

Background Notes on the Bullfighting Case

In October 2003, UNESCO adopted the Convention for the Safeguarding of Intangible Cultural Heritage. Articles 1 and 2 of the Convention provide in part as follows:

Article 1 – Purposes of the Convention

The purposes of this Convention are:

(a) to safeguard the intangible cultural heritage; (b) to ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned; (c) to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and of ensuring mutual appreciation thereof; (d) to provide for international cooperation and assistance.

Article 2 – Definitions

For the purposes of this Convention,

1. The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills — as well as the instruments, objects, artefacts and cultural spaces associated therewith — that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development.

2. The “intangible cultural heritage”, as defined in paragraph 1 above, is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship.

3. “Safeguarding” means measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.

[...]

France ratified the Convention in 2006. Since 2007, it has been keeping an inventory pursuant to article 12 of the Convention which states as follows:

1. To ensure identification with a view to safeguarding, each State Party shall draw up, in a manner geared to its own situation, one or more inventories of the intangible cultural heritage present in its territory. These inventories shall be regularly updated.

2. When each State Party periodically submits its report to the Committee, [...] it shall provide relevant information on such inventories.

The “Observatoire national des cultures taurines” [“National Observatory for Bullfighting Cultures”] having sought recognition of bullfighting as a feature of France’s intangible cultural patrimony as of December 2009, the French Minister of Culture proceeded to add bullfighting to the national inventory on 22 April 2011, bullfighting thus being henceforth officially listed as part of France’s intangible

cultural patrimony. To date, France has not taken the further step of filing with UNESCO to have bullfighting listed as UNESCO Intangible Cultural Heritage as it is entitled to do pursuant to articles 16 and 17 of the Convention (article 16 concerns a request for an inscription on UNESCO's "Representative List of the Intangible Cultural Heritage of Humanity" while article 17 has to do with a request for an inscription on UNESCO's "List of Intangible Cultural Heritage in Need of Urgent Safeguarding").

Two organizations later filed with the administrative tribunal of Paris to have the ministerial decision annulled. In the course of the proceedings, the claimants challenged the constitutionality of the provision of the French penal code exempting bullfighting from the general penal regime governing cruelty to animals. On 5 December 2011, the administrative tribunal of Paris took the view that the constitutional challenge was "not [...] devoid of a serious character" and allowed the claim to proceed to the next stage. It therefore sent the file to the Conseil d'Etat where it was officially received on 21 March 2012. On 20 June 2012, the Conseil d'Etat found the constitutional challenge to be "serious" and referred the file to the Constitutional Council for a fully-fledged constitutional review.