

## SECȚIUNEA VII: Științe juridice. Științe politice și administrative

### THE LEGAL PROTECTION OF CULTURAL HERITAGE: NATIONAL AND INTERNATIONAL PERSPECTIVES

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**Abstract.** *In this paper the author reveals briefly the history of the protection of cultural heritage that is a growing international concern. The research aims at revealing the essential issues related to the examination of protection of cultural national heritage and the protection of cultural rights in international law that has led to a fine network of rules and regulations. Thus, the protection of cultural heritage has become an important subject that is relevant in a network of policy areas. The UNESCO World Heritage Convention and the Intangible Heritage Convention should be interpreted in each other's context, and that it may be advised that in time these two Conventions should merge into one. Political shifts in national governments should not stand in the way of the operationalization of the Diversity Convention .*

**Keywords:** *Global Heritage, fundamental duties, the Constitution, the holder of rights and duties, the legal protection of cultural heritage in international law, UNESCO Conventions.*

The process of raising awareness of the need to protect national heritage by introducing legal responsibility and expressing concerns about the protection of cultural assets has had a long and difficult evolution. As social life progressed, this concern was highlighted, triggering the emergence of the first measures to protect the cultural heritage, becoming a growing international concern. International and national legal instruments have multiplied and tended to turn into *erga omnes* obligations, such as human rights, environmental protection, etc. The protection of cultural heritage is revealed by the concept of the common heritage of humanity as a concern of the international community. At present, international organizations, particularly UNESCO, which have shown a constant commitment to developing the notion of cultural heritage, have an important role to play in the protection of cultural heritage, which determines the development of this important area for the whole of humanity. Since the 1960s, the Council of Europe has been actively involved in European cultural heritage protection activities by adopting a series of conventions, recommendations and resolutions that urge Member States to develop and develop policies to protect cultural heritage.

The historical and cultural heritage with all its components - natural complexes, cultural monuments, art, architecture, archeology, objects of worship, movable and immovable property, etc., considered unique and irreplaceable, represents the inestimable value of the human community is part of the world heritage of all mankind. The protection of monuments of history and culture is the moral duty and obligation of every society

The first legal regulations on the protection of the monuments of history and culture are issued in Italy (1162) [1], which, thanks to the numerous ancient monuments on who owned them, noted early that cultural goods require special protection.

The impact of globalization has also resulted in an increasing interest in the economic exploitation of cultural heritage and the effects of the liberalization of the trade in goods and services with regard to the effects of the global market economy on cultural identity and cultural diversity. Because of the combination of developments in international trade, the media and technology, local cultures are being increasingly confronted with new influences.

Since the beginning of its existence, UNESCO, as a specialized agency of the United Nations, has developed a network of normative instruments regarding the protection of cultural heritage.

The World Heritage Convention (WHC) is the most comprehensive and widely ratified among UNESCO treaties on the protection of cultural and natural heritage. The Convention establishes a system of identification, presentation, and registration in an international List of cultural properties and natural sites of outstanding universal value. Throughout the years the WHC has progressively attained almost universal recognition by the international community

The 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, followed by the World Heritage Convention of 1982 and the Safeguarding of Intangible Heritage Convention of 2003 and, finally, the Convention on the Protection of the Diversity of Cultural Expressions together form a comprehensive normative system that covers the state of the art in the protection of cultural expressions, and are also, each in their own distinctive way, related to all of the issues presented above. After the entry into force of the Covenants on Civil and Political Rights and Social, Economic and Cultural Rights in 1976, the new Conventions refer to their close relation with these human rights instruments. [2]

The academic analysis of the protection of cultural heritage is currently experiencing a paradigm shift from a compartmentalized approach focusing on physical protection of tangible cultural objects towards a more integrated approach of dealing with cultural heritage [3]. So, during its more than 45 years of life, the 1970 UNESCO Convention has undergone extensive interpretation and evolution in its scope of application. Operational Guidelines, which are the implementing rules governing the operation of the Convention, have been extensively revised. New institutions such as the World Heritage Centre, have been established. New links, with the World Bank and the United Nations, have developed to take into account the economic and political dimension of world heritage conservation and management. However, many legal issues remain to be clarified.

So, nowadays, the most widespread classification of monuments belonging to the universal cultural heritage is the classic method of protecting cultural heritage as the co-existence of several isolated protection regimes:

- *tangible* (movable or immovable) or *intangible* cultural heritage (oral traditions, performing arts, rituals);
- *movable* (paintings, sculptures, coins, manuscripts) or *immovable* cultural heritage (monuments, archaeological sites, and so on);
- *natural heritage*: natural sites with cultural aspects such as cultural landscapes, physical, biological or geological formations;
- underwater (shipwrecks, underwater cities);
- heritage in the event of armed conflict and so on.

Definitions of cultural heritage changed over time and depend on perspective. The international community preferred instead of the cultural notion of cultural heritage. The term *cultural heritage* was introduced by UNESCO legislation in 1973. Cultural heritage or cultural property law (the terms are used interchangeably) regulates and protects culturally significant sites, objects, etc. UNESCO defines the term cultural heritage in several different ways .

Today the concept encloses both tangible and intangible cultural heritage. The glossary of the ICOM Code of Ethics of 2004 defines cultural heritage as *anything or concept considered of aesthetic, historical, scientific or spiritual significance*. A more elaborated definition in the Council of Europe's Framework Convention on the Value of Cultural Heritage for Society of 2005 seeks to define cultural heritage as *a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions...* (Council of Europe 2005, article 2).

Our national legal system follows the classical categorization for the protection of cultural heritage which is rather recent date compared with other European countries. The first act on the protection of cultural heritage was the 1993 Monuments Act. Thus, three distinct stages can be delineated as regards the consolidation of the national legal framework:

- in the first stage (1993-1994) the Law on the Protection of Monuments was adopted (No 1530, 22.06.1993) and the European Cultural Convention (19.12.1954, Paris) was ratified;

- in the second stage (1999-2008), two laws were adopted: the Law on Culture (No 413, 27.05.1999) and the Law on Museums (No. 1596, 27.12.2002). 9 Cultural Heritage Conventions (5 UNESCO Conventions and 4 European Conventions) have been ratified;
- in the third stage (2010-2018) 5 organic laws on the protection of cultural heritage were adopted: archaeological heritage (2010), mobile heritage (2011), public monuments (2011), graves and war memorial works (2017) .

The protection of monuments as a fundamental duty is also a characteristic of the Constitution of the Republic of Moldova, according to the content of art.59, the preservation and protection of the monuments of history and culture is the duty of every citizen [4].

So, in the first place, the national legal system strictly distinguishes between the protection of intangible cultural heritage on the one hand and the protection of tangible cultural heritage (immovable and movable) on the other. In 2006, the Republic of Moldova ratified the Convention for the Safeguarding of Intangible Cultural Heritage (Paris, 17.10.2003), completing the list of other international instruments in the field of intangible cultural heritage on its territory in order to mitigate the risks of its loss. To date, national law grants specific protection to cultural objects of immovable character, as well as of movable character.

At the moment, major challenges in the field of national cultural heritage are:

- lack of strategic vision on cultural heritage issues;
- the lack or inefficiency of the institutional framework necessary for training in the patrimony protection;
- the lack of institutional training system for cadres in the field of protection and management of cultural heritage;
- the need to save the national cultural heritage in all its diversity;
- the continuous degradation of the patrimony, the absence of state budget funds for the documentation, preservation and protection of the national cultural heritage, and the absence of legal mechanisms capable of ensuring the integrity of cultural heritage.

So, our national policy on legal protection of national cultural heritage developed in a tradition of great ambitions, but modest achievements. While many 19<sup>th</sup>-20<sup>th</sup> century European states were engaged in developing a protective regime for national cultural heritage, in the Republic of Moldova the first modest attempts appear only at the end of the 20th century, so a double pillar is needed: citizens' awareness of the need to protect the cultural patrimony, besides legislation in the field. Therefore, most legislative measures on the protection of cultural heritage are inspired by the developments in international law. The debate on the protection of cultural heritage in the 20th century wavered between nationalism and internationalism. The need to protect the cultural heritage in national territories, the need to protect free exchange of or trade in cultural objects and the need to protect the international interests in protecting cultural heritage.

All of the above mentioned international instruments have one common feature. They represent a bias towards a nationalist and internationalist approach, the implicit statement its hat cultural heritage is important to a distinct people or community, by contributing their creations to their cultural heritage, contributes *to the cultural heritage of the world*.

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