

OTVORENO PISMO **ZA RAVNOPRAVAN ZAKON** **O KULTURI CRNE GORE**

(English translation below)

Organizacije civilnog društva i pojedinci/ke iz sektora kulture Crne Gore pozivaju Ministarstvo kulture i medija i Vladu Crne Gore da iz Nacrta zakona o kulturi uklone rješenja kojima se nevladine organizacije isključuju iz sistema javnog finansiranja kulture.

Članice Kooperative, regionalne platforme za kulturu, daju punu podršku crnogorskoj nezavisnoj sceni u njenoj borbi za ravnopravan položaj u kulturnom sistemu Crne Gore.

Nakon gotovo 15 godina primjene važećeg zakona, potreban je stvarni, a ne kozmetički iskorak. Javna podrška u kulturi mora se dodjeljivati prema kvalitetu programa, rezultatima i doprinosu javnom interesu, a ne prema pravnom obliku organizacije.

NVO koje stvaraju kulturne i umjetničke programe nijesu akteri izvan kulturnog sistema. One razvijaju savremeno stvaralaštvo, štite kulturnu baštinu, grade publiku i ostvaruju javni interes u kulturi. Zato moraju imati pravo da pod jednakim uslovima učestvuju na konkursima u oblasti u kojoj djeluju.

ZAHTJEV 1 **IZBRISATI ISKLJUČENJE NVO IZ ČLANA 83**

Članom 83 Nacrta nevladine organizacije isključuju se iz konkursa Ministarstva kulture i medija i nadležnih organa lokalne uprave u oblasti kulture. Za takvo potpuno isključenje ne postoji odgovarajuće pravno obrazloženje.

Postojanje posebnog sistema finansiranja prema Zakonu o nevladinim organizacijama ne može biti osnov za isključivanje NVO iz sektorskih konkursa. Taj zakon uređuje jedan mehanizam javne podrške, ali ne propisuje da je to jedini dopušteni izvor finansiranja NVO niti da organizacije zbog njega gube pravo učešća na drugim konkursima.

Praksa pokazuje zašto posebna linija finansiranja ne može biti zamjena za sektorske konkurse. Prema podacima organizacija civilnog društva, u posljednjih pet godina konkursi za NVO u

kulturi, koji se realizuju u skladu sa Zakonom o NVO, sprovedeni su svega dva puta. To pokazuje koliko je postojeći pristup finansiranju neodrživ za razvoj nezavisne kulturne scene

Ne tražimo povlašćen položaj niti dvostruko finansiranje. Finansiranje istog projekta i istih troškova iz više javnih izvora treba zabraniti i strogo kontrolisati. Zaštita javnih sredstava može se obezbijediti bez isključivanja svih NVO iz konkursa.

Zahtijevamo da se iz člana 83 izbriše odredba kojom se NVO isključuju iz državnih i lokalnih konkursa u kulturi. Uslovi učešća moraju zavisiti od djelatnosti podnosioca, kvaliteta programa i doprinosa javnom interesu, a ne od njegovog pravnog oblika.

ZAHTJEV 2 ODUSTATI OD DODATNOG REGISTRA ILI GA POTPUNO UREDITI ZAKONOM

Član 78 uvodi kategoriju „udruženja u kulturi“ i dodatni Registar koji vodi Ministarstvo kulture i medija, iako su NVO već registrovane u skladu sa Zakonom o nevladinim organizacijama.

Nacrt ne objašnjava dovoljno jasno svrhu novog Registra, prava koja proizlaze iz upisa ni razloge zbog kojih organizacija može biti izbrisana. Ključni kriterijumi i postupci ostavljaju se budućim podzakonskim aktima Ministarstva.

Članovi 78 i 83 moraju se posmatrati zajedno: NVO se odmah isključuju iz konkursa u kulturi, dok njihov budući položaj i prava zavise od Registra čija pravila još nijesu poznata.

Zahtijevamo da se od dodatnog Registra odustane. Ako predlagač odluči da ga zadrži, njegova svrha, kriterijumi za upis i brisanje, prava organizacija, rokovi, postupak odlučivanja i djelotvoran pravni lijek moraju biti uređeni samim zakonom. Upis u Registar ne smije biti uslov za učešće NVO na konkursima u kulturi.

MINISTARSTVO MORA ODGOVORITI

1. Koja konkretna odredba Zakona o nevladinim organizacijama predstavlja pravni osnov za isključenje NVO iz konkursa u kulturi?
2. Koji se legitiman cilj postiže potpunim isključenjem NVO i gdje je taj cilj obrazložen?
3. Zašto se sprečavanje višestrukog finansiranja ne može obezbijediti kontrolom projekata i troškova?
4. Zašto pravni oblik organizacije ima prednost nad njenom djelatnošću, iskustvom i kvalitetom programa?
5. Da li je sprovedena procjena uticaja člana 83 na nezavisnu kulturnu scenu i hoće li biti objavljena?
6. Koja prava proizlaze iz upisa u Registar iz člana 78 i zašto kriterijumi, postupak i pravna zaštita nijesu uređeni zakonom?

NVO SU DIO KULTURE

Crna Gora ne treba da donese novi Zakon o kulturi koji ponavlja neravnopravan položaj nezavisne kulturne scene. Potreban je zakon koji jednako prepoznaje sve aktere koji svojim radom ostvaruju javni interes u kulturi.

Kooperativa će od Ministarstva zatražiti pisane odgovore i o spornim rješenjima obavijestiti Delegaciju Evropske unije, relevantne službe Evropske komisije, Savjet Evrope i druge institucije koje prate položaj civilnog društva i pristupni proces Crne Gore.

Uz otvoreno pismo dostavljamo pravno mišljenje o članovima 78 i 83 Nacrta zakona o kulturi

OPEN LETTER **FOR AN EQUITABLE AND EUROPEAN LAW ON** **CULTURE IN MONTENEGRO**

Civil society organisations and individuals from Montenegro's cultural sector call on the Ministry of Culture and Media and the Government of Montenegro to remove from the Draft Law on Culture the provisions that exclude non-governmental organisations from the public cultural funding system.

The member organisations of Kooperativa – Regional Platform for Culture express their full support for Montenegro's independent cultural scene in its efforts to secure an equal position within Montenegro's cultural system.

After almost fifteen years of implementation of the existing law, Montenegro needs genuine reform rather than merely cosmetic changes. Public funding for culture must be allocated according to the quality of programmes, demonstrated results, and contribution to the public interest—not according to an organisation's legal form.

Non-governmental organisations that develop cultural and artistic programmes are an integral part of the cultural sector. They create contemporary cultural content, safeguard cultural heritage, develop audiences, foster participation, and serve the public interest in culture. They must therefore be entitled to participate in public funding calls in their field of activity under equal conditions.

DEMAND 1 **REMOVE THE EXCLUSION OF NGOs FROM ARTICLE 83**

Article 83 of the Draft Law excludes non-governmental organisations from public funding calls issued by the Ministry of Culture and Media and the competent local government authorities in the field of culture. There is no adequate legal or public-interest justification for such a blanket exclusion.

The existence of a separate funding mechanism under the Law on Non-Governmental Organisations cannot constitute a valid basis for excluding NGOs from sector-specific funding calls. That law regulates one mechanism of public support, but it does not provide that this is the only permissible source of public funding for NGOs, nor does it stipulate that NGOs thereby lose the right to participate in other public funding procedures.

Experience demonstrates why a separate funding line under the Law on Non-Governmental Organisations cannot replace sector-specific funding calls. According to data collected by civil society organisations, public funding calls for NGOs in the field of culture under the Law on Non-Governmental Organisations have been issued only twice in the past five years. Such an irregular and unpredictable funding mechanism cannot provide a sustainable basis for the development of Montenegro's independent cultural scene.

We are not asking for preferential treatment or duplicate funding. The financing of the same project activities and the same eligible costs from multiple public sources should be explicitly prohibited and subject to effective oversight. Public funds can and must be protected through transparent application procedures, financial controls, reporting obligations, and sanctions for misuse—without excluding an entire category of cultural actors from access to public funding.

We therefore demand that Article 83 be amended by removing the provision that excludes NGOs from national and local public funding calls in the field of culture. Eligibility must depend on the applicant's field of activity, experience, programme quality, organisational capacity, and contribution to the public interest—not on its legal form.

DEMAND 2

ABANDON THE ADDITIONAL REGISTER OR REGULATE IT FULLY IN THE LAW

Article 78 introduces the category of “cultural associations” and establishes an additional register to be maintained by the Ministry of Culture and Media, even though NGOs are already registered in accordance with the Law on Non-Governmental Organisations.

The Draft Law does not define clearly enough the purpose of this additional register, the legal status or rights arising from registration, or the grounds and procedure for removing an organisation from it. Essential criteria and procedures are left to future implementing legislation to be adopted by the Ministry.

Articles 78 and 83 must be considered together. NGOs are immediately excluded from public funding calls in the field of culture, while the scope of their future status and rights is linked to a register whose purpose, criteria, procedures, and legal consequences have not yet been fully defined.

This creates legal uncertainty and gives the Ministry excessive discretion to regulate essential matters through secondary legislation. Questions concerning eligibility, the acquisition or loss of status, procedural safeguards, and access to an effective legal remedy must be regulated by the law itself.

We therefore demand that the additional register be abandoned.

If the Government nevertheless decides to retain it, the law itself must clearly regulate:

1. the purpose of the register;
2. the criteria and procedure for registration;
3. the rights arising from registration;
4. the grounds and procedure for refusing registration or removing an organisation from the register;
5. the time limits for decision-making;
6. the obligation to provide a reasoned decision; and
7. access to an effective legal remedy.

Registration in this additional register must not be established as a precondition for the participation of NGOs in public funding calls in the field of culture.

QUESTIONS FOR THE MINISTRY OF CULTURE AND MEDIA

1. Which specific provision of the Law on Non-Governmental Organisations provides a legal basis for excluding NGOs from public funding calls in the field of culture?
2. What legitimate public-interest objective is pursued through the blanket exclusion of NGOs, and where is that objective explained and substantiated?
3. Why cannot duplicate funding be prevented through transparent application procedures, project and cost monitoring, reporting obligations, and effective financial controls?
4. Why should an organisation's legal form take precedence over its field of activity, experience, organisational capacity, programme quality, and contribution to the public interest?
5. Has an assessment been conducted of the impact that Article 83 would have on Montenegro's independent cultural scene? If so, will that assessment be made publicly available?
6. What rights arise from registration in the register introduced under Article 78, and why are the criteria, procedures, time limits, grounds for removal, and available legal remedies not regulated by the law itself?
7. How does the Ministry reconcile the exclusion of NGOs from public cultural funding with the principles of equality, transparency, participation, and cooperation with civil society promoted within Montenegro's European integration process?

NGOs ARE AN INTEGRAL PART OF CULTURE

Montenegro should not adopt a new Law on Culture that preserves or deepens the unequal position of the independent cultural scene. The country needs a law that recognises, under equal conditions, all cultural actors whose work contributes to the public interest.

Legal form does not determine cultural value. Programme quality, professional integrity, achieved results, public accessibility, and contribution to cultural development must be the decisive criteria for allocating public funds.

Kooperativa will request written responses from the Ministry of Culture and Media and will inform the Delegation of the European Union to Montenegro, the relevant services of the European Commission, the Council of Europe, and other institutions monitoring the position of civil society and Montenegro's EU accession process about the problematic provisions of the Draft Law.

A legal opinion concerning Articles 78 and 83 of the Draft Law on Culture is being submitted together with this open letter.

Signatories

Independent cultural sector actors from Montenegro, Kooperativa member organisations and members of national networks

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