

Comparative Legal Analysis of the Legislation in the Area of Cultural Heritage in Southeast Europe

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1. Subject

The proposed research will provide a comparative analysis of the legislations of Bulgaria, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia (hereinafter referred to as FYROM), Serbia and Montenegro¹ and Greece in the area of cultural heritage. For the purposes of this research cultural heritage will be deemed to encompass two types of objects – tangible and intangible. Tangible cultural heritage will be considered to include monuments, groups of buildings and sites in the sense of Article 1 of the Convention concerning the Protection of the World Cultural and Natural Heritage (hereinafter referred to as the World Heritage Convention) of the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as UNESCO).² Intangible cultural heritage will be viewed as including “all forms of traditional and popular or folk culture, i.e. collective works originating in a given community and based on tradition.”³

2. Background

Presently, the relations between Western Europe and the Balkans are being radically transformed. This is evidenced by the intensification of foreign direct investment in the region, the development of a market for international tourism and by the prospects of future accession of the Balkan states into the EU. Worldwide these processes of globalisation are associated with the redefinition of economic and political boundaries away from nation states. As a way of coping with the challenges posed by economic globalisation, nation states are increasingly engaging in cooperative relations with other states. Regional cooperation is seen as a means of responding to common challenges through a concerted collective effort that is

¹ Effectively, the study will include the Slavic Balkan countries with the exception of Slovenia which is to join the European Union in 2004.

² See UNESCO, Convention concerning the Protection of the World Cultural and Natural Heritage, at <http://whc.unesco.org/nwhc/pages/doc/main.htm> viewed on 26 July 2003.

more effective than undertaking individual national initiatives. The importance of protecting and promoting the cultural heritage of the Balkan region is therefore tied to these tendencies.

Balkan countries however, remain isolated in their cultural policies.⁴ Whereas the turbulent history of the region may explain the attitude of denying the cultural connections between Balkan nations, it certainly does not justify the lack of cooperation and communication between states in the area of cultural heritage legislation. A common regional approach to the protection and promotion of cultural heritage would constitute one way of transforming some of the entrenched political attitudes that have divided the Balkans. In turn, cooperation in this area can be a vehicle for advancing the notion of the Balkans as a common cultural region.⁵

3. Justification

All new democracies of the Balkan region are facing the task to reform their national legislation by introducing modern approaches for the preservation and management of cultural heritage. The proposed research is based on the concept that co-operation and coordination between these countries' efforts at reforming their legislations would speed up this process and make it more efficient. It could also set a favourable basis for future dialogue and co-operation in the promotion and utilisation of cultural heritage and the development of common projects in the area of cultural tourism, promotion campaigns, etc.

In addition, one of the countries in the region, Greece, has vast experience in the area of managing cultural property and developing cultural tourism. The new Balkan democracies can learn from its experience and possibly adopt the positive features in its cultural policy. For these reasons, a focused and comprehensive comparative legal analysis of the legislations of these new Balkan democracies, on one hand, and Greece, on the other, is much needed.

4. Outline

³ See UNESCO, Culture & UNESCO, Intangible Cultural Heritage, at http://www.unesco.org/culture/heritage/intangible/html_eng/index_en.shtml viewed on 26 July 2003.

⁵ One positive initiative in this respect is for example the multinational project Cultural Routes of South Eastern Europe (awarded the PRIX JEP 2000 Prize and the Prime Award granted by the Delegation of the European Commission to Bulgaria). The project sets up a network of experts from all South-East European countries that

The analysis will encompass several main areas:

4.1. Ratified international instruments and membership in international organisations

4.1.1. The World Heritage Convention

Bulgaria and all former Yugoslav republics are member states to the World Heritage Convention. The research will explore the extent to which these countries have implemented their obligations under the convention and have utilized the opportunities that it offers. It will examine and compare the domestic mechanisms for nominating cultural monuments for inscription in the World Heritage List under Article 11(2) and the World Heritage List in Danger under Article 11(4) of the World Heritage Convention.⁶ It will also attempt to formulate policy recommendations for improving these mechanisms and for utilizing the possibilities for requesting international assistance under Chapter V of the Convention.

4.1.2. Conventions of the Council of Europe

All the countries that are subject of the proposed research are members of the Council of Europe. There are five conventions in the framework of this organization that directly relate to cultural heritage.⁷ All countries in question are parties to the European Convention on the Protection of the Archaeological Heritage and the European Cultural Convention whereas in respect of the other three instruments membership varies. The research will analyse the mechanisms needed for the implementation of these conventions. It will then attempt to formulate a policy proposal as to the future ratification or non-ratification of these instruments.

4.1.3. European Heritage Network (HEREIN)

Bulgaria and Croatia participate in HEREIN which is a permanent information system of the Council of Europe. It is an instrument for implementing and monitoring the European

offer a system of cultural routes as the basis of an integrated regional policy for cultural tourism and for cultural heritage preservation.

⁶ Presently, nine Bulgarian properties are inscribed in the World Heritage List, seven of which are cultural monuments; five of the six Croatian properties are cultural monuments; and three of the four properties in Serbia and Montenegro; Macedonia and Bosnia and Herzegovina have no properties inscribed in this list. None of the countries has properties inscribed in the World Heritage List in Danger. See <http://whc.unesco.org/nwhc/pages/doc/main.htm> viewed on 26 July 2003.

⁷ European Convention on the Protection of the Archaeological Heritage as revised in 1992, Convention for the Protection of the Architectural Heritage of Europe of 1985, European Convention on Offences relating to Cultural Property of 1985, European Convention on the Protection of the Archaeological Heritage of 1969 and the European Cultural Convention of 1954.

conventions on the architectural and archaeological heritage offering a databank for communicating the cultural heritage reports required of the Convention on Architectural Heritage and Convention on Archaeological Heritage. These reports contain information on the various aspects of heritage policy: identification, inventories, protection, conservation, financing, integrated conservation strategies, digital recording of cultural assets, etc.⁸ The approach towards systematising information on cultural heritage in these reports will be used as a tool in the proposed research. However, the reports offer a very limited overview of the issues involved and lack critical analysis. Therefore the proposed research will build upon the general scheme of this databank to create a regional information resource of a greater analytical value.

4.2. Special laws regulating the protection of cultural heritage

The proposed research will examine the special domestic legislation on protection of cultural heritage of the countries in question. Attention will be given to the nature and powers of agencies that are responsible for managing cultural heritage. The extent of decentralisation of this activity will also be discussed with a particular reference to local authorities' ability to participate in the administration of cultural monuments situated within their territory and use them for purposes of sustainable development.

The regime of financing the preservation and management of cultural property will also be discussed with an emphasis on the formation of the budget for this activity.

The analysis of the special legislation in the area of cultural heritage will also touch upon the secondary legislation in the area. Although not always in the highlight of such discussions, secondary legislation often proves to be of a bigger practical importance for the day-to-day activity of managing cultural property.

4.3. Intellectual property treatment of cultural heritage objects

The proposed research will explore the intellectual property issues arising in respect of the utilization and promotion of cultural heritage. This analysis would look at intangible cultural

⁸ See European Heritage Network, National Heritage Policies at http://www.european-heritage.net/sdx/herein/national_heritage/introduction.xsp viewed on 26 July 2003.

heritage such as folklore. It would require an examination of the intellectual property laws of the countries in the region with particular reference to the regime of protection of cultural heritage, as well as their commitments to intellectual property protection in an international aspect.

In respect of cultural monuments, the research will examine issues such as the regulation of the use of their images for commercial purposes, including for the purposes of promotion of cultural tourism.

4.4. Fiscal legislation

The research will further examine the tax legislation related to cultural heritage of the countries concerned. It will look at various tax incentives intended at encouraging the preservation of cultural heritage such as granting of tax relief for donations and investments for the preservation and restoration of monuments of culture, duty exemptions for the import of equipment used for the restoration and maintenance of cultural objects, etc. The research will also touch upon the procedures for exercising such rights.

4.5. Private participation

The opportunities for private participation in the preservation, studying, management and utilisation of cultural heritage will also be explored. This will include an examination of the role of civil society in the policy making in the area of cultural heritage with references to the legal regime of non-governmental organisations in the relevant countries and their activity in the area of cultural heritage. Other forms of private participation also call for an examination. These include the regulation of private museums and state support for such museums and for other private projects in the area of cultural property, as well as the encouragement of entrepreneurship especially in the area of cultural tourism.

5. Methods

The research will rely on a legal analysis of the provisions of the relevant national legislations and ratified international instruments. It will mainly involve a library-based research including the wealth of materials published on the Internet sites of governmental and non-

governmental organisations. Where necessary, interviews with experts in the area from different nations will be used to provide a more practical and in-depth view on the discussed issues.