RESPONSES ON THE QUESTIONNAIRE ON CULTURAL RIGHTS AND PUBLIC SPACE

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Q1.: *What are the various existing definitions of “public spaces” used in national legislation or proposed by international mechanisms, experts and civil society organizations? Are other terms used such as “civic space” and “public domain”? What is the scope of the concept of such public spaces?*

and

Q2: *What are the diverse legal frameworks, trends and practices at the national level that either promote or impede actors from across the cultural ecosystem, including women and persons with disabilities, from accessing and using public spaces? What strategies are most useful in overcoming such challenges?*

My response on the definitional articulations of “public space” is conditioned with the Croatian context of a post-socialist country that has endured an on-going transition since 1990. Similar experience to the Croatian one is found in all ex-Yugoslav nations, but also throughout the post-socialist and post-communist region in Central and South-eastern Europe.

The legacy of socialism and experience of transition have caused deep ruptures in the understandings and meanings of the “public” encompassing suffixes as “interest”, “space”, “sector”, “goods” etc. In the pre1990s period, everything was public in a sense that it had ideologically determined and institutionally operationalised collective purpose and ownership embedded in the abstract and operational meaning of "public". This implied all-inclusive and all-accessible functionality of the "public space" that encompassed not only intra-urban areas but also all spaces that had a public function – from concert halls, community centres, fish and green markets, schools and parks to town squares and community beaches.

The changes in the 1990s, marked by the shift from socialism to capitalist democracy, brought radical re-definitions of the term “public”, including “public space”. The ideal of collective ownership and use of space and resources has since been politically associated with negative connotations and reference to the “past times” and “previous regimes”. In the meantime, public space has been omitted from the spatial and urban planning policies where it is inertly sustained, while the wider scope of the “public space” such as public goods in form of, for example, cultural heritage is articulated through the legal framework of cultural policy. Public policies, those being urban planning and/or cultural policy are making a gradual but persistent turn away from cultural democracy and towards the creative economy paradigm, which stipulates so-called commercial use of public resources in order to achieve measurable capital gains. This approach to governing and managing public domain and public resources, encompassing public spaces, goods and services is limiting access to free and all-inclusive use for not only marginal groups of society but to all citizens. The “development wave” across Croatian cities and regions is gradually wiping out public domain by either privatizing, semi-privatizing (in form of public-private partnerships or using public goods and resources for private commercial purposes) public resources. The countertendencies to this trend stem from the civic movements and civil society actions that not only try to preserve *publicness* of the *public domain, spaces, resources, goods and services*, but strive to fill out the *policy gaps and voids* that permit for *publicness* to be relentlessly dissolved. Deliberations on public space now are evolving around on-going (and rising) tensions between civic movements, supported by the civil society organisations, public authorities and interests from the private sector, encompassing global corporate players down to medium and small entrepreneurs. Insofar, the public space has become a place of public contestation, where the discussions on public space are substituting public space meaning, purpose and function. Public space has also become a place of political trade-offs and a site for the execution of the command economy, which is a detrimental consequence of transition period and corruptive privatisation that took place since the 1990s. Public policies do not have the answer to these situations, which can be interpreted as chronic disorientation by public authorities in setting the issue of public space and resources as a priority that should be addressed transversally across a number of public policies. In the current situation, public spaces, resources and goods are scattered in several public policies that have already been mentioned (urban planning, cultural policy, etc.), but they are not *explicitly* dealt with in any policy at any level. This present approach to non-articulating, non-governing and non-assigning meaning and function of *public spaces for the common interest and good* open possibilities and perspectives for the continuance of negative and susceptible trends in quasi-managerial treatment, governance and management of public spaces.

In regards to the cultural ecosystem, we can talk about: 1.) anthropological use of public spaces in sense of (local) culture, i.e. the role of public spaces in sustaining, promoting and supporting everyday ways of life of communities that those public spaces should belong to; and 2.) aesthetical use of public spaces for cultural work, cultural expressions, etc., encompassing public spaces *as* artefacts or symbolic or signifying places of cultural expression. The legislation from the remit of cultural policy in Croatia preserves public spaces that are listed as protected cultural heritage, either as sites, objects with surrounding urban or rural area or whole urban areas, i.e. historical cities' centres. The legal ‘protection' from the cultural policy remit is by display a quite strong one in the sense that both anthropological and aesthetical values of protected public spaces should be preserved and protected, yet the proper practice of that protection indicates that it exists only on a declarative level. Croatian cultural system has decentralised conservation offices across the country (which is similar practice to a number of European countries). The conservation offices should be the first instance of protection and preservation of public cultural heritage spaces and goods, but despite their restrictive lines of work, the level of devastation of public heritage spaces is ever rising. The devastation does not involve only physical aspects, but also the shifts in collective comprehensions and articulations of public spaces. Several pieces of research that are currently undergoing in Croatia deal with the issue of public spaces being a matter of *collective memory¸* and not a matter of present. In that line, it must be unlined that public spaces are not only confined to their physical dimension but also bear huge significance in sense of discursive space that encompasses elements of mediation, which is vital for enabling and developing human interaction and communication necessary for the formation of citizenship and affirmation of cultural rights. Therefore, *public spaces* must be maintained in their actual form but also developed in spheres; abstract, virtual and physical.

Q3: *What are the specific characteristics of public spaces that either is conducive to the realization of cultural rights, including of women and persons with disabilities, or are an impediment to them, including in relation to issues of discrimination, equal access, accessibility, availability, and adequacy?*

Croatia is ethnically and religiously quite homogenous country. In a sense of ethnic affiliation and nationality, there are more than 90% Croats living in Croatia, which are by more than 96% Caucasian and more than 86% Catholic. Hence, cultural rights have a rather small diversity margin to be articulated in a sense of right for diverse societal groups, minorities, etc. In sense of women and persons with disabilities, access to public spaces presupposes equality, accessibility, availability and adequacy. Inaccessibility and inequality in access to public spaces in Croatia are driven by issues of economic and political criteria/discrimination, but never on the basis of gender or disability. The only issue of accessibility for persons with disabilities is evident in heritage cities and sites that are yet to become more adapted for access for people with disabilities.

Q4: *What could be the contents and contours of a possible “right to public spaces”, and of legitimate restrictions that could be made to it, in accordance with international standards? Is this concept employed in your country or in your work? Is it helpful?*

As mentioned in the response to questions 1 and 2, several civil initiatives and civil society organisations that counteract negative trends in planning, preservation and promotion of public spaces in Croatia. Here selected as an example is the civil initiative *Srđ is Ours, “*Srđ je naš”. The civil initiative “Srđ je naš” was organized in 2010 with the main aim to fight against the land-grabbing project of the golf courses on the hill of Srđ, located just above the town of Dubrovnik, Croatia. This initiative, amongst other similar at that time in Dubrovnik and Croatia, began what is now a decade long effort to establish transparency and trust in urban planning policies based on participatory principle, which involved including all the relevant stakeholders (especially citizens, NGOs, and experts) in urban planning, development, and decision-making on public spaces. In (post)transition period of *wild* capitalism of Croatia, urban spatial planning became *investor spatial planning*. With the inevitable consequence of public spaces and common goods becoming purchasable commodities, in such constellation, the political and economic actors have gained a much bigger power over the decision made in urban planning. They are now adjusting it to fit their own projects and need. Less powerful actors such as citizens, NGOs and experts are pushed aside and almost completely waived of any decision-making power.

This imbalance of the power relations between the political, economic, civil actors and experts is evident in all forms of urban development, being an important dilemma and problem of sustainable development.

The civil initiative “Srđ je naš” had their biggest success in 2013, when they collected enough signatures to organise a referendum, first of its kind since the 1991 and the independence of the Croatian state. Numerous lawsuits against the investors, UNESCO monitoring session and strong recommendation against the project, several annulments of the location, building and environmental permits and almost 10 years later, the civil initiative is still active with the same premise: the actions of the civil initiatives are a crucial element for the maintenance of the urban planning process transparency and are the only counterbalance to the conjugation of real-estate developers’ lobbies and public authorities. Currently, public authorities are facing the arbitrage process against the country of Croatia by the investors. In September 2017, the investor filed a 500 million EUR ISDS claim against the Republic of Croatia at an arbitration tribunal. The claim was made through the Croatia-Netherlands bilateral trade deal, which allows the investors to sue states for ruling in the public interest if they feel their project may be harmed. This has severely affected the court ruling in Croatia, allowing the investors to reactive the aforementioned permits. This process is indicative of the pressures that are posed from the level of international power retaining bodies used and accessed not by local communities, citizens and citizen initiatives (most of those are not even aware of the existence and possibilities that are available on the international level in relation to contestations about public spaces), but by international investors. In the case of Dubrovnik, on one side there is an international investor and local community on the other side. In between are public authorities led by a nation-wide right-wing party that has a proven track record in corruption, hence their positioning is far more favourable for the interest of the investor and against the voices of the local citizens. This situation is not specific for Dubrovnik or Croatia but is emblematic for contemporary discussions on public space and questions on *who secures the public right to public spaces?* What is the role of *public authorities* in protecting and maintaining *public spaces* for *the public good?* Who maintains the *sustainability of public spaces?* These questions are crucial in light of the story of “Srđ je naš" initiative, not, as already mentioned, it is a unique story, but an example that proves the radical power imbalances that can be translated into the discussion on basic human inequalities. In other words, when it comes to struggling between citizens and communities on one side, and the investment capital (corporate, international, whichever sort) on the other, the citizens are faced with a battle that is, in most cases, beyond their (regular) capacities. Moreover, the citizens are faced with the paradox of having a conflict with public authorities that should, by default, defend and represent the interest of citizens and not those of investors. This issue must be solved by non-negotiable policy directives for the preservation of public spaces and resources for the use of public good.

Q7: *What recommendations should be made to States and other stakeholders concerning these topics?*

* Public spaces are an essential prerequisite for the affirmation and enactment of cultural rights. Cultural rights and public spaces are intrinsically linked and inherently symbiotic. Hence, the deliberations and decision-making on cultural rights *must* reciprocally involve deliberation and decision-making on public spaces.
* Contemporary trends in transitions and transformations of public spaces into private spaces, or commercially exploited or conditioned public spaces invalidate and reverse the development of cultural and human rights, but also of society as a whole. The transitions and transformations of public spaces do not only include physical space and its change from open and inviting space to off-limits space but also include virtual and communicative space, which is increasingly becoming infested with the rhetoric of discrimination, exclusion and negativity. New ideological conflicts are happening in the sphere of virtual space and in many ways reflect the situation and developments of intolerance, antipathy and bigotry from the real world and real space.
* Public spaces *must be explicitly protected, supported and promoted by the public policies*. Given the complex scope and definitions of public spaces, the issue of public spaces must be covered transversally across public policies; from spatial planning, communal and economic policies to health, education and cultural policies. Insofar, protection of public spaces should not be endangered by international pressures in form of investment capital, but should be endorsed and protected from the supranational bodies, organisations and agencies for their value in the remit of human and cultural rights, as well as for their social, cultural, political and overall civilizational value.