p o l i c i e s f o r c u l t u r e

Workshop dossier

Legislation and cultural policy development

Workshop in Sinaia, Romania
6-8 July 2000

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Contents

Sources

Sources used to compile the material in this dossier include:

Balancing Act: 21 Strategic dilemmas in cultural policy, by Francois Matarasso and Charles Landry, Council of Europe Publishing, Cultural Policies Research and Development Unit. Policy Not No.4, April 1999.

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Cultural Policies in Europe: A Compendium of Basic Facts and Trends, ERICarts and Council of Europe, Bonn 2000

Cultural Policy in France: European Programme for the Appraisal of Cultural Policies, Report by the panel of European experts by Robert Wangermee and the National Report by Bernard Gournay, Council for Cultural Co-operation, Council of Europe, 1991

Country papers of the International Conference: Preservation and development of cultural life in the countries of Central and Eastern Europe, Budpaest 1997, Unesco in co-operation with the Ministry of Culture and Education of the Republic of Hungary, the Council of Europe and the EU.

European programme of national cultural policy reviews (Cultural policy in Romania) national report and foreign experts report compiled by Jaques Renard (Culture and Heritage directorate, Council of Europe, 1999)

Politici si strategii culturale , Ministerul Culturii din Romania, 1997/1998

Cultural Strategy-final report, february 2000, Phare RO9709-01, Nomisma

Part 1: The Workshop

1.1 WORKSHOP AGENDA, Sinaia, Romania, 6-8 July

Thursday 6 July

The policy development process

(for cultural administrators, organisations, professionals and artists only)

07.30	Departure of bus to Sinaia from outside Hotel Triumf, Bucharest
Plenary Chair: Rapporteur:	 Odile Chenal, Director of Programmes and Grants, ECF Mara Galaty, Expert
10.00 – 10.30	Welcome: Maria Berza, State Secretary of Culture of Romania Introduction: Odile Chenal, ECF/Corina Suteu, ECUME Presentation of the programme: Hanneloes Weeda, ECF - EWPPP
10.30 – 11.15	Session 1: **Familiarisation with the Romanian legislative and policy development process** Presentations: Delia Mucica, Secretary General Ministry of Culture of Romania Virgil Nitulescu, Expert to the Culture Committee of the Romanian Chamber of Deputies Discussion
11.15 – 11.30	Coffee break
11.30 – 12.30	Session 1 continued
12.30 – 13.30	Lunch break
13.30 – 15.00	Session 2: **The different roles that cultural organisations, administrators and professionals can play in the policy development and legislative process** Presentations: Dan Perjovski, Artist Inez Boogaarts, General Co-ordinator SICA Discussion
15.00 – 15.15	Coffee break
15.15 – 16.45	Session 3: **The structures and mechanisms to make one's professional voice heard** Presentations: Aura Corbeanu, Director UNITER Lidia Varbanova, Expert Discussion
16.45 – 17.30	Conclusions and formulation of recommendations

Friday 7 July

Partnership in the legislative process

07.30	Departure of bus to Sinaia from outside Hotel Triumf, Bucharest	
Session 1: Plenary		
Chair:	Corina Suteu, Director ECUME	
Rapporteur:	Mara Galaty, Expert	
10.00 – 10.15	Welcome:	Rüdiger Stephan, Secretary General ECF Delia Mucica, Secretary General, Ministry of Culture Romania
10.15 – 10.30	**Introduction to partnership in the legislative process**	
	Presentation:	Eugen Vasiliu, Chairman of Culture Committee of the Romanian Senate
10.30 – 10.45	Case study 1:	**The law on sponsorship** (recently adopted)
	Presentation:	Virgil Nitulescu, Parliamentary expert
10.45 – 11.00	Case study 2:	**The status of the artist** (social security and rights for freelancers)
	Presentation:	Delia Mucica, Secretary General, Ministry of Culture of Romania
	The focus will be on the tripartite relationship between the legislature, the executive and the third sector during the process of initiating, drafting, adopting and implementing the law (rather than on the content of the law).	
	Discussion & questions	
11.00 – 11.15	Coffee break	
Working groups		
11.15 – 13.00	Group 1 – case study 1	
	Moderator:	Milena Dragicevic, Expert
	Rapporteur:	Virgil Nitulescu
	Group 2 – case study 2	
	Moderator:	Corina Suteu, Director ECUME
	Rapporteur:	Delia Mucica
	Further discussion on the mechanisms of partnership, focusing on interaction, consultation and co-operation.	
	Formulation of conclusions and recommendations	

13.00 – 14.00 Lunch

Plenary

Chair: Eugen Vasiliu, Chairman of the Culture Committee in the Romanian Senate

Rapporteur: Mara Galaty, Expert

14.00 – 15.30 Feedback from the groups and discussion of recommendations

15.30 – 15.45 Coffee break

Session 2: Plenary

15.45 – 16.00 **The role of legislation in the policy development process: From legislation to cultural policy planning and development**

Presentation: Vesna Copic, State Undersecretary for Culture, Slovenia
Christopher Gordon, Director of the English Regional Arts Board

16.00 – 17.00 Questions and Discussion

17.30 – 18.30 Visit to Peles Palace

Saturday 8 July

Policy planning as the first step towards creating new cultural policies

Session 3: Plenary
Chair: Rüdiger Stephan, Secretary General ECF
Rapporteur: Mara Galaty, Expert

09.00 – 09.15 **Introduction to Policy planning as the first step towards creating new cultural policies**

Presentation: Anne-Marie Autissier, Expert

09.15 – 09.45 Case study 3: **Finnish cultural policy planning and development**

Presentation: Ritva Mitchell, Finnish Arts Council

Questions and Discussion

09.45 – 10.15 Case study 4: **Dutch cultural policy planning**

Presentation: Atzo Nicolaï, Deputy of the Dutch Lower House of Parliament

Questions and Discussion

10.15 – 10.30 Coffee break

Working groups
10.30 – 12.00 Group 3 – case study 3

Moderator: Milena Dragicevic, Expert
Rapporteur: Ritva Mitchell

Group 4 – case study 4

Moderator: Th. Adams, Ministry of Education, Culture and Science of The Netherlands
Rapporteur: Atzo Nicolaï

Plenary
Chair: Mircea Martin, Editor
Rapporteur: Mara Galaty, Expert

12.00 – 12.30 Feedback from the groups and discussion of recommendations

12.30 – 13.30 Lunch

Session 3 continued
Chair: Mircea Martin, Editor
Rapporteur: Mara Galaty

13.30 – 14.00 Case study 5: **French cultural policy planning and development**

Presentation: Bernard Gournay, Expert

Questions and Discussion

14.00 – 14.30 Case study 6: **Polish cultural policy development** / CANCELLED

Presentation: Anna Niewiadomska, Director of the Department of International Cooperation and European Integration, Ministry of Culture and National Heritage, Poland

Questions and Discussion

14.30 – 14.45 Coffee break

Working groups
14.45 – 16.15 Group 5 – case study 5

Moderator: Christiane Botbol, French Cultural Centre, Cluj
Rapporteur: Bernard Gournay

Group 6 – case study 6 / CANCELLED

Moderator: Lidia Varbanova, Expert
Rapporteur: Anna Niewiadomska

Plenary
Chair: Mircea Martin
Rapporteur: Mara Galaty

16.15 – 17.00 Feedback from the groups and discussion of recommendations

17.00 – 17.30 Closing remarks by Mr Ion Caramitru, Minister of Culture of Romania

Sunday 9 July
10.00 Cultural trip in Bucharest

1.2 List of Participants

Please contact info@policiesforculture.org for a full list of participants to the Sinaia workshop

1.3 Points of Departure

These points of departure are meant to complement and clarify the agenda

Contents

I Towards Policy Through Partnership

What is meant by the term "policy"?

The word 'policy' implies the steering mechanisms – the rules, measures and means that need to be in place to achieve the goals in cultural development. Policy starts with political (+ public) debate and leads to the setting of objectives. From these objectives a strategy is derived. The strategy highlights priorities, which are implemented by structures, procedures, rules and laws.

The processes of making policies for culture in Europe's democracies differ from country to country, depending on such factors as the country's individual history and the nature of its government. The countries to be reviewed in the framework of this programme each have their very own manner of answering to the practice of cultural policy planning. Every government addresses the dialogue and partnership between the executive, parliament and the third sector, or the involvement of the third sector in the establishment of new policy initiatives, in quite a unique way.

The applicability of the existing policy-making methodologies must be carefully assessed in the local contexts of each South-Eastern European country participating in the programme before these methodologies can be used as examples from which these countries can draw. It is ultimately up to the decision-makers and the artistic communities in South-Eastern Europe themselves to find solutions that are appropriate to their needs. This will depend on the political, economic and social context. Nevertheless, there are common principles of partnership (between the executive, the legislature and the third sector) that underlie the way cultural policies are made in most European countries, which, although they may be implemented in distinctly different ways, remain similar in their outset.

The approach to these common principles offered in this document aims to pave the way towards addressing fundamental questions of partnership between politicians, central government executives, the executive at local level and the third sector.

Questions

What are the mechanisms through which cultural organisations and professionals can initiate policy?
How does the Ministry of Culture launch policy initiatives?
What is the role and effect of organised interest groups?
What are the institutionalised and informal channels of communication between the Ministry of Culture and cultural organisations of the third sector?
How can feedback on proposed initiatives be sought by the legislature and provided by the third sector?
How easy is the access to Parliament and the Executive for the professional?
How can Parliament hear the feedback of cultural organisations?
How useful can cultural organisations and professionals be in alleviating the burden of cultural policy making?

II Legislation or Policy?

It is being generally acknowledged that in many countries legislation is used far too frequently as an end in its own right, rather than as a tool, or instrument to implement and facilitate aspects of a well-defined cultural policy. As Mrs Vesna Copic, State Under-secretary for Culture in Slovenia puts it in her paper *Legislation: a threat or an opportunity*:

> 'A law may not be a formal substitute for an effectively stable and well-regulated financing system, nor an alibi for the absence of a development-oriented vision of cultural policy. Law is in fact, merely one instrument for the realisation of this vision' [Ljubljana May 1999].

Laws are needed to justify decisions and to fulfil strategic policy objectives. A law is not a policy in itself, but an instrument of regulation. For legislation to be effective, it has to respond to the objectives formulated in the national cultural policy or strategy.

There are several other ways of managing aspects of one's cultural policies besides by law. One could think of agreements, programmes, and regulations to act as steering devices and that lie below the status of law.
There often exists the tendency to solve every problem by drafting a new law. Furthermore, artists and professionals tend to demand laws to guarantee their artistic freedom and social security, when this may not always in fact be necessary. A web of laws covering every aspect of cultural society will improve neither transparency, understanding, nor adherence and leads to massive legal backlogs.

III The Mechanisms of Partnership

The appearance of the welfare state in many Western European countries after the Second World War stimulated politicians to start thinking about the benefits of cultural policy. To realise their policies, the governments of the Western European democracies gradually began to work through and with a broad range of public, private and independent organisations and partners in the cultural sector. The advantages to the democratic process of governance of such a partnership are obvious and have been formulated by François Matarasso and Charles Landry in the Council of Europe's policy note *Balancing Act: 21 Strategic Dilemmas in Cultural Policy* as follows:

> 'The creation of policy through a real partnership between a cultural ministry, its constituency and the wider public offers major advantages. A policy that has been developed in partnership with the sector on which its implementation depends obviously has a better chance of being successful in practice, since it will reflect the experience and the concerns of people working in all sectors. It is also likely to be more creative and imaginative, since it results from open-minded thinking and dialogue reflecting a wide range of views rather than just internal planning. The policy goals and standards of success, which are developed through such a partnership, will be closer to the shared aspirations of many people. Finally, the process itself is an important element of civil society, enabling and encouraging citizens to take responsibility in an area where most people have an opinion and are not afraid, in the right circumstances to voice it.' [p.21-22, Policy Note No.4, April 1999].

Creating a vision for cultural policy cannot happen in isolation: it needs to be shared by the parliament, government and the whole of the cultural sector. Various different structural and organisational relationships between government and the cultural sector exist to ensure that cultural policy is conceived, formulated and implemented in a manner most suited to each country at hand.

IV The Ministry of Culture

All Ministries of Culture strive to create the necessary climate and conditions for the cultural market to operate efficiently. The focus for every Minister of Culture must therefore be to understand where the market does not operate as well as it could and to assess what action should be taken to remedy any deficiencies. In order to manage this process, active consultation with the cultural constituency is considered to be essential.

The legislative context
The primary task of the Ministry of Culture is to provide the legislative context and framework within which culture can develop. This means creating core legislation that allows cultural activities to develop within a specific framework of rules and importantly applying, adapting or interpreting existing general laws, so that they are relevant to the cultural sector. In many countries, there exists the tendency to produce a law on every specific detail that needs to be regulated. This creates massive legal backlogs. Furthermore, too many laws lead to a lack of transparency and effectiveness. The focus of the Ministry's work should also lie on the development of regulation that lies beyond the status of law. The main argument for this is that the Ministry does not then need to go back to Parliament with its lengthy procedures and that regulations can be changed more quickly should the need arise.

The role of the Ministry of Culture
The Ministry is the encourager, facilitator, protector and advocate for culture, whose activities and products are carried out by others. Its role is not to "create culture", nor to make money out of culture, but to generate general resources and income that can be redistributed along policy guidelines. The laws and regulations made and implemented in and by the Ministry then are the instruments of cultural policy. The Minister of Culture also takes into consideration all other fields of government, which relate to culture. By identifying the importance of culture for other sectors and by creating precious links with other ministries, the budget of the Ministry can expand.

Governments should ideally involve the cultural sector (to the mutual benefit of both the sector and the government itself) in the fundamental debate about the direction in which cultural policy is developing. Cultural actors and organisations can provide decision-makers with first-hand experience and feedback; cultural debate allows key issues such as civic participation, social cohesion and community capacity building, which are of priority to the Government, to be addressed and stimulated. Throwing open the debate on cultural policy strengthens the general commitment to culture.

V Non-Governmental and Governmental Advisory and Funding Bodies and the Third Sector

The third sector is a term that is widely used today to refer to the independent zone of activity, which lies somewhere between the field of government on the one hand, and the field of commerce (the profit or business sector) on the other. It includes the non-commercial, non-profit and independent organisations, foundations, institutions and professional individuals. Third sector institutions operate at their best when they remain as independent as possible (even if they are heavily dependent on subsidy), but run as if they were a commercial enterprise.
(Nowadays the boundaries of this independent zone are becoming slowly ever vaguer. Some successful third sector institutions are those which operate in public-private partnership).

The Maastricht Treaty affirmed the principle of subsidiarity in Europe, stating that decision-making should take place as close to the citizen as possible. This can be applied to cultural policy, as it can to any political sphere, allowing regional and local administrations, non-governmental bodies and organised citizen groups to participate in the policy-making process. To this end, the Netherlands and Slovenia, for example, have a Council for Culture which has an important advisory role in many political discussions. The British Government partners with the Arts Councils and other semi-independent bodies with clear advisory and financial roles. France on the other hand makes use of its Regional Directorates of Cultural Affairs.

In many countries, the policy-making process has been largely internal, concerning only the departmental civil servants and the politicians. Elsewhere, there have been successful attempts to consult the public on a regular basis about policy issues. Current practice in most democratic states, lies somewhere between informing, consultation and active participation.

The web of civil society organisations and individuals, aside from its role as a potential user of culture, plays a crucial role in helping to develop and comment on cultural policy. Many civil organisations may themselves be culturally oriented and their activities are thus an integral part of the cultural spectrum. The benefits of a strong civil society should be realised in all European countries, even in the established democracies. There are cultural activists and critics who help to create new legislation, suggesting new types of institutions or even forcing their views on to politicians. However, there is often a lack of priority in encouraging NGOs within the cultural sector. Their active participation would engender a more urgent debate and action on radical decentralisation.

Discussion on cultural issues naturally takes place within specific sectors or the Ministry, but often not jointly between politicians, professionals, academics, the commercial sector and communities as to what levels of support can be achieved and afforded. There is felt to be the lack of a wide-ranging public debate about the future of public investment in culture amongst all interested parties.

VI The Parliament

Members of Parliament (or the 'Lower House' in bicameral systems) do much of their work in committees. Generally speaking, the composition of these committees is a faithful reflection of the division of power in the parliament. In consultations on government papers, the committee members of parliament discuss all possible documents with members of the government (memoranda, reviews, letters and the like). During consultations of this kind, all kinds of specialist and technical aspects of one or more pieces of draft legislation may come up for discussion. Every deputy has the constitutional right to ask a minister or state secretary questions. This can be done in writing or orally. However, committees do not confine themselves to such forms of consultation alone. They regularly conduct hearings and pay working visits, for example to ascertain how interested parties think of certain pieces of draft legislation or a government paper.

In some of the parliaments in the new democracies, there exists a general lack of trust towards civil society. Parliamentary representatives often assert that NGOs tend to only criticise their work and, thus, if consulted have little positive to add. In other parliaments a degree of trust exists, but real communication and co-operation is generally weak. Although some parliamentary committees have begun to work with NGOs on legislative development, other committees in the same parliaments continue to believe that they can get the work done just as well without input from outside organisations and experts.
At the same time, parliamentary representatives are usually understaffed and don't have enough experts or researchers to effectively plough through and comment on legislation being developed. What's more, parliaments fear that as they move closer to the EU, the amount of legislation to adopt, change and debate will only increase – to numbers unmanageable for their modest staff.

Representatives of the cultural field often feel left out of the legislative process. If the artist or the professional cannot communicate feelings of frustration and helplessness, then they will not feel connected to the decisions coming out of the parliament. Lack of co-operation between parliaments and he cultural constituency translates into a huge, and unnecessary, gap in communication with the general electorate.

All European parliaments can truly benefit by improving their relationships with civil society. Civil society can support parliamentary missions in developing effective legislation and in communicating the results to the public. If included as an integral part of the process, civil society will have an investment in the success of the legislation and an interest in communicating to the people that the laws have been well considered and will be effective. Parliamentarians could go far out of their way to make clear to their constituency what the various choices and alternatives are, and exactly why they are making the choices they do. Paying working visits, for example, to ascertain how interested parties and cultural organisations feel about certain pieces of draft legislation or a government paper, or inviting NGO representatives who are specialised in the topic at hand, can provide an invaluable source of feedback for the parliament.

Part 2: Romanian Cultural Policy – a summary

2.1 Cultural Policy in Romania

Based on:

1/ **European programme of national cultural policy reviews** (Cultural policy in Romania) national report and foreign experts report compiled by Jaques Renard (Culture and Heritage directorate, Council of Europe, 1999)
2/ **Politici si strategii culturale**, Ministerul Culturii din Romania, 1997/1998
3/ **Cultural policies in Europe-a compendium of basic facts and trends**
Council of Europe and ERICarts, 1999
4/ **Cultural Strategy-final report**, february 2000
Phare RO9709-01, Nomisma

This presentation aims to summarise the information presented in existing official documents produced nationally and internationaly. All remarks or comments or interpretations are based on published data. As far as the accuracy of historical information is concerned, the material is based on the national evaluation report, 1999.

The 40 years of Communism

Contents aspect:

For the Communist, totalitarian state, culture was the main ideological mediator. Therefore, large cultural institutions proliferated and had to promote political messages in all their artistic work.

- Heritage was the means to boost the national identity and the sense of nationalist pride.
- History was reshaped in an everlasting, glorious succession of won battles against all foreign invasion.
- Alternative art and all independent, non-traditional forms of artistic expression were considered to be "dangerous" and invaluable. One lived off the past, everything had already been invented.
- All artistic or cultural manifestation had to have a clear message and to convey the ideology.
- Communist culture was good, versus capitalist culture, which was bad.

The above implies: censorship, uniformity and centralisation are the three main directives of the communist period.

Administrative aspects

The 'Council of Culture and Socialist Education' was the Communist organ that took care of cultural policy in Communist Romania. It was directly dependent on the Executive Committee of the Communist Party and it had complete power over all cultural organisations (be they national, municipal or just simply a group of writers that met regularly to read poems).

An impressive number of laws and regulations were promulgated in order to 'implement' the communist pattern of the 'multilaterally developed Marxist-Leninist society' on the one hand and the foreign Soviet and Chinese models (notably in culture) on the other.
Laws were contradictory and there was no harmonisation system. The law was represented by POWER.

Nowadays, the administration has remained fundamentally the same since the days of Communism. In some regions there has been even hardly any changes in the staff of the public authorities. The same people have taken over new functions and are responsible for implementing change.

Situation Today

Some data

- Romania's central administration is decentralised in a system of sub-central administrative units: Romania has 42 districts, 2682 municipalities, 182 towns, 80 small towns.
- In December 1989, the Ministry of Culture was created by decree, as the unique specialised organ of central administration to deal with internal cultural affairs and as the second central organ to deal with external cultural affairs (an inter-ministerial commission regulates the relations between the Ministry of Culture and the Ministry of Foreign Affairs regarding this aspect).

Observation

One should note that one of the vey first decrees of the CFSN in Romania included the creation of the Ministry of Culture, on the 28th of December 1989, only a week after the fall of Communism started in Romania. This means culture was regarded as a foremost sector by the Government. The cultural community played an important role during these events.

Between 1989 and 1992, the general tendency of this newly created central administration was to descentralise brutally, sometimes under "street pressure" and without any reflection on the consequences. Thus, a certain number of autonomous bodies were created in the rush to delegate responsabilities:
- The National Council of Cinematography
- The Museums Commission,
- The Audiovisual Council
- The National Archives...etc

As we can see, the most reactive cultural communities were the audiovisual and heritage (maybe the best informed on a international scale). At the same time, we may notice again that both audiovisual and monumental heritage (including the museums) are the two sectors which play the most essential role in determining the national identity in terms of image communication and tradition.

The Ministry itself underwent several restructuring initiatives, corresponding firstly to the decentralising tendency (until 1992), re-centralising tendency (1993-1996) and eventually by the Government decision in March 1998, concerning the organisation and functioning of the Romanian Ministry of Culture.

The structural confusion was augmented between 1989-1996 by very frequent changes of people in key administrative positions. Within 6 years, Romania saw 9 Ministers of Culture and all the newly established independent councils and commissions changed heads at least every one and a half years.

From a legislative point of view, between May 1989 and December 1991 Romania had no Constitution approved so that all legislation adopted in 1990 and 1991 became non-constitutional afterwards, be it in culture or other sectors.

The lack of experience in democratic procedures, the persisting late approval of the state budget and uncontrolled inflation, made planning for cultural institutions impossible.

The dependence of all important cultural enterprises on the economic and social sectors and the lack of a legal framework for NGOs were a serious obstacle to cultural development and restructuring of the cultural institutional sector. An example of this confusing situation concerns the cultural inspectorates (representatives of the central authority in the territory). In 1992, the Inspectorates were suppressed as moral entities and their authority was entirely transferred to the TERRITORIAL councillors, by a decree. In 1995, a new law reaffirmed their authority in the regions, but the reglementation was ambiguous and did not clearly specify attributions.
Inside the Ministry of Culture itself, there was not, until 1995, any Directorate to co-ordinate the territorial representation of central authority. Only in 1998 did the inspectorate's role become better defined and was co-ordination ensured inside the Ministry. Nevertheless, cultural inspectorates are supposed to collaborate with local authorities and local NGO's and to assess cultural needs in the regions, with still no approved budget until June of each year and with no regular strategic feed-back from the Ministry (each inspectorate has to define specific directions and invent strategies to be implemented, based on only one general meeting a year, organised by the Ministry).

Observation

The foreign group of experts assessing Romanian cultural policy for the Council of Europe insisted on the role the Inspectorates could play, if correctly briefed, used and financially supported as a platform for partnership with local cultural reality, with NGOs as actors of change as they are closely aware of the needs and potential of a give territory.

Role of the Ministry of Culture as defined after 1996

The Ministry has both the material and territorial competency and is represented centrally and in the regions. All cultural initiatives at local level have to be accepted by the specialised directorate in the Ministry, but all initiatives are free of other forms of control.

The strategic focus of the Romanian Ministry of Culture in the last two years has been to respond to the 'cultural administration crisis', as defined by the 'Basic programme for macro stabilisation and development of year 2000 Romania'.
Policy has been oriented towards:
- Internal restructuring of the Ministry (legally implemented in 1998)
- Reformulating priorities of the general policy approach

Five main principles have been put forward by the new policy:
- Freedom of creation
- Arts and cultural autonomy
- Priority to value
- Equality of opportunities
- Giving value to cultural identity

These principles are supposed to be implemented through:
- Decentralisation
- Restructuring the cultural institutions
- Partnership with local authorities
- Partnership with civil society

Functions of the Ministry of Culture

The main functions of the Ministry are:
- Legislation:
  - on culture
  - on diverse laws of other sectors, touching the cultural domain
- Representation (together with the Ministry of Foreign Affairs, representing Romanian culture abroad)
- Organisation and co-ordination:
  - applying the Government's programme and the general strategy in the cultural domain
  - organising the execution and application of norms
  - co-ordinating the elaboration and realisation of sectorial strategies, of politics sustaining these strategies, of international cultural programmes sustaining Romania
  - harmonisation of cultural programmes
  - protection of contemporary art and the free circulation of artists
- Control:
  - assessment of the way cultural institutions apply regulations and respond to their objectives

Remark

There is still a great ambiguity to be noticed in the transfer of decisional power between the central and the local level as well as between the public authorities and civil society. A common declaration on the status of the artists in Romania has been issued, that stipulates the relationship between public central authorities and civil society; the declaration is entitled: 'Common Declaration concerning art creators, artists and art interpreters in Romania'.
In order to improve its action, the Ministry has decided to use the following instruments:

- better financial management of resources
- better harmonisation of laws
- better investment and aquisition policy
- organisation of specialised commissions for the priority sectors (eg: national commission of historical monuments, of museums and collections, of the written culture, of the artistic aquisitions)

There exists also an inter-ministerial commission, which co-ordinates the collaboration between the Ministry of Culture and the Ministry of Foreign Affairs.

Legislation

After 1991, many new laws were issued out of the desire to 'imitate' the main legislative trends in Europe and to create norms in the principal cultural sectors.

Sponsoring (see case study)
A Law was passed in 1994, with weak results and which was financially not interesting (only 5% of taxable income). After important suggestions from the NGO sector, it was modified to a modern law in 1998. This text is not yet approved by the parliament.

Copyright and connex rights
In 1991, a project existed already. The law was passed in 1996, and is said to be one of the most modern laws in Europe. Romania signed in within many European conventions concerning Copyright.

Cultural heritage
1990 - Several projects were elaborated by the Monuments Commission but only 2 urgent ordinances were passed in 1992 and 1994. The situation of this law has not yet been solved.

The Archives
The law was passed in 1996

Libraries
An important law was passed in 1995

Artists' rights (protection)
Several initiatives have been launched, sector by sector, but there has been no coherent addressing of the issue.

Cinema
The creation of the National Office of Cinema was approved in 1998

Audiovisual
The most dynamic sector. Accords were signed in 1992,1994 for the implementation of autonomous entities of audiovisual;
Important remarks by the foreign group of experts of the Council of Europe regarding the implementation of the policies described by the national evaluation:

- In the Ministry of Culture's strategy the relation with the social and educational sector are not clear and strong: "Nowadays, cultural policies cannot apply exclusively to culture. Experts recommend the creation of a national think tank of experts (on an interministerial level) and of a committee of academics, entreprenneurs and senior cultural administrators, in order to realise the necessary evaluation of needs and links between culture and other sectors of social activity.

Only as a result of these studies can structural change be started and implemented, with all that this implies socially and economically.

- Cultural domains should not be prioritised in the given situation. The Ministry tends to give more importance to heritage than, for example, to contemporary art. Even though in the short term, the preservation of heritage is definitely a most important priority, creativity and training are priority sectors for the cultural domain.
- Concerning decentralisation, experts consider it necessary, but note that the ways and the means of decentralisation are feeble and have a poor degree of clear empowerment strategies from the centre to the local authorities.
- As far as the cultural institutions are concerned, experts noticed:
    - lack of competence at the decision making levels
    - lack of financial means for innovative projects
    - lack of financial means for contemporary art and new productions
    - lack of reliable data and of evaluation materials at central and local level
    - necessity to create or empower an 'agency' to organise tours, exhibitions, shows at a national level:

In the absence of statistics and detailed information on local authorities, the experts made the following recommendations:

- creation of database on local authority expenditure and activities
- promotion and establishment of competent cultural departments within such authorities
- training of local representatives
- providing legislative of regulatory framework that ensures the independence of local institutions

Conclusion

The Ministry only launched a clearer strategy in 1998.
This strategy was supposed to be implemented and reshaped also by the intermediary of the Phare project for technical assistance(CULTURAL DIMENSION OF DEMOCRACY), that the Romanian Ministry of Culture contracted with the EU in 1999.
In the final report of the Technical Assistance PHARE, in february 2000 the following rationale was adopted:

A
ESTABLISH targets within a mission statement(on a 10 years period)
the strategic targets formulated are :
- preservation of national heritage
- harmonisation of cultural policies and strategies with EU countries
- enhancing of the role of cultural civil society and individual players
- promoting Romanian culture internationally

B
FIX tactical targets (period of 5 years)
- develop human capital
- increase independence from state subsidies
- increase awareness about culture in Romania and abroad
- preserve heritage
- coordinate policy and action
- develop the supply and demand in arts
- create framework for synergies
- arts/education/tourism/regional development

C
delimit areas of intervention for 2-3 years
according to the tactical targets

D
fix specific action in every area of intervention(yearly)
implementation of the tactical targets through projects(nourished by the existing projects, Euro art projects).

Formally, strategy and action are existent, but ‘implementers’ are not yet sufficiently informed about it.

This lack of transparency concerning the Ministry's intentions, has accumulated together with the very difficult economic situation and with the institutional crisis in Romania. This has driven civil society to the conclusion that ‘nothing good’ happens centrally.

The lack of bodies taking care of the internal circulation of artistic values, the irregular and chaotic information system from the Ministry to the cultural institutions and the still ambiguous descentralisation policy, has driven independent cultural actors into a confused and inert state.

On the other hand, the efforts to restructure the Ministry and to shape its action, at least at a conceptual level, seems, since 1990, the most coherent and a very important effort of reshaping the infrastructure and norm it is on the way.

Nevertheless, all the formulated directions and strategies will remain unfulfilled without the involvement of the civil society, its creative input and motivation.

It is why multiplying communication bridges brings about an increased degree of awareness and a comprehension of the deep need to act locally in order to obtain global result.

Part 3: Legislation and Policy

3.1. Legislation: A Threat or an Opportunity?

By Vesna Copic

Law is like a classic. Something that people praise and don't read.
How can one make a law, which people will not only read but also praise?

Words are, of course, the most powerful drug used by mankind
Laws should neither be overestimated nor underestimated.

A law should not become a political manifestation or cheap propaganda used in election campaigns, failing to transcend the mere declaration of good faith, while life remains unchanged. Instead, an attempt should be made to find out what a law can achieve and where its power ends. The adoption of laws for the purpose of winning political points for politicians who come and go is the ultimate danger with which progress is faced. A law may not be a formal substitute for an effectively stable and well-regulated financing system, nor is it an alibi for the absence of a development-oriented vision of cultural policy. Law is in fact merely one instrument for the realisation of this vision.

The power and impotence of law
Law should govern only those relations, which can be adequately regulated with legislation.

Laws are instruments of regulation. Their major task is to govern individual relations by dividing the roles among the different stakeholders in the decision-making process on one hand and by enforcing rights and duties on the other i.e. to ensure that only those issues that can be regulated become the subject of law. Laws are therefore regulatory instruments, rather than programmed norms. Laws differ from programmed norms in that they are inevitably associated with legal consequences while programmed norms do not prohibit anything but, rather, they merely highlight specific developmental guidelines. Once programmed documents are provided with a legal form, laws lose their legal power and, along with it, their purpose. To avoid legislative impotence we should be aware of which issues can be regulated and receive the legal form of law, and which issues are policy oriented, calling for a different form, that of a cultural policy planning document.

Stand by your law
Each law must be accompanied with a plan of activities for effective enforcement.

Legal hygiene requires that only such laws be adopted which can be enforced. The implementation of legislation is as important as its formulation. Here we must draw from:

1. The principle that a good decision is a product (and not a sum) of acceptability and enforceability. As professionally well formulated as a law may be, it will not work if those affected by this law fail to accept it as their own and if the actual situation is not ripe for this kind of legislative solution.
2. The realistic estimate of the material consequences of a specific law (financial, staff, organisational, etc.) and a conscious decision by the government to assume these responsibilities.

Tradition is like shoes – the longer you walk in them, the less they pinch
Law should govern only what is necessary to govern. And what is necessary to be governed?

In countries with a long tradition and continuity specific relations are taken for granted and do not call for separate legalisation. Although it is hard to imagine that this method could be used for regulating, for example, taxation issues, the situation is entirely different in the case of 'soft' activities, such as culture. In these environments the system can be upgraded spontaneously and consensually. This however cannot apply to all post-Socialist countries, in which society was mostly highly regulated. The void, which emerged with the abolition of the former political system, must be filled. Metaphorically speaking, where there is no tradition, legalisation is indispensable and all necessary steps must be taken to make 'the shoes fit'.

Cultural awareness calls for legal awareness
If we can say that there is a doubt as to whether there is at all a need for special cultural legislation, in view of the fact that specific countries have proven that an enviable cultural level can be achieved even without such legislation, there is no doubt that culture lives in a legislative environment defined by international conventions and general statutes.

The universal legislative story began to be told even before we began to talk about globalisation. The experience gained from the two world wars has driven nation-states to subject their legal sovereignty to the international legal order or, more precisely, to ratified international conventions, such as the Convention on the Protection of Human Rights and Fundamental Freedoms, which in addition to human rights deals with the right to be informed.

The annually adopted budget, legislation governing value added tax, legal relief arising from sponsorship and patronage, copyright legislation, regulation of the public administration, regulation of decentralisation, legislation governing local communities financing, customs legislation, and so on, are likely to affect the fate of culture more than most people think, or are willing to admit that they can. The feeling that the mission of culture is something prosaic and must therefore be transcended beyond reality diminishes the presence of culture's interests in the areas in which its fate is tailored.

Irrespective of whether we advocate special legislation to govern culture or not, we must raise our legal awareness, which will take advantage of that which practically offers itself on its own on both the international and national levels, and which will ensure a legislative environment which culture will find favourable.

Conclusion
Legislation is an opportunity if we know how to use it.

About the author:

Born in 1956, Vesna Copic completed her studies at the Ljubljana Faculty of Law and subsequently passed the bar examination at the Ljubljana Circuit Court. In 1991 she published a book with the title of Elements for Formulating National Cultural Policy and later on co-authored with Gregor Tomac and Michael Wimmer the book Cultural Policy in Slovenia, which was published at the Council of Europe. In the last five years, in addition to lecturing cultural policy and cultural management at the Ljubljana Faculty of Social Sciences, she has been involved in the preparation of legislation for governing the area of culture. She has also contributed two articles for two books dealing with privatisation of societal activities. She has published articles in professional magazines issued in Slovenia and elsewhere in the world. The main subjects she is dealing with are denationalisation of culture and development of civil society.

Vesna Copic, Head of the Policy Development Department, Ljubljana, May 1999

3.2. The legislation for culture in Romania

By Virgil Nitulescu

As one of the most important instruments for implementing cultural policy, the legislation for culture needs to respond to the regulation needs of the cultural market. Besides this essential requirement, Romanian legislation is also subject to another 'imperative': its harmonisation to European legislation. With these two prerequisites (the domestic needs and the approximation to the European standards) as a point of departure, this report tries to draw a synthetic picture of what has been effectively achieved in Romania in the field of cultural legislation during the last decade and to place it into a coherent system.

Starting from what constitutes the fundamentals of cultural law in any modern society – i.e. copyright – one can remark, first of all, that the field of the protection of intellectual property is one of the best harmonised to European legislation. I do not refer here to inventions and marks, which belong to the field of industrial property, but to copyright and neighboring rights**.**

Even if this field was accordingly regulated only by the *Law no 8/1996*, Romania quickly 'joined' the other European countries in the field of copyright and neighboring rights, by repealing a 40-year old decree, completely obsolete. It was the first step aimed at retrieving lost time; soon after that Romania ratified:

- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of October 26, 1961 (by the *Law no. 76/1998*);
- The Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, in the form revised by the Paris Act of July 24, 1971 and amended on September 28, 1979 (by the *Law no. 77/1998*) and
- The Convention for the Protection of the Phonograms Producers against their Unauthorised Reproduction, adopted in Geneva on September 29, 1971 (by the *Law no. 78/1998*).

It is true that the member states of the European Union have also signed these conventions. Still, for a real approximation of the internal legislation with that of the Community, it is necessary to adopt certain provisions contained in two directives of the European Parliament, namely the directive issued in 1996 (on the harmonisation of the treatment of the copyright to that applied to neighboring rights) and, respectively, the directive issued in 1997 (on the protection of databases and of the database makers' rights).

These aspects should be regulated by a law which, amending *Law no. 8/1996*, could also eliminate certain 'weaknesses' of the text, such as the omission of a neighboring right – for the film producer. This amendment is required very quickly, before we will face a far more complex problem that will undoubtedly arrive soon: the regulation of the regime of copyright and neighboring rights for works transmitted over the Internet.

The second important legislative chapter subject to harmonisation is the audiovisual. *The Audiovisual Law (Law no. 48/1992)* needs severe changes in order to incorporate the *acquis communautaire* in the field. What has been achieved so far (the introduction of the majority percentage for European works under the *Law no. 41/1994* on the organisation and functioning of the Romanian Society of Radio and the Romanian Society of Television, amended by the *Law no. 124/1998* and *Law no. 19/1999*, which also modified the Audiovisual Law) is just a beginning; and not a flawless one.
The new laws have been negatively received by both the European Commission, who had serious objections to the definitions adopted in the new amending laws, and by the non-European countries, either part of the Marrakech Treaty or members of the World Trade Organisation.

It is obviously a very delicate field; the negotiations between Neil Kinnock and Jack Valenti reigned on the first page of the financial newspapers around the world. More recently, the Seattle meeting, which failed the beginning of the Millennium Round, aroused discontent from all parties involved.
Therefore, Romania has a very short time available. Practically, we have only a few months or even less left to start up direct negotiations with all interested parties, so that the controversial adoption of the provision of the majority percent broadcasting of European works will find us (in the case of the economic sanctions Romania will probably face from the states whose most favoured nation clause has been affected) in the position of associated country candidate to membership and, moreover, as an ally of the Union.

The legislative proposal to amend the current *Audiovisual Law* (initiated by George Serban and continued by Mrs. Elena Iacob and Mr. Alexandru Ioan Badea, MPs) will lead – if adopted in a form close to the one currently on the agenda of the Chamber of Deputies – to a substantial change in the law and, furthermore, to a better definition of European works. We could thus expect a good reception from the European Commission, leaving negotiations to be led only with non-EU member countries.
The current legislative proposal defines as European states those which are members of the European Union and those which signed the European Convention on Transfrontier Broadcasting. That is why it is very urgent for Romania both to sign of the Protocol amending the Convention and the discussion of the legislative proposal on the Convention's ratification in the Parliament.

The percentages reserved for European works represent, however, only one of the most visible and spectacular parts of the European *acquis*, as regulated by the *Directive 552/1989*, amended by *Directive 36/1997*, and by far not the only one. During the last few years, The National Audiovisual Council has tried to fill the flaws of the law through decisions concerning the protection of minors, advertising, teleshopping, sponsorship, the right to retort, re-transmission, the prevention of

concentration and monopoly. All these aspects are distinctively presented in the above-mentioned legislative proposal, including also the provisions of the *Government Emergency Ordinance no. 48/1998*, that amended the Audiovisual Law, thus facilitating the passing of certain radio stations from the FM band to the West band.

Although the approximation of laws to those of the Community in the field of cultural heritage is not on the "emergency list", the legislative framework for its protection is one of the problems that need a fast resolution.
The existing pieces of legislation, as listed below, ensure a minimal protection for the tangible cultural heritage:

- *Government Ordinance no. 27/1992*, adopted by the *Law no. 11/1994;*
- *Government Ordinance no. 68/1994*, adopted by the *Law no. 41/1995;*
- *Government Ordinance no. 24/199*7, adopted by the *Law no. 56/1998*, that modifies the *Government Ordinance no. 68/1994.*

Two legislative proposals meant to regulate this field are currently in the Parliament: the legislative proposition on the protection of the national movable cultural heritage (currently passing through the mediation procedure between the two houses of the Parliament); the legislative proposal on the protection of historical monuments (is still on the agenda of the plenary in the Chamber of Deputies).

Other proposals for the approval of the following government ordinances are also still under discussion in the Parliament:

- *Government Ordinance no. 5/1999* declaring the city of Sibiu and its surroundings as a site of national interest;
- *Government Ordinance no. 129/1998* declaring as a national interest site an ensemble including the central perimeter of Bucharest, *Centrul Civic* and the historical centre, and establishing the conditions for investments in the ensemble in the area.

These two government ordinances are attempts to punctually solve the situation of certain ensembles or entire areas, in a context lacking a specific law that would ensure its protection and that would attract investments, mainly foreign ones.
The former government ordinance is particularly interesting, representing a model in regulating the natural and built environment following the principles of sustained development; it should be noted, however, that the number of such sites "of national interest" continues to increase (The monumental ensemble created by Constantin Brancusi in Tirgu Jiu, Gorj – declared as such by the *Law no. 127/1992*, The Sighet Memorial of the victims of the communism and the resistance – founded under the *Law no. 95/1997*).

Until these projects will be voted, there must be also noted the ratification of certain international conventions of great interest:

- UNESCO Convention for the protection of the world natural and cultural heritage (adopted under the *Decree no. 187/1990*);
- The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (ratified by the *Law no. 79/1993*);
- Unidroit Convention on Stolen or Illegally Exported Cultural Objects, adopted in Rome on June 24, 1995 (ratified by the *Law no. 149/1997*);
- The European Convention for the protection of archaeological heritage (revised), adopted in La Valetta on January 16, 1992 (ratified by the *Law no. 150/1997*);
- The Convention for the protection of the architectural heritage in Europe, adopted in Granada on October 3, 1985 (ratified by the *Law no. 157/1997*).

I believe that even after the adoption of these projects many things remain to be cleared up: the issuing of guidelines for the application of the law, the construction of the national list of heritage pieces. Furthermore, many litigations concerning the ownership of such cultural goods are still waiting for a solution and there are more than just a few cases when a museum, for instance, is confronted with multiple demands of real or alleged former owners of the museum's pieces (sometimes several demands for only one piece), or of the museum's building. In most cases, these litigations are left to be solved by the judicial system, leading to time and effort consuming trials often ended by museums losing their cases.

It is one of the causes for which a legislative proposal concerning the museums is being currently discussed in the Government; it will regulate their general functioning framework, their creation and dissolving, the protection of the museum's collections and the status of the museum's staff.
In the meantime, other ordinances were issued by the Government during the parliamentary recess, among which those concerning:
- the protection of the archaeological heritage and the establishing of archaeological sites as national interest sites;
- the setting up of protection measures for the historical monuments included on the World Heritage List;
- measures for the insurance of movable cultural objects during their temporary exporting.

The only regulation in regards to libraries is that of the legal deposit which already needs to be amended in order to facilitate its application, especially since the problem of electronic publications is already present in Romania and the issue of publications printed on demand will not delay in arriving.
The legislative project concerning the libraries currently follows the government notifying circuit, but it seems that it does still not answer certain issues well, such as the storage of information on electronic medium. On the other hand, the project tries to impose a new vision upon these institutions, seen as community information centres.

A very delicate situation is faced by archives. The *Archive Law* (*Law no. 16/1996*), on one hand, is very criticised due to its vision being too much based on the authoritarian system roots, but without having many chances of being modified during the current legislature. On the other hand, the law does not very well regulate the status and functioning of the National Film Archive, as part of the audiovisual archive that Romania will have to set up, sooner or later, due to the introduction of the legal and voluntary deposits for audiovisual works.

It needs to be remarked in this context that the *Emergency Government Ordinance no. 67/1997* on the setting up, the organisation and functioning of the National Cinema Office and the setting up of the National Cinema Fund (approved with amendments under *Law no. 22/1999)*, instead of solving the problem of the cinema heritage as part of the national heritage, makes it even more confusing by leaving the field to 'float' between the provisions of several laws: the Cinema Law, the Archive Law and the future laws on the protection of the cultural heritage.
Besides this, however, the *Emergency Government Ordinance no. 67/1997* manages to regulate well a field extremely tormented in 1990 by personal interests, being, at the same time, one of the most modern models of regulation in the field of culture, mixing protection tools with economic incentives.

Starting from the same principle, Romanian culture should also benefit from the existence of the National Cultural Fund, created under the *Government Ordinance no. 79/1998*. The mechanism created required some time (and many implementation guidelines that were adopted with considerable delay) to be effectively put into practice and now that it was finally done, it is endangered by the disappearance of most special funds.
A similar example of a good law that failed to apply is *Law no. 32/1994* on sponsorship in the form amended, after impressive pressure from the civil society, by the *Government Ordinance no. 36/1998*; the latter, after a short period of effective functioning in the benefit of culture, was amended by a far less helpful *Emergency Government Ordinance no. 127/1999*.

Since we have touched the field of financial legislation, it is the place to notice that it is maybe this field that has accumulated the greatest discontent from culture professionals or simply owners of cultural objects. The latter, for instance, are considerably limited in their possibility of protecting the objects they own due to a lack of financial incentives. Neither the *Emergency Government Ordinance no. 73/1999* on the global individual revenue tax, nor the other laws in the field have introduced the deductions that these owners would need, in order to stimulate the development of a cultural market in Romania.
The Government's recent message was clear: it is not the moment for fiscal incentives. However, many problems do not need important financial support in order to be solved; thus, the application – for sponsorship – of the deductibility percent of

10% (or even 5%, as it is today) not to the revenue but to the corporate tax could be possible, requiring only certain correlations and calculations. It is not a matter of austerity or waste, but a matter of will.

A change in these laws could probably facilitate the situation of the artists and performers, whose status of December 14, 1998 does not have, as many hoped, a regulating value for the artist's condition in the Romanian society. What can be noticed in this respect is that, as expected, not all creators' and artists' guilds acted the same way or with the same speed and efficiency in standing out for the rights of their members; the elitist positions proved inefficient in a context in which the first objectives of such guilds should have probably been the setting up and the profitable functioning of the collective copyright and neighboring rights administration organizations. And in practice it was proved that there was always the need for agents, intermediaries to economically manage the creative potential of the members of such guilds.

If the situation for performers or fine artists seems to be on the right track, that of journalists is probably one of the worst existing. Divided into numerous professional associations, syndicates and employers' organizations displayed as professional ones, journalists did not manage to impose a legislative regulation that would protect their rights and, more importantly, that would provide for the rights of the press' public, in order to be correctly and responsibly informed. All attempts that have been done so far ended up covered with shame and ridicule. On the other hand, a law on the access to public information is still expected by the Romanian society, in order to bring normality in a field still under the rule of chaos and arbitrary.

Another community still proving unsatisfied interests is that of publishers and editors of cultural magazines and books**.** Their attempts to impose a more favourable tax system seem to be ruined just the moment it looked close to becoming true. The 0% VAT continues to be an unfulfilled wish.

Lacking serious funding sources, the Romanian cultural policy makers use, more and more often, extra-budget sources. In this domain the *Government Ordinance no. 51/1998* on the improvement of the financing system for the cultural projects and programmes brought some hope. However, what is also required is the implementation of a training program to respond the issue of how a cultural program is conceived; this requirement is demonstrated by numerous failures of the candidates to credits, especially to foreign ones. In this respect, there are new and promising initiatives, namely:

- The *Government Ordinance no. 102/1998* on the continuous professional training through the education system and, especially,
- The recent initiative of the Ministry of Culture to organise cultural management training programmes, through the Implementation Unit of the Phare Project (currently in development).

As promising as such initiatives may seem, we must not forget that they arrive rather late; many projects and programmes have been launched without having the necessary tools and skills to conduct them. And the results of such an approach can also be seen in the often mentioned "trap" in which the decentralisation of institutions and cultural activities in Romania seems to have fallen into. It is maybe the moment to notice the fact that too often the distinction between deconcentration (devolution) and decentralisation is ignored – an issue that would need a more thorough reflection from those responsible and proving responsibility.
What will happen to the cultural institutions most affected by the transition: the community cultural centres (*case de cultura & camine culturale*) or arts schools? What is the current role and place of the centres for the promotion of the popular and non-professional artistic creation? And, most of all, what is the responsibility of the local authorities who found themselves, all of a sudden, in charge of cultural institutions they are not interested in? The protection of the intangible heritage represents a problem as important as the protection of the more visible tangible heritage.

We have thus reached the issue of the very controversial place of the decentralised units of the Ministry of Culture, that seemed, after 1990, not to have been yet found. That is why a new regulation in the field is still expected to be issued by the central authority.

In this respect, one might notice that many laws adopted 3-4 years before require more or less radical changes. Certain critics argue that this situation is caused by the bad quality of adopted laws. I believe that, even if the Parliament undoubtedly adopted certain bad laws, the need for their change is not caused by their lack of quality but by the reality that changes faster and faster, forcing the society to a continuous adapting of the regulation framework. Unfortunately, the slowness of the legislative process brings to up to 4 or 5 years the lapse of time between the moment the legislative initiator (the Ministry of Culture, for instance) notices the need for a regulation and the moment it is effectively adopted. By the moment the law is validated, the reality has changed, requiring a different regulation; in order to face the situation, the ministry chooses the shortcut allowed by the Constitution and asks the Government to solicit the Parliament the empowerment to issue an ordinance that would modify the recently adopted law. Before the Parliament manages to end the debate for the legislative proposal on the approval of the government ordinance, the Government notes that a modification is again required, so they issue an emergency government ordinance to modify it. So that in the moment the law on the approval of the ordinance is sent to be promulgated, the act has already been modified by the emergency ordinance.

As stressed before, certain laws may prove to lack quality; but it is definitely clear that the legislative system is too slow and too heavy for a society such as the

Romanian one, under considerable pressure. Following the much used tradition of skipping certain steps, we are trying not only to repair the injustices of half a century dictatorship and of a hesitating passing to democracy, but also to adopt and implement a huge body of law, created by the far more effective European Union in the last two-three decades. We believe that these things should be thoroughly explained to both artists and creators (whom we often call 'culture people') and the culture's beneficiaries – the public. The continuous modification of laws is not, in itself, a sign of weakness or insecurity, but a sign of adapting to contemporary challenges. The times one could ask for a good and stable law 'once and for all' are gone.

One must notice, on the other hand, that the above-mentioned example is valid when the initiator of the law and the initiator of the successive government ordinances are one and the same ministry. If, however, the initiator of the law is the Ministry of Culture, and the initiator of the amending ordinance is, for instance, the Ministry of Finance, the result is, undoubtedly, incoherent.
Each ministry can be coherent with and within itself, but if the interests, means and initiatives of each of them become contradictory, then the whole ensemble turns incoherent. It is at this level that one can rightfully accuse the lack of co-ordination at the level of governmental departments and agencies.

We have thus reached the issue of the Romanian cultural policy/policies. The laws and, generally, the regulating or administrative acts represent the expression of a long term strategy, at a certain moment. Any government can change, when needed, laws or administrative acts, it can reorganise institutions or change the executives. But this policy needs to remain stable on a long term scale, it needs a direction to be maintained whatever government or minister may arise; that is why Romania's cultural policy needs to be made with the consent of as many representative personalities as possible, belonging to all political and cultural spectres in the country.

3.3 The Workings of the Legislative process in Romania[1]

Debates in Parliamentary Committees
Draft bills or legislative proposals are submitted for debate to the House of Deputies or to the Senate together with the advisory opinion of the Legislative Council. They are registered in the order of their presentation. After they have been received and registered, the standing bureau distributes them to the parliamentarians and sends them to the standing committees for examination in the substance and formulation of an advisory opinion.

After they have received the draft bills or legislative proposals, the parliamentarians may advance motivated amendments in writing which are transmitted to the Standing Bureau at least 6 days before the debate of the draft bill or Iegislative proposal in the plenary of the Chamber. The amendments are submitted to the examination of the competent committees, whose conclusions are added to the previously drawn up report.

At the request of the chairman of the parliamentary committee informed of the matter, the Legislative Council analyses and issues an advisory opinion on the amendments submitted to the debate of the committee and the draft bills or legislative proposals received by the committee after their adoption by one of the Chambers of Parliament.

The Standing Committee informed of the matter draws up a report including proposals with regard to the amendments resented, to the adoption or rejection of the draft bill or legislative proposal as well as to the advisory opinions communicated by the committees informed to this purpose.

The report drawn up by the committee informed of the matter is distributed by the Standing Bureau to members of the respective Chamber and to the Government.

The draft bills and legislative proposals for which the committee informed of the matter has drawn up a report are entered on the agenda of that Chamber. Before it is entered on the agenda, the author of the legislative initiative may withdraw it.

After approval of the agenda by that Chamber, the draft bills and legislative proposals are submitted to debate and adoption in the order in which they were entered on the agenda.

Debates in Plenary
The development of the legislative procedure in the plenary of the Chambers involves a general debate on the draft bill or of the legislative proposal and a debate by articles. The general debate is preceded by a presentation by the initiator or his representative, of the motives that have led to the promotion of the legislative initiative.

The initiator's intervention is followed by the presentation of the report of the standing committee informed of the matter. A rapporteur designated by the committee presents the report. After presentation of the report the president gives the floor to the parliamentarians in order of their names entered on the speakers' list. The initiator has the right to take the floor before the closing of the general debate.

[1] This material is reproduced from the website of the Romanian Chamber of Deputies: www.cdep.ro.

At the general debating stage of the legislative initiative amendments can be neither proposed, nor adopted. If the report of the standing committee informed of the matter proposes the rejection of the legislative proposal after closing the general debate, the president of that Chamber may put the matter to the vote.

After exhaustion of the general debate, the Chamber moves to the debate of the legislative initiative by articles, with the modifications proposed in the report of the standing committee informed of the matter.

In the discussion of each article, parliamentarians may take the floor to express their own opinion or that of the group to which they belong. The initiator also may take the floor. In the speeches only amendments can be suggested regarding clarity of expression and style or issues which do not affect the substance of the case and which are of lesser importance.

The discussion of the articles begins with the amendments. During the debates the parliamentarians or the Government may raise for discussion the amendments rejected by the committee informed of the matter or the amendments handed in to the committee, but not appearing in its report. By way of exception, new amendments may be handed over during the debates in plenary as well. Amendments must refer to the contents of a single article.

In case the amendment has important consequences on the draft bill or on the legislative proposal, it may be decided to send it for in advisory opinion to the competent committees. The initiator of the amendment has the right to be heard at the proceedings of the committee.

The discussion begins with the amendment proposing the elimination of some texts included in the article submitted to debate, and continues with those regarding their modification or supplementation. In case there are several amendments of the same kind, they are submitted to the vote in the order in which they were presented.

The Chamber decides by distinct vote on each amendment. At the request of the Government or on its own initiative, the Chamber may adopt draft bills or legislative proposals by an expeditious procedure established according to the standing orders of each Chamber.

Voting of the Draft Bill

At the closing of the debate by articles of each draft bill or of each legislative proposal the Chamber proceeds to their finial voting. Draft bills or proposals for the revision of the Constitution are adopted by a majority of at least two thirds of the number of members of each Chamber. Drafts of organic laws are passed by the vote of a majority of the members of each Chamber: Ordinary draft bills are passed by the vote of a majority of the members present in each Chamber.

If the draft bill or legislative proposal has been adopted it is signed by the president of the Chamber and sent for debate to the other Chamber of Parliament. A draft bill or legislative proposal adopted by one Chamber and rejected by the other is sent to the Chamber that has rejected it with a view to a new debate. A new rejection is final.

Mediation

If one of the Chambers has adopted a draft bill or legislative proposal in a wording different from that passed by the other Chamber, the presidents of the two Chambers initiate the procedure of mediation through the agency of a parity committee. The Mediation Committee would try to eliminate the texts on which there is division of opinion by drawing up a formulation acceptable to the two Chambers. The proposals of the Mediation Committee are entered in a report, which is submitted for debate and adoption to the two Chambers in separate sittings.

In case the Chambers adopt the Mediation Committee's report, the law is sent for promulgation. In case the Mediation Committee fails to reach an agreement with regard to the issues on which there is division of opinion, or if one of the Chambers does not approve the Mediation Committee's report as a whole or in part, the texts on which there is division of opinion are submitted for debate in a joint sitting of the two Chambers, according to the standing orders of these sitting.

Control of the Constitutionality of the Laws

The laws adopted are submitted to a preliminary control as to their constitutionality at the intimation of the President of Romania, of one of the presidents of the two Chambers of the Government, of the Supreme Court of justice or of a number of at least twenty-five senators, or at least fifty deputies. In order to exercise this right the law is handed to the secretaries general of the two Chambers, it is communicated to the interested parties, and, after passage of a term of five days, it is sent to the President of Romania for promulgation. Intimation of the Constitutional Court suspends the term for the promulgation of the law.

If the Constitutional Court has been informed and has declared the law unconstitutional as a whole or in part, the Constitution provides the release of the re-examination procedure. This procedure presupposes an examination of the objection of unconstitutionality first in the Juridical Committee, and there on the basis of the report of this committee, in the plenary of the Chamber, where the law declared unconstitutional is submitted to a single vote only. The objection of unconstitutionality of the Court is removed only in the case that both the House of Deputies and the Senate have adopted the law in the same form, with a majority of at least two thirds of the number of members of each Chamber. In case in one of the Chambers the two thirds majority is not obtained, the provisions declared unconstitutional by the Constitutional Court are removed from the law, and the necessary technical and legislative correlation’s are operated with the Chamber's approval; if the law as a whole is declared unconstitutional and the Chambers once more fail to accept it by at least two thirds majority, it will no longer be sent to the President of Romania for promulgation

Promulgation of the law

The laws adopted by the two Chambers of Parliament with identical texts are sent for promulgation to the President of Romania. The promulgation is made within 20 days at the most after its reception.

Before promulgation, the President may ask Parliament, once only, to re-examine the law within not more than 20 days after the law was received for promulgation.

If, after re-examining the law, both Chambers adopt or reject the objections of the President of Romania, the President is obliged to proceed to the promulgation within

10 days after the reception of the law adopted after re-examination. The same promulgation term operates also in the case in which the President of Romania has received the decision of the Constitutional Court by which the law is declared constitutional.

Coming into Force of the Law

The law comes into force on the day of its publication in the Monitorul Oficial (Official Gazette of Romania), or at the date provided in its text, which date may not be previous to the publication.

Part 4: Partnership in the legislative process: Romanian case studies

4.1. The Adoption of the Law on Sponsorship: Civil Society - Parliament - Government Partnership

by Virgil Stefan Nitulescu

Since its promulgation, the law on sponsorship (No. 32 of May 19, 1994) has been the favourite target for the attacks directed by the potential culture sponsorship recipients towards the system of supporting culture through financial means.

This discontentment had been accumulated at the level of the civil society throughout 1995 and 1996, as the National Alliance of the Creators' Unions in Romania - ANUC (in 1995) and the Forum of the Non-governmental Organisations (in 1996) organised several meetings aiming at modifying the law. Thus, with the support of the Centre for Assistance to Non-governmental Organisations (CENTRAS), a team of eight experts (representatives of the beneficiaries, sponsors, NGOs and jurists) produced a 27-article text of a potential draft bill on sponsorship and patronage. The draft was immediately approved by almost all parties involved, but it was not taken into consideration by the authorities.

The civil society succeeded in promoting only one representative in the Government following the 1996 elections, namely the Minister of Culture, supported by the Civic Alliance. He set as the third priority of the governmental programme "the establishment of a legal and institutional framework for financing culture". The most urgent issue envisaged was precisely the amending of the law on sponsorship, keeping in mind that the governmental reform programme was targeted towards a drastic cut of subsidies.

The central authorities started to work, but, due to divergent opinions between the Ministry of Culture and the Ministry of Youth and Sport, it was impossible to pass any draft bill through the Government during the first four months of administration. In this context, the civil society, supported by the members of Parliament, was once again the one that, in a short time, managed to rally and to come up with several legislative proposals aiming at amending the law. Thus, no less than five proposals were drafted, out of which two were submitted to the Standing Bureau of the Senate (initiators: Laurentiu Ulici and Nicolae Cerveni, respectively) and three went to the Standing Bureau of the Chamber of Deputies (initiators: a group of 25 senators and deputies, the deputies Florian Udrea, Aron Popa and Nicolae Popa, and the deputies Sorin Marinescu and Dorel Constantin Onaca, respectively).

Out of these five drafts, the only one that took over the whole text produced by the NGO experts in 1996, was the one initiated by the group of the 25 MPs, among which one could find prominent figures of the Romanian politics: Dan Lazarescu, Eugen Vasiliu, Emil Tocaci, Alexandru Popovici, Gabriel Tepelea, Adrian Iorgulescu, George Serban, Alexandru Sassu, Alexandru Badea, Mona Musca, Gheorghe Oana and Puiu Hasotti.

This legislative proposal on sponsorship and patronage received a favourable advisory opinion from the Legislative Council and the Judicial Committee. However, it came to be discussed by the committees informed on the matter (on culture, arts and mass-media, and on budget, finance and banks, respectively) only after the summer recess of 1997.

Meanwhile, on 8 July 1997, the Forum of the Non-governmental Organisations passed a resolution, expressing its hope that the Parliament would adopt as soon as possible the initiative of the 25 MPs in its original form.

In September 1997, after the parliamentary recess, the representatives of the civil society were expecting that the proposal of the 25 MPs be discussed with priority. It was obviously not a priority for the Committee on budget, finance and banks. All hopes were thus directed towards the Committee on culture, arts and mass media.

The first debate took place on 27 September 1997; Ioan Onisei, State Secretary in the Ministry of Culture and Iulia Raileanu, CENTRAS expert, were also invited to discussions. However, the Committee was forced to delay the debates, as it learned that it had not yet received the Government Point of view on the proposal - a compulsory document for all legislative initiatives with an impact on financial issues. Moreover, the deputies were informed that the Ministry of Culture started to work on a new draft aiming at amending the same law on sponsorship. The reason for which the Government wished to come up with its own project for modifying the Law 32 of 1994 remained - officially speaking - a mystery for the members of the Parliament, especially since the text used as the point of departure of this project was exactly the one produced by the group of experts.

The first thing to be noticed is the fact that the Government Point of view has never arrived to the Chamber of Deputies. The second one is that, following a rich documentation sent by CENTRAS, the general debates concerning the legislative proposal started only on 22 October 1997, with the hope that the Government Point of view would arrive in the meantime.

This delay led to reactions of concern from the civil society, which started consultations for establishing an action plan. As the delay for the debate by articles became chronic, the National Alliance of Non-governmental Organisations organised on 13 November 1997, at the American Cultural Centre, a meeting for 130 representatives of the almost 100 NGOs. The participants, supported by CENTRAS, decided to initiate a national lobbying campaign for the law on sponsorship and patronage. It is important to note that the meeting was attended by two presidential councillors and a councillor of the Prime-minister, as well as by the president of the Committee on budget, finance an banks. The participants set up a lobbying committee – co-ordinated by representatives of the *Pro Democratia* Association and of the Association for Human Rights Defence - Helsinki Committee (APADOR - CH), a PR committee and a development committee – co-ordinated by the representatives of CENTRAS and the Foundation for Civil Society Development (FDSC).

In October and November 1997, the Committee on culture, arts and mass-media was flooded by more than 150 almost identical letters, requesting a rapid start of the debates. The standard content of the letter was published in *Revista 3,* where it was taken over from by everyone concerned. The deputies (including those signing the legislative proposal) received phone calls, private letters and audiences, all with the same target: the rapid adoption of the legislative proposal, in its original form produced by the experts. Several press conferences and public debates were organised. On 3 December 1997, the Alliance had 297 members, all sharing the same opinion: " we need a new law, not some bungling stuff". Until January 1998, the Alliance reached over 425 members.

Meanwhile, on 11 December 1997, FDSC organised a round table on "Sponsorship and Patronage in Romania". Participants, including ministers and representatives of the business circles, discussed several ministerial alternatives for a legislative initiative aiming at amending the law on sponsorship. This text took finally the form of the Government Ordinance no. 36 of 1998 aimed at amending the Law no. 32 of 1994 on sponsorship. The main change consisted in the increase from 5 to 10%

of the deduction quota of the sponsor's tax base, with the equivalent amount of the sponsorship, for several fields, including culture.

At the end of the parliamentary recess, the draft bill concerning the approval of the Government Ordinance no. 36 came into debate of the standing committees of the Senate.

The civil society had diverging reactions. One part was content that the law had been finally amended; many provisions of the Ordinance had been taken over from the original text produced by the experts supported by CENTRAS. The other part was discontent with the fact that, following the approval of the Ordinance, all other legislative proposals concerning the modification of the law on sponsorship, including the one which took over the entire original form written by the experts, were rejected by the parliamentary committees and, later, by the two Chambers. Obviously, the majority of the civil society supported a text other than the one finally adopted by the Government, but, nevertheless, the campaign and public debate around this proposal were an excellent example of exercising the civic spirit.

It should be noticed however that, after the Senate had adopted, with amendments, the draft bill on approving the Ordinance no. 36 of 1998, the legislative process was blocked in the Chamber of Deputies. During the summer of 1998, the standing committees of the Chamber were once again requested by several organisations to modify the Ordinance. Following a stormy plenary debate, the draft bill was sent back to the Committee on budget, finance and banks. The Committee's report, entered on the agenda of the Chamber of Deputies on 28 October 1998, is still waiting to be discussed, together with other 485 legislative proposals and draft bills on the agenda.

Meanwhile, on 10 September 1999, at the initiative of the Ministry of Finance, the Government passed the Ordinance no. 127 aiming at establishing several fiscal measures to increase state revenues and improve their collection. This Ordinance considerably amends the Law no. 32 of 1994, this time against the sponsors, and implicitly against the recipients, as the percentage of the deduction in the tax base is cut down again to 5%. The draft bill on the approval of this Ordinance was first submitted to debate in the plenary of the Chamber of Deputies in October 1999. The debates were interrupted exactly at the article concerning the amendment of the Law on sponsorship, and - although the draft bill is still following an emergency procedure - they were resumed only on 20 June 2000, when it was decided to sent the draft bill back to the Committee on budget, finance and banks. It is worth mentioning that, this time, none of the standing committees of the Chamber of Deputies had received any protest or request whatsoever from the non-governmental organisations.

The time has probably come for the public debate to be re-opened. The reviewing of the draft bill for the approval of the Ordinance no. 127 of 1999 at the Committee on budget, finance and banks could become such an opportunity. Furthermore, the resuming of the debates in the Chamber of Deputies on the draft bill on approval of the Ordinance no. 36 of 1998 could be speeded up through lobbying around the members of the Standing Bureau of the Chambers of Deputies, those in charge with setting the priorities for the plenary debates.

4.2 The Law on Sponsorship

Law on sponsorship[2]

(No. 32 of May 19, 1994)

Art. 1. - Sponsorship is an activity which is run based on a contract concluded between a sponsor and a recipient, agreeing on the financial means and on the assets to be granted in aid as well as on the duration of sponsorship.

In case of sponsorship consisting of assets, the latter shall be valued through the sponsorship contract at their real value at the time they are handed over to the recipient.

Art. 2. - A sponsor can be any Romanian or foreign natural person or legal entity engaged in sponsorship according to the law.

Art. 3. - Romanian natural persons or legal entities shall not run sponsorship activities based on budget related sources.

Art. 4. - Any legal entity for public benefit seated in Romania which runs or will run humanitarian, philanthropic, cultural, artistic, educational, scientific, religious, sporting activities or activities aimed at human rights protection, civic education or environment protection can enjoy sponsorship.

Art. 5. - Sponsorship can be granted to :

a) any non-profit legal entity seated in Romania which runs or will run an activity that can be sponsored according to the provisions of Article 4;

b) any natural person domiciled in Romania or belonging to the Romanian spirituality whose constant activity in one of the areas specified under Article 4 is recognized by a non-profit legal entity which has been legally set up in Romania or abroad and which runs a constant activity in the domain the recommendation is made for.

Art. 6. - The sponsor or the recipient shall bring sponsorship to the public knowledge only through promoting its name, brand or image.

The name of sponsored newspapers, magazines, radio or television broadcasts shall be announced as such.

Through sponsorship, the recipient or the sponsor shall not run advertising activities prior to, concurrently with or subsequent to the sponsored activity in favour of the sponsor or of entities other than the recipient.

Art. 7. - The facilities provided for in this Law shall not be granted in case of:

a) mutual sponsorship between natural persons;

b) sponsorships by relatives or in-laws up to the fourth degree of kinship.

Art. 8. - The Romanian natural persons or legal entities involved in the sponsorship areas specified under Article 4 shall enjoy a reduction on the taxable base by the sponsorship equivalent but no more than 5% of the taxable income with the exception of incomes arising from salaries in the case of natural persons.

[2] Published in the Official Journal no. 129 of May 25, 1994

The foreign natural persons or legal entities that, according to the legislation in force, owe to the Romanian state a tax on income achieved in Romania, but that offer sponsorship in the areas specified under Article 4 shall enjoy a reduction on the taxable income representing the equivalent in lei of sponsorship, calculated at the exchange rate in force on payment day, but not higher than 5% of the taxable income.

Art. 9. - The recipients of sponsorship shall be relieved from VAT on the proceeds of sponsorship.

Art. 10. - The provisions of Articles 8 and 9 shall apply also to the sponsors involved in the maintenance of historical monuments and sites.

Art. 11. - The facilities provided for in this Law shall not apply to those sponsors that directly or indirectly aim at directing the recipient's activity.

The provisions under previous paragraph shall not deprive the parties of their right to conclude pledged legal transactions according to the law, provided that they are not aimed at directing or conditioning the overall activity of the recipient.

Art. 12. - The settlement of disputes arising from the granting or non granting of the facilities provided for in this Law shall fall within the competence of the general directorates of public finances and state financial control.

The complaints shall be lodged within 30 days since the award by the relevant body of the Finance Ministry has been notified.

In case the award has not been notified, a complaint shall be lodged 30 days after the application has been submitted.

By lodging a complaint the sponsor shall not be relieved of the obligation to pay taxes or customs duties to the state budget, or as the case may be, to the local budgets.

A stamp duty of 2% calculated on the value of the challenged amount but not lower than 1,000 lei shall be levied on the complaints lodged before the tax offices.

In case a complaint is allowed wholly or partially, the stamp duty shall be reimburesd wholly or proportionally to the challenged amount.

Art. 13. - Any dispute shall be settled through a well founded ruling of the general directorate of public finances and state financial control and shall be notified to the concerned parties.

Art. 14. - The party which is unhappy with the ruling can go to court within 15 days since the well founded ruling has been notified.

Art. 15. - With a view to settling a dispute, the simulation evidence can be brought even between the parties concerned through any legal evidence producing means.

Art. 16. - The Ministry of Finance will issue guidelines on law enforcement within 30 days since the coming into force of this Law7.

Art. 17. - The provisions under this Law shall come into force on the first day of the month following its publication in the Official Journal of Romania.

Art. 18. - Upon the coming into force of this Law any contrary provisions shall be repealed.

This Law has been adopted by the Chamber of Deputies and the Senate in plenary session on May 5, 1994 in compliance with the provisions under Article 74 paragraph (2) and Article 76 paragraph (2) under the Constitution of Romania.

Law on Sponsorship No. 32/1994 as amended and complemented by the Government Ordinance No. 36 of January 30, 1998

Art. 1. - (1) For the purpose of this Law sponsorship is the legal transaction through which two persons agree on transferring the ownership right over assets or financial means with a view to supporting non-lucrative activities run by one of the parties referred to as recipient of sponsorship.

(2) The existence and content of a sponsorship contract shall be proved by its written form stipulating the contract object, value, duration and the terms and conditions for the parties.

(3) For the purpose of this Law patronage is an act of liberality by which a natural person or a legal entity referred to as patron, transfers without any direct or indirect compensation duty its ownership right over assets and financial means to a natural person as a philanthropic activity of humanitarian nature to run activities in the cultural, artistic, medical and sanitary or fundamental and applied scientific research areas.

(4) The existence and content of a patronage act shall be proved by its authentic version stipulating its object, duration and value.

(5) In case of sponsorship or patronage consisting of assets, the latter shall be valued through the legal act concluded at their real value at the time they are handed over to the recipient.

Art. 2. - A sponsor can be any Romanian or foreign natural person or legal entity engaged in sponsorship according to the law.

Art. 3. - Romanian natural persons or legal entities shall not run sponsorship or patronage activities based on budget related sources.

Art. 4. - (1) Sponsorship can be received by:

a) any non-lucrative legal entity that runs or will run an activity in the cultural, artistic, educational, fundamental or applied scientific research, humanitarian, religious, philanthropic, sporting, human rights, medical and sanitary, social assistance and services, environment protection, social and community, professional representation areas as well as in areas dealing with the maintenance, restoration, preservation and value enhancing of historical monuments;

b) the public institutions and authorities, the relevant bodies of the public administration for the activities specified under subparagraph a);

c) television or radio programmes as well as books and publications in the areas specified under subparagraph a) of this Law;

d) any natural person whose activity is one of the areas specified under subparagraph a) is recognized by a non-lucrative legal entity or by a public institution constantly involved in the area the sponsorship is requested for.

(2) Any natural person without having to be recognized by a non-lucrative legal entity or public institution which requires support in the areas specified under Article 1(3)2 can be recipient of patronage.

Art.5. - (1) The sponsor or the recipient shall have the right to bring sponsorship to the public knowledge by promoting the sponsor's name, brand or image.

(2) The sponsor or the recipient shall bring sponsorship to the public knowledge in a way so as not to directly or indirectly endanger the sponsored activity, morals or the public order.

(3) The denomination of publications as well as the titles of books, radio and television programmes enjoying sponsorship shall be announced as such.

(4) Announcements shall be worded so as to clearly highlight sponsorship and shall be brought to the public knowledge free of charge by the recipient of sponsorship.

(5) The sponsor, the patron or the recipient shall not engage in prior, concurrent or subsequent advertising in their own favour or in favour of other persons within the framework of sponsorship or patronage activities.

Art. 6. - The facilities provided for in this Law shall not be granted in case of:

(a) mutual sponsorship between natural persons or legal entities;

(b) sponsorship to a non-lucrative legal entity by a legal entity directly supervising or controlling the sponsored legal entity.

Art. 7. - The provisions of Article 6 shall also apply to the natural persons and legal entities performing acts of patronage.

Art. 8. - (1) The Romanian natural persons or legal entities involved in sponsorship in the areas specified under Article 4 shall enjoy a reduction on their taxable base by the sponsorship value but not more than:

a) 10% of the taxable base for sponsorship in the following areas: culture, arts, education, health, social assistance and services, humanitarian activities, environment protection;

b) 8% of the taxable base for sponsorship in the following areas: education, human rights, fundamental and applied science and research, philanthropy, maintenance, preservation and value enhancement of historical monuments, sports with the exception of soccer.

c) 5% of the taxable base for sponsorship in religious, social and community areas, in the representation of the interests of professional associations, in soccer.

(2) The Romanian natural persons or legal entities involved in acts of patronage in accordance with this Law shall enjoy a reduction on their taxable base by their equivalent value but not higher than 10% of the taxable base.

(3) The overall reductions on the taxable base for sponsorship performed according to paragraph (1) to which those arising from patronage acts are added shall not exceed 10% of the revenue or of the taxable profit as the case may be.

(4) The foreign natural persons or local entities that according to the legislation in force owe a tax to the Romanian state for a revenue made in Romania and which perform acts of sponsorship or patronage shall also enjoy a reduction on the taxable base by the equivalent in lei of sponsorship or patronage calculated at the day's exchange rate in force upon ownership transfer according to the same quotas applied to the Romanian natural persons or legal entities according to the previous paragraphs.

Art. 9. - (1) The sums arising from sponsorship or patronage shall be income tax free.

(2) The above provision shall apply also to the assets received through sponsorship or patronage according to this Law."

Art. 10. – (1) The facilities provided for in this Law shall not apply to those sponsors that directly or indirectly aim at directing the recipient's activity.

(2) The provisions under paragraph (1) shall not deprive the parties of their right to conclude pledged legal transactions according to the law, provided that they are not aimed at directing or conditioning the recipient's activity.

Art. 11. - Disputes over the granting or nongranting of the facilities provided for under this Law shall be settled according to the provisions under Law No.105/1997 concerning the settlement of objections, disputes and complaints over the sums assessed and enforced through the control or tax bodies of the Ministry of Finance.

Art. 12. – Within 30 days since the entry into force of this Ordinance, the Ministry of Youth and Sports, the Ministry of Culture, the Ministry of Research and Technology, the Ministry of Health, the Ministry of Waters, Forests and Environment Protection, the Ministry of National Education will issue guidelines for its enforcement to be given an opinion by the Ministry of Finance.

Art. 13. - The provisions under this Ordinance shall come into force on the first day of the month following its publication in the Official Journal of Romania. Upon the coming into force of this Ordinance any contrary provisions shall be repealed.

The Emergency Ordinance No. 127 of September 10, 1999[3] aimed establishing several fiscal measures to increase state revenues and improve their collection amended again the Law on sponsorship, respectively the following paragraphs of Article 8:

Art. 8. - (1) The Romanian natural persons or legal entities involved in sponsorship in the areas specified under Article 4 shall enjoy a reduction on their taxable base by the sponsorship equivalent *but not more than 5% of the taxable base.*

(2) The Romanian natural persons or legal entities involved in acts of patronage in accordance with this Law shall enjoy a reduction on the taxable base by their equivalent value *but not higher than 5% of the taxable base.*

(3) The overall reductions on the taxable base for sponsorship performed according to paragraph (1) to which those arising from patronage acts are added *shall not exceed 5% of the revenue or of the taxable profit as the case may be.*

(4) The foreign natural persons or local entities that according to the legislation in force owe a tax to the Romanian state for a revenue made in Romania and which perform acts of sponsorship or patronage shall also enjoy a reduction on the taxable base by the equivalent in lei of sponsorship or patronage calculated at the day's exchange rate in force upon ownership transfer according to the same quotas applied to the Romanian natural persons or legal entities according to the previous paragraphs.

[3] Published in the Official Journal no. 455 of September 20, 1999

4.3 The Status of the Artist in Romania

by Delia Mucica

Why a case study on this topic?

A simple answer would be that it is difficult to conceive a cultural policy designed and implemented without the involvement of creators (authors and artists); on the other hand, the status granted to them is decisive for the feasibility of such a policy. lt seems all the more important to generate a debate concerning the status of the artist[4] in a country like Romania, a country still in transition, still in a period of redesigning and implementing new economic, fiscal and social policies, as well as educational and cultural policies.

On the other hand, the emergence of freelancers is quite a new phenomenon in Romania and, thus, the social security for freelancers and especially for artists, neither has yet received special attention from the authorities, nor has it been subject to a special law - which is likely to slow down the development of this sector.

Nonetheless, the development of the freelance sector is an important element in the whole concept of 'desétatisation' and privatisation of cultural activities and institutions, as it is an alternative to the present system of artists - civil servants.
Any effort aimed at the restructuring and development of the public cultural institutions must take into account not only the opportunities for professional reconversion of employees, but also the actual ability of granting a coherent social, professional and economic status for those artists opting to turn freelance.

Therefore, it can be said that any cultural policy must acknowledge the need for regulating the status of the freelancers in the field of culture, as an important element of the overall strategies.

This is why we consider that this is a matter of interest for politicians and public authorities, as well as for civil society.

Several guide marks to begin with:

- 1961, Rome, The Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations
- 1977, Paris, La condition de l'artiste. Résumé des reponses á UN questionnaire élaboré conjointment par Ie BIT et I'UNESCO sur la condition économique, sociale, professionelle et morale de l'artiste. Note du Bureau International du Travail;
- 1980, Belgrade, Recommendation sur la condition de l'artiste, adoptée lors de la 37eme séance plénière de I'UNESCO;

[4] In this paper, as well as in the UNESCO Recommendation, "artist" is taken to mean any person who creates or gives creative expression to, or recreates works of art who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognised as an artist whether or not he is bound by any relations of employment or association.

- 1991, Geneva, La condition de l'artiste, de A. Nayer and S. Capiau, Bureau International du Travail - Programme des activités sectorielles, service des employés et travailleurs intellectuels (document du travail);
- 1992, Geneve, Reunion tripartite (gouvernements, employeurs, travailleurs) dans Ie cadre de l'OIT sur les conditions d'emploi et de travail des artists interprètes;
- 1997, Paris, UNESCO World Congress on the Implementation of the Recommendation Concerning the Status of the Artist.

As one can see, the status of the artist, understood as his "place" and "role" in society has been the subject of many specialised meetings and papers.

The **UNESCO Recommendation of 1980** starts by reaffirming the fundamental right of freedom of expression and access to information, including artistic creation and then defines the guiding principles and fields of action - legislative, economic, fiscal, social and educational - to be undertaken by each state.

What has been done in Romania for the implementation of the UIVESCO recommendations?

This recommendation, as well as the declaration adopted at the 1997 Pan's World Congress, was included in the Governmental Programme of 1996, in the form of a provision concerning "the adoption of the legal status of the author and the artist".
A honourable initiative indeed, but one which did not take into account that the issues included in the UNESCO documents were in fact subject to various laws applying to different fields (from fiscal legislation, through work and education legislation, to pension and social security systems). Thus, a single law regulating such a vast field was impossible to draft.

1. The status of the Authors and Performers in Romania. Common Declaration.

Together with the most important professional organisations of authors and performing artists, the Ministry of Culture succeeded in November 1998 in agreeing upon a programmatic document[5]. The document contains, besides general provisions and principles, a medium-term action plan, in which the most important UNESCO recommendations were adjusted for the specific Romanian conditions.

This Common Declaration was considered by its signatories as a first step in raising the awareness of the public authorities on the specific problems the artists were facing. Due to their complexity, these problems needed a sector by sector approach, by introducing special provisions in different laws, applying to various fields.

However, the demands of an economy still "in transition", together with the low interest in regulating these specific sectors issues, concerning a small group of the population, were the main reasons for which in most of the laws passed in that time, the artists were mentioned either as public employees or as freelancers - a category still ambiguously defined.

2. The present legal framework applying to authors and artists

[5] 'The document entitled *The Status of the Authors and Performers in Romania. Common Declaration* was signed at the conclusion of the Annual Meeting of the National Alliance of the Creators' Unions in Romania, Bucharest, 27-28 November 1998.

2. 1. The intellectual property rights of the artists

The first and most important step after 1990 has been the adoption in 1996 of the law on copyright and neighbouring rights, a law that defines, among other things, the legal category of owners of neighbouring rights, stipulates as an offence or a misdemeanour any violation of copyright and neighbouring rights, institutes the principle of free negotiations of the remuneration due to rights owners, and offers a new view of the collective copyright and neighbouring rights societies.

2.2. Artistic education

The law on national education, passed in the mid-90s, establishes a set of harmonised norms for the whole education system, including artistic education. Thus, the law does not recognise or grant the specificity of artistic education.

2.3. The social status

If the freedom of expression, the abolishing of censorship, the access to information culture or the trade union rights are an acquis of the last decade, the respect for the artistic work, the public recognition of the creative work and the attached economic rights are not yet recognised. As stated above, the perpetuation of the "civil servant" status for most of the artists is not leading to the development of the sector of freelancers.

2.4. Social security

As a rule, social security systems have started with regulations protecting workers against accidents in the workplace. As the social and work relations had been diversifying, the area of concern for social security policies expanded. There are three components of this area:

- categories of persons benefiting from social security;
- the covered social risks;
- the actual mechanisms of social security.

The social security systems have developed their mechanisms of protection, from the workers to all active persons, and then to all members of society. In the same way, the coverage of the social risks had expanded, from the insurance of the workforce against events impeding its activity, to guaranteeing a certain economic security to all members of society. In specialised literature, mechanisms for protection are taken to mean the various kinds of social allowances, aimed at eliminating not the risks, but their social and economic consequences. These kinds of allowances can be either in money (unemployment aid, pension etc) or allowances in kind (e.g. medical care[6]). By paying the social security contribution and thus by participating to the establishment of these funds, the employers and employees insure themselves in advance against the social risks (the temporary or definitive loss of the working capability, the job loss etc.).

In Romania, during the communist regime, the social security system was based on the general rule that its sole beneficiaries were the employees, as they were the ones contributing to the fund. There had been however several exceptions from this rule. Regarding our area of interest, it suffices to recall that every Creators' Union (Guild) was running a mutual social

[6] The classical approach to social security involves the payment by the employees and employers of some amounts, covering the provided services, that compensate for the salary and job loss. Several systems and alternatives were used throughout the decades, from the establishing of "mutual funds", managed by the contributors themselves, to the nationalisation of the social security management system. The most frequently used formula was the one of the "nationalisation", which could consist either in exerting the state control over the management, or in the direct state involvement in managing the fund.

security fund, which only its members had access to. These funds were supplied by contributions made by the Union members. After 1990, the spectacular increase in the inflation rate, together with a certain lack of economic and managerial vision, led to a drain of resources and to the collapse of these funds.

This was the reason for which, starting from 1992, the artists' request was legally accepted concerning the inclusion of their pensions into the public social security system[7]

As we are currently passing through a transition period, also from a social security point of view, the establishment of a coherent well balanced and equitable system is still in its making. The first step towards reforming the social security system was the Law no. 1 of 1991, regulating unemployment aid.

The social health insurance system is compulsory and is working in a decentralised way, based on the principles of solidarity and subsidiarity in collecting and using the funds, and on the right of free choice of the doctor, of the medical centre and the health insurance institution. Other forms of health insurance could also function, covering individual risks in special occasions. Private health insurance companies can be established. These kinds of insurance are not compulsory. The health insurance funds are being established out of the contributions of the insured, of the natural and legal employers, of state subsidies, as well as out of other sources. The persons not being employed obtain the capacity of insured from the first day of payment of the contribution, and keep this capacity under the law.

They have the right to medical care, medicines and medical supplies. The public pension system is regulated by the law no. 19 of 2000. Under this law, the right to social security is guaranteed by the state and it can be exercised, through the public system of pension and other social security rights - the public system[8].

Under the law, the public system provides for compulsory insurance to:
- the persons performing activities on the basis of an individual employment contract;
- the persons earning a gross income over the year, amounting to at least three average gross salaries, and who find themselves in one of the following situations: sole associate,

[7] The provisions of all these bills are practically identical in regards to the way of computing the social security contribution and the pension. As a rule, the social security contribution must be computed as against revenues derived by the authors from their activity, and these cannot be less than the minimum gross salary in the economy. For a period up to five years from entering into force of each of these bills, the computing base for the pension is represented by the income for the months in which the contribution was paid, and, for the rest of the five-year period, the minimum gross salary.

[8] The public system works according to the following guiding principles: a) the principle of unicity, according to which the state organises and guarantees the public system based on the same legal provisions; b) the principle of equality, which insures to all participants to the public system, contributors and beneficiaries, equal treatment as to the rights and obligations provided for in the law; c) the principle of social solidarity, according to which participants in the public system mutually assume obligations and enjoy rights with regards to the prevention, limitation or removing of the social risks under the law; d) the principle of obligation, stating that under the law, the natural and legal persons have the obligation to participate to the public system, the rights thus enjoyed being in relation to the obligations performed; e) the principle of contributing, according to which the social security funds are based on the contributions paid by natural and legal persons participating to the public system, which also determines the rights to social security granted; f) the principle of repartition, providing that the funds resulting from the contributions to the system will be distributed to the payment of all obligations of the public system, under the law in force; g) the principle of autonomy, based on the autonomous administration of the public system, according to the provisions of the law in force.

associates, sleeping partners and shareholders; administrators or managers working under an administration or management contract; members of a family association;
- the persons authorised to perform independent activities;
- the persons performing activities exclusively on the basis of civil conventions for service provision, and who eam an yearly gross income equal to at least three average gross salaries.

Under the law no. 19 of 2000, any other person not stated above can enjoy the social security of the public system on the basis of an insurance contract. Any person providing services on the basis of a civil convention can conclude a contract of social security directly with the general directorates of labour and social security. The computing base for the social security rights and obligations is determined and stated in the social security contract, having as a minimum the minimum national gross income.

The status of employee automatically gives the natural person the right to enjoy social services. This right is related to the obligation to contribute to the supplementary pension fund and to the unemployment benefit fund. On the other hand, every employer has the obligation to contribute to the establishment of the social security contribution fund, as well as of the supplementary pension fund and the fund for the unemployment benefit.

The contribution to the social security fund is set according to the law, as against the gross earnings included in the salaries[9]. The contribution to these funds grants to the employee the following main indemnification:
- the payment of the indemnification for temporary working inability, in case of working accident or professional illness;
- free medical assistance;
- pension for age limit;
- infirmity pension;
- unemployment benefit.

Besides the working relations established on the basis of an individual contract of employment artists can also perform their activity either as freelancers (natural persons authorised to perform a certain activity), or through a contract concluded under the law no. 8 of 1996, with entities which use or exploit their artistic performances. The Romanian legislation regulates the social insurance mechanisms for freelancers, by assimilating it with the ones established for employees, provided that such a clause is include in a written contract.

The status of freelancer is an ambiguous one, not enough regulated in our legislation. After 1990, the first regulation in this respect was the decree no. 54 of 1990, on performing economic activities based on free initiative. This regulation does not set any conditions and does not go into details concerning the categories of persons or activities, which might benefit from these provisions.

[9] In these earnings there are included: 1. the base salary; 2. the additional earning due to seniority; 3. the additional earning for difficult working environment; 4. the additional earning for systematically working after hours; 5. the additional earning for the performance of an additional task; 6. the premiums paid to the employees; 7. other additional earnings gained on a regular basis and provided for in the contract employment.

According to the law on health insurance (no. 145 of 1997), the "freelancer" is taken to mean "a person who derives income from activities based on free initiative, from copyright, including neighbouring rights, from licensing, hiring, as well as from capitalising such rights obtained by inheritance".

As far as the contribution to the health insurance system is concerned, it consists of a quota of 5% born on the taxable income of the freelancers.

2.5. Taxation

The system of taxing the global revenues earned by natural persons was implemented in Romania under the government ordinance no. 73 of 1999 Under this Ordinance, "the revenues derived from independent activities" are taken to mean the commercial revenues, revenues from the professions and revenues from capitalising under any form the rights of intellectual property, derived individually or 1 and in any form of association, including neighbouring activities.

Before the start of the fiscal year, the taxpayer can opt for one of the two taxation systems agreed by the legislator for this income category:

A. the deduction of certain expenses out of the taxable gross revenue, as against documents in proof,
B. the deduction, out of the gross revenue, of a lump quota of expenses, set by the legislator at 25%, for which there is no need for documents in proof.

This new taxation system came into force on 1 January 2000 and replaced the old one, according to which the revenues derived from the copyright and neighbouring rights were taxed after the deduction of a lump quota of expenses, varying between 50% and 20%, in accordance to the types of the artistic creations.

2.6. Trade Unions

The organisation of trade unions is regulated by the law no. 54 of 1991. As far as the freelancers and artists are concerned, the legislator provided for the possibility of them getting organised in a trade union. However, the legislator focuses on the organisation of trade unions by employees, that is by persons having concluded individual labour contracts with the employers.

Unfortunately, so far in Romania there has not been established any powerful tirade union consisting exclusively of freelancers, which could promote and protect the specific rights of this professional category.

lt must be however acknowledged that the trade unions established by artists employed in public cultural institutions have become ever stronger. Thus, nowadays, these trade unions are a real partner for social dialogue with the public authorities, and especially with the Ministry of Culture. lt must be noted in this context the closing of the negotiations and the signing, in 1999, of the first collective labour agreement at the level of the cultural sector.

2.7. Involvement in designing the cultural policies - the artists - Ministry of Culture partnership

The reorganisation of the Ministry of Culture in 1998 allowed for reaffirming the fundamental guiding principles for its activity, among which the support for the modern creation and the respect for the independence of creators and for the freedom of creation.

No Romanian law provides for the involvement of the artists, within the framework of consultative committees of the Ministry, in the designing of cultural policies and of specific sectors strategies, in the evaluation and selection of the cultural programmes and projects financially supported by the Ministry (the only exceptions being the National Committee for Historical Monuments and the National Committee for Museums and Collections). This form of partnership is established by administrative provisions (orders of the minister) concerning the setting up of committees of specialists in various fields (financial support for written culture, acquisitions of book for public libraries, of fine art and monumental and financial support for most of the areas of performing arts).

4.4 The Common Declaration of the Status of Authors and Performers in Romania

Please contact info@policiesforculture.org for a copy of this declaration

Part 5: Policy planning as the first step towards creating new cultural policies

Some background notes on the European policy-making models to be discussed at the conference

The following short descriptions serve to provide a very basic background to some of the structures and systems behind the cultural policy making of the four European countries to be discussed at the workshop.

They are not in any way intended to be exhaustive, nor do they provide a comparative analysis of different systems.

Each country will be discussed in depth in the working groups by experts from the field.

5.1 The Service Centre for International Cultural Activities (NL)

Dutch artists and cultural organisations are becoming increasingly involved in cultural activities throughout the world. The Service Centre for International Cultural Activities (SICA) was set up in January 1999 to promote the exchange of information and documentation between the different cultural sectors, to improve co-ordination, and to encourage a lively interchange of expertise and experience within the field of international culture. Starting in 2000 the SICA will also perform as Cultural Contact Point for the Netherlands.

The organisation of international cultural activities in the Netherlands usually runs smoothly without external assistance, sometimes supported by subsidy funds and cultural institutes. But there is scarcely any exchange of information and expertise between the various sectors and disciplines. For instance, the international expertise that exists in the area of pop music and dance is rarely utilised for other types of music, the visual arts or architecture. And different Dutch cultural organisations are often involved in the same events and festivals in other countries, without being aware of this in advance. This results in a great deal of duplicated effort in such areas as organising transport, visas and technicians, and applying for permits.

The SICA has been appointed by the Dutch Ministry of Education, Culture and Science, and the European Commission as the official Cultural Contact Point for the Netherlands (CCP) for 2000, with the specific remit to encourage and assist individuals and organisations in the arts and heritage to make applications to Culture 2000.

The Dutch Ministry of Education, Culture and Science, following the recommendations of the Council for Culture, has made basic funding available for the SICA.

The Service Centre for International Cultural Activities (SICA) is an independent service organisation in the area of international intersectoral cultural activities, and provides information and documentation relating to these activities (projects, events) in the Netherlands and abroad. The SICA promotes the exchange of experience and expertise in the field of international interdisciplinary and intersectoral projects and events, and serves as an information centre - and co-ordination point when requested - for organisations with an international orientation looking for contacts and networks in other sectors in the Netherlands and world-wide. The SICA also functions as an information centre for organisations from abroad looking for contacts in the Netherlands. These organisations are referred to existing cultural funds and institutes, and given advice about any potential difficulties.

The SICA publishes a quarterly magazine, SICAmag, (in Dutch) with background articles about international projects and events. lt also includes a calendar of events, *Buitengaats*, giving information about performances and exhibitions of Dutch artists abroad. SICAmag is a free service of SICA.

The SICA has its own website where individual artists and organisations will be able to search for information and connect to other internationally relevant websites. (WWW.sicasica.nl). Some information is in English. In 2000 an English version will be available.

The SICA has set up a European Cultural Contact Point (CCP), with the specific remit of encouraging and assisting individuals and organisations in the area of arts and heritage to make successful applications to the EU programmes, Culture 2000. www.sicasica.nl/CCP

The Executive Committee of SICA: chairman Hans van Beers (Board of Management of the Netherlands Broadcasting Foundation - NOS), secretary Han Bakker (head of drama and culture with a Dutch public broadcasting association - VARA), Hans de Wit (management consultant with the University of Amsterdam), Kathinka Dittrich (former director of the Goethe Institute, Amsterdam, now responsible for events in North Rhine/Westphalia), Karel Schampers (curator of Boijmans Van Beuningen Museum), Jan Smeets (director of Pink Pop Festival) and temporary external consultants Jaap Lampe (commercial manager of IJsbreker) and Rob Boonzajer Flaes (consultant with QRA).

The Board of SICA is currently made up of the Mondriaan Foundation, the Netherlands Foundation for Fine Arts, Design and Architecture, the Performing Arts Fund, the Dutch Film Fund, the Foundation for the Promotion and Translation of Dutch Literature, Donemus, Gaudeamus, the Dutch Rock & Pop Institute, the Netherlands Photography Institute, the Netherlands Theatre Institute and the Netherlands Architecture Institute. lt is anticipated that more members will be added to the Board in the future.

For more information please contact lnez Boogaarts, 020 - 5200510

5.2 The Finnish Arm's Length Cultural Policy Model

(Taken from: Cultural Policies in Europe: a compendium of basic facts and trends; ERICarts)

Historically, the main instruments of Finnish cultural policy are public ownership and joint financial responsibility of the state and municipalities. The second half of the 1990s brought a tendency towards withdrawal of the state from the cultural sector and towards new forms of partnership.

The Cultural Policy Line

The main executive power in Finland is in the hands of the **Council of State** that initiates new legislation and proctors the central government administration. There are no advisory bodies on cultural policy on this top administrative level.

The main executive responsibility for culture lies in the hands of the **Ministry of Education and Culture** through its second minister, the Minister of Culture. He is also responsible for youth and sports affairs.

Recent organisational changes have integrated all these three sectors into a 'cultural policy line' and the administration has been organised accordingly. Recent changes to the subsidy structure of museums, orchestras and theatres into statutory ones (like those to public libraries and adult education) and other administrative reforms have decreased the bureaucratic work of the Ministry, thus enabling it to **concentrate more and more on strategic planning**. The National Board of Antiquities is responsible for the heritage sector and museums and the Finnish Film Foundation for support to film production and distribution.

Cultural policy making is centered around the Ministry of Education and Culture but it has links to the Ministry of Industry (e.g. SMEs in the cultural sector), to the Ministry of Transportation and Communications (e.g. concerning the media, communication and information technologies), to the Ministry of Justice (copyright and other intellectual and property rights issues) and to the Ministry of Labour (public works, construction projects and employment policies).

The **Ministry of Finance** gives the direction for economic planning of all ministries and drafts the annual budget proposals for the Parliament, which has the final budgetary power. In this process, parliamentary committees play a major role. The **Committee of Education and Culture** deals with cultural policy issues, but the **sub-committee on culture of the powerful Committee of Finance** proposes the financial limits for budget allocations and legislative reforms. Earlier special bottom line allocations by Parliament to cultural projects had an impact on cultural policies, now these allocations have scarcely any importance at all. Finland has an extensive system of local self-government, where the municipalities have their own taxation right. The state (central government) has the task of levelling all inequalities in cultural provision through statutory subsidies.

Finnish public administration revolves around two poles, the state and the municipalities. There is no autonomous regional administration with elected bodies. Provincial councils are extensions of the central government; their number has been recently decreased from 11 to five and many of the functions have been transferred to more specialised regional agencies run by the state. At the same time regional councils (19), which are associations of municipalities, have gained a greater role in regional development and planning, because they have been given the responsibility of planning and monitoring programmes financed within the framework of the EU programmes.

Cultural policy decision-making at the municipal level is basically in the hands of the **Municipal Council** (elected assembly), the Executive Board (reflecting the party divisions in the Council) and the executive staff, headed by the mayor.

The **Arts Council of Finland** is made up of the Central Arts Council and the nine art form councils.The Council functions as an arm's length body and has the main task of administering the system of grants to artists.

The National Cultural Policy Model
The Finnish cultural policy model is first and foremost an **arm's length** model where a number of expert bodies give advice to the Ministry. These bodies have some independent decision making power. The Finnish arm's length model is of a very corporate character, professional associations and trade unions of artists playing an important role in the formulation and implementation of policies concerning artists as well as in determining project funding.
Finnish cultural policy has traditionally been educational - a kind of **enlightenment policy model**. In this model socio-cultural activity, a network of public libraries and centres of adult education play a very important part in educating citizens and promoting access to the world of learning and literature.

State and municipalities share financial responsibility. The state takes care of the national institutions, but it also co-operates with municipalities in providing financing for the widest possible access to art and cultural services for the population as a whole. This is done through the system of statutory subsidies which guarantee basic financing for public libraries, adult education, museums, theatres and orchestras in municipalities. The recent inclusion of general arts education into this statutory state subsidy system provides an important additional dimension to this joint responsibility. The same state subsidy system has been extended to cover special museums, group theatres, and additional financing of institutions with regional functions.

The Finnish model has three unique features. The first feature is the **reliance on public ownership** and public budgets and, especially, on **legislation**, which has made public allocations for the arts and culture statutory.
The second feature has been the central role of **earmarked funds**, that is the profits from the 'Veikkaus Oy', the state owned company of lottery, lotto and sports betting, in financing the arts and cultural life – together with sports, youth work and science. During the recent recession these discretionary funds were used to finance the statutory state subsidy system and therefore, less funds for projects. It also seems that foreign lottery and betting companies, especially the ones using the Internet as their communication medium will soon be cutting some of the profits of 'Veikkaus Oy' - to what extent and with what consequences is yet to be seen.
Thirdly, the Finnish model has never solved the role of the regions in cultural policy making. The Arts Council system was extended at the very beginning to the regions by creating the system of regional arts councils (11), but they remained a part of the state administration (the Ministry of Education and Culture and the Provincial Councils). Within the system of cultural institutions financed jointly by the state and the municipalities, some have received the status of regional institutions (regional historical and art museums, regional theatres).

Decentralisation versus centralisation
There has been a definite drift towards decentralisation and 'desétatisation' in Finnish cultural policy. This is reflected in the liberalisation of the statutory state subsidy system to municipalities and cultural institutions; in the performance contracts and in the introduction of net budgeting within the state budget framework. If we look at the issue from the point of view of enhanced democracy, probably a more important trend is linked to the Finnish membership in the EU and the financing of regional and local projects from the programmes of Structural Funds of the EU. On an administrative level this development has enhanced the role of regional councils (that are actually associations of municipalities) and it has released cultural energy at the local level in the form of projects and new initiatives. It has also created leeway for autonomous regional and local initiatives across the border with adjacent regions and localities.

Legislation: The basic principle of policy implementation
Finnish politicians and civil servants still often repeat an old adage inherited from the period of Swedish rule*: "land skall med lag byggas"* (the nation should be built by laws). This, of course, refers first and foremost to constitutional order, but it is also the basic principle of policy implementation. Even the reforms, which characterised the construction of the Finnish welfare state were legislatively enshrined, and the easiest way to identify the principal elements of Finnish cultural policy is to examine the corpus of laws and statutes pertaining to the cultural sector.

The laws and statutes define the role of the Ministry of Education and Culture and its regulatory, advisory and arm's length bodies (especially the Arts Council of Finland) in policy planning and implementation and the tasks and responsibilities of those national cultural institutions, which are organised and financed as state agencies.
The laws and statutes define the responsibility of the state to subsidise art institutions (orchestras, theatres) and cultural service organisation (museums, libraries, adult education centres, music schools, and art education), and non-institutional activities. Besides the so-called national institutions, these networks and activities are, as a rule, organised, maintained and financed by the municipalities.

Legal frameworks for artists
There is no specific legal framework for artists. However, the promotion of the Arts Act (1967) introduced a statutory system of state grants to artists. Within this system, 112 one-year grants, 41 three-year grants and 22 five-year grants are annually awarded to artists. This system also includes posts of eleven arts professors granted to outstanding artists by the President of Finland.

Social security/labour relations
As one can imagine, there are laws and statutes which define the **responsibility of the state to support the arts and artists** (the system of artists' grants and compensations, legislation pertaining to the pensions of freelance artists as a part of the wage earners pension system), including a special artists' pension system operated by the Ministry of Finance and the Ministry of Education. Labour agreements in the institutions of performing arts (theatres, orchestras) have their own unique features within the Finnish system of collective bargaining, but they are becoming increasingly flexible.
Taxes
Artists as wage earners are subject to regular income tax stipulation, artists as entrepreneurs are subject to company taxation (income, VAT etc.), artists being taxed as professionals

(authors, visual artists) have special rights for tax deductions and also the right to spread their income over several years (income averaging).

Cultural institutions and new partnerships
Within the public sector there has been a definitive trend towards desétatisation. Foundations and the business sector play a greater role in funding the arts, but this is not due to the re-allocation of responsibilities or policy measures, but due to the stagnation or decrease of public funding. Institutions have to look for extra funding, and individual artists must seek alternative funding possibilities for their projects.

As indicated above funding of cultural institutions takes the lion's share of the government spending on the arts and culture. These institutions again are forced to look for new partnerships with the private sector to cover their increasing costs. The National Opera and the Museum of Modern Art, for example, have made interesting new sponsorship agreements with the private sector. Foundations are becoming more important players in funding individual artists and their projects, and their grants are becoming as important to artists as those granted by the Arts Council of Finland.

The development of *non-profit organisations and non-governmental organisations*, including endowments and foundations, took place in Finland in much more difficult circumstances than in other countries of Central and Eastern Europe. The main reason was the war, which has considerably reduced the interest on the part of foreign foundations as well as public bodies to invest in this sector in Finland. Today, such organisations amount to about 60 in the cultural sector. For the most part, they include drama and dance groups, fine arts workshops, societies for the renovation of cultural heritage, or societies for the preservation of traditional cultures.
A working group nominated by the Ministry of Finance and the Ministry of Education and Culture is creating a code of conduct for private sponsorship of the arts and for public-private partnerships in the cultural field.

5.3 The Cultural Policy Cycle in The Netherlands

In The Netherlands, culture is regarded as a separate sector of government involvement. There is a State Secretary for Culture, who works independently, but in close relationship with the State Secretary for Education and under the auspices of the Minister of Education, Culture and Science.
Cultural policy in the Netherlands is based on the premise that the state should distance itself from value judgements on art and science. The government is expected to focus solely on policy issues, which is why it leaves decision-making about the arts mainly to various committees of independent experts.

The Netherlands enjoys considerable devolution of planning and produces a National Cultural Policy Document (Plan) every four years, which is developed in close co-operation with the cultural sector and is approved by Parliament for implementation.
The policy cycle associated with this policy document brings the Government's cultural policy up for review once every four years.

The National Cultural Policy Document
A legislative proposal for a Specific Cultural Policy Act, submitted to Parliament in December 1988, aimed to define a number of aspects of cultural policy. It had also become necessary to ensure that central government's cultural policy was given a basis in the law. The proposal consisted of only a few articles. According to article 3, the government is obliged to present a Cultural Policy Document to both Houses of Parliament at least once every four years.

The National Cultural Policy Document reviews all planned and completed cultural policy activities over the past 4 years. It is expected to determine a series of substantive goals for the coming period, as well as make arrangements for an evaluation of the past. In this manner, the government can tighten its system of grants and subsidies every 4 years. At the same time, the system of forward planning allows cultural institutions to adopt long-term programmes (4 years) knowing that they will be covered financially for this period, if their institution is selected for funding.

The State Secretary for Culture is aided in its preparation of the National Cultural Policy Document by independent advisory organs, and in particular by the Council for Culture (more information on the Council for Culture is given below). The Council for Culture is an arms' length body, which co-operates with the government on formulating policies, assessing applications for government funding and evaluating cultural institutions. The State Secretary is not obliged to consult the Council, but in practice, he does so regularly.

The following steps give a general indication of the way in which the National Cultural Policy Document is realised.
1. The State Secretary for Culture requests the advice of the Council for Culture concerning specific policy issues in the field of culture at the beginning of his term;
2. The Secretary of the Council for Culture receives the request for advice and submits it to the relevant Commission within the Council.
3. The Commission discusses the request for advice (sometimes in cooperation with other Commission, external experts and research institutions) and prepares a draft response.
4. The draft is discussed in the Council and is ratified.

5. The Council submits the advice to the State Secretary for Culture.
6. The State Secretary for Culture draws up his National Cultural Policy Document, based on the advice of the Council for Culture (although he is not obliged to follow the advice of the Council) and submits it to the Dutch Parliament.
7. The Parliament of the Netherlands reviews the Document and adopts or rejects it (or parts of it): The State Secretary for Culture can defend his Document during this process and the Council for Culture is free to comment on it.

Once the National Cultural Policy Document has been adopted, a call for proposals is launched, with a strict deadline, for cultural institutions to submit their applications for funding. This takes place 1 year before the actual start of the new cultural policy period. Institutions to be funded are those that comply with the criteria set out in the National Cultural Policy Document.

8. Cultural institutions apply for structural funding (subsidies) by submitting an application, which must include a policy plan providing a complete survey of the institution's artistic or substantive goals for the next four years. It must also analyse its policy during the previous period. Each plan is accompanied by a budget of incomings and outgoings for the period ahead. By setting these general and special subsidy conditions, the national government forces the recipients to work towards its cultural policy targets;
9. Applications are forwarded to the Council for Culture, which reviews each of them and issues a statement of advice to the State Secretary for Culture, as to which cultural institutions and projects should, in its eyes, receive funding over the next four years (The Council for Culture can recommend that the State Secretary tries to increase the budget for culture, depending on the amount of successful applications);
10. Successful applicants are awarded funding, after approval by the Parliament, and are requested to submit an annual activity plan, stating how the basic principle of its policy plan are to be implemented for a one-year period.
11. Once the institutions have implemented their policy plans in the form of concrete activities, the Council for Culture has another major task throughout the four-year period: it must keep an eye on the artistic side of these activities and analyse them. The analyses serve two purposes: they verify that the institution is actually doing what it promised to do in its policy plan, and they influence the decisions taken on any future subsidy applications. The Minister also checks to what extent the institution is keeping to the policy plan as approved. In the event of a major deviation from a plan halfway through, the Minister may decide to withhold part or even the whole subsidy.

The Subsidy system under the National Cultural Policy Document
Before the introduction of the Cultural Policy Document, all subsidies were determined annually by the Minister. Now they are determined every four years, following the four-year subsidy cycle. The advantages of this are:

- to make the cultural budget more flexible by eliminating the automatic allocation of annual subsidies to established institutions, and by subjecting these institutions to a comprehensive and simultaneous analysis once every four years;
- to offer the institutions a certain measure of continuity by furnishing a four-year subsidy with a basis in the law;
- to make government procedures more transparent by forcing both the national government and the institutions to articulate and defend their policies more than they had in the past.

Every institution is free to submit a new subsidy application for each new period, but the fact that it has already received a subsidy does not mean that it will continue to do so. However, the national government cannot simply abandon certain institutions, which have a basis in law, like the funding bodies (see below) or facilities that house valuable collections assembled with public funds, for example the Netherlands Film Museum in Amsterdam.

There are two categories of subsidy in the Ministry's present system: the long-term subsidy and the incidental subsidy. Long-term or ‘structural’ subsidies are awarded to institutions that form an essential and therefore indispensable part of Dutch culture. Incidental subsidies are awarded for temporary projects or one-off activities, and come almost exclusively from the various funding bodies.

The current funding bodies:

- *the Literature Fund (1969)*
- *the Press Industry Fund (1974)*
- *the Creative Music Fund (1982)*
- *the Fund for Visual Arts, Design and Architecture (1987)*
- *Dutch Cultural Broadcasting Productions Promotion Fund (1988)*
- *the Fund for Special Journalistic Projects (1990)*
- *Netherlands Fund for Literary Production and Translation (1991)*
- *Performing Arts Fund (1993)*
- *Mondriaan Foundation (1993)*
- *the Architecture Promotion Fund (1993)*
- *the Dutch Film Fund (1993)*
- *the Fund for Libraries for the Visually Handicapped (1995)*
- *the Amateur Art Fund (1977)*

take the form of foundations, but this has had no effect on their private-law character. The national government's responsibility goes no further than furnishing monies and determining the specific conditions under which the fund in question must operate. The authority to allocate subsidies from the annual budget is delegated to the funds' boards. Parliament has the final word when it comes to the size of the budget. The Minister's monitoring task is generally restricted to laying down the articles of association and the rules describing how subsidies are to be allocated. The Council for Culture assists the Minister in this task, but the Minister does appoint all of the funds´ board members himself. The creation of such funds has streamlined the procedure for allocating subsidies to individual artists or art institutions. Subsidy applications require the competent authority to take numerous similar decisions on matters of artistic merit. The Council for Culture is not longer involved in this process. In the current system, it is the board of the relevant fund that is responsible for assessing quality and

handling the financial side. The boards generally also call in external experts to advise them on matters of quality.

Partnership with advisory bodies and expert committees
The Dutch government takes very few decisions on the arts and culture without first consulting a committee of independent experts on the subject. This practice is in line with two concepts:

- that the national government should devote as much effort as possible to the main lines of policy; and
- that the national government should not be involved in assessing artistic or cultural merit.

The committee of external experts gives advice on:

- policy recommendations;
- the most desirable distribution of the budget over various sectors and disciplines;
- specific subsidy applications (quality assessment);
- the selection of candidates for the award of prizes or honorary stipends.

It is the task of the external advisors to lay the foundation for political decisions. These advisers are organised in the Council for Culture. The responsible government politicians and executives are not obliged to apply to these bodies for advice, but they do so regularly. Decisions are always taken by the Ministry itself (when new legislation is being drafted, however, the Council of State must be consulted, and for socio-economic issues - the advice of the Social-Economic Council).
The Council for Culture
The Council for Culture superceded the Arts Council, the Cultural Heritage Council, the Media Council and the Advisory Council for Libraries and the Dissemination of Information. The external advisory process has been given a firm footing in this single advisory body for culture. It is customary to consult the Council for Culture, not only about the main lines of policy, but also about any cultural institution, which applies for a long-range subsidy. The council judges them on their artistic merit or on the cultural and historical significance of their intended activities. With 25 Crown members, including the chairman, the Council for Culture is larger than most of the government's other advisory bodies. The Council's various committees also include external members appointed by ministerial decree. Applications for incidental subsidies are dealt with by the funding bodies.

The Council for Culture does not advise on the budget, although the financial scope must obviously be uppermost in its mind. The Council's recommendations are of considerable influence, but the ultimate decision-making power lies with the administrators. The Minister or State Secretary responsible must, after all, often take a broader view than artistic merit alone.

The Council for Culture then is the legal organ of advice in the field of cultural policy. The Council operates independently from the Ministry and independently from the cultural sector. Fields covered in the Council’s portfolio include: media and information, cultural heritage, art, cultural diversity, cultural entrepreneurship, culture and youth, amateur art, cultural education and teaching, interdisciplinary co-operation, international cultural policy and new technologies.
Each sector is managed by a separate commission, which prepares the pieces of advice. The commissions are made up of sectoral experts and are chaired by a member of the Board.

Temporary advisory committees
In addition to the advisory structure described in the foregoing, the Minister frequently appoints external advisory committees. Such committees are set up to advise on politically and administratively charged re-organisational issues. This is often the case in the performing arts and the broadcasting system. Some examples of temporary committees for the performing arts are the National Working Party for the Orchestra Sector, the National Working Party for the Dance Sector, the Batenburg Committee and the National Committee for the Theatre Sector.

Distribution of Tasks: State, Provinces and Municipalities
The distribution of tasks between the state, the provinces and the municipalities came about as a result of the central government's intentions to transfer tasks (including the responsibility for cultural policy) to the local authorities for reasons of efficiency, to reorganise the domestic administration and to improve the state services.
The redistribution of tasks between the state, the provinces and the municipalities was as follows:

- the state became responsible for the national museums, the symphony orchestras, the theatre and dance companies.
- the provinces became responsible for disseminating, co-ordinating and maintaining cultural activities at provincial level.
- the municipalities became responsible for maintaining the various cultural venues and facilities and for performances schedules.

Covenants have been reached with the large cities (Amsterdam, Rotterdam and The Hague) that covered state and municipal co-financing of cultural institutions located there (e.g. the Royal Concertgebouw Orchestra, the Dutch National Ballet, the Netherlands Opera, the Rotterdam Philharmonic Orchestra, The Residential Orchestra, the National Theatre Company etc…).

The last Cultural Policy Document (1997-2000) was drafted in close consultation with the provinces and municipalities. Further agreements were made with Amsterdam, Rotterdam and The Hague, and with different provinces and large cities, concerning the joint financing of institutions. In 1997 these agreements were confirmed in a series of eight covenants on culture, which run until the year 2000.

Culture as Confrontation
The Cultural Policy Document 2001-2004 ‘Culture as Confrontation’ has been adopted in the Dutch Parliament. The policy was prepared during 1999, in partnership and close co-operation with the non-governmental advising body, the Council for Culture and will enter into force in the year 2001. December 15th 1999 saw the closing date for applications for all cultural organisations for government funding for the next 4-year period.
Now, throughout May 2000, the Council for Culture has been providing its comments on the applications received. Below, please find some newspaper cuttings of the past months, which published the Council for Culture’s decisions.

In ‘Culture as Confrontation’, the priorities are cultural diversity, reaching new audiences and cultural entrepreneurship. It is evident that cultural diversity is an important policy principle, especially in view of the multi-ethnicity of contemporary Dutch society. At the same time, the arts are to reach out to a braider and new (young) audience. The third principle is focused on the market (which is multicultural and diversified, young and old etc).

5.4 The Policy of Decentralisation in France

The Five-year plan
Since just after the war (1946), France has regulated the most important sectors of French life with 5-year plans, drawn up after consultation between politicians and representatives from the sectors concerned. Culture entered the picture only in the fourth five-year plan (covering the period 1962-1965), after an independent Ministry of Culture had been set up. For the purpose of the plan, a '**Commission for Cultural Facilities and Artistic Heritage'** was created to examine the cultural sector. The Commission set up working groups in different sectors, composed of figures from the worlds of social sciences, popular education and politics.

Involving culture in the five-year plans meant that the state could now potentially exercise control on culture. It is namely the government that determines which projects should be adopted in the plan, within the context of its general policy. It is the government, which has the means available to it for culture under the annual budget. When the bill has been approved by Parliament the projects adopted in the plan demand commitments for a period of five years.
The adoption of the bill, however, does not always guarantee that the chosen cultural projects will be implemented. They still always need the backing of the programme and budget acts. Also, the changing political climate, a change of government or minister, can alter the course of a project, delay it, or cause it to be scrapped altogether.

The role of the Parliament
The Parliament only plays a **secondary role in drawing up cultural policy**. Each year, when the time comes to vote on the Finance Bill, parliament learns of the projects of the Ministry of Culture, since the overall budget presentation is broken down into sections. Parliament can intervene in the projects at this stage, but usually the debate that ensues is purely for form.

Parliament plays a more constructive role in **producing legislation**. Initial proposals come from the Minister for Culture, but the National Assembly and the Senate can amend it to varying degrees.

The role of the Ministry of Culture
The role of the Ministry of Culture is decisive. Within the budget allocated to it by the government, it is the Ministry that draws up its concrete projects and general objectives. Generally speaking, the Prime Minister does not seem to have been directly involved in the choice of projects. When it is a matter of executing certain projects that require new expenditure however, the President often sides with the minister responsible for cultural affairs. The natural enemy within the government is the Minister of Finance, whose powerful department holds the purse. The Prime Minister often sides with the Minister of Finance; the President with the Minister of Culture.

No permanent advisory body
Those responsible for cultural policy in France are not assisted by any permanent decision-making body made up of representatives from the world of culture. For a long time, a useful role was played by the working groups or committees, which helped draw up the cultural section of the five-year plan. Within government and political circles in France, there is a

strong tradition of intellectual debate, theorising and analysing cultural policy. The plans for culture are born, more often than not, out of a body of advisors comprising the creme of the field: cultural managers, creators, users of cultural institutions and industries, thinkers and academics. This body, however, is not permanent.

The Ministry is directly responsible for many fields of cultural activity and for handing out subsidies. It also co-ordinates the regional directorates, which are responsible for decentralising certain ministry activities. Thus, the Ministry is not only responsible for drawing up cultural policy, but also for implementing it in detail.

Regionalisation
France has a strong tradition of political, administrative and economic centralisation. In cultural terms, Paris long exerted great influence, particularly from the 19th century onwards. It attracted the elite, developed powerful cultural institutions, secured a strong budget and dominated the cultural field. However, nowadays, it is the region that is often considered to be the best level to ensure consistency of development.

The administrative units established after the process of regionalisation began in France, include: the commune, the département and the region. For some time the département played only a limited role in cultural life, mainly in the conservation and the restoration of historic monuments. This role has increased steadily, but to varying degrees, as it has been left basically up to the initiative of each département as to how active they are. Now they provide support mainly to the arts (music and theatre), participation in the funding of major facilities like the maisons de culture, aid to music schools and to amateur music performances, subsidies to socio-cultural and socio-educational associations.
The regions have only been involved in culture for some ten years or so. Large and medium towns, on the other hand, have always supported cultural activities, sometimes even on a large scale. They have built libraries, theatres, museums and art and music schools.

The Regional Directorates of Cultural Affairs (DRACs)
In 1974 a Regional Action Unit was set up within the general administration of the Ministry of Culture and Communication. In 1977, this unit felt the need to establish more direct, more permanent contacts with the regions and it decreed that Regional Directorates of Cultural Affairs (DRACs) should be set up to serve as a link with the local authorities.
These bodies are a form of central government presence in the regions of France. They also act as a link between central government and the local authorities. Initially their interventions were limited to cultural heritage and music, but they subsequently extended to all sectors of cultural activity. Staffed by competent specialists, they are appreciated not only for their role as intermediaries in the allocation of subsidies, but also for the expert advice they offer local authorities.

The DRACs follow the guidelines laid down by the Ministry's different central directorates, keep them informed of the needs of the regions and plead in their favour. They also advise the regions as to which requests for funding agree well enough with the Ministry's policy to have a chance of being accepted.

Funding of Culture
The Regional Directorates possess 'decentralised credits', funds, which are made available to them for use as they see fit in supporting certain activities or projects. They also keep accounts for the budgets, which the various ministry directorates manage and which involve

larger sums than the decentralised credits. There must be good cultural managers in place in the regions, who can judge the quality of cultural projects, draw up financial plans, raise additional funds from private enterprise, from other local authorities and the ministry and maintain good political relations, if the DRACs are to enjoy even greater autonomy of action in the future.

Cross-funding: the 'Conventions'
In general, there is a rather complicated system of cross-funding in place, established in 1989, since the idea of simply handing over resources to local authorities has been abandoned. Cultural activities are the responsibility of the state first and foremost, but the regions and departments also have a large role to play as mentioned above. Regulations have been set up to cover the fixed overhead costs of many institutions and municipal facilities and to keep up and restore cultural heritage.

Where local museums, libraries, music and art schools are concerned, the state contributes through small subsidies amounting to approximately 10% and the departement sometimes contributes, but the region does not. For example, the state contributes up to 50% of the running costs of the maisons de la culture and in the case of the heritage conservation costs for classified monuments the state contributes 50%, the departement 25% and the local authority concerned, 25%.

The system of co-financing has some advantages. It necessitates consultation and partnership between the centre, the departement, the region and the local authority, and it spreads risk. The disadvantages are that there is an overlapping of responsibilities, and often no clear 'leader' or main partner. It is easier for one of the funding partners to pull out of a cultural project, knowing that the others can carry the risk.

Although the state is forced, under such co-financing agreements, not to avoid its responsibility, which can only be positive, there is always the danger that its level of control remains high over the local authorities in the negotiation of agreements. The system of conventions, still allows the Ministry to promote its own proposals to its local and regional partners. The DRACs may be secure and well funded, but their reducing budgets give them less and less freedom of manoeuvre and less chance to encompass real local initiatives.

The message is still getting clearer, however, that the burden of support of financing must increasingly be taken up by the local authorities and the major provincial cities. Many cities still lack the means to conduct their initiatives.

5.5 Polish Cultural Policy Development

Forming new foundations of cultural policy in Poland

A Summary of relevant points taken from the Report of the International Conference on the Preservation and Development of Cultural Life in the Countries of Central and Eastern Europe, Country Papers, on 23-25 January 1997 in Budapest, organised by Unesco.

Changes since 1989

The change of the political and economic system in Poland, which started after 1989, resulted in creating new conditions of cultural development. In the first period of changes it was essential for artists and animators of culture to regain the creative freedoms, which they had gained. This led to theses, expressed publicly by many artists and politicians, on the uselessness of the state conducting any cultural policy.

Yet, the new possibilities of free creation and flow of cultural values and concepts started to be accompanied by fast accumulating restraints and difficulties of an economic character. Private sponsors fulfilled the expectations vested in them only to a small extent and were not able to replace the state, which was withdrawing from patronage over culture. The market also proved to be an effective regulatory mechanism only with respect to some cultural goods and services. At the same time, the Act on territorial self-government, the Act on the division of competencies between communes and organs of governmental administration, as well as the liquidation of the Culture Development Fund, the Cinematography Fund and local funds for monuments restoration (all passed in 1990) caused cultural institutions to be faced with a new organisational, legal and economic situation.

New questions arose, such as:

1. In how far should the state withdraw from patronage over culture and where is the border, which if crossed, leads to processes threatening national culture?
2. To what extent can the newly formed local self-governments replace the state in previously performed functions?
3. For what kinds of cultural activity is the market the best regulator?
4. Is it possible and, to what extent, to rely upon private protectors and sponsors?
5. Who and in accordance with what criteria should distribute public funds allocated to culture so that they are used in the most effective way?

An attempt to give a partial, political answer to these and other questions was undertaken in a document by the Ministry of Culture and Arts and passed by the Cabinet: '**Cultural policy of the state: principles'.** Although it was stated in the introduction of the document that "the term *cultural policy* sometimes evokes bad associations", it was acknowledged that its use should not be given up "until the state renounces the influence on the cultural life and the society's participation in culture (...). Surely, this term must be given a new meaning".

According to the government's attitude the cultural policy pursued by the state should favour the development of cultural democracy and civic society, facilitate for artists and cultural institutions the transition to an economy based on free market principles, enable the protection of the most valuable cultural values, introduce and initiate legal solutions favouring the new forms of activity. The bases for the new cultural policy are supposed to be:

1. Decentralisation, consisting of transferring a part of the rights of the central administration to the regional level, and of the regional administration to the local level;
2. Protection of national heritage, book and reading habits as priority objectives;
3. Supporting from the state budget funds, selected institutions and enterprises being the most essential for cultural life;
4. Supporting the development of non-governmental institutional structures and financing mechanisms, which may constitute a supplement to the state patronage of the culture.

The new principles of organising and financing activities created in the sphere of culture. after six years of economic transformations are still based, to a great extent, on the principles formed in 1993. Decentralisation of the rights of public administration in culture has come true and is still advancing. The idea of joining public and private funds bas been adopted as a fixed principle of financing culture. Support for the development of non-governmental institutional structures resulted in a considerable growth of the number of private sector and non-profit institutions.

In 1995 the Ministry of Culture and Arts passed a document (amended in January 1996) entitled 'The tasks of the Ministry of Culture and Arts 1996-1997'. This document develops and specifies in detail the principles of state patronage over culture. As the most important priorities of cultural policy of the state were considered: assistance in the sphere of books and protection of reading habits, protection of national heritage and cultural education. In the meaning of the document the competencies of the Ministry of Culture include also legal activity, seeking and activating new sources of non-budget financing of culture, observation and analysis of the changes under way and control of the realisation of cultural policy. The sphere of the state patronage related to the execution is transferred mainly to the voivodship level. '**Keeping guard over the Polish culture is a universal engagement of the state since its primary value is culture as a source of the nation's continuation and development' -** says the last sentence of the document.

The new legal and institutional system of culture

One of the most important legal acts constituting the current cultural system in Poland is the '**Act on organising and conducting cultural activity'** 1991, which created the basis for decentralisation of management of culture and which finally abolished the state monopoly in this domain. The Act enabled all legal and physical persons and individuals not possessing the status of legal entity, to conduct cultural activity and to appeal for subsidies from the state budget in order to realise state objectives. Both public and private organisers have the right to form together institutions of culture. The provision, enabling the public cultural institutions to gain funds for their activity both from legal and physical persons (sponsors and protectors) is of very big importance.

According to the Act some public institutions of culture conduct their activity on the principles set forth for the budget institutions (museums, libraries, cultural centres and houses of culture), while others conduct their own financial activity (financial institutions, theatres, opera houses, operetta houses. philharmonic halls, orchestras). Such a distinction of the legal formulas entails tax consequences. Budget institutions are automatically exempt from the necessity to pay income tax from legal persons (it is a linear tax and amounts to 40% of the tax base). Institutions conducting their own financial activity obtain such an exemption under the condition they allocate their profits to the statutory (cultural) activity. Both types of institution are obliged to pay taxes from real estates.

The Cultural Administration

Organs of cultural administration are situated in Poland at the **central, regional (voivodship) as well as at the local levels.** The central governmental administration has a prominent role in determining the cultural policy of the state and in creating the principles of financing culture. A substantial role in the legislative process in the field of culture is assumed by permanent **Chambers of Culture** of both houses of the Polish Parliament - **Sejm** (Lower House) and **Senat** (Upper House). Their role consists, among others in assessing the candidates for particular governmental positions, in putting forward, examining and assessing the bills and the acts, in examining the reports and information of the Minister of Culture and in carrying out analyses of activities in the field of culture. The Committees participate also in the working stage of annual works on the project of the state budget, in the part concerning culture. They have the right to demand additional explanations from the Minister and they always use this right. The Committees' work on the budget result in expressing opinions and remark, which normally concern the demand to increase the outlays for culture.

Central and voivodship (provincial) level

The main organ of the central administration in the field of culture is the Ministry of Culture and Arts. Its organisational structure has been adjusted to the adopted priorities of the realised cultural policy. The following departments have been created in the Ministry, among others: books and reading habits department, museums department, department of promotion of culture, responsible for contacts with local self-governments, department of arts education which manages the issues of cultural education, and also department of arts supervising the majority of domestic institutions of culture.

In the Ministry and under its supervision, works the State Service of Protection of Monuments, whose organs are General Conservator of Monuments and 49 voivodship conservators of monuments, and the Cinematography Committee - the central organ of government administration responsible for the issues of production, distribution and promotion of films. The Ministry is also the organiser of selected, recognised as important institutions of culture, performs the function of founding organ with respect to state cultural enterprises and supervises arts education.

Depending on the needs, the Minister may appoint collective advisory and consultative organs. Outside the structure and influence of the Ministry of Culture is the National Council of Radio and Television Broadcasting, which is the central organ of government administration dealing with the issues of public and non-public radio and television broadcasting.

At the regional (voivodship) level the decisions about cultural policy are taken by voivodship offices, constituting state administration organs. Cultural issues are usually managed by specialised departments of these offices, often responsible for such issues as education, health protection, social welfare and sport.

The self-government level

As a result of the **Act on territorial self-government** passed on 8 of March 1990, 2500 Polish communes obtained the status of legal entities and the right, and at the same time the obligation, to carry out public tasks on their own behalf. The 'competence' act on the division of tasks and competencies between the commune organs and state administration organs of 17 May 1990 (with further amendments) included in own tasks of the commune in the field of culture the following tasks:

1. maintaining own institutions and units of popularisation of culture;
2. delegating tasks in the field of dissemination of culture to social organisations and cells of social cultural movement;
3. Maintaining public libraries.

For the realisation of their own statutory objectives the communes allocate their own funds and funds coming from the general subsidy from the state budget. State administration organs may, on a current basis, have influence on the scope and type of tasks realised by the communes only through so called assigned tasks. This type of task is financed by target subsidies, the level of which, their directions and ways of using are decided by the entity granting the subsidy. In the field of culture state authorities use to a minimal extent this possibility of influencing the cultural policy realised at the commune level. On the other hand, a very frequently used form of co-operation between the Ministry of Culture and Arts and local self-government and cultural institutions subordinated to them, is the organisation of nation-wide conferences and seminars, as well as the realisation of scientific research on culture.

Public financing of culture

After 1989 culture and its financial problems were delegated in the hierarchy of importance and urgency to a further position. lt is visible in a systematic reduction of share of expenditures for culture in the state budget. Also in the expenditures' structure in majority of communes, the expenditures for culture are ranked the last ones. Despite this fact, since the implementation of self-governmental reform there has been a steady growth in participation of local authorities in the public financing of culture. Yet, it results more from the decline in expenses of the state budget rather than from the growth of communes' expenses.

In the Polish budget law the amount of sums at the disposal of the Ministry of Culture, the so-called co-ordinated ministers and voivods, is determined annually. The budget procedure in force has limited the influence of the Minister of Culture on the most important decisions, which used to be quite significant not so long ago. Such decisions are taken in Parliament and in the Ministry of Finance. The Minister of Culture and Arts has no direct influence on the amount of funds allocated to culture by individual ministers and voivods. He may only within the limits determined by the Minister of Finance, decide about his own budget.

Starting in 1994, decisions concerning the majority of funds allocated to culture in the voivodships were subordinated to voivods decisions. They may be corrected only by the

Ministry of Finance. The Ministry of Culture and Arts does not have the influence on the shape of the financial policy in the sphere pursued by the voivodships.

Non-State financing of culture

As early as in the 1980s people in Poland started to consider the possibilities and purposefulness of acquiring non-state funds to finance social objectives. lt was caused mainly by the growing crisis of public finances and impossibility to fulfil by the state the commitments it had assumed. Already the **Act on the Culture Development Fund** of 1982 had said it was possible for the fund to collect payments, donations and legacies from physical and legal persons. However, only in 1989 a considerable step was taken in order to arouse the interest of legal persons to finance social objectives. In the **Act on income tax from legal persons** (1993) there was enabling to deduct from the tax base donations for socially useful purposes, including donations on behalf of organisations and foundations, in the amount not exceeding 10% of the taxpayer's income. In 1995 this threshold was increased, among others with respect to donations for cultural purposes up to 15%.

A similar exemption with respect to donors - private persons - is contained in the **Act on income tax from physical persons** (1991). At the same time the **Act on cultural activ**ity from 1991 gives a possibility to take by the cultural institutions, whose organisers are state or self-governmental authorities, funds coming from physical or legal persons. In this way legal possibilities of development of private patronage over culture have been created.