

# UNESCO's intangible cultural heritage and its polarising nature: A case study on Aalst Carnival

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## ABSTRACT

Intangible cultural heritage, such as a tradition, folk dance or carnival, contributes to cultural diversity within a society. Therefore, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage was adopted with the intention of safeguarding and perpetuating intangible cultural heritage and intercultural dialogue. But what happens if intangible cultural heritage has been recognised and inscribed on one of the UNESCO lists and, within its expression, the tradition goes against the list's inscription criteria and causes controversy?

This article explains the events that took place during the Carnival of Aalst, as well as the controversies it sparked. It sheds light on the visible tensions between different aspects of the controversy. Its scope thus remains limited to a brief explanation of intangible cultural heritage and the tradition of Aalst Carnival. Within this context, a judicial approach through case law research of the European Court of Human Rights

concerning the right to freedom of expression and its limitations is used to provide a legal assessment of the controversy. Moreover, this article discusses the limitations of this legal approach and proposes recommendations in other policy fields. The article will thus attempt to reconcile these tensions and balance the competing interests in order to diminish the likelihood of controversies happening again in the future. It will aim to illustrate the tensions between stereotypical and derogatory depictions that are legally acceptable, however controversial given the multicultural society, and further concisely explore possible solutions within different policy areas.

## Keywords

UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, multiculturalism, cultural diversity, controversial practices, Carnival of Aalst

## Cultural diversity and intangible cultural heritage protection

The society we live in is not homogeneous. On the contrary, our society is diverse and multicultural. There is a stratification characterised by social, cultural and ethnic differences. Within a multicultural society, intangible cultural heritage is an important source and expression of cultural diversity (Arizpe 2004). Protecting and preserving this cultural diversity can offer guarantees for the sustainable development of a society (Neyrinck 2017). It is important that communities and groups play a part in preserving, safeguarding and maintaining their own intangible cultural heritage, thereby enriching cultural diversity and interpersonal creativity, promoting intercultural dialogue and fostering mutual respect between different cultures (Junjie 2017). The importance of intangible cultural heritage and its safeguarding within our society is incontestable from this point of view. On the other hand, cultural diversity and intangible cultural heritage are threatened by social transformation and an increasing intolerance of cultural minorities (Neyrinck 2017). The need for national and international safeguarding of cultural diversity and intangible cultural heritage is visible in this context.

Therefore, it is fundamental to safeguard and perpetuate intangible cultural heritage in order to promote cultural identity and cultural diversity. Hence, UNESCO established in 2003 the Convention for the Safeguarding of the Intangible Cultural Heritage (Aikawa 2004). The Convention provides a legal, institutional and organisational framework for the safeguarding of intangible cultural heritage. In addition, it provides monitoring and financial mechanisms to ensure the effectiveness of protection. The objectives of the Convention include safeguarding and guaranteeing respect for intangible cultural heritage. The UNESCO Convention considers it a necessity to create more awareness of the importance and protection of intangible cultural heritage (Kurin 2004). Moreover, intangible cultural heritage and its safeguarding is inherently linked to cultural identity and cultural expressions of communities. Consequently, UNESCO established in 2005 the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

For intangible cultural heritage to be recognised and inscribed on one of the UNESCO lists, it needs to fulfil the requirements stated in article 2 of the Convention: *'consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with*

*the requirements of mutual respect among communities, groups and individuals, and of sustainable development'* (UNESCO 2003, 2, emphasis added). It is thus of the utmost importance that intangible cultural heritage is compatible with these requirements to be eligible for the inscription on one of the UNESCO lists for intangible cultural heritage, lists for the safeguarding of intangible cultural heritage at the international level.

## The case of Aalst Carnival

The Carnival of Aalst is a folklore festival in which carnivalists poke fun at public figures, politicians, culture and religion. It is characterised by mockery and satire with a slightly anarchic undertone. In 2010, Belgium nominated the Carnival of Aalst for inscription on the Representative List of the Intangible Cultural Heritage of Humanity, after which UNESCO subsequently included the folk festival on the list (UNESCO 2010). According to UNESCO, the carnival satisfied the inscription criteria, as it could contribute to cultural diversity and intercultural dialogue. Moreover, the carnival is an essential part of Aalst's heritage and identity, increases the visibility of intangible cultural heritage and shows 'rich human creativity' (UNESCO 2010).

In 2019, however, a carnivalist group displayed Jewish stereotypical and derogatory caricatures, depicting the Jewish community in a way that was similar to stereotypes of anti-Semitic propaganda from the 1930s. The floats paraded the streets of Aalst depicting Orthodox Jews with hooked noses, fur hats, pink costumes and sitting on bags of coins. One of the floats also carried a white rat on its shoulder (UNIA 2019). The carnivalist group in question stated that these caricatures were in the context of the chosen theme 'sabbatical year', mocking their own shortages of money to participate in the parade. The group stated that it had never intended to hurt the Jewish community. Nevertheless, UNESCO issued a press release condemning the anti-Semitic nature of the depictions (UNESCO 2019b). This was followed by the announcement that the removal of the Carnival of Aalst from the Representative List was on the agenda of the Committee meeting in Bogotá later in the year (UNESCO 2019c). The many international reactions led to the City of Aalst deciding to take the initiative to withdraw the carnival from the UNESCO list (Stad Aalst 2019).

Furthermore, these derogatory and stereotypical depictions of the Jewish community caused a lot of turmoil and sparked controversy on different levels. First of all, there was societal controversy surrounding

the parade. On one hand, the Jewish community felt targeted and negatively depicted, stating that the floats were disruptive for cultural diversity and cohesion within the society (Suchowolski-Sluszny 2019) while others found the display acceptable, claiming that satire in the context of carnival is a cultural phenomenon and enjoys the protection of freedom of expression (Lemmens 2019). Second, the societal controversy was translated into political controversy, and the debate started to base itself around 'values'. The respect for cultural diversity and different communities was juxtaposed with the idea of Aalst Carnival as a century-old national tradition that should be preserved (Wax and Tritschler 2020). Third, the controversy gave rise to an international discussion surrounding the carnival and anti-Semitism (Schreuer 2019).

## Legal assessment of Aalst Carnival

The most important remark is that the controversy of Aalst Carnival became 'juridified', and solutions to the controversy were sought in the legal spheres. The stereotypical depictions of the Jewish community were questioned in the light of international human rights laws and anti-Semitic laws, as well as in the light of the UNESCO Convention's inscription criteria of intangible cultural heritage. One question at hand was whether the displays of 2019 could be considered as satire and thus enjoy protection under the right to freedom of speech or whether the displays were considered hate speech. Since international human rights conventions experience difficulties with enforceability, solutions can be sought in the European Convention on Human Rights of which the rights can more easily be enforced through the European Court of Human Rights in Strasbourg. Within recent case law of the Court on article 10 (right to freedom of speech), there are elements that could give guidance on whether the display falls under the protection of freedom of expression or falls under hate speech.

The Court has always underlined the importance of freedom of speech within a democratic society and thus carefully scrutinises restrictions on any form of expression. Satire concerns a specific form of expression and fulfils the function of 'social commentary', even when the expression is provocative, and it feeds the public debate (*Vereinigung Bildender Künstler v. Austria* 2007 and *Eon v. France* 2013). The Court has stressed that ethnic or religious communities must tolerate criticism and satire, especially when it contributes to the public

debate (*I.A. v. Turkey* 2005 and *Giniewski v. France* 2006). Furthermore, the Court considers the use of insulting, hurtful and negative stereotypical statements about ethnic groups permissible if they are meant as a metaphor and do not refer to the whole group (*Aksu v. Turkey* 2012). However, the right to freedom of expression is not absolute. Speech inciting hatred and violence or speech that is 'gratuitously offensive' is not acceptable. According to the Court, 'gratuitously offensive' speech is 'expressions that [...] do not contribute to any form of public debate capable of furthering progress in human affairs' (*Otto-Preminger-Institute v. Austria* 1995). Nonetheless, given the context in which the displays were shown in (i.e. a carnival), it cannot be said that the carnivalists tried to incite hatred and violence against the Jewish community, nor were the displays 'gratuitously offensive' given the context of the folklore festival. Neither can it be noted that the depictions were anti-Semitic. Under Belgian anti-racism laws, to incite discrimination, segregation, hatred or violence, or to disseminate racist ideas, there should always be an intention to do so, *quod non in casu* (UNIA 2019). The importance of context, the role satire plays in a democratic society and the absence of intent are thus vital in the legal analysis to conclude that the display of stereotypical depictions of the Jewish community is most likely acceptable.

Nevertheless, it is worth noting that the stereotypical displays can also be questioned in light of other rights in the European Convention on Human Rights, namely article 8, which enshrines the right to a private life. The Court ruled in one of its more recent judgements that ethnic identity is part of one's private life and that negative stereotyping can impact an individual's ability to determine their own identity (*Aksu v. Turkey* 2012, para.58). For the first time, the Court explicitly stated that negative stereotyping can interfere with someone's ethnic identity and private life and that article 8 can form a basis to prosecute a state in this light. The question, however, remains whether the derogatory depictions parading during Aalst Carnival would fall under the violation of article 8.

Another legal question at hand is whether the display of derogatory and stereotypical floats is still in line with the inscription criteria for intangible cultural heritage, more specifically with the criteria of 'mutual respect between different communities'. Since the Convention for the Safeguarding of the Intangible Cultural Heritage does not foresee a removal procedure in case of recognised yet controversial practices, the decision for removal is ad hoc. The Convention expects intangible cultural heritage

to contribute to diversity and intercultural dialogue. The stereotypical floats were similar to depictions used during the Nazi period and are considered a sensitive topic within the Jewish community (UNIA 2019). After all, the derogatory displays show little respect for the collective trauma of the Jewish community, rather than contributing to intercultural dialogue. On the contrary, these displays have mainly fostered social polarisation within society. For these reasons, the carnival no longer adhered to the criteria of mutual respect between different communities, and the removal of Aalst Carnival can be justified on these grounds (UNESCO 2019a). However, it is important to underline that the removal from the Representative List of the Intangible Cultural Heritage of Humanity only has repercussions with regard to the recognition on one of the UNESCO lists and does not have any consequences regarding the displays on the carnival itself. Aalst Carnival can still occur in the same controversial way as it has before, regardless of whether it is inscribed on one of the intangible cultural heritage lists.

### **Balancing competing interests within the expression of controversial intangible cultural heritage**

Against this background, it is clear that the controversy surrounding Aalst Carnival was mainly approached from a legal perspective. The events raised questions such as the following: to what extent are the displays in line with human rights, such as the right to freedom of expression and the right to ethnic identity as part of the right to a private life? Can the Carnival of Aalst continue to enjoy recognition under the Convention for the Safeguarding of the Intangible Cultural Heritage? Notwithstanding the legal answers to these questions, the Convention still offers limited solutions to the social problem that has arisen. Withdrawing the UNESCO recognition cannot legally prevent the derogatory and stereotypical displays themselves, and the right to freedom of expression remains fundamental within a society that is open to criticism and satire. The question of the social desirability of such displays should therefore be judged more broadly than merely through a 'legal lens'. Social policies aimed at diversity and cohesion between communities and groups are needed.

Nonetheless, stronger legal guarantees should be installed to ensure that recognised intangible cultural heritage does not violate certain community or minority rights. The legal framework surrounding intangible

cultural heritage could be more elaborate to diminish the likelihood of controversial intangible cultural heritage happening in the future. First, the inscription criteria stating that there should be 'mutual respect among communities, groups and individuals' needs to be further clarified. It is unclear what the concept precisely entails, how it can be defined and how it relates to the case law on the right to freedom of expression and the right to a private life. For example, according to the European Court of Human Rights, negative and derogatory depictions of ethnic and religious groups are, in principle, acceptable given the satirical context, while it may be at odds with the question of mutual respect. Clarification of such interaction is useful, with mutual respect possibly having a different scope than what is necessary for an open society in the context of freedom of expression. Second, the Convention for the Safeguarding of the Intangible Cultural Heritage can foresee more procedural guarantees in order to avert future controversial expressions of certain practices. For example, the inscription procedure needs to be more transparent and with a possible new adversarial nature of the proceedings. This way, if practices are up for inscription, people who are against the recognition can also be heard. Moreover, the Convention lacks a formal procedure for removal and a formal mediation procedure in case of controversial intangible cultural heritage. These formal procedures need to be enshrined in the Convention, since it can enhance legal certainty for all parties involved, as well as the credibility and authority of the Convention itself.

Furthermore, Aalst Carnival illustrates a process of increased polarisation, reflecting a fine line between what is legally acceptable and what is supported by groups within the society. The carnival does not shun controversial topics, as the folklore festival is the epitome of satire, mockery and anarchy. However, one of the purposes of the Convention is to ensure the viability of the intangible cultural heritage, to safeguard and perpetuate traditions, customs and specific practices that are characteristic or valuable for a certain community. At the same time, the Convention states that intangible cultural heritage is an enrichment for every society, precisely because it underlines human creativity and cultural diversity. The Convention further emphasises that these values are embedded in human rights and must always be compatible with them. It is therefore of utmost importance to pursue social policies based on the same values of cultural diversity and respect for human rights, with the aim of propagating and strengthening these principles even further. 'Tolerance' and 'respect for

cultural diversity' within a society are therefore starting points of this social project. Alongside freedom and equality, tolerance between different communities is the foundation of an open, democratic society. With regard to intangible cultural heritage, this not only requires a more comprehensive legal framework, but it especially requires fundamental social anchoring in all parts of society. Considering the criteria of mutual respect, it is important to hold an open social debate on the desirability of such stereotypical and derogatory displays. Hearing all parties involved and their respective motives, concerns and worries poses a first step towards finding a (social) solution. Encouraging cultural diversity through policies and aiming for a change in mentality could be among possible answers to the controversy of Aalst Carnival.

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