

Changing the State's Discourse about Public Theatre Institutions by Redefining the Language of Law

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Abstract: In this study we take a closer look at how the state refers to performing arts venues and their roles and attributions in Romanian society, through its official channel of expression – the law. The two chosen laws, OG 21/2007 and OUG 189/2008, define the purpose, structure and organisation of public performing arts institutions, the criteria for becoming their manager and the duties that must be performed in this position. Our research first reflects on the terminology of these laws, comparing it with the general vocabulary of the texts. Then, for each of the two sets of regulations, we illustrate their shortcomings from the point of view of theatre management, grouping them in six and four topics. We believe that it is necessary to sensitise the professional and civil community to what the word of law actually means, since we consider it important to take back our public spaces through language as well and start democratising public institutions also through discourse.

Keywords: public sphere, legislation, performing arts, management, post-communist institutions, state funding.

Introduction: The present-day legislation of theatre institutions²

In the following pages we present a semantic analysis with critical annotations of the ordinances in effect in 2022, which regulate the organisation

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² In this article the term “institution” always refers to public theatre.

and functioning of public theatre institutions. These are *Ordinance no. 21 of 31 January 2007*,³ *concerning institutions and companies of performing arts or concerts*, as well as the conduct of artistic impresario activities, and *Emergency Ordinance no. 189 of 25 November 2008*,⁴ *concerning the management of public cultural institutions*. They aim at a concrete definition of how to establish, organise, operate, and manage these public institutions of culture and define the way of employment, position, duties, and rights of the theatre manager.⁵ It must be noted that these are not the only legal statutes that define the way these institutions currently operate,⁶ but we have chosen to focus on them for two reasons. Firstly, because they are the most representative for the state's vision of the theatre, primarily as a public cultural institution under its supervision, and subsequently as an artistic institution. And secondly, because we believe that if we understand the basis on which this system is built, we can discover the process that has led to its current structural difficulties.

OG.21/2007 defines in eight Chapters and thirty-six Articles the relationship system between the theatre institution and the state and refers to the role of this institution in contemporary Romanian society. OUG.189/2008 is the normative act – much discussed publicly – that defines the relationship between the central (or local) public administration and the management of cultural institutions. OUG 189/2008 shows us, in five Chapters and fifty-seven Articles, how the competition for the management of these institutions is

³ Full text of the ordinance: <http://legislatie.just.ro/Public/DetaliiDocument/79172>, hereinafter referred to as OG.21/2007 in the article.

⁴ Full text of the ordinance: <http://legislatie.just.ro/Public/DetaliiDocument/99863>, named OUG.189/2008 in the article.

⁵ This article uses the term manager instead of director of a theatre, in order to avoid the confusion between the artistic theatre director and general director of an institution. It is also important to state that these two terms should be separated by the law as well, since they point towards two different positions within leadership – differentiation elaborated later in this article.

⁶ For example, the list of normative acts regulating the organization and functioning of the Hungarian State Theatre of Cluj Napoca: O.G. nr. 21/2007, H.G. nr. 763/2010, O.U.G. nr. 189/2008, H.G. nr. 90/2010, O.G. nr. 9/1996, Legea- Cadru nr. 153/2017, Legea nr. 8/1996, Legea nr. 287/2009, Legea nr. 329/2009, Legea nr. 263/2010, Legea nr. 227/2015, Legea nr. 95/2006, Legea nr. 64/2008, Legea nr. 53/2003, Legea nr. 49/2010, Legea nr. 319/2006, Legea nr. 98/2016, H.G. nr. 1860/2006, H.G. 714/2018, O.G. 600/2018.

organised, which is the primary way of hiring the new manager, it details the relationship between the authorities and the given manager and enlists the manager's tasks and the assessment of their work. Both ordinances, even after nine amendments in total since their publication, still leave much to be desired, a fact underlined also by the professional public discourse surrounding them.

The present semantic analysis of these laws attempts to identify – through the given definitions, lexical choices, and the logic of the text – how the state views the institution of public theatre. What kind of role does the state attribute to it? What kind of leadership and thus what kind of manager does it want? What kind of management is needed to meet the state's requirements? Where are the public and the employees positioned by law, and where are the authorities – the primary financiers of the institution?

The very manner of approval of these laws tells us a lot: both are ordinances, a simple one (21/2007) and an emergency one (189/2008), which means that they were issued by the Government – an executive power made up of appointed ministers – and not by the Parliament, the law-making authority in Romania, with members elected by democratic vote by the citizens. This calls into question the separation of powers within the state and may suggest an aggressive political intervention in the field, which is not necessarily democratic.

We believe that such an assessment is important because it shows us the foundation on which the structure of theatre institutions in Romania is built – and it hints to the general state of all institutions within public culture. Through such an analysis we want to argue how exactly the state and the law leave room for abuses of power in their system. At the same time, we also want to explore how these laws limit the position of the theatre manager: what kind of operation is possible and necessary in such circumstances? We believe that the myths of the “mean old men clinging to their chairs,”⁷ which

⁷ “A ghost haunts the theatrical world in Romania, two in fact: the idea, the belief even, that theatre managers are dinosaurs of an age beyond the possibility of social existence, plus the equally strong belief that this is the only, the big problem – old men clinging to their chairs.” Iulia Popovici, “Ad Usum Delphini. Revoluția Managementului Cultural (I-III)”, *Adevarul.ro*, June 2020. https://adevarul.ro/cultura/arte/ad-usum-delphini-revolutia-managementului-cultural-iii-1_5ede0d745163ec42719f82f7/index.html (last access: 16:00, 03.02.2022).

have even appeared in professional circles, must be nuanced by raising awareness of the administrative and legislative environment in which these people operate as managers or general and artistic directors. We believe that through such analyses it becomes clear that the way these institutions currently operate – and the aesthetical state which many public theatre productions are in consequently – is not such by nature, only because “this is how we have become accustomed” to institutional culture. Understanding these processes unravels that the theatre managers are not the sole culprits, but that this state has come into being as a result of legal constructions, which we can influence and change in a functional and participatory democracy.

Our analysis is exclusively based on the aforementioned ordinances, and our reflections are supported on the one hand by the public discourse surrounding them, and on the other hand by the example of events in the life of certain state institutions. Our article is an attempt to clarify the legal basis from which a public theatre manager in contemporary Romania must (and can) start their endeavours.

Part I: OG. nr. 21/2007

This normative act, issued by the Romanian Government and signed by Prime Minister Călin Popescu-Tăriceanu,⁸ was published in the Official Gazette No. 82 of 2 February 2007 and came into effect three days after the date of publication. On the date of approval, it repealed Law No. 504/2004 on public performing arts and concert institutions. The ordinance regulates both performance and music institutions, although in several cases various articles omit the latter, so we can assume that the document was formulated

Translated by the author from the original text: “O fantomă bîntuie România teatrală, ba chiar două: ideea, convingerea chiar că managerii de teatre sînt niște dinozauri cu vîrste trecute de posibilitatea unei existențe sociale, plus la fel de puternica încredere că asta e singura, marea problemă – bătrîinii răi care se agață de scaune.”

⁸ Călin Popescu-Tăriceanu is a Romanian political figure, who was Prime Minister of the country from 29 December 2004 to 22 December 2008.

with a greater focus on state theatres than on philharmonics.⁹ One of the consequences of the approval of this ordinance was the establishment of the Registry of Performance or Concert Institutions and Companies,¹⁰ which records them at national level.

First, our analysis shows where the weaknesses are in this regulation, that leave a lot of room for free interpretation, which then can lead to abuses of power and conflicts of interest – both on the side of the theatre manager and the authorities. By carefully observing the language used by the state, we deconstructed its perception of the role and function of the public theatre institution and its manager, and through the logic of the text we identified legal situations in which a theatre manager may find themselves and in which they must make executive decisions. The main research questions were: What kind of opportunities does the ordinance create and what obstacles does it raise? What kind of decisions does the theatre manager need to make and what kind of decisions become impossible under this ordinance?

1. The objectives of the regulation – the objectives of public theatre?

The ordinance sets out the following objectives, achievable by the theatrical institutions through the implementation of the given regulation: a) to support public initiative and encourage private initiative, with a view to diversifying and developing the performing arts; b) to affirm national cultural identity and the cultural identities of national minorities through the performing arts; c) to promote nationally and internationally local and universal artistic values in performing arts; d) to increase public access to performances and concerts.¹¹

Point a) mentions the encouragement of private initiatives, but in the rest of the document we find only private law entities, consisting of companies and artistic impresarios. The latter occupation actually entails an entrepreneurial

⁹ For example: while the ordinance establishes the number of repertory productions and the number of new productions per year for repertory performance institutions, Article 6 of Chapter II. only states that concert institutions must have different artistic productions and must produce new productions each season, regardless of their number.

¹⁰ Official site of the institution: <http://www.registrulartelor.ro/despre.html>

¹¹ OG. 21/2007, Chapter. I. Art. 2.

role, which helps the marketability of theatrical productions and is more financially motivated for both the theatre institution and the responsible impresario. Otherwise, for example, in order for this activity to make a substantial contribution to achieving the objective in point d), the ordinance could rather regulate the number of compulsory national tours of the institution or companies per year in areas which lack such activities.

Point b) underlines the romantic concept¹² of theatre as a body for national consolidation, care for traditions and preservation of language. This point shows us that the state still sees theatre as an institution where the artistic act is text based, traditionalist and museum-like dramatic theatre, where the public services consist in the cultivation of supposedly common values. The rest of the text makes no reference to the obligation of the institutions in point d), thus increasing public access remains a mere slogan.

2. *The Glossary of the State*

If we study the glossary given by the state in Chapter I, Art. 3, we can see where the misunderstandings and tensions between the (mostly independent) theatrical field and the authorities arise from. First of all, we find here a language that pushes theatre towards commercialisation, proving that the state thinks in terms of quantity, rather than quality. Secondly, the definition given to artistic productions is quite outdated: new forms and aesthetics – such as performance or performative installations – are missing, and no serious consideration is given to how private theatre entities are formed and organised.

Among these definitions we would like to highlight the following:

- project: according to the ordinance, it cannot exceed one season, which completely ignores the summer rehearsals of theatres, resulting in difficulties in managing these activities at the bureaucratic level.

¹² Friedrich Schiller, “Theater Considered as A Moral Institution,” essay read at a public session of the Elector’s German Society in Mannheim, 1784. Translated by John Sigerson and John Chambless for The Schiller Institute, https://archive.schillerinstitute.com/trans/schil_theatremoral.html (last access: 18.02.2022).

- community needs and requirements: expression used by both analysed ordinances, without making it clear how these should be measured. According to these ordinances, there is no regulation for the inclusion of the public in the activities, in the artistic or administrative board of the institutions and thus the question arises: through which official channel can the public express its needs, to whom should they address?
- *programul minimal* [minimal programme]¹³: is defined by the number of programmes carried out, and a programme means a certain number of projects, which all are part of the management project. But we do not find here the definition of the manager itself, and in Chapter IV, where the management of institutions is regulated, it is mentioned under the term general director – terms that shouldn't be interchangeable.
- the artistic collective: the definition states that its members are employed for a minimum of one season, resulting in individual employment contracts for one year, which is unfavourable for independent companies, which in most cases form an ensemble per project.

3. Tell me without telling me – the independent sector

Private companies are recognised by the ordinance only as a possible form of existence, but their organisation and functioning are not regulated at all within this decree. There are no rules for the possibility of collaboration between them and the authorities, or other public cultural institutions, and no indication can be found of any funding possibilities. In the eyes of the state, the establishment of an independent theatre company is not recognised, because, according to the law, in order to be recognised as a performing arts institution, it must be established by the authority, and this means it is subordinated to local or central authorities, and therefore subsidised.¹⁴

¹³ A term used for describing the set of activities and goals that need to be completed and achieved within a mandate of a theatre manager.

¹⁴ OG. 21/2007, Chapter. II. Art. 4.

We believe that the legislation should make it possible for independent theatres to be recognised as theatre institutions without them being subordinated to the authorities. This recognition could be based on the nature of the activities they carry out and can be complemented by the recognition that these entities perform a public service. For example, Article 7¹⁵ says that the authorities have the right to set up new institutions, which may operate in other manners. This could also mean the contracting of an independent theatre association on the basis of the public service provided. In return, the organisation in question could be supported by allocating premises owned by the authorities for its operations, or by other types of temporary or long-term aid, such as subsidising rent or some of its maintenance costs, co-financing projects of public interest, etc.¹⁶

According to the legislation, the two, annually compulsory new productions of the institutions must complete and reconfigure the existing repertoire (made up of at least three artistic productions). In our reading of the law text, this means that the theatre is obliged to have a diverse repertoire, to present varied productions aimed at different audience groups. Another clause¹⁷ says that the institution must ensure that it has the necessary budget to carry out the “minimal programme” – instead of requiring the funder to ensure that it can adequately support the given institution. We believe that here, too, an obligation could be introduced to accept performances and events from outside the institution on an annual basis, with the provision that these must include independent projects and projects from other communities. This would solve the ongoing problem of a lack of venue/performing space for independent companies, while their productions would complement the repertoire of the host public institution. At the same time, it would also provide an opportunity for a community to meet other artists and creators.

¹⁵ OG. 21/2007, Chapter. II. Art. 7.

¹⁶ An example for this can be found in Hungary, where the Civil Code defines as a public service any activity in which an NGO performs a public or municipal task that serves the common needs of society and individuals. If an association – for example, a performing arts group – can prove this and apply for a public benefit title, it can establish a public service contract with the state or municipality and thus receive sustaining, operating subsidies.

¹⁷ OG. 21/2007, Chapter II., Art. 5/2c.

4. Personnel matters

The language used by the state in relation to the personnel of institutions shows a logic in which the functioning of a theatre is based mostly on the artistic act. This is considered the driving and organising force of the management, although the functioning – and therefore the operational aspects – are provided by an administrative staff. Thus, it is emphasised again that the state sees the theatre institution primarily as a producer of artistic projects. This is not necessarily wrong, of course, but it contributes to the hierarchical thinking between the various positions in theatre institutions. On the other hand, the limitation to artistic production does not take into account the fact that a public institution could (if not actually should) offer other types of cultural, educational, research, dramaturgical, or experimental programmes, thus responding to both its professional and public community's needs.¹⁸

Although the law differentiates between repertory and project-based performing institutions, it also makes it possible for both to hire artistic personnel from outside the existing staff to produce artistic productions. This leaves room for situations where money, human resources, and talent are wasted: members of the hired (and on a payroll from public money) ensemble end up not being cast in new productions. On the other hand, those contracted annually are not guaranteed financial security, social benefits, seniority or pensions. This has both psycho-affective and professional aspects: as no managerial programme can be developed for only one year without the possibility of continuity, neither can artistic and personal investment of the same quality without the assurance of a future. And thirdly, the amounts set out in these contracts, even if they must be included in the income and expenditure budget, are not public and do not fall under Law nr. 544/2001 on free access to information of public interest. This allows for some differences in the amount of artistic fees on the basis of which an actor may decide to give up their life in the troupe and become a freelancer – also performing at the

¹⁸ As an example, one can look at the London National Theatres projects to see the various ways through which a theatre may connect with its audiences and support the development of its professional field, besides presenting performing arts productions:

<https://www.nationaltheatre.org.uk/about-the-national-theatre/our-national-work>

“parent institution” and/or gaining more acting opportunities. We do not have the grounds to judge this decision, obviously, but it raises the question of whether we need theatre companies at all? Why keep an unused artistic staff just as props in a storage room? And more importantly, at whose expense are we doing this?

Further, in the case of these individual employment contracts, hiring can be done directly by agreement of the parties, without public notice, competition or exam. Institutional transparency suffers as a result, as anyone can be hired or let go, without a legal framework for re-evaluating the decision taken by the management of the institution. The fact that this is made possible by the legislation itself shows that employees are seen more as executors than as organic members of the institutional structure and development.

A final weak point in this chapter is that it is stated that any employee of a performing arts institution may have more than one position, and/or may sign royalty contracts with other institutions as well.¹⁹ This point makes it possible for someone to be a General Manager in a theatre, direct and also act in the production, presented in their own theatre. This not only makes it possible to accumulate large sums of money from an institution’s budget, but also brings inefficiencies within the operation: conflicts of interest can arise when the director negotiating their fee with the general manager is one and the same person. Or when the manager, being the same person as the director, is witness to non-compliance with the Rules of Internal Organisation during rehearsals. But it also leaves room for possible tensions and inequalities between the actors who perform together with their managers – one may ask who do you say no to during rehearsals, him/her as actor/director, or him/her as employer?

5. Management of the institution

The general director, chosen on the basis of a management competition, can form their team by setting up an administrative board, which has a decisive role in the organisation and operation of the institution. The Chairman of the Board is the general director himself. Its members have to express their

¹⁹ OG.21/2007, Chapter III., Art. 12/3.

opinion and possible opposition to a president who is also their employer, which can create an atmosphere of fear and censorship in the free expression of differences of opinion.²⁰ In US theatre institutions, there is a similar board that is above the manager and whose responsibility is to evaluate and oversee the manager's decisions – in addition to financially insuring the operation of the institution. It functions more as a body that ensures transparency and fairness of operations to protect the values of the institution and its employees, rather than as a limiting and controlling entity. In contrast, under Romanian law, the manager is accountable only to the Chief Authorising Officer (the state), which is not transparent, does not ensure the protection of employees and frequently does not ensure the correct evaluation of a manager. We believe that an independent administrative board should also have a role in the annual evaluation of a manager, and that their evaluation should count as a percentage in the final given grade.

Another body to assist the management is the artistic council, which can have as members employees of the institution, and/or cultural personalities from outside of it.²¹ We believe that in order to better involve the public – as this objective is formulated in Chapter I, Art. 2 – and to democratise cultural institutions, this board should also have several members from the local community, who are not necessarily from the theatrical field, but are part of the direct and indirect audiences of the given institution, thus properly representing the diverse composition of the local community.²² In addition, the artistic council should have clear responsibilities for the institution's running and future work, but current legislation gives it only an advisory role.

6. Funding of the institution

Among the principles on which the financing of performing arts institutions is based, we would like to highlight the following²³:

²⁰ OG.21/2007, Chapter IV., Art. 19/1.

²¹ OG.21/2007, Chapter IV., Art. 19/2.

²² Example for proper inclusion: Manchester based Contact theatre, who dedicate their programming to performances about, for and by youth, also include young members of the community in their decision-making processes: <https://contactmcr.com/about-us/>.

²³ All examples are from OG.21/2007, Chapter V., Art. 20-24.

The theatre's own income can be used as an incentive for the theatre's staff, making it possible, for example, to distribute a monetary prize won at a festival with a theatre production.

The law makes it possible to rent its spaces, which can however cause tensions, as it being a public institution is not indifferent to what happens within its walls, even if this is not directly their activity. And the budget allocated to artistic activity cannot be supplemented in this way, because this income cannot be spent on production. The income obtained through renting must be spent on materials and services. However, if an artistic, technical or administrative activity is outsourced (according to Article 12) and a service is contracted by the institution, it can also be covered by the income obtained from the exploitation of its own goods.

It is stated that institutions may accept money from other entities, but only for programmes other than the "minimal programme". This can create for example the following scenario: if a festival, organised by the institution, is included in the minimal programme, its continuity is ensured, but its budget cannot be increased, and if the annual budget granted decreases, the budget of the festival potentially decreases. On the other hand, if it is part of programmes other than the "minimal programme", its budget can be increased by accepting other funding, yet its continued existence is not guaranteed this way.

Another phenomenon that is a consequence of this law is the existence of foundations and associations under private law, through which, for example, most Hungarian state theatres in Romania can accept money from Hungarian Governmental bodies, or through which the given institution's artists/employees can obtain financial support for activities that are not part of the repertoire but are carried out within the theatre. This prompts questions such as: what kind of shortage do these sums cover, and why do they exist? What kind of lack is there in the current funding structures that calls for the foundation of extra institutional organisations? Shouldn't there be a way through which the programme of public cultural institutions could be supported directly by third parties – other than the state?

Part II: OUG. nr. 189/2008

This ordinance was issued by the Romanian Government, published in the Official Gazette on the 25th of November 2008 and was signed by Prime Minister Călin Popescu-Tăriceanu. On the date of entry into effect, it repealed Government Ordinance No. 26/2005 on the management of public cultural institutions. OUG. 189/2008 regulates the employment, contracting and assessment of managers of public cultural institutions. Thus, it defines the eligibility criteria for candidates and the framework regulation for the organisation and conduct of competitions for the position of general manager.

Being issued in a manner of urgency, in accordance with the law, the ordinance begins by arguing the need for this imperative intervention. This introduction states that the legal ambiguities, uncertainties and insufficient regulation in OG. 26/2005 created the premise for abuses by the authorities towards public cultural institutions. In this article we have taken this point of view and applied it to the current form of OUG. 189/2008, adding to it the other side of the equation as well. We have also examined what kind of disproportionate possibilities – and limitations – are created by the law for these executives.

In contrast to OG. 21/2007 – which is superficial and lacking in many necessary provisions – the present emergency ordinance is much better known in professional circles, due to the wide and conflicting public discourse caused by attempts to change the current form of the act.²⁴ It has been amended five times since publication, with interventions in almost two-thirds of the original text, with the last amendment dating from 2 January 2015. However, the ordinance seems to still fall short of a satisfactory form in several respects, which is due to the fact that the amendments and/or the opposition around them are more of a personal nature, protecting (or attacking) the current managers of some of these institutions, rather than aiming for transparency and democratisation of these public entities through forward-looking legislation.

²⁴ For example: in 2014 a platform was formed, initiated by several professionals who demanded affirmative action from the authorities regarding compliance with OUG. 189/2008. On their website you can also find their reaction with annotations to the proposed 2020 amendments: <https://apelpentrucompetenta.wordpress.com/apelul/>.

In 2020 an attempt at some major changes, first proposed in 2016 by Vlad Tudor Alexandrescu,²⁵ Minister of Culture in the then technocrat government, was taken up. His attempt was met with such an overwhelming backlash from theatre managers that the author of the proposal resigned as minister. In the spring of 2020, Senators Lucian Romaşcanu²⁶ (PSD²⁷) and Vlad Tudor Alexandrescu (USR²⁸) formulated a new proposal²⁹ which was adopted by the Senate on the 19th May, and on 29th the Government expressed its non-support.³⁰ At the time of this writing, the proposed legislation has the status of “Referred to the House” for debate and is awaiting remarks.³¹

Iulia Popovici³² has published on the blog *Adevărul.ro* a mini-series of three articles in which she presents and analyses in detail the current proposal for amendments to this ordinance. Among others, she calls this new attempt at a proposal a “Trojan horse”, which could introduce regulations by which public cultural institutions can be pushed towards a more commercial and economically profitable activity, with the expectation that they will provide more of their own income in addition to the state subsidy. This trend towards cultural institutions can be observed increasingly in Central and Eastern Europe. It seems that in these countries current cultural policies, instead of reviving these public institutional structures inherited from the previous regime, are pushing them towards the market under the aegis of “sustainability”.³³

²⁵ Romanian senator between 2016-2020.

²⁶ Romanian senator from 2020, and Minister of Culture since 25th of November, 2021.

²⁷ Partidul Social Democrat/Social Democratic Party.

²⁸ Partidul Uniunea Salvați România/Save Romania Union – political party.

²⁹ <http://www.cdep.ro/proiecte/2020/300/10/6/em399.pdf> (last access: 16:00, 03.02.2022).

³⁰ <https://www.senat.ro/Legis/PDF/2020/20L154PV.pdf> (last access: 16:00, 03.02.2022).

³¹ The status of the document can be followed here:

http://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?nr=316&an=2020 (last access: 16:00, 03.02.2022).

³² Iulia Popovici, “Ad Usum Delphini. Revoluția Managementului Cultural (I-III)”, *Adevarul.ro*, 2020 June: https://adevarul.ro/cultura/arte/ad-usum-delphini-revolutia-managementului-cultural-iii-1_5ede0d745163ec42719f82f7/index.html (last access: 16:00, 03.02.2022).

³³ We find the same phenomenon related to educational institutions, if we look for example at the events around the Budapest Academy of Theatre and Film (SzFE) from 2020.

The professional discourse about the regulation of institutions largely focuses on the age of theatre managers and their allowed mandates. However, in the current version of the ordinance there are other clauses that are more damaging in the long run: the continued lack of public involvement in the processes of these institutions and the persistent push for theatres to be “performance factories”.³⁴

In the following we present how the state outlines the image of an institution that mass-produces, is profitable, aims for continuous (quantitative) growth and is more reactive than reflective and proactive in its society's processes. For us, this model is a capitalist one, which paints the image of a business rather than of a public cultural institution.

1. Terms and expressions

Same as in OG. 21/2007, between the first articles of the law we find a glossary.³⁵ Here, first of all, we find a legislative formulation that underlines the power relationship between the state and the theatrical institution, reducing the responsibility of the authorities merely to providing funding. Thus, the state could be seen as an intermediary for citizens' money, someone who manages and administers taxpayers' money for their own benefit. Based on this logic we can return to the idea that as audience we should at least have advisory functions in the processes between public institutions and the

³⁴ “There is a vocal desire for a broader approach to creative processes, a more rational organization and sequencing, giving space not only to artistic creation and research, but also to the possibility of organic and real reconnection with the audience and its community. In this way, theatre could emerge from the role of “showcase institution”, also enshrined in legislation.” Theodor-Cristian Popescu, “Schimbări subtile. Gânduri la repornirea sistemului teatral,” <https://www.observatorcultural.ro/articol/schimbari-subtile-ganduri-la-repornirea-sistemului-teatral/> (last access 16:00, 03.02.2022).

Translated by the author from the original text: “Există dorința vocală pentru o abordare mai amplă a proceselor creative, o organizare și etapizare mai rațională, care să dea spațiu nu numai creației și cercetării artistice, dar și posibilității de reconectarea organică și reală cu publicul și comunitatea sa. Astfel teatrul ar putea ieși din rolul de “instituție vitrină cu spectacole”, consacrată și prin legislație.”

³⁵ OUG.189/2008, Chapter I., Art. 2.

authorities. But even in this legislation we only encounter the continual mention of “community needs” – which must be met – but there are no rules for the constant exploration, analysis and evaluation of these needs, or for the organic involvement of citizens.

We can also identify contradictions between the two reviewed ordinances in their definition of the terms “programme” and “project”. While OG. 21/2007 says that the programme is a managerial-artistic structure, OUG. 189/2008 recognises it as a purely managerial exercise. And while the latter text states that a project does not exceed the duration of one fiscal year, in the 2007 ordinance, this term is defined with the duration of one season.

This managerial exercise is carried out, according to the law, through the implementation of a management project. We believe that being the manager of a public institution is not a project that is reborn every 3-5 years, but under optimal conditions, we are talking about a process which has a continuous evolution within its community. When the competition for the position of the manager is based on a project, and the project is defined by the state as a series of completed activities, it shows that the state thinks in indicators that can be achieved within a well-defined timeframe, and between the terms of a quantitative assessment. But art, culture and their impact work differently. The purpose of a project or a programme may not only go beyond a financial year or a season, but its scope may also materialise only after many years of seemingly invisible investment.

2. The ideal candidate

Among other criteria, the ordinance requires the candidate to have the lowest degree in higher education, i.e. they must hold a bachelor’s degree in theatre studies.³⁶ This is outdated not only in practice – there are many examples of managers of international theatre institutions coming from other fields³⁷ – but also in the structure of Romanian higher education, where the transition to the Bologna system means that students only deepen their studies

³⁶ OUG.189/2008, Chapter I., Art. 3/c.

³⁷ For example, György Szabó, founder and former executive director of Trafó – House of Contemporary Arts in Budapest has a BA degree in economics.

and specialise after the completion of a BA programme. In other words, the ordinance induces the absurd fact that a graduate with a bachelor's degree is better prepared than one with a master's or doctorate in the same field.

Some actors in the public discourse are calling for the addition of legal age regulation among the eligibility criteria, i.e. indirectly introducing the obligation for managers to retire. We believe that age is not the right argument, because as neither an artist, a manager also doesn't have a time limit on their abilities or talents.³⁸ However, being in a democratic country, we should all have equal opportunities to become theatre managers. Thus, rather limited terms of office and public competitions every five to ten years are needed, in this way organically keeping up with the new generations both in the public and in the profession, and with immediate societal and broader global changes.

According to the content of the emergency ordinance, the theatre manager is someone who organises and manages the activities of the institution while also having an artistic vision. This definition implies two positions of eight daily hours each, not to mention the fact that the same manager is also entitled to be involved in artistic projects. In a more prosperous scenario, the person who creates and develops the vision, artistic direction and goals of a cultural institution, and the content of its programme, would work together – forming a great team – with the person who implements – a.k.a. manages – it all.

First of all, it is impossible for someone to cope with this amount of work and responsibility without missing something and without their physical and mental health suffering. Secondly, it would be appropriate for the legislation to distinguish between the position of a manager and a general director – separate terms which it uses interchangeably. By properly defining these functions, the need would arise for at least two people, who help each other in the proper running of the given institution: a general director and an operational manager. The director directs, plans, and is more of a leader, and the manager executes, implements and ensures that each department and employee have what is needed to operate at full potential.

³⁸ Cristina Modreanu, "De ce e necesară reforma în cultură și de ce nu mai poate fi ea evitată" [Why culture reform is needed and why it cannot be avoided], *Scena.ro*, 18.09.2020.

We believe that risks do not arise because someone is a manager, an artist, a sociologist, a lawyer or an economist, because we also have international examples that show that art and culture institutions can be run by people with (or without) such studies. Institutional threats arise from the fact that all decisions are in the hands of one person, both physically and mentally overworked, equipped with a power and thus an overwhelming responsibility that often corrupts people.³⁹

Even though they have the right to delegate tasks and responsibilities, the manager – according to the authorities’ requirements – seems all-knowing and omnipresent. For someone with the minimum criteria of holding a bachelor’s degree in theatre, they have duties that are related to economics, law, human resources, and public administration.⁴⁰ In the original sense, the manager should be the one who ensures that these tasks are carried out according to the law and in the best manner, not the one who actually does everything. The operation proposed by the state is called micromanagement and is damaging to any institution.

We come back to the sensible clause that allows theatre managers to also be authors or performers in the projects of the institution they run and to practise their artistic work in other institutions as well.⁴¹ It is clear from this that the law is worded with those in mind who are mostly in these positions today: directors and actors.⁴² Although the authorities are defined as authorising officers, by this term reducing their responsibility to a purely financial one, they are nevertheless the ones who give their consent through this clause to the manager’s participation as author/actor in other projects. If the state were to think responsibly, this would never be possible because it compromises the smooth running of the managerial act. No matter how small a public cultural institution is, its management is a full-time job, requiring

³⁹ A phenomenon also highlighted by Cristina Modreanu, “De ce e necesară reforma în cultură și de ce nu mai poate fi ea evitată”.

⁴⁰ OUG.189/2008, Chapter III., Art. 27.

⁴¹ OUG.189/2008, Chapter III., Art. 27.

⁴² Out of 99 public performing arts venues from Romania, in 40 the general manager is an actor and in 16 a theatre director, and 10 musicians – excerpt from the authors ongoing research regarding the gender parity in the leadership of Romanian public theatre institutions.

permanent presence and undivided attention. This, as well as physically and mentally exhausting a person, can also result in potential conflicts of interest and the accumulation of various incomes within the same institution.

3. Management competition and employment of the winner

OG. 21/2007 runs the potential risk of creating needs assumed at national level, when the community, the audience of an institution is local, and each institution has its own socio-cultural particularities.⁴³ The fact that the Ministry of Culture only gives directives in OUG. 189, and each local authority can develop its own regulations for a managerial competition according to its own needs, makes decentralisation possible, but it still fails to give directives for how to engage the public, mentioned again only as a label. The authorities are obliged to draw up all the regulations relating to this process and also to appoint the members of the committee for the competition (and the appeal and evaluation committees). We believe that because these actions are executed by the same body, the transparency of these processes suffers greatly.

Articles from Chapter II, section 1-2 regulate issues such as: the days given to the preparation of management projects, the mandatory content of the objectives document and the requirements of the management project. Candidates have a minimum of 21 calendar days to draw up their management project, which has the following content, based on the information provided by the authorities in the objectives document: socio-cultural analysis of the environment in which the institution is located and proposals for its development; proposals for improving activities; reorganisation proposals; strategy, programme and implementation plan. In the event of winning the competition, the project submitted becomes the reference for the annual evaluation of the manager: in practice, only the level of achievement of the

⁴³ From OG.21/2007, Chapter II., Art. 4 it can be concluded that the needs and requirements that an institution needs to fulfil have to coincide with the cultural policies of the authorities to which they belong to. In the case of cultural institutions which are directly subordinated to the Ministry of Culture, this means, according to the law, that it has to be in line with values and strategies different from those of the host city and thus of its direct community.

indicators proposed by the candidate five years before will be measured. But if we only evaluate these indicators (achieved or not), are we really evaluating the content, the real and organic impact of the activities carried out by the institution? Under the pretext of the objectives document, which contains tasks set by the authorities and whose fulfilment – according to the law – means meeting the needs of the community, we return to the question: are these tasks in line with the needs of the community? Can one really find out if the public is not included in any way in these processes?

It is clear from the emergency ordinance that both the competition and the evaluation committee have extremely great power, because it depends on them whether a manager is hired, has their contract extended or leaves office. It would therefore be very important that the methodology for selecting members and, subsequently, the composition of these committees be transparent and regulated by impartial decisions. There is no limitation in this current regulation as to who can or cannot become a member of such committees. For a little comparison, we could look at the regulations of the Administration of the National Cultural Fund (AFCN)⁴⁴ where we find more criteria and rules – when even these are not regulated clearly enough – for someone to become a project evaluator than in this ordinance.

None of the articles of the ordinance mentions the obligation to publish the list of committee members. Thus, there is no public pressure on the decision taken, which reduces the transparency of the process, and creates room for political intervention. Although, by law, the interview with the candidates admitted to the competition is public, so anyone can participate, and thus the composition of the commission becomes public information

⁴⁴ Call for independent expert evaluators, 2020:

https://www.afcn.ro/media/invitatie%20evaluatori%20sesiune%20I%202021_1.pdf (16:00, 18.09.2020).

Please note that, according to the law, a person CANNOT BE AN evaluator if they:

- have projects submitted for funding under the relevant section;
- are part of the team of a project submitted for funding under the relevant section / are in a contractual relationship with the applying legal entity / are a partner / are in a contractual relationship with a project partner;
- have the status of a civil servant.

anyway.⁴⁵ We believe that if the public were included in the selection process and/or in the evaluation of the theatre managers – at least as invited and well-informed observers – we would ensure that the process becomes more transparent through such a public presence.

Once the winner is selected, their managerial project becomes public.⁴⁶ We believe that in order to raise the stakes in the decision (and thus ensure transparency) every project submitted to evaluation should be published.

4. Evaluation of the manager

According to Chapter IV, Article 39, the financial report is submitted earlier than the activity report, which again underlines that numbers, amounts and indicators are important for the state. The analysis of the content follows only after these. However, we believe that in the case of a theatre, we should first look at what is done, why and how it is done, thus at the content, and then look at the number of occasions and editions of a project. The evaluation is done in a quantified formula, so it is again emphasised that the theatre is seen as a manufacturer, where the assumed objectives must be achieved, without assuring the evaluation of the means and ways in which these objectives are being achieved.

Among the grounds for terminating a theatre manager's contract, there are several⁴⁷ where the relationship between the institution and the authorities becomes vulnerable. This relationship is already a dependent one, since the authorising officer decides the budget, the form of operation and the administration of the institution, to which this clause adds by leaving room for interpretations whereby we can assume that differences in opinions and values can also result in tensions between the authorities and the theatre manager. From Chapter IV, Article 43.1 we learn that if the annual evaluation reaches a grade of 9, the current manager of the institution is entitled to a new candidacy, and the authorities are not obliged to hold a public competition. Even if this ordinance was intended to protect institutions from potential

⁴⁵ OUG. 189/2008, Chapter II., Section 3, Art. 16/3.

⁴⁶ OUG. 189/2008, Chapter II., Section 2, Art.15/2.

⁴⁷ OUG. 189/2008, Chapter III., Art. 31.

abuse of power by the authorities, it clearly also gives way to collaboration between managers and the authorities, which is not transparent and has almost no monitoring body.

We also note that there are no members of the public, or employees, in the evaluation committees. Obviously, it can be said that the institution that achieves its objectives has a good team and a satisfactory leadership. It seems clear from these rules that the theatre is not seen by the state as a community of people, but as a factory. The contract cannot be terminated at the request of the company or the audience/the community, nor is there the possibility of asking for an evaluation of the manager by its employees and/or community representatives.

Conclusions

In addition to the critical observations presented above, the most important conclusion for us is that the public is not included at all by the current legislation in the processes of the theatrical institution. Its role cannot be made consultative or proactive through any of the analysed ordinances, although it is defined by law that these institutions have the obligation to serve their audience's interest. The state does not ensure through legislation that this service is being provided. The state only ensures that the money is spent according to the initial plans, that what is proposed corresponds to what is done each year, but it is not interested in the content and the way in which these results are being achieved. By the logic of these ordinances, in fact the *authority* becomes the *public* whose needs must be met, so the public theatre means the *theatre of the authorities* – and not of the actual, local audiences. And the institution of the theatre thus equals the theatre manager in the eyes of the state. In the eyes of the state, these managers are its direct employees and the fulfilment of their duties stops at the execution of a financial exercise.

By analysing these laws, we conclude that the relationship between the state and the theatre institution is a money-based one. This equation is not even wrong until it implies that the public institution exercises its responsibility to exchange these sums into cultural values for the audience, and the state fulfils its commitment to properly support the institution in this endeavour.

Thus, we believe it is necessary and important to make the professional and civil community aware of what the state theatre actually means: a place for the public, supported not by state money, but by citizens' taxes. It is important to be aware of this differentiation and to introduce an alternative expression into the discourse: instead of public money, let us use taxpayers' money.⁴⁸ It is important to take back public space through language as well and to start democratising public institutions through discourse.

Another observation that we have made during this analysis is that there is a hyper-visibility to some state theatres which produce an exaggerated image in the collective professional consciousness.⁴⁹ Because of these, public discourse easily falls into the mistake of saying that the problems come only from "megalomaniac artists" who become managers and stay for life, because we tend to focus on problems with big plus figures – either in age or in money – but we have such indicators in minus figures as well. There are also state theatres where structural problems manifest differently: through underfunding, ethnic and/or political tensions, high resignation rates, personal conflicts between the local authorities and the institution. In a way, these situations are all, directly or indirectly, the products of the present legislation, and persist because of the continued lack of public involvement – both by themselves and by the institutions.

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⁴⁸ The importance of this difference was explained by the late Anna Lengyel, Hungarian playwright and theatre producer, in a talk with Martin E. Segal Theatre on 4 May 2020: <https://howlround.com/happenings/segal-talks-andrea-tompa-and-anna-lengyel-hungary>.

⁴⁹ Such as the National Theatre in Bucharest or the Hungarian State Theatre in Cluj, where there have been the same directors for many years (15 and 31 years, respectively) and the given institutions receive enormous subsidies (in 2019: 45,710,000 lei and 14,378,000 lei, respectively).

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