

PRIVATISATION AND CULTURE: HOW TO SEPARATE CULTURAL POLICY FROM THE PROVISION OF CULTURE?

ABSTRACT

The new circumstances determined by political pluralism, a market economy and social stratification also require the transformation of cultural policy. Instead of the present-day transition, which only adapts old positions to a new environment, a strategic transformation that would improve quality and content is needed. The author believes that such a qualitative transformation calls for the redefinition of the role of the state in culture. The state used to have all three basic functions: the regulation of cultural activities; the provision of cultural services through state cultural institutions; and the subsidising of individual cultural projects. In order to establish the principles of competition, selection, transparency and accountability in the allocation of public funds for culture, the funding of cultural activities must be separated from their provision. This article will try to advance a number of arguments as to why civil society is the most appropriate partner for assuming the function of the organisation and performance of cultural services from the state, and why the state should now concentrate more on the newly-formed strategic role for culture-policy formation, i.e. establishing the general conditions for cultural development whereby a range of stakeholders, including the private and civil sectors, is brought to the surface.

Key words: cultural policy, deregulation, de-etatisation, decentralisation, autonomisation, incorporation, democratisation, publicisation

Introduction

The romantic period of the 19th century was linked to the emergence of national cultural institutions as symbols of the birth of nations and national identities. National states created a very powerful public cultural sector, which gave the state culture its legitimacy. After the Second World War, the transition from the liberal era to that of the

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welfare state led to the birth of cultural policy whose focal value was the idea of the access to cultural services (D'Angelo, Vasperini 1998). Culture began to acquire the character of a public good that should not be left to specific interests, capacities and abilities, but ought to be provided for by the state.

While the welfare state model and the related powerful public sector substantially increased the standards in health care, education, culture, social care and science, it was also claimed by some that the welfare state was encouraging a "culture of dependency" (Taylor 1997: 41). The welfare state made people less willing to take responsibility for themselves, their families and their environment. It made them dependent. They became a kind of clients of the state. On the other hand, the paternalist attitude that socialist states took towards their citizens was their way of controlling them. The state defined which cultural services people needed and then provided them. The purpose was to eradicate any need for joint civil action and self-organisation for the purpose of providing community benefit of a public goods character. In such conditions, private property was abolished and its nationalisation was expected to remove the basic cause of social conflicts. The resulting system not only suffocated any innovation but also efficiency, and in the end contributed to the collapse of socialism. This statement is too harsh considering the fact that Slovenia, as a part of the Yugoslav socialist system, experienced a softer variant of communist dictatorship. This "softness" was reflected in the tolerance of private property in certain areas, introduction of market rules into a planned economy and the transfer of the running of education, health care, science, culture and social care to the joint bodies of providers and users known as "self-management interest communities".

In Slovenia, another important process took place in culture that had an important effect on the position of culture. Although Yugoslavia was formally a federal state, a tendency towards "yugoslavianisation" was always present. Slovenia's civil society, particularly the arts community, opposed this tendency; in turn they emphasised "Sloveneness" and Slovenia's political circles tacitly supported them. As a result of this national mission, Slovene political circles tolerated the arts community in its attempts to act independently through civil initiatives.

The consequence was that in the 1950s, the interest in pluralism gained ground. In a single- political-party dictatorship these interests were always subjected to the absolute right of the communist party to intervene whenever it wished to do so. Nevertheless, this system of repressive tolerance allowed independent cultural organisations to develop parallel to state culture (Čopič et al. 1998). The so-called non-institutional culture reached its peak in the 1980s and played a significant role in the destruction of the old system.

After the fall of the Berlin Wall it was expected that civil society would flourish on its ruins. All that seems to have flourished was political pluralism. Introduction of market principles and privatisation encouraged individualism while at the same time it damaged social cohesion and social responsibility. In addition, the creation of the new Slovene state in 1991 resulted in an increased need for staff by the public administration, and the state drew staffing potentials away from civil society. In the 1990s, civil society found itself to be on the margins; and behind this paper conveys the idea to enhance

citizens' power to act as agents, who provide or use the cultural services. "Once again", therefore, we would like to form a civil society, which means that in this paper I will deal with the relationship between the state and the society in the area of culture from the viewpoint of privatisation.

Rather than debate the meaning of the word "privatisation" I will quote Schuster (1997: 263) who said "no other word has been used so many times by so many people in so many different ways to mean so many different things". There are many expressions which cover these different meanings, such as deregulation, decentralisation, de-etatisation, deinstitutionalisation, democratisation, autonomy, incorporation, contractualism, contracting-out, publicisation and privatisation. In this respect privatisation is used more as the collective term. Perhaps some other collective term would be better suited, for instance, liberalisation. If the word privatisation remains the key word I prefer to speak about "privatisation and culture" rather than "privatisation of culture". It gives more manoeuvre space and it shows some reservations.

If the term privatisation is used to describe the transition from the state to other sectors, the main purpose of this paper will be to answer the following questions: What ought to be the object of transfer, who would be the main protagonist of this transfer and what ought to be their roles in the transformation process?

In order to answer these questions, I will have to challenge the basic contradiction in the area of culture, which is that the private sphere is in principle the sphere of particular individual(s) and his/their interests, including various forms of satisfying these interests (for example commercial companies). But on the other hand, cultural services, as any other social services, are by their character of public interest, as well. They are common needs that are satisfied collectively.

Therefore, in this context the relevant question would be, in which circumstances we may leave cultural services to the market and the principles of supply and demand, and when it is acceptable that despite the fact that cultural services continue to be public services, they can be transferred to other providers?

When there are several possible private providers and strong competition which increases the efficiency and quality of public services, then, maybe, profit-oriented interest of providers would no longer be an inappropriate mechanism to manage the aforementioned contradiction of cultural services, since it would be controlled by competition.

But what shall we do when there is no such competition? Then we should seek partners elsewhere. The partner could be someone whose interests are not private-oriented (for example, creating profit on capital investment), but someone who wishes to carry out the public mission. Since the concept of civil society is close to this attitude, we could expect that civil society is that kind of partner. In this case, privatisation can be discussed as a mechanism for the development of civil society (Čopić 1998).

The paper will ignore the private sector, since it is linked to cultural services that have already been privatised, like publishing houses and cinemas. In the small cultural landscape of Slovenia, these two areas represent the only spheres interesting for (private) profit-oriented privatisation. I will try to answer the remaining questions in the following

four sections. In the first three sections, I will describe the roles of the state, the public sector and the civil sector. The state and the public sector ought to be differentiated, since in Slovenia public cultural institutions are more or less independent from the state having separate legal status (from the state). In conclusion, I will sketch the state of the art in the area of culture in Slovenia and its alternative perspectives that we should strive for.

The state

The role of the state in culture has changed. If before the fall of the Berlin Wall, the glorification of political ideology through cultural achievements was one of the motivations for state support of culture, the end to bloc division brought a dramatic change to this situation. Motives such as the glorification of the nation or of individual politicians remained important, but in the world of globalisation and new priorities, these are not enough for a new expansion of cultural policy. The role of culture must be redefined as a factor of progress (Pick 1993). In the broadest meaning of the word, culture is an entity of special spiritual, material, intellectual and emotional characteristics, which defines society. It encompasses not only the arts but also lifestyle, fundamental human rights, value system, traditions, habits (Mondiacult Declaration 1982). Culture is defined by values, and values are the orientation for action. Subsequently, culture contributes enormously to the functional and developmental success of the people, groups, organisations, society and the state. It is one of the most important instruments of social integration and of easing social pressures. From a purely economic aspect, it shows in the opening of new jobs (cultural industry), successful urban development (cultural facilities increase the value of the area and attract commercial investments) and in cultural tourism as a branch of the economy.

Before the new constitution of the Republic of Slovenia (1991), culture was a sort of substitute for our own state, an outlet for Slovene national aspirations and interests. In addition, within a single-political-party system, culture was the only ground where pluralism could be exercised. Now, that the nation has its own state and political pluralism, culture has been pushed to the margins of political interests. For Slovenia the time has come when, as a result of the changes that have occurred, the role of the state in culture must be redefined. The issue of how to remove cultural policy from the margins of political interests and bring it to the centre is not fundamental only for Slovenia, but it is the main topic of the Council of Europe's contribution to UNESCO's Culture and Development Report, entitled "In From the Margins" (Council of Europe 1996).

The changes of role of the state call for changes in the shape and type of public intervention in culture by the state. Public interference by the state can be clustered into three kinds of public involvement: regulation of culture, provisions of cultural services and subvention of cultural projects (LeGrand, Robinson 1984).

Regulation of culture: deregulation

The word deregulation is often defined as a reduction in the number or the influence of legal rules (Boorsma 1998). All the restrictions which in the past prevented private theatres, publishers and museums from operating in Slovenia (unless they were operating under the pretension of an association functioning on the basis of the right to free association) were gone. Professional culture ceased to be state monopoly. This transition was carried out by The Law on the Implementation of the Public Interest in the Field of Culture (1994) with the view of introducing a new model of cultural policy for a new democratic era. The state ceased the regulation of cultural activity (except, of course, in the field of heritage protection) and instead ordained the ways in which public authorities could implement public interest in culture. Therefore, we cannot speak of deregulation in general, but only of cultural activity. If attention is to be drawn to the changes in connection with deregulation, then it is more appropriate to talk about re-regulation. The regulation is still there, only the subject has changed. Legal rules now focus on the ways and mechanisms employed by the state to implement the public interest in culture and regulate the relationship between the state and municipalities, which emerged in the wake of decentralisation, i.e. of the transfer of state authorities to the local level. In case of existing public institutions are privatised, new rules may indeed be required to regulate the relationship between the state and private sector in the provision of public services (Boorsma 1998; Lane 1997). Purchasers, who would no longer control services directly, need to ensure that standards are met. The setting-up of these standards will require a new regulatory regime, this time connected to the contract culture (Taylor 1997).

Provision of cultural services: de-etatisation and decentralisation

Otokar Roubinek presents his view on the situation of theatre in Czech Republic with the following words:

“We are living in a strange period of transition, in which the old models, institutions, laws and regulations continue to exist, though they have ceased to function, whilst their replacements are still in the process – a slow, painful, cautious process – of creation. Personal relationships are complicated by unresolved issues of people’s behaviour and actions under the previous regime; the desire for revenge and punishment exists alongside the wish for forgiveness, for a general pardon, for peace. In addition, the old system of permanent contracts and fixed relations between the institutions, in which no one was judged by results, led to the dislocation of moral and professional values. Over the past forty years it has gradually become more acceptable to pick up one’s pay packet without doing anything in return... In this system a whole generation lost their sense of enterprise, boldness, independence, responsibility, pride, professional expertise and imagination — many people never even considered the idea that things could be different, that they themselves could

have the power to decide otherwise” (Schuster 1998: 261).

The origin of the majority of Slovene national cultural institutions dating before the Second World War lies in the civil initiative. If their existence and progress are to be guaranteed then permanent and favourable conditions for work must be ensured. This was achieved by the state taking over cultural institutions in 1991 according to the Law on Social Institutions; and this is how the state, i.e. the public sector in culture was created. A large step was made towards the regulation of conditions for cultural work. This is highly relevant if we consider that the Slovene cultural space and subsequently the number of artists, is very small.

The position of the state as the owner of the public sector is far more powerful than that of the owners in the commercial sector. If in the commercial sector, the scope, price and quality of services are determined by the market, in the public sector this is done by the state. As it is the nature of the state to use regulation as its main tool, it tries to use it to regulate the aforementioned dimensions as well. However, the characteristics of administrative regulation include static nature and automatism. Regulation is welcome in the areas where highly standardised work methods and procedures are desired, like the protection of cultural monuments, for example. But the situation is reversed in the areas where creativity and innovation are the most important factors, for example in theatre.

There are three points in particular where the question of the appropriateness of the situation in which the state provides public services in the cultural arena becomes very problematic:

- Public institutions in culture are independent of supply and demand. There is no proper motivation for them to respond to the challenges presented by the new demands and expectations of artists as well as of the consumers. How can this self-sufficiency be overcome without having a disturbing and obstructive effect on the provision of cultural services? Commercialisation could increase the size of the audience but it would jeopardise the role of cultural institutions as the catalysts of progress. The mission of culture is also to create new cultural needs, i.e. not only to react to the demand pull but also to create a demand push (Adizes 1995);
- The amount of public funding for culture is limited. Therefore, more can be achieved for the same amount merely by raising the efficiency and effectiveness of providing of cultural services;
- All jobs within the public sector are based on a formal division of work, allocation to wage categories and the automatic promotion system. Employees depend on the position and not on the results of work. Where standardised work is involved (for example, inventories and the evaluation of cultural monuments) and experience is the guarantee of good work, such an automatic approach can be sufficient. In contrast to this, where there are no standards and where creativity and innovation are of special significance, these principles are inappropriate.

Self-sufficiency can be overcome only by introducing competition and selection into the allocation of public funds for culture. Greater efficiency and effectiveness thus depend on whether the organisation in fact depends on its good or bad performance.

Using the status that an organisation has been awarded as basis for the allocation of funds (number of jobs, material costs), does not allow for quality allocation of state funds. This situation can be overcome by a transition from “input budgeting to output budgeting” (Boorsma 1998: 39).

The question remains whether these changes can be carried out by modernising the public sector or whether other solutions should be sought outside the sector.

There is no doubt that strategic planning can be established within the public sector and improvements made in the organisation of work. The red tape can be reduced, the exchange of information increased and communications networks with inside and outside stakeholders established. The services can be marketed and public relations nurtured. The response to the demand and needs of the users and the artists can be increased and new opportunities and possibilities pursued; human resources management can be established. In their “Reinventing Government” (1993) David Osborne and Ted Gaebler summarised most of the reforms proposal within the branch of public administration under the label of public management. Instead of looking at the public sector as a system of rules for governing in an impartial manner in order to meet the requirements of equity and the rule of law (the public administrative perceptible), public management has emphasised goals and the achievement of objectives. The introduction of so-called internal markets within the public sector is what they have in mind when advocating for: competitive government, injecting competition into service delivery, enterprising government, earning rather than spending, and market-oriented government, leveraging through the market (Lane 1997). Unfortunately, due to the legal obligations of the state as a founder of public institutions having the obligation to ensure the conditions for the operation of these institutions, the possibilities for such manoeuvres in Slovenia stay limited; the second set of limitations represents the regime applying to employees in the public sector, since the status of public servant is a poor motivator for the staff (Flynn 1997).

In addition to system-related limitations, there is also a status-related limitation. The public sector continues to identify with the mission, with which it had been entrusted, to the degree where it claims to be the value itself. But this value is now challenged by productivity, which is related to the legitimacy of the operations within the public sector. The first thing that is required for such a shift is the consideration of economists and managers that the public sector is associated with certain social values, such as equity and equality. Only in this case, business techniques and economic methods may become relevant to the public sector. However, business techniques have to be adjusted to the values, for example: strategic planning has to be transformed into community-based strategic planning, consumer satisfaction becomes client, citizen, tax-payer satisfaction, profit becomes only surplus etc. (Berman 1998). Productivity is defined as the effective and efficient use of resources to achieve outcomes. Effectiveness in particular is oriented towards achieving results, which is the basic rule in the actual implementation of the mission. The mission is losing its elevated position and is becoming the subject of evaluation. Culture is a matter of the public and not of the public sector.

In order to establish the principles of competition, selection, transparency and responsibility, the function of public service funding must be disassociated from the function of organising (and providing) cultural services. The state would thus become an investor of public funds in those cultural services, which are in the public interest; and cultural organisations would be able to independently organise the provision of these services. This would represent a fundamental change of the current situation (Čopič, Tomc 1998). The point is not to achieve small corrections of the regulation of public institutes, but a fundamental conceptual change. This applies in particular for cases where there are no standardised services with the basic features of public services and where the scope and type of assignments are not permanent. That concerns an entire sector of so-called living culture, like: theatre, orchestra, galleries, cultural centres.

The above described separation of functions requires a division of the authorities and responsibilities into two contractual parties, each having its own role, position and interests. The state should transfer part of its functions to the provider as the future contractual partner. This transfer is called de-etatisation. Currently the state performs all four basic functions for the cultural services: the planning, organising (including providing), funding and supervision. Although they are carried out by public institutions, they do it in the name and on behalf of the state. In practise this means that public institutions adopt the decisions, but the responsibility remains with the state. This discrepancy is the origin of a serious anomaly in the system. Public institutions are independent legal entities that do not shoulder the responsibility for their own independence. I doubt that this situation suits the state, but for now it is very comfortable for the public cultural sector, where there is no real interest for change.

In order to separate cultural policy from the provision of cultural services, first of all the public interest for culture ought to be defined by a national document (the National Cultural Programme) adopted by the parliament, which would set the guidelines and priorities of cultural-policy. At the moment, it is defined through the network of public institutions. The responsibility of the state would be to spend public funds on reaching the objectives, which does not mean that these objectives have to be fulfilled by public institutions. The government can assign this task to independent providers under one condition: it should in advance clearly identify goals of cultural policy. Providers of cultural services could respond on the basis of a public invitation to bid, to the orientations set by the national document for culture, with their own proposal in which they state exactly which objectives they wish to achieve in the next programme period and what is the amount of public funds required. This would be the start of a dialogue between the state and the provider, which would consequently lead to the signing of a contract. On the other side, the government will have to establish in the dialogue whether the provider's proposed objectives put national strategic orientation into action, whether they can be measured quantity- and quality-wise and whether the previous achievements (references/credits) warrant that the provider is actually capable of achieving them. These objectives include, for instance; specific artistic orientations, the attitude towards new Slovene works, the target audience, the scope of activity, the occupancy rate of the premises and technical capacities, cultural education, audience policy, links with other

related institutions, touring policy. Then the government, together with the provider, would have to make a financial estimation of the funds required for the objectives and allocate the funds in yearly sums, which will be paid in a set number of instalments throughout the year.

This method would create a public market that would go beyond the self-sufficiency of cultural institutions, where there would have to be a competition for public funds. This is not a commercialisation or weakening of the state's role in culture but an introduction of those market mechanisms which can increase the efficiency and effectiveness of public funds allocation. In this context some commentators are saying that "internal markets are becoming established within the public sector" (Lane 1997: 5), but I think it is more appropriate to speak about a public market, considering the fact that the state remains the financial supporter. It is, therefore, irrelevant whether the state will finance cultural services provided by the public or private, i.e. civil sector. What is important is that public service will remain public in its function, despite having been transferred to the private or civil sector, and that the funds for these services will be accumulated collectively within the state budget and the management of public funds will be more "businesslike" (Simmonds 1997: 39). This is the way how to introduce output budgeting. Since public institutions are linked to input budgeting because of the public servant status of their employees, the change of their legal status is a necessary precondition for the change to output budgeting.

The Law on the Implementation of the Public Interest in the Field of Culture adopted by the end of 1994 already has some indications for the above advocated reform:

- The Parliament has the obligation to adopt the National Cultural Programme defining a strategy of cultural policy;
- The Ministry of Culture has the obligation to introduce financing of cultural institutions on the principle of their performance and on contract basis. The law calls this type of funding "programme funding" though it would be more suitable to say "financing by objectives". A programme is not the sum of projects but a complex integral activity, which should lead to reaching the objectives.
- The Government has the obligation to report annually to the National Assembly on the implementation of the National Cultural Programme reached by specific decisions on the results (evaluation) and, if deemed necessary, it can propose changes or additions.

Although the law was passed in December 1994, Slovenia still does not have a National Cultural Programme. Public funding for culture thus remained unscathed.

There are purely declaratory statements of interest in a new National Cultural Programme. However, any initiative introducing substantial change meets immediate resistance. This fact first became obvious in 1994, when the Law on the Implementation of the Public Interest in the Field of Culture was in the process of adoption. Any legal solution which tried to intervene in the actual situation (labour relations, deregulation, de-etatisation, autonomisation, privatisation) was attacked by the arts community, eventually resulting in a compromise between politics and culture, whereby all changes were postponed until the adoption of the National Cultural Programme. This paralysed

the existing situation and incapacitated any restructuring in the field of culture. Lately, it became obvious that maintaining a status quo cannot be the permanent solution.

If the cultural policy decides to implement the above advocated changes, the state will get an important supervisory role. This role would be no longer of administrative nature. It would put it in control over the contracts, i.e. the outcome. Such supervision would require an introduction and development of the evaluation methods and a transformation of public administration into public management. Since I do not speak about the re-organisation of the public sector within the government, but of the transformation of the public sector into non-profit non-governmental organisations working for the public benefit, this does not involve any use of market mechanisms within the government, but only the establishment of these mechanisms in the allocation of governmental funds. The state will not become an entrepreneur, but an investor or commissioner. The duties of the public servants differ essentially, if the government becomes an entrepreneur or if the state separates the funding and organisation by leaving the organisation (including provision) of public services to private and civil sectors. In the former case the state retains its previous function as the provider of public services, and changes only from being the administrator to being the manager. In the second case the state is forced to behave like an investor. The attention of the state is redirected from the distribution of public funds to the evaluation of the objectives that were achieved with these funds.

Consequently, two important new features ought be introduced: no-one would be untouchable or automatically accepted, and the burden of proof of the significance of an institution would be transferred to the institution itself, which must prove its importance with the results and persuade the “investor” of the need for an “investment”.

The state would, thus, maintain responsibility for creating favourable conditions for cultural activity; but the responsibility and the risk of efficiency and success in executing the agreed public services would be transferred to the cultural sector itself.

Decentralisation is another important issue related to the provision of cultural services. Decentralisation means a transfer of authority from the central to the local levels. Here the principles of subsidiarity (that authorities are carried out where most suitable) and of connexity (funds are transferred together with the authorities) apply (Vlaj 1998). As stated earlier, the following four functions are most commonly the subject of the transfer: planning, organising (and providing), funding and control. While we have established that in connection with the transfer to the private or civil sector, the most suitable for transfer is the organisation and providing, all four functions are suitable for a transfer to the local level. Here, some commentators include also the notion of de-concentration. They understand decentralisation as a transfer of all four functions and de-concentration as a transfer of the execution of these functions from one centre to several locations. Others use the terms decentralisation and devolution, where the term devolution covers all four functions, and decentralisation only the transfer of the performance (organisation and provision) and administration (that is control) (Vitiello 1998).

In the previous constitutional system, municipalities played the basic role in culture, but they were not the independent local self-governing communities as they are today. They founded most of the public institutions in culture (out of some 150 only 15 were founded by the state). The funding ratio between the state and the municipalities in the 1980s was: 40 percent state, 60 percent municipalities. This does not mean that 40 percent of the funds went to the state institutions, because the state shared the financing of all municipal institutions as well (Čopić et al. 1998). In the second half of the 1980s, municipalities began to cut down on the funding for cultural institutions because the priorities were on day-care centres, schools and public utilities (roads, sewage systems). The state took over the funding of 70 out of 150 institutions, in addition to 15 national institutions (the National Library, National Museum, the Opera, Restoration Centre, Film Studio, Cultural Centre), all professional theatres (8), all museums (around 38), monument protection institutes (7), archives (7), and some galleries. Public libraries, cultural centres and amateur culture are left to be financed by the municipalities. The ratio was nearly 70 percent financing by the state to 30 percent financing by the municipalities (Čopić et al. 1998).

A particular problem for systematic decentralisation in Slovenia is the absence of a level in between the state and its approximately 200 municipalities. Of these only 13 are urban municipalities and the great majority of the rest are small-sized municipalities. The change in the Law on Municipal Funding in July 1998 increased their funding. It also stipulated that after 1 January 1999 those municipalities that had cultural institutions situated within them would have to resume the major part of their funding. This meant that while all municipalities received more funding, only those municipalities which had cultural institutions received new duties. Since it was not possible to carry out a transfer to regions, urban municipalities now had to look after the cultural needs of rural municipalities. Due to this inequality in the position of the municipalities and because the transfer was carried out with the finance law before the national cultural programme was even adopted, this gave rise to objections. Besides, there was also fear that this would lead to the provincialism of Slovene culture. This fear is present even nowadays because restricted polycentric development means that most of the institutions are municipal. There is also the question of whether the municipalities are able to implement cultural policy, considering that this assignment was bestowed on the municipal administrations without any forewarning or advance preparation. Some even claim that by doing so the state did not resolve the problems in the cultural sector but got rid of them. Since the issue of the public sector is now split among municipalities, each municipality tackles the issue in its own way. The key question at the moment is whether decentralisation will help to restructure the public sector or it will just force the public sector to fight for survival.

Decentralisation of culture is a sensitive issue because of two competing rights: the citizens' right to take part in the management of public affairs and the citizens' right to culture, which is for some commentators already an integral part of the human rights standards (Council of Cultural Cooperation). Why competing? Because all citizens must be guaranteed the right to culture to some degree, irrespective of race, gender,

social status... and irrespective of in which municipality the person lives. On the other hand, local self-government means making independent decisions on priorities. This can lead to the situation, where municipalities have to cope with problems of the material infrastructure (roads, water supply), and thus neglect the spiritual infrastructure (theatres, galleries, museums). A balance must be found between the two interests. The state can do this by defining the legal obligations of the municipalities, which they must respect when executing what are now their authorities. However, a regulation of this type can only solve the problem when the activity is of a type which can be standardised, such as libraries and protection of cultural heritage, and can define legal obligations on this basis. In essence the state in this case only transfers to the municipalities the execution of the activity and related funding, but retains the policy making and control. Of course, I speak only about the minimum standards of obligations. Everything above them depends on the municipalities and their policy. However, this manner can only be applied to the so-called non-living culture. Living culture, on the other hand, cannot even be suitably standardised, precisely because it is living. Consequently, legal obligations cannot be prescribed to the municipalities. In this case, a different relationship must be created between the state and the municipalities. Legal obligations can be replaced by mutuality. Instead of regulation, the state and the municipality make a covenant, which is the basis for the allocation of state funds and in this way encourages the municipality to contribute its share.

Subsidising culture: de-institutionalisation

The state and municipalities ensure part of cultural services through their institutions. The remaining cultural services in the public interest should receive state support through subsidies for individual projects.

In the 1960s an anomaly occurred in Slovenia, which continues to exist. At that time cultural foundations for the cinema industry, publishing and arts were created (Čopič et al. 1998). These funds were supposed to implement project funding, i.e. strict purpose-linked funding of specific projects. At that time, any projects by non-institutional providers were more an exception than the rule, this meant that additional funding with specific-purpose taxes accrued for what were otherwise undervalued and undernourished cultural institutions. To some degree this purpose was achieved but at the expense of transparency. The mission of the institutions is to perform the activity for which they were founded; this, of course, means projects in their field of work. Considering that an institution is justified by its work only, such division is incomprehensible. Even though these foundations no longer exist, their practice remains, as the state continues to supply institutions with funds for so-called regular activities and with additional funds for individual projects. In essence, such a system means double payments and a great deal of non-transparency, which leaves the state with the feeling that it has paid more than was necessary and the cultural institution with the feeling that it did not receive enough. This is quite irritating, since it is a poor consolation and misleading. Instead of this, efforts should be made to establish financing by objectives for all activities.

When competing for project funds, public institutions are in a privileged position compared to the non-institutionalised culture. Since the state provides public institutions with money for wages and material costs, they enter the competition for project funding from a better starting position.

In order to normalise the situation, the right to project funding needs to be linked to those providers who do not receive state funding for their regular activity. This can be described as the de-institutionalisation of project funding.

The public sector: privatisation, autonomisation, incorporation, contractualism

The classic meaning of the term privatisation is a transfer of property and property entitlements from the state to the non-state sector. The transfer can be payable or non-payable.

Payable transfer or divestiture is carried out with management buy-ins or buy-outs. A divestiture is a process in which an organisation is sold and the property rights are transferred to a private entity (Boorsma 1998). While in Slovenia there were no management buy-outs, i.e. purchases of state cultural organisations at their market price, internal (management and employees) share purchases occurred as part of privatisation in those cultural organisations which earned most of their income on the market (publishers and cinemas). Their employees were even able to invest their privatisation vouchers into these organisations.

The legislation in Slovenia did not introduce a free transfer of property rights in the area of culture. It established the so-called concept of “public infrastructure in culture”. These are state or municipality-owned premises and equipment, which are used for cultural activities. They became public infrastructure pursuant to a proclamation and entry in the records at the Ministry of Culture. They are given to cultural workers in use. Even though this approach was set by the 1994 Law on the Implementation of the Public Interest in the Field of Culture, in many places the proclamation procedures have not been carried out. The objective reason for the delay is that balance sheets of the new municipalities, which were formed from the old municipalities, were not adopted on time. The second problem is how to maintain favourable rent conditions for the premises, as many of the municipalities hope to charge high rents to beef up their budgets. In principle, the rent should not be higher than the maintenance costs because this is a cultural policy measure. However, this measure is linked to the private as well as the civil sectors in culture.

A small potential market in Slovenia represents little hope that the activities which currently are mainly funded by the public (museums, theatres, galleries) may one day be privatised in such a manner. There are other forms of privatisation that can be used.

Highly administrative regulation generalises the state attitude towards particular cultural institutions and prevents any adjustments from being made within the organisation. Any system tries to avoid exceptions to the rule, and an administrative

system in particular cannot tolerate them. The rules must be the same for all and since the rules interfere directly with the internal functioning of the institutions, institutions are losing their autonomy. The essential difference between Western and Eastern Europe is that, in the West, the organisations operating within the public sector, i.e. budgetary organisations, are not separate legal entities but part of the state administration. In Slovenia, on the contrary, all public institutions in culture are independent legal entities. The legislator was aware of this specific feature of the Slovene law. In Article 4 of the Law on Social Institutions (1991), there is an option that social institution is not a separate and independent legal entity. Perhaps the legislator estimated that accepting the Western European transition model would be a too radical solution and did not lay the western model as a principle, but offered it namely as an exception. However, all other regulations (the Law on the Wages in the Public Sector and its secondary regulation, the Law on the Enactment of the Budget, the Law on Public Procurements, etc.) define the internal set-up and funding so precisely that questions often arise as to whether public cultural institutions need to have a separate legal identity, since all they are left with is a bit of operational autonomy. At the internal level they carry out autonomously what is regulated externally. This situation is confirmed by the practice of the supervisory boards of these institutions, which are the supreme decision-making bodies. They meet rarely and quite often their mandate has ended without anyone noticing it.

Despite this and since everything can not be regulated, there is a bit of a space left for manoeuvring. But this is not the right solution as this space is usually not taken up by the formal decision-making structure and a clear policy but rather by the pragmatic actions of the executive body (the director). A fine example of such a situation is the income of public institutions in culture. With the Law on Wages in the Public Sector the state has succeeded in standardising wages a great detail (job classification, wage categories, promotion procedure, restriction on surplus hours), which culture simply avoids by paying author's fees. As these are not wages but rather contracts with the authors, they are outside the existing regulation. The author's fee thus presents a way to provide extra payment to employees for the performance of their work, while they all receive regular wages in accordance with job classification. Apart from this, there are no restrictions on public employees working for other public cultural institutions. Perhaps this explains why in the area of culture there are no trade union' actions and strikes.

The situation apparently suits both sides - the public institutions and the state, more precisely the Ministry of Culture. Recently, this situation has been upset from the outside, by tax inspectors. They established that the state suffers heavy damage if employees are paid author's fees, as they are not subject to the same taxation rates as wages. Perhaps the state will (also) realise that transparency must be introduced into the evaluation of the work in the public sector in the area of culture and at the same time, the anomaly, allowed by the legal loops in the Law on Wages in the Public Sector, removed. In the future the author's fees will have to be paid only in the institutions other than those of regular employment.

This change would cause a staffing crisis in public cultural institutions. Suddenly they would no longer be able to reward the staff on the basis of results, and a flat rate

would apply. All the weaknesses of the public sector that are currently masked by the dual system – the official and non-official – would be exposed. So far, public institutions were not interested in change. But respecting the regulations will force those public institutions, which by their character are not public services (the entire so-called living culture; theatres, orchestras, galleries), to become interested in structural changes. In Western Europe the terms autonomy and incorporation of the public sector are used in this context. Autonomy means the right to make decisions and be responsible for them. In our case too, it is about making decisions on the four basic issues: planning, organising (and providing), funding and control. The lowest degree of autonomy is when a public institution receives funding from the state, allocated to individual items (wages, material costs, maintenance investments) and during the year independently makes decisions on the way it will use these funds, transferring them from one item to another. A higher degree of autonomy is only possible by incorporation into an independent legal entity. In this case it receives a lump sum which it can use freely. If it is incorporated into a public law entity, then it remains independent of the regime, which applies to public employees, and the use of the lump sum is predetermined by the prescribed promotion procedures. If the incorporation is not a private law entity, then all this disappears and the institution is bound only by the general legal system (collective employment agreements) and the honouring of the contract on public funding signed with the state.

The important issue with incorporation into legal entities is who becomes the owner and who has the work conditions (premises) at his disposal. The Dutch national museums, for instance were, transformed into foundations with their own administrative structure which assumed all functions except for the function of the owner of the museum buildings and collections, which the state retained. Others are financially dependent on the state budget. Since funds are granted in three-year contract cycles, it can be said that strategic planning remains to be a shared responsibility.

Under the subject of de-etatisation we said that a transfer of the organisation and provision of public services to the private or civil sector requires an articulated cultural policy. The state published the orientations and priorities of its policy and on this foundation, the institutions (public and private) determined their objectives, which they believe to be the fulfilment of this policy. Pursuant to negotiations, the two sides sign the contract. Contractualism enacts contract culture, which brings a more regulatory regime; “open-ended relationships with grant officers who were aware that the non-profit sector was being replaced by business relationships with contract managers concerned with bottom lines and outcomes” (Taylor 1997: 47). The entry into contractual relationships demands new knowledge from the public administration. Purchasers who no longer control services directly need to ensure that contract aims are reached. Since the services are atypical (apart from the area of heritage protection and libraries) the standards that need to be met by the providers cannot be set up. Instead, such objectives must be written down, which can be measured in terms of quality and quantity, in order to establish to what degree they have been met. This reinforces the need for systematic permanent evaluation of the results, which requires new knowledge both from the public administration as well as from cultural institutions.

The civil sector: contracting-out, democratisation, denationalisation, publicisation

In addition to individuals and groups, the civil sector is composed mainly of non-profit non-governmental organisations. Non-profit organisations are private organisations dedicated to serving public or membership interests rather than gaining profit for the owner (Salomon 1992).

In the old system, civil society held a subversive role and the state had good reason for not being interested in its development. Under the new circumstances, civil society has lost its destructive powers, yet its position has not been normalised but marginalised. The best we can hope for is that the state is too busy with itself and establishing its state integrity and that there is no deep conceptual reason as to why civil society has been sidelined. On the other hand, alternative culture throughout Europe lost a great deal of its innovative dynamics and a part of its social influence. At the same time new forms of co-operation between non-institutional culture and traditional institutions have developed (Wimmer 1998) and the delineation is no longer self-evident. Perhaps the best thing would be to look for an exit from the current situation in the convergence of traditional institutions and non-institutional culture and the equalisation of non-institutional culture with established forms of culture. This new approach would provide a complex treatment of the necessary changes in the public sector and support the development of a civil sector in culture.

However, the term non-institutional culture can be misleading as it suggests that individual projects, occasional work or alternative movement are involved, which do not require any permanent organisational structure and professional work, typical of permanent institutions. In reality, only a part of non-institutional culture operates on a non-professional or on an occasional basis. Non-professional culture is comprised of amateur cultural societies with no professional ambitions and of occasional providers of individual projects not associated with long-term activity. In addition, some providers have appeared performing cultural work professionally in an organised and permanent manner and thus forming an alternative to the public sector. These are “non-institutional” institutions. Cultural policy financed the entire non-institutional culture in the same way, through project funding.

Project funding is problematic because it is tied to individual projects rather than to the activity as a whole. Project funding is also strictly purpose-linked, and as a result there are not enough funds available to cover the “core” costs of organisations (Simmonds 1997). As in the past the annual budget was normally adopted mid-year, project funding has been very unstable. While institutions were able to receive monthly advance instalments, non-institutional culture was without a public source of funding until the budget was adopted. Since projects need to be planned in advance the providers took risks or even credited their projects in hopes that later on they would be included among those receiving subsidies. The situation was hard enough for those who wanted to carry out an individual project, but for those with permanent projects it was nearly fatal.

The normalisation of this situation would mean for all so-called non-institutional providers, whose activity is just as important as the work of public institutions, the right to be treated the same as institutions by the state. This can be achieved by introducing programme funding or even better, financing by objectives, into public institutions and by contracting out public cultural service to non-institutional providers. Considering that services provided by living culture cannot be standardised, the contracting out would have to be based mainly on financing by objectives.

In essence, the treatment should be equal. An increase in the number of providers would create healthy and fair competition. The important issue is what is done and not by whom. Such equalisation cannot of course be used for the entire non-institutional culture, but only for that part which is an alternative to the public sector.

For others, who appear occasionally with individual projects, project funding is the perfect solution, under the condition that they need to de-institutionalise (refer to the section on subsidising culture) and that the institutions lose the right to project funding, which should be strictly reserved for the occasional provision of particular cultural projects. The solution is justified by the fact that to non-institutional culture, public institutions are unfair competition for project funding. Since the state provides public institutions with funds for wages and material costs, they enter the race from a better starting position.

The non-institutional professional cultural sector has no access to structural financing. The Law on the Implementation of Public Interest in the Field of Culture envisaged a new instrument which partially filled the void, that being permanent non-programming costs. As subject to certain conditions, the state assumes the payment of fixed permanent costs, such as rent, water, electricity, heating bills, for a maximum of three years, with the option of extending these entitlements. The conditions are linked to the role and the importance of an individual non-institutional provider from the aspect of public interest. In practice, the law is not being implemented because new funds or the restructuring of existing funds would be required.

Why is it necessary to restructure existing funds? Some professional associations (writers, fine artists, film makers) are financed in the same way as public institutions (their employees enjoy the same entitlements as public employees, receiving funds in the so-called "twelfths"). The reason behind this is most likely that they were created as part of socialist cultural policy, which was in favour of forming central associations. The state wanted to use them to spread its influence, and in return was prepared to offer certain advantages. In the new system this inequality of treatment, encased in the acquired entitlements and not in the new system, became a huge problem. For these associations a transition to the new system would not mean a necessary reduction in state funding. They would have to compete for funding like everybody else and under equal terms. Those associations, whose work is comparable to the current public institutions, would go through the financing by objectives cycle. The rest would apply for permanent non-programming costs and funding of particular projects that go beyond the interests of its members (who are limited to the professional aspect) and are in the public interest. Of course, in this evaluation special attention needs to be dedicated to drawing a distinction

between the assignments of professional associations, which are intended for the enactment of their own interests, and the activities which are in the interest of the public. If a professional association is a membership-serving, non-profit organisation which exists primarily to provide benefits to their members, then, from the aspect of public interest, it is completely different from a public-service organisation which serves the public as a whole (Berman 1998).

The concept of privatisation, which places the emphasis on the plurality of ownership forms, pushes democratisation into the forefront. (Bos 1991). This issue is of particular importance in post-socialist countries. To some degree it is linked with the denationalisation procedures of restoring private property which had been nationalised under Communism. Claims have been made for the return of immovable property, which is used for cultural purposes. The Law on Denationalisation (1991) in point 1 of Article 19 specifies that properties, which are used by public services, shall not be returned in kind. In its procedure of assessing the constitutionality of this article, the Constitutional Court of the Republic of Slovenia stated that a service is public only when delivered by a public institution by using property, which was entrusted to them to manage. Since the issue of property was neglected in the old system, the transfer to management often had not been concluded - only the right to use the property was granted. As a result, the premises used by public institutions have been returned in kind (for instance the Oton Župančič Town Library in Ljubljana). However, only the immovable property and not the cultural institutions have been denationalised.

The word democratisation should be, therefore, associated with the development of civil society, deriving from the fact that civil society is an essential element of democracy, a symbol of its good condition. Thus, public life extends beyond the state and becomes an open-ended heterogeneous composition, as diverse as private incentive can be (Fernandes 1994). Citizen participation is an effective indicator for the state when establishing private interest in culture.

At the end of this section, I would like to mention also that the term publicisation is close to democratisation. In this case the word public is not linked with the state but with the society as such, so it could also be referred to as socialisation. If we say that the welfare state was about the nationalisation of society, then it can be said that the transfer of the delivery of public services to civil society is the socialisation of the state. If in the socialistic period of self-management, nationalisation had been mentioned in connection with the demise of the state, the current procedure is merely about the distribution of roles between the state and the society. The state remains to bear political interests and to redistribute taxes, but it also enables society to assume its part of the responsibility by organising itself for the delivery of public services for its own use.

Conclusions

Instead of concluding remarks I will sketch briefly what is the state of the art in the area of culture (left side within the table below) and what should we strive for in the future development of the cultural sector (right side within the table below).

| STATE | |
|---|--|
| absence of cultural policy state paternalism disintegration of cultural policy regulation administrative planning state bureaucracy public economy administering of public funds administrative funding static funding input costs funding state – the provider spending on culture | active cultural policy partnership between the state and civil society negotiation between the state and municipalities evaluation strategic planning public management mixed economy management of public funds programme funding stable funding output funding state - the investor investing in culture |
| PUBLIC SECTOR | |
| cultural needs client of the state exclusive/self-sufficient isolation job public employee regulation of the providers | cultural demands partner of the state inclusive/open competition calling segmenting of labour market professionalisation of the providers |
| CIVIL SECTOR | |
| state tolerance subversive factor monolithic treatment acquired right of individuals arbitrary funding | active support by the state legitimate competitor diversified treatment equal treatment for all stable funding |

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