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To the attention of

Federazione Italiana
dei Club e Centri per UNESCO
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Parere *pro-veritate*
(Opinion in favour of the truth)

1. *Question*

The Italian Federation of Clubs and Centres for UNESCO (hereinafter FICLU) requests me to formulate a *Parere pro-veritate* (opinion in favour of the truth) on the legal status to be granted to it on the basis of the constitutional and legislative provisions governing the phenomenon of association, the relationship between this legal status and the "Regulatory Framework" resulting from the resolutions adopted by the General Conference of UNESCO in Paris from 30 October to 14 November 2017, and the compatibility with this legal status and this Regulatory Framework of certain proposals to amend its Statute currently under discussion.

In particular, I am asked to: (a) define the legal status of the FICLU, taking into account both the civil legislation

on the basis of which the Constitution was adopted, both of the system of constitutional guarantees of freedom of association protecting its action and, finally, of the provisions introduced, with reference to the functions known and assumed by UNESCO, of the Regulatory Framework adopted by UNESCO's General Conference in November 2017;
(b) to determine whether, and in what capacity, the requests for amendment of the Statutes issued by the Italian National Commission for UNESCO (hereinafter referred to as the INCU), which are set out, are compatible with the above-mentioned system of constitutional guarantees, the above-mentioned Regulatory Framework and, in any case, with these latter requests or recommendations;
(c) assess whether and to what extent the statutory amendments prepared by the FICLU Executive Board of the Federation, which are presented to me, are in turn appropriate to ensure the full implementation of the said Regulatory Framework; determine whether and how such proposals best meet the requests for amendment requested by the INCU, in order to pursue the objectives set by the Regulatory Framework while ensuring full respect for the constitutional guarantees of freedom of association.

To this end, the undersigned has submitted the following documentation:
(a) The FICLU's Constitution, both in its original version dating from 1979 and in the text currently in force following amendments approved over time (the last of which resulted from the resolution of the extraordinary meeting of 17 March 2018):
(b) Regulatory Framework for UNESCO Clubs and Associations, approved by the General Conference of UNESCO in Paris on 14 November 2017;
c) List of requests for amendments to the Statutes, processed by the INCU and received by the FICLU National Executive Council on 5 December 2017,
d) Proposals to amend the regulations developed by the FICLU National Board of Directors and currently under discussion.

2. *Preliminary legal framework*

According to the documentation presented to me, the FICLU is an association founded in 1979 among the "UNESCO Clubs".

This association was created by a public deed in accordance with Article 14 of the Civil Code. Examination of the Statute shows that its legal nature is that of the "unrecognised associations" referred to in Article 36 of the Civil Code, according to which "the internal organisation and administration of the so-called legal persons associations are governed by the members' agreements".

It must be concluded, from this point of view, that the FICLU was born of the free decision of certain "UNESCO Clubs"(as set out in Article 1 of the original Constitution) which, in 1979, considered that the associative form could constitute a useful tool to achieve and better develop the objectives that each club had already proposed. The establishment of the above-mentioned association was carried out without further formalities (as far as those expressly provided for by law are concerned, even for non-recognised associations), and was never followed by the acquisition of "legal personality".

In its current organisational form, the FICLU – as defined in Article 1 of the current Statute – proclaims itself as "heir and successor to the Italian Federation of Clubs and Centres for UNESCO established in Rome in 1979." Although important statutory changes have occurred over time, there is therefore a perfect legal continuity between the association created in 1979 and the current association, which must therefore be placed within the same regulatory framework.

The aims and objectives of the FICLU – freely identified and set by the partners at the time of its constitution – have been duly clarified in the Statute (as provided for in Article 16 of the Civil Code, which provides that the constituent instrument and the Statute contain, inter alia, "an indication of the purpose" of the association.

In Article 4 – in its original version – it was established that: "The Federation intends: a) to disseminate, through the activities of its members, the principles of (a

promoting international understanding in accordance with UNESCO's ideals and action, by taking appropriate initiatives in the fields of education, cultural and information sciences in schools and in extracurricular activities; (b) establishing relations with similar organisations in other countries in order to promote mutual understanding and joint action; (c) promoting the creation of UNESCO clubs, by facilitating and coordinating their activities; (d) guaranteeing to the Italian National Commission for UNESCO that the initiatives promoted by the various clubs are in conformity with the ideals of UNESCO whose names they bear, thus preventing any abuse of UNESCO's name."

In Article 5, the instruments with which the newly constituted Association intended to pursue the above-mentioned objectives were then identified: "For the purposes of applying Article 4, intensive forms of cooperation with the relevant Ministries and regional and local authorities may be provided by the Federation. The Federation shall achieve its objectives by all appropriate means, in particular: (a) the collection, dissemination and production of documentation material of a national and international nature; (b) the organisation of meetings and seminars, cultural exchanges, in particular between young people of different nationalities."

The current statutory provisions, which have integrated and enriched this original framework, are in line with the natural continuity of those mentioned above and are perfectly consistent with them in terms of identifying social objectives and the means of adapting them. As can be seen from all the considerations formulated, the FICLU was therefore born of the free initiative of certain groups of individuals to create an association to which they entrust the pursuit of a common goal, the limits of which have been determined in a timely and autonomous manner. They have already joined – in an equally free manner -–the single club "UNESCO Club" (and, today, freely join the associations, clubs and centres for UNESCO) and have decided to create a "Federation", i. e. an association of associations, identifying the reasons for this free choice.

The initiative that led to the decision to create the FICLU is therefore perfectly in line with the

associative phenomenon, expression of the plurality - guaranteed by the Constitution - of social systems within the community.

It is worth clarifying this theoretical connection immediately, as it allows us to clarify immediately that, within the framework offered by the Italian legal system, the FICLU is not a public body, let alone an instrumental organ of a Ministry or one of its internal articulations, nor more generally a "public body", nor a private subject to whom public functions are attributed. It does not derive its existence from any constitutional act, or from any prior authorisation from any person, to continue its activity or to decide – possibly – on its own dissolution. By law, it is not a subject necessary for the pursuit of public interest objectives. From the point of view of the Italian legal system, it is a free private association, born of the autonomous decision of its members to establish it, which freely decides on the organisation of its associative life and which can freely determine whether and for how long it remains.

We will see below how its relations with UNESCO and the INCU are regulated and can be legally regulated. But it should not be forgotten that the regulation of such relations, whatever their configuration, does not in any way reduce the associative nature of the FICLU and does not allow it to derogate from the constitutional guarantees underlying its action.

It is worthwhile to examine in more detail the practical content of these guarantees.

3. *Constitutional limitations on freedom of association*

The Constitution, as we know, removes vast areas from the imperative determination of the Person-State, by analytically setting a series of fundamental values

of the law. The objective is not only to safeguard individual rights, but also to organise human freedom in social reality. This is how the "personalist" principle and the "pluralist" principle, which are the two cornerstones of the entire constitutional system of freedoms, are realised (cf. V. Crisafulli, *Raccolta di scritti sulla costituzione*, Milan, 1958, 104). This objective is achieved by identifying, within the framework of the Charter, a set of areas of autonomy presided over constitutionally, and which are expressly exempt from any regulatory claims on the part of the public authorities.

For the Constituents, freedom of association should not only be the means of implementing the pluralism set out in Article 2, but also the appropriate instrument to keep it always open and dynamic to changes over time: social formations (among which, of course, are included associations governed by Article 14 et seq. of the Civil Code) referred to in Article 2, where inviolable human rights are expressed – in collective form – must therefore be directly protected in their autonomy, precisely in consideration of the principle that what the individual can do as an individual, he must also be able to do in associated and collective form. Thus, associative pluralism becomes a mirror and a form of manifestation of democratic pluralism. Freedom of association is an essential element in building social and political democracy.

In short, the Constitution no longer regulates in an abstract and theoretical manner the position of the individual in relation to public power, but recognises the importance and protagonism of collective, plural and differentiated social interests. This recognition has been fully and explicitly confirmed in the guarantee, provided by Article 18, of the right of all citizens to associate freely and without authorisation to pursue purposes that are not prohibited to individuals by criminal law. It has been consolidated and strengthened throughout republican history. Since 2001, the Constitution has also recognised and guaranteed – in Article 118, paragraph 4 of the text resulting from the revision of

Constitutional Law No. 3/2001 – the independent citizens' initiative, individually or in association, in the exercise of activities in the general interest on the basis of the principle of subsidiarity.

Thus, through Article 18 and Article 118, paragraph 4, the principle of pluralism becomes so central that its virtues are also exercised to promote dialogue between the political and institutional pluralism defined in Article 5 of the Constitution and social and associative pluralism, which is further strengthened today, as mentioned above, by the full constitutionalisation of the principle of subsidiarity. The choice of the autonomous valorisation of associative freedom is functional in order to highlight the freedom of social groups – within them and towards the exterior, in particular towards public authorities) – which manifests itself as the expression of a polyarchical society, in which the level of real democracy of the order is measured (thus, among the many, P. Ridola, *Democracia pluralistica e libertà associative*, Milan, 1987, 267).

Associations constituted in accordance with Articles 14 et seq. of the Civil Code are obviously included in the double constitutional guarantee mentioned above. Indeed, Article 18 regulates the "general status of the associative phenomenon" (cf. A. Pace, *Problematica delle libertà costituzionali*, parte speciale, II ed., Padua, 1992), which directs the freedom of association towards the free development of the human personality, in the sense that it prohibits any interference by public authority, both at the time of the constitution of the association, during its life and finally at the time of its dissolution.

Within this delimited framework, we can therefore define association as encompassing "all forms of aggregation by which a greater number of subjects, following a mutual and spontaneous commitment to cooperate in the pursuit of a common goal, organise themselves for this purpose" (thus, in summary, A. Pace, *Problematica*, cited, 339).

Freedom of association is manifested both as an individual right and as a collective freedom. Article 18 offers the associative phenomenon two distinct and co-existing protection profiles. The first is individual and concerns the freedom of individuals to choose the purposes for which they want to form an association and participate

in its activity. The second is collective and includes a number of guarantees granted to the association as such. From the first point of view, the guarantee of freedom of association is manifested in the right of each individual to form (with others) an association, to access an existing association in accordance with its institutional purposes and statutory rules, to withdraw from an existing association, to not join any association.

This corresponds to a series of symmetrical interdictions by the public authorities. Public administrations are forbidden to prevent (by administrative decrees or by mere conclusive negative behaviour) the creation of an association (with the exception of the general limit on criminal associations provided for in the first paragraph of Article 18 and the two special limits provided for in the second paragraph of the same Article 18, which prohibits secret associations and those which pursue, even indirectly, political aims through an organisation of a military nature). It would obviously be unconstitutional if a law gave a public administration the power to organise in any way – except in the exceptional cases mentioned above – the free decision of a group of persons to form an association.

The prohibition on preventing the formation of an association obviously includes the prohibition on making its formation subject to any form of prior authorisation, or on making its existence or preservation subject to any form of authorisation. Only this clarification makes it possible to make the right of free association effective; it is precisely for this purpose that Article 18 explicitly provides that citizens have the right to associate freely "without authorisation". This also means that the State is prohibited from regulating access to existing associations in a coercive manner (by identifying autonomous requirements for access to an association that are different from and complementary to those freely established by the associations themselves), as well as from authoritatively dissolving an association (subject, once again, to the specific limits set out in paragraphs 1 and 2 of Articles 18 et seq. of the Constitution).

The objective is to prevent associations – in particular those without legal personality – from being conditioned in their activities by the will of the public body (whether or not it is expressed in the adoption of specific administrative decrees). For this reason, for example, the Constitutional Court has declared illegitimate, over the years, the prefectoral measure for the dissolution of associations contrary to the national order of the State (Decree No. 114/1967), or the provisions providing for government authorisation for the establishment of international associations (Decree No. 193/1985). The only form of administrative authorisation permitted by the Constitution is that which may be imposed for the exercise of certain activities which are already subject (even if they are not exercised in an associated form) to administrative controls. However, this applies exclusively to economic activities or, in any event, to those, including non-profit activities, which take place within the framework of the market system (see Const. Court Decree No. 417/1993, 365/1997).

Finally, Article 18 provides for a tendentious prohibition to oblige someone to belong to an association, to protect the right of those who do not intend to join it (Const. Court, Decrees Nos. 40/1982 and 239/1984), as well as the right of each member to withdraw from an association of which he is a member. Any restriction on this right, which in this case would result from the State's exercise of a real power to compel members of a particular category to form an association, cannot be based on a general “public interest”, but must in turn be based on specific constitutional principles. For this reason, forms of mandatory association could only be created in the presence of objectives “presumed unequivocally public in the Constitution” (Court of Justice, Const., Decree No. 40/1982).

In accordance with this principle, the Constitutional Court has therefore limited the possibility of State interference in the freedom of individuals to join or not to join an association to cases where it is necessary to regulate (for the purposes of public interest under Article 41 of the Constitution) the exercise of economic activities (i.e. the non-illegality of the rules designed to subordinate

the exercise in the form of associations of certain economic or professional activities when they are entered in the registers).

The principle that can be deduced in summary from the above-mentioned constitutional jurisprudence is that Article 18 of the Constitution establishes a general and fundamentally absolute guarantee of the freedom of the associative phenomenon in all its forms, which may be restricted only in specific cases where the Constitution itself explicitly authorises the setting of limits.

Until now, the associative phenomenon has only been dealt with in its individual dimension (that of the rights of the individual in relation to the State's claims to limit it within its sphere of autonomy). Equally solid is the protection of freedom of association in terms of its collective dimension, i.e. the guarantees offered by Article 18 to the association as such. From the general principle that shareholders have the full right to freely choose the most appropriate organisational arrangements to pursue the identified corporate objectives as they see fit, it follows that, again subject to the specific and exceptional limits set by Article 18, paragraph 2 – each association enjoys a broad and general freedom in defining its internal organisation (see S. Bartole, *Problemi costituzionali delà liberertà di associazione*, Milan, 1970, 39). In this case too, any restrictions or limitations of the public authorities may be provided for and imposed exclusively on the basis of the existence of specific constitutional provisions, in particular as regards the rights that individual members may exercise within the association to which they belong.

This problem, it must be noted, has been the subject of an in-depth study, especially with regard to the establishment of regulations for trade unions and political parties, which is the subject of particular attention in Articles 39 and 49 of the Constitution, or commercial companies, which are dealt with in Articles 41 et seq. and are therefore not highlighted here. Where the constitutional conditions referred to above are met, the law could, for example, require the introduction, in the statutes of the individual associations concerned, of appropriate rules to ensure protection for the member,

his “endo-associative rights”, based on an adequate guarantee of internal democracy and transparency of decision-making procedures. These are issues that go beyond those that have been brought to my attention.

From this point of view, the Statute of the Association is the instrument for achieving and, at the same time, guaranteeing this freedom. With regard specifically to the non-recognised associations referred to in Article 36 et seq., it was conveniently pointed out that precisely the summary and synthetic nature of these provisions “seems to guarantee a wide space for the freedom of individuals” to freely decide on the organisational model best suited to the pursuit of the goals they have set themselves (see F. Rigano, Article 18, in Bifulco, Celotto, Olivetti (ed.), *Commentario alla Constituzione*, vol. 1, Turin, 2007, 412).

It follows that the sphere of full autonomy of the association includes the right to freely regulate, in its statutes, the conditions and procedures for membership, the forms of deliberation, the causes of exclusion of members, the causes and procedures for dissolution of the association. Any interference by public authorities in these areas would constitute a violation of the constitutional guarantee of freedom of association in its collective dimension.

In conclusion, with regard to the principle framework within which the problems examined here are situated, associations – and in particular those which, like the FICLU, are constituted under Articles 36-38 of the Civil Code – belong to a more general category of “subjects of the organisation of social freedoms” (Const. Court, Decrees No. 300, 301 of 2003), whose qualifying connotation is given by the fact that they do not belong to the domain of public services and that they are expressly guaranteed in their role as pillars of a pluralist and participatory model from which the values and functions of solidarity with subsidiarity, referred to in Articles 2, 3c 118 of the Constitution, must take their inspiration.

In the end, whatever the basis that can be attributed to the collective phenomenon, a typical and essential manifestation of the freedom enshrined in Article

18 is the right of the individual to create with others – without interference from the State -– an artificial legal entity capable of pursuing a common objective. This subject in turn is given a series of specific guarantees of autonomy in organisational and decision-making choices, so that this right is based on an adequate level of efficiency.

In this sense, association is the collective prediction of all the freedoms enjoyed by the individual.

4. *The FICLU between the guarantee of freedom of association and the links resulting from its relations with UNESCO*

Once the constitutional reference framework has been defined in which all the subjective legal situations qualifying the status of the FICLU in the Italian legal system must be defined, it is necessary to examine the impact on this framework of all the relations that the FICLU establishes – by reason of the interests it represents and the objectives it pursues – with the UNESCO Organisation, the Italian National Commission for UNESCO established in accordance with Article VII of the 1945 London Convention, the clubs and associations for UNESCO. These relations were last defined in a document entitled "Regulatory Framework for UNESCO Clubs and Associations", approved in Paris at the 39th session of the General Conference of UNESCO in 2017.

It should be stressed that the above-mentioned Regulatory Framework is not intended in itself to condition or limit the free association activity of the FICLU or similar associations established in other countries, but only to regulate certain aspects of relations between UNESCO on the one hand, the UNESCO Clubs and any national association that groups them on the other. Nor could it be otherwise, since the above-mentioned Regulatory Framework, whatever its exact legal nature (which, moreover, is itself

very uncertain) and its possible impact on the system of sources of Italian law (which it is certainly not possible to go into in more detail here), obviously does not have the right to derogate from the specific constitutional provisions laid down in the Republic's legislation.

On the basis of an analysis of the content of the provisions included in the above-mentioned Regulatory Framework, the following can be deduced:

(1) UNESCO recognises that UNESCO's associations, centres and clubs make an important contribution to the achievement of its mandate and objectives, as well as to the improvement of its visibility (Article 1). However, these associations are and remain – and could not otherwise be – independent private associations that are not part of the International Organization to which they offer the above-mentioned voluntary contribution. The same applies to national Federations which include all or some of the UNESCO Clubs present in the territory of each State party to the Convention. UNESCO itself therefore expressly reaffirms the autonomy of the various national associations in relation to the International Reference Organisation and thus implicitly recognises freedom of association, which is not in itself linked to heterodetermination by public bodies of all kinds.

(2) The National Commissions for UNESCO (which are for all practical purposes bodies governed by public law, the articulations of the Person-State) are entrusted with functions in the public interest concerning the link between UNESCO's activities and the various States, and the guarantee of compliance with the London Convention on their territory. In particular, the Italian National Commission for UNESCO is currently entrusted, by Inter-ministerial Decree No. 4195 of 24 May 2007, with various functions which include the promotion of UNESCO's activities in the various countries, the link between the national government and the above-mentioned United Nations agency, the activity necessary to ensure the implementation of the decisions of the General Conference, the dissemination of information and documents encouraging UNESCO's activities, support, particularly economic support, the formulation of proposals concerning the selection of members of national delegations

to the General Conference, the provision of advice to the Ministry of Foreign Affairs on activities related to the implementation of UNESCO's activities and, in general, on all public activities related to the obligations arising from the London Convention entrusted to these commissions by governments.

These responsibilities are now covered by the provisions of the Regulatory Framework. Article 4.1 expressly entrusts the National Committees (and therefore, in this case, the INCU) with "the direct supervision of UNESCO's associations and clubs, in order to ensure the quality control of these subjects and their conformity with the provisions of this regulatory framework". This activity includes (Article 4.2) having the authority to "accredit, monitor and evaluate associations and clubs and, where appropriate, withdraw their accreditation," "ensure supervision of the work of the National Federation of UNESCO Clubs and Associations," where appropriate, and "ensure that the objectives and activities of UNESCO Clubs and Associations are in conformity with the current strategy of the Organisation's priority objectives and programme" and "on the proper use of UNESCO's name, acronym and logo".

With regard specifically to national federations, Article 6 further specifies that they may be established "under the auspices and with the authorisation of their National Commission" when there is, in the same Member State, a plurality of clubs or associations for UNESCO. The same Article 6 also stipulates that in the same Member State there can be only one Federation and that the National Commission for UNESCO "guarantees its legitimacy". Federations, like individual clubs, must also undertake to "strictly comply with the guidelines concerning the use of the acronym, the emblem of UNESCO's Internet domain names" (Article 6.4).

However, having considered the literal content of the above-mentioned provisions, the question arises as to the exact meaning to be given to the terms used in the Regulatory Framework, both as regards the overall logic that this document expresses and the regulatory objectives that it sets for itself, and in particular the general regulatory framework in which the document in question is established. In other words, it is necessary to clarify the

the scope of the unique obligations, unique prohibitions and unique requirements contained in the Regulatory Framework with regard to the aims that the Regulatory Framework intends to pursue and with regard to the constitutional system of the rights of associative freedoms in which it inevitably finds itself operating at the moment when it claims to (also) be effective towards free associations operating on Italian territory.

Indeed, it is clear that no provision contained in the aforementioned UNESCO Regulatory Framework, nor any internal regulatory measure designed to implement it (whether legislative, regulatory or other), and a fortiori no administrative decree aimed at the same objective, could in any way affect the areas of autonomy and freedom of association guaranteed by the Constitution. Since the Constitution, as mentioned above (see paragraph 2.1.2. (3), expressly understands by guarantee of this freedom the absence of any "constraint" or public policy constraint on the formation of an association, its survival over time, the decision of any individual or group to join or leave it, the decision taken by the organs of the association on the modalities of its action, and so on, it is clear that the lexical formulas used in the Regulatory Framework to make the activities of the club and the national federations "conform" to a set of requirements established therein must be interpreted in such a way as to make these formulas "compatible" with the most relevant good – the "constitutional framework" in which these requirements claim to be found.

In particular, these provisions cannot be understood as limiting in any form whatsoever the freedom of any person to associate freely – without the authorisation of any person – to pursue independently the same aims and ideals as those set forth in the UNESCO Charter. Nor can they justify the introduction, and the fact that the Italian Government or a public body designated by it, of a competence to

"control", "supervise" or "evaluate" with regard to the modalities of free citizens' associations that intend to pursue these objectives.

Consequently, no power of "authorisation" may be conferred by the Regulatory Framework on the Italian Government or a public body designated by it, with regard to the right of each of these free associations to associate with each other, if they consider it necessary, in a "National Federation" which promotes a better dissemination and achievement of the same objectives and ideals. No public administration – as we have seen previously – can therefore be granted the power of *interference and control* to create such a Federation, which is in fact a free association of associations.

Likewise, no Public Administration may be granted the power to interfere in or control the life of the association, the internal organisational arrangements and the *statutory content* that such an association considers it can give itself from time to time.

How, therefore, can all the provisions contained in the Regulatory Framework, which expresses UNESCO's desire to make clubs and associations "conform", on one hand, and Federations, on the other, to a series of strict organisational constraints, in particular "authorisations", "accreditations" and "supervision"?

The only legitimate interpretation to be given to these provisions, which makes it possible to consider them compatible with the above-mentioned constitutional principles of freedom of association, is that, far from introducing limits to the right of citizens to associate freely and without authorisation in the pursuit of UNESCO's objectives and to the right of such free associations to federate freely among themselves, they merely lay down a series of rules to which associations and federations of associations must adhere in order to be able to continue to use the name "UNESCO", its acronym and logo.

It is only for these limited purposes that National Commissions (and for what matters here, the INCU) are vested with powers of "authorisation" or "supervision".

Certainly not a general compliance with the most minute aspects of the life and activity of associations and their federations, but only and exclusively the power to ensure compliance with the minimum conditions that must be maintained so that these subjects can continue to use the name, acronym, logo of UNESCO.

The existence of such provisions, in the end, does not in any way diminish the free and associative nature of these organisations. And it certainly does not transform the FICLU into a kind of instrumental body of the INCU, which it can freely direct, to which it gives general orders and directives and by which it imposes public policy obligations on individual clubs. The latter, and therefore the FICLU, remain for all intents and purposes free private associations, endowed with all the specific constitutional rights that flow from this status. They – if they consider it so – "***limit themselves***", in the exercise of these rights, in order to comply spontaneously with the provisions that the Regulatory Framework identifies. Compliance with this commitment is reflected in the preservation of the right to use UNESCO's name, acronym and logo in the exercise of their activities.

The Regulatory Framework is therefore a kind of "benchmark", established by UNESCO, that the free associations we are talking about must adapt if they want to establish and maintain a formal link with the above-mentioned United Nations Agency through the use of the name, acronym and logo that it proposes under "licence".
The initial non-compliance or subsequent violation, by clubs or national federations, of this benchmark obviously cannot allow authoritarian interventions capable of investing – and therefore undermining – the full right of these associations to incorporate freely, to organise freely, to dissolve themselves when they deem it appropriate. On the other hand, it may include, subject to the intervention of the National Commission to which UNESCO attributes this competence, the withdrawal of the right to use the UNESCO "trademark" to which the same Regulatory Framework offers protection.

5. *Examination of individual proposals for amendments to the Statutes*

Once the meaning of the provisions in question has been defined, it is now possible to identify within what limits and with what objectives the INCU can legitimately ask the FICLU to modify its status. It is also possible to assess which of the amendments to the Statutes that have been expressly requested by the INCU from the FICLU to adapt the Statutes to the requirements of the Regulatory Framework are – within the limits indicated above – necessary, appropriate or reasonable, which are not necessary or even contrary to the spirit and letter of the said Regulatory Framework.

Similarly, it is possible to assess the compatibility with the same Regulatory Framework of the proposed amendments prepared by the Executive Board of the Federation, which I have carried out. Sometimes these proposals coincide perfectly with those put forward by the INCU. Sometimes they diverge partially with them or complement them. Sometimes, the INCU proposals are not accepted.

With regard to all the cases to be examined, it must be borne in mind that – as has been said several times before – the power to amend the statutes of an association is a power that belongs, in full autonomy, to the association itself. Any limitation of this power must therefore be understood as a self-limitation aimed at pursuing a purpose for which the association intends to be a carrier (in this case, the realisation of the purpose of continuing to use UNESCO's name, acronym and logo "under licence") in Italy. The discussion will continue with the analysis of proposals for the revision of the Statute, article by article.

<u>Article 1</u>

The INCU requires that a paragraph be added to Article 1, specifying that the FICLU "was created under the aegis and with the authorisation of the Assembly of

the Italian National Commission for UNESCO."

The Executive Board of the Federation proposes to prefer the following wording: the FICLU "operates under the auspices of the Italian National Commission for UNESCO, which authorises the use of the name, acronym and logo."

The second wording seems to be more correct in all respects. It is the only one able to maintain together the "compliance" requirements expressed in Article 6 of the Regulatory Framework and the most stringent constitutional requirements to guarantee freedom of association.

First of all, it should be noted that the CISL cannot be replaced by the authorisation of the INCU, for the simple reason that the FICLU is an association already created in 1979, which therefore derives its legal legitimacy from the statutes established in 1979 in accordance with Article 13 of the Civil Code. As a free association protected by Article 18 of the Constitution, it cannot be conditioned in its existence (and in its survival) by a (subsequent) authorisation either. Such a statement, for the reasons amply illustrated above, would be radically contrary to the law.

What can legitimately be affirmed on the basis of what is established by Article 6.1 of the Regulatory Framework is that this free association, if it intends to continue to use the name, acronym and logo "UNESCO", must continue its activities under the auspices of the above-mentioned the INCU. This spontaneous self-limitation of its constitutionally guaranteed rights and prerogatives corresponding to the authorisation of the INCU does not concern the existence of the association (over which the INCU clearly has no authority), but only to the use of UNESCO's name, acronym and logo.

In this sense, the wording proposed by the Executive Board of the Federation seems more in line with the letter and spirit of the Regulatory Framework, as well as the constitutional principles mentioned above.

Article 3

The INCU requires, in accordance with the provisions of the Regulatory Framework concerning the use of UNESCO's name, acronym and logo, the introduction of a new provision, according to which "Name, acronym, logo are established in accordance with UNESCO's provisions." In addition, "the Italian National Commission for UNESCO shall verify the correct use of the name, acronym and logo of UNESCO used by the Federation, and shall ensure that it is not misused or abused by its members or third parties."

With regard to the first of these three provisions, I think it concerns a necessary specification. The current text of the Statute identifies in the same FICLU the holder of the reserved right to use the name, acronym and logo. This – for the reasons explained above – does not seem correct: it is in fact UNESCO's responsibility to be the "owner" of these instruments and to grant "a licence" to individual clubs and federations in exchange for compliance with a series of conditions. The new wording makes it possible to better clarify the correct relations between the different subjects in the use of the name, acronym and logo and to regulate reciprocal ceilings in line with what is established in this respect in the Regulatory Framework.

What appears to be legally incorrect from a "topographical" point of view is the introduction – in the FICLU statutes – of an additional provision giving the INCU the power to "verify" the correct use of these instruments. The INCU certainly has this power, but it holds it on the basis of another different source. The same provisions adopted pursuant to the London Convention confer this power on the INCU (starting with Ministerial Decree No. 4195 of 24 May 2007, which, in Article 2, reads as follows: expressly confers on the INCU the task of carrying out "on the national territory all the functions entrusted to it or delegated to it by UNESCO," and therefore those arising from the Regulatory Framework for the control of the proper use of the name, acronym and logo).

The FICLU statutes, on the other hand, provide the basis for associative autonomy for the FICLU itself, and it makes no sense to include in the statutes a provision that confers supervisory powers on an external public entity. This power exists because a source of the law provides it and assigns it, and it obviously cannot derive from the rules of the status of a private association, whose sole function is to regulate the internal organisational powers and instruments that belong to that private association.

From this perspective, the assertion that the FICLU statutes contain such a provision constitutes a violation of the freedom of association.

As mentioned above (see point 3), any limitation of statutory autonomy (i.e. any public "interference" with the exercise of an association's power of self-organisation) can only be justified if it aims to implement other specific constitutional provisions. This is clearly not the case here.

As for the Regulatory Framework, and also in the perspective of the "self-limitation" to which reference has been made on several occasions, it is not at all clear what the "sacrifice" of statutory autonomy that is required here could be used for. The INCU is perfectly capable of exercising its power of control over the correct use of its name, acronym and logo, without it being necessary to "impose" the requested statutory amendment, which therefore manifests itself – also perfectly unnecessary for this purpose – as an excessive and disproportionate violation of statutory autonomy, which is, as mentioned, the expression and protection of the constitutionally guaranteed freedom of association.

Article 4

The INCU requires the amendment of paragraph 1(c) with regard to the activity to promote the establishment of new clubs and provide training. The request is obviously based on the observation that direct competence for the "accreditation" of new clubs has been attributed by the Regulatory Framework to National Commissions (see in particular Article 4.2).

This would therefore not be the responsibility of individual national federations, but would now be the direct responsibility of National Commissions. To this end, it is proposed to specify that the FICLU "supports, if necessary, the Italian National Commission for UNESCO in the training of candidates for the creation of a new UNESCO Club during the trial period, collaborates with the UNESCO Clubs in the drafting of their annual programmes and reports and ensures the coordination of the Clubs' activities in agreement with the Italian National Commission for UNESCO."

In fact, it should be noted that, on the basis of what is established by Article 4.2 of the above-mentioned Regulatory Framework, all activities generated by the "accreditation" of new clubs (regardless of the meaning of this elliptical expression) seem to be the responsibility of the National Commissions. However, this does not exclude that the Federations, and in the case of the FICLU, possess the skills, experience, qualifications and relations that make them highly qualified operators if necessary in the activity of assisting the National Commissions in compliance with their mission. For this reason, the alternative wording of the provision proposed by the National Board of Directors seems to me to be entirely reasonable and in line with what is generally stated in the Regulatory Framework (in particular Article 6.1).

It provides that "a Federation, in accordance with UNESCO's regulatory framework, shall perform, inter alia, the following functions: - provide guidance, advice and opinions on the achievement of the objectives of the partnership strategy; - provide assistance to the National Commission in carrying out its tasks relating to assistance to and coordination between clubs; - provide support to the National Commission in the training activity in preparation for the establishment of any new club - provide assistance to facilitate accreditation with the INCU; ensure the preliminary and continuous training of its members; - report to the National Commission any violations of commitments arising from the Regulatory Framework that come to its attention, if any, by its members; - encourage contacts, joint activities and collaboration between members."

Thanks to this wording, the Statute does not only provide, in general, for the following provisions relative to

the possibility of assisting the INCU "on request" in the exercise of preparatory activities for the opening of new clubs, but "takes seriously" and reinforces the overall role that the Regulatory Framework entrusts to National Federations, establishing that the FICLU does not only make itself available independently – in accordance with the prerogatives of the INCU to provide assistance and advice in relation to the overall activity of the clubs, but above all to offer itself to the same INCU as a privileged interlocutor, making its experience and resources available in the performance of the tasks entrusted to the above-mentioned public body. Thus, the goals that the Regulatory Framework itself identifies and that offers a better overall service for the full achievement of UNESCO's objectives are better specified. At the same time, the FICLU manifests and fulfils its autonomous associative vocation, spontaneously offering its activity in order to pursue the objectives indicated in the Statute itself.

Article 7

With reference to Article 7, the INCU requires the deletion of the statutory provisions that currently govern a series of relationships between the FICLU and the promotion committees of new clubs. These provisions (see current paragraphs 3, 4, 6, 7 and 8) provide for the evaluation of the training course, the appointment of tutors to accompany the course and the scope of the functions entrusted to them, the number of clubs that may be established in the same territory, the procedures to be followed for a club to become a "Centre for UNESCO". The request for the deletion of the above rules can indeed be considered – if understood – as the cancellation of a procedural "constraint" on the possibility of creating new clubs or centres for UNESCO – in accordance with the powers conferred on the INCU by the Regulatory Framework. Therefore, this proposal –

always with a view to a "self-limitation" of the powers that the FICLU may freely decide to assume in order to comply fully with the provisions of the Regulatory Framework above – can be accepted. What can legitimately be provided for in the Statute, and cannot be denied to the association without infringing on one of its constitutionally protected prerogatives, is the power to identify in absolute autonomy the conditions that must be met by those who apply to join the FICLU to be admitted as a supporter. For this reason, the National Board of Directors proposed to introduce a provision according to which "the FICLU shall be responsible for the training of aspiring members in accordance with the rules and procedures established by its own regulations." As a free association, the FICLU has the constitutionally guaranteed right to establish, in its Constitution or in the other legal instruments of its action (such as one or more regulations), the conditions to be fulfilled by those who aspire to join the association itself.

This competence that is specific to it obviously goes beyond the supervisory powers of the INCU.

The latter may legitimately establish the conditions and procedures required to obtain the status of "UNESCO Club" or "Association for UNESCO". On the other hand, it cannot claim to regulate the requirements and methods required to obtain the status of "FICLU member".

The FICLU is the only structure that holds the authority to identify who can assume membership status.

The Regulatory Framework does not and cannot establish anything from this specific point of view.

Absurdly, alongside the UNESCO Clubs and Associations for UNESCO which are also members of the FICLU (because the FICLU will have established that they fulfil the conditions required for membership in the association), there may be other UNESCO Clubs and Associations which, although they have received "accreditation" from the INCU, do not meet the (stricter) conditions established by the FICLU Constitution (or Regulations) with regard to their membership in this Federation. The possibility of such a "double track"

is furthermore the natural and inevitable consequence of the associative nature of the FICLU: the INCU certainly has the power to establish, through its own "accreditation" procedure, to which private associations may "have the right" to use UNESCO's name, acronym and logo. However, it does not have the power to determine which private associations may be admitted to the FICLU, which – as a free association – could legitimately set increasingly stringent requirements in this respect. The provision proposed by the Executive Board of the Federation for the introduction to Article 7 (2), could legitimately establish stricter requirements in this regard that are derived directly from the of freedom of association established by Article 18 of the Constitution.

Article 9

The proposed amendments submitted by the INCU with regard to Article 9 reproduce the same problems as those already addressed with regard to Article 7; first of all, the INCU requires that, in paragraph 1a, it be specified that the dissolution of the club or association, resulting in the loss of membership, be decided by the Italian National Commission for UNESCO.

This is an obvious inconsistency.

Nor will I go into the substance of the literal content of a provision that seems to give the INCU the power to dissolve a club, that is, to dissolve a free association between citizens. As explained in detail above, the INCU could at most deprive this association of the right to use UNESCO's name, acronym and logo, certainly not deliberately the "dissolution" of anything! These citizens could safely continue to exercise, in the same form of association, the same social and cultural activities as before, without changing the slightest element of their behaviour. The only consequence of such a decision would be to prohibit the use of the UNESCO "trademark" in the context of the above-mentioned activities.

Beyond the absurdity of the literal wording of the proposal, the problem here concerns the relationship between the resolution of the INCU and the loss of FICLU membership. We have repeatedly pointed out that the freedom of association guaranteed by the Constitution includes, inter alia, the right of the association to autonomously provide for cases of loss of members.

To sum up, the FICLU has every right to establish, *regardless of the cause of the dissolution of the club or association*, that such an event automatically results in the loss of membership. The wording proposed by the INCU would even have absurd and manifestly unconstitutional consequences. In the absence of a formal resolution of dissolution of the club by the INCU, the club would remain formally alive (and a member of the FICLU) even if *all* its members had in the meantime disappeared, or had decided to go abroad, or to cease participating in the life of the association. This would be contrary to the principle, repeated several times, that freedom of association also includes the right to withdraw from an association at any time, as well as the right – logically linked to it – to proclaim its dissolution without having to wait for the authorisation or resolution of a public body.

Much more in line with the law, as well as with logic, is therefore the general wording contained in the amendment proposed by the Executive Board of the Federation, according to which membership is lost through the "dissolution of the association or club", <u>regardless of the cause of this event</u>.

Also with reference to Article 9, we call for the repeal of the provision (paragraph 1b) which provides for the loss of membership in the event of a breach of "the obligations arising from Article 8." The same reasoning as developed above applies in this case. An association is free to determine how it chooses the causes of the loss of its membership. In any event, a simple reading of the obligations established by Article 8 is sufficient to understand the absurdity of the request. Why should the FICLU be prohibited from

declaring the loss of membership of the club that has not paid the FICLU membership fee? Or for a club that has not adopted a constitution that complies with UNESCO's Regulatory Framework? Or for the club that does not participate in the associative life? Or for a club that does not produce an annual report on its activities? Or for those who do not communicate and update the number of members and social positions?

In all these cases, these concern minimum rules, which each association has every right to attribute to itself and exercise, and which it can freely dispose of. Nor can it be objected that such rules conflict with the Regulatory Framework. In fact, there is no indication in the latter of the rules governing the exclusion of members of National Federations. Nor does any other provision of the Regulatory Framework appear to have been violated as a result of maintaining this provision. On the contrary, the causes of exclusion mentioned above are functional to promote and implement the active and effective participation of members in the life of the association and, thereby, the promotion of UNESCO's mandate and objectives, their implementation in daily life, "the increase in the Organisation's visibility, the support of its mission, its priorities and its programme." All the objectives and proposals are expressly set out in the above-mentioned Regulatory Framework (see Articles 1 and 2).

It has already been pointed out above that any sacrifice imposed on freedom of association, even in the form of "self-limitation", must be supported by reasoning, which here, however, is completely outside this procedure. Consequently, the proposal of the Executive Board of the Federation not to repeal Article 9, paragraph 1b, with regard to the reference to the violation of Article 8 as a cause of loss of membership, is considered to be entirely correct and in accordance with the Regulatory Framework.

Rather, in accordance with the powers conferred on the INCU, there appears to be a proposal to incorporate letter d of paragraph 1 of Article 9, concerning the loss of membership in the event of proven abuse of the use of the logo and any official sign relating thereto "if the Commission so establishes and informs

the Italian national team for UNESCO." This provision seems to be in line with the tasks entrusted to the INCU by the Regulatory Framework for monitoring the proper use of the name, acronym and logo. As an alternative to the simple repeal, suggested by the INCU, of the provision of Article 9, paragraph 1e, the Executive Board of the Federation proposes the inclusion of a new provision establishing the loss of membership in the event of "violation of the rules of loyal cooperation between members or the adoption of conduct and practices contrary to UNESCO's purposes and principles or its Regulatory Framework."

This provision is not only fully in line with the above-mentioned Regulatory Framework, whose effectiveness and normative character are strengthened and defended, but is also fully in line with the constitutional rules concerning freedom of association, from which it also derives the existence of the full right of the association to identify the specific requirements of "good repute" that must be met to maintain membership.

Article 11

The INCU calls for the repeal of the reference to "promotion committees" in paragraphs 3 and 16. The request is justified by the need for the "promotion committees" of a club not yet constituted not to (no longer) participate in the FICLU Assembly (as provided for in the Statutes currently in force), since, according to Article 4 of the Regulatory Framework, the competence and responsibility of the alleged "accreditation of a UNESCO club or association is from the INCU, and not from the FICLU."

The allegation does not appear unreasonable in itself. Moreover, it should be pointed out that, according to an interpretation of the areas of freedom and autonomy guaranteed to the FICLU which do not undermine the constitutional framework of reference, if, on the one hand, it can legitimately be requested that a "promotion committee" not yet constituted as an association cannot participate in the Federation's Assembly

(which, in fact, only admits as members associations that are already constituted), cannot admit, on the other, that all clubs and associations for UNESCO, on the sole ground that they are "accredited" by the INCU, must automatically be admitted by the FICLU as a member of the latter.

This issue merits further consideration. Freedom of association also includes the right of the association not to admit among its members persons who do not fulfil the statutory requirements (whether or not such persons have been "accredited" and have received the name "UNESCO Club" by a public body recognised by UNESCO). As already mentioned above in relation to Article 7, each association has the exclusive power, guaranteed by the Constitution, to regulate in its statutes the requirements and procedures required to acquire the status of "member" of its association.

The FICLU – as has already been pointed out – is a private association, not an instrumental body of the Ministry of Foreign Affairs. It administers its members according to their own decisions and not those of others. Consequently, in addition to UNESCO Clubs and Associations for UNESCO which are also members of the FICLU, there may be other UNESCO Clubs and Associations for UNESCO which, although they have received "accreditation" from the INCU, do not fulfil the conditions laid down in the FICLU Constitution (or a regulation) for admission to that Federation.

It is reiterated that the power granted by the Regulatory Framework to the INCU concerns the authorisation to use the name of the emblem and the acronym "UNESCO", certainly not the authorisation to acquire the status of member of the FICLU. The possibility of a "double track", from this point of view, is the natural expression of the principles arising from the associative nature of the FICLU and the related constitutional guarantees.

Consequently, it seems preferable to respond to all the legal principles thus reconstructed by using the wording of Article 11, paragraph 8, which allows the president of the member in good standing or his delegate to participate with the right to vote in the General Assembly of the FICLU. For the same reason, it appears that

the wording of paragraph 16, which limits candidacy for the position of national councillor to those who have been "registered as a Member for at least three calendar years," seems more respectful of this set of principles).

More generally, the term "members" – more general but for this reason more comprehensive – should always be replaced, as far as possible, by other terms that seem to officially make the taking in charge of membership subject to "prior authorisation" by a public administration, public body or any other qualified public entity.

Article 13

The request to repeal the current paragraph 14, which regulates certain activities conducive to the transformation of "promotion committees" into "clubs", seems to be in line with what has already been stressed on several occasions with regard to the competences of the INCU under the Regulatory Framework in the area of "accreditation". As such, it does not result in any violation of the membership rights guaranteed to the FICLU.

Article 21

As indicated in point 3, the timing of the "dissolution" of an association, as well as the timing of the withdrawal of an individual member, is supported by specific constitutional guarantees.

Just as associations are not subject to prior authorisation (except in the frequently mentioned exceptional cases), they cannot be dissolved by unilateral action by a public authority either.

The constitutional guarantee of freedom of association also includes the right of the association to exist until its members decide, in complete independence, to dissolve it in accordance with the provisions identified in the Statute, or at least until – as required by law (see Article 27 c.c.,

also applicable to non-recognised associations) – "the objective has been achieved or has become impossible" in the present case, for example, when the simultaneous withdrawal of all members of the association has led to the disappearance of the FICLU's operational practice.

In this regard, the request to include Article 21 ("The dissolution of the Federation may also be ordered by the Italian National Commission for UNESCO in the event of serious violations of UNESCO's founding principles and the use of UNESCO's name, acronym and logo") seems detrimental to the constitutional framework.

Moreover, it seems that it does not fall entirely within the scope of the rules contained in UNESCO's Regulatory Framework. The formula contained in Article 6.1 of the latter, as has been mentioned several times, must be understood, in order not to come into irreparable conflict with the above-mentioned constitutional guarantees of freedom of association, in the sense that "under the auspices and with the authorisation" of the INCU, the use of UNESCO's name and acronym must be governed.

This means in particular that, under the supervisory and authorisation powers of the INCU, the latter may, in the event of "serious violations of UNESCO's founding principles and the use of UNESCO's name, acronym and logo," withdraw the use of these instruments from the FICLU. On the other hand, it cannot decide on the dissolution of the association as such, since – as mentioned – the constitutional guarantees of freedom of association include precisely the prohibition of "heteronomous" dissolution (except in cases where the Constitution itself expressly allows it: these are the cases already mentioned of criminal associations, secret associations, associations which pursue, even indirectly, political aims by an organisation of a military nature).

In conclusion, the request to introduce such a heterogeneous cause for the dissolution of the FICLU, as well as to find no justification in UNESCO's Regulatory Framework (which does not expressly or implicitly provide for it), would be seriously prejudicial to the constitutional principles mentioned above.

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A comparison between the proposed statutory amendments requested by the INCU and those prepared by the National Board of Directors for the FICLU Extraordinary Assembly to be held to approve them provides a very clear framework. Both must deal dialectically with the mandatory rules, provided for in the Constitution, governing freedom of association, and not just the provisions of what is known as UNESCO's Regulatory Framework.

From the precise analysis of the various revision proposals, I believe I can conclude, on the basis of what has been explained in the previous pages, that the proposals drawn up by the National Board of Directors that have been presented enable the Federation to fully meet the needs for adaptation to the decisions taken by UNESCO in 2017, based on the Regulatory Framework.

At the same time, the amendments proposed by the National Board of Directors also respond to the need to defend, in accordance with the aforementioned Regulatory Framework, the general principles of freedom of association, supported by a constitutional guarantee, and to pursue the objective by ensuring that FICLU members can fully exercise their rights.

I remain at your disposal for any clarification or to deepen and integrate aspects that may have remained totally or partially obscure.

Turin, 6 October 2018

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