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22.2.2024 sem objavili poziv predsedniku Vlade RS. Kabinet predsednika Vlade ga je 5.3.2024 odstopil kabinetu ministrice za kulturo v reševanje. Državni sekretar mag. Marko Rusjan mi je odgovor prijazno sporočil 8.3.2024. Odgovoril še nisem, ker nekatere svoje trditve še preverjam pri svoji odvetnici. Ta poziv sem naslovil na predsednika Vlade RS kot prispevek v boljše delovanje slovenske kulturne politike. Ministrica dr. Asta Vrečko s svojimi potezami zbuja upanje, da se stanje izboljša, kar veča tudi odgovornost kulturnih delavcev. Njej in njenemu kabinetu se zahvaljujem za kooperativnost in dialog, ki se je pričel z njenim nastopom. Še posebej se zahvaljujem Mihaelu Kelemini, članu kabineta in kontaktni osebi ministrstva za sodelovanje z nevladnimi organizacijami. Tudi to je pomemben prispevek Vlade dr. Roberta Goloba, da je na vsakem ministrstvu nekdo zadolžen za sodelovanje z nevladnimi organizacijami.

Pridobili smo Pravilnik o spremembah Pravilnika o izvedbi javnega poziva in javnega razpisa za izbiro kulturnih programov in kulturnih projektov, številka 0070-16/2016 z dne 1.9.2016, ki pojasnjuje, zakaj pred izdajo odločbe ni predvideno obveščanje prijaviteljev o predlagani oceni in mnenju strokovne komisije.

Minister Anton Peršak (20.5.2016-13.9.2018) je s tem dokumentom oškodoval vrsto vrhunskih kulturnih producentov nevladnega sektorja in nekatere trajno in hudo poškodoval, ko jim je odvzel možnost ugovora pogosto povsem zgrešeni oceni in mnenju strokovne komisije. Če prijavitelj o tem ni obveščen, oceni ne more ugovarjati in zagovarjati svoje prijave, ker za oceno izve šele iz odločbe, ki pa je dokončna. Tudi če bi samo en prijavitelj menil, da je ocena nekorektna in bi želel zagovarjati svojo prijavo, je ta pravica zakonsko opredeljena. Pravilnik, ki se požvižga na zakonodajo, je nelegalen, minister pa je s tem mnogim prijaviteljem povzročil materialno, poslovno, moralno in zdravstveno škodo. Nekaterim zelo veliko. Kriv je on in vsi, ki so z njim pri tem zavržnem dejanju sodelovali. Minister cinično navaja »zanemarljivo število primerov«, hkrati pa mu ni jasno, da če bi že bila njegova strokovna komisija par excellence (kar pa vsaj v naših primerih ni bilo), ni nobene garancije, da ne bodo strokovne komisije tudi v prihodnje odločale nestrokovno in nekorektno. Čeprav so imenovane kot stalne, je to le za določen čas. Pravica do zagovora pa je zakonsko in ustavno določena pravica in je formalno nad katerimkoli pravilnikom. In če bi že kaj bilo neprimerno v upravnem postopku distribucije javnih sredstev, se to dela v okviru Državnega zbora ali referendumov, ko se takó Ustavo kot zakon vedno lahko spremeni, nikoli pa se ne more nek pravilnik postaviti nad zakon (glej poglavje II. Zakonske osnove v mojem pozivu).

Če je že gospod Peršak kratkoviden in brez pameti (kar verjetno ne bo povsem držalo), pa je pri tej spremembi domnevno sodelovalo več uradnikov in pravna služba Ministrstva za kulturo. Zato to spremembo Pravilnika razumem ko načrtno rušenje in uničevanje programov in projektov nevladnega sektorja s strani Ministrstva za kulturo. Ponovno poudarjam, da potrebujemo ministrstvo, ki bo spodbujalo kulturno produkcijo in ji svetovalo, nikakor pa ministrstva, katerega ukrepi so restriktivni in dušijo že tako skozi desetletja izčrpan nevladni sektor. Kljub negativnim okoliščinam, sektor še vedno producira vrhunske izdelke predvsem zaradi izjemnega osebnega angažmaja njegovih kreatorjev.

Sodba I U 1613/2021-37 z dne 31. januarja 2024 v točki 39 navaja: »V sodni praksi je ustaljeno stališče, da v skladu z opisano naravo postopka javnega razpisa, ni potrebno, da so prijavitelji pred izdajo posamične odločbe s strani tožene stranke pisno obveščeni o dejstvih in okoliščinah

pomembnih za izdajo odločbe in predlogu strokovne komisije oz. da nimajo možnosti izjave o navedenem. Drži sicer navedba tožeče stranke, da je tožena stranka v postopku javnega razpisa po ZUJIK pred časom postopala drugače, in sicer na podlagi 13. člena Pravilnika, ki pa je s 1.10.2016 prenehal veljati.«

Čudi me, da je sodstvo to spregledalo in tega spodrsljaja ni prepoznalo, tako da se je taka nepravilnost lahko umestila v sodno prakso. To ni škodljivo le za prijavitelje kulturnih programov in projektov, ampak tudi obremenjuje sodstvo, ker je edina pot reševanja spora tožba na Upravno sodišče Republike Slovenije. Očitno gre za zelo ozek administrativen pristop, ko je pri neki spremembi uradnega določila pomemben samo zapis brez razmisleka, kakšne posledice ima lahko neka administrativna sprememba za racionalno izrabo javnih sredstev.

Klemen Ramovš

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On 22 February 2024, I published an Appeal to the Prime Minister of the Republic of Slovenia. On 5 March 2024, the Cabinet of the Prime Minister resigned it to the Cabinet of the Minister of Culture for rescue. State Secretary M.Sc. Marko Rusjan kindly communicated the answer to me on 8 March 2024. I haven't answered yet because I'm still checking some of my claims with my lawyer. I addressed this appeal to the Prime Minister of the Republic of Slovenia as a contribution to the better functioning of Slovenian cultural policy. Minister Dr Asta Vrečko with her actions raises the hope that the situation will improve, so the responsibility of cultural workers will also increase. I thank her and her cabinet for the cooperation and dialogue that began with her appearance. I would especially like to thank Mihael Kelemina, cabinet member and contact person of the ministry for cooperation with non-governmental organizations. This is also an important contribution of the Government of Dr Robert Golob, that in every ministry there is someone in charge of cooperation with non-governmental organizations.

We have obtained the Rulebook on Amendments to the Rulebook on Conducting a Public Call and a Public Tender for the Selection of Cultural Programs and Cultural Projects (translated only Reasoning), number 0070-16 /2016 of September 1, 2016, which explains why it is not planned to inform the applicants about the proposed assessment and opinion of the expert committee before issuing the decision.

With this document, Minister Anton Peršak (20.5.2016-13.9.2018) harmed several top cultural producers of the non-governmental sector and permanently and severely harmed some of them when he deprived them of the possibility of objecting to the often completely wrong assessment and opinion of the expert committee. If the applicant is not informed about this, he cannot object to the assessment and defend his application, because he learns about the assessment only from the decision, which is final. Even if only one applicant believes that the assessment is incorrect and would like to defend his application, this right is defined by law. The regulation, which is whistled at the legislation, is illegal, and the minister caused material, business, moral and health damage to many applicants. For some, very much. He and all who collaborated with him in this despicable act are to blame. The minister cynically states a "negligible number of cases", but at the same time it is not clear to him that even if his expert commission was already par excellence (which, at least in our cases, it was not), there is no guarantee that expert commissions will not make unprofessional decisions in the future and incorrect. Although they are named as permanent, it is only for a certain period. The right to defence is a legally and constitutionally defined right and is formally above any rulebook. And if there was anything inappropriate in the administrative procedure for the distribution of public funds, it is done within the framework of the National Assembly or referendums, when both the Constitution and the law can always be changed, but no regulation can ever be placed above the law (see chapter II. Legal Bases in my Appeal).

If Mr. Peršak is short-sighted and brainless (which probably won't be entirely true), several officials and the legal department of the Ministry of Culture allegedly participated in this change.

That's why I understand this change in the Rules as a planned demolition and destruction of programmes and projects of the non-governmental sector by the Ministry of Culture. I emphasize once again that we need a ministry that will promote cultural production and advise it, but by no means a ministry whose measures are restrictive and stifle the non-governmental sector, which has already been exhausted over decades. Despite the negative circumstances, the sector still produces top-quality products mainly due to the extraordinary personal commitment of its creators.

Judgment I U 1613/2021-37 of January 31, 2024 in point 39 states: "In judicial practice, it is an established position that, in accordance with the described nature of the public tender procedure, it is not necessary for the applicants to be before the issuance of an individual decision by the defendant informed in writing about the facts and circumstances relevant to the issuance of the decision and proposal of the expert commission or that they do not have the opportunity to make a statement about the aforementioned. The statement of the plaintiff is true, that the defendant acted differently in the public tender procedure according to ZUJIK some time ago, namely on the basis of Article 13 of the Rules, which, however, ceased to be valid on 1 October 2016.

I am surprised that the judiciary overlooked this and did not recognize this slip, so that such an irregularity could be placed in judicial practice. This is not only harmful for the applicants of cultural programs and projects, but also burdens the judiciary, because the only way to resolve the dispute is a lawsuit to the Administrative Court of the Republic of Slovenia. Obviously, it is a very narrow administrative approach, when in the case of a change in an official provision, only the record is important without considering what consequences a certain administrative change may have for the rational use of public funds.

Klemen Ramovš

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Slovenska cesta 1, SI-1000 Ljubljana
+386 (0)1 242 0812
+386 (0)41 674 060
info@k-ramovs.si