BOOKS, CULTURE AND THE EUROPEAN CHALLENGES THEY FACE

UROŠ GRILC

Abstract

In an article that takes as its starting point two of the fundamental European Union (EU) principles regarding the issues of culture, cultural diversity and plurilingualism, the author researches the effects to date of the absence of a common European cultural policy. In two concrete cases – taxation on books and public lending rights – he shows that the absence of a common European cultural policy has resulted in practice in the inadequate implementation of these fundamental principles. Recent moves in relation to the formulation of a European constitution point to an awareness of the need for a more active European cultural policy that actually provides a framework within which member states would be independent in the formulation of their own cultural policy models.

Uroš Grilc is Secretary at the Ministry of Culture, Republic of Slovenia, e-mail: uros.grilc@gov.si.

Duality of the Book and the Role of State

Let us begin by asking a naive and direct question: why, in virtually every European country, does the book publishing field enjoy state support? A simple and more or less precise answer to this question might linger on the duality inherent in the book phenomenon from its Guttenberg beginnings on, the duality of a book as a cultural commodity on one side, and market commodity on the other. This duality extends to the book as the intersection of public and private/profitable interest; while the former exposes the book as a medium of multifaceted creativity, information, knowledge, scientific application, entertainment, etc., the latter aspect of the book enables it to present itself as a commodity, and potentially bring about economic benefit. In short, a book combines spiritual/cultural and economic dimensions. On the basis of this duality the answer to the above question might be wrapped up in claiming that state support of the book is primarily directed by the assurance of a balance between both sides of the book. In other words, the state intervenes at the point where this balance is lost and public interest linked to the book is jeopardized.

Yet the empiricism of this answer promptly shows not only the problem that cultural or government policies towards the book field greatly differ in defining the public interest of the book, not at the declaratory level, which is in practically every country very patronizingly high-flown and outspoken, but the problem comes when the implementation of public interest through concrete forms of support to the book *de facto* unveils the full "extent" of their notion of public interest. It is also true that the above answer undoubtedly applies to all small book markets, particularly those limited by language. Without adequate state support, such book markets simply cannot function and develop themselves. This particularly applies to demanding book production and has an important impact on culture and science, while simultaneously providing the possibility of market profitability. As a result, the above-mentioned "market-corrective" agreement becomes totally useless at the moment that we find out – and this is another issue – that the very countries in which the book market is evidently self-sufficient, actually most abundantly support book publishing activities and/or have developed the most complex forms of indirect or direct subsidies to the book sector. Let us remind ourselves of two countries: France, whose cultural-political system of book support includes numerous forms and refers to all links in the book chain, while the French book market records constant growth in practically every respect; and Great Britain, which in spite of the *lingua franca*-based book market, which is actually the world book market, persistently exempts the book from taxation and thus assures a high level of support.

How then to answer to the above question if, at least in some countries, market conditionality of the book turns out to be an insufficient reason for state support? First of all, one should get rid of the otherwise benevolent naiveté of the initial question. Together with Ulrich Beck we will slightly complicate this question with the help of the reflection of the "capitalist world society," whose triumphant march has been made possible by the "simultaneity of transnational integration and national disintegration" (Beck 1985, 129). When Beck takes over Zymunt Bauman's standpoint on weak countries, which remain in the interest of transnational groups, and which the new world order needs for its own renewal, he quotes a very spe-

cific example: the "experiment called the European Union." Beck perceives the European Union as one of the most potent economic areas of the world, as a structure which might be capable of "co-defining the world trade rules, to support and enforce implementation and consideration of social and ecological measures." If we slightly misinterpret this attitude in the direction of our topic, then we can say, together with Beck, that this new structure would be capable of re-determining and realizing public interest in all areas of life, in a way that might be a fruitful response to the tensions between the transnationality of participating countries and the neoliberal capitalism of the world market. Proof of this statement is the book field, to which all European Union states accord public interest status, regardless of the fact that they are forced to do so by various reasons and incentives. In the following text we will not make an issue of this difference, as we will be interested primarily in the possibility of a kind of common dimension of European cultural policy towards the culture industry area, while we point out its outstanding importance and potential. The comparison of different cultural political models and their impacts on the book market in individual countries may substantially contribute to the building up of their book support systems; only a slight knowledge of existing instruments of individual countries reveals that many of them could, by adopting an example of good practice, substantially incite the development of their own book markets. Owing to their specifics and complexity of factors affecting their condition – in our opinion the latter, in spite of the external aspect of exhaustion and slow adjustment to new market conditions – harbour potentials, which is not in the least proven by the countries able to realize these potentials while their markets record growth. Anyway, this task will have to be addressed not only at the declarative level, by calls to the governments, heard so many times before, that they should allot more budget funds to the book, but first at the level of reinterpretation of the notion of public interest for the book, which an individual country expresses and/or implements by a weighty consideration and adoption of adequate forms of book support in the individual cultural/market environments. We are positive that such reserves and possibilities of incentives to European book markets are substantial, yet we are leaving the task of a more in-depth contemplation of this topic to another occasion.

Acquis Communautaire and State Support

Let us return to our question and/or problematic response to it. We have seen that the "market corrective" response, appearing in the function of affirmation of public interest, does not hold. We have also indicated that public interest itself in the book is not a uniform but rather a very heterogeneous category in European Union countries, which, owing to different practices, takes over very divergent, sometimes even unique, forms of book support. And if it is evident that either issuing from the world market, or issuing from the market itself, we cannot provide a full answer to our initial question, then there remains only one way to it: the solution to the riddle shall only be sought at the level of public interest itself. The answer to the question: "Why is the book area in all European countries eligible for state support?" has therefore its expression in the weight of the public interest of the book, in the predominance of its general cultural dimension over the book as a market commodity. In a time of neoliberal capitalism, such a position of the book is

a unique phenomenon – one could say even a timeless historic relic – as it exempts the book as a commodity to a greater or lesser extent from market rules. And if we labelled the first answer to the initial question as naive, we shall now label the correct answer to it as even more naive, yet accurate.

In all European countries the book enjoys state support because the countries ascribe to the book – as the bearer of creativity in all areas, bearer of knowledge, science, information, entertainment, etc. – the importance of public interest; even with the appearance of numerous new media they still apprehend it as the bearer of the functional literacy of its citizens. The attention to literary creativity, fiction, holds a special place in this respect, as the reading of such texts is a particularly complex and exciting intellectual process, which – according to Iser's functional understanding of literature – develops in an active relation between the text and the reader, between the literary text as the expression of the real and fictional, and the reader, who – with his imaginative participation – fills in the gaps of this split expression and in this way co-forms for himself its final image (Iser 1976). If we take a step further towards the elementary, the input of state funds in the book is the input in development, even in the foundation of development, in practically all areas of our lives; this is the foundation of public interest, the bearer of which is the book. In light of this, we will be interested in the very phenomena and contradictions of this public interest in relation to what Beck calls "the experiment called the European Union."

Therefore, this paper looks at some of the cultural policy issues currently faced by individual States whose common root is harmonisation with the *Acquis communautaire*. In order to understand fully the prospects for national cultures in the light of European integration processes, it is first necessary to shed some light on the general orientations of the European Union with regard to culture and respond to the question of the relationship of individual common European policies affecting the sphere of culture to national culture policies. This question includes the sub-question "Does a common European cultural policy exist?" Only on this basis can we consider the future role of national cultural policies within a united Europe.

To begin with we need to highlight the concepts on which is based not only the EU's attitude to individual cultural policies but also the very idea of a united Europe. These two concepts are the *principle of plurilingualism* and the *principle of cultural diversity.*

If there is one thing with which we cannot reproach the European Union at this moment with regard to its respect for the characteristics of individual States, it is the declarative advocating of the principle of plurilingualism. Proceeding from the principle of non-discrimination, translation into all the languages of the European Union is done consistently. This means that before enlargement, the 11 official languages were translated in 110 directions. At the same time this means that the translation service represents a significant part of the European administration and requires 30-40% of its entire budget, or 0.8% of the entire budget of the EU. With the enlargement of the Union in 2004, the number of official languages has grown to 19. This means that the number of translation directions increased to more than 300 and translation costs tripled.

These naked figures reveal the first problem of the consistent implementation of the principle of plurilingualism. EU language policy is faced with the necessity of translation, and thus with the issue of the hierarchy of linguistic idioms, the

issue of the first foreign language and the issue of the border of collective plurilingualism. All of these issues ultimately terminate in the pragmatic issue of a *lingua franca*, English as the dominant language of common communication. Today it is indisputable that English prevails absolutely in communication within the EU – where great linguistic heterogeneity prevails, since it is home to 34 linguistic communities – and that English is the undisputed first second language. But this dominance carries with it in practice a powerful ideological note: the predominance of one language reveals the extent of the economic and political factors which are inseparable from it.[1] This is the practical level. *De iure*, the EU remains for now an area of supranational communication and an area of awareness that national languages are the first national symbols of Member States. This is clearly reflected in the strong symbolic resistance to the predominance of English on the part of members of the non-English-speaking area, particularly France and Germany. Languages as prime national symbols are perhaps an even more sensitive topic in candidate countries, where in most cases the language communities are small. For this reason the symbolic recognition of these languages as official is of key importance. And if Member States have eventually been able to renounce their national currencies, likewise one of the basic national symbols, in favour of a single European currency, in the case of languages no such solution is possible, and thus the response of a united Europe to the dilemmas of a common European language policy will have to be completely different to its response to the dilemmas of a common European monetary policy. Moreover, these questions require a new response as the new members joined in 2004, and thus the EU will be forced to question its own language policy to date. The question of linguistic saturation, which is already a burning issue, is no longer avoidable, either because of the need to preserve a symbolic balance among languages or because of the unworkability of constant two-way translation and the enormous costs of the translation service. Realistically, a solution will very likely be sought in the direction of a line of demarcation between official languages (all languages of Member States) and a limited number of working languages. This is by no means an unproblematic solution – quite the opposite: it means privileging some languages ahead of others, it means that some States will have to invest more in translation than others, and it means that speakers from countries which speak the working languages of the EU will be in a privileged position. Last but not least, it means that the implementation of the principle of linguistic non-discrimination would become questionable. Undoubtedly, agreeing to such a pragmatic solution would also have great symbolic effects which every national policy would have to confront painfully in the internal policy field.

If we pass from this dilemma to the question of what entry to the EU means for a small linguistic community, we can immediately state, on the basis of the above, that the responsibility for language policy remains a matter of individual States, while EU language policy is focused on respecting and promoting linguistic diversity, where special attention is devoted to the protection of linguistic minorities. In other words, the response to the dilemmas of European language policy within the EU will always be strongly predetermined by the way in which individual States implement their own (internal) language policy. The latter, for external reasons (integration processes and globalisation) and internal reasons (preservation of national identity) are thus actually compelled to implement a strategically planned and active language policy at the national level, one which takes into ac-

count the various levels and dimensions of language (educational, cultural, academic, social, commercial). Europe is therefore still a long way from merely representing a threat to small linguistic communities; through the putting into effect of the principle of plurilingualism, no matter how paradoxical and difficult this is, it also represents an opportunity for smaller European languages to be promoted more conspicuously within the European arena. Lastly, the European Union itself is deliberately encouraging this promotion through individual targeted programmes. This perspective can probably be further radicalised: in a way, a united Europe affords small linguistic communities better protection and development prospects than they would have if they were simply left to the mercy of globalisation processes (Beck 1985, 130). How individual States will exploit these new opportunities will depend above all on the success of their language policies.

To a certain extent, the putting into effect of the *principle of cultural diversity* is faced with kindred dilemmas.[2] The general normative framework which regulates the approach to the common issues of art and culture in the EU is Article 151 of the 1997 Amsterdam Treaty amending the Treaty on the European Union. This article is entitled "Culture" and sets out the fundamental objectives of the European Union with regard to culture. We can immediately state that this article does not contain a basis for a common European cultural policy. Rather, it merely sets out the key EU objectives with regard to cultural issues. There are three such objectives: contributing to the flowering of the cultures of the Member States, respecting their "national and regional diversity" and "bringing the common cultural heritage to the fore." The key activity of the EU in the field of culture is therefore "encouraging cooperation between Member States," the main aims of which are strengthening the idea of European unification, emphasising the European dimension of national cultures and encouraging transnational cultural programmes. It is thus no surprise that Article 151 of the Amsterdam Treaty only conditionally provides a basis for EU programmes oriented towards supporting and complementing the activities of Member States in the field of culture. It was with the aim of providing this type of support that the *Culture 2000* programme was founded.

The clear conclusion deriving from the above is that it is not possible to talk about a "common European cultural policy" but merely about the fundamental objectives of the EU with regard to cultural issues. It is undoubtedly also true that cultural policy is primarily a matter for individual Member States. In other words, the stated general objectives of the EU with regard to cultural policy are a kind of added value which cannot either significantly stimulate nor significantly threaten the development of culture in individual States. The responsibility for the development of culture and language is borne by each Member State itself.

Books, Cultural Policy and Enlargement

Up until 2003 the principles and instruments described above effectively represented all of European cultural policy, in so far as we understand policy as an internally coherent field with clear starting points, goals and orientations. Today, however, it can be seen that the story of European cultural policy does not end here and in fact is really only just beginning. Recent moves within the context of the formulation of the European constitution open up new possibilities for a different approach to the regulation of the field of culture.

The formulation of a European constitution has among other things encouraged Member States and that-time candidates to reflect on the EU's policy to date in the field of culture. The passiveness of the EU, or its limitedness to fundamental guidelines in the area of culture, has thus been placed open to question not from the point of view of the suitability of the principles but as regards their implementation in practice. The realisation has been reached that because of the complexity of the field of culture and its susceptibility to the influences of numerous other changes in the articulation of European policies, it is nevertheless necessary to formulate a minimum common European cultural policy: not a policy regulating the area of culture of the Member States, but one which would *de iure* and *de facto* make it possible for Member States themselves to regulate the field of their own national cultures in accordance with needs and taking into account the specific nature of the position. The state and operation of the cultural sphere are significantly affected by tax legislation and by legislation in the sectors of the economy, the environment, copyright, spatial planning, the media, telecommunications etc., which means that European regulations indirectly but significantly determine the area of culture too. The fourth provision of Article 151 of the Amsterdam Treaty states that the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order "to respect and to promote the diversity of its cultures." But this is the very thing that has proved to be problematic since, if we look at the last six years, the putting into effect of this fourth provision has generally been very modest, and in several cases even unsuccessful, which consequently means that within European legislation European cultures have not always enjoyed appropriate incentives and treatment. This of course means that the specific features of the cultural sphere may in the long term receive less consideration than they could do, and that the implementation of the *Acquis* can have a slowing effect on cultural development, which indirectly means that the putting into effect of the principles of cultural and linguistic diversity, on which in the final analysis the idea of Europe has been based since the very beginning, can become problematic. In the long term this would probably be felt most powerfully by the cultures of the smaller States.

There is an even more glaring dimension to the problem of the absence of a minimum European cultural policy: today we have to deal with individual differences between the normative regulation of the EU and the implementation of this regulation in the Member States. To put it another way, we have to deal with a clear discrepancy between the individual legal systems of the Member States and European directives. To put it yet another way, the paradox lies in the fact that merely *de iure* declarations with regard to the respecting of national cultural diversity do not *de facto* mean (and have not meant) that the special features of the cultural sphere are respected within EU directives.

Accordingly, it is no longer possible today to advocate in this form the view that a common European cultural policy is unnecessary and that it is enough simply to proceed from the fundamental objectives regarding the treatment of the cultural sphere set out in Article 151 of the Amsterdam Treaty while at the same time leaving interference in the regulation of the sector to the States themselves. European cultural policies are facing the dilemma of how to get over the current situation, while an opportunity is being offered by the European constitution. It is not therefore a matter of obtaining an explicit and uniform European cultural policy; it is

rather a question of obtaining a common European cultural policy which ensures the respecting of the specific features of cultural issues within all other public policies. Such a position is particularly necessary in the treatment of those cultural goods which also appear on the market, where this question is of priority importance above all for countries with a small cultural market which can also be affected very negatively by the general regulatory framework of the common European market. To put it as plainly as possible: a minimum of regulation is necessary in order for the principle of deregulation to be implemented. In order for the principle that States are autonomous in the formulation of their own cultural policies to be valid, a minimum common European cultural policy is necessary. This change of view has matured during the formulation of the European constitution.

Naturally the goal of a minimum common European cultural policy cannot lie in exempting the field of culture from all directives or, in short, protecting it from every regulation which is not completely to its measure. On the contrary, the goal is considerably more modest, but at the same time considerably more direct: to ensure incentive conditions for the development of culture in every individual national environment in such a way that the incentives for this development also come from the common European area. Since at this moment no such European policy exists, confusion reigns among Member States as regards the regulation of these issues, which however in no way favours the position of culture.

So as not to remain merely on this general level, let us take a brief look at two concrete cases in which the dilemmas of European cultural policy described above are reflected, and which have – and will continue to have – a significant effect on the position of books in the European Union. They are: tax policy and the public lending right.

Taxation of Books and EU Cultural Policy

Tax policy has a significant effect above all on the operation of that part of cultural production which today we call the cultural or creative industry. The tax policy of the EU has as its starting point the principle of guaranteeing freedoms, i.e. the free movement of goods, services, labour and capital, and for this reason is directed towards the area of indirect taxes, i.e. VAT and excise taxes. The single market of the EU is thus based on respecting the rule of "fiscal neutrality," the rule under which domestically produced goods and imported goods are subject to the same taxation. The sixth VAT directive of the EU stipulates the minimum rates of value added tax. In accordance with this provision the lowest rate is 5 per cent (as in Luxembourg for example), while the general rate is at least 15 per cent. Only Denmark has a higher rate – 25 per cent. The EU directive does not permit any exceptions or zero-ratings for taxation, and thus zero-rating on books is not possible under this directive. However this unambiguousness of the directive hits two obstacles: the first is that in numerous declarations on books the Council of Europe (for example) has appealed to the governments of Member States or candidate countries to take into account the special position of the book as a cultural good and proposed to them the introduction of zero-rating on books, or if books are already taxed, the adoption of measures which take into account this special position of the book.[3] Such an appeal is in direct contradiction to the fiscal regulation of the EU, though of course it is extremely legitimate and based on powerful argu-

ments. The second is even more perilous. A major discrepancy exists between the tax rating of books as imposed by the European directive and that which is implemented by the old and new Member States. A famous example is the long-running dispute between the EU, the United Kingdom and Ireland, where the two countries have persisted with a zero VAT rating for books. On the other hand, two years ago Spain began taxing books in order to come into line with EU regulations. There are also differences between new member countries. Poland is the only new member country to have won itself a seven-year transitional status in which it will preserve its zero VAT rating for books.

We may draw from the above the following conclusion about European taxation on books. In this case we can state with certainty that the fourth provision of Article 151 of the Amsterdam Treaty, which refers to the Community taking cultural aspects into account in its action under other provisions of the Treaty, has not been implemented in the case of the uniform fiscal policy. The fact that the EU at this moment has still not achieved uniform respecting of the sixth VAT directive is probably not the only questionable fact; more questionable is the passivity or non-existence of a European cultural policy which in accordance with this Article of the Treaty would ensure that cultural aspects are genuinely taken into account within the other provisions of the Treaty, since fiscal policy has a key influence on a great part of cultural activities, which are particularly vulnerable in small cultural markets.

Public Lending Right

Another example also points to the inconsistent implementation of the principles of "European cultural policy," and at the same time involves a problem which is now very topical in all new Member countries, with the exception of Lithuania, and is still topical in old Member States too. This is the question of public lending right, rental right and certain rights related to copyright in the field of intellectual property. It is therefore a question of the regulation of the area of intellectual property which relates to public lending and the rights of authors regarding the public lending of their works. Public lending is of course closely linked to guaranteeing access to library material and therefore has its roots in the development of the network of public libraries. Before the second world war libraries in Europe were for the most part private institutions which lent books according to market principles, in other words on the basis of the payment of a membership fee (Pallier 2000). After the Second World War library networks developed rapidly all over Europe. These provided public access to library material and passed almost entirely under the jurisdiction of public authorities. Today we can say with certainty that the provision of public access to library material is one of the great gains of post-war Europe. Simultaneous with the development of the network of public libraries, in circumstances when States rather than private initiative and the market were becoming responsible for libraries, the question of public lending right appeared – in other words the right of authors to decide on the lending of their works. The public lending right was introduced in Denmark in 1946, in Sweden in 1955, in Finland in 1961, in Germany in 1972, and in the United Kingdom in 1979.

The European Union is very sensitive with regard to issues of copyright and intellectual property. It is therefore no surprise that in the 1988 throughout Green Paper on Copyright, which analyses the public lending right situation in Member

States, the European Commission identified major differences, while at the same time proclaiming copyright protection and the provision of rental rights and lending rights to be fundamental rights on which the cultural and economic development of the community rests. The demand for the regulation of this area published here was followed on 19 November 1992 by the adoption of Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property. The directive was adopted with the aim of achieving a minimal harmonisation within Member States with regard to the regulation of these rights. In the first place the directive was supposed to eliminate those differences between Member States in this field which represent a threat or a disturbance to the functioning of the common European market as defined by Article 8 of the Treaty on the European Union, and above all a disturbance to competition. What then is the "public lending right" as defined by the 1992 European directive?

The starting point of the directive is that authors have the right to authorise or refuse the rental or lending of all works protected by copyright. To put it another way, this means that authors have an *exclusive right* to decide on the public lending of their works, where this does not only apply to books but also to dramatic works, phonograms and, with some additional restrictions, cinematic and other audiovisual works, while applied arts (e.g. architecture) and computer programs, which are governed by other regulations, are exempt. The exercising of the exclusive right to rental means in practice that the author and the renter regulate their relationship with regard to public lending on the basis of a contract. This is therefore an exclusive right which is contained in the preamble to the directive.

The directive does however enable a different regulation. Article 5 of the directive allows derogation from this exclusive right: Member States may restrict the exclusive lending right in certain ways but in this case they are obliged to provide remuneration for authors. If States exploit the possibility of derogation and deprive authors of the possibility of authorising or refusing public lending of their works via libraries, then they may follow their own cultural policy guidelines in formulating models for the implementation of the public lending right. Likewise, in the case of derogation States are permitted to exempt from this right certain types of library material and certain types of libraries. Thus the implementation of this right in EU countries today is divided into three different models: 1. on the basis of copyright (Austria, Germany, Netherlands); 2. on the basis of the right to remuneration separate from copyright (United Kingdom) and 3. as part of state support to authors (Scandinavian countries).

At first glance, then, this is a consistent and broad regulation: the principles of the directive are sufficiently clear, the normative framework of the directive allows different models, while at the same time States have sufficient possibilities for the realisation of their own cultural policy objectives within this framework. The differences between the described models of implementing the public lending right are a clear illustration of the differences between the cultural policies of individual European countries. But in the case of the public lending right a European directive exists, which means that common denominators of these models should exist. What then is the situation in this case?

Article 5 of the directive binds the Commission to draw up a report on "public lending in the Community" before 1 July 1997. Since the process of harmonisation with the directive proceeded very slowly the report was completed with a five-

year delay and bears the date September 2002. The general conclusion of the report and the estimate of the degree of harmonisation achieved is that Member States have achieved "a relatively low degree [of harmonisation] with regard to public lending right," where quite a number of Member States have not harmonised their legislation or have only introduced minor changes. If we look at the assessment in detail, we find that the report establishes that the situation in this field is extremely poor. A significant picture is provided by a more detailed look at how the public lending right is actually implemented in Member States. In three Member States (Belgium, Greece and Luxembourg), authors receive no public lending right payment at all. In late 2003 the European court found against Belgium in this connection and ordered it to introduce the implementation of this right within six months. In June 2003 France introduced the right of remuneration. Despite this, however, the report announces that by 2004 all Member States have to guarantee the full exercising of the public lending right as defined by the 1992 directive. The deadline is certainly no coincidence, connected as it is to the date of entry of the new members. It is also worth mentioning that the public lending right is implemented by some non-European countries such as Israel, New Zealand and Australia but not by the USA.[4]

Here, then, dilemmas appear for new members appear with regard to the regulation of public lending right, and perhaps also opportunities, since on the basis of the published report and the opinion of the European Commission the understanding of this right is clearer today than it was even a year ago.[5]

Introducing Public Lending Right: Main Concerns

Let us look now at some of the fundamental issues faced by European countries in introducing or harmonising the public lending right.

1. *What types of libraries are exempt from the implementation of the public lending right?* Ireland and the Netherlands exempt certain special libraries; the United Kingdom exempts educational institutions. Spain and Italy make use of the derogation offered by the directive and exclude general libraries from the public lending right. This is strongly challenged by authors in these two countries, on the basis of the Berne Convention (the protection of literary and artistic works), since public libraries are the majority lender of library material. Although such a solution is legal from the point of view the European directive, its legitimacy is questionable. In Slovenia the statutory basis imposes a restriction to general libraries, which is also supported by practical reasons, viz. the monitoring of lending via the COBISS information system which does not include the bulk of academic and specialist libraries. There are also differences as regards the payer of this right. Three models exist: payment is implemented from the state budget via the ministries (Denmark, Sweden, United Kingdom) or the relevant bodies thereof; in Austria and Germany both the federal and the provincial governments are responsible for payment; in the Netherlands the libraries themselves pay directly.

2. *In what way do States determine the level of funds intended for the implementation of this right, and how do States implement payment?* European States determine the level of funds intended for the implementation of the public lending right in different ways: Denmark: 6% of the funds which the State earmarks for public libraries; France: €1.5 per member of general and private libraries and €1 per member of

university libraries. In Norway the level of funds is determined on the basis of annual negotiations between authors' representatives and the government. The proposed Slovene model is tied to the share of funds earmarked in the national budget for the purchase of library material for general libraries (25%).

States use four methods to implement payments: 1. with regard to the frequency of lending of the author's work; 2. with regard to the number of copies of the author's works in libraries (Denmark, Australia, Canada); 3. with regard to the number of books by the author which libraries purchase in one year (France); 4. arbitrarily, not with regard to lending but with regard to the decisions of a special commission (Finland). Since 2002, following an only partially successful overhaul, the Danish model sets the lower limit of payments granted at €207 and the upper limit as follows: without restrictions up to €44,163, 50% of amounts over this limit and a third of amounts over €55,000. Slovenia is joining the majority system, i.e. the first method, where it sets lower and upper limits of the lending that is taken into account and devotes surplus funds to working grants, which means that the model will combine the implementation of payments with regard to lending and (selectively) the provision of working grants, where priority will be given to top authors and promising authors who make an important contribution to culture but will either not achieve the lower lending limit or are engaged in a cultural profession which is not a subject of the public lending right. Significantly, these working grants are granted by authors' organisations.

3. *For loans of what types of library material is the public lending right granted?*

In Denmark the writers of original literature receive a third more than other authors; in Finland writers of literature receive 90% remuneration while all others receive 10% – where the authors of scientific books and textbooks are excluded, while at the same time 76% of remunerations go to authors of original works, 16% to translators and 8% to the social fund for writers. In some countries (Germany, Austria, France) the public lending right relates to all library material, while in other countries it only relates to single works. In Denmark writers, translators, illustrators, photographers and composers are entitled to remuneration. The Slovene statutory basis grants the right to a library payment to authors of all types of library material and therefore the proposed model grants the right to authors of monographs, translators of monographs, illustrators, writers of texts and scripts, composers of music and directors of films.

These are three very practical issues which the EU faces in the harmonisation of the public lending right. But the first and most complex dilemma of putting this right into practice in Member States is to be found elsewhere. The derogation right under Article 5 of the directive provides that Member Statistics shall be free to determine remuneration taking account of the cultural promotion objectives. At first glance, the wording of Article 151 of the Treaty of Amsterdam happily coexists here. At the same time, numerous other international obligations (the TRIPS agreement, the Treaty the founding the EU, the Berne Convention on the protection of literary and artistic works, etc.) place unambiguous restrictions on this provision. Is it admissible, for example, only to guarantee the right of remuneration to domestic authors writing in the national language(s) of the country concerned or resident in that country? At first glance the directive itself would appear to permit this when it permits Member States to independently formulate their public lend-

ing right model in accordance with their own cultural objectives. This has also been how the majority of Member States have understood this Article of the directive. But the report and the opinion of the Commission on the matter take an unambiguous position: in no case may Member States grant the right of remuneration to authors on the basis of their nationality (Sweden) or language (Denmark). In the first case we are talking about direct discrimination and in the second about indirect discrimination. This view shakes to its foundations all existing models of the public lending right. It is indisputable that at the time the report was published no European country had conceived the public lending right in such a way that foreign authors would enjoy this right – even the United Kingdom and Germany, which have signed a bilateral agreement, only guarantee the right to remuneration to authors from the other country as well as to domestic authors, while the United Kingdom also grants it to resident authors. The fact that this is an extremely topical debate on the basis of which colossal changes are about to take place is shown by the fact that in 2003 the Netherlands became the first country to introduce the public lending right for foreign authors. On the other hand in 2003 Denmark sharply criticised the position taken by the report as regards non-discrimination – the position which understands the model based on language as indirectly discriminatory.[6]

Conclusion

This look at taxation on books and the public lending right in Europe could perhaps lead us to the conclusion that not only is harmonisation of these issues unnecessary, it is also impossible, and that a common cultural policy decision providing a framework within which Member States could respond to them is also impossible. But practice to date and the prospects for national cultures within the EU dictate a different reply. The different cultural policy models in European countries are precisely that distinguishing feature which the EU is obliged to respect, and for this purpose a passive attitude is not sufficient. Instead an active common European country policy is necessary. The independence of States in formulating these models is a *conditio sine qua non* of future common European cultural policy, where the fundamental effort of the latter will be directed towards preserving, strengthening and developing this independence of the Member States. This active attitude regarding the treatment of culture in the EU is announced by the new European constitution. From the point of view of the book, a very special product which is simultaneously an economic good and a cultural good, this task is of key importance, since a consensus on European cultural policy with regard to the issues discussed could act as a solid basis for the development of publishing production in individual countries and for the development of the so-called *new book economy* which connects all the links of the book chain vertically and horizontally and more intensively (Vitiello 1997; Braul 1997). Thus at this moment a confident or even bold cultural policy in relation to the formulation of the European legal system appears urgent, especially from the point of view of smaller nations. And if something can be learnt from the examples described above of the current vagueness and incompleteness of the EU with regard to questions of cultural policy, this is surely that Europe can also stand such a self-confident attitude.

Notes:

1. More on this in the research by the Institute for Ethnic Studies entitled "Slovenia and the Further Development of the European Union" coordinated by Jernej Zupančič; we draw particular attention to the excellent section on language policies by Dubravko Škiljan and Janez Justin.

2. For a broad overview of the topics and the approaches to the reflection of cultural diversity, we recommend *Differing diversities. Cultural policy and cultural diversity*.

3. For example in the declaration which followed the conference organised by the Council of Europe on "Books and Archives" in 1996 in Warsaw and which is summarised in *Legislation for the Book World* (Council of Europe 1997).

4. Cf. www.plrinternational.com.

5. Slovenian government for example has committed itself to regulating the issue before Slovenia joins the EU, which, putting it another way, means that this is a very topical and "European" issue. A draft model was elaborated in late 2003 and submitted for public discussion. The normative situation in Slovenia with regard to the public lending right is the following: Article 36 of the 1995 Copyright and Related Rights Act regulates the issue of public lending and the right to appropriate remuneration "when the original or a copy of a work is made available for use, for limited period of time and without direct or indirect economic advantage, through public institutions or institutions having public prerogatives." The article lists certain exceptions, first of which are originals or copies of written works in public libraries. Library remuneration is thus exempted from the Copyright and Related Rights Act and is therefore defined by Article 56 of the Libraries Act which entered into force in 2002. This means that Slovenia has exploited the possibility of derogation from the exclusive right. Article 56 of the Libraries Act reads as follows: "For the public lending of the library material under Article 3 of this Act in general libraries, a library payment shall be introduced as a support for the authors of this material who have permanent residence in the Republic of Slovenia or who write in the Slovene language. The minister responsible for culture shall define in more detail the method and forms of distribution of funds accruing from the library payment." The statutory basis therefore states clearly that Slovenia will regulate the public lending right on the basis of a cultural policy model which allows it to formulate various instruments of support for authors of library material and in this way encourage creativity in individual spheres of culture.

6. In 1992 the European Commission expressed its opinion that the Danish model of the public lending right did not contain an incompatibility with Article 5 of the Directive and with Article 12 of the Treaty which talks about non-discrimination. The objection of the Danish government with regard to the opinion contained in the 2002 report on the implementation of the public lending right is based on two assumptions: that the Danish model is not based on copyright, and that the Danish model cannot be the object of reciprocity of granting rights to foreign authors since it is not "covered" by international treaties.

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