



**Opinion 293 (2017)<sup>1</sup>**

## **Draft Council of Europe convention on offences relating to cultural property**

Parliamentary Assembly

1. The Parliamentary Assembly welcomes the initiative of the Committee of Ministers of the Council of Europe to draw up a Council of Europe convention on offences relating to cultural property<sup>2</sup> and it commends the principles inspiring the text.
2. In particular, the Assembly appreciates the broad scope of the new convention which applies protection not only to property that has been designated by States which have ratified the Council of Europe treaty, but to all property designated by any State that is party to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage (1972).
3. The Assembly emphasises that the new convention would enhance law-enforcement efforts by requiring States parties to criminalise certain conduct relating to trafficking and destruction of cultural property. States parties would be obliged to ensure that their domestic criminal law provides criminal liability for both natural and legal persons and that there is a basis to apply effective, proportionate and dissuasive criminal sanctions, or, under certain conditions, non-criminal sanctions, including administrative sanctions.
4. The Assembly considers, however, that some provisions have been weakened in the course of the drafting process and need to be tightened up to ensure that the new instrument delivers its promise.
5. Concerning illegal importation, States parties can reserve the right to provide for non-criminal sanctions, instead of criminal sanctions. Such a possibility clearly weakens the whole system, which is intended to fight illicit trafficking of cultural goods and, according to Article 1.a of the draft convention, is an essential objective of this legal instrument.
6. The Assembly regrets that in the last round of negotiations it was decided to delete a provision which provided for the criminalisation of other offences related to trafficking in cultural property, including the storage, transportation and transfer of movable cultural property, when the offender had knowledge that such property derived from or was obtained, directly or indirectly, through criminal offences, and that the intent was the illegal importation, exportation or placement on the market of this property.
7. The Assembly considers it important to include the participation in a “terrorist group” as a possible aggravating circumstance in the sentencing of persons convicted of an offence related to cultural property, as set out in the draft convention. The explanatory report to the convention could indicate that States parties may refer to other international instruments which define this concept, and establish that it should be aligned with the definition set out in Article 2.1 of the 2015 Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 217), with reference also, if necessary, to Article 2.5.c of the International Convention for the Suppression of the Financing of Terrorism.

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1. *Assembly debate* on 28 April 2017 (18th Sitting) (see [Doc. 14300](#), report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Stefan Schennach). *Text adopted by the Assembly* on 28 April 2017 (18th Sitting).

2. [Doc. 14290](#).



8. The Assembly regrets that the proposal of the Committee on Offences relating to Cultural Property (PC-IBC) with regard to setting up a European observatory for offences related to cultural property, which was envisaged as a central mechanism to support the Committee of the Parties in carrying out its functions, has not been retained. The Assembly therefore insists that the important function of such an observatory in recording offences related to cultural property ought to be discharged by the Committee of the Parties.

9. Finally, the Assembly notes that the current wording of Article 27.1 opens the convention for signature and ratification only by those non-member States “which have participated in the elaboration of the Convention”. For the Assembly, there is a clear interest in opening the convention also to other non-member States, subject to the usual conditions.

10. The Assembly therefore recommends that the Committee of Ministers:

10.1. delete Article 5.2;

10.2. introduce within the final text of the convention a new provision which (based on the previous text prepared by the PC-IBC) could read as follows:

*“Each Party shall ensure that the following acts constitute a criminal offence under its domestic law, when committed intentionally: the storage, concealment, transportation and transfer of movable cultural property, when the offender knows that such property derives from or was obtained, directly or indirectly, through criminal offences, with the intention of illegal importation, exportation, or placement on the illegal market, with the purpose of obtaining an illicit profit”;*

10.3. amend Article 15.c as follows:

*“the offence was committed in the framework of organised crime **or of a terrorist group**”;*

10.4. amend Article 22.5 as follows:

*“The Committee of the Parties **shall maintain a register of offences referred to in this Convention committed within the jurisdiction of parties to the Convention, to include details of persons convicted of such offences and of the sentences imposed on them, and may propose to the Committee of Ministers appropriate ways to engage relevant expertise, such as an observatory, in support of the effective implementation of the Convention**”;*

10.5. as a consequence of the foregoing amendment, amend Article 19, so as to require parties to provide the relevant information to the Committee of the Parties;

10.6. after Article 27.1, add the following paragraph:

*“This Convention shall also be open for signature by any other non-member State of the Council of Europe upon invitation by the Committee of Ministers. The decision to invite a non-member State to sign the Convention shall be taken by the majority provided for in Article 20.d of the Statute of the Council of Europe (ETS No. 1), and by a unanimous vote of the representatives of the contracting States entitled to sit on the Committee of Ministers”;*

10.7. if applicable, make the necessary amendments to the explanatory report to the draft convention so as to reflect the amendments to the draft text.

11. The Assembly insists that in order to make this new instrument efficient and dynamic in its implementation, the Committee of Ministers should allocate sufficient resources to the functioning of the Committee of the Parties to allow for regular meetings and exchanges, at least every two years.

12. Lastly, the Assembly encourages all member States to initiate as quickly as possible the necessary internal procedures for the ratification of the new convention.