

Preface

This guidance document is a revised version of a guidance document first published in 2000. It has been prepared by the Legislative Support Task Force for legislative reform in the field of cultural heritage. This is an ad hoc group of experts formed as part of the Technical Co-operation and Consultancy Programme for the integrated conservation of the cultural and natural heritage, which operates within the framework of the Directorate of Culture and Cultural and Natural Heritage of the Council of Europe.

The Legislative Support Task Force was first established in 1997 to respond to formal requests made to the Secretariat of the Council of Europe for expert opinions or advice on legislation and the administration of cultural heritage protection and management.

This guidance has been prepared by the members of this ad hoc group of experts. Robert Pickard (United Kingdom) was responsible for the editorial, the introduction, Part A on the Architectural Heritage and the reference information in the first edition and this revised version, and for updating the conclusion in the second version, which was originally written by Myriam Goblet (Belgium). Carsten Lund (Denmark) was responsible for Part B on the Archaeological Heritage in the first edition, which has subsequently been updated by Friedrich Luth (Germany). Pierre-Laurent Frier (France) was responsible for Part C on the Movable Heritage in the first edition of the guidance, which has subsequently been updated by Jérôme Fromageau (France). Further comments in formulating the original version of this guidance were provided by Hans Jacob Hansteen (Norway) and Roger Leech (United Kingdom).

This guidance document was the first in a series commencing in 2000 and now updated in 2011. The second volume, produced in 2002 by the ad hoc Group on Inventory and Documentation, is entitled *Guidance on Inventory and Documentation of the Cultural Heritage*. The third volume, produced in 2005 by the ad hoc "Lisbon Debate" on rehabilitation, is *Guidance on Urban Rehabilitation*. The fourth volume, produced in 2005 and entitled *Guidance on Heritage Assessment*, is the result of a joint initiative of the European Commission (Directorate General for Education and Culture) and the Council of Europe (Directorate for Culture and Cultural and Natural Heritage):

the Integrated Rehabilitation Project Plan/Survey of Architectural and Archaeological Heritage. The fifth volume, produced in 2009, is entitled Funding the Architectural Heritage: A Guide to Policies and Examples and is a result of research of different funding mechanisms and fiscal incentives systems in operation in several European countries and in North America.

Introduction

The Council of Europe was founded on 5 May 1949 to “achieve a greater unity between its member states for the purpose of safeguarding and realising the ideals and principles which are to their common heritage and facilitating their economic and social progress”. From the 1960s onwards the Council of Europe began its work to protect and enhance the architectural and archaeological heritage. Since the beginning of the 1980s its concerns have widened to include other items of the cultural heritage.

The Council of Europe has fostered a climate of political debate, and developed a number of key texts and activities directed at the protection of the cultural heritage. Most significantly in 1969 the European Convention on the Protection of the Archaeological Heritage was opened for signature. In the same year, through the first Conference of European Ministers responsible for the Preservation and Rehabilitation of the Cultural Heritage, a Committee of Experts was appointed whose role was to draft a charter to lay down general principles and guidelines for an overall policy.

In 1975, “The European Architectural Heritage Year”, the European Charter of the Architectural Heritage was adopted and proclaimed through the Amsterdam Declaration at the Congress on the European Architectural Heritage. The charter introduced the concept of *integrated heritage conservation*, directed towards the revitalisation of old town centres by taking advantage of the existing heritage and retaining the traditional atmosphere of historic neighbourhoods. The incorporation of conservation into urban and territorial planning was proposed as a means of protecting architectural ensembles and sites to the same extent as single monuments and as a way of integrating the heritage into the business world. In practical terms the aim of the charter was to arrange co-operation between people working in a whole range of occupations in the fields of conservation and urban and regional planning with a view to improving the quality of life.

During the second Conference of European Ministers held in Granada in 1985, the Convention for the Protection of the Architectural Heritage (known as the “Granada Convention”) was opened for signature. It reaffirmed the principles laid down in the 1975 Charter and further developed them by putting forward statutory measures by which the

contracting parties should protect the architectural heritage according to certain minimum standards. These include the maintenance of inventories, the identification of properties to be protected, ancillary financial and fiscal measures to provide support for maintenance and restoration, sanction provisions, integrated conservation policies, and the setting up of a mechanism to encourage consultation and co-operation in the various stages of the decision-making process. The convention also recognised the need to involve the public and cultural associations in this process, as well as the need to promote training at professional and craft levels in the conservation of the architectural heritage.

The European Convention on Offences relating to Cultural Property (known as the “Delphi Convention”) was also opened for signature in 1985. This convention makes provision for co-operation between states in the prevention of offences relating to cultural property, particularly items of the movable heritage, with a view to restitution of such property. It is a significant international legal instrument designed to provide mutual assistance to combat the illicit trafficking of cultural property, but it has not yet come into force for want of enough ratifications.

In 1992 during the third Conference of European Ministers a revised version of the European Convention on the Protection of the Archaeological Heritage (known as the “Valletta Convention”) was opened for signature. Replacing the 1969 Convention, which had concentrated on archaeological excavations, the new version reflected the growing impact of major urban development projects on the archaeological heritage that had made it necessary to find new ways of protecting this heritage including the use of “preventative” archaeological investigation prior to development activities. The contracting parties to this convention undertook to institute a legal system according to conditions set by the convention and to devise suitable protection and supervision measures, as well as promoting the development of integrated conservation policies in this context. Further aspects included the need to provide financial support for research, to facilitate the pooling of information, to promote public awareness and to intensify co-operation between the parties.

The resolutions of the fourth Conference of European Ministers held in Helsinki in 1996 emphasised the need to develop further the concept of integrated conservation mechanisms by incorporating the cultural heritage as part of the wider cultural environment and within a process of sustainable development. Moreover, the Fifth Conference

of European Ministers responsible for the Cultural Heritage held in Portorož in 2001 promoted the theme of the “cultural environment” by advocating its enhancement through ethical development strategies aimed at promoting prosperity while recognising the essential public dimension to sustaining the heritage.

There has been an increasing recognition that both the cultural and the natural heritage make up mankind’s environment and that combined action is necessary for their joint protection. This must be through the co-ordination of legislation and policy on heritage protection and spatial planning in particular, and through the cross-referencing of other matters including landscape and environmental protection, agriculture, development and construction, transport and traffic, business investment, job creation, housing, other social policies, and tourism.

It has also been recognised that the cultural heritage has different values: cultural, aesthetic, educational, functional and economic value and a value for communities and society. As a resource it is necessary to ensure that it is transmitted to future generations in a manner which preserves its authenticity without precluding change. This calls for both public and private operators to adopt practices that are compatible with the cultural environment.

The notions of the cultural environment and sustainable development in relation to the cultural and natural heritage have been further developed through the Guiding Principles for Sustainable Spatial Development of the European Continent, adopted by the European Conference of Ministers responsible for Regional Planning in 2000, the European Landscape Convention (2000) (known as the “Florence Convention”) and the Council of Europe Framework Convention on the Value of Cultural Heritage for Society (2005) (known as the “Faro Convention”).

Apart from the conventions, which, when ratified, are binding on states through a multilateral legal act of the contracting parties based on international law, resolutions, recommendations and other documents adopted by the Committee of Ministers have been made under the auspices of the Council of Europe. These are not legal acts and are not of a binding nature, but governments of member states may be requested to take action by them. By the end of 2010, 12 resolutions, 20 recommendations, one charter and two declarations had been adopted by the Committee of Ministers on issues relating to the immovable and movable heritage.

The Technical Co-operation and Consultancy Programme

Technical co-operation in the field, made at the request of national, regional or local authorities, is governed by the "Rules for the Technical Co-operation and Consultancy Programme relating to the integrated conservation of the cultural heritage" adopted by the Committee of Ministers in 1987. The rules were revised in 1992 following the inauguration of structures of co-operation to include countries of central and eastern Europe and states outside Europe.

The programme aims to help the relevant authorities tackle the complex issues of enhancing, managing and preserving the cultural heritage in an integrated and sustainable manner. The actions of the Council of Europe through this programme focus mainly on the political, economic and social potential of the cultural heritage in a contemporary society, reflecting the human dimension of sustainable development. This programme is one of the Council of Europe's principal tools of intervention, with over 30 years' experience acquired through more than 100 projects or activities and 1 250 expert assessments carried out by more than 370 experts.

Since 1993 the programme has included Specific Action Plans designed to streamline and co-ordinate activities so that the difficulties of implementing cultural heritage policies may be dealt with comprehensively with an emphasis being placed on multidisciplinary work and on the value of sustainable development. Since 1994 the programme has also provided the means of implementing "Follow-up" programmes to support the efforts made by responsible authorities following technical co-operation missions in giving effect to the actions and strategies indicated.

More recently, actions have included Regional Programmes of assistance to countries in South East Europe (since 2003) and the region of the Black Sea and South Caucasus (the "Kyiv Initiative") (since 2006), which have reflected the wider concerns of society today. In particular, the programme has proposed integrated approaches encompassing the concept of sustainable development and taking account of regional planning (urban and spatial planning), cultural heritage (monuments, architectural ensembles, sites and cultural landscapes), the environment and the protection of nature (biological diversity and landscape) and regional and local development (economic activity and job creation).

In 1996, a Legislative Support Task Force (LSTF/CAL) for the integrated conservation of the cultural heritage was established, following a number of requests for expert opinions or advice on legislative and institutional reform concerning the cultural heritage and associated issues including law and policy issues concerning the connected spheres of spatial planning, natural heritage and environmental protection and sustainable development. Since this time, the task force has provided expert opinions to several countries, and other actions have been organised to provide reform assistance through a series of international seminars held in Sofia (2004), Bucharest (2005) and Belgrade (2006) and three corresponding books published in the European Heritage Series in 2008.¹

Legislative Support Task Force

In order to satisfy the requests of countries that have asked for assistance, the Council of Europe's Secretariat (currently through the Directorate of Culture and Cultural and Natural Heritage: Regional Co-operation Division) established the specific programme of legislative support within its Technical Co-operation and Consultancy Programme. The Legislative Support Task Force comprises a number of consultants with expertise in European heritage law and other inter-related disciplines. The task force is able to assist in the process of formulating appropriate strategies. These include assessment of existing texts, which may or may not have been revised since 1990; expert opinions on the current drafting of, and advice on, amendments or revisions to be undertaken; and missions by experts to examine the situation in the field.

The Legislative Support Task Force is competent to deal with laws or draft laws on protection of the immovable heritage including the architectural heritage, understood in the sense of the Granada Convention, and the archaeological heritage, understood in the sense of the Valletta Convention. It is also empowered to address wider issues associated with the immovable heritage including historic gardens and other landscape features of cultural significance. Furthermore, it may consider related problems of administrative organisation and associated policy procedures (including environmental and sustainability issues) and, as

1. *Analysis and reform of cultural heritage policies in South East Europe*; 2. *Integrated management tools in South East Europe*; and 3. *Sustainable development strategies in Europe*, published in the European Heritage Series, Council of Europe Publishing, Strasbourg, 2008.

appropriate, heritage funding where this is linked to legal and administrative protection mechanisms. Similarly this competence extends to matters concerned with the movable heritage, understood in the sense of the Delphi Convention and other international conventions, in particular the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) (see Appendix: Information Sources).

As a precondition to the provision of assistance it is necessary to reiterate certain principles. Since its foundation, the Council of Europe has developed a rigorous philosophy of democracy based on the “protection of human rights”. This includes the participation of citizens in community life; respect for the rights of others; the right to own property; freedom of association; the right to pluralist information; freedom of the press, etc. These issues are embodied in the European Convention on Human Rights and have been confirmed by the subsequent findings of the European Court in Strasbourg. Moreover, the right to heritage necessarily forms one element of the whole entity. Furthermore, the need for unity and the recognition of diversity in the protection of the cultural heritage was specified in the Final Declaration of the Fourth Conference of European Ministers responsible for the cultural heritage:

Knowledge of the cultural heritage should be propagated at local, regional, national and international level, and must emphasise both the elements which reflect Europe’s unity and the diversity of its cultural identities. A thorough understanding of the values inherent in heritage is conducive to appreciation of diversity, tolerance and ability to surpass mere differences. The now established concept of a common cultural heritage should lead individuals and communities to acknowledge shared responsibility for protecting it regardless of its physical location or current political context.

Moreover, building on the Declaration on Cultural Diversity adopted by the Committee of Ministers in 2000 (which called upon member states to pay particular attention to the need to sustain and promote cultural diversity), Resolution No. 2.1 of the Fifth European Conference of Ministers responsible for the Cultural Heritage (held in Portorož in 2001) indicated a need to identify, sustain and allow appropriate access to cultural heritage regardless of its current political context and to promote ethical, non-discriminatory policies for public access

to information about the cultural heritage. These notions have been further developed through the Faro Convention, which identifies the need for dialogue concerning the diversity of interpretations and values placed on the cultural heritage as well as for democratic access and participation in the identification, study, interpretation, protection, conservation and presentation of the cultural heritage.

In the context of formulating legislation for the cultural heritage, it should be recognised that there are two distinct and separate objectives for managing this process within a democratic society. First, legislation is required to regulate the actions of private citizens (to safeguard the cultural heritage for the enjoyment of society as a whole in the wider “public interest”) while at the same time recognising the right to own property as a fundamental issue of human rights. Secondly, legislation is required for the purpose of delegating power to specific authorities and for establishing appropriate public institutions (including for the protection and management of the cultural heritage). The provisions that regulate the behaviour of the citizens should not be mixed with provisions that regulate the public bureaucracy. In relation to these objectives the legislation should be clearly defined and easily understood by all citizens.

In association with these principles, the Legislative Support Task Force will normally consider requests for assistance where they are accompanied by a written statement providing general data on the political, administrative, legal, and economic systems adopted and specific information on heritage protection and management issues including existing or proposed legislation on cultural heritage and other related fields such as urban and spatial planning and environmental protection and any procedural and institutional integration between these fields in operation by relevant and competent authorities at national, regional or local levels.

The Council of Europe has issued a separate “Guidance on Heritage Assessment” (published in 2005), which may assist in this process. Methodological guidelines for conducting heritage assessments were developed from a joint initiative of the European Commission (Directorate General for Culture and Education) and the Council of Europe (Directorate for Culture and Cultural and Natural Heritage) entitled “Integrated Rehabilitation Project Plan/Survey of the Architectural and Archaeological Heritage” in the framework of the Council of Europe’s Regional Programme for Cultural and Natural

Heritage in South East Europe and under the general heading of the Technical Co-operation and Consultancy Programme.

These guidelines centre on a questionnaire aimed at identifying sources of information and partners with a view to gathering preliminary information for the purpose of elaborating national assessment reports on the status of the architectural and archaeological heritage. However, the guidance document emphasises that this analytical tool can be used for comparable heritage assessments in other countries and in other circumstances. As such, the guidance emphasises the role of national assessment reports, which should present, in a concise manner, the legal and institutional framework related to the protection and enhancement of the heritage (including the relationship between heritage management and spatial planning); the existing management mechanisms and tools; the resources available both at the professional/institutional level (including budgetary concerns) and the documentary level; political considerations concerning the heritage and the role attributed to heritage in society.

Countries requesting assistance are also asked to form a “working group” of a wide membership (representing heritage, environment, planning and other official authorities as necessary) and to identify a “contact person” to act as a liaison point for the Legislative Support Task Force.

In order to assist the reform process, the Legislative Support Task Force has formulated this document to provide some guidelines on protection of the immovable and movable heritage, showing which aspects have to be addressed and clarifying the rules under international law (to which the requesting state may be a party). Where international rules are lacking, it will make non-exhaustive reference to the various heritage protection laws in Council of Europe member states and to other internationally respected charters, recommendations and guidelines – including those published or ratified by the Council of Europe, the European Union, UNESCO and other specialised non-governmental organisations such as the International Council on Monuments and Sites (ICOMOS). A list of references of published sources of information contained within the guidance, as well as supplementary references to other useful documents, is provided in an appendix to this document.

Further information sources may be derived from a compendium of texts published by the Council of Europe and an accompanying review of policies and practice.² In addition, the European Heritage Network (Herein), which is available at www.european-heritage.net, is a permanent information system with 41 countries participating in the network. It is operated under the umbrella of the Council of Europe and includes an overview of national heritage policies adopted in different countries.

It should be emphasised that the aim of this document is to establish some general principles rather than rigid rules. International obligations apart, the requesting state remains free to choose those solutions which, if possible, should be inspired by the conventions, recommendations and the guidance provided by this document. Legal texts should be drafted in a simple and straightforward manner so that they are understandable to all citizens.

A first general principle is one of caution and pragmatism with regard to the ambitions of cultural heritage legislation in order to take account of the transition conditions that some countries are experiencing. Administrations with limited human and financial resources must be able to enforce the legislation mechanisms. However, the legislation must include compulsory heritage protection provisions, even if they are only used exceptionally or in special circumstances. In this respect it must be possible to manage emergencies and set priorities, that is, conservation should be the first objective. This can be managed with the help of a minimum inventory, identification or classification of important elements of the national heritage, conservation measures to prevent the destruction of the cultural heritage (control over demolition, authorisation and monitoring of work). These activities go hand in hand with the setting of priorities and the assigning of resources according to need.

Finally, the need to observe the basic principles of a democratic society as contained in the European Convention on Human Rights should also be emphasised.

2. *European cultural heritage (volume I): Intergovernmental co-operation: collected texts*, Council of Europe Publishing, October 2002 and *European cultural heritage (volume II): A review of policies and practice*, Council of Europe Publishing, September 2002.

Instructions

The guidance is contained in three parts relating to the architectural heritage, the archaeological heritage and the movable heritage. It is important that the guidance is considered as a whole as certain aspects of the cultural heritage do not sit easily within one distinct area, particularly as some immovable items may have a movable quality. In this respect each of the three parts contains cross-references to the other parts. A concluding statement and an appendix of information sources are provided at the end of this guidance document.

Part A contains guidance on the architectural heritage. This is divided into seven sections (and a number of subsections) which contain information on:

- A1.0 Definition of the architectural heritage
- A2.0 Identification and selection of properties to be protected
- A3.0 Levels of heritage protection
- A4.0 The specific protection system for single monuments
- A5.0 Groups of buildings, sites and areas
- A6.0 Administrative measures and the participation of the public, associations and local authorities in heritage protection activity
- A7.0 Ancillary financial measures

Part B contains guidance on the archaeological heritage. This is divided into 13 sections (and a number of subsections) which contain information on:

- B1.0 Introduction to the archaeological heritage
- B2.0 Definitions and inventories
- B3.0 Protection of the archaeological heritage
- B4.0 Treasure trove and ownership
- B5.0 Archaeological monuments and sites and protective zones
- B6.0 Archaeological reserves
- B7.0 Archaeological excavations, archaeological searches and documentation
- B8.0 Integrated conservation
- B9.0 Underwater archaeological heritage
- B10.0 Maintenance, restoration and management plans
- B11.0 Public access
- B12.0 The archaeological profession
- B13.0 Enforcement measures

Part C contains guidance on the movable heritage. This is divided into six sections (and a number of subsections) which contain information on:

- C1.0 Definition, identification and protection of the movable heritage
- C2.0 Public collections
- C3.0 Historical objects, historic monuments
- C4.0 The art market
- C5.0 Circulation of cultural objects
- C6.0 Restitution of cultural objects

Since legislation applicable to the heritage is not separate from the administrative organisation that implements it, the guidance provides advice on administrative methods of organisation. The guidance also refers to the fact that legislation on cultural heritage matters may need to be developed alongside other legislation and administrative mechanisms and integrated with other policy tools. In particular, legislation on the immovable heritage cannot be totally separate from legislation on urban development, spatial planning, the environment, and so on, and therefore the relationship between these areas should be considered. Similarly, legislation on the movable heritage should be considered in relation to legislation concerning public collections/museums, the art market, and the circulation of cultural goods, etc. The administration of these matters will depend on how the state is organised and must therefore take into account the extent to which powers have been decentralised to local or regional authorities as well as the nature of the powers transferred. In this context it is important to reiterate that while the guidance recommends methods of protection, management and administration they may be adapted to take account of the circumstances of each country.

It is important to note that the Legislative Support Task Force will not be able to respond effectively to requests for assistance made in very short time periods. However, once a decision to reform legislation has been made, it may be possible to provide a programme of support. The information contained in this guidance document, together with the opinions of the task force members or other experts appointed by it, is designed to assist this process.

Finally, it should be noted that this guidance document does not refer specifically to the intangible or spiritual heritage. While the Council of Europe has provided technical assistance to countries seeking to

reform their laws in the field of cultural heritage, and some countries have laid down legislative provisions to safeguard spiritual values, the normal course of action by the Legislative Support Task Force has been to advise on policy approaches such as recording and research activities, education and awareness-raising as well as the role of institutions to safeguard traditional and popular culture rather than to define prescriptive measures for protection.

Despite the fact that a number of Council of Europe recommendations have referred to issues relating to collective memory, heritage education and history teaching, and other texts such as the Declaration on Cultural Diversity have referred to the need for policies to be developed to assure the recognition of different forms of culture, the Council of Europe determined that it should avoid duplicating action on standard-setting activities begun by UNESCO concerning the intangible heritage. Building on the UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore of 1989, the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 2003, which entered into force in 2006, has identified some measures to ensure the safeguarding of the intangible heritage. These include identifying and defining its various elements; recording by means of inventories; adopting policies to promote the intangible heritage in society; engaging in research studies concerning the intangible heritage, in particular where it is in danger; designating or establishing competent bodies and fostering training in the management of the intangible heritage; promoting education, awareness-raising and capacity building to recognise, respect and enhance this heritage; and ensuring the widest participation by communities, groups and individuals in safeguarding activities.