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Culture and Law

(on actors in governance of culture and cultural heritage)

Study “Culture and Law (on actors in governance of culture and cultural heritage)” is a result of a research “Laws and Culture”, initiated after our previous researches in areas of governance of and cultural heritage indicated that many practical problems in cultural development particularly on local level are connected with legal framework. Legal frame in culture, just in principle, suggests strategic vertical and horizontal collaboration of actors (cultural institutions and organizations, decision-makers) and lack of concrete mechanisms for vertical and horizontal cooperation leaves open space for *ad hoc* activities that depend on personal interests and engagement. In the area of cultural heritage, *Law on Cultural Property* was adopted in 1994 but since then many developments in this area have happened in international community. Republic of Serbia has approved several recent international conventions. On the other side, general *Law on Culture* (in its segments dealing with issues of cultural heritage and the work of institutions and organizations) has been adopted in 2009 and amended twice in 2016. Similar was the case with “other” laws influencing culture originating from domains such as economy (including fiscal and tourism), education, urbanism, work, employment and social security. In practice these “other” laws are often given a priority in implementation whereas laws from the domain of culture are frequently marginalized. Yet, many cultural actors put their faith in legislation.

Drawing from these results, major theme in our research “Laws and Culture” was relationship of culture and law having in mind Taylor’s definition of that complex whole, culture, according to which its parts are law and moral. Also, we have had in mind that in contemporary public policy all decisions and actions must have legal ground. How culture and law relate to each other? Is law a major instrument for cultural change and does it initiates or just merely reflects changes in the society? How legislative issues resonate in cultural policy in Serbia?

Theoretical basis for conceptualization of our research and setting up hypothesis was found in anthropology of public policy (e.g. Shore and Wright 1997, Weddell et all 2005), legal anthropology (Gertz 1983, Greenhouse 1989, Merry 2001, Bruce – Jones 2009, Pavković and Naumović 2014), legal studies (Gessner 2001, Cotterrell 2001, Mezey 2007), socio-legal studies (Merryman 1977) and theories of sustainable development (Hawkes 2001).

Our first hypothesis was that contents of laws directly (as regulation in the domain of culture) and indirectly (as legislation adopted in other domains but obliging actors in the domain of culture to comply) influencing cultural development provide possible answers to question posed in anthropology of public policy and adapted in our research – why cultural policy in Serbia does not “work” as actors in the domain of culture desire; as well as the question of rather low position of the culture in Serbian society. Beside “history” of rather dull conceptions of programs in cultural institutions especially since 1980s and newer increased role of new communication technologies and media, our assumption was that separation of domains of culture and education have had an impact. Reading laws as testimonies of now mainly diseased actors (lawmakers) was perceived as a way to track the roots of marginal position of the domain of culture that shapes culture in wider sense of the word. Accordingly,

we began to make a timeline in which adoptions and changes of laws are markers and analysis of their contents most prominent methodological tool for understanding the development of cultural system governance and its impacts.

Our second hypothesis was that reflections on (general) legal framework in culture by representatives of cultural institutions and local authorities in Serbia may provide answers significant for understanding practical implications of laws in implementation of contemporary cultural policy. As our previous research experiences showed that actors in group settings do become inspired to open-up and share (in significant manner) their own experiences, we opted for focus-groups interviews as prominent methodological tool in this segment. Altogether six groups were composed and interviews took place in Centre for Study in Cultural Development from December 2017 up to October 2018. One group consisted of representatives from various institutions working in the area of cultural heritage (archives, museums and institutes for protection of cultural monuments) since the area of cultural heritage is regulated primarily by common *Law on Cultural Property*. Other five focus-groups entailed representatives of particular types of institutions with regard to practical liaisons with other domains: culture and education (museums' educators, curators in charge of educational activities); culture and tourism (museums' managers and guides since heritage tourism, in which museums play crucial role, is a dominant in cultural tourism); immovable cultural heritage and urbanism (experts from institutes for protection of cultural monuments); local self-governments and culture (cities councillors for culture and representatives of municipal social affairs units); local and regional sustainable development agencies.

Starting point in our timeline (that also shaped frame for focus groups discussions) was 1945, the year in which World War II ended and Yugoslavia, in which Serbia was founding entity, began its life as a republican state. By the end of the War Serbia was mainly rural and rather devastated country with high proportion of illiterate population. Such situation directed public policy after the War.

Governing cultural development on local level

Building the new socialist society required (self-)conscious and at least minimally educated people. Laws on peoples' committees, "ancestors" of present days' local authorities were stipulating building of cultural infrastructure (local cultural centres, libraries, cinemas, theatres, museums and galleries) having a support in laws in domain of economy such were laws on local contributions (part of fiscal economy set of laws), whereas decrees in domain of work and employment stipulated minimal education level of persons working in cultural institutions as well as obligation to permanently educate themselves. Peoples' committees have had a right and an obligation to discuss all issues of local, regional, republic and federal importance. On the basis of local needs and opinions, they were suggesting courses of actions to higher instances in governance. Throughout decades, peoples' committees developed into local governments. On a higher instance of Republic of Serbia bodies in charge of various issues in the domain of culture were formed as part of governance on republic's level. Their tasks were to provide assistance regarding implementation of federal and republic's cultural policy on local level, to ensure proper treatment of the domain of culture in whole system of the state, to monitor implementation of cultural policy and to plan courses of action. Since 1974, when new Constitution was adopted, self-interest communities for culture that existed on all levels - Republic's, provincial and local, as bodies in charge of planning cultural development who were bridging the gap in terms of strategical approach in cultural development (based on local needs and aspirations). Unlike republic level where domains of

culture and education were, in 1951, divided onto two domains by *Law on founding Ministry of Culture*, on a local level, domains remained connected. Laws on local self-governance from late 1970s onwards show, so called social affairs units were formed as part of local administration. Handful of employees in municipalities have had a task to implement policies in domains of social affairs – education, sports, culture, social policy, youth policy and public health. Comparing with first laws on peoples' committees from 1940s, it is clear that local instances of governance became marginalized in creation and expected just to comply and implement policy created on federal and Republic of Serbia levels. At the beginning of 21st century decentralization was buzz-word and since 2003 many prerogatives of Republic authorities have been passed to local authorities but without any preparations and without explicitly giving them authority to make suggestions according to local circumstances and local need. Both laws on local self-governance (adopted but amended in first decade of 21st century) and *Law on Culture* stipulate role of local authorities in supporting cultural development on their territories but leave to the imagination and creativity how to do that beside legal provisions. Participants in focus group consisted of local authorities' representatives clearly emphasized that none of them was invited to take part in processes of making laws in any domain classified as social affairs nor they know that any of their colleagues (in charge of implementing policies in other domains of social affairs) were invited. In group discussion they emphasized that both horizontal (across domains on local level as well as with other cities and municipalities) and vertical (instances of governance and management from local up to national level) coordination and communication are based on personal enthusiasm shaped by experiences, perceptions of commonwealth and recognition of possibilities. As local authorities and social affairs units within them comply laws from different domains, they clearly indicated obstacles particularly in organization of public funds posed by *Law on budgetary system*. This Law stipulates limitations regarding possible increase of budgets for financing social affairs from public funds (due to rather centralized system of tax collection) and also proportional allocation of funds for all domains covered by municipal social affairs units regardless of investments made by using other sources of financing. For example, if municipality applied for international grants (being successful) and/or provided donations from private foundations for renewal of schools and/or kindergartens and/or sports venue and/or ambulance, it cannot redirect public funds towards increasing of budget for culture but has to allocate public funds proportionally for all domains of social affairs. Reflecting on horizontal collaboration with other, particularly neighbouring, municipalities, participants were happy to share examples of good practices like being host or a guest at regional or across country events but rather surprised by notion that they should also be responsible for co-financing regular work (salaries and utilities) of cultural institutions in charge of protecting and safeguarding cultural heritage on their territories such are archives, institutes for protection of cultural monuments and central libraries with funds of old and rare books. Though *Law on Culture* and *Law on Local Self-government* stipulate partnership of municipalities in activities relevant for cultural development, which includes co-financing cultural institutions, in practice city in which institution is based mainly finances its work whereas other municipalities just finance projects on their own territory. Surprised replies were given on question if their city/municipality participates in co-financing of regular work (beside projects) of institutions in charge of protecting cultural heritage on their territories but having headquarter in another city - "Oh, we are supposed to do that as well? It didn't cross our minds!" This kind of replies suggest that legal provisions are too general and have to be more specific regarding what partnership includes and how mechanisms should be elaborated beside suggesting contracts.

Cultural heritage and law

Responding to efforts in international community, since 1945. Yugoslavia (and Serbia within it) began creating system of cultural monuments and natural diversity protection. First law that regulated area of cultural heritage (*Law on Protection of Cultural Monuments and Natural Rarities of Democratic Federative Yugoslavia*) was adopted in the same year and amended in 1946 after Assembly of Federative Peoples' Republic Yugoslavia adopted Constitution. This law defined cultural monuments according to conceptualization of heritage at the time in international community. Each republic had a task to found institutions in charge of (movable and immovable) cultural monuments protection as well as implementation of protective measures. Also Law defined responsibilities of owners including their rights to apply for tax reductions on the ground of proper care and maintenance of movable and immovable cultural monuments. Republic of Serbia opted for approach of separate legislation according to type of monuments so in 1951 *Law on Museums*, *Law on Archives and Archive Materials* and *Law on Libraries* were adopted, whereas work of Institutes for protection of cultural monuments was regulated by *General law on cultural monuments*. Such approach was rather successful in networking institutions according to specific nature of heritage types and clearly defining division of responsibilities regarding integrative protection of cultural heritage (relations and coordination of different types of institutions). It was maintained until 1977 when *Law on Protection of Cultural Property* was adopted following approval of UNESCO *Convention on World Cultural and Natural Heritage* in 1974. Law on Protection of Cultural Property mainly blended previous laws regarding responsibilities and rights of owners (according to socialist orientation and terminology – users of property) as well as responsibilities of institutions. However, it didn't clearly emphasize relations and coordination between institutions in charge of protection of different types of heritage. Coordination was a task of the body formed within Ministry of Culture (Council on Cultural Property) composed by experts in various areas of cultural heritage having the authority to make decisions regarding protection of all types of cultural properties separately and jointly. Minister of Culture was a member, equal with the others and very limited in discrete prerogatives. This body seized to exist by mid-80's and eventually reorganized as a unit within Ministry of Culture, nowadays Sector for Cultural Heritage. Since '90s prerogatives of Minister increased and he/she is nowadays in charge of making final decisions. Approach of common regulation that applies to all institutions is maintained up to present days. *Law on Cultural Property*, adopted in 1994, is still the basic law in the area of cultural heritage. This Law incorporated many provisions given in conventions and other documents adopted in international community by the beginning of 1990s and many professionals, representatives of various institutions in area of cultural heritage protection, agree that the Law is generally good. However, by acknowledging developments in international community (increased sensitivity for intangible cultural heritage, recognition of specific nature of urban and rural architecture, importance of cultural heritage for societies and its role in sustainable development) as well as development of new technologies and communication media, the need for up-dating and up-grading regulation is also recognized. By the middle of 21st century's first decade, professionals in the area of cultural heritage protection and safeguarding (from different types of so-called heritage institutions) opted for separate approach in legislation and by mid-2008 versions of "Law on museum heritage" and "Law on immovable cultural heritage" were shared to the public via Ministry of Culture's web site. Yet, in 2011 at the time Minister of Culture dismissed these proposals and at the occasion of setting up National register of Representative Intangible Cultural heritage announced the beginning of work on new set of laws in the area of cultural heritage. Also, by the middle of 21st century's second decade proposal of "Law on

Archives and archive materials" reached National Assembly of Republic of Serbia but was withdrew in 2015. According to participants in focus groups interviews opting for separate legislation is based upon experiences (and majority of participants are active in the field at least for 15 years, some of them 30+ years) that showed that current legislation failed to provide integrative approach in protection, preservation and safeguarding of cultural heritage, including mutual collaboration and networking (archives and libraries were rather successful in maintaining their networks, museums managed to reintegrate network by the end of 21st century's first decade, network of institutes for protection of cultural monuments almost entirely disintegrated). Also, particularly in terms of cultural tourism development new actors like tourism organizations entered the scene. As one participant noticed: "It all became mess – who is in charge of creating and performing programs, who is to take care of sites, who is selling the tickets. Unfortunately, it usually gets down to selling the tickets whereas other aspects are neglected." Hence, reasons behind opting for separate legislation include perceptions that separate laws will clean-up a mess by clearly defining tasks, responsibilities and coordination of all actors in protection and safeguarding particular type of cultural heritage, as well as promoting networking among actors. Also, participants agree on the need to have a common "Law on Cultural Heritage" that would install integrative approach in heritage safeguarding and define common tasks, responsibilities and coordination of actors primarily concerned with protection of particular type of heritage. Although such approach in new legislation may be set-up through common low and sub-laws on specific types of cultural heritage, participants firmly emphasized that each field in the area of cultural heritage should be regulated by laws because "it is in our mentality, people here tend to find holes and grey areas in legislation so they can avoid to comply and sub-legislation makes avoiding responsibilities easier. Law is a bit more difficult to ignore."

Conclusion

Legislation that shaped cultural development in Republic of Serbia (founding entity of Yugoslavia and since 2006 an independent state) was rather extensive. In the domain of culture, areas of cultural heritage, literature/publishing, film, theatre were carefully regulated since the beginning of the establishment of republican governance in 1945 both on federal and Republic levels. Regulation in other domains – education, economy, urbanism, state governance and local self-governance – also reflected onto cultural development as they contained provisions that supported cultural up-building sat as an objective of governments even in constitutions (Federal and Republic of Serbia).

Reading through laws in these areas and encouraging stakeholders to share in focus-groups ~~setting~~ their experiences and opinions, proved delicacy of relationship between culture and law. Law derives from culture – if, when, why, what and how much does that cost (fees and punishments for disobedience) are written in laws. On the other side, simultaneously, by defining identities and shaping social practices law becomes important in producing the culture and even opening up avenues of resistance. Consistency of legal provisions apparently enables pairing which is crucially important for effectiveness in making changes in the society.

Our first hypothesis that texts of laws provide possible answers on the question why cultural policy does not often works in ways desired by cultural actors as well as that separation of domains of education and culture on republic's level influenced rather poor position of culture (in narrow sense of the word culture) among general population. The second part of the hypothesis actually derives from what was written in laws on state governance and local self-governance. According to the *Law on formation of Republic of*

Serbia's Ministry of Culture (1949) domains of governance were separated on Republic's level but remained united on local level. Still, at the time peoples' committees ("ancestors" of present days' local governments) have had a right to make decisions regarding courses of actions in all domains, meaning that they could combine actions taking into account local needs as basis and accordingly make proposals for higher instances of governance. Significant support was given in laws on local contribution which was part of fiscal economy set of legislation. Laws on jurisdiction of peoples' committees on municipal, cities and counties level from 1950s show that these administrations actually lost authority to actively participate in the processes of creating policies and making laws by giving local inputs. Later laws even more emphasized that federal and Republic of Serbia bodies were in charge of creating policies and making laws whereas the role of lower instances of governance was to ensure their implementation. Nevertheless, laws in areas of state governance and local self-governance, economy and cultural heritage (to narrow a bit the domain of culture) also show attentiveness towards synchronization of legal provisions in all domains. Laws on self-interested communities adopted and enacted following 1974 Federal Constitution, conceptualized a new system of planning including local cultural planning and monitoring progress as crucial for making new plans. Following disintegration of Yugoslavia at the beginning of 1990s, governance in the Republic of Serbia became centralized as well as taxation system. At the beginning of 21st century, after the changes initiated in 2000, idea of decentralization was put into the focus of new (democratic) authorities. *Law on local self-governance* and legal documents from other domains (including the domain of culture) show that local governments and administration retrieved some prerogatives that they have had according to first laws on peoples' committees back in late 1940s but most important ones like active participation in processes of policies creation and law making remained neglected. Policies in domains of culture and education remain separated at Republic level but are still connected in local administrations within so called social affairs units. Yet, systematic mechanisms to unite endeavours of colleagues sitting in door-to-door offices are not explicitly suggested. In addition, set of legislation in the domain of economy was rather uniformly created, without participation of people working in local administrations, which decreased sensibility for actual needs of citizens in particular municipality and/or city.

Laws in the area of cultural heritage from 1945 up to nowadays, more exactly 1990s because current *Law on Cultural Property* was adopted in 1994, are quite clear teachers of what two legal approaches (separate legislation according to type of heritage and general legislation that emphasizes common features of heritage protection) may bring. Separate legislation approach was implored from 1951 up to 1977 and it was successful in creation of more elaborate system of protection of specific types of heritage, emphasizing networking of cultural institutions, seemingly with clear division of tasks and responsibilities. Yet, integrative aspects were just outlined. General legislation approach, implored in late 1940s and again since 1977 (following approval of UNESCO 1972 Convention on Worlds Cultural and Natural Heritage) was successful in demonstration of holistic appreciation of each type of cultural heritage (tangible, movable and immovable), that all types are equally important to protect. Over two decades of compliance to separate but still connected laws created a kind of common law in communication between institutions which kept "the engine" running by inertia up to the beginning of 21st century. Then, new challenges arose deriving from changes in international (heritage) community and Serbian society. Attempts to improve legal basis for upgrading significance of cultural heritage in national, regional and local sustainable development so far have not been successful leaving a trace in inadequate appreciation of cultural heritage in laws adopted within domains such as economy (including fiscal economy),

tourism, education and urbanism. Lack of contemporary legislation in the area of cultural heritage, one that strongly suggests importance of heritage for ~~the~~ society and more adequately corresponds with latest developments in international (heritage) community, reflects on dissonance between institutions in charge of heritage protection that should work together on projects of integrative heritage protection and safeguarding. Also, dissonance is visible in activities of institutions whose primer task is to protect same type of heritage (contradictions of solutions).

Dissonances were clearly addressed in focus groups' discussions, which was vital for our second hypothesis, that groups of stakeholders will (intensely) shed light onto impacts of current legal framework for cultural development and strengthening the fourth pillar of sustainable development. Discussions resulted with practical examples of squeaks in practice. All participants in focus groups indicated speed in changing legislation in domains of economy, spatial planning, education, work and employment and contrasted it with slow motion in changing legislation in the domain of culture. In this regard, participants in all focus groups agreed that especially laws adopted in the domain of economy have had a primate in practice but some of their provisions do not acknowledge specific nature of cultural and artistic activities, nor the differences between towns and municipalities regarding the level of their economic and social development is acknowledged. Also, though for example laws in spatial planning (urbanism) and tourism refer towards *Law on Cultural Property*, (out-dated) provisions of this Law do not support contemporary principles of heritage protection in its complexity nor they emphasize the importance culture for society. Consequence, for example is that heritage protection institutions (namely institutes for protection of cultural monuments) appear as just an instance that stands on the way of real estate investors. In addition, in a new system of holistic administration, institutes for protection of cultural monuments are not emphasized as instance in decision-making processes and are obliged to pay fees to Geodetic authorities just as any other user of services would pay. Regarding the development of cultural tourism (also known as cultural heritage tourism) references towards *Law on Cultural Property* appear to be useless because tourism nowadays is based upon interpretation and the Law is not speaking much about that. Also, in relations of culture and education, laws in domain of education do not even mention cultural heritage whereas *Law on Cultural Property* does not even recognize existence of museums educators or curators-pedagogues, i.e. ones accomplishing one of museums' major tasks – education. Hence, participants in discussions in all three focus groups (with representatives of heritage institutions) emphasize the urgency of modernization of legislation in the area of cultural heritage because, as they believe, it will clearly define rights and responsibilities of all stakeholders in heritage safeguarding processes (local authorities, cultural institutions, institutions in domain of urbanism, schools, tourism organizations, private entrepreneurs, civil society organizations, citizens/-owners of cultural heritage objects and carriers of intangible heritage). Having in mind responsibilities of cultural heritage objects owners, participants in groups' discussions noted the need of adjustments in fiscal economy set of laws and recognize that previous laws (which they are familiar with even though some provisions date in decades before focus groups participants became professionals) offered better solutions for establishing percentages in tax deduction as well as procedures to deduct taxes on the ground of proper care of heritage owned by individuals and/or their families.

Participants in all focus group discussions agreed that *Law on Culture* made some things easier regarding the recognition of the domain of culture in local communities so in many of them there is a person (city councillor or municipal headmaster) in charge of culture.

Beside regular financing of local cultural institutions, local authorities finance projects of civil society organizations. However, participants in focus group with representatives of local administrations noted difficulties to organize commissions that evaluate projects to be funded. All areas of culture are not equally represented in local communities and also many artists and artistic groups that apply for funds cannot be members of these commissions. Participants in focus-groups with representatives of cultural (heritage) institutions noted that criteria for the appointment of institutions' directors still is a membership in ruling political parties despite that the *Law on Culture* is clear that director must have at least 5 years of experience in the area in which she/he obtained faculty degree, but that area is not necessarily culture and/or arts related).

Participants in all focus groups agree that legal framework is not well synchronized. Discordance of legal provisions, gaps especially regarding horizontal and vertical coordination, influence opinions all participants shared – too much enthusiasm, too little systematic solutions and strategic measures. Also, discordance of legal provisions given in different laws create gaps that people use to avoid compliances. Yearning for systematic solutions in legal framework in culture and coordination is expressed in all groups' discussions.

In modern history of Serbian society two years marked significant changes – 1945 when state in which republican governance began to form and 2000 when the citizens voted for transformation of the state. Basic principles in these two marking points were different (socialism and kind of capitalism) and in our study we are not arguing pro and contra any of these systems. We do argue that legislation is crucial for in making changes. If *historia magistra vitae est*, laws provide (practical) demonstrations. Laws may be a letter on the paper but also may have profound impact. Loosely practiced laws, putting ones as priorities and marginalizing ~~of~~ others, did managed to create an environment in which law disobedience may go unpunished. That was the case in the area of cultural heritage in which deeds that seriously damaged heritage went inadequately punished or sometimes not punished at all. Hence, for the purposes of modernization of legislation in this area it would also be useful to examine judicial practices in cases of heritage devastation.

Effectiveness of the change in which laws are basis for actions depends on synchronization on horizontal level – how laws originating from different domains respect specific nature of different activities and support each other. Also, it depends on cooperation and collaboration of stakeholders particularly in neighbouring cities and municipalities. At last, but certainly not at least, it depends on vertical coordination and thoughtful consideration of local differences in creating national policies and making laws.