and may make the expression of thoughts easier, even manipulate them – which leads us again to the pathology that includes, as mentioned, cancel culture.

The present paper will focus on the European Union and its primary and secondary law (II), since its respective legal steps taken (III) as well as corresponding case law (IV) are quite fresh, as well as on the Council of Europe's European Court of Human Rights case law (IV), which is specialized in the area of human rights protection through the ECHR, and for that reason, without being part of the EU and its law, should be included here, too. In a playful analogy, the paper sections follow the denominations of the three movements of Brahms's aforementioned 1st Piano Concerto.

## III. *MAESTOSO*- EU PRIMARY AND SECONDARY LEGAL BASES AS AN ANSWER?

For many decades, the former European Communities/nowadays EU lacked a proper human rights catalogue. This seems natural, as far as the Communities' main focus had been an economic one, ever since

[7] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), 2022 O.J. (L 277/1).
[8] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), 2022 O.J. (L 265/1).
[9] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act), 2024 O.J. (L 2024/1689).

the 1950's. The main goal was to recreate the European continent after the madness of World War II.

Consecutively, the EU Charter of Fundamental Rights was created only in 2000 after a lengthy drafting process under the headship of Roman Herzog, a former German president and federal constitutional judge. It has been legally binding since the Lisbon Reform Treaty, and Article 6 paragraph 1 TEU forms its legitimation. The Charter stood at the end of a long process in which the European Court of Justice (hereinafter: ECJ) deliberately used the ECHR which is, as a product of the Council of Europe, no EU law, in order to create case-law for - so to say - 'community fundamental rights'.

The Charter includes Article 11, which through its paragraph 1 allows everyone to express freely, as well as to holding opinions and receiving - as well as sharing - information and ideas around the EU without any sort of censorship involved. Moreover, paragraph 2 of Article 11 emphasizes the corresponding necessity of pluralism of media.

Any limitations to this right must be lawful and proportional, as Article 52 paragraph 1 of the Charter would point out. This means that limitations are possible, if they are legitimized respectively. What limitations would come to mind?

A basic element of EU law is the Principle of Proportionality which, along with the Principles of Conferral and of Subsidiarity, are located in Article 5 TEU. The Principle of Proportionality (Article 5 paragraph 4 TEU), which is also well-known in the respective national legal contexts of (not only) the EU Member States, limits state actions to such amount which is necessary in a concrete case in order to reach general, constitutional goals. In the upcoming case law section, we will understand how necessary, but also how flexible this Principle is in reality.

Fundamental rights are also mirrored in a good wealth of EU secondary legal acts. Maybe the most important of them, especially in the digital era, would be the General Data Protection Regulation[10], itself a pioneer if compared to the respective legal situation on other continents. That Regulation's Recital 153 reads

*"Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation",*

[10] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119/1).

which of course shows the high standards the EU legislator aimed at when publishing this legal act. This very element emphasizes, for instance, the necessity of balance between an expressed opinion and data protection. And balance is obviously the right word to describe what needs to be done also when expressing an opinion publicly, and when dealing with such. This is, at the end of the day, not only a legal matter, but merely a matter of proper social conduct, in light of using modern means of digitalization.

## IV. *ADAGIO*- THE CONTEXT OF "FRESH" EU LEGISLATION IN DIGITALISATION AND AI

### A. Digital Services Act[11]

The importance of digital services in our lives is understandable in many different ways: Such services are used to communicate, to shop, to find information etc., all of it through constantly evolving, newer digital services. They have also made trade across borders and the access of new markets much easier: But there are also issues to address, issues which deal with the trade and exchange of illegal goods and services. Online services might also be misused by manipulative algorithmic systems and disinform especially the weaker link on the market, the consumer.

A main issue is still that some larger online platforms control important ecosystems within the digital economy, acting as gatekeepers on the digital markets - leading sometimes to unfair conditions, not only for businesses using these platforms, but also for consumers. To address such matters, the Digital Services Act (hereinafter: DSA) was introduced.

The path to the DSA observed and followed technological progress, of course. Put more generally, since the 1970s the European Communities were trying to articulate certain consumer protection law programs (with reference to President *Kennedy's* 1962 "Consumer Bill of Rights")[12]. A lack of compromise between the Member States led the European legislator to concrete first results in that area, only

[11] Cf., in the following, Dimitrios Parashu, *Elements of EU Consumer Protection Law. With Analyses of other EU Market Law Matters*, Berlin 2024, pp. 31 et seqq.

[12] Cf. Robert N. Mayer, *The US Consumer Movement: A New Era Amid Old Challenges*, in: The Journal of Consumer Affairs, Vol. 46, No. 2, Special Issue on Product Literacy (Summer 2012), pp. 171 et seqq. (171 et seq.). More generally, cf. Victor E. Schwartz / Mark A. Behrens / Cary Silverman / Rochelle M. Tedesco, *Consumer Protection in the Legal Marketplace: A Legal Consumer's Bill of Rights is Needed*, in: 15 Loyola Consumer Law Review 1 (2002), pp. 1 et seqq.

significantly later,[13] for instance in the 1980s[14] and 1990s[15]. In that way, several types of contract which proved to become more influential over the years were mirrored, for the consumers' benefit.

The EU followed this path and issued, among other activities, a special European Consumer Agenda in 2012[16] which, due to further technological development and its needs to be addressed,[17] aimed at further consumer protection policies by the Union[18] in order to also enhance competition matters[19]. In 2020, the European Commission adopted a successor, the New Consumer Agenda,[20] which effectively updated the overall strategic framework of the EU consumer policy, aiming to respond to the post-pandemic and digitalization challenges to consumer rights.

The main goals of Reg. 2022/2065, which exists parallel to the core elements of Directive 2000/31[21] and avoids also other collisions with preexisting secondary EU law,[22] are threefold, attempting to harmonize[23] (for the benefit of the internal market)[24] intermediary service providers' potential liability exemptions,[25] further their possible due diligence obligations[26] and last - not least - necessary cooperation matters between Commission and relevant national enforcement authorities[27]. All this in reference to only intermediary[28]

[13] To understand the struggle better, cf. generally Gerhard Schricker, *Die Angleichung des Rechts des unlauteren Wettbewerbs im Gemeinsamen Markt*, in: WRP 1977, pp. 1 et seqq.; Markus Möstl, *Grenzen der Rechtsangleichung im europäischen Binnenmarkt*, in: EuR 2002, pp. 318 et seqq.; Yves Bock, *Rechtsangleichung und Regulierung im Binnenmarkt. Zum Umfang der allgemeinen Binnenmarktkompetenz*, Baden-Baden 2005, especially pp. 1 et seqq.

[14] Cf. Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises 1985 O.J. (L 372/31).

[15] Cf. Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts 1997 O.J. (L 144/19).

[16] Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, A European Consumer Agenda - Boosting confidence and growth (COM/2012/0225 fin.).

[17] Cf. Point 3 of said Communication.

[18] Cf. Point 1 of said Communication.

[19] Cf. ibid.

[20] Communication from the Commission to the European Parliament and the Council, New Consumer Agenda Strengthening consumer resilience for sustainable recovery (COM/2020/696 fin.).

[21] Cf. Article 2 paragraph 3 Regulation 2022/2065.

[22] Cf. Article 2 paragraph 4 Regulation 2022/2065.

[23] Cf. Article 1 paragraph 1, 2 Regulation 2022/2065.

[24] Cf. ibid.

[25] Cf. Article 1 paragraph 2 lit. a Regulation 2022/2065.

[26] Cf. Article 1 paragraph 2 lit. b Regulation 2022/2065.

[27] Cf. Article 1 paragraph 2 lit. c Regulation 2022/2065.

[28] Cf. Article 2 paragraph 2 Regulation 2022/2065.

services offered to recipients established or located in the EU, regardless the respective service providers' place of establishment.[29]

Of the utmost importance is the subject of providers' potential liability: First of all, the EU lawmakers did not include a general information monitoring obligation[30] (regardless a supervisory fee charged by the Commission in terms of *checks and balances* when dealing with distance contracts)[31] but opened the door to any voluntary own-initiative investigations if necessary.[32]

Corresponding with the wide[33] informational obligations in EU law for consumers' benefit, and also making generally sure that minors are protected,[34] Article 14 Regulation 2022/2065 underlines the necessity of clear using terms and conditions of providers' services, and Articles 15, 24 and 42 of Regulation 2022/2065 emphasize the necessary transparency in terms of their obligations reporting. In order to address problems (with an expressed priority to trusted flaggers[35]), an internal complaint-handling system for each comparable platform shall exist,[36] not affecting of course the possibility of out-of-court dispute settlement.[37]

In order to support especially the Commission's coordination tasks in the DSA enforcement and investigation context[38], a "Board"[39] consisting of independent advisors[40] shall be established, composed of the Member States' Digital Services Coordinators.[41] Interestingly, this very "Board" is chaired by the Commission,[42] which is not entitled to having a vote though - *au contraire* to the Member States.[43]

To sum it up, due to the constantly growing significance of information society services also for consumers,[44] and in order to enhance the most responsible behavior possible by providers of such

[29] Cf. Article 2 paragraph 1 Regulation 2022/2065.
[30] Cf. Article 8 Regulation 2022/2065.
[31] Cf. Article 43 Regulation 2022/2065.
[32] Cf. Article 7 Regulation 2022/2065.
[33] With the economically and ergonomically necessary exception of SME, through Article 19 Regulation 2022/2065.
[34] Cf. Article 28 Regulation 2022/2065.
[35] Cf. Article 22 Regulation 2022/2065.
[36] Cf. Article 20 Regulation 2022/2065.
[37] Cf. Article 21 Regulation 2022/2065.
[38] Cf. Articles 65 et seqq. Regulation 2022/2065 (including inspections, Article 69, and monitoring activities, Article 72, as well as Periodic penalty payments, Article 76). The professional secrecy lined out by Article 84 is of the utmost importance for a fair procedure, as well as a regular access to files, Article 79).
[39] Cf. Article 61 paragraph 1 Regulation 2022/2065.
[40] Cf. ibid.
[41] Cf. Article 62 paragraph 1 Regulation 2022/2065.
[42] Cf. Article 62 paragraph 2 Regulation 2022/2065.
[43] Cf. Article 62 paragraph 3 Regulation 2022/2065.
[44] Cf. Recital 1 to Regulation 2022/2065.

services,[45] the EU legislator issued the DSA; it is only applicable since 17 February 2024 though,[46] amending[47] important parts of the Electronic Commerce Directive 2000/31[48]. It aims at

"*(...) setting out harmonised rules for a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected. (...)*"[49]

It does so especially through its Articles 29 et seqq., which include provisions regarding providers of online platforms, whenever allowing consumers to conclude distance contracts with traders through said platforms. Especially the quite excessive right to information would have to be emphasized here,[50] as well as matters of data access and respective checks and balances,[51] and last, not least, certain conduct rules for online advertising.[52] Non-compliance from the providers' side might very well lead to legal sanctions, also for the consumers' benefit.[53] Taking place under the auspices of the new European Board for Digital Services,[54] one cannot still determine the ultimate impact of said secondary legal act on the Market and especially on matters of consumer protection. Same goes for its impact on freedom of speech and even cancelling culture, through digital means.

## B. AI Act[55]

The EU aims further to contribute to safe AI: By developing a strong regulatory framework based on human rights and fundamental values, the EU further wants to build an AI ecosystem that benefits all stakeholders. It shall enable better healthcare, safer and cleaner transport systems and more efficient public services for citizens. Within the AI ecosystem, innovative products and services can be ideally developed, especially in the energy, security and health sectors, and companies might benefit from increased productivity and

[45] Cf. Recital 3 to Regulation 2022/2065.
[46] Cf. Article 93 paragraph 2 Regulation 2022/2065.
[47] Cf. Article 89 Regulation 2022/2065.
[48] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), 2000 O.J. (L 178/1).
[49] See Article 1 paragraph 1 Regulation 2022/2065.
[50] Cf. Article 32 Regulation 2022/2065.
[51] Cf. Article 40 Regulation 2022/2065.
[52] Cf. Article 46 Regulation 2022/2065.
[53] Cf. Article 52 et seqq. Regulation 2022/2065.
[54] See Article 61 et seqq. Regulation 2022/2065.
[55] Cf., in the following, EU Commission, *Shaping Europe's digital future*, https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai.

more efficient manufacturing processes, while public authorities can deliver their services, for example in the transport, energy and waste management sectors, more cost-effectively and sustainably.

It is thereby apparent that technology has grown significantly over the last couple of years, making it difficult for lawmakers to follow and to address, wherever necessary, new developments and possible problems arising thereof. The EU AI Act is something entirely new in this context, being the first-ever legal framework on matters of AI, which also addresses possible dangers and risks of AI and tries to help the EU to be capable of playing (ideally) a leading role in this context, not only within the European continent but globally.

The EU legislator has issued its AI Act in order to lay down certain, as much as possible harmonized rules for the Member States on artificial intelligence. It gives AI developers as well as AI deployers both clear requirements and clear obligations for the various, specific uses of AI. It does not do so by creating administrative burdens though: Reg. 2024/1689 seeks to ideally reduce administrative and financial burdens for business, having especially in mind small and medium-sized enterprises (SMEs)[56].

By doing so, the EU legislator was the first world-wide to issue a comparable legal framework. It remains to be seen whether the constant development of AI and corresponding technologies will create the need to further normative adjustments.

The Regulation's purpose includes its serving of the Market's efficiency as well as the promotion of both human-centric as well as trustworthy AI elements, in order to emphasize the human rights and consumer protection as created through EU primary and secondary law.[57] Such premise is served further through certain harmonization, prohibitions and monitoring elements.[58]

This European Regulation on Artificial Intelligence entered into force on 1 August 2024.[59] This legal act was proposed by the Commission in April 2021 and adopted by the European Parliament and the Council in December 2023. It is particularly focused on the potential risks of AI to health, safety and – enter this paper's topic – fundamental rights of citizens. The regulation sets out clear requirements that AI developers and operators must meet depending on the specific use of AI, while reducing the administrative and

[56] Cf. already Recitals 121/143-146 to Reg. 2024/1689.
[57] Cf. Article 1 paragraph 1 Reg. 2024/1689.
[58] Cf. Article 1 paragraph 2 Reg. 2024/1689.
[59] Cf. Article 113 Reg. 2024/1689.

financial burden for companies. The AI Regulation introduces a uniform framework for all EU Member States based on a definition of AI, a classification of such systems and a risk-based approach. The Regulation's main problem would be that it is only going to be fully applicable after August 2026.[60] The question is whether technology will be capable of adapting to the planned new legal environment, developing ways of coping with it under any circumstance.

The scope of Reg. 2024/1689 does not include areas outside the EU law jurisdiction;[61] it does not tangent national security issues[62] as well, among other, freely licensed systems[63] or, more generally, the scientific research context[64]. Member States are free to foresee more favorable provisions for their citizens.[65]

It does include providers (or their third-country representatives)[66] who place on the Union market or put into service AI systems or models, regardless of their location[67] or, if located in a third country, whose AI system output is being used in the EU[68]; further deployers of such systems, located in the EU;[69] all importers or people distributing AI systems,[70] as well as manufacturers of such;[71] last, not least, every "affected (thereby) person wo is located in the EU".[72]

Article 3 includes a considerable wealth of relevant definitions, as it is usual for comparable secondary legal acts of the EU. Among them, the utmost significance is to be seen in the terms 'AI system', which corresponds to

*"a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments".*[73]

[60] Cf. ibid.
[61] Cf. Article 2 paragraph 3 Reg. 2024/1689.
[62] Cf. ibid.
[63] Cf. Article 2 paragraph 12 Reg. 2024/1689.
[64] Cf. Article 2 paragraph 6 Reg. 2024/1689.
[65] Cf. Article 2 paragraph 11 Reg. 2024/1689.
[66] Cf. Article 2 paragraph 1 lit. f Reg. 2024/1689.
[67] Cf. Article 2 paragraph 1 lit. a Reg. 2024/1689.
[68] Cf. Article 2 paragraph 1 lit. c Reg. 2024/1689.
[69] Cf. Article 2 paragraph 1 lit. b Reg. 2024/1689.
[70] Cf. Article 2 paragraph 1 lit. d Reg. 2024/1689.
[71] Cf. Article 2 paragraph 1 lit. e Reg. 2024/1689.
[72] Article 2 paragraph 1 lit. g Reg. 2024/1689.
[73] Article 3 Nr. 1 Reg. 2024/1689.

Further, the definition of 'providers'[74] and 'deployers'[75] is central for the Regulation's better understanding. These persons are *ex lege* in charge of securing their respective staffs' 'AI literacy', as Art. 4 of the Regulation would put it, in order to enhance the efficiency in the Regulation's practical application.

The EU legislator has prohibited *ex lege* the placing on the market as well as the putting into service of AI systems which deploy both subliminal techniques (acting beyond a person's concrete consciousness) as well as purposefully manipulative or even deceptive techniques,[76] or exploit any of the vulnerabilities of a natural person or a specific group of persons,[77] evaluate or classify such persons[78] (including biometric categorization systems to deduce vulnerable personal information of these persons)[79], or make risk assessments of them,[80] create facial recognition databases,[81] or infer emotions of persons.[82] Social media control is therefore understandably included.

AI systems classified as high risk[83] (e.g. AI-based medical software or AI systems for recruitment) are subject to strict requirements, in terms of risk mitigation systems, high-quality data sets, clear information for users, human oversight, etc. Also, AI systems that pose a clear threat to people's fundamental rights are prohibited for providing an unacceptable risk. This applies, for example, to systems that enable authorities or companies to assess social behavior (social scoring).

Transparency and consumer protection are above all, though: Systems such as chatbots must clearly inform their users that they are dealing with a machine, and certain content generated by AI must be labelled as such.[84]

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[74] *"A natural or legal person, public authority, agency or other body that develops an AI system or a general-purpose AI model or that has an AI system or a general-purpose AI model developed and places it on the market or puts the AI system into service under its own name or trademark, whether for payment or free of charge";* Article 3 Nr. 3 Reg. 2024/1689.

[75] *"A natural or legal person, public authority, agency or other body using an AI system under its authority except where the AI system is used in the course of a personal non-professional activity";* Article 3 Nr. 4 Reg. 2024/1689.

[76] Article 5 paragraph 1 lit. a Reg. 2024/1689.

[77] Article 5 paragraph 1 lit. b Reg. 2024/1689.

[78] Cf. Article 5 paragraph 1 lit. c Reg. 2024/1689.

[79] Cf. Article 5 paragraph 1 lit. g Reg. 2024/1689.

[80] Cf. Article 5 paragraph 1 lit. d Reg. 2024/1689.

[81] Article 5 paragraph 1 lit. e Reg. 2024/1689.

[82] Article 5 paragraph 1 lit. f Reg. 2024/1689.

[83] Cf. Article 6 et seqq. Reg. 2024/1689.

[84] Cf. *id.*

The Office for Artificial Intelligence uses its expertise to support the implementation of the AI Act by contributing to the coherent application of the AI Act in Member States, including setting up advisory bodies at EU level, facilitating support and information exchange, developing tools and creating among other state-of-the-art codes of conduct to shape rules (for instance in respect to chatbots!) in cooperation with leading AI developers and the scientific community.

At the institutional level, this AI Office works closely with the European Board on Artificial Intelligence, which is a key advisory body comprising representatives of all EU Member States, composed of their representatives, and the European Centre for Algorithmic Transparency (ECAT) of the Commission. It will also create forums for collaboration between providers of AI models and systems, including general purpose AI, and similarly for the ever increasing open source community, in order to share best practices and contribute to the development of codes of conduct and codes of practice.

Technology advances on high speed, as one understands. Imagine an AI system which would lead its users to judge or even avoid certain people based on them being simply ‘different’ than others. Would that be a desirable future?

Having now finished the analysis of relevant matters of EU law and the ECHR, the impression is obvious that freedom of expression is protected, with certain borderlines, and that culture cancelling is not *expressis verbis* mentioned in European law, but may well be a pathologic way to assess the application of freedom of expression. Newest legal instruments which take account of digital and AI developments may help to enhance the overall situation especially in social networks - but due to a quite long transitional period foreseen *ex lege*, the contribution of these could frankly go either way, positive or negative.

## V. *RONDO: ALLEGRO*- CASE LAW

In order to depict possible violations of rights through free expression, as well as their proper (and non-cancelling) reception, one also has to consider case law in its whole variety. In practice, the ECJ has had the opportunity on various occasions to emphasize its interpretation of Article 11 of the Charter. But one could state, as a sort of spoiler, that it has dealt with the matter of the freedom of expression in a more economy-centred, even Market-centred way. For instance, and in the context of a right to erasure ("right to be forgotten"), which is included in the very core of Article 11, it decided that the operator of an internet search engine must delist the

information contained in the listed content, if it can be proved that such information is obviously incorrect.[85] Such information may well include expressions done on social media, as well as opinions on such expressions, which would lead us to matters of cancel culture. This very judgment was based on a request for a preliminary ruling[86] from the German Federal Court of Justice: Two managing directors of a group of investment companies asked a well-known internet search engine to remove the links to certain articles (which were critical of the group's investment model) from the results of a search carried out using their names. They claimed that these articles contain incorrect information, and further asked the relevant internet search engine to delete photos of them, which are displayed as thumbnails, whenever an image search is carried out using their names. The internet search engine, after a lengthy process of consideration, refused to comply with these requests, emphasizing the professional context of these articles and photos and claiming that it did not know whether the information contained in these articles was incorrect.

In its ruling, the Court of Justice of the European Union reminded us all that Article 11 is not an absolute right, but must be viewed in light of its social function and weighed against other fundamental rights, while respecting the Principle of Proportionality (as mentioned above, Article 5 paragraph 4 TEU). However, the right to freedom of expression and information cannot be taken into account if at least a part of the information in the listed content (which is not insignificant for the entire content) is incorrect. That affects also the right of expression on other people's expressions, of course.

In another, even more contemporary ruling, of 4 October 2024[87], the ECJ clarified the requirements for police investigations of a cell phone, in particular access to stored data in connection with investigations. The question was under which circumstances police and law enforcement authorities may access personal data as well as personal expressions of any kind (also expressions which might cancel other people's opinion) which have been stored on a cell phone, and which legal restrictions must be observed consecutively.

In this Austrian case, the police had confiscated a mobile phone that was connected to an investigation. Without the crucial permission of a judge or prosecutor, the police attempted to access the data stored on the device. The person concerned was not informed of this measure

[85] *See*, in the following, Judgment of the Court (Grand Chamber) of 8 December 2022.
TU and RE v Google LLC, Case C-460/20; ECLI:EU:C:2022:962.
[86] Based on Article 267 TFEU.
[87] *See*, in the following, Judgment of the Court (Grand Chamber) of 4 October 2024.
C.G. v Bezirkshauptmannschaft Landeck, Case C-548/21; ECLI:EU:C:2024:830.

and only found out about the analysis attempts later, through a witness statement in court. A matter also of questionable transparency, one could remark:

The ECJ made it clear here that police access to personal expressions of any kind (for instance on social networks) and corresponding data stored on a mobile phone does not have to be limited exclusively to the fight against serious crime. This means that police authorities can also access such in the case of less serious crimes. But there is a borderline involved: However, the Court stipulated essential conditions: First of all, any form of access to personal expressions (even cancelling other people's ones) and data stored on a mobile phone must be subject to prior authorization by a court or independent authority, in order to ensure that the access is both lawful and proportionate. The Court further stated that the data subject must in any case be informed about access to his or her data, either before or immediately after such access, without any sort of ado.

In yet another, German case,[88] the ECJ ruled that the operator of a certain social network fan page is jointly responsible with that very network for processing the personal data (including people's personal expressions and all kind of publicly notable views) of visitors to its page. Therefore, the data protection authority of the Member State in which this operator is based is allowed to take action against both the operator and the subsidiary of this network established in that state. In the present case, the responsible data protection authority had instructed the operator to deactivate its social network fan page because neither the operator nor the social network had informed visitors to this fan page, which were (in the very same case) quite keen on judging other people's expressions, that the network was collecting personal data concerning them using cookies and then processing this data. The operator filed a lawsuit with the responsible administrative court, arguing that the processing of personal data by the social network could not be attributed to it, emphasizing that the data protection authority should have taken action directly against the social network platform and not against it. But the ECJ decision seems to be justified in terms of transparency for consumers' benefit and of preserving the freedom of expression altogether.

Case law includes also other, more professional examples of expression - here the EU institutional focus on Market and

[88] *See*, in the following, Judgment of the Court (Grand Chamber) of 5 June 2018. Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v Wirtschaftsakademie Schleswig-Holstein GmbH, Case C-210/16; ECLI:EU:C:2018:388.

corresponding, more economic issues became really apparent:[89] Further according to the ECJ, the publication of inside information about listed companies by a French journalist in advance of a press release is lawful if this is necessary for the journalistic work, as well as proportionate. In this specific case, the journalist had published an article in which he had picked up on a rumor about possible purchase offers for the shares of two companies, being quite judgmental about their relevant approach. As a result, the values of the securities in question rose. Some people in Great Britain who were informed in advance by the journalist about the publication immediately sold their recently purchased shares. Following that, the journalist was fined by the French financial regulator for disclosing insider information.

Further, and again with a certain and non-deniable economic focus, the ECJ[90] has commented on the admissibility of a parody of a copyrighted work. Such a parody is privileged under the EU Copyright Directive[91] which provides and emphasizes that individual Member States may generally allow the use of a copyrighted work as a caricature or parody.

The ECJ ruled that the term "parody" contained in the EU Copyright Directive[92] is an independent term of EU law which must be understood as meaning that the essential characteristics of a parody are, firstly, that it is reminiscent of an existing work while at the same time presenting perceptible differences from it and, secondly, that it is an expression of humor or mockery. The term "parody" within the meaning of this provision depends on several conditions, for instance that the parody has its own original character and can reasonably be attributed to a person other than the original author.

The ECJ further emphasized that such privileging of parody is subject not only to the aforementioned balancing of conditions, but also, and even more importantly, to a balancing of interests: Whenever applying the exception for parodies, the interests and rights of the persons referred to in Articles 2 and 3 of the Directive (about reproduction and communication matters, respectively) must be taken into account, as well as the freedom of expression of the user of a protected work.

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[89] *See*, in the following, Judgment of the Court (Grand Chamber) of 15 March 2022. Mr A v Autorité des marchés financiers (AMF), Case C-302/20; ECLI:EU:C:2022:190.

[90] *See*, in the following, Judgment of the Court (Grand Chamber), 3 September 2014. Johan Deckmyn and Vrijheidsfonds VZW v Helena Vandersteen and Others, Case C-201/13; ECLI:EU:C:2014:2132.

[91] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, 2001 O.J. (L 167/10).

[92] Article 5 paragraph 2 lit. k of Directive 2001/29.

In the present case, the main issue was that the parody of the copyrighted work was used to convey a discriminatory statement previously not inherent in the work. The judges made sure to emphasize that they obviously meant situations when such a parody is intended to convey a statement which would be discriminatory in the sense of the Charter of Fundamental Rights. In conclusion, it can be understood that parodies of copyrighted works are possible in the eyes of the ECJ, but (as usually) a balancing of interests must be carried out. In any case, if the parody includes free expressions, but at the same time discriminatory statements, for instance cancelling culture elements, that are inadmissible under EU law and are associated with the original work through the parody, the parody will, as a result, be inadmissible altogether, giving the author or user a claim for injunctive relief.

In another, Austrian case,[93] the central person is a politician. She sued a social network to remove defamatory and offensive content. The ECJ ruled in October 2019 on the reference from the Supreme Court of Austria and concluded that online platforms can be required by the courts of the Member States to delete not only the reported content, but also identical and similar content.

Following the ECJ, host providers can be required not only to remove illegal content, but also to delete other content, for instance cancelling approaches, that might have the same meaning. The ECJ is sticking with a certain notice and take down procedure, but is extending it to the benefit of those affected: Some tech giants base their entire business model on flooding individuals with information.

In fact, when it comes to defamation on the Internet, it is often not enough to simply delete a single post, as statements on the Internet can spread extremely quickly and the person affected would be pretty lost if he or she had to first have every single statement banned by the courts.

In view of the ECJ it is permissible to instruct social networks to search for and block statements that have the same content as those already declared illegal, provided that their statement has remained essentially unchanged compared to the content of the original statement and contains the details that are precisely specified in the court order. Differences in the wording should not be such that they force the provider to make an autonomous assessment of the content.

[93] *See*, in the following, Judgment of the Court (Third Chamber) of 3 October 2019. Eva Glawischnig-Piesczek v Facebook Ireland Limited, Case C-18/18; ECLI:EU:C:2019:821.

In terms of Human rights protection, the European continent knows yet another Court though. It may not be institutionally part of the EU, since it is an integral part of the Council of Europe - but still its case law has a certain impact on legal ongoings in Europe; despite the lack of efficiency in its legal enforcement:

The European Court for Human Rights (hereinafter: ECtHR) was established under the aegis of the Council of Europe. Said court has a significant task: To protect the already mentioned ECHR, another Council of Europe product, against possible violations. It is therefore institutionally not a part of the EU. Nonetheless, the ECJ often used ECHR portions in its own case law, beginning in the 1960s, when the European Communities lacked a proper human rights catalogue on their own. Further to that, Article 6 paragraph 2 TEU provides for the EU opportunity to be an ECHR part in future. It seems difficult to predict if and when such will happen.

Despite the clear separation between EU and Council of Europe, the ECtHR case law in matters of human rights protection is always followed properly and with great interest by the EU and its Member States. In terms of freedom of expression, the ECtHR has stated for many decades already that it forms one of the essential foundations a democratic society should enjoy - one of the basic conditions for that society's progress, and also necessary for the creative and constructive development of every man.[94] Article 10 paragraph 2 ECHR sees its application scope not reduced to "information" (generally) or "ideas" (more specifically) that might be popular, favorably received or even regarded as inoffensive or as a matter of indifference, but also includes those ideas that might offend, even shock or disturb.[95]

Referring especially to Article 10 ECHR, the ECtHR, for example, declared the complaint of a French comedian inadmissible:[96] He appealed to the ECtHR because he felt his freedom of expression had been violated. He had been previously convicted of publicly insulting people because of their origin, racist attributions or membership of an ethnic community, nation or religion. In this specific case, it was about mocking people of Jewish origin or faith. At one of his performances, he awarded a "prix de l'infréquentabilité et de l'insolence" to a Holocaust denier. According to the ECHR, this no longer had the character of a satirical, provocative performance, but represented a demonstration of hatred, anti-Semitism and support for Holocaust deniers, and could therefore not invoke freedom of

[94] *See* Handyside v. The United Kingdom (Application no. 5493/72), ECtHR judgment of 7 December 1976.
[95] *Id.*
[96] *See*, in the following, M'Bala M'Bala v. France (Application no. 25239/13), ECtHR judgment of 20 October 2015.

expression because the latter had been exercised in complete disregard of the provisions and spirit of the ECHR.

The ECtHR ruling in the case of "Müller v. Switzerland"[97] from 1988 is still the decisive leading ruling on artistic freedom. The case concerned the triptych "Three Nights - Three Pictures" by the artist Josef Müller, which was exhibited in Freiburg in 1981 and which openly depicted sexual acts. The court in Strasbourg confirmed with its ruling that the right to freedom of expression also protects artistic expression. It was the first ECHR ruling in which artistic freedom was explicitly protected under the heading of freedom of expression.

However, the courts have avoided making a higher-level assessment of art to this day. Using the same argument as in the aforementioned Müller case, namely that there is no uniform European concept of morality, the confiscation of the Austrian film "Liebeskonzil", a bitter anti-Catholic satire, was judged to be legal in 1994[98].

Another case which should be mentioned here is "Akdaş v. Turkey".[99] The plaintiff in this case, Rahmi Akdaş, is a Turkish publisher. He had published the Turkish translation of the erotic novel "Les onze mille verges" by French writer Guillaume Apollinaire in 1999. The book is a novel that contains descriptions of sexual practices, including sadomasochistic practices and vampirism. Akdaş was convicted under the Turkish Penal Code for publishing obscene or immoral material that was likely to arouse sexual desire in the population, having used exaggeration and metaphors, and the confiscation and destruction of all copies of the book was ordered. Akdaş was also sentenced to a fine of EUR 1,100, which could have been converted into a prison sentence. In its final judgment of 11 March 2004, the Court of Appeal confirmed most parts of the judgment.

Akdaş appealed against his criminal conviction and against the confiscation of the books, citing Article 10 of the ECHR. The ECtHR found that the interference was not necessary in a democratic society: The ECtHR was quite conservative in its approach and reiterated that those who promote artistic works are by no means free from "duties and responsibilities", the extent of which depends on the specific situation and the means used. Since moral standards vary over time and place and even within the same state, national authorities are

[97] *See*, in the following, Müller et al. v. Switzerland (Application no. 10737/84), ECtHR judgment of 24 May 1988.
[98] Cf. Otto-Preminger-Institut v. Austria (Application no. 13470/87), ECtHR judgment of 20 September 1994.
[99] *See*, in the following, Akdaş v. Turkey (Application no. 41056/04), ECtHR judgment of 16 February 2010.

better placed than an international court to rule on the precise content of these standards in order to protect morality. However, the ECtHR pointed out that the novel which had been translated in the present case was first published in 1907, meaning that more than a century had passed since the work was first published in France. In the eyes of the judges, a consideration of the cultural, historical and religious specificities of the various Council of Europe Member States (reaching the considerable wealth of almost 50!) could not go so far as to prevent public access to a work that is part of Europe's literary heritage in a particular language, in this case Turkish. Furthermore, the heavy fine and the confiscation of the books were deemed by the judges as not being proportionate to the legitimate aim, and therefore not necessary in a democratic society within the meaning of Article 10. As the result, and for the abovementioned reasons, the court found that Akdaş's right to freedom of expression had been violated.

In yet another case,[100] the applicant was the director of the video "Visions of Ecstasy", which was intended to depict the ecstatic visions of St. Theresa of Avila. The video shows, among other things, sexual acts being performed on the body of the crucified Christ. The applicant applied for a license to distribute his video. The application was rejected by the British Board of Film Classification because the video constituted the criminal offence of blasphemy. The appeal against this was unsuccessful.

Although the applicant was completely prohibited from distributing his video as a result of the alleged interference, this measure was justified insofar as, on the one hand, placing the video on the market would have violated criminal law provisions and, on the other hand, the applicant had refused to cut out or change the blasphemous sequences in his video. The authority did not exceed the discretionary powers available to it. Therefore the ECtHR saw no violation of Article 10 of the ECHR here, effectively mirroring its varying case law findings of previous years.

The latter mentioned ECtHR views were comparable also to such in another Austrian case:[101] The Association of Visual Artists Vienna Secession held an exhibition in its "Secession" gallery on the topic of "The Century of Artistic Freedom" in 1998 to mark its 100th anniversary. Among the works on display was a painting entitled "Apocalypse," which the Austrian painter Otto Mühl had created to mark the anniversary involved. The painting, among other, showed

[100] *See*, in the following, Wingrove v. the United Kingdom (Application no. 17490/90), ECtHR judgment of 25 November 1996.
[101] *See*, in the following, Vereinigung Bildender Künstler v. Austria (Application no. 68354/01), ECtHR judgment of 25 January 2007.

various public figures in sexual positions, which caused grave controversy.

In another, earlier case,[102] from the early 1980's on there were a number of allegations regarding situations of police brutality in the Republic of Iceland that led to the prosecution of members of the Reykjavik police force. Thorgeir Thorgeirson was a writer and filmmaker, and in 1983 he published two articles in the newspaper Morgunbladid, claiming publicly that there were major problems with police brutality in Reykjavik. He was prosecuted and fined quite heavily for defaming the Reykjavik police. The ECtHR on its end ruled that a matter of particular public interest was involved, and that both the depicted prosecution and conviction of Thorgeirson for writing about these allegations could discourage public debate on serious issues affecting society. For this reason, the ECtHR decided that the authorities' actions were disproportionate and violated Thorgeirson's right to freedom of expression.

In an even earlier but also significant (for depicting specificities of Procedural law) case,[103] in Great Britain there were numerous "thalidomide cases", named after the chemical active ingredient involved. The British newspaper Sunday Times reported on the damages claims of the affected families against the manufacturing company. It also published out-of-court settlements between the plaintiffs and the defendant. One of the relevant courts consecutively banned the newspaper from reporting further. The Sunday Times took action against this before the ECtHR on the grounds of its freedom of expression.

As we already know, the relevant Article 10 of the ECHR also allows restrictions on freedom of expression by law in principle. In the present case it was already very questionable whether there was even a law in this sense involved. Moreover, it seemed to be already uncertain whether a report on a settlement negotiation could even constitute the allegation of contempt of a court. However, the ECHR was of the opinion that the newspaper could at least have suspected that this could fall under this specific legal concept under the British procedural law.

Having now concluded an overview of the ECJ and ECtHR case law in matters of freedom of speech, the impression is apparent that freedom of expression is generally protected, with borderlines, and with a sometimes not consistent approach in case law. It further

[102] *See*, in the following, Thorgeir Thorgeirson v. Iceland (Application no. 13778/88), ECtHR judgment of 25 June 1992.
[103] *See*, in the following, The Sunday Times v. The United Kingdom (Nr. 1) (Application no. 6538/74), ECtHR judgment of 26 April 1979.

becomes apparent again that cancelling culture - as a rather pathologic assessment of other people's expression or even habit – whenever a possible part of the case – does not even receive an *expressis verbis* mention in the aforementioned (and also in other comparable) case law.

## VI. IS THERE ANY PROPER LEGAL ANSWER AFTER ALL? CONCLUSION

As we've seen, there is a quite comprehensive legal basis, especially in the EU, but also in Europe in total, for protecting both the freedom of expression and its possible abuse, especially in the context of hate speech. We've also seen that cancel culture does not seem to have an *expressis verbis* or, so to say, adequate and proper mirroring in law – but that it can be an abuse of the freedom of expression. The 'fresh' new EU Secondary Law in the areas of digitalization as well as AI has been too recent yet, in order to draw concrete conclusions of it, in terms of dealing especially with the matter of cancel culture. But its potential, even to support hate speech or examples of cancel culture, seems to be very apparent and understandable already.

I guess the present legal reality calls for constant awareness – and a constant combating of both hate speech as well as cancelling culture (both metaphorically and also literally, since culture is our immaterial nourishment of the mind).

To close with Riccardo Muti, who is - in the eyes of the author - the greatest Maestro alive and has conducted also Brahms's Piano Concerto No. 1 on different occasions and with various well-renowned orchestras worldwide, and who recently[104] talked about cancel culture:

*"This is something I absolutely reject. Nothing must be erased, on the contrary, all the mistakes of the past must be made clear to young people. History is not just about St. Francis of Assisi, but also about tyrants, dictators and bloodthirsty people. We must not build an imaginary heavenly past, but we must know it in order to correct it (...)"*

[104] Interview by Aldo Cazzullo,
"Corriere della Sera",
December 1, 2024, https://www.corriere.it/cronache/24_dicembre_01/riccardo-muti-non-ne-posso-piu-dell-acuto-di-vincero-nel-vaticano-di-bergoglio-si-fa-poca-musica-b8f56b76-5a13-4987-a1d4-aaa854561xlk.shtml (translation by this paper's author).

The conductor further criticized the fact that the libretto of some operas had been changed:[105]

*"In 'Il Ballo in maschera' Verdi has the judge say that the sorceress Ulrica has the 'impure blood of the Negro'. Various theaters, including La Scala, have changed this formulation. When I performed 'Il Ballo in Maschera' in Chicago, a city where the black presence is very strong and which was then governed by a black Democratic mayor, I did not change a single word. I explained to the singer (who was black, by the way) that Verdi was not racist; he had put that terrible phrase into the mouth of the white judge, but Verdi's accusation was not directed against blacks, but against racist whites. And the singer agreed".*

The apparent bottom-line would be that through the generally efficient protection of freedom of expression and the generally efficient application of necessary borderlines[106] to it, as well as through a certain good-will and mutual understanding, solutions can be found almost for every situation, even if law lacks providing such *expressis verbis*.

[105] *Id.* (translation by this paper's author).

[106] Banning certain ages of using social networks does not seem to be a fitting approach, in terms of the rule of law; cf. Sarah Joseph, *Why Australia's Social Media Ban for Kids May Breach Its Constitution,* 5 December 2024, https://verfassungsblog.de/why-australias-social-media-ban-for-kids-may-breach-its-constitution/.