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INICIATIVA ZA KULTURO

English translation of the Statement of the Initiative for Culture on the on the adoption of the ZUJIK amendment.

Ljubljana, 13 October 2024

STATEMENT
to the Proposal for Amendments to the Exercising of the Public Interest in Culture Act (ZUJIK)

Article 59 of the amendment ZUJIK-I (amendment) is deficient. It does not follow the recognition of the current situation in the co-financing of top projects and programs of non-governmental organizations, and above all it bypasses the applicants' right to defence, thereby violating both the Constitution of the Republic of Slovenia and the European Convention on Human Rights.

Such a law will be unconstitutional. If the National Assembly nevertheless approves it, if the National Council requests a new decision with a veto, but the National Assembly does not accept it, and if even the Constitutional Court does not recognize the discrepancy, the Republic of Slovenia will approach the values of authoritarian societies or societies in the field of culture under the dictates of capital. This will be bad, so it is necessary to review and consider this deviation from respect for human rights before the adoption of the law.

We published the petition https://action.wemove.eu/sign/2024-6-we-demand-the-right-to-defence-in-the-co-financing-of-non-govern-EN, which signed by 575 signatories to date, which is by no means bad for Slovenia and considering the specific issue.
The comments (https://www.seviqc.si/media/uploads/files/Recent_comments_(2024-09-19)_2158.pdf) describe the sector's wider dissatisfaction with the current situation, all received unedited until September 19, 2024.

In the petition, we highlight **three main demands**:

- The right to defence even before the MK issues a decision.
- Mediation if the applicant and the expert committee could not agree. By mediation, we mean a discussion, as stipulated in Article 146 of the ZUP, and the possibility of arbitration by an independent assessor, with which both Ministry of Culture (MC) and the applicant fully agree, but not procedures under the Mediation Act, which would block the implementation of the tender. Due to the excessive autonomy of expert commissions, which no one can control, it often happens that wrong judgments and evaluations occur. It also happens that there are intentional or unintentional mistakes that need to be corrected in the process even before the Ministry of Culture issues a decision, and the only way is the Administrative Court of the Republic of Slovenia (ACRS).
- Revision of the procedures from 2016 until today, when all injured parties could request the renewal of the procedure regardless of (1) whether the friends did not complain to UpS for any reason, but did not agree with the commission's assessment, (2) whether they are continuing the procedure

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withdrew from the lawsuit and (3) whether obtaining the correct assessment is still in the process. Some cases have been dragging on since 2018 and have not yet been concluded, because the ACRS only returns them for re-determination, and the expert committee re-evaluates what was missed.

In Article 59 of the amendment (a new, fifth paragraph is added to Article 119), the MC only returns the assessment protocol to the state it was in until September 2016, when Minister Peršak withdrew Article 13 of the Rules, and nothing more.

The proposal, as stated in the amendment when evaluating tenders, will not correct anything. Injured applicants, if they have enough resources and persistence, will still be forced to seek justice at the ACRS. This will not be efficient in the least, neither for the applicant nor for the overburdened judiciary. ACRS only returns matters to the MC for re-decision, decides only on violation of tender conditions and legal provisions in the commission's assessment, does not go into content and artistic judgment. The expert commission will most likely always defend its original assessment. Without the inclusion of an additional evaluator or there will be no change of opinion/assessment of the mediator. It should also not be overlooked that several applicants who feel aggrieved do not complain to ACRS, because they simply do not believe that they will achieve anything in the process. The system as it is now, is far from the rule of law and shameful for the Republic of Slovenia.

In its reasoning, the MC considers that the amendment increases the legal protection of applicants, which is by no means true. The experience of recent years shows that such a change will not fix anything. This is evidenced by the many comments of the signatories of our petition, who believe that the applicants do not have an adequate instrument to respond to the wrong judgment of the expert commission and that the essential problem lies in the “excessive protection” of the expert commissions, whose status is not even precisely defined (see among the comments to the petition, also Luka's opinion). In explaining the withdrawal of Article 13 of the Rules in the fall of 2016, Minister Peršak states that “in practice, it has been shown that the assessment and opinion of the commission changes in a negligible number of cases after receiving the applicant's response, and that this phase of the procedure did not prove to be effective or that it did not help to more legitimate or more professional results”. However, it does not indicate how many applicants even declared that they disagree with the commission's assessment, and probably not all filed a lawsuit in ACRS. The number of lawsuits won when ACRS remanded the case is very likely significantly higher than the “negligible number” in this record. This only proves that the commission firmly insists on the wrong assessment as correct and that it re-assess only at the request of the court. And even then, it was wrong again, as practice shows. Based on experience and logical thinking, we assume that without the possibility of defence and the possibility of arbitration, if the committee and the applicant could not agree, the expert committee will very likely continue to judge arbitrarily.

If such an amendment to the law, as proposed by the amendment, is adopted, the applicant will still be able to make a statement, but this will most likely have no effect. Commission under Dr Vrečko is evaluated similarly arbitrarily as the one under Dr Simoniti or commissions before. Such a situation **is completely unsustainable** in terms of responsibility towards taxpayers, as well as applicants and Slovenian culture.

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Here are some of MC's notes from the introduction to the amendment, which are a harbinger of better times for non-governmental production:

- Likewise, in that part of ZUJIK, which regulates the engagement of the profession in the professional work and assessments of the ministry, there is a poorly regulated method of selecting members of expert commissions, which does not ensure adequate transparency of the process or - when it comes to temporary commissions - the efficiency and agility of the ministry. (1.b)
- Expert commissions that decide on the selection of works of art must have clearly defined rules of operation and composition, which would ensure greater professionalism and reduce the possibility of subjective decision-making. It would also be important to establish more systematic mechanisms for monitoring and evaluating the implementation of this institute, to ensure that the funds allocated to the artistic share contribute to the cultural enrichment of public spaces. (1.e)
- Cultural policy must be transparent and accountable, with clear and accessible procedures for allocating funds and making decisions. The principle of transparency strengthens public trust in cultural institutions and politicians. (2.2)

All of this is encouraging, but if it is only the way that Article 59 of the amendment complements, nothing will change, and all these beautiful words and intentions are **just letters on paper**.

Applicants will be protected from the arbitrariness of decision-makers by no other than a high-quality law, so it is important what kind of law we adopt. If ZUJIK-1 considers the demands of the petition, it will contribute to a better culture, a better art market, greater social security for the self-employed, a higher quality of cultural offer and will contribute to the reputation of Slovenian culture in the world.

The following decision-making timeline should be entered into the law in a suitable descriptive form:

- The applicant registers for a tender or call.
- MK reviews the technical correctness of the application.
- The expert committee evaluates the application.
- MK informs the applicant about the commission's assessment.
- Defence of the applicant, in case he does not agree with the commission's assessment, which only delays for a few days, as long as it takes to coordinate the appointment.
- Mediation with an independent arbitrator, if so requested by the applicant, which also only takes a few days to present the views to the independent arbitrator, for the arbitrator to speak with both parties and render a decision. It also only delays for a few days.
- The minister signs the decision.

At the same time, ***we are interested*** in how much funding the MC plans for NGO music programmes, when it states in the news of 26/09/2024 that “the Government of the Republic of Slovenia has adopted changes to the budget for the years 2025 and 2026 and that the MK will have 271.7 million available in 2025 euros of budget funds, or after the efforts of the minister Dr Asta Vrečko for 36.88 million euros more than the originally adopted budget for 2025”.

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For a good and penetrating culture, it is necessary to ensure professional functioning, for this it is necessary to provide funds for employees in addition to programme resources. Under bad conditions (salary level, permanent employment), it will be difficult to get good staff. One job is at least EUR 25,000 gross-gross per year.

Therefore, there is an encouraging finding in the introduction to the amendment (1.a. Conceptual framework of public interest in culture), where the MC recognizes the importance of NGOs for cultural programs (namely, ZUJIK does not recognize non-governmental organizations among the key expressions of the law and among the ways of realizing public interest in culture, furthermore and in the related article, cultural associations are listed as key entities) and the financial possibilities of its operation (In addition, the current regulation stipulates that they are financed through co-financing of public cultural programs comparable to public institutions, although in reality, it does not reach its full extent. The problems are mainly manifested in the absence of continuous financing and the provision of suitable spatial conditions for operation).

However, the amendment to Article 2 of the ZUJIK (Article 1 of the amendment) does not clearly define what **comparable financing** with public institutions means. If the word “comparable” only concerns the administrative procedure, we have achieved nothing. However, if it concerns comparable financing, which in turn means comparable operating conditions, a comparative analysis is necessary.

A quick review of the websites of public institutes (https://podatki.gov.si/dataset/evidenca-javnih-zavodov-s-podrocja-kulture) quickly reveals the enormous difference in working conditions compared to NGOs. There are only 13 program co-financed NGOs in the last four-year program call, and 200 public institutions according to the Record of Public Institutions in the field of culture. The inequality is reflected in the number of employees, NGOs are still far from reaching the possibilities that public institutions have.

We have been pointing out for many years that we **do not have adequate and accessible comparative analyses**, whereby we should transparently compare the percentage of labour costs and the percentage of the implemented programme, and in the case of organizations that also implement their program with their own employees, divide the labour costs into administration and program. The percentage of co-financing from public funds should also be shown comparatively. Deviation from the average cost of work and the implemented programme, up or down, should affect further co-financing. The nominal amount and the percentage of co-financing from public funds must be public information. Only then could we determine how comparable the financing of NGOs is with public institutions. Until then, the platitude of comparable financing is sand in the eyes.

The process of evaluating the submitted projects and the approach to co-financing are essentially related issues, so when requesting the right to defence through mediation/arbitration, we also touched on the problems of co-financing in this Statement. Namely, if the resources are insufficient, even a correct assessment is not enough. Fair distribution of crumbs is mission impossible. A large part of the top NGO projects is of a non-commercial nature and cannot be implemented with tickets and sponsors alone. Public funds are a key element in ensuring a good cultural landscape. The reduction of public funds is not directly proportional to the reduction of the planned program. Since non-governmental producers also tie other

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resources to the implementation, with the reduction of public funds, the implemented programme is reduced significantly more, sometimes it even collapses, because the producer with less public funds finds it more difficult to obtain funds from other sources.

There are currently no MC tenders for music programmes, but an insight into the tender resources of other fields unfortunately shows that MC has not made any progress for the better. What would be necessary is an increase in funding for NGOs. The tenders already published concern the 2025 programme, so the question is where the proudly announced increase in funds goes in 2025 and 2026. Something is wrong here.

From the introduction to the proposed amendment, it is clear, that the MC understands the needs of NGO producers and what is needed for a good cultural policy, so we want to be sure that the creation of Article 59 of the amendment (Article 119 of the ZUJIK) is merely an unwelcome administrative slip-up. funds of public tenders for the selection of cultural projects in the fields of art for 2025, and the inertia of the MC administration.

We request the MC to immediately amend Article 59 of the amendment and to increase funds for NGOs in 2025.

The MC is bound to this not only by the principles of civilization and the electoral programme of the Left, from which our minister is, but also by an excellent introduction to the amendment.

With respect

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