

Novelties of the new legal framework on the indirect management of cultural heritage in Albania

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Abstract

In May 2018, the Albania parliament approved the Law no. 27/2018 on Cultural Heritage and Museums to implement profound reforms in the management of cultural heritage. One of the novelties of the law 27/2018 is the introduction of new forms of management of cultural assets. The approach to the public private partnership in Cultural heritage in the Albanian legislation is generally based on the concept of administration of cultural heritage in Italy and in United Kingdom. Law gives green light to the creation of the specific cultural heritage foundations which non-profit legal persons. As this way of management is new in Albania, the legislator has provided in the law that the cultural heritage foundations are co-established between state institutions, represented by the ministry responsible for cultural heritage, and private, domestic or foreign natural or legal persons.

Keywords: Novelties, new legal framework, indirect management, cultural heritage, Albania.

Introduction

In May 2018, the Albania parliament approved the Law no. 27/2018 on Cultural Heritage and Museums, one of the most revolutionary laws in the region, which aims, among other things, to implement profound reforms in the management of cultural heritage and museums, decentralization of administration and financing of in order to protect and preserve the national cultural heritage, as well as a whole change in society's approach to cultural assets.

Before the approval of the new law in 2018, from 2003 during the implementation of the law no. 9048, dated 07.04.2003 "On cultural heritage" it was observed that many of the provisions of this law especially in the concrete realization of private state cooperation in the maintenance of cultural heritage objects did not achieve the objectives provided (Kumbaro, 2018). Although in the previous law there was a provision which enables the relations between the state and the private in order to maintain the cultural heritage objects, this cooperation did not worked in practice and it was mostly the state that financed the restoration of the public and private cultural heritage objects. During his implementation, no agreement was reached for private individuals to engage in cultural heritage maintenance or to obtain soft loans as required by law (Kumbaro, 2018).

Based on the abovementioned facts, one of the novelties of the law 27/2018 is the introduction of new forms of management of cultural assets, for which the procedures for their application on a case by case basis are clear, transparent and collegial in terms of decision making. The new law dedicates an entire new chapter (Ministry of Culture, 2018) in relation to usage and administration of the cultural heritage. These new

novelties of cultural heritage administration are divided into direct administration by specialized institutions of cultural heritage as well as indirect administration by public entities created by specialized institutions of cultural heritage (Ministry of Culture, 2018).

As stated in Article 171 of the law "Publicly owned cultural assets are administered directly or indirectly. Direct administration is realized through specialized organizational structures in dependence on state institutions or other public entities with scientific autonomy, organizational, financial and with specialized technical-scientific personnel. The public institutions can carry out the administration directly in cooperation with other bodies of public administration. Indirect administration is performed through special foundations, established according to article 172 of this law; foundations established by specialized cultural heritage institutions, according to this law; natural or legal persons, public or private, to whom cultural property is given in administration through public procedures determined by decision of the Council of Ministers and the decision of the National Council of Cultural Heritage Management, based on the comparative evaluation of the presented projects."

The direct management of cultural heritage provided by the law is the classic management by the state with public funding. There are two reasons of keeping this form of cultural heritage management: the first one is related to the fact that not all cultural heritage objects can go into a public private partnership as some of them are not able to generate revenue from the administration. The second reason is the constitutional role of the state to preserve and maintain these kind of cultural heritage based on the cultural value they represent.

One of the new concepts brought by the law, among others, is the indirect management as strategic partnership with natural and legal persons who, from their experience in the cultural heritage field, value and quality of sponsorship, cooperation agreement, exchange of intellectual values and human and financial resources, intensity and duration of the cooperation, are considered essential in the implementation of policies in the field of cultural heritage and the provision of common objectives in the development of the cultural heritage as a whole (Ministry of Culture, 2018).

The approach to the public private partnership in Cultural heritage in the Albanian legislation is generally based on the concept of administration of cultural heritage in Italy and in United Kingdom. The rationale behind this approach is that while governments are increasingly confronted with political fragmentation and budget constraints, foundations independence and long term orientation allow to compensate for this and to provide a long term vision (Fondazione Di Venezia – OECD, 2018).

Article 172 of the law gives green light to the creation of the specific cultural heritage foundations which non-profit legal persons. As this way of management is new in Albania, the legislator has provided in the law that the cultural heritage foundations are co-established between state institutions, represented by the ministry responsible for cultural heritage, and private, domestic or foreign natural or legal persons. With this co-establishment, the state is involved in preserving the cultural heritage by checking the implementation of the management partnership. Moreover, scope of the management of the specific foundation is also reflected in law and includes 4 fields: protection, preservation, restoration and cultural valuation of the cultural

heritage. As it is understood the partnership of the specific foundation will be built based on these four pillars which may be taken non-exhaustive or separately. If we analyse the phrase "which may be taken non-exhaustive or separately" stipulated in the first paragraph of the article 172 of the law, what the legislator intends is that the partnership between the Ministry and the private, domestic or foreign natural or legal persons for the cultural foundation can cover even one of the four pillars (for example: restorations) or can cover all the pillars stipulated by the law.

Moving forward, one of the novelties for the creation of these foundations as a mean for indirect cultural heritage management is also the difference that the legislator creates for the categories of the immovable cultural heritage objects which will undergo into the partnership. The difference is made in the approval institution of the agreement that the ministry responsible for cultural heritage will sign with the strategic partner. If the cultural heritage property is classified as of local or national interest, the Council of Ministers is the approval collegial body of the abovementioned agreement for the establishment of the foundation, while if the cultural heritage property is of Universal interest, the agreement is approved by the Parliament of Albania. The involvement of the Council of Ministers and the Parliament are an upgrade of the decision making in relation to the management of cultural heritage as they are the two most important executive and legislative collegial bodies in Albania. In this way we have a more secure approach towards the indirect management.

In order for the Foundations to better excel in their work, the law has given various facilities in their economic activity as stated in paragraph 7 of article 172, they are not subject to the law on profit tax in Republic of Albania and they are exempt from VAT payment. Moreover all the supplies in function of the object of activity of indirect management are exempted from obligations of import and other customs duties. This approach of the legislator is mostly based on the fact that the maintenance and preservation of Cultural heritage is costly and the revenues do not cover most of the costs. In this way, this economic approach will give the foundation more financial stability to perform its duties.

Another detail regarding the ownership of the cultural heritage asset in the process of indirect management is that in any case the property will remain state ownership. This legal provision has been put by the legislator in order to better protect the cultural heritage in the view of public scepticism towards indirect management.

Conclusions

In conclusion, the Albanian legislator has created an entire formula on the indirect management of cultural heritage which is bound by requirements of accountability and responsibility. The involvement of the state through the ministry responsible for cultural heritage as a co-founder of the cultural foundation and Council of Ministers or Parliament as approval bodies of the agreement of the creation of the foundations are well thought steps towards a safe approach for this management. With the tourism boost in Albania in the last decade, the cultural offer has to be in its best and the new way of managing the cultural asset has to be implemented broadly in order to increase the social and economic impact of culture in Albania.

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