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NGOs & Cultural Rights: reflections on the Serbian legal framework

Miljana Jakovljević

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Abstract

Even though the public image of non-governmental organizations in the Republic of Serbia is not wholly positive, a significant number are operating in the cultural field, promoting and protecting cultural rights. Yet the framework in which they operate is restricted, though not directly by the Constitution of the Republic of Serbia or the many other laws relevant to culture identified in this article. This article will therefore offer an analysis of NGOs' operations via a normative analysis of domestic law and specific major legal acts, and then consider the socio-cultural context. The aim of this paper is to present the legal norms regulating NGOs as a means of assessing the conditions for the promotion of cultural rights, and then by extension to identify the conditions for actual development. For cultural rights are, in one sense, guaranteed by the Constitution of the Republic of Serbia, but are not fully manifest in practice. The existence of legal gaps, lack of adequate legal and financial knowledge, and the fact that the existing legal framework does not have an appropriate impact, are all factors that must be weighed and subject to critical insight.

Author

Miljana Jakovljevic is a practicing lawyer, based in Belgrade, Republic of Serbia. She is a graduate of both the Faculty of Law and UNESCO Chair of Cultural Policy and Management:

miljana.jakovljevic@gmail.com

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Introduction

The beginnings of non-governmental organizations (NGOs) in Serbia in late 18th century was a humble one. Nonetheless, today a few thousand can be seen to operate just in the field of culture. Yet the general public perception of these NGOs is far from positive. A cursory assessment of the legal condition of NGOs would identify obvious legal gaps, lack of adequate legal and financial knowledge, and evidence of an insufficient impact in the existing State legal framework itself (adding to which are visible discrepancies between legal norms in different areas, and subtle but common violations of both law and constitutional rights). All of this makes an impact on NGO operations, and specifically relevant, how their work contributes directly to the freedom to exercise cultural rights. This article will offer critical insights into the matrix of legal norms that regulate the work of non-governmental organizations in culture and the arts, and will attempt to provide a perspective of functioning of NGOs on daily basis, specifically regarding its everyday fight for the promotion of cultural rights. There is no shared or common strategy for cultural development in Serbia: the analysis will largely be normative, with reference to major legal acts and their practical impact, using methods common to legal practice and language, prioritising the logical, objective and target interpretation¹.

The early history of cultural NGOs in the Republic of Serbia is related to its Jewish community, starting with the religious charitable organization 'Hevra Kadisa' founded in Novi Sad (the second largest city in the country) in the year of 1729. Given the turbulent history of the nation, consistent and reliable data is not forthcoming. We know that after the founding of Hevra Kadisa, it took almost twenty years to establish another one, in the form of the corporate identity of the Jewish Religious Community of 1748. The very next year, 1749, the first Serbian organization started operating in Vojvodina,² after which an incremental expansion of cultural and

community organisations increased, attracting either restrictions or support on the part of the authorities. Many organizations didn't last, and only a few from the 18th century are still operating today, albeit funded and supervised by the authorities. These include Matica Srpska (most important Serbian literary, scientific and cultural society, founded in 1826) and is notable in its main purpose that was and remains to preserve Serbian cultural heritage and present it to the world. At the time, cultural independence raised political suspicion, and despite its national interests the organisation was the subject of an attempted ban by the then national ruler, Prince Mihajlo (1839-1842).

Today, there are 15,600 registered NGOs operating in the civil sector generally, with various fields of interest. This article will focus only on the arts and cultural sector, where so many NGOs are perceived to be the product of 'Western countries', and whose sole perceived purpose is to influence the political realm to its detriment. In the last few years, public opinion has changed positively, but not a great deal. Fear, prejudices and ignorance can be identified, not least in relation to the legal basis of such organisations. Article 55 of the Constitution of the Republic of Serbia concerns the regulation of Freedom of Association, a basic human right (1948 UDHR articles 20 and 23). To be precise, Marković has observed that this is more of a "political right, which is part of the very 'first generation' of human rights" (2013: 43). Article 55 is not only guaranteeing freedom of political union and any other form of association, but restricts secret and paramilitary associations. According to paragraph 2 of the same article, the Constitutional Court has the authority to ban associations whose activity is aimed at a violent overthrow of constitutional order, the violation of guaranteed human or minority rights, or the incitement of racial, national and religious hatred (Constitution of the Republic of Serbia, 2006: Article 55, paragraph 2). Modern history has not, for the most part, been witness to such radical measures, but these options were used in the past. Moreover, censorship and even more, auto-censorship, was part of the daily life of artists and cultural workers during Communist Yugoslavia.

¹ These methods originate from legal doctrine.

² Today Vojvodina is an autonomous province; at the time it was part of the Austro-Hungarian Empire.

Indeed, as Dragičević Šešić (2011) observed, this wasn't a specifically Yugoslav phenomenon but the life of cultural workers in all totalitarian regimes (2011: 22).

A significant research publication, *Perception and public opinion on non-governmental organizations in Serbia 2009*, was funded by USAID and conducted by the NGO, Civic Initiatives (Civic Initiatives, 2009). The research, now almost ten years old, still offers us valuable insights on how the Serbian general public perceives such organizations. It concludes that the public image of NGOs is somewhat better than during the 90s, though still not wholly positive. A fifth of citizens consulted during the research did not know what an NGO was, or represents. Further, negative patterns of thinking about non-governmental organizations were revealed to bear a tight relation on topics current in the media. Responsibility for their negative public image was, however, also related to NGOs themselves. The report articulates this criticism, including the unwillingness of NGOs to reach out to the general public; in not having specified their target groups of beneficiaries; in not using the media to change how they are being perceived by the public (actively creating a positive public image), along with other notable points of criticism.

This research report offered an opportunity to understand how, in relation to culture, the 'average person' thinks, feels, prioritises, takes an initiative and the reasons if they don't. Almost 80% of population does not have a membership of any civic organisation of any kind. Among those who are active, only 2% are members of arts associations. Membership is also gendered and with a greater number of males. The average participant is educated, aged 30-44, with more spare time than the average person. The main indicators of inactivity are identified as: lack of free time; a (mis)belief that nothing will change; and an indifference to any involvement of this kind. Surprisingly, most of those who said they did not know how to participate were women and youth. Of the those consulted, most of the active 3% decided to participate to help their careers (registering an increasing competition in

the labour market). Their support is moreover largely passive (except for signing petitions and participating in polls). Only 2% of the active supporters (out of a total 3% involved in cultural organizations) were willing to invest more time and effort in cultural initiatives. Only 16% of those consulted in total said that they have been actively involved in project of any kind that relates to helping their own local community (Civic Initiatives, 2009, *passim*).

Having taken account of this general picture of participation, support and membership with regard civic and cultural NGOs, it is instructive to understand the current legal framework in which these organisations (and participants) are operating. A normative analysis focused on the Constitution of the Republic of Serbia of 2006, will allow us to conceptualise the participatory conditions of cultural NGOs in terms of cultural rights, particularly with reference to the Law on Culture (2009), Law on Associations (2011), and Law on Endowments and Foundations (2010).

Prior to an analysis, it is useful to start with a couple of general guidelines considering the legal system of the Republic of Serbia. Significant formal sources of legal thought and activity are the Constitution, national Law(s), International agreements, Sublegal general legal acts, general acts of social organizations, customs, judicial precedent, case law, and last, but not least, legal doctrine. The Constitution is considered to be the supreme legal act, and all the other legal acts must be in compliance with it. According to the hierarchy of legal acts, every single subordinated legal act must be in compliance with the one directly of the higher rank. In addition to this, legal acts provided by State will always be ranked higher than those provided by other institutions, with exceptions including supranational sources of law (such as bilateral or multilateral agreements, international conventions, suitably ratified), or sub-legal acts generated by the executives (President, government, ministries, local government bodies, and so on) and adopted with the purpose to help execution and appliance of higher laws. Even though, in the legal framework of the Republic of Serbia, the State is the key creator of legal acts, it is not the only

one. Various organizations and institutions are involved in legal drafting and creating legal acts for their own purpose and functioning, albeit they remain part of the hierarchy and in compliance with the law and sub-legal acts of State bodies. It must be noted, that among these acts, the statute of each organization is the most important. The reason for this is that the statute defines the very constitution of the organisation - its defining direction, goals, mission and vision.

In order to understand the role of law in relation to cultural policy, Blagojević emphasises that historically the central role of cultural policy was to create a public cultural sector (2013: 354). However, lately, the role of economy and economics-related laws have emerged (common to countries with well developed creative industries). Fortunately, cultural policy in Serbia has maintained a distinct domain in terms of its legal instruments, and not become integrated with market-based regulation or policies, and yet, according to the same author, it does not entirely define the extent its legal influence, so as to maximize its effect on society (Blagojević, 2013: 354). Legally, it is the State who is under obligation to arrange all available means and rules, so cultural life within its borders can freely develop, yet there remain some fundamental ambiguities on the relation between the legal and political dimensions of cultural policy, and the relation between the legal and the political as they both impact on cultural policies (Blagojević, 2013: 355) and so determine the impact of the cultural sector on society more broadly.

With regard to the specific influence of legal acts on cultural policy in Serbia, Blagojević (2013) asserts that there are two distinct spheres of culture and law that must be observed: the first is the direct influence of laws, i.e. legal regulative acts defining the direction and creation of cultural policies nationally; the second is the realm of legal acts that regulating certain situations important in achieving the realisation of cultural rights, often relating to everyday life (Blagojević, 2013: 361). The most important legal act any country produces is its constitution, and not least in the Republic of Serbia, whose

constitution is relatively recent (8th November 2006). To quote:

Article 73 provides Freedom of scientific and artistic creativity:

Scientific and artistic creativity shall be unrestricted.

Authors of scientific and artistic works shall be guaranteed moral and material rights in accordance with the law.

The Republic of Serbia shall assist and promote development of science, culture and art.

This specific article belongs to the second chapter of the Constitution, which regulates human and minority rights and freedoms. Marković notes that this guaranteed freedom of artistic creativity represents a basic human right, i.e. rights guaranteed to the citizens of a state in relation to obligations of a state toward citizens (Marković, 2013: 43). If we understand human rights historically, it is clear that they were not all created at the same time or even defined in relation to each other. In the human rights community of legal scholars it is common to refer to a first 'generation' of human rights (which revolve around liberty, civil and political rights), a second 'generation' (which revolve around equality and are largely social, economic and cultural), and a third 'generation' (featuring new legal conceptions of collective rights, such as right of development, environmental resources, humanitarian aid, identity, heritage and self-determination: see Marković, 2013: 44). Yet we also need, in respect of all rights, to register the role of 'passive' rights, or 'freedom from' restriction, interference or repression -- all very relevant to freedom of artistic creation.

If we consider Article 73 of the Constitution, we can see that freedom of artistic creativity actually consists of two components, namely:

- (i): The freedom of creation and publishing (of art and art works)
- (ii): The moral and material rights of creators, in accordance with other laws and to copyright.

Marković remarks that intellectual freedom, generally, is closely related to related rights of freedom of thought and public expression of opinion; it is also highly subject to being formed in the process of its implementation (Marković, 2008: 463). Freedom of thought, as such, involves the right to stand by one's belief or to change one's belief according to choice. As Marković has asserted, the Constitution is guaranteeing freedom of thought and expression, side by side with the freedom to seek, receive and impart information and ideas through speech, writing and/or art (Marković, 2008: 466).

Using the systematic method for the interpretation of legal norms³ we can draw a preliminary conclusion that the Republic of Serbia shall assist, on one side, and promote, on the other, the development of the arts and culture. When it comes to position of this Article in the Constitution, it is positioned well. If an individual is not guaranteed a right to life, dignity, free development or of the inviolability of their physical and mental integrity, etc., artistic expression would not be able to exist. In a way, the absence of the former precludes the existence of the latter; i.e. they are all prerequisites for the freedom of artistic creativity. While speaking of a cultural right, as one of the basic human rights, it is important to emphasise that Article 20 of the Constitution of Republic of Serbia (2006) provides us with the following *Restriction on human and minority rights*:

“Human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of restriction in a democratic society and without encroaching upon the substance of the relevant guaranteed right.”

³ Systematic method is used to determine the accurate meaning of legal norms via links between the factual norm and any other norm that is part of the legal system. In this particular case, since only one article has been analysed, that particular article represents a legal system on its own.

Yet human and minority rights may not be lowered. To continue:

When restricting human and minority rights, all state bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, pertinence of restriction, nature and extent of restriction, relation of restriction and its purpose and possibility to achieve the purpose of the restriction with less restrictive means (Constitution of the Republic of Serbia of 2006, Article 20).

In this particular Article, we can see that certain restriction can exist, but only via special procedures, conducted by courts. Judicial precedents related to this restriction are almost impossible to find. Moreover, cultural rights in the Republic of Serbia are vulnerable violation in more subtle ways. It is not uncommon that exhibitions, theatre plays, screenings of certain movies, are suddenly cancelled. The reason later evident for this is that they are considered too socially or politically dangerous or provocative. As the Belgrade Pride march needs to be secured by police officers (due to many incidents of violence that occur), the same situation transpires with certain openings of exhibitions, considered to be controversial. The Opening of ‘Ecce homo’ in 2012, by Swedish photographer Elisabeth Ohlson Wallin, is an example: it needed to be secured by police forces due to serious threats provided by several different groups⁴. The LGBT community in Serbia was, at the time, proud of their achievement, and put a great deal of effort into the opening and exhibition. While it cannot be said that something substantive has changed since then, or that exhibitions such as ‘Ecce homo’ are now part of Serbian’s everyday cultural life, nevertheless, these are without doubt a step forward in promotion of overall cultural rights. Further, the Museum of Contemporary Art Vojvodina in Novi Sad during 2017 featured an opening of an exhibition entitled ‘New Religion’, featuring British contemporary artist, Damien Hirst⁵. This exhibition is remembered mostly for

⁴ Mostly political and sport-based supporter groups.

⁵ Novi Sad is capital of Autonomous province of Vojvodina.

the scandal during the grand opening ceremony, not the exhibition content. Members of various art organizations, art associations, artists and activists for human rights, were brutally expelled from the Museum on account of their wearing black eye patches and protesting against the corporatisation of the arts. The cost of this exhibition was around 1,1 million dinars (approximately 9.000,00 Euros). A week-long exhibition in an art gallery for a Serbian artist will cost approximately 100 Euros by comparison – indicating the contrasting economies, effaced by how the opening ceremony was largely provided politicians and ambassadors (and only on the first floor of the Museum, where actual artworks of Hirst were exhibited). Regular visitors could only watch it live on screens provided downstairs. Eventually, security intervened and turned out the protesters, calling the police. In this case, what was violated was the basic access or availability of a central cultural event (one of the basic principles drafted in Article 3 in Law of Culture). This transpired without a substantive reason except perhaps the cultural capital of the socially elite class for whom the ceremony was, in reality, organised.

Even though the national Constitution is the most significant legal act within Serbian legal framework, it is not the only one. There are others, such as international agreements and conventions. The European Cultural Convention was adopted in Paris on December 19, 1954, and at the time as Yugoslavia, the Communist party recognized its importance, and ratified it in 1987. Clause 3 of this act provides us with the following:

The Contracting Parties shall consult within the framework of the European Council, in order to harmonize their actions for the implementation of cultural activities of European interest. (Law on ratification of the European Cultural Convention of 1987, clause 3)

Using the accepted language of legal norms⁶, we must conclude that Serbia will cooperate with

⁶ One of the methods of the interpretation of legal norms used to reveal its true meaning or the standard of norm.

other State Parties⁷ in order to promote cultural activities of European interest. In this context, it is both important and appropriate to cite the Stabilization and EU accession agreement, signed on the April 29, 2008 (since Republic of Serbia is still not member of EU this legal act is considered to be international and not supranational: the agreement regulates the rights and obligations of States that acceded to the EU accession process). The Article 103 of the Agreement is crucial, since it anticipates the requisite cultural cooperation. Both of these legal acts are positioned above all laws other than the Constitution itself. They are to be applied equally, without exception, in all areas of artistic creativity and cultural life. We may consider these regulations in relation to cultural cooperation with countries Albania or Croatia (knowing that diplomatic relations can, from time to time, become pernicky). Thanks to these standards, NGOs, development agencies and other cultural institutions are trying to increase capacity and attain to an EU level in all activities. Their influence on the arts and cultural sector is palpable, and there are more international projects, cooperation with countries from the Balkan region, and other EU states. Further, there are more and more non-governmental organizations established by young people, entrepreneurs, even students. They all have aimed to promote Serbian culture abroad, get in touch and combine forces with similar-minded people from different parts of the world, and so participate in an overall cultural exchange (until recently dictated by the government).

We must also consider the more direct impact of domestic law. The Law on culture (adopted in 2009, with amendments in 2016) represents *lex generalis*, i.e. general law-type of law that is regulating general matters. The public had high expectations of this Law, but which haven't been fulfilled. An arguable cultural chaos existed long after it was adopted and started to be applied, and after seven long years, dozens of public discussions, polls and propositions, a change in the law was proposed and the Amendment took place. Yet, its substantive impact remains

⁷ Total number of State parties is 50. Nevertheless, the Convention remains open for signatories, so at any time any interested state can accede.

indeterminate. The opening of the original Law, the Article 1, states:

This Law shall regulate the general interest in culture, the ways of fulfilling the general interest in culture and performing cultural activities as well as the rights, obligations and responsibilities of the Republic of Serbia, autonomous provinces and municipalities, towns and the City of Belgrade (hereinafter referred to as: local self-government units) in culture and the conditions for functioning of all cultural operators. (Law on Culture of 2009, Article 1)

Further on, Principles of cultural development are defined (in Article 3):

The Republic of Serbia shall ensure the fulfilment of general interest in culture and the implementation of cultural policy as a set of goals and stimulating measures for cultural development based on the following principles:

- 1: the preservation of cultural and historical heritage
- 2: freedom of expression in cultural and artistic creation
- 3: the stimulation of cultural and artistic creation
- 4: openness and availability of cultural events for the public and citizens
- 5: respect for cultural and democratic values of the local, regional, national, European and world tradition and variety of cultural expressions and intercultural dialogue
- 6: integration of cultural development into social-economic and political long-term development of democratic society
- 7: democratic cultural policy
- 8: equality of operators in the establishment of institutions and other legal entities in the field of culture and equality of all cultural institutions and other cultural operators
- 9: decentralisation in decision-making, organising and financing of cultural activities

- 10: autonomy of cultural operators
- 11: encouragement of sustainable development of cultural environment as an integral part of environment (Law on culture of 2009, Article 3)

Three of these eleven principles already appeared (more or less) in the Constitution -- freedom of expression in cultural and artistic creation; stimulation of cultural and artistic creation; and openness and availability of cultural events for the public and citizens. There was no unnecessary repetition in this case, and we can say that adopting cultural rights within the Constitution built a qualitative foundation for these interdependent principles. Further on, these principles are providing a solid basis for non-governmental organisations, associations, state organisations and cultural operators in general. The autonomy of their work is legally guaranteed, equality (considering different background of cultural operators) and last, but not least they are all being encouraged to find a way to finance themselves⁸. Public finance for cultural programmes and projects still exists, though far from sufficient. The efficacy of self-financing, when it comes to cultural operators, is highly dependent upon the cultural manager(s) of the particular organization, and their skills. Thus, there are organizations that have thrived and others who are struggling to cover basic expenses. On the other side, there are financial implications in relation to the cultural product or artistic activity itself. By way of example, the European Centre for Culture and Debate⁹ obtains more visitors per event¹⁰ than the award winning ceremony organized by the *Jelena Šantić Foundation*¹¹.

⁸ This notion emerged in relation to the economic condition of the country along with trends in cultural management internationally.

⁹ Mostly known as KC GRAD, located in the city centre, it represents a creative space that gathers artists and introduces new artistic practices.

¹⁰ Despite the given name, mission and vision, most of their events are market-oriented.

¹¹ The NGO started with the intention of financially supporting individuals and associations working in the field of culture and promoting basic human rights. It was named after late ballet dancer, one of the most important peace activist in the ex-Yugoslavia and winner of Pax Christi International Peace Award. The Jelena Šantić Foundation continues her work and now it is encouraging others to follow their example.

The principle of preservation remains a central one, in part as cultural and historical heritage is not only related to cultural policy but also the cultural diplomacy of the Republic of Serbia. Cultural policy and cultural diplomacy are interrelated when it comes to churches, monasteries and promotion of medieval historical landmarks. Whatever the culture, the policy framework offers incentives to channel one's work in that direction. Yet, we must ask, should this be a priority given how, in actual fact, the cultural diplomacy of the Republic of Serbia is almost non-existent, at least in terms of the creative individuals who are promoting country abroad. It is the case, that artists who have achieved significant success without government support are nonetheless being used to represent or promote the country internationally.

Another, unrelated example – Belgrade's district of Savamala – is equally relevant. On the riverside yet within walking distance of the city centre, the run-down district was referred to as a creative hub and artistic district over a decade ago. Moreover, it became a cultural phenomenon attracting the research of sociologists and art critics. It began with creative individuals, associations and non-governmental organizations seeing potential in what was a range of hangars, old buildings and warehouses. Transformed into cultural centres, multidisciplinary event spaces, and places where festivals, workshops and lectures were held on daily basis, it escalated into a popular urban creative district, even beginning to make money. However, municipal authorities envisaged a larger 'Belgrade Waterfront'¹², whose design did not accommodate the improvised development of a creative hub, and which has prioritised commercial profitable urban development.

Understanding the relevance of the Law on Culture (2009) then, precisely in relation to the relevant Article 21, Savamala might have been a location for the support of certain types of organizations and cultural operators, given how the emergence of cultural organisations must

¹² One plan of the authorities is to build a new city hub with elegant and luxury apartments.

be understood as interrelated with a place or location and not just a set of cultural aspirations:

Cultural activities can be performed by cultural institutions, cultural associations, artists, cultural associates and/or cultural experts as well as other cultural operators. (Law on culture of 2009, Article 21)

Furthermore, Article 73 of the same Law gives us a definition of 'other cultural operators':

Other cultural operators shall be:
1: cultural endowments and foundations;
2: companies and entrepreneurs registered for performing cultural activities;
3: other legal entities in culture and cultural operators.' (Law on Culture of 2009, Article 73)

Such legal drafting leads us to the Article 12 of Law on culture (2009) which underlines importance of foundations and endowments in cultural activities:

The funds for the financing of cultural activities can be secured through the establishing and functioning of endowments and foundations, in accordance with law. (Law on Culture of 2009, Article 12)

Using both objective and systematic method of analysis for this legal norm, it is clear that these two forms of legal entities are allowed to participate in cultural life, exercising cultural rights to the same extent. Furthermore, this Article is at the same time making reference to the Law on Associations (2009) and Law on Endowments and Foundations (2010), two Laws are representing *lex specialis* in a given area. They are tightly connected. Yet, the Law on Business Companies (2011) is considered to be *lex generalis*.

The opening of the Law on Associations (2009), Article 1, provides a valuable detail: this Law will be regulating the establishment and legal status of associations, their entry and deletion from the Register, membership and bodies, associations' status changes and termination as well as any

other issues of importance to their activities. Further, the aforementioned Law (2009) will also be regulating the status and operations of foreign associations.

The Law on Associations is applicable in relation to all sorts of Associations (not just art organizations). Yet, they are in compliance not just with the Constitution and international agreements, but also with the norms regulated in Law on Culture. Restrictions of associations are in compliance with the Constitution. So, Article 3, Clause 2, of the aforementioned Law is regulating the way that an association's goals and operations may not be aimed at, for example, the violent overthrow of the constitutional order, or the breach of the Republic of Serbia's territorial integrity violation, or incitement and instigation of inequalities, hatred and intolerance based on racial, national, religious or other affiliation or commitment as well as on gender, race, physical, mental or other characteristics and abilities. Further, Clause 3 of the same article states that this provision shall be applied to the associations not holding the status of legal entity. In order to direct the activities of (arts) associations without difficulty, lawmakers ensured to define their activities as public, as regulated in the Article 5, Clause 1, of the same Law (2009). Registration according to the Article 4, Clause 1, of the Law on Associations (2009) is made on voluntary basis, but one can still operate as a non-formal group in the field of culture (with certain limitations) as long as the current provisions are followed. However, it is the case that according to the Civil Procedure Act (2011), a court can formally acknowledge the existence of an association (as a legal entity) even if it is not officially registered in the Associations Register (only as required by a specific legal process related to the court).

It is a widely known fact, that during the process of the establishment of an association or cultural organisation, statutes and other legal acts can be intentionally incorporated by artists and members of the organizations, without the advice of professionals, as a form of legitimacy. It is not uncommon that organizations with a sole aim of earning money, take on registration, thereby enabling them to apply for the local and international funds and develop short terms

projects (albeit without any long term influence nor contribution to the cultural community or public). On the other hand, young entrepreneurs and even students are able to 'start-up' an art associations or NGO, and it has become common for such, after a period of time living abroad to return and start their own enterprise.

Entrepreneurs are generally aware of risk and think strategically before launching their projects, while for students the development of an enterprise can be fraught with obstacles and despite initial enthusiasm, many give up. Many independent organisations 'live' for less than a year, nor develop during the early phase¹³. This opens many questions on the relation between law, cultural policies and public funding. The aims of a given law or article can be clear, yet disempowered by the relation (or lack of) between public funding and cultural policies.

No wonder that many statutes of these organizations betray numerous legal gaps, a lack of clarity and even a confusion between the mission and vision of the organization itself. The Business Registers Agency is not very helpful in this case, since the process of registration only requires examining if the form itself is valid (the application contains all necessary documents; if data from the application match with those of the documents; if the organization has already been registered, and so on.). After checking the form, the Business Registers Agency makes a decision on whether it will register the organization or not, which is even defined by the Article 14 of the Law on the Procedure of Registration with the Serbian Business Registration Agency (2011). This procedure of registration is swift and open that one could even register an organization with the sole purpose of denying human rights, or in our case, denying cultural rights. Afterwards, only a court could prevent the work of such an organization. With this in mind, it is clear why there is a vast number of art associations and NGOs on the one hand, yet on the other very few devoted to promoting cultural right specifically, or even fighting for the preservation of freedom of artistic creativity and expression.

¹³ According to the Adizes Corporate Lifecycle.

There are a few notable foundations whose positive practice in the field of culture and the promotion of cultural rights are exemplary and allows us to focus more clearly on the Law on Endowments and Foundations. The subject of regulation in this law is its establishment and legal status, assets, internal organisation, entry in and removal from the Register, activities, statutory changes, monitoring the work of endowments and foundations, dissolution and other issues pertaining to legal status and activity of branch offices of foreign endowments and foundations (Law on Endowments and Foundations 2010). Further, main difference between these two types of organizations, is that there is no need for foundations to have assets or a budget in order to be registered, while at the same time capital assets are needed if you want to start endowment. To be precise these assets may be in kind, rights and money and the minimum value shall be 30.000€, as it is predicted by the Article 12 of the Law on Endowments and Foundations (2010). Just like Law on Associations, Law on Endowments and Foundations is also applicable on all forms of endowments and foundations and not just those related to culture and art. Having that in mind, it is clear why legal norms that can be found in this Law are of a more general nature, applicable to other organizations operating in the field of culture and trying to promote cultural rights. When it comes to the procedure of registration, it is similar to associations and the demands of the Business Registration Agency. Young entrepreneurs and artists, while thinking of registering their own NGO can choose between a foundation and association. Due to the fact that the registration process is prompt and simple, they can undertake it themselves and in most cases do not require a legal professional (always needed when legal drafting or the process of registration itself). However, this openness can exact a price: often only realised later, the organisation has defined certain severe restrains articulated in the statutes and founding acts, unknowingly. Professionals might not be consulted, but depending on the nature of the organisations work they could alert the Press, make complaints to state organs, and raise questions. Many NGOs face internal problems in

this way, and are distracted from their core mission and vision activities. There are, of course, cases whereby large firms and public personalities have established their own foundations, supporting projects that they consider important. These are usually specific in terms of their criteria and aims, and only work within a limited orbit of activity. While they certainly contribute to the public sphere of rights and cultural production, and they sponsor or commission the arts and culture, they nonetheless are too tightly defined to maintain a significant impact on cultural development more broadly.

The Serbian Development Agency is dedicated to the promotion of national exports, facilitating investments and overall economic and regional development in the country. However, it remains a pending judgement (and a matter for cultural policy) whether cultural NGOs, arts enterprises, art associations, and foundations have benefited from its activities. The Agency is for the most part dependent on the Ministry of Culture and Information (or large corporations) for such appropriate funding. The Law on culture (2009), in fact, predicted in its articles no. 19 and no. 20, that the Government of the Republic of Serbia will devise a new strategy for cultural development for 2017-2027, and this will be born out of an analysis of the current situation, the basis, direction as well as the instruments of cultural development, so as to plan the realization, through criteria, indicators and an evaluation process, as it is determined by the aforementioned law (Law on culture 2009). However, this strategy remains forthcoming. The abovementioned organisations have to continue with their work of participating in Serbian cultural life, extending the legal framing of cultural rights through practice (or not) with little empowerment or national coordination for cultural development.

Cultural rights are human rights, but we can also say that in relation to a cultural sector, it is as much a practical requirement as a 'right'. Even though it is proclaimed by the legal instruments

of Serbian cultural policy¹⁴ its practice is inconsistent and questionable as to its strategic value in cultural development. As mentioned before, the fact that cultural rights are explicitly guaranteed by Constitution, does not prevent cultural suppression and the conditions for artists practicing self-censorship, such as cutting public funds, cancelling exhibitions, and the continued closure of the National Museum (now for more than 10 years). Many NGOs Serbia, some significant cultural operators, have been drawing attention to this situation to little effect. The National Museum is proclaimed to be under 'renovation' but this is evidently not justified, nor is preventing its collection from being used for other exhibitions – one example was the exhibition of works by Edgar Degas from the collection of the National Museum, hosted by Gallery SANU from 15th July – 15th September of 2017.

Organizations operating in the field of culture are rarely funded with significant financial support, and so turn to the market and competing with each other in order to survive. Given that the average consumer in Serbia has limited financial means, participating in the cultural life of the country is so often dictated by price, and only secondly determined by cultural content. A situation pertains where organisations are usually only partly funded by the state or local government, and so are compromised by their need for the market. Cultural managers and the fight for cultural rights in such an economic situation involves not only a fight for freedom and the full exercise of rights, but the right to public resources, space and the means of providing art and artistic creativity for a general public, whether controversial or not. It is also fight for practicing and developing the culture of the country. 'Inter arma silent musae'¹⁵ and this war in Serbia lasts for too long. It remains to be seen if the forthcoming strategy for the cultural development of the Republic of Serbia, will bring any changes, and fully activate the right to

culture as access, participation and development. There are many aspects to be considered by creators and researchers, and NGOs and art associations are just one area. But in understanding their context of formation, incorporation and activity, it becomes clear that cultural rights remain weak if only inscribed within law and legal frameworks. Cultural rights is contingent upon policies and public infrastructure, providing for an active participatory public. As Albert Camus famously stated:

Without culture, and the relative freedom it implies, society, even when perfect, is but a jungle. This is why any authentic creation is a gift to the future.

References

- Marković R. (2013) *Constitutional Right*, Belgrade: Faculty of Law University of Belgrade.
- Marković R. (2008) *Constitutional Law and Political Institutions*, Belgrade: Faculty of Law University of Belgrade.
- Dragičević Šešić, M. (2011) *Culture-management, animation, marketing* Belgrade: Clio.
- Blagojević, P. (2013) 'Law as a factor of guiding cultural policy of Republic of Serbia', Legal notes, 4(2): The Constitution of the Republic of Serbia (Official Gazette, RS, 98/2006).
- The Law on ratification European Cultural Convention (Official Gazette SRFY-international contracts, no.4/87).
- Law on Culture (Official Gazette of the RS, no. 72/2009, 13/2016 and 30/2016-correction).
- Law on Associations (Official Gazette of the RS no. 51/2009 and no. 99/2011).
- Civil Procedure Act (Official Gazette of the RS, no. 72/2011, 49/2013-verdict of Constitutional Court, 74/2013- verdict of Constitutional Court and 55/2014).
- Law on the Procedure of Registration with the Serbian Business Registration Agency (Official Gazette of the RS, no. 99/2011 and no. 83/2014)
- Law on Endowments and Foundations (Official Gazette of the RS, no. 88/2010)
- The Law on ratification Stabilization and EU accession agreement (Official Gazette of the RS-international contracts, no. 83/2008)
- Civic Initiatives (2009) *Perception and public opinion on non-governmental organizations in Serbia for the year 2009* <https://www.gradjanske.org/wp-content/uploads/2014/11/043-Percepcija-i-stavovi-javnosti-o-NVO-sektoru.pdf>, [accessed 20th May, 2017]

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¹⁴ As Dragičević Šešić (2011: 24) observes, the three types of cultural policy instruments are the legal, financial and organizational.

¹⁵ In the times of war the muses are silent.