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Study on the Implementation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions for the European Parliament

BACKGROUND INFORMATION

Introduction

The Geneva based law firm Germann Avocats and its interdisciplinary research team is completing a study for the European Parliament's Committee on Culture and Education (CULT) whose overall objective is to provide a summary of the state of implementation of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 2005, in particular in fields where the European Community would be expected to provide leadership or coordination.

This study shall give assistance and long-term guidance to the EU on implementing the UNESCO Convention by carrying out a detailed analysis of the obligations set out by this international treaty. In particular, we shall gather information on the various practices in implementing the UNESCO Convention, from a legal and practical viewpoint, and identify challenges and measures to help achieve the objectives of this instrument.

For these purposes, we drafted three sets of questionnaires. The first questionnaire shall allow us to gather legal data. The second questionnaire shall inform us about the implementation of the UNESCO Convention from the perspective of representatives of civil society. The third questionnaire shall cover the situation from the angle of a selection of regional and regional organizations, (the ASEAN, the African Union, the Association of Caribbean States, the Commonwealth, the International Organisation of La Francophonie, the Council of Europe, the European Union, UNESCO, WTO and WIPO).

Expected results from the surveys

We expect to collect valuable information on the public measures that are specifically undertaken to protect and promote cultural diversity on the national level in different jurisdictions. We shall obtain insights to compare regulatory practice in a variety of economic and political situations that characterize the selection of countries located in different geographical area. We will obtain data which will allow us to compare regulatory practice in varying economic and political situations. We shall use and compare this information in our subsequent analysis that will eventually provide the basis of our conclusions and recommendations to the European Parliament.

Legal survey

The legal questionnaire will focus on legal aspects of the implementation of the Convention. We send our survey to law firms specializing in international public law in Canada, Brazil, China and Senegal. In Europe, we will directly investigate the legal situation in Italy (as a larger jurisdiction) and Switzerland (as a smaller jurisdiction). In addition, we will send the legal questionnaire to a sample of eight National UNESCO Commissions of EU Member States, which will reflect geographic, political and economic diversity. This legal survey shall allow us to assess the current state of implementation of the UNESCO Convention in these countries in terms of regulations and administrative practice.

We will attach the replies to this questionnaire to our study that will be available over the internet.

For the text of the Convention and other useful documents, please consult:

www.unesco.org/culture/en/diversity/convention

LEGAL QUESTIONNAIRE

A General questions

1 When did the UNESCO Convention **enter into force** in your country?

PLEASE INSERT YOUR ANSWER HERE:

The Convention on the Protection and Promotion of the Diversity of Cultural Expressions entered into force on March 18, 2007

2 Are those provisions of the UNESCO Convention that are precise and clear directly applicable ("**self-executing**") in your country?

Yes () No

According to the Constitution of the Republic of Bulgaria art.5 (4):

International treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation.

3 Please list any **non-governmental organizations** that deal with cultural diversity concerns and that represent a substantial part of the stakeholders concerned by cultural policies in your country.

PLEASE INSERT YOUR ANSWER HERE:

"Next Page" Foundation; Regional Resource Center "The Factory"; The International Center on Minority Issues and Cultural relations (IMIR), Foundation "Inter-ethnic initiative for human rights", Foundation "S.E.G.A" (Start of effective civil alternatives), "Open Society" Institute, Bulgarian foundation for intercultural education and understanding "Diversity", Association of Vlaxhs in Bulgaria – Vidin, Federation of culture and educational associations of Karakachans in Bulgaria, United Roma Union – Sliven, Cultural and educational center "Navrez" – Dobrich, St. George National Roma Centre – Sofia, Center for Aromanian language and culture – Sofia, Stepanos Hovagimjan Armenian School Association – Sofia, Armenian Charity Society "Parekordzagan" – Sofia, OSOK "Hamazkain", Organisation of the Jews in Bulgaria "Shalom", Erevan Cultural and Educational Organisation, Turkish Cultural Center – Sofia, Bulgarian Female Jewish Forum – Sofia, "Project Human Rights" Association – Sofia, "INTEGRO" Association – Sofia, Foundation for Regional Development "Roma – Plovdiv"- Plovdiv, Confederation of Romas "Europe" – Sofia, "Municipality Roma Union - Burgas" Association – Burgas, "Ethno-cultural dialogue", Association "Youths Tolerance" – Sofia.

B Questions on the implementation of the UNESCO Convention so far

For the purpose of this questionnaire, "**national law**" includes national legislation, regulations, administrative practice and case law that entered into force before or

after the entry into force of the UNESCO Convention in your country.

4 Does your country have national law implementing the UNESCO Convention as of 1 January 2010?

(X) Yes () No

If the answer is "No", please explain the absence of national law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

PLEASE INSERT YOUR ANSWER HERE:

If the answer is "Yes":

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

- **Constitution of the Republic of Bulgaria art.5 (4)**
- **Law for ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (SG. 97, 2006)**
- **Cultural Heritage Law**
- **Law on the Protection and Development of Culture**

Art. 2 The basic principles of national cultural policies are:

6. Promoting cultural diversity in keeping the unity of national culture;

7. Promotion of the cultural industry and the market for works of art and stimulation the production in the field of culture;

4.1 How does your country comply with points 4, 7 and 8 of article 2 of the 2005 UNESCO Convention ("principle of **international solidarity and cooperation**" and "Principle of **equitable access**" and "principle of **openness and balance**") and with articles 12 to 17 of the 2005 UNESCO Convention ("promotion of international cooperation") in its implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

Cultural Heritage Law

Art.3 This law aims to create conditions for the conservation and protection of cultural heritage, sustainable development of policy for protection of the heritage and to ensure equal access of citizens to cultural values subject to the following principles: .

3. Publicity and transparency in the management for protection of cultural heritage.

(2) The right of access to cultural heritage is an opportunity for using the cultural values, ensuring physical and intellectual access to them without harm or put at risk.

(3) The state, municipalities and individuals create conditions and guarantee everyone's equal access to cultural values.

Art. 43. (1) A National Council for the intangible cultural heritage is established and it works under the control of The Minister of Culture, This council:

2. proposes measures for implement of international instruments in the field of intangible cultural heritage, to which Bulgaria is a party;

Law on the Protection and Development of Culture

Art. 2 The basic principles of national cultural policies are:

1. democracy in the cultural policy, freedom of the artistic creativity and non-censorship;
3. equality of artists and cultural organizations;
6. Promoting cultural diversity in keeping the unity of national culture;

4.2 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

Cultural diversity is an integral part of the Bulgarian cultural measure. Various ethnic, confessional and language communities live alongside in the country, and all of them have contributed to the common national cultural heritage. The years of co-existence have strengthened the mechanism of cooperation between the different cultures, languages and religions on the basis of protection and harmonic diversities compatibility between people in Bulgaria and through free expression of their individuality and common self-awareness.

4.3 How is article 11 of the 2005 UNESCO Convention ("**participation of civil society**") regulated in the implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

Cultural Heritage Law

Art. 4. State policy on protection of cultural heritage is held by the Minister of Culture in cooperation with the competent state and municipal authorities, the Holy Synod of Bulgarian Orthodox Church and the central governing bodies of other registered religions, and with the support of civil society.

In 2008 in the Framework of the European Year of Intercultural Dialogue, the Ministry of Culture as a national coordinator for the Year developed a national project called "House". The implementation of the national project stimulated the public-private partnership. Thus, besides the concern about cultural diversity and the future of culture, the social content of Bulgarian society was set up as a cultural organization system, united for achievement of common and relevant to their own interest goals. During the implementation of the activities in the framework of the Year of Intercultural Dialogue, the popularization of the initiative was done through inclusion of regional and municipality experts on ethnic and demographic issues, representatives from scientific circles and NGOs with a range of activities, linked to the cultural diversity and intercultural dialogue, traditional cultural-educative centers in the country, such as "chitalishta"/cultural clubs/community centers and houses of culture - and in particular those of the ethnic minorities, media, incl. media of ethnic minorities, as well as famous cultural activists from different ethnic groups.

4.4 How are articles 20 and 21 of the 2005 UNESCO Convention ("**relationship to other treaties**" and "**international consultation and coordination**") regulated in the implementing national law?

PLEASE INSERT YOUR ANSWER HERE:

Bulgaria is a state party to the convention but also an EU member-state. The goals of the national cultural policy, which coincide with those pursued by the member-states of the European Union:

- Guaranteed freedom of expression;
- Creation of conditions for equal participation in cultural life;
- Preservation and promotion of the culture of different ethnic groups and religions;
- Support for cultural education;
- Support for international dialogue between cultures.

The importance of this Convention is confirmed by the fact that it is widely used as a basis for the drafting of various documents by the European Union, as Conclusions on the promotion of cultural diversity and intercultural dialogue in the external relations of the Union and its Member States. It underlines the need for uniting the efforts of the European Union and the various international organisations relevant to heritage, and, more specifically, of UNESCO and the Council of Europe. The will expressed in this documents, provides us with grounds to pay common effort for undertaking joint actions to broaden dialogue and cooperation with the European Union in favour of the region's cultural heritage.

Bulgaria is also very active in its politics in the region of South Eastern Europe and annually is taking part in the Ministerial Conference on cultural heritage in South-Eastern Europe "Cultural Heritage - a Bridge towards a Shared Future". The Convention stimulate us to speak of the value of our cultural heritage, not merely in terms of its cultural, historical and aesthetic properties but to consider its social significance and try to identify the link between the heritage and society, and between the heritage and every individual. We are convinced that, if the common cultural heritage is well protected and managed, it could be used as a significant resource for sustainable development of the regions.

4.5 How does your country assess and insure the compliance of its efforts to implement the UNESCO Convention with respect to its **human rights obligations**?

PLEASE INSERT YOUR ANSWER HERE:

According to the Constitution of the Republic of Bulgaria art.6

(1) All persons are born free and equal in dignity and rights.

(2) All citizens shall be equal before the law. There shall be no privileges or restriction of rights on the grounds of race, national or social origin, ethnic self-identity, sex, religion, education, opinion, political affiliation, personal or social status or property status.

The Republic of Bulgaria is pursuing a policy of respect and observance of the fundamental human rights and freedoms. The first steps towards democratic development after 1989 were connected with the restoration of ethnic and religious rights of the main ethnic communities in Bulgaria. This process resulted in strengthening the model of inter-ethnic relationships, based on the civil society principles, cultural pluralism and democracy. The process has been settled by balancing and harmonizing between the integration of the ethnic communities inside the civil society and the preservation of their ethnic, religious and linguistic identity.

The creation of conditions for adequate cultural expression and active participation of ethnic, religious and language communities is part of the state cultural policy. It is

based on recognition and respect of group and individual cultural distinctions. This policy combines measures in support of: preservation and development of the cultural identity of the people, belonging to minority groups, balanced common co-existence and manifestation of **diversity** of cultures and **forms of cultural expression**, creation of conditions for common acquaintance and promotion of intercultural dialogue. In addition, the national policy accounts for importance of culture and intercultural dialogue as a precondition for equal participation of all groups in the social life, as a significant instrument for integration, cooperation and social cohesion, and as an important mechanism for eradication of prejudices.

The goals of the national cultural policy coincide with those pursued by the member-countries of the European Union:

- Guaranteed freedom of expression;
- Creation of conditions for equal participation in cultural life;
- Preservation and promotion of the culture of different ethnic groups and religions;
- Support for cultural education;
- Support for international dialogue between cultures.

The social cohesion issues, based on the intercultural dialogue, have been adopted by several main bodies within the central executive authorities as priority in their activities. The Bulgarian government has initiated different programs, directed to the building of multi-cultural models for upbringing, demeanor, education, teaching, etc., as well as such for provision of conditions for equal opportunities for all Bulgarian citizens, regardless of their ethnic, religious or linguistic belonging, like for example: equal access to health care, education, labour market, goods and welfare, social services, homes, culture; equal opportunities for participation in the political, economical and social life.

*As a complement to your replies to questions 4.1 to 4.5, please provide a copy of, or references to, your country's implementing **national law**, if any, together with related commentaries and web site addresses where such national law and related documentation may be found.*

The Constitution of the Republic of Bulgaria is published on the website of the National Assembly of the Republic of Bulgaria in Bulgarian and English.
<http://www.parliament.bg/?page=const&lng=en>

The laws and all kind of normative documents related to culture and cultural heritage are published on the website of the Ministry of Culture of the Republic of Bulgaria in Bulgarian.

<http://mc.government.bg/page.php?p=141&s=0&sp=0&t=0&z=0>

According to the Constitution of the Republic of Bulgaria Art. 88.

(1) Bills shall be read and voted upon twice, during different sessions. By way of exception, the National Assembly may resolve to hold both ballots during a single session.

(2) All other acts of the National Assembly shall require a single ballot.

(3) Each passed act shall be promulgated in State Gazette within 15 days of being passed.

<http://dv.parliament.bg/DVWeb/index.faces>

<http://www.lex.bg/bg/laws> offers free access to all Bulgarian laws

5 Does your country intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

() Yes (X) No

If yes, please describe the project(s) for which your country will ask for funding:

PLEASE INSERT YOUR ANSWER HERE:

6 Is your country affected by **special situations** contemplated under articles 8, 12 para. 1, 17 and 23, point 1 of the UNESCO Convention ("special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding")?

Yes () No (X)

If "Yes", please describe these special situations, and the measures that your country adopts to redress these situations?

PLEASE INSERT YOUR ANSWER HERE:

7 What **institutional measures**, if any, does your government take to facilitate dialogue and coordinate action between culture and trade ministries and other relevant ministries (e.g. foreign affairs ministry) on the national level in order to meet the objectives of the UNESCO Convention?

PLEASE INSERT YOUR ANSWER HERE:

The Ministry of Culture is the central executive authority in the sector of culture, and has the right of legislative initiative. It is the body, which determines and implements the main principles of state cultural policy. During the last 10 years the ministry has initiated and coordinated series of cultural reforms, aiming at:

- Decentralization of management and financing of culture;
- Freedom of actions and formation of market-oriented behaviour of cultural institutions and artists;
- Changes in the culture-related legislation, designed to correspond to the new social and economic challenges;
- Approach to the legislation of the European Union;
- Establishment of administrative environment, easing the cultural development and European integration;
- Guaranteeing equality of rights for state, municipality and private cultural institutions;
- Enhancement of the role of the non-government sector.

Each of them has a direct connection with the problems of preservation and development of the cultural diversity, as well as with support of the inter-cultural dialogue. According to the structure of the Ministry there are two Deputy Ministers – one of them in charge of the Cultural Policy and the other one in charge of the Historical and Cultural Heritage. Supporting their work there are 9 directorates: "Cultural Policy" Directorate, "Cultural Heritage" Directorate, "Coordination of

Programs and Projects" Directorate, "Arts and creative generation" Directorate, "Copyright and Neighbouring Rights" Directorate, "Law and Legal affairs and public procurement" Directorate, "Human Resources and Administrative Services" Directorate, "Budgeting and financial accounting activities" Directorate, "Property Management" Directorate and one Chief Directorate "Inspectorate for the Protection of Cultural Heritage". "Cultural Policy" Directorate is in charge for the activities connected with the Convention, coordinating its work with the National Commission for UNESCO under the Ministry of Foreign Affairs.

Similarly, a Public Council on cultural diversity issues is established within the Ministry of Culture as an expert and consultative body.

Other central authorities, which deal directly with the problems of minority communities in our country, are the Ministry of education, youth and science, the Ministry of healthcare, etc.

There are some other structures too, that provide relations between the central authorities. These are the inter-ministerial commissions, where cultural competencies take only part of the whole activity – for example education, foreign policy, youth, tourism, and ecology. The inter-ministerial commissions are either permanent or temporary, and their functions are consultative and legislative.

Within the Presidential institution there is a consultative Council on Cultural Affairs.

Since 1997 the National Council for Cooperation on Ethnic and Demographic Affairs (NCCEDA) within the Council of Ministers has been working as a state and public body. It is a "body for implementation of consultations, cooperation and coordination between the government structures and non-government organizations, aiming at formation and realization of the national policy regarding the ethnic and demographic issues and migration." For that purpose it covers 11 ministries at a level of deputy minister, 4 state agencies and 34 non-governmental organizations of traditionally living in the country ethnical groups.

One of its purposes is the creation and development of conditions, essential for the Bulgarian citizens from different ethnic communities to strengthen and develop their culture, as well as to preserve the most important elements of their identity – religion, language, traditions and cultural heritage.

NCCEDA acts also in favor of protecting and strengthening ethnic tolerance and understanding, providing common connection and coordination between the different policy sectors, including culture and the protection of Bulgarian spiritual environment, for coordinating, implementing and conducting on-going monitoring in respect of different programs' realization.

NCCEDA disposes of a developed network of councils at municipal, district and regional levels, which involve representatives of minority groups at local level. Work of councils at regional and municipality levels is supported by experts on ethnic and demographic issues, appointed by the relevant administrations.

At all levels the councils for cooperation are designed as civil and state bodies, uniting representatives from state and local institutions and from the civil sector. This strengthens the democratic principles with regard to processes connected with preservation and development of ethno-cultural distinctions, and helps promoting dialogue between cultures.

The state and local structures, specialized in ethnic minorities' issues, collaborate with the traditional cultural and educative centers in the country, such as "chitalishta"/cultural clubs/community centers, and houses of culture, where they are particularly active in the cooperation with cultural centers and organizations of ethnic minorities and with those NGOs, which are working in this area.

8 How does your country contribute to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with regional organizations, promotion of exchanges between National UNESCO Commissions, involvement in negotiating the operational Guidelines of the UNESCO Convention, activities within the Intergovernmental Committee)?

PLEASE INSERT YOUR ANSWER HERE:

In the framework of the European Heritage Days 2007 & 2008, special attention was paid to the Convention in the annual booklets; a seminar in September 2007 and a Research publication launch "The Right of Cultural Diversity" by Ass. Prof. Ivan Kabakov (Cultural studies, Sofia University);

The European Year for Intercultural Dialogue 2008 was also used to disseminate the messages of the Convention through various activities, workshops, exhibitions, conferences, press conferences etc... (Some larger scale events such as the multiethnic concert "Celebrate the Diversity" followed by an educational documentary "Together in Bulgaria and Europe" and a bulletin "Dialogue of cultures in Bulgaria" are just a couple of illustrations for bottom up initiatives we supported and/or developed in partnerships.)

A bilingual publication of research papers by Bulgarian and international authors will be published in 2010 ("Fragments from the Future. The Impact of cultural diversity and globalization on the policies for culture", Oxiart, Sofia)

Bulgaria is taking part in the Regional Program of the Council of Europe and in the Council of Ministers of Culture of South East Europe. Also the country has active bilateral cooperation in the sphere of culture with more than 70 countries.

C Questions on the further implementation of the UNESCO Convention

To reply to the following questions, you may consult with the competent agency within the Ministry of Culture of your country, or with your national contact point for the UNESCO Convention (articles 9, letter b, and 28) as listed in

www.unesco.org/culture/fr/diversity/convention/3igc/3IGC_INF6_Points_de_contact_des_Parties.pdf

9 Which **major problems**, if any, related to the implementation of the UNESCO Convention does your country identify so far?

PLEASE INSERT YOUR ANSWER HERE:

- insufficient funds
- Lack of sufficient coordination between institutions
- Alliances with the small and medium sized cultural industries and NGO (not "major companies") should be built, in order to take on board their own reasoning and ideas for the future of the Convention. For the time being this process is somehow isolated from many of them and they do not see the benefit of it.

10 Which **best practices** related to the implementation of the UNESCO Convention does your country identify so far?

PLEASE INSERT YOUR ANSWER HERE:

The messages of the Convention for preservation and development of the ethno-cultural identity, enhancement of atmosphere of intercultural acquaintance, tolerance, cooperation and rapprochement, enlargement of the intercultural dialogue in the multi-ethnic social environment were taken into consideration in the realization of the Bulgarian National Project "HOUSE", **Our HOUSE – a Home for Our Unity in Sincere Embrace** in the framework of the European Year for Intercultural Dialogue 2008 and were included in almost all of the events.

In spite of the limited budget, the Ministry of Culture provides financial support for cultural projects of minority communities ("Roma Cultural and Information Center", "Roma Music Theatre", festivals of different ethnic groups). A Public Council on cultural diversity issues was established within the Ministry as an expert and consultative body.

11 What are the **expectations** of your country regarding the further implementation of the UNESCO Convention

11.1 in the best case scenario?

PLEASE INSERT YOUR ANSWER HERE:

- Significant expansion of exchanges between countries of cultural values and artists
- Confirmation of the positions of cultural industries as an important element of the economic life of the State parties
- Expansion of the international market for cultural industries

11.2 in the worst case scenario?

PLEASE INSERT YOUR ANSWER HERE:

11.3 in the most likely scenario?

PLEASE INSERT YOUR ANSWER HERE:

the Convention to remain only as a document but not put into practice

11 From the perspective of your country, what will be the **priorities** when implementing the UNESCO Convention in the near future?

PLEASE INSERT YOUR ANSWER HERE:

Priority for Bulgaria is to create conditions for equal expression of culture for every Bulgarian citizen

13 Which concrete actions in terms of **legal and policy measures** does your country contemplate to take in order to implement the UNESCO Convention in the near future?

PLEASE INSERT YOUR ANSWER HERE:

Cultural Heritage Law, which was accepted in 2009 is stressing over the intelligible

heritage.

14 If you have **further comments** on the questions of this survey or **additional information** that is useful for assessing the implementation of the UNESCO Convention in your country, please state them here:

PLEASE INSERT YOUR ANSWER HERE:

D Identification of respondent to this questionnaire

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