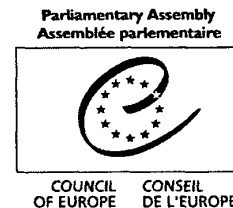


Parliamentary Assembly
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The private management of cultural property

Report
Committee on Culture, Science and Education
Rapporteur: Baroness Hooper, United Kingdom, European Democrat Group

Summary

This report continues examination of the public-private interface with regard to cultural heritage.

In 2003, proposals were made for tax incentives for conservation. Another relevant area is that of cultural tourism.

The present report draws attention to the potential interest of private management of cultural property.

The general principle behind this work is to extend responsibility for cultural heritage beyond the State while ensuring proper protection. The report calls for a review of models of private management and for guidelines on best practice for public-private partnerships.

This is a new field that may be of particular interest for countries of central and eastern Europe.

I. Draft recommendation

1. The Council of Europe has pioneered conservation of the European cultural heritage. Along with UNESCO it has drawn up a system of instruments setting out internationally recognised norms for protecting the heritage. These include the notion of common responsibility, whether of Europe or of mankind, as well as the responsibility of the State.
2. The Council of Europe has also sought to develop partnerships between the private and public sectors in the conservation and sustainable use of this heritage, for example by alerting the tourist industry, conservation firms and private owners.
3. While much cultural property (movable and immovable) is owned by the State, a considerable amount is owned by other bodies such as private individuals, trusts, associations and foundations, churches and other non-governmental organizations or commercial companies.
4. There have been recent moves towards the privatisation of the cultural heritage in order to lighten the burden of State responsibility. This has been a major feature of the change of régime in central and eastern Europe. It was highlighted by the move of the Italian Government in 2002 to pass legislation enabling the sale of State-owned cultural property.
5. Of possibly greater interest as a means of spreading the burden of conservation from the State, has been the introduction of private management of cultural heritage. Examples should be assessed and guidelines introduced.
6. While recognising the potential benefits of privatisation and private management, the Parliamentary Assembly is anxious to ensure that such moves do not in any way diminish protection of the heritage, reduce access to it or absolve the State from its responsibility to ensure such protection.
7. In particular, the Assembly would point out the dangers inherent in ceding land with unknown archaeological content, in releasing incompletely researched objects on the open market without ensuring traceability or in failing to secure liability insurance for protection and maintenance.
8. Privatisation carries the further risk of weakening planning resistance to commercial interests, of ignoring cultural value (for example archaeological context) or of failing to identify appropriate conservation techniques.
9. Specific problems arise in cases of inadequate endowment for heritage conservation as in the privatisation of country houses without the landed estates to guarantee their economic viability or in the return of religious property to churches that lack a sufficient congregation interested in ensuring their conservation.
10. In terms of general policy, the Assembly believes that a properly balanced partnership between public and private interest would seem preferable to exclusive control by either sector.
11. The Assembly therefore asks the Committee of Ministers to:
 - 11.1 conduct a comparative study of the responsibility involved in ownership (public and private) of cultural heritage (movable and immovable);
 - 11.2 review established and emerging models of private management of cultural heritage and draw up guidelines on best practice for public-private partnerships;
 - 11.3 encourage member states to ensure that private owners and managers of cultural property are effectively responsible (directly or through insurance arrangements) for the property in their care.

II. Explanatory memorandum, by Baroness Hooper

Context

1. The subject was launched by Mrs Melandri, former Italian Minister of Culture, at a committee meeting in Venice in November 2002 in protest against legislation that had been introduced in Italy to enable the State to sell off artistic and cultural assets or use them as security loans (the Tremonti Law 112/2002). It is now being taken up in the wider context of ongoing examination of the public-private interface with regard to cultural heritage. The general principle behind this work is to extend responsibility for cultural heritage beyond the State while ensuring proper protection. Of course it can also be seen as means of lightening the financial burden on the State.

The public-private interface

2. There are several aspects to this public-private interface with regard to cultural heritage. They should all be pursued further than this outline report goes. The emphasis is on unmoveable property though many of the considerations apply equally to moveable.

3. Tax incentives for cultural heritage conservation were examined in a report in 2003 (Doc 9913). The proposals then formulated in Recommendation 1634 (2003) should lead to further examination at intergovernmental level (see Committee of Ministers' reply in Doc. 10365). This is an area for coordination with the EU for example over reduced VAT for heritage conservation and maintenance work. The question should be taken up with the Cultural Committee of the European Parliament.

4. Private services related to conservation have long been of interest to the Assembly. In the 1970s the Council of Europe set up on the Assembly's initiative a foundation known as Pro Venetia Viva one of the main activities of which was to promote a centre in Venice for the training of craftsmen in conservation of the architectural heritage. This Centre now functions independently of the Council of Europe on the Island of San Servolo. The idea of promotion of trades related to conservation has however been pursued by the Assembly in its support for the European Foundation for Heritage Skills (FEMP) and in the European Association of Enterprises for Conservation of the Architectural Heritage (AEERPA). Recent developments have seen increasing recourse to commercially hired archaeologists for rescue operations. The whole area calls for more active attention.

5. Related to it is the field of cultural tourism. The Committee on Culture, Science and Education is currently reviewing the arrangements for European cultural itineraries and the new initiatives launched this year in Sofia of "cultural corridors". There are however many other aspects of tourism that call for attention.

6. These are commercial sectors based on the cultural heritage. Direct private management of the cultural heritage is the subject of the present report. It is a field that has not yet apparently been directly studied yet is one in which many interesting developments are under way that call for attention and assessment.

Private ownership

7. The most usual form of private management of cultural property is by the owners of that property. Such owners may be private persons, trusts, associations and foundations and other NGOs. The most significant of these NGOs in terms of historic cultural property are the established churches.

8. Considerations of tax or succession can affect the form of ownership chosen. A special situation develops with the privatisation of formerly State-owned cultural property (as proposed by the recent Italian legislation) or the re-privatisation of property confiscated by the State (as in former communist countries).

9. The relevant question for this report is how to ensure that cultural property is properly maintained. On the one hand there is need for assessment of the cultural or historical importance of the property (for example by listing or inventory). Owners can be expected to take reasonable measures to maintain and protect significant property. On the other hand the rights of property ownership should be respected (including the commercial exploitation of a property as hotel or guest house). A balance must be found, but one which ensures that the cultural heritage is protected.

10. There are many good examples of outstanding care taken by private owners for the preservation of cultural property. However the owner may not necessarily be concerned with or aware of the heritage value of the property. A house is for residential, a school primarily for educational, a church for religious purposes, however historical the buildings might be.

11. Awareness of the value of heritage is a clear incentive to preserving it. Other financial incentives can be added (as Recommendation 1634 (2003)). The ultimate resort of State compulsory purchase clearly defeats the objective if that is precisely to share responsibility and costs for heritage maintenance. It is no solution if the State lacks the necessary resources.

12. In the case of privatisation (as in Italy) the requirements of conservation and maintenance can be written into the conditions on which the property is handed over (re-privatised or returned). These can also include provision of public access where the property in question is of particular cultural or historical importance. The dangers in such transfers of ownership lie in lack of proper control of the conditions imposed and in the criteria for judging cultural importance (one criticism of the Italian Tremonti Law is that control seems to be passed from the Minister of Culture to the Minister of the Economy – after whom the law is named, so that economic rather than cultural criteria essentially apply).

13. If the funds available to the State for conservation are not inexhaustible, continued private ownership is even more vulnerable because of the costs involved.

14. The problem of maintaining large estates in the face of increasing taxation and succession dues has led to the collapse of many of these estates in Western Europe. This has also applied to collections, and significantly to collections of cultural objects that may have furnished historic properties but which have been broken up and dispersed to cover mounting costs.

15. Similarly in many cases of re-privatisation of country houses in Eastern Europe the viability of the returned property is not evident, especially where country houses are deprived of the large estates on which they used to rely for income for maintenance etc.

16. Studies are being conducted into ways of preserving landed estates as socio-economic units. A project funded by EU "Culture 2000" and the National Trust is based on properties in Ireland, United Kingdom, Netherlands, Czech Republic, Slovakia and Hungary. See also the Tellow Declaration on landed estate complexes in the Baltic area (October 2004).

17. The collapse of many churches is similarly linked to the disappearance of a congregation prepared to pay for their upkeep.

18. In such cases alternative use or rescue by an institution concerned for protection of heritage is necessary. The Assembly touched on this in its Resolution 916 (1989) on redundant religious buildings. Examples of Trusts looking after redundant churches as historic buildings are: in the United Kingdom the Churches Conservation Trust, the Historic Chapels Trust, the Scottish Redundant Churches Trust and also the Friends of Friendless Churches, in the Netherlands the Stichting Oude Kerken particularly that for the Province of Groningen and in Germany the Förderkreis Alte Kirchen (with 4 churches in its possession).

Private institutional ownership

19. An alternative to ownership by private persons is institutional ownership. One of the best-known examples of institutional ownership linked to conservation is the United Kingdom National Trust (1895 and National Trust of Scotland 1931). This is a non-governmental non-profit charity which acquires property (significant buildings and areas of natural beauty or importance such as the coastline). The role of the National Trust is to manage such properties for the nation in perpetuity.

The effectiveness of the National Trust depends on the powers of inalienability granted to it by Act of Parliament, and on the provision that gifts to it, including endowments, are free of tax. It is also backed up by its membership of 3.5 million.

20. "Revolving funds" was an interesting form of private ownership for the purpose of restoration advocated in the 1970s in the United Kingdom. The idea was for an association to purchase properties for restoration and then resell, using the profits for restoring further properties.

21. Other forms of institutional ownership of historic buildings do not necessarily however carry responsibility for their upkeep. Protection of historic religious property is particularly variable. In the United Kingdom responsibility lies with the churches. In France the State is responsible for the upkeep of historic cathedrals. In Cyprus however while the government maintains historic religious monuments, this is at the expense of the churches.

From private ownership to private management

22. Private management is currently the most interesting area for involving the private sector in protection of the cultural heritage. It can take many forms and extend from management of State property to management of privately owned heritage.

23. On the national level NGOs have been created with responsibility (inter alia) for protecting cultural heritage. This is the case of English Heritage in the United Kingdom, set up in 1983 as a government body for managing the historic environment.

24. It would appear that a similar arrangement to manage and improve State cultural property is intended with the State-owned joint stock company *Patrimonio S.p.a* set up in 2002 in Italy by the Tremonti Law. But that body has the possibility of also selling the property (and hence the controversy surrounding the law).

25. More generally Italy has opened up the management of museums and individual sites to private companies (following on from the Ronchey Law of 1993). These include the underwater site at Baia (Naples) and the archaeological site of Pompeii.

26. Following on these precedents legislation is currently being considered in Greece that will require museums to find their own private management arrangements in place of government funding.

27. In the United Kingdom much advice is being given from government and private sectors on the development of PPPs. Examples can be cited also from France and Malta (see appendix). It should be noted that such partnerships are usually for profit on the private side in return for the risks taken at investing funds in the cultural heritage.

28. The problems can be anticipated, for example by making provision of maintenance a precondition for building or alteration of cultural property. Again in the United Kingdom, local authorities only give planning permission for statues if funds exist for their maintenance.

29. These various developments should be followed carefully. Of particular concern is the proper care of the cultural heritage. Italia Nostra has proposed an observatory to monitor the implementation of the 2002 law. It would be helpful if a more systematic review was made of these initiatives (both good and bad) and guidelines proposed.

30. Such guidelines should cover requirements for access, restoration, maintenance, insurance, health and safety standards etc. Appropriate mechanisms for control should be indicated. Means should be devised of evaluating the risks of investment and establishing fair profit margins.

Commercial development

31. Commercial development incidentally affecting cultural heritage should be mentioned here as it is part of the public-private interface and is not necessarily negative.

32. The most usually encountered problem is where builders encounter archaeological remains. Provision is usually made for this in planning legislation which requires initial prospecting and then lays down requirements of the developers to cover costs involved in excavating or relocating. Much useful archaeological work has resulted from underground extensions.

33. Special cases recently brought to the attention of the Committee on Culture, Science and Education by its present General Rapporteur on Cultural Heritage Mr O'Hara, have been the development of Marathon and other archaeologically important sites in Greece for the Olympic Games and the proposed mining development in Rosia Montana (Romania) affecting an area of natural beauty and also of historically significant Roman gold and silver mines. These are interesting in that despite the threat to cultural heritage, the projects have seemed to offer definite gains in terms of more investment in archaeological excavation and research than would be normally available from the public sector.

34. A balanced public-private approach would seem in many of these cases to be to the ultimate benefit of cultural heritage

Conclusion

35. Information on private management of cultural heritage would be of immediate interest in the new democracies in central and eastern Europe which are still coming to terms with the impact of the private sector on areas formerly administered exclusively by the State. But it can also be of relevance to many western countries that remain suspicious of private involvement in matters of public interest. As in other areas of policy, a properly balanced partnership between public and private interest would seem preferable to exclusive control by either sector.

Appendix

The Applicability of Public Private Partnerships (PPPs) in the field of physical heritage.

by Brian Smith (consultant expert)

Background

Over the last twelve years there has been a widespread movement to resort to PPPs as an alternative method for providing infrastructure, assets and in particular services previously funded and normally delivered by public authorities. Previously certain Southern European countries have had long traditions of delegation of municipal services, and concession structures have been adopted for tolled roads, tunnels and river crossings.

In the early 1990s the United Kingdom developed a specific PPP procurement methodology, which in part derived from these earlier experiences, and has been applied to the extent that by 2005 over 600 PPP projects have been signed and some 500 are in operation. Around the world over 80 countries are now adopting similar approaches and today every European country has or is developing some form of PPP programme.

For reasons outlined below, heritage projects have rarely featured as PPPs to date, but this annex seeks to make the case that many of the advantages of PPPs could be applicable to heritage projects without involving the transfer of historic assets or the compromising of cultural integrity.

The PPP methodology

The rationale for PPPs is that the private sector is nearly always better at managing investment and operational risks than the public sector. Consequently better economic results and superior service levels can be achieved by public authorities contracting with private suppliers to design, construct and finance the infrastructure or assets that are necessary for public services or administration. The supplier then has the long-term responsibility for operating the full or, more frequently, the generic functions of the asset(s) supplied (see below).

The basis for the so-called partnership is in fact a very detailed long-term agreement, which sets out the nature of the supply of assets and services, how these will be funded and how the private supplier will be remunerated over the operating term of the agreement and in accordance with service performance.

The methodology has now been successfully applied to many sectors, from the hard infrastructure of roads, bridges, water treatment and environmental management, to the social infrastructure of schools, hospitals and libraries and even to the general and specialist requirements of government and civil order viz. offices, courts, police stations, barracks and prisons. Although still a relatively new initiative, official studies particularly in the United Kingdom point to a 15% value advantage, and greater certainty of delivery timetables and service quality over time.

The basic commercial structure of PPPs fall into three broad categories:

- User financed projects such as toll roads (in effect concessions)
- Authority financed projects where there is no possibility of user contribution such as public hospitals, schools and prisons
- Hybrid projects where public subsidy is required but where there can be user revenues, either modest as from catering and other commercial activities, or significant as for transport systems and museums.

The operational responsibility transferred to the private sector varies from sector to sector and different approaches are taken in different countries. In the United Kingdom custodial duties are part of a prison PPP, but not in France or the Czech Republic. In the United Kingdom healthcare services in a PPP hospital are totally retained by the public health authorities, but not in Australia. Again in the United Kingdom, to date the education authorities have retained all teaching responsibilities in PPP schools – but this is under review.

In the main, PPP techniques have been applied to the creation of new assets or infrastructure, but there are significant examples in the areas of schools, government accommodation estates and roads where the investment obligations of the private supplier have been directed at overhauling and upgrading existing assets rather than new construction. In these cases the contracts frequently cover groups or "bundles" of assets rather than a single structure

In summary, PPPs as presently applied demonstrate the following characteristics:

- They are long-term agreements predicated on significant levels of partner investment and a long-term but reliable funding stream (whether from government or users) to provide partner financial returns
- PPPs can be adapted to a very wide array of assets, services and circumstances
- PPPs are *not a form of but an alternative to privatisation*. Public ownership can be retained throughout and it is a policy decision whether core services (teaching, healthcare, curatorship etc.) are retained or contracted for under the PPP
- As a procurement technique, PPP methodology allows earlier and more effective investment and better economic leverage for the public contribution.

PPPs and Heritage project

The application of PPPs to Heritage/Cultural projects, however, has been modest and nearly always directed to new facilities (museums, libraries). The reasons for this are easy to discern:

- PPP programmes have been largely directed at areas of critical national and regional priority (transport, healthcare, schools)
- The elaborate and time-consuming process of PPP procurement is only warranted for larger projects (the United Kingdom threshold is currently greater than £20M, though lower elsewhere)
- Mostly PPPs have involved the creation of new assets rather than the refurbishment of old (or even historic) structures and fabric and depend on reliable long-term funding streams.

Frequently, required spending on preserving and developing heritage assets will not conform to this pattern. Projects would tend to be smaller, more piecemeal, funding less certain and there may be a perception that many of the critical conservation skills are not found with private concerns.

There are however exceptions to the apparent rarity of heritage projects in the PPP portfolio. In France in particular, Culture-Espaces, a subsidiary of the Suez group, provides delegated management and development services for a number of historic sites, building visitor revenues so that no public subsidy is required. It describes its services as follows:

"Culture Espaces is the only company in Europe providing a full management service for numerous historic buildings and museums on behalf of public and private institutions, using modern management methods

These institutions entrust Culture Espaces with the long-term promotion, cultural organization and overall management of their establishments, with their collections, staff, services, etc.

Thanks to its marketing and communication skills, Culture Espaces makes these projects more widely known and brings in a wider public.

With a customized cultural policy using temporary exhibitions, educational schemes and new technologies, Culture Espaces fills them with life and interest for all to discover.

Using sophisticated customer service equipment, Culture Espaces helps to make visits more enjoyable. Efficient site management generates new resources that can be used for restoration work.

Using delegated management, Culture Espaces makes the cultural heritage more accessible to a larger public and contributes to its preservation"

In Malta, the government is developing a national PPP programme and one of the early sectors for attention is the Heritage Agency, now an arm of the Tourism Ministry. It is now clearly recognised that the great wealth of historic monuments, buildings and sites on the island require far better conservation, presentation and commercialisation than hitherto. The first project is now under development.

Challenges and Opportunities

Although the application of PPPs for heritage projects has been relatively rare hitherto, the precedent and principles of the methodology as exemplified in other sectors could and should be applied to conserving and developing European heritage.

PPPs do not imply privatisation but a realistic sharing of risk and responsibility between public and private sector organisations. The latter contribute marketing, management, (re) construction/refurbishment, operational skills and, critically, finance. The public sector can retain the core roles of curator and antiquarian, and can stipulate the character of the commercial offering. Where public subsidy is required, it must be assured over the long-term, but it can be capped and predictable. By strategic collaboration between the public and private partners, site revenues can be increased and the local economy boosted by a superior tourism offering.

There are however limitations at this point to PPP applicability. PPPs are only suitable for larger projects (or a cluster of smaller related projects) and the specialist supply market is relatively thin. But experience from other sectors points to a rapid development once the market is stimulated.

Recommendation

In the first instance, the Council of Europe could consider developing guidelines or an outline model for how PPP methodology could be beneficially applied in the field of physical heritage drawing on the precedent from other sectors. This theoretical exercise could then be followed up by identifying one or two historic sites or regions to help develop pilot regeneration projects adapting the PPP approach.

The object would be to arrive at a PPP heritage model where private operators would compete to repair and rehabilitate historic structures, to enhance the cultural offering and to be remunerated by a mixture of public finance, a risk-sharing proportion of revenues generated and possibly a royalty on wider local economic development.

Reporting committee: Committee on Culture, Science and Education

Reference to committee: Doc. 9788, Reference No 2836 of 27 May 2003

Draft recommendation adopted by the committee on 4 October 2005 with one abstention

Members of the Committee: Mr Jacques **Legendre** (Chairman), Baroness **Hooper**, Mr Josef **Jařab**, Mr Wolfgang **Wodarg**, (Vice-Chairpersons), Mr Hans Ager, Mr Toomas **Alatalu**, Mr Gaço Apostoli, Emerenzio Barbieri, Mr Rony **Bargetze**, Mrs Marie-Louise **Bemelmans-Videc**, Mr Radu-Mircea Berceanu, Mr Levan Berdzenishvili, Mr Božidar Bojović, Mrs Anne Brasseur, Mrs Kirsten Brosbøl, Mr Osman **Coşkunođlu**, Mr Vlad Cubreacov, Mrs Maria **Damanaki**, Mr Joseph Debono Grech, Mr Ferdinand **Devinsky**, Mrs Kaarina **Dromberg**, Mrs Anke Eymer, Mr Relu Fenechiu, Mrs Blanca **Fernández-Capel**, Mrs Maria Emelina Fernández-Soriano (Alternate: Mr Iñaki **Txueka**), Mr José **Freire Antunes**, Mrs Siv **Friedleifsdóttir**, Mr Piotr Gadzinowski, Mr Ian Gibson (Alternate: Lord **McIntosh**), Mr Eamon **Gilmore**, Mr Stefan Glăvan, Mr Luc Goutry, Mr Vladimir **Grachev**, Mr Andreas Gross, Mrs Azra Hadžiahmetović, Mr Jean-Pol Henry, Mr Rafael Huseynov, Mr Raffaele Iannuzzi, Mrs Halide Incekara (Alternate: **Çerçi**), Mr Ivan **Ivanov**, Mr Igor Ivanovski, Mr Shavarsh **Kocharyan**, Mr József **Kozma**, Jean-Pierre **Kucheida**, Mr Guy Lengagne (Alternate: M. Jean-Marie **Geveaux**), Mr Peter **Letzgun**, Mrs Christine **Lucyga**, Mrs Jagoda **Majska-Martincevic**, Mr Gennaro Malgieri, Mr Bernard **Marquet**, Mrs Giovanna Melandri, Mr Ivan Melnikov (Alternate: Mr Alexander **Fomenko**), Mrs Fausta Morganti, Mrs Christine **Muttonen**, Mrs Miroslava Němcová (Alternate: Mrs Alena **Gajduřková**), Mr Edward **O'Hara**, Mr Guilherme de Oliveira Martins (Alternate: Mrs Maria Manuela **de Melo**), Mrs Elsa **Papadimitriou**, Mr Andrey **Pantev**, Mrs Antigoni **Pericleous Papadopoulos**, Mrs Majda Potrata, Mr Lluís Maria **de Puig**, Mr Anatoliy Rakhansky, Mr Johannes Randegger, Mr Zoltán Rockenbauer, Mrs Anta **Rugāte**, Lord **Russell-Johnston**, Mr Volodymyr Rybak, Mr Pär-Axel **Sahlberg**, Mr André **Schneider**, Mr Vitaliy Shybko, Mrs Elsa Skarbøvik, Mr Andrey Skoch (Alternate: Mr Anatoliy **Korobeynikov**), Mr Jerzy Smorawiński (Alternate: Mr **Drzęźla**), Mr Ninoslav Stojadinović, Mr Valeriy Sudarenkov, Mr Aleksander Szczygłó, Mr Mehmet **Tekeliođlu**, Mr Ed van **Thijn**, Mr Vagif Vakilov, Mrs Majléne **Westerlund Panke**, Mr Emanuelis **Zingeris**, N...

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