

The Italian Draft Law on the ‘Ratification and Implementation of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society’

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DRAFT LAW

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Ratification and implementation of the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, Done at Faro, on the 27th day of October 2005

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INTRODUCTORY REPORT¹

HONORABLE COLLEGUES!

The Council of Europe Framework Convention on the Value of Cultural Heritage for Society, adopted at Faro on 22 October 2005, entered into force at international level on 1 October 2011, after the tenth Member State of the Council of Europe ratified the Convention (ex art. 18 of the Convention). Currently, 17 Member States have ratified the Convention. 5 States have just signed the text, Italy among them.

The Convention is a text of great breathing and highly innovative con-

¹ The editors decided to include the English translation of the introductory part of the Draft Law while its text is in the original language, being the Draft Law closed to been approved by the Italian Parliament.

tent, to whose elaboration our country has actively participated through the work of the then Ministries of Heritage and Cultural Activities and Tourism and of Foreign Affairs.

The signature of Italy was delayed in order to allow a more thorough assessment of the financial burden arising from the implementation of the Convention's provisions. The signature has then been placed in 2013, following the 2010 pressure exercised by the Steering Committee for Cultural Heritage and Landscape to all the Member States of the Council of Europe.

It must also be said that, thanks to its 'flexible' nature, since time the Faro Convention goes on the practical experimentation on a territorial scale, even by countries that have not yet ratified it (including our State).

Like all the framework conventions, it sets forth a number of goals-aims Member States are called to pursue - especially those indicated in parts II (Contribution of cultural heritage to society and human development, articles 7-10) and III (Shared responsibility for cultural heritage and public participation, articles 11-14) - leaving to States a wide range of normative and political freedom on the times and ways of pursuing them: this means a progressive/gradual realization of the goals, and not the absence of binding obligations incumbent upon States.

Particularly, as to the implementation of the so-called right to engage with the cultural heritage of their choice, each State Party to the Convention is obliged to comply with the principle of effectiveness by pursuing a path that leads to the concrete application of the provision and allows individuals and heritage communities to enjoy the rights established therein. The provisions of the articles encompassed in the five parts of the Convention are summarized below. Alike all international legal instruments, the Preamble is an integral and essential part of the text. In the case of the Faro Convention, part I (Aims, definitions and principles, articles 1-6) should be analyzed in the light of the indications contained therein.

The Fourth recital of the Preamble recognizes that "every person has a right to engage with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right freely to participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966)".

This statement must be read in conjunction with art. 27 of the Universal Declaration that lays down the right of each person to "take part freely in the cultural life of the community", and with art.15 (1) (a) of the International Covenant on Economic, Social and Cultural Rights according to which the States Parties to the Covenant recognize the right of everyone "to take part in cultural life". This provision is strictly tied to the extremely innovative assertion included in art. 1 (a) of the Faro Convention according to which "the Parties to this Convention agree to recognize that rights relating to cultural heritage are inherent in the right to participate in

cultural life, as defined in the Universal Declaration of Human Rights”.

In this way, the cultural heritage’s dimension enters the sphere of human rights, enriching it in a meaningful way.

Art. 4 (c) states then - by using a well-known restrictive clause - that the exercise of the right to cultural heritage may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others.

The Third recital of the Preamble - on the value and potential of cultural heritage as a resource for sustainable development and quality of life in a constantly evolving society - and the Sixth one - built upon the typical no-discriminatory model (the Member States of the Council of Europe are convinced of the soundness of the principle of heritage policies and educational initiatives which treat all cultural heritages equitably and so promote dialogue among cultures and religions) - confirm and strengthen the nature of the right to cultural heritage as belonging to the sphere of cultural rights.

A separate reflection deserves the Second recital, which recognizes “the need to put people and human values at the center of an enlarged and cross-disciplinary concept of cultural heritage”. It introduces art. 2 (a) which defines the “cultural heritage” as “a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time”.

In the light of the Second recital, this definition is not too wide and undetermined as it might seem at first sight. The terms “constantly evolving values, beliefs, knowledge and traditions”, according to the accurate order they follow, uphold in fact the intentionally selected prevalence of subjective elements (values, beliefs) over those objective (knowledge, traditions), a choice which represents one of the most original traits of the Convention.

This notion of cultural heritage, accompanied by the phrase “independently of ownership”, voices the intent of Member States to keep the matters relating to intellectual property rights outside the framework proposed, along the same line of the 2003 UNESCO Convention on the safeguard of intangible cultural heritage. The 2003 Convention is also re-invoked in the expression “constantly evolving heritage”, which precisely refers to a still and continuous living cultural heritage. Rather, the use of the term ‘group of resources’, also comprised in the 2003 Convention, indicates the States’ awareness on the importance and interest in the economic profiles of the cultural heritage, reminding also the terminology used by the 2005 UNESCO Convention on protection and promotion of cultural diversity.

Finally, the use of the term ‘people’, in a legal instrument which features the words ‘person’ and ‘individuals’, is to indicate that it refers to a right

which is simultaneously collective and individual.

Under art. 2 (b), “a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations”. The definition is to be tied to art. 4 (a) (Rights and responsibilities relating to cultural heritage) according to which the parties recognize that “everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment”. This is a very innovative feature, on which the debate is still open and in need of further development.

Art. 3 of the Convention then encompasses a definition which has, rightly, been dealt with extensively in the doctrine, the notion of “the common heritage of Europe”. This common heritage consists, on one side, of “all forms of cultural heritage in Europe which together constitute a shared source of remembrance, understanding, identity, cohesion and creativity” and, on the other side, of “the ideals, principles and values, derived from the experience gained through progress and past conflicts, which foster the development of a peaceful and stable society, founded on respect for human rights, democracy and the rule of law”.

The definition referred to in point (a), to be read in connection with the provisions of art. 6 of the Florence Convention on the cultural landscape, is characterized by the call to the heritage of Europe as a shared source. Under another perspective, the relationship between the provisions in points (a) and (b), second part mainly, is relevant. More than others, this norm recalls the painful events occurred in Central and Eastern Europe at the end of the last century and may explain why, in the beginning, only States belonging to that geographical area ratified the Convention. Finally, noteworthy is the appraisal for which the common heritage of Europe is also identified with the capacity of Member States of the European Union to be guarantor of the freedoms of European citizens.

The encounter between the notions of “common heritage of Europe” and “heritage community” thus defines the original trait which makes the Faro Convention evolutionary in its content. As underlined by the Steering Committee for Cultural Heritage and Landscape in 2009, the trait is represented by the “multiple cultural affiliation”.

Articles 5 and 6, ending Part I, are devoted respectively to “Cultural heritage law and policies”, and the “Effects of the Convention”.

Art. 5, as typically formulated in *framework* conventions, expresses a generic obligation for Member States to “recognize the public interest associated with elements of the cultural heritage and the value of cultural heritage situated on territories under their jurisdiction, regardless of its origin”; to “enhance the value of the cultural heritage”; to “foster an economic and social climate which supports participation in cultural heritage activities”; to “promote cultural heritage protection”; to “formulate integrated strategies to facilitate the implementation of the provisions of

the Convention". In point (c) it then affirms the undertaking of States to ensure that legislative provisions exist in their legal systems for exercising the right to cultural heritage as defined in art. 4.

Art. 6 specifies that no provision of the Convention shall be interpreted to limit or undermine the human rights and fundamental freedoms, or to affect more favorable provisions concerning cultural heritage and environment, contained in other national or international legal instruments; nor it creates enforceable rights.

Part II titled "Contribution of cultural heritage to society and human development" articulates more specifically the obligations set forth in art. 5.

Ex art. 7, the Parties undertake, through the public authorities and other competent bodies, to encourage reflection on the ethics and methods of presentation of the cultural heritage, to develop knowledge of cultural heritage as a resource to facilitate peaceful co-existence by promoting trust and mutual understanding with a view to resolution and prevention of conflicts; to integrate these approaches into all aspects of lifelong education and training. In addition, States undertake to establish processes for conciliation to deal equitably with situations where contradictory values are placed on the same cultural heritage by different communities.

The following articles 8, 9 and 10 deal with the relationship between cultural heritage and the environment and quality of life, the sustainable use of cultural heritage and the relation with economic activities.

Part III concerns the shared responsibility for cultural heritage and public participation. According to art. 11, in the management of the cultural heritage, the Parties undertake to promote an integrated and well-informed approach by public authorities in all sectors and at all levels; to develop the legal, financial and professional frameworks which make possible joint action by public authorities, experts, owners, investors, businesses, non-governmental organizations and civil society, but also to encourage voluntary initiatives of non-governmental organizations concerned with heritage conservation, provided that they act in the public interest.

States, moreover, by way of means they choose, undertake to encourage everyone to participate in the process of identification and in the public reflection and debate on the opportunities and challenges which the cultural heritage represents (art. 12).

Parties also undertake to facilitate the inclusion of the cultural heritage dimension at all levels of education, professional training, and interdisciplinary research.

Finally, the Parties undertake to develop the use of digital technology to enhance access to cultural heritage pushed by the belief that the creation of digital contents related to the heritage should not prejudice the conservation of the existing heritage.

A careful consideration should be set upon Part IV on "Monitoring and

co-operation". Indeed, art. 15 commits the Parties to develop, through the Council of Europe, a monitoring system covering legislations, policies and practices concerning cultural heritage, consistent with the principles established by the Convention (a mechanism then specified in art. 16) and to maintain, develop and contribute data to a shared information system, accessible to the public, which facilitates assessment of how each Party fulfils its commitments under the Convention. This monitoring mechanism detaches in part from the classic ones provided for in the framework conventions.

In the Faro Convention, this occurs by means of the provision that imposes an obligation to establish, through the Council of Europe, a monitoring body with a control mandate over policies, legislative activities, practices of individual States. An obligation this that becomes even more detailed with reference to States' participation in a shared information system. As the Steering Committee for Cultural Heritage and Landscape has subsequently specified, the treaty provision refers to a shared database - which also extends to other Conventions of the Council of Europe on cultural heritage - as it has been implemented through the creation of the European Cultural Heritage Information Network (HEREIN). HEREIN envisages namely: a network made-up of 46 national coordinators appointed by relevant Ministries, which ensures the definition of themes and areas of work depending on the current challenges and issues to be addressed; a database, with input from the coordinators, which provides a regularly updated inventory of European heritage policies, a program for sharing, exchanging and analyzing information and a monitoring function for Conventions, legislation, policies and practices relating to cultural heritage and; a thesaurus with more than 500 cultural and natural heritage terms in 14 European languages.

The control mechanism shaped by the Faro Convention and enlarged to other instruments on cultural heritage thus does not reproduce the instrument established in cultural rights treaties and constructed upon the periodic reports Member States are required to submit to the relevant treaty body.

More, the system ruled by articles 15 and 16, together with the timely States' obligation indicated in article 5 (c), distinguishes the Faro Convention from the standard framework conventions. Short of distorting the nature of the latter legal instruments, however, it lays down precise obligations, with no discretion for States as to their implementation.

When called to authorize the ratification and to provide the order to execute the Convention, the national legislator should be therefore aware that the obligations to participate in the European monitoring action, to be part of the HEREIN system, and to translate into the internal legal system a right to cultural heritage as an articulation of the cultural right referred to in art. 15 (a) of the International Covenant on Economic, Social and Cultural rights, constitute specific obligations that, if breached, raises the

international responsibility of our State.

Art. 17 encompasses the commitment of Parties to cooperate with each other and through the Council of Europe in pursuing the aims and principles of the Faro Convention, and especially in promoting recognition of the common heritage of Europe.

Part V, on final clauses, sets forth the standard criteria for the entry into force of the Convention (art. 18), with reference to the possibility for the European Union to accede to the Convention (art. 19). The same article also indicates how the Committee of Ministers may invite any State not a member of the Council of Europe to accede to the Convention, once it entered into force.

Ensuing to the entry into force of the Convention, the Council of Europe, through the work of the Steering Committee for Culture, Heritage and Landscape has identified some pilot experiences in Marseilles - France, Venice - Italy, Pilsen - the Czech Republic, Viscri - Romania, voicing the interest - in compliance with Action Plan 2013-2014 - to endorse an implementation approach based on the relationship between inhabitants and the territory and between these latter elements and the cultural heritage.

The determination of the Council of Europe to give new impetus to its *patrimonialista* inclination is documented also by the VI Conference of Ministers responsible for cultural heritage, held at Namur (Belgium, 22-24 April 2015) and titled *Cultural Heritage in the 21st century for living better together: towards a common strategy for Europe*.

The Faro Action Plan 2016-2017, published by the Steering Committee in May 2016, and still applicable, provides for the concrete execution of the Convention by means of a set of priorities: by increasing efforts to promote the implementation of the Convention and the visibility of its action; by increasing relations between heritage communities which strive to apply the Convention; by developing good practices, workshops; by establishing a pool of experts and generating dynamic dialogue among practitioners, facilitators and heritage actors (*Faro in action*), as well as by examining and assessing specific areas where to measure the possible role of the Convention in addressing social challenges (*Faro Spotlights*).

The proposed draft law on the ratification consists of four articles.

Article 1 provides for the authorization to ratify the Convention.

Article 2 includes the order of execution of the Convention.

Article 3 defines the financial coverage of costs arising from the implementation of the law.

Article 4 defines its entry into force.

Proposta di legge

Art. 1.

(Autorizzazione alla ratifica).

1. Il Presidente della Repubblica è autorizzato a ratificare la Convenzione quadro del Consiglio d'Europa sul valore del patrimonio culturale per la società, fatta a Faro il 27 ottobre 2005.

Art. 2.

(Ordine di esecuzione).

1. Piena ed intera esecuzione è data alla Convenzione di cui all'articolo 1, a decorrere dalla data della sua entrata in vigore, in conformità a quanto disposto dall'articolo 18 della Convenzione stessa.

Art. 3.

(Copertura finanziaria).

1. All'onere derivante dall'attuazione della presente legge, valutato in euro 1 milione per l'anno 2017, in euro 1 milione per l'anno 2018 e in euro 2 milioni annui a decorrere dall'anno 2019, si provvede mediante corrispondente riduzione dello stanziamento iscritto, ai fini del bilancio triennale 2017-2019, nell'ambito del fondo speciale di parte corrente dello stato di previsione del Ministero dell'economia e delle finanze per l'anno 2017, allo scopo parzialmente utilizzando l'accantonamento relativo al Ministero degli affari esteri e della cooperazione internazionale.

2. Il Ministro dell'economia e delle finanze provvede al monitoraggio dell'attuazione del presente articolo, anche al fine dell'applicazione dell'articolo 16 della Convenzione di cui all'articolo 1 della presente legge.

Art. 4.

(Entrata in vigore).

1. La presente legge entra in vigore il giorno successivo a quello della sua pubblicazione nella *Gazzetta Ufficiale*.