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**ZAPISI S MARGINE: KULTURNA PRAVA I KULTURNE POLITIKE U
BOSNI I HERCEGOVINI /
NOTES IN THE MARGINS: CULTURAL RIGHTS AND CULTURAL
POLICIES IN BOSNIA AND HERZEGOVINA**

Sažetak: Kulturna prava, utvrđena članom 15. Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima (ICESCR) i članom 27. Opće deklaracije o ljudskim pravima (UDHR), predstavljaju važan segment u ostvarivanju općeg stremljenja čovječanstva ka slobodi i dostojanstvu. Ipak, ova su prava često marginalizovana ili percipirana kao „preostala kategorija“. Međutim, države potpisnice imaju jednaku obavezu, kao i u pogledu građanskih i političkih prava, da preduzmu korake kako bi postepeno ostvarile punu realizaciju prava priznatih u ICESCR-u. Stoga, ovaj rad istražuje stanje kulturnih prava u kulturno raznolikoj Bosni i Hercegovini, pritom se fokusirajući na kulturnu politiku kao pokazatelja volje države za ostvarivanjem kulturnih prava. U radu se prikazuju slabe i jake tačke kulturne politike i identifikuju se prijedlozi koji bi mogli doprinijeti efikasnijem ostvarivanju kulturnih prava u Bosni i Hercegovini. Analiziranjem postojećih kulturnih politika u Bosni i Hercegovini, kao i kulturne politike susjedne države, Hrvatske (članice EU), a na osnovu pokazatelja koje predlaže autorica (postojanje kulturne politike i državnih izvještaja za ICESCR, formulacija/jezični sadržaj kulturnih strategija, finansijski aspekt kulturnih strategija i karakteristike statističkog okvira sadržanog u kulturnim strategijama), rad generiše preporuke za nadogradnju kulturnih politika kako bi se osiguralo efikasnije ostvarivanje kulturnih prava i njegovanje društvene kohezije.

Ključne riječi: Kulturna prava, Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima (ICESCR), ljudska prava, kulturne politike

1. Introduction

Culture, defined as the “broad, inclusive concept encompassing all manifestations of human existence”¹, affects all aspects of life and has been acknowledged as a driver of change and a tool for fostering mutual understanding and social

¹ UN Committee on Economic, Social and Cultural Rights (CESCR). *General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*. Forty-third session, 2–20 November 2009

cohesion, as well as for promoting economic prosperity and development.² Such a viewpoint was upheld by the expansion of the legal framework concerning culture, the creation of funds for supporting culture, and the development of a comprehensive statistical framework for culture on a global level in the last decades. However, even though the culturally diverse Balkan region, more so the state of Bosnia and Herzegovina, could benefit greatly from the investment in culture, this issue is still rather marginalized. Thus, this paper serves as a note in the margins which aims to highlight the importance of culture in general and, in particular, which draws attention to the importance of cultural rights which are often perceived as a “residual category”³ within the human rights system and analyzes their presence in the countries’ cultural policies and strategies.

Namely, cultural policies are significant tools for both realizing the cultural rights of all citizens of Bosnia and Herzegovina, as well as for progressing on the path towards the European Union and harmonizing the legislation, due to the fact that (cultural) policies can be considered as a starting point for the realization of cultural rights upon the ratification of relevant treaties. Specifically, since Bosnia and Herzegovina became a State party to the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in 1993, the existence of cultural policies that reflect the content of the ratified treaty and submitting quinquennial State reports acts as an indicator of the will of the state to fulfill its international obligations and to promote the further realization of cultural rights. Based on that, the paper examines the existing cultural policies from the perspective of the international human rights framework, by particularly focusing on Article 15, para 1 (a) of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)⁴, and the Article 7, para 1 of the UNESCO Convention on the Protection and Promotion of Diversity of Cultural Expressions (UNESCO, 2005)⁵, which contain *the right of everyone to take part in cultural life*.

It is important to note at the very beginning that the European Commission concluded that “Bosnia and Herzegovina is *at an early stage* of preparation in the area of education and culture.” (Chapter 26: Education and Culture, p. 154) in its *Opinion on Bosnia and Herzegovina’s EU membership application*⁶ adopted in May 2019. Within the Opinion, the Commission provided a comprehensive

² Sen, Amartya. *Development as Freedom*. New York: Alfred A. Knopf, 2000

³ Eide, Asbjorn, *The use of indicators in the protection of the Committee on Economic, Social and Cultural Rights*. In Eide, Asbjorn, Catarina Krause and Allan Rosas: *Economic, Social and Cultural Rights, A Textbook*, Second Revised Edition. Dordrecht: Martinus Nijhoff Publishers, 2001, p. 545-553

⁴ United Nations (General Assembly), *International Covenant on Economic, Social, and Cultural Rights*. Treaty Series, vol. 999, December 1966

⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO). *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris, 2005

⁶ European Commission. *Opinion to the EU Council on the membership application of Bosnia and Herzegovina*. 2019

roadmap for incremental reform, and although the focus of the Chapter 26 lies heavily on the educational segment, one of the reasons for such a conclusion is surely the fact that the latest cultural policy, the *Strategy of Cultural Policy in Bosnia and Herzegovina*⁷, was adopted quite a long time ago – in 2008, by the Council of Ministers of Bosnia and Herzegovina. Hence, the paper brings forward the results of the comparison of the cultural policies of Bosnia and Herzegovina and the neighboring country Croatia, with the aim to pinpoint examples of good practices for Bosnia and Herzegovina, rightfully assuming that Croatia, as the newest European Union member (since 2013), managed the cultural sector and created the cultural policy in accordance with the international obligations.

Finally, the paper displays the policies' strong points and areas for improvement, as well as identifies possible adjustments to the future versions of cultural policies, strategies, and action plans in Bosnia and Herzegovina that could contribute to a more effective realization of cultural rights and advancement in the process of Bosnia and Herzegovina into the European Union. The adjustments and recommendations given within this paper are generated on the basis of indicators proposed by the author: the existence of the (current) cultural policy and State reports to the ICESCR, the wording of the cultural policies and/or strategies, the financial aspect of these policies/strategies, and the characteristics of the statistical framework included in the cultural policies/strategies. The basis for these indicators were the conclusions and guidelines given within the relevant documents: ESCRC's General Comment no. 21 (2009) – Article 15, para 1(a)⁸ and the UNESCO Operational Guidelines and Measures for Article 7 of the UNESCO Convention (2013)⁹. Adapting the policies to fulfill these indicators would not only ensure the presence of cultural rights in the policies and contribute to Bosnia and Herzegovina's path towards the EU, but they would contribute to strengthening the human rights treaty system in the rather marginalized area of cultural rights.

2. Methodology

The research methodology for this study, which aims to examine whether cultural policies ensure cultural rights and reflect the legal provisions and international cultural obligations taken by adopting the ICESCR (1966) and the UNESCO 2005 Convention, is two-fold and consists of

a) the revision of the international legislative framework related to culture, as

⁷ The Council of Ministers, Ministry of Foreign Affairs BiH, *Strategy of Cultural Policy in Bosnia and Herzegovina*. Sarajevo, 2008

⁸ UN Committee on Economic, Social and Cultural Rights (CESCR). *General comment No. 21, Right of everyone to take part in cultural life (art. 15, para. 1 (a) of the International Covenant on Economic, Social and Cultural Rights)*. Forty-third session, 2–20 November 2009

⁹ UNESCO. *Basic texts of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*, edition 2013

well as the national legislation concerning culture in the respective countries: Bosnia and Herzegovina and Croatia, and

- b) revision of the official State documents regarding the field of culture, particularly the latest cultural strategies and reports of the ministries of culture which are instruments from which we can “sense” the cultural policy, as both the countries in question, Bosnia and Herzegovina and Croatia, do not have official, explicit cultural policies (the Strategy of Cultural Policy in Bosnia and Herzegovina (2008) and The Strategic plan of Ministry of Culture in Croatia 2014-2016).¹⁰

Upon identifying the focus of the research, and upon generating the crucial indicators on the basis of the literature review, a qualitative analysis of the selected cultural policies/strategies was conducted to assess the level of compliance of the policies with internationally recognized cultural rights.

The revision of the legislative framework, conducted after reviewing the administrative and demographic features of the chosen states, encompasses both the international and national laws, but focuses on legal provisions from two international treaties that were ratified by both states:

- ◆ Article 15, para 1(a) of the International Covenant on Economic, Social, and Cultural Rights - ICESCR (1966):

“1. The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life” and

- ◆ Article 7, para 1 of the UNESCO Convention on the Protection and Promotion of the

Diversity of Cultural Expressions (2005):

“1. Parties shall endeavor to create in their territory an environment which encourages individuals and social groups:

(a) to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples;

(b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

In addition, the author has also used the two subsequent documents that further elaborate the content of these provisions: the Committee on ESCR’s General Comment no.21 – Article 15, para 1(a) (2009) and the UNESCO Operational Guidelines and Measures for Article 7 of the UNESCO Convention (2013).

Article 7 of the UNESCO Convention, as further elaborated in the UNESCO Operational Guidelines, should be reflected in the cultural policies through developing and implementing instruments and activities which aim to support the creation, production, distribution, dissemination, and access to cultural activities,

¹⁰ Ministry of Culture of the Republic of Croatia. *Strategic Plan of the Ministry of Culture 2014-2016*. Zagreb, 2013

goods and services with the participation of all stakeholders, and notably civil society. These instruments can relate to various fields and include: legislation (establishment of structuring legislation in the cultural field), creation/production/distribution (creation of cultural organizations mandated to create, produce, and present the domestic cultural content), financial support (development of financial support programs including tax incentives that provide assistance for the creation of cultural activities), advocacy and promotion (participation in exchanges on various international legal instruments), export and import strategies (develop both export-driven (promoting cultural expressions abroad) and import-driven strategies (enabling the distribution of diverse cultural expressions in their respective markets)), and access strategies (encourage programs for economically disadvantaged groups).¹¹

Cultural policies and measures are defined in Article 4.6 of the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions as policies and measures “relating to culture, whether at the local, national, regional or international level that are either focused on culture as such or are designed to have a direct effect on cultural expressions of individuals, groups or societies, including on the creation, production, dissemination, distribution of and access to cultural activities, goods and services”.¹² Their importance is further emphasized by Article 12 of the above-mentioned Convention which promotes international cooperation in order to facilitate dialogue among Parties on cultural policy and by Article 14 which advises capacity-building through the exchange of information, experience, and expertise, relating to, inter alia, policy development.

Therefore, in order to set up indicators that would measure the presence of this right – the right of everyone to take part in culture - in the latest cultural strategies and policies in Bosnia and Herzegovina and Croatia, the author relied on the Economic, Social and Cultural Rights Committee’s General Comment no. 21 (2009) and the UNESCO Operational Guidelines and Measures (2013). As a result, four indicators were generated:

1. the existence of State reports to these treaties,
2. wording of the cultural policies and strategies and whether it explicitly reflects the content of *the right to take part in cultural life*,
3. financial aspect of these policies and strategies or whether the funds are allocated in such a manner to promote and ensure the (gradual) realization of this right, and
4. the characteristics of the statistical framework included in the cultural strategies or whether the decision-making is underpinned by accurate and up-to-date information from the ground.

¹¹ UNESCO. *Basic texts of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*, edition 2013

¹² United Nations Educational, Scientific and Cultural Organization (UNESCO). *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris, 2005

The rationale behind such a selection of indicators dwells upon the ideal process that a state party should undergo after the ratification of the ICESCR. This process involves identifying indicators, setting benchmarks, and starting to monitor and prepare quinquennial reports to the ESCR Committee. By indicators, we consider a set of statistics that “indicate” phenomena that are not directly measurable and may be based on either quantitative or qualitative information, as long as they can be consistently measured over time. Their purpose is to give an indication of actual conditions, or in other words, to determine whether a change has occurred or not. In the broad sense, indicators may be categorized into 3 groups: structural (which aims to assess will/intent, e.g., data collection and policy promise), process (which assesses effort, e.g., policies taking place), and outcome (which assesses results, e.g. assessing the impact of policies) indicators. Benchmarks, on the other hand, are goals or targets or “minimum thresholds” set according to the differing situations of each country. Thus, in fact, they prioritize different temporal targets for evolving rights protection to meet. By establishing such an indicator-benchmark process, it is possible to assess progress over time and detect whether there are improvements or deteriorations and/or if there are certain disparities on grounds of discrimination (e.g. the wage discrimination of the employees in the cultural sector on the grounds of gender).¹³ Therefore, we may conclude that, next to the ratification of ICESCR and similar treaties, the adoption of cultural policies that explicitly reflect the content of these treaties is one of the starting steps of the process of implementing the State’s responsibilities and gradually achieving the full realization of cultural rights.

Thus, the analysis provided in this paper determines whether the above-outlined provisions are reflected in the strategies of the ministries of culture in the respective states: the Strategy of Cultural Policy in Bosnia and Herzegovina (2008 – the latest cultural strategy in Bosnia and Herzegovina) and The Strategic plan of Ministry of Culture in Croatia 2014-2016 (chosen as the first strategy after Croatia’s accession to the EU in 2013, in order to assess the level of compliance needed for the accession to the EU). To be more precise, the analysis first examines the availability and content of the submitted State reports for both Conventions. Afterward, the analysis focuses on the content of the cultural strategies to determine whether the wording and financial plans match the comprehensiveness of the selected legal provisions. Finally, attention is put on the inclusion of statistical data in the cultural strategies, as statistical data is an essential indicator by which the current state of affairs in culture can be reviewed (or in other words, it serves as a monitoring tool) and which can serve as a foundation for setting up benchmarks and goals for the upcoming policies.

It is assumed that policies that fulfill these criteria would be better equipped to accomplish their intended role: to serve as an important tool to encourage the protection of cultural rights through fostering the participation of arts and culture

¹³ Young, Katherine G. *The Minimum Core of Economic, Social and Cultural Rights: A Concept in Search of Content*. In *Yale Journal of International Law*, vol. 33. New Haven, Connecticut, 2008

in economic development, through emphasizing the importance of creativity in developing human capital and through supporting participation in the arts as a link to social cohesion, inclusion, and diversity. In other words, cultural policies should provide support to culture on four stages: of creation (supporting creators in their effort to create cultural activities, goods, and services), of production (supporting the development of cultural activities, goods, and services by promoting access to production mechanisms), of distribution (promoting access through public, private or institutional channels), and of access (provide information about available domestic or foreign cultural activities)¹⁴, which would fulfill all segments of cultural rights prescribed in the above-mentioned articles. When it comes to policy instruments, they should relate to legislation (e.g. copyright), production (creation of cultural organizations), financial support (to provide assistance for cultural activities), advocacy and promotion, export and import strategies (promoting cultural expressions abroad and from abroad), and access strategies (for economically and geographically disadvantaged groups).¹⁵ Hence, in order to create an efficient policy, there are numerous questions to be answered: what are the main objectives of the policy, when, how and by who has it been implemented, as well as what are the main challenges and impacts of the policy and with which indicators are they measured.

3. Results

Indicator 1: The existence of State reports to the ratified treaties

In the case of Croatia, indicator 1 – the existence of State reports as the sign of the State's willingness and efforts to comply with international obligations, as visible from the official website of the United Nations where there are available periodic reports of the State Parties, was only partially fulfilled and with a substantial delay. To be more exact, having in mind the fact that Croatia ratified the ICESCR in October 1992, the first report should have been submitted within two years of entry into force while the subsequent periodic reports should have been submitted every five years. However, we may notice that Croatia's reporting cycle is far from ideal: during these 30 years only two reports were submitted – the initial report, whose due date was June 30, 1993, was submitted with 7 years of delay - on July 4, 2000. Accordingly, the second State report should have been submitted by June 30, 2006, but, as we may see from the website, the second report was submitted only in March 2022, with 16 years of delay. Also, according to the current list of periodic reports on the UNESCO website, Croatia did not

¹⁴ UNESCO. *Basic texts of the 2005 Convention on the Protection and the Promotion of the Diversity of Cultural Expressions*, edition 2013

¹⁵ United Nations Educational, Scientific and Cultural Organization (UNESCO). *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris, 2005

submit its first report on UNESCO 2005 Convention before 2012 even though it ratified it in 2006. The subsequent due dates were 2012, 2016, and 2020 while the reports were submitted in 2014, 2018, and 2020, which suggests there's room for improvement in this aspect.

On the other hand, Bosnia and Herzegovina has submitted three State reports for the ICESCR: the initial report in July 2004, the second in August 2010, and the third periodic report in March 2019. Having in mind the fact that Bosnia and Herzegovina ratified the ICESCR in October 1993, and that the first report should have been submitted within two years of entry into force while the subsequent periodic reports should have been submitted every five years, we find that reporting cycle for Bosnia and Herzegovina is relatively orderly. Namely, during these 19 years, three reports were submitted. The first, which was due on June 30, 1995, was submitted on July 21, 2005. Naturally, a certain delay for the first report in the case of Bosnia and Herzegovina was expected due to the war atrocities taking place during the period 1992-1995. But on a positive note, the second State report was submitted with only a month of delay, on Aug 13, 2010 (it should have been submitted on June 30, 2010). Finally, the third report was delayed again – but with a tolerable delay of 9 months; it was submitted in March 2019 instead of June 2018. Regarding the UNESCO 2005 Convention, Bosnia and Herzegovina ratified it in 2009 and submitted all the periodic reports in due time (every four years) – in 2013, 2017, and 2021, as confirmed on the official UNESCO website. Hence, when taking into account the existence of reports to the chosen treaties, we may notice that Bosnia and Herzegovina quite duly fulfills its obligations to submit periodic reports and that it may serve as an example of good practice. Leaving aside all possible and justified reasons and obstacles each state might have, it is important to acknowledge that a delay in the submission of reports has negative consequences for the image of the State in the international community as it displays its unwillingness to fulfill the undertaken responsibilities. In other words, by failing to submit periodic reports, the State Party fails to fulfill its international obligation. Furthermore, bearing in mind that a report-writing process represents an opportunity to gather information on human rights (in this case, cultural rights) protection through reviewing the level of harmonization of laws and policies with the international standards and identifying problems and shortcomings, as well as assessing future needs and goals, these delays act as an impediment to a more successful policy planning and implementation in the future. Finally, addressing the issue of State reports is important for strengthening the human rights treaty system because it has been recognized that one of the challenges it faces is precisely the delay in the submission of reports. Thus, it may be concluded that all states failing to timely submit the reports weaken the system, while all those states that manage to submit the reports to the ratified treaties help to strengthen the human rights treaty system.

Indicator 2: The wording of the cultural policies and strategies that explicitly reflects the content of the treaties

The analysis suggests that Croatia has shown significant progress in embedding the wording that reflects the content of selected treaties. The analyzed strategic document provides information on the current state of affairs in culture, as well as the forthcoming challenges, and it identifies bodies responsible for specific issues and connects the planned activity to the state budget. In addition, the Strategy offers the indicator-benchmark overview which is characterized by very precise quantitative data – numbers or percentages neatly given in tables. Such inclusion of the relevant statistical and financial data shows a significant attempt to operationalize culture and make it as measurable and comparable as possible. The space given to the development of culture is parsed into 5 specific goals in this strategic plan: 1.1 Support to artistic creation, entrepreneurship, and participation in culture, 1.2 Development of independent (non-institutional) culture, 1.3 Support to the development of performing arts, 1.4 Improving audio-visual activities and media and 1.5 Development of book-publishing and library activities. For assessing the level of presence of the content of the chosen provision (“right to take part in cultural life”), the specific goal 1.1 proves to be the most important. Within it, we found the terms stemming from the treaty: *participation, creation, production, cultural life, access to, cultural goods, services and activities, development, cultural industry, sustainability, and youth/children*. Thus, we may conclude that the wording of this Strategic plan considerably reflects the content of the above-mentioned cultural right.

An area for improvement can be identified due to the fact that “persons with disabilities”, “the elderly”, “economically disadvantaged groups”, “minorities”, “women”, “minorities”, or simply “various social groups” haven’t been explicitly mentioned in the strategy. When outlining plans to draw cultural heritage closer to persons through digitalization, it might be implied that their opening is directed to all the aforementioned groups. However, this should be explicitly stated. Furthermore, physical access is extremely important, which means that in indicators such as “the support to the development infrastructure” there should be an explicit statement that highlights the necessity of adapting the physical access of the cultural sites and institutions to meet the needs of persons with disabilities (e.g. elevator, ramps, preparing audio and video presentations as well as having the sign language tours). Similarly, explicitly mentioning “the economically disadvantaged groups” and envisaging a supportive program to encourage them to participate in culture (free of charge) might be a good start to further open the culture in Croatia to all its citizens. Thirdly, even though the mission states that the Ministry of Culture shall improve the cooperative relationship between the majority and the minorities, in the strategic plan there is no mention of the word “minority” and no goals that foster their participation in culture. If we take into account that there are 22 minorities living in Croatia, and they represent almost 9% of the overall population (according to the Census 2021 data in Croatia), and

if to this fact we add that the percentage of persons with disabilities in Croatia was 11.9% (according to the data of the Croatian Registry for Persons with Disabilities in 2016), we may conclude that a considerable percentage of citizens of Croatia were bypassed in the analyzed cultural strategy. Needless to say, this number would notably increase if we were to consult the latest statistics for information on the percentage of economically disadvantaged persons living in Croatia. Thus, as a state which agreed to ensure participation in cultural life for all its citizens, more efforts could and should be made to address these issues effectively.

Comparing the two documents from the respective countries, we may determine this format and wording might be useful for Bosnia and Herzegovina when creating future cultural strategies and action plans. When looking at the Strategy of Cultural Policy (2008) of Bosnia and Herzegovina, we may notice that – although comprehensive – it is considerably abstract and without sufficient accurate and up-to-date statistical data and developed indicators and benchmarks. In addition, its language does not reflect (i.e. repeat or paraphrase) the content of the treaties. “Cultural participation” seldom appears in the document, and it usually denotes the participation of cultural organizations in international projects and not the participation of all citizens in cultural life. The author endorses that, in the case of assessing whether the strategy aims to respect the right to participate in culture, first, the wording needs to match the contents of the relevant legal provision(s). Hence, it would be useful if the wording that reflects cultural rights was embedded in future strategies (e.g., explicitly mentioning and elaborating terms such as “cultural life”, “creation”, “participation” etc.). Furthermore, the text should elaborate on cultural participation by mentioning various social groups, such as women, children/youth, the elderly, persons with disabilities, and minorities whose unmet cultural needs should be examined. This may seem trivial, but words are seeds for action; explicit mentions contribute to bringing the issues into the midst of discourse, which eventually results in a comprehensive but clear and well-detailed framework of action.

Indicator 3: The financial aspect of cultural policies and strategies to promote the realization of cultural rights

In the case of Croatia, studying the Strategic plan 2014-2016 shows that it does not include the financial plan, but it does provide a helpful overview of the connections between the Ministry of Culture’s activities and the state budget. Hence, we may see that for the specific goal of *1.1 Support to artistic creation, entrepreneurship in culture, and participation in cultural life*, there are 11 different projects/activities in the state budget, such as: Health and Retirement Insurance of the Artists, Basic Activity of Cultural Associations, Awards for Achievement in Culture, Entrepreneurship in Culture, Building, Maintaining and Equipping the Cultural Institutions, Informatization of Cultural Institutions, International Cultural Cooperation, etc. It also highlights that the support for cultural infrastructure and participation in cultural life is drawn from three state budget activities:

Building, Maintaining, and Equipping the Cultural Institutions, Informatization of Cultural Institutions, and Matica Hrvatska.¹⁶

In the case of Bosnia and Herzegovina, from the Strategy of Cultural Policy (2008) and its adjoining Action Plan for Implementation of the Strategy of Cultural Policy in B&H 2011-2014, we cannot obtain any information about financial support to any of the indicators, including those that relate to addressing cultural participation. The Strategy of Cultural Policy of Bosnia and Herzegovina, within its 73 pages, contains an introduction, 20 sections (Cultural historian capital in B&H, Cultural specificities in B&H, Cultural democracy, Democratic society, and cultural policy, Cultural heritage in B&H, Cultural policy in the system, Market and culture, Programs and projects in culture, Cultural industries, Publishing and literature, Music and discography, Film industry, Arts, Communications, Cultural policy and theater, International cooperation in culture, Goals of the Strategy of Cultural Policy in B&H, Basic long-term commitments of the Strategy of Cultural Policy in B&H, Priorities and action plan of Cultural Policy in B&H and Program of Implementation of the Strategy of Cultural Policy in B&H) and a statistical attachment (Annex 1: Basic indicators in statistics and Annex 2: Statistical data in culture). At the very first glance, we may notice that the Strategy is very comprehensive, which is laudable, but the text is very descriptive and general, without providing financial information, facts from the ground, and a detailed framework of indicators and benchmarks to reach a certain goal. Interestingly, the statistical attachment was provided at the end of the document, but it was not included in the text as the factual underpinning of the envisaged plan, nor it was at any point interpreted within the text of the strategy.

In any case, if the effort to realize "the right to participate in cultural life" is to be assessed from the financial aspect, the basis for such examination would not be the policy or the strategic plan, but the financial plan of the yearly Action Plans of the Ministry of Culture and the list of projects which were winners at the Ministries' yearly competitions. In order to reach conclusions, the researcher needs to comb through these projects or programs and identify those which are promoting the right to cultural participation of various social groups (including women, youth, persons of the third age, persons with disabilities, minorities etc.) By examining the number of these projects, and by calculating the funds allocated for their realization, the effort of the State to realize this cultural right might be portrayed. In this aspect, it is worth mentioning that it would be beneficial if one of the selection criteria for the winning of the Ministries' competitions became precisely the wording that explicitly reflects cultural rights given within the ratified treaties. By choosing to allocate funds for project proposals whose goals and the overall text of the proposal explicitly highlight specific cultural rights, the State ensures support for the gradual realization of cultural rights. Finally, this paper acts as a reminder of the ICESCR's obligation for the states to seek or provide international

¹⁶ Ministry of Culture of the Republic of Croatia. *Strategic Plan of the Ministry of Culture 2014-2016*. Zagreb, 2013, p. 58

assistance to achieve the full realization of all rights, which may be secured by participating and withdrawing funds from programs such as the Creative Europe Program with an ample budget of €2.44 billion allocated for the period 2021-2027 (according to the Creative Europe official website).

Indicator 4: The inclusion of the statistical data in the cultural policies and strategies

In Croatia, the text of the strategy is notably clear and coherent. This applies also to the parts of the text which adjoin each of the goals - they, without an exception, have the same, coherent structure: they include an introducing paragraph that offers concise statistical information from the ground about the specific topic, they identify the challenges and possible solutions to these challenges, and present the ways of realizing the outlined specific goal accompanied with indicators by which the path of realization will be assessed. These indicators are characterized by very precise quantitative data – numbers or percentages (the current data and the benchmark value). After this descriptive text, for each of the specific goals, there is a table of output indicators and a table of outcome indicators.

On the other hand, as it was mentioned earlier, the comprehensive Strategy of Cultural Policy in Bosnia and Herzegovina (2008) does have a statistical attachment (Annex 1: Basic indicators in statistics and Annex 2: Statistical data in culture) at the end of the 73-page document. By inspecting the content of these annexes, we may see that the cultural data available relating to cinemas (projections, attendance, and employees), theatres (projections, attendance, and employees) and libraries, the structure of expenditure of the average household (expenditure on education and culture amounts to 4,8%), cultural centers of foreign countries in B&H, cultural industry (music and film) and radio and TV stations. This is a good foundation to work on by expanding the scope and going more into detail in depicting cultural infrastructure following the 2009 UNESCO Framework for Cultural Statistics¹⁷ (e.g., providing more information on local cultural centers, their contents, and attendance, the audience profile) in order to get a clearer view of cultural participation and the (un)met needs of various social groups.

However, this statistical data was not included in the text as the factual underpinning of the envisaged plan in the strategy of cultural policy of Bosnia and Herzegovina, nor it was at any point interpreted during the descriptive and largely vague and abstract text. As a result, even explicitly stated notions may never be tackled in practice. Thus, in order to ensure the realization of a certain goal, there must be provided statistical data background upon which benchmarks will be established. Finally, a detailed set of indicators must be established to measure the gradual movement toward the realization of that goal. For these purposes, we may use (and suggest its upgrade) the thematic report “Culture and Arts” prepared by

¹⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO). *Framework for Cultural Statistics*. 2009. p. 21

the Agency for Statistics of Bosnia and Herzegovina, in which the following parties are monitored: radio and TV stations, cinematography, libraries, and theaters. This thematic bulletin, in order to better assess cultural participation, should include information about the number of other types of cultural centers, the profiles of the audience (gender, age, social groups etc.), and their unmet needs. Such information would represent a significant foundation upon which cultural participation could be built, and thus it should be included in all upcoming strategic plans and action plans concerning culture.

4. Discussion

Aiming to shed light on the importance of cultural policies and strategies and advocating for improvements of the future versions of these documents in Bosnia and Herzegovina, we shall first provide a more detailed justification for each of the indicators in the following paragraphs.

Indicator 1: Existence (and quality of the content) of State reports to the treaties: It has been recognized that one of the challenges that the human rights treaty system faces is the delay in submission and/or consideration of reports, or even non-reporting.¹⁸ By failing to submit periodic reports, which is an international obligation of the State Parties, the States send a signal of indifference or disregard for the undertaken responsibilities – expectedly, such an act can negatively influence the State’s reputation in the international community. The very idea of monitoring human rights through review of reports roots back to a 1956 resolution of the Economic and Social Council which requested United Nations Member States to submit periodic reports on progress made in the implementation of responsibilities taken by ratifying human rights treaties. In the case of the ICESCR, the initial comprehensive report should be submitted within two years of the treaty entering into force for that State, while the latter periodic reports should be submitted every five years. (The reporting duty has been set out in Article 17 of the ICESCR, but it did not establish a reporting periodicity. On the contrary, it gives ECOSOC discretion to set up its own reporting program.)

Reports, however, should not only be seen as a duty and a final product of one process; they are, at the same time, a valuable foundation for planning the steps to progress. Due to the fact that these reports must set out the legal, administrative, and judicial measures taken by the State to give effect to the treaty provisions and outline the difficulties that have been encountered in implementing the rights, they can and should act as a starting point for the creation of new policies and strategies. In particular, the report preparation process provides an opportunity for the State party to conduct a comprehensive review of the measures taken

¹⁸ UN OHCHR. *Enhancing the human rights treaty body system. Harmonized guidelines on reporting to the treaty bodies*. Geneva, 2004.

to harmonize national law and policy with the provisions of the relevant treaty, to monitor progress made in promoting the enjoyment of the rights, to identify problems and shortcomings in its approach to the implementation of the treaties, to assess future needs and goals for more effective implementation of the treaties and to, accordingly, plan and develop appropriate policies to reach these goals.¹⁹

Indicator 2: The wording/content of the cultural policies, strategies, and action plans: The content of these documents should genuinely reflect the legal provisions of the ratified treaties. In the case relevant to this paper, it means that the wording present in Article 15, para 1(a) of the ICESCR and Article 7, para 1 of the UNESCO Convention should also be present – explicitly and implicitly – in the strategies and action plans. Words are seeds of action, which entails that, if the legal provisions are verbally seeded in strategies and action plans, they are brought into the midst of discourse and will have more chance to be embodied in the actual practice. To be more precise, the wording necessary for the reflection of the two provisions mentioned above would include terms such as “take part” or “participate”, “cultural life”, “creation”, “production”, “dissemination”, “access to” cultural expressions, “cultural goods, services, and activities” ” (or in other words - the terms which are encompassed by the term “the culture cycle”), “various social groups”, “minorities”, “women”, “economically disadvantaged groups”, “elderly”, “youth”, “persons with disabilities”, “sustainability”, “development”, “cultural industries”, “cultural heritage”, and “universal values”.

Indicator 3: The financial aspect of the content of cultural policies, strategies, and action plans: The projects/programs which are closer to realizing the cultural objectives (thus, there is a necessity to explicitly state them using carefully worded language) and which are complying with the international obligations should be given priority and awarded with (increased) financial support. Hence, by examining the financially supported projects, we may conclude what is the direction of culture in a certain country (even if the objectives are not explicitly stated in the policy or strategy), and whether this path goes towards the compliance of internationally recognized and adopted standards. Needless to say, such an examination may motivate the State’s officials to assemble a set of cultural objectives (if they are currently only implicit) as well as a set of indicators by which their implementation and progress can be monitored.

Indicator 4: The existence of statistical data concerning culture in cultural policies, strategies, and action plans: The statistical data is an important tool for knowing the status quo in culture, i.e., for clearly determining at which stage of development the country’s culture is, and whether it is progressing in terms of achieving the State’s cultural objectives. Additionally, the statistics allow

¹⁹ UN OHCHR. *The United Nations Human Rights Treaty System - An introduction to the core human rights treaties and the treaty bodies. Fact Sheet 30.* Geneva, 2012. p. 25-26

international comparisons of many cultural aspects, including the realization of cultural rights, which helps to provide a global picture of cultural matters. On the other hand, when considering the national level, such reliable information is needed for evidence-based policies to be formulated and for their impacts to be measured and evaluated. In other words, the existence of statistical data in the field of culture gives a picture of the level of sophistication of cultural policymaking and the degree to which evidence is used to underpin decision-making.

The importance of statistical data has been internationally recognized, and thus in the last decades, there are many efforts invested in encompassing culture into measurable indicators. One of these efforts is certainly the creation of the UNESCO Framework of Cultural Statistics (2009) which is envisaged as a reference point for the States interested in developing a data package that will enable their culture's performance to be measurable and comparable. Luckily, a certain degree of cultural data may be collected by disaggregation of the currently existing national data, such as the national censuses of population, business censuses, and any participation/usage data, as well as funding allocation data, house expenditure surveys, etc. For example, if we are to measure cultural participation which includes participating in cultural practices that are home-based (*culture d'appartement*), going-out (*culture de sortie*), and identity building (*culture identitaire*), the UNESCO Framework advises that it may be measured by the cultural participation surveys which must be sensitive to all social groups (youth, elderly, members of minorities, persons with disabilities, socially and geographically disadvantaged persons). This paper focuses on the statistical data that is explicitly stated in the available strategies and thus represents a solid and easily visible underpinning to the decision-making in culture.

In a nutshell, the comparison of the selected cultural policies and strategies from Bosnia and Herzegovina and Croatia suggests that – Bosnia and Herzegovina, after the initial delay in preparing State reports to the ICESCR and the UNESCO 2005 Convention (in the period of war atrocities and post-war recovery), quite devotedly fulfills its obligations and submits the reports in a timely manner showing the willingness for gradual realization of cultural rights and other rights contained in the treaties. On the other hand, the wording that matches and reflects the content (cultural rights) of the ratified treaties is predominantly found in the Strategic Plan of Culture in Croatia (2014-2016). In addition, the Strategic Plan offers the indicator-benchmark overview which, by including the relevant statistical and financial data, shows a significant attempt to operationalize culture (and cultural rights) and make them as measurable as possible. Such a format would be useful for Bosnia and Herzegovina for the creation of the future cultural strategy and action plan because currently there is a weak synapse between the law and the cultural strategy, in other words, signals sent from the law are not efficiently transmitted to the policy. To conclude, the current cultural strategy in Bosnia and Herzegovina is of a more declarative nature without sufficient language formulations and terminology that reflect the content of the treaties, as well as the accurate and

up-to-date statistical data, financial information, and clearly specified indicators and benchmarks. However, it must be noted that it is a very comprehensive text and thus it is a good material to build upon to ensure the legal provisions enter the policies and have their embodiment in the practice.

5. Conclusion

Culture has been recognized as an essential tool for development, peace, eradication of poverty, building social cohesion, as well as for fostering mutual respect and understanding between individuals and groups, in all their diversity.²⁰ Cultural rights, which are modestly rooted in the ICESCR (1966) and subsequently further developed in conventions such as the UNESCO Convention (2005), represent an important segment in realizing the universal claim of humankind to freedom and dignity, through ensuring respect of the right to take part in the cultural life and to enjoy the benefits of scientific progress and its applications. Thus, even though they are often perceived as less important or “the residual category”²¹ within the human rights system, the state parties are under equal obligation as for the civil and political rights to take steps to achieve progressively the full realization of the cultural rights. Hence, this paper investigated the state of cultural rights in culturally diverse Bosnia and Herzegovina by focusing on cultural policy as an indicator of the will of the state to realize cultural rights. The role of cultural policy is to have gathered an overview of the current cultural situation of the country and to lay down the foundation for its development in direction of fulfilling the cultural objectives which are in accordance with the objectives of the international cultural community appearing in a variety of ratified treaties.

In the attempt to identify adjustments that could contribute to a more effective realization of cultural rights, primarily the right to “take part in cultural life” (ICESCR Article 15, para 1(a) and UNESCO 2006 Convention, Article 7), this paper examined and displayed the weak and strong points of the cultural policies in Bosnia and Herzegovina and the neighboring (EU-member) country of Croatia. The conducted analysis was based on four indicators proposed by the author who relied on the relevant documents (ESCR’s General Comment no. 21 (2009) – Article 15, para 1(a) and the UNESCO Operational Guidelines and Measures for Article 7 of the UNESCO Convention (2013), to generate them: the existence of the cultural policy and State reports to the ICESCR and UNESCO 2005 Conven-

²⁰ United Nations Human Rights Council. *Report of the independent expert in the field of cultural rights, Ms. Farida Shaheed, submitted pursuant to resolution 10/23 of the Human Rights Council*. A/HRC/14/36. March 2010

²¹ Eide, Asbjorn, *The use of indicators in the protection of the Committee on Economic, Social and Cultural Rights*. In Eide, Asbjorn, Catarina Krause and Allan Rosas: *Economic, Social and Cultural Rights, A Textbook*, Second Revised Edition. Dordrecht: Martinus Nijhoff Publishers, 2001, p. 545-553

tion, the wording of the cultural strategies, the financial aspect of these strategies and the characteristics of the statistical framework included in the cultural strategies.

The analysis brought forward the following steps and recommendations for upgrading the existing cultural policies to ensure the fulfillment of cultural rights and fostering of social cohesion:

- a) The content of the cultural policy must reflect the content of the internationally recognized cultural rights. Literally, their content should reflect the content of legal provisions by matching wording. This might appear trivial at first, but words are seeds of action – by explicitly stating the content of rights in the policies it is ensured that the synapse between law and practice is strong, or in other words that the signals sent from the law are put in the planning process which then increases chances for their embodiment in practice.
- b) Those segments of cultural policies that aim to realize the recognized cultural rights should be financially supported, within the limitations of the available resources. Naturally, the decisions about financial support must be carefully and regularly rethought, because if resources are scarce, one cannot afford to allocate them in ways that do not bring steady improvement in the field. Hence, priority for fund allocation in the yearly plans and competitions by the Ministry of Culture and related authorities should be given to those cultural projects whose proposals explicitly match the wording and which clearly aim to realize cultural rights present in the relevant ratified treaties.
- c) To have a clear and comprehensive view of the achieved progress in the realization of cultural rights and to detect which areas seek more attention, there ought to be established a statistical framework which allows a more detailed examination of progress in the realization of cultural rights (and progress in culture, in general). Conducting a continual statistical examination built on the basis of the UNESCO Framework of Cultural Statistics (including measurement of cultural participation, which is especially important to monitor the respect of the right to participate in cultural life) and including the results in the cultural strategies would set a path to the indicator-benchmark format of the cultural strategies that would provide a factual underpinning to the decision-making.
- d) The efforts for the realization of cultural rights and the challenges standing in their way should be continuously compiled and presented in the State's reports to the ratified treaties, which ought to be delivered in a timely manner (every four or five years, depending on the treaty). The necessity of the existence of the State Report writing process is multiple: it can detect gaps in knowledge (it brings together facts, statistics, analysis, interpretations, and opinions about the state of affairs in culture) and weaknesses and strengths of the current system. These reports, while fulfilling the in-

ternational obligation to the ratified treaty, may serve as a final stage of the previous circle as well as the initial stage of the following circle; an overview of the past efforts in the area is found within them, and hence they can become a basis for the upgrades of future cultural strategies. Finally, timely and comprehensive State reports contribute to strengthening the human rights treaty system because it has been recognized that one of the challenges it faces is precisely the delay in the submission of reports.

These steps may contribute to a better realization of “the right to participate in cultural life”, but also of other international (cultural) rights because they comply with the internationally envisaged ideal process for the States Parties to the treaties, including the treaties related to culture. This process, as previously described, instructs the States to, after the ratification of a certain treaty, identify indicators, set benchmarks, and start monitoring and preparing quinquennial reports to the responsible monitoring body. Namely, by establishing an indicator-benchmark process, it is possible to assess progress over time and detect whether there are improvements or deteriorations and/or if there is discrimination on certain grounds. Hence, implementing these steps would both fulfill the obligations taken by the treaties and would enable data-driven progress toward the highest attainable standard. In other words, upgrading the future cultural policies and strategies as suggested by this paper would allow for a stronger presence of cultural rights in the policies which would thereafter result in an upward trajectory toward the full realization of cultural rights in practice, the advancement of Bosnia and Herzegovina’s on its path towards the EU, and finally toward the strengthening of the human rights treaty system in the rather marginalized area of cultural rights.

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NOTES IN THE MARGINS: CULTURAL RIGHTS AND CULTURAL POLICIES IN BOSNIA AND HERZEGOVINA

Abstract: Cultural rights, as established by Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Article 27 of the Universal Declaration of Human Rights (UDHR), represent an important segment in realizing the universal claim of humankind on freedom and dignity, and yet are often marginalized or perceived as a “residual category”. However, the state parties are under equal obligation as for the civil and political rights to take steps to achieve progressively the full realization of the rights recognized in the ICESCR. Hence, this paper investigates the state of cultural rights in culturally diverse Bosnia and Herzegovina by focusing on cultural policy as an indicator of the will of the state to realize cultural rights. The paper displays the policies’ weak and strong points and identifies adjustments that could contribute to a more effective realization of cultural rights. By examining the latest cultural policies in Bosnia and Herzegovina as well as the cultural policy of the neighboring (EU-member) country of Croatia on the basis of indicators proposed by the author (existence of the cultural policy and State reports to the ICESCR, wording of the cultural strategies, financial aspect of these strategies and the characteristics of the statistical framework included in the cultural strategies), the paper generates recommendations for upgrading the existing cultural policies to ensure fulfilling cultural rights and fostering of social cohesion.

Keywords: Cultural rights, The International Covenant on Economic, Social and Cultural Rights, Human rights, Cultural policies