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Cultural policy of the European Union

1. Introduction

There are few words that are as difficult to define as the word “culture”. Probably the best definition possible – “culture” is about “everything humans do”, as opposed to “nature” being “everything else” – delivers little in terms of explanation of complexity or content of the phenomenon. To make matters even more complicated, the ontological aspect of culture is entangled in axiology: humans have capacity to create meaning for the reality in which they are currently situated,¹ and through this ability people can give a dimension as well as meaning to their humanity. The term “culture” has no legal definition,² and while it was once used in the matter of cultivating plants and animals, over time “culture” has become a term entering the sphere of cultivating human minds.³ The effect of culture goes far beyond the realms of use and at the same time gives value to business and politics.⁴

The European Economic Community was established more than half a century ago. At that time, it was assumed that the glory days of Europe were over because of post-war economic and political impoverishment. However, European integration turned out successful; old animosities were silenced and international tensions were effectively reduced. The European Community was an attractive model of integration to European

¹ K. Bielawski, *Przemoc w działaniach politycznych w Indonezji*, unpublished doctoral dissertation, Wydział Nauk Społecznych – Instytut Politologii, Uniwersytet Gdański 2020, pp. 38–39.

² A. Jagielska-Burduk, W. Szafranski, “Sektor kultury – działalność kulturalna. Wokół problematyki prawnej” [in:] *Kultura w praktyce. Zagadnienia prawne*, eds. A. Jagielska-Burduk, W. Szafranski, Poznań 2012, p. 14.

³ E. Baldwin, B. Longhurst, S. McCracken, M. Ogborn, G. Smith, *Wstęp do kulturoznawstwa*, Poznań 2007, pp. 24–27.

⁴ K. Bielawski, *Przemoc w działaniach politycznych...*, p. 38.

countries. It should be noted that all assimilation processes were related to the economy of the countries and cultural aspects were a side effect of the project. However, there is no Europe without Europeans, thus the countries attempted to continue further steps in the European integration project.⁵

Cultural policy, just like the concept of culture, does not have a legal definition, so attempts to formulate it have been made through discourse and approximation. Imprecision in the terminology used in this discourse is also evident in discourse on related notions, i.e. common cultural heritage, common cultural area or European cultural space. As cultural policy, a targeted and systematic integration in the cultural aspect has therefore been adopted.⁶ According to this approach, cultural policy is about preservation of cultural identity for each Member State, about ensuring equal access to culture, about diversity of cultural offerings and promotion of cultural goods and services. The diversity of countries belonging to the European Union (formerly the Community) has caused, to say the least, difficulties in formulating a single cultural policy. Because of this diversity, the Union has developed a unique approach to the subject – one that is based on compromise and cooperation rather than law.

2. Historical background and legal framework

The official motto of the European Union is “united in diversity”. This slogan points to the cultural paradigm “unity in multiplicity” which has an influence on diversity of cultures and cultural codes functioning throughout the European continent. The next stage of integration, mentioned above, has been associated with instilling a sense of European identity in society and since the 1970s numerous academic and political debates on the unification direction of the countries belonging to the Community have been held.⁷

It is important therefore to remember about different models of cultural policy that have worked in European countries. Member States were convinced that culture should remain as an exclusive national competence. This implied the need to conduct debates, as it was not obvious that culture belongs at the European level.⁸ As far back as the 1980s,

⁵ Z. Sokolewicz, “Kultura w procesie integracji europejskiej” [in:] *Europeistyka w zarysie*, eds. A.Z. Nowak, D. Milczarek, Warszawa 2006, pp. 318–334.

⁶ D. Ilczuk, “Polityka kulturalna a społeczeństwo obywatelskie w świetle literatury, badań Rady Europy i Unii Europejskiej”, *Kultura Współczesna* 1999, no. 1, pp. 65–66.

⁷ M. Sassatelli, “Imagined Europe: The Shaping of a European Cultural Identity Through EU Cultural Policy”, *European Journal of Social Theory* 2002, vol. 5, no. 4, pp. 435–451.

⁸ A. Littoz-Monnet, *The European Union and Culture. Between economic regulation and European cultural policy*, Manchester 2007.

it was known that cultural integration activities required their own legislation, as a balance and compromise on the exclusive competence of the State in the field of culture, and Community involvement in the common policy in the area remained important.⁹

The legal basis for understanding the cultural policy came with the Treaty on European Union, signed in Maastricht on 7 February 1992 (OJ C 326, 26.10.2012, pp. 13–390; also known as the Treaty of Maastricht). In accordance with the provision contained in Article 128 of the Maastricht Treaty, the aim, competences and the scope of Community actions in terms of culture have been established. These were the foundations of the cultural policy, allowing the culture of individual Member States to develop while creating a common cultural heritage for Europeans. The Maastricht Treaty has sanctioned the role and the significance of cultural diversity while delegating part of the competence to the Community to create and emphasise the common heritage. That provision has defined EU responsibilities precisely and assigned them to the principles of complementarity and subsidiarity: the Community was supposed to encourage cooperation and, if necessary, to support or supplement the actions of a Member State. In line with these principles, Article 128(5) of the Maastricht Treaty excluded culture from any actions of harmonisation. Thus, the very idea of creating a common cultural policy within the European Union has been treated with great reserve. The Community was given competence to increase knowledge of the history of European peoples, to protect the European cultural heritage, to develop non-profit cultural exchange, and to promote broadly understood work and creativity. Due to this solution, the Community has been tasked with integrating cultural activities into other undertaken activities, such as cohesion policy, while protecting state autonomy in this area.

Another treaty regulating cultural policy was the Treaty of Amsterdam amending the Treaty on European Union, signed in Amsterdam on 2 October 1997 (OJ C 340, 10.11.1997, pp. 1–144; hereinafter: Treaty of Amsterdam of 1997), which justified the integration of cultural aspects into all activities and policies pursued by the Community.

The paradigm of cultural policy changed after 2000, as it was necessary to redefine the directions of engagement. There has been a proposed increase in interest in culture in the aspect of European society. However, legal considerations have specifically positioned the culture of community in the shadow of the identity of individual Member States. The fact that cultural policy was being obscured by the conservatism of the Member States for an extended period of time limited the effective use of Union funds in the modernisation of cultural infrastructure. Nevertheless, technological progress has had changes in the production, distribution, or consumption of cultural goods and services

⁹ E. Psychogiopoulou, *The Integration of Cultural Considerations in EU Law and Policies*, Leiden – Boston 2008.

on the States as well as on the European Union. Yudhishtir Raj Isar has stressed that over time the range of goods and services has developed significantly, which undoubtedly affects every cultural process.¹⁰ The Communication on the European Agenda for Culture in the age of globalisation of the world¹¹ – a document setting out new strategies and orientations for cultural policy, which was approved by the Council of the European Union on 16 November 2007 – has changed the understanding of the role of culture by underlining its important role in the process of European Integration and the significance of cultural policy for the idea of cooperation and integration.

The Agenda identified three thoughts that the European Union was to be guided by, namely: 1) promoting diversity while encouraging the dialogue, 2) culture as a catalyst for creativity, 3) culture as part of international relations.

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on 13 December 2007 (OJ C 306, 17.12.2007, pp. 1–27; hereinafter: the Treaty of Lisbon) which entered into force in 2009, established cultural heritage as a foundation and an inalienable human right. The culture of the Union has been expressed as a desire to deepen solidarity while respecting state cultures, traditions, and history. The Union, therefore, respects diversity, but also ensures the protection and development of the cultural heritage of Europeans.

The Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390; hereinafter: TFEU) regulates implementation of EU law into national laws, including rules related to cultural engagement. It is worth to note that the TFEU introduced the principle of majority voting, replacing the unanimity rule in force since 1992. Moreover, the responsibilities of the institutions of the European Union in promoting and implementing cultural policy actions have been established expressly. In particular, Article 167(2) of the TFEU mandates that the Union aims to deepen knowledge as well as to disseminate the culture and history of the Member States and European peoples; contributes to the flowering of the cultures of the Member States; protects cultural heritage of European importance; aims for non-commercial cultural exchanges; supports artistic, literary and audiovisual creation; and takes cultural aspects into account and respects and promotes the diversity of Member States' cultures. Of course, any EU action in that sphere must support and complement the actions of the Member States. The aim of the Member States was, therefore, to highlight and protect diversity in cultural systems.¹²

¹⁰ Y. Raj Isar, "The cultural industries and the economy of culture", <http://www.cultureaction-europe.org> (accessed: 31.12.2020).

¹¹ The European Commission, *European agenda for culture in a globalising world*, Brussels, 10.05.2007, COM (2007) 242.

¹² E. Psychogiopoulou, *The Integration...*, p. 26.

Needless to say, any further agenda or action, is constrained by the scope and purpose of their respective legal bases in the field of cultural policy.¹³ Accordingly, any direct action by the European Union in the field of culture is based on the Treaties, and the specificity of the instruments used by the European Union in the field of culture is subordinated to the principle of subsidiarity and complementarity. Culture, however, stands visibly apart from other areas of interest of the Union. There is actual reluctance to regulate these issues at the EU level, so much so it would appear as if the solutions to culture (and related policies) are supposed to work under different principles than, for example, trade, transport, or agriculture. The attitude of the Member States is conservative in this regard and the language of Article 167(1) and the rest of Title XIII of the TFEU does reflect this conservatism: instead of outright regulation or harmonisation of domestic laws, the EU “contributes” to the flowering of cultures (plural of the noun is no coincidence), and any action or initiative at the community level (“bringing common heritage to the fore”) must “respect national and regional diversity”. Nevertheless, the Union has developed mechanisms for the operation and financing of cultural activities,¹⁴ which allowed creation of a legal framework, despite the lack of a legal definition.

The academia identifies three areas of cooperation within the European Union’s cultural policy: 1) protection of European heritage, 2) projects developing European culture, 3) promoting European culture.¹⁵ Despite the Member States’ reluctance to allow regulation of cultural issues as a part of the continent’s integration, it quickly became apparent that it was necessary to build a sense of community among Europeans. These theses underline that the European Union was aware of the difficult and serious challenge of multiculturalism within the Community.¹⁶ Moreover, technological and economical progress has invited some international cooperation between the Member States. In this regard, it has been noted that culture is a resource of the European Union’s “soft power”, which has strengthened external relations and the competitiveness of the European cultural sector. Activities related to the Agenda have initiated a turnaround in the cultural policy. The aim was to include culture as an independent area within EU policies. But despite such postulations, culture has not become a strategic area of development, and this was confirmed in a 2010 manifesto entitled “Europe 2020 – a strategy for smart, sustainable and inclusive growth”, where the area of culture was notably omitted in *exposé* of key

¹³ J. Barcz, *Polityki Unii Europejskiej. Społeczne aspekty prawne*, Warszawa 2010.

¹⁴ D. Jurkiewicz-Eckert, “Cultural Policy of the EU. How it works in practice” [in:] *Introduction to European Studies: A New Approach to Uniting Europe*, eds. D. Milczarek, A. Adamczyk, K. Zajączkowski, Warszawa 2013, pp. 729–762.

¹⁵ K. Zeidler, “Zasada ochrony europejskiego dziedzictwa kultury” [in:] *Europa sędziów*, ed. Z. Brodecki, Warszawa 2007, pp. 292–293.

¹⁶ H.E. Naess, *A New Agenda? The European Union and Cultural Policy*, London 2009.

solutions in terms of EU funds.¹⁷ Moreover, in that document, the word “culture” was replaced by “creativity”, which might cast doubts as to the role of culture as an independent priority of the European Union. The EU’s engagement in culture is derived from the paradox of disproportionate discourse on the concept of “unity in multiplicity”. Aside from axiological explanation, the “culture–creativity” word game had tangible consequences: on one hand, the number of cultural initiatives that receive funding has increased to the satisfaction of cultural audiences; on the other, there is a sense of frustration felt by some cultural institutions which complain about undue reliance on criterion of “creativity of the idea” in assessment of their applications for EU grants.¹⁸

3. Protection of cultural heritage within the framework of cultural policy

Given the Member States’ autonomy in the area of cultural policy – the default position – defining what is actually common in the common policy might prove problematic. Europe has visible regional differences, and the concept of culture is not identical in all Member States. It is believed that culture is the source of the nation’s identity, which is undoubtedly a component of cultural heritage, and aims to create a European society with the identity of society as Europeans. Thus, in order to create an awareness that allows the creation of a functioning culture (and cultural policy), it is necessary to find (or perhaps to create) some common ground. In the case of the Union, the common ground is the platform of dialogue.

The concept of “cultural heritage” mentioned in Article 167(1) of the TFEU is expanded in Decision No. 2228/97/EC of the European Parliament and of the Council of 13 October 1997 establishing a Community action programme in the field of cultural heritage (OJ L 305, 8.11.1997, p. 32). Article 2 of this Decision defines “cultural heritage” broadly and includes movable and immovable heritage (museums and collections, libraries and archives including photographic, cinematographic and sound archives), archaeological and underwater heritage, architectural heritage, assemblages and sites and cultural landscapes. Again, the cultural diversity of Europe – beginning with diversity in language¹⁹ – affects not only the EU’s policies, but also its secondary legislation. A notable example is

¹⁷ D. Jurkiewicz-Eckert, “Cultural Policy of the EU...”, pp. 753–761.

¹⁸ Ch. Gordon, R. Fisher, D. Klaić, Analysis of the Commission Communication „A European Agenda for Culture in globalizing world”, briefing paper for European Parliament, 2007, <http://www.europarl.europa.eu/thinktank/en/document.html> (accessed: 31.12.2020).

¹⁹ A. Siwek, “Komentarz do art. 151 TWE” [in:] *Traktat ustanawiający Wspólnotę Europejską. Komentarz*, ed. A. Wróbel, vol. 2, Art. 61–188, eds. K. Kowalik-Bańczyk, M. Szwarc-Kuczer, Warszawa 2009, pp. 11–30.

Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, 27.03.1993, pp. 74–79). This directive does not harmonise the principles of protection, but merely lays down a procedure for cooperation between states as the Treaties lack specific powers to enact any farther reaching measures. Despite the establishment of a common market, economic and monetary union, protection of heritage has been limited to “facilitating” and “refraining from measures threatening treaty objectives”. In other words, the treaty provisions referred to above allow for little more than soft law. What is more, any actual Community legislation related to the cultural area would gain typical characteristics of EU law only if its subject intersected with other areas relevant to the Union. Consequently, the EU’s cultural policy is connected to the notion of cultural heritage, and this connection works in two dimensions only – it is a cooperation mechanism and a source of funding for important activities. And while the third dimension – law, as a casual reader of the founding treaties might infer – is missing, this omission is not a flaw of the system; it is its feature.

The European approach to cultural heritage policy – dialogue instead of law – inspires actors in other normative frameworks worldwide, with a view to establish sustainable cultural exchanges, promote interculturalism, and, ultimately, add flavour to the relationships among peoples. No doubt, Europe should be able to fulfil itself in a common cultural space conducive to the development and progress of Europeans, both in an individual and collective sense, enhancing their feeling at the same time belonging to one community.²⁰

4. Conclusions

The issue of the European Union’s cultural policy remains sensitive. The EU has treated cultural policy as a sphere of national sovereignty and has refrained from introducing uniform regulations. The autonomy of the Member States in this field and the subsidiarity of the activities of the EU institutions allow the soft law system to keep its balance. The focus of cultural policy is on the economic importance of culture, which is not surprising since economy is both at the EU’s origins and in its present core. Nevertheless, culture is acknowledged to have not only a financial dimension – the very reason why it was included into the Treaties is that it is a carrier of value.

Today, at the time of crisis caused by the COVID-19 pandemic, any reduction of national and EU funds – especially in the context of lockdown-related domestic policies

²⁰ L. Terezini, lecture given on 21 May 2005 in Bologna during a session organised by ATER (Associazione Teatrale Emilia Romagna).

and regulations which have led to effective freezing of economic activity in the sphere of culture – can have far-reaching consequences. Not all cultural endeavours are economically self-sustainable; culture and heritage protection need the continuing support of the European Union.

Due to the differences between European regions and states, defining common cultural heritage is a difficult undertaking. The current legal framework does not allow typical legal measures aimed at direct regulation or harmonisation of domestic laws on this subject. Moreover, any EU initiative that might be perceived as an effort towards substantive or even procedural unification of law on culture is likely to face opposition from Member States. Nevertheless, the Union's objective remains to promote culture (understood as diversity of cultural expressions), to protect it and to help develop it. These objectives are realised through dialogue and soft-law measures. Preserving Member States' autonomy in this area, while at the same time supplementing national measures with dialogue and financing are key features of the system. The dialogue-oriented approach was purposefully chosen over typical legal measures adopted in other areas of interest to the EU, and this choice was meant to reflect the discursive nature of culture itself and to promote peace and mutual respect in Europe and around the world. In other words, establishing one standard policy in place of current approach would amount to an irreparable loss for the Member States and, ultimately, to the Union itself. Maintaining cultural diversity is a condition *sine qua non* for sustainable development in quality of life.

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Summary

Cultural policy of the European Union

The term “culture” is expansive and ambiguous. In legal discourse the usual difficulties as to the ever-changing meaning and undertones of this word are amplified by the lack of legal definition of the concept. In the broadest sense, culture can be understood as the entirety of spiritual and material legacy of mankind, and by adding an element of generational transformation we arrive

at the concept of cultural heritage. Cultural heritage has become one of the priorities of the modern world and has conditioned the emergence of a cultural policy appropriate for each country. The establishment of the European Community brought the citizens of the Member States closer together and influenced the formation of a common identity and the development of a common European heritage. The ensuing transformation of the Community into the European Union – an entity unique among international organisations – required the creation of equally non-standard solutions with regard to the integration and cooperation of the Member States in the field of the common cultural heritage. The EU motto “united in diversity” indicates the cultural paradigm of “unity in multiplicity”, or, in other words, the principle of preservation of the cultural codes functioning throughout the European continent. The rising interest in the common policy in the field of culture is noticeable, and consequently, cultural policy has become one of the components of the EU’s agenda. This article discusses evolution of the cultural policy of the European Union and its impact on the protection of cultural heritage.

Keywords: cultural policy, cultural heritage, European Union, integration, respect for heterogeneity

Streszczenie

Polityka kulturalna Unii Europejskiej

Kultura jest pojęciem wieloznacznym i pojemnym. W dyskursie prawniczym na zwykłe trudności wywołane zmiennością treści i konotacji tego słowa nakłada się nadto brak definicji legalnej. Najczęściej za kulturę uważa się całokształt duchowego i materialnego dorobku ludzkości, przy czym, jeśli dodać do tego określenia element pokoleniowości, możemy mówić o dziedzictwie kultury. Ochrona tego dziedzictwa stała się jednym z priorytetów współczesnego świata i uwarunkowała powstanie polityki kulturalnej właściwej dla każdego z państw. Powstanie Wspólnoty Europejskiej zbliżyło do siebie obywateli państw członkowskich i wpłynęło na ukształtowanie się wspólnej ich tożsamości, co skutkowało rozwijaniem wspólnego europejskiego dziedzictwa. Przeobrażenie zaś Wspólnoty w Unię Europejską – podmiot różniący się od klasycznych organizacji międzynarodowych – skutkowało koniecznością opracowania równie niestandardowych rozwiązań w odniesieniu do integracji i współpracy państw członkowskich w zakresie wspólnego dziedzictwa kultury, a także usystematyzowania wspólnej polityki kulturalnej. Już samo motto Unii – „zjednoczona w różnorodności” – wskazuje na kulturowy paradygmat „jedność w wielości”, a więc na zasadę zachowania niejednakowych kodów kulturowych funkcjonujących na kontynencie europejskim. Wzrost zainteresowania wspólną polityką w sprawach kultury jest zauważalny, a tym samym polityka kulturalna stała się jednym z komponentów działalności Unii Europejskiej. W artykule przybliżono ewolucję polityki kulturalnej Unii Europejskiej, jednocześnie wskazując na jej wpływ na ochronę dziedzictwa kultury.

Słowa kluczowe: polityka kulturalna, dziedzictwo kultury, Unia Europejska, integracja, poszanowanie różnorodności