
JURIDICAL PROTECTION OF THE ROMANIAN CULTURAL AND RELIGIOUS PATRIMONY

**Dana Copot, Gabriela Vatavu, Vlad Diaconescu, Rodica Diaconescu
and Iulian Rusu***

*Technical University 'Gh. Asachi', Faculty of Chemical Engineering and Environmental
Protection, Bd. D. Mangeron 71, Iasi 700050, Romania*

(Received 25 April 2012)

Abstract

It is well known that the period 1989-2000 was, from the juridical point of view, a nefarious one for all aspects concerning the Romanian cultural patrimony. However, after 2000, the juridical protection regime knew an obvious improvement, because what was not made in 11 years was fulfilled in less than 4 years. The juridical frame was, thus brought in this short period of time to the standards requested by our time. The present paper is analysing this evolution also in correlation with the problems created to the religious and cultural patrimony by the pollution of the environment.

Keywords: juridical protection, cultural heritage, environmental task

1. Introduction

During the existence and its historical evolution, man has shown a full creativity. Consciously or not, in its long history, was the man who created the goods and values, adjusting and transforming as necessary for natural and environmental alike [1]. In time, her creations have suffered multiple valuation or appraisal processes of the next generation. Cultural values are created over the time and are the most valuable for a nation. Cultural goods are the results of intelligence work and inspiration of the creators and are the perennial value of a people. They form the 'genetic code identity' of a people [2]. Man over his evolution realized that this goods and values that have been created over time must be kept, preserved and then transmitted to future generation. Thus, the human conscience has recovered the idea of conservation, preservation and transmission of what is created. The awareness of responsibility from cultural heritage, like the idea of care, has a long and difficult evolution.

The development and social progress and also the emergence of laws have shaped in the human history the idea of cultural heritage protection. Cultural heritage is characterized as a social phenomenon and has developed and evolved along with other elements of the social system. Over its historical evolution there have been many attempts to define it from different perspectives, being

* Corresponding author, e-mail: rusu_iulian@hotmail.com

accentuated either its cultural-historical dimension or the material one. In order to avoid any confusion, starting from multiple definitions over the time, the notion of preserving cultural heritage and the history of the term, the legislature has determined that goods are part of national cultural heritage and especially what is this heritage. The notion of patrimony and cultural goods can be defined as those objects with historical, archaeological, documentary, ethnographic, artistic, technical, scientific, literary, etc. representing material evidence of the environment evolution and the human relations with them, but also their contribution to the universal civilization.

Starting from this definition, the Romanian national cultural heritage consists in:

- Movable cultural heritage – i.e. goods identified as such, and represent the evidence and vivid expression of values, beliefs, knowledge and tradition that are constantly evolving;
- Intangible cultural heritage - consisting of all the practices, representations, knowledge, objects, artefacts, rituals, skills along with the appropriate tools and techniques;
- Immovable cultural heritage – buildings, historic monuments, etc.;
- Archaeological heritage – consisting of archaeological sites, movable objects or traces of human events, together with the land they were discover;
- Museums and public collection.

The need to legally protect the national cultural heritage is highlighted once again by the fact that cultural goods have supported, during the passage of time, human factors and natural action. Paradoxically or not, by individual or collective action, man is the creator of goods and cultural values, but also man was a permanent threat to the integrity of cultural heritage and causing significant or irreparable damage [3]. We refer here to the armed conflicts, socio-political crises, political and economical instability, all this leading to the destruction or loss of goods and cultural values. Besides the huge loss of life, the two world wars that shook the twentieth century have produced irreparable damage to the cultural heritage.

The quantity and the quality of the cultural and religious patrimony of a country also reflect the welfare of the state. Therefore, our study intends to find out if the actual juridical frame ensures the proper protection of the cultural and religious patrimony in connection with the environmental issues.

2. Questions

A sensitive factor for cultural heritage of Romania is related to the property. Until the revolution of 1989 this wasn't a problem because all the property belonged to all people. But the country's new Constitution regulates and guarantees equally property regime and access to culture, being established the requirements of keeping and assuring the spiritual and cultural identity for all owners [4].

2.1. *If a cultural creation belong to Romanian national heritage, who is the owner?*

According to the Constitution and legislation, should be noted that these assets may be subject to public property and establishment of civilization forms and private high compliance on mobile cultural heritage, immaterial cultural heritage, archaeological monuments, museums and public collection. Regardless the ownership, one thing is certain: property forming part of national cultural heritage is a perennial way of property, which is owned by Romanian people. National cultural heritage has to be seen and understood as a collective right, and a form of community ownership of the nation, because the goods are created in the space of life and culture of Romanian people. The link between a good and cultural space is undoubtedly indestructible. We say this because there are special situation when, due to chance, that good may come in unlawfully in possession of another person. Connection between the two elements above, as I said, cannot be eliminated. Two obvious examples, from our point of view, will help in better understanding the link between cultural property and the area where it was created: the Romanian treasure who is still exposed in Moscow, Russia and works of Constantin Brancusi exposed in various museum in the world.

2.2. *Can be removed or broken connection between these cultural values and Romanian geographical space where they were created?*

Protection of national cultural heritage as a part of the Romanian people and the contribution to European and world culture in the process of European integration and globalization of culture is, in our opinion, both a duty and a necessity for every member of the Romanian society. Awareness of cultural heritage protection is possible only when is achieved its knowledge and the proper understanding of what is in fact. National cultural heritage is the result of the intelligence, effort and talent of some of the most representative members of the Romanian society and is the perennial property of the Romanian people. Therefore, we consider necessary for all members of our society to know the national cultural heritage.

3. *Legally protection of cultural and religious heritage of Romania*

In is generally recognized that 1989-2000 was a bad period for Romania's cultural heritage in almost every respect. After 2000, however, the legal protection experienced a clear improvement. This improvement was the development and adoption of more specific laws designed to help protect heritage. A simple comparison on the adoption of laws from the period 1989-2000 and during 2000-2008 is illustrative in this respect. Thus, between 1989 and 2000, were adopted only two acts providing for sanctions at all. Things have changed completely in 2000-2008, when were adopted not less than 15 acts,

including normative acts on the legal protection of intangible cultural heritage. On the other hand, was not important only the number of documents adopted in this respect, but rather that these acts began to take legal measures in order to ensure the consistency and strength of country's cultural heritage. However, laws adopted during this period were developed in the spirit of existing international legal documents, conventions, recommendations of United Nations Educational Scientific and Cultural Organization (UNESCO) or those adopted by European organizations.

A concern for Romania's cultural heritage protection was evident as what was not made for almost 11 years, was achieved in less than four years. The legal protection of this was brought about in this short period, the appropriate standard time. Thus, the legislature has considered all areas and forms that make up the cultural heritage. With regard to movable cultural heritage, through the law no. 182 of October 25, 2000, appeared the basic legal act which provides legal protection of movable cultural heritage. With all amendments made thereafter by Government Emergency Ordinance (GEO) 16/2003 and law 105/2004, with the Government Decision (GD) 1420/2003, GD 518/2003, GD 1546/2003 and GD 486/2002 and finally by the law 488/2006 was formed the legal protection instrument of Romanian cultural heritage. Normative acts on the movable cultural heritage ensure the adequate and necessary institutional framework for its protection. A brief overview of the normative documents mentioned above allows us to see that they cover substantial areas of national cultural heritage protection. So, are taken into account research issues, inventory, classification, service and funding of Romanian's cultural heritage protection, but also on movement, exportation, conservation and restoration of movable cultural goods.

The institutional system established specific duties and responsibilities not only for the Ministry of Culture or subordinate bodies, but also for the Internal Affairs Ministry. Romanian Police, as a fundamental institution of the Romanian state with responsibilities in public order and property is involved directly in the complex process of Romanian cultural heritage protection. The institutional system of cultural heritage protection is wisely completed, we appreciate, as a coherent system of sanctions and administrative or criminal penalties, according to legal rules which would be violated.

In turn, the Romanian archaeological heritage is protected by a set of laws adopted after 2000. In this respect, the legal protection of archaeological sites and archaeological heritage consists of the Government Ordinance no. 43 from 30 January 2001, which was then amended and supplemented by Law no. 462 from 12 November 2003. The two laws establish the legal status of archaeological sites, consisting from the research categories to be performed, issues and areas of archaeological excavations and the legal regime governing the possession and sale of metal detectors. Also, are expressly established the public administration bodies and local obligations. Finally, in the above laws are mentioned the antisocial facts, according to their social danger, which are considered offenses and how can these be detected.

3.1. Legal protection of historical monuments

For the protection of historical monuments, the legal and normative framework include: government ordinance no. 47/30 January 2000, subsequently amended by Law no. 564/19 October 2001, Law no. 422/18 July 2001 and Law no. 468/12 November 2003.

A classification of historical monuments according to their importance is:

- Class A - consists of historical monuments of national and universal value;
- Class B - represent the historical monuments of local cultural heritage

This classification is necessary to observe the limits for the authorities taking measures to protect and preserve cultural heritage. If in the case of the class A is involving central authorities, in case of historical monuments of local importance, protection and conservation measures will be taken by local authorities. Whatever class they belong, interventions on historical monuments can be made only after consulting the Ministry of Culture. Very important is that the instruments on the protection of historical monuments have established a complex institutional organization, formed by the Ministry of Culture, National Institute of Historical Monuments, the National Monuments, as central institutions and at local level are represented by the Monuments Services subordinated to the county Department for Culture, Cults and heritage. As professional bodies, we mention the National Monuments, with consulting and approval responsibilities and the Control and Audit Department for Protection of Historical Monuments. For the effective protection of the cultural heritage consisting of historical monuments, laws provide a list of possible offenses and crimes, without which isn't possible a real protection of them.

The legislation concerning the protection of cultural heritage monuments is completed with another bill, which, while regulating a different field – the discipline in constructions, contributes to the protection of historical monuments - Law no. 50/1991.

The legal status of museums and public collections consists of a single act: Law no. 311/8 from July 2003. This law is what establishes the principles of organization and operation way of museums, public and private collections that are open to the public, defining also the notions of museum and collection. Together with the above mentioned legislation, Law. 311 provides classification and operating principles of museums and public collections, and the system of state bodies involved in these tasks. Also, the law provided for what constitutes offenses and who has the competence to report and sanctions. The law provides a single criminal act, which is taken almost entirely from the Article 26 Law no. 63/1974. Finally, have appreciated the effort the legislator, who understood at least since 2000, the need for legal protection of cultural heritage of the country by adopting not only special laws specific for the national cultural heritage, but also the common criminal law (Criminal Code) to punish a very common crime, namely aggravated theft of property belonging to the cultural heritage [art. 209 paragraph (1), letter a), Criminal Code], which is provided for imprisonment from 3 to 15 years.

3.2. Legal protection of traditional and popular culture

Cultural heritage of peoples, seen only in terms of cultural heritage material is sufficient and complete? What about cultural heritage formed from traditions, practices, cultural expressions, etc..?

Be it cultural manifestations of the community group or individual, they required a careful examination, conceptual definition, ordination and legal regulations. Positive experience in the material cultural heritage protection and the measures to protect it, were a starting point so that the community understand the need to create an effective regulatory framework to protect these forms of cultural events. If for the European and international culture connected questions we have found some answers, internally speaking the things are far from being clarified.

The most important internationally adopted documents are primarily those developed by UNESCO. By the adoption of the Framework Convention on cultural property belonging to the intangible cultural heritage, there were approved other documents too, who prepared in some way the Convention. We refer here to: the Recommendation for the Safeguarding of traditional and popular culture taken on the occasion of the XXVth UNESCO Conference in November 15, 1989, at Paris; the draft recommendations on the 'Living Human Treasures' from Venice, in February 11, 1989; the International experts meeting in Rio de Janeiro on 'Intangible Cultural Heritage: Priority areas for an international convention'; the Third Round Table of Ministers of Culture on 'Intangible Cultural Heritage - the mirror of cultural diversity', at Istanbul, September 2002. All these meetings and documents were adopted and were sanctioned by the Convention for the Safeguarding of the Intangible Cultural Heritage, adopted at the UN General Conference for Education, Science and Culture - October 17, 2003, in Paris.

In the last 30 years, the people of culture and lawyers alike had problems with setting rules for folk traditions, the crafts, practices, representations, or other forms of cultural expression. Documents resulting from global forum like traditional art and culture are a powerful means to approximate the differences between peoples and social groups and also of asserting their cultural identity as part of universal heritage of humanity, with folk art. When referring to the intangible cultural heritage and beyond, we assign the United Nations Educational, Scientific and Cultural vocation as a coordinating body of worldwide cultural policies because it made recommendations to states that each internally, to take measures to identify, conserve, recover and promote the traditional and popular culture. Were not omitted people with their creative talent. Community members are recognized as true personalities in the creation, preservation, interpretation and unaltered transmission of culture and traditional folk. Such personalities are established and recognized under the name of 'Living Human Treasures'.

As in other periods of time, our legislature did not have time or have not considered necessary to pay the due attention to regulate a particular field in a country with a very rich cultural potential and diversified at the same time. We agree with the criticism at the address of the government for the late settlement of intangible cultural heritage, on the basis of at least four reasons:

- First, the world, international organizations documents already adopted framework for intangible cultural heritage;
- In the second place, in Romania there is a potential rich traditions and folk art, belonging to the majority Romanian population and other ethnic communities;
- Then, in terms of cultural research, thanks to the efforts of men of culture, Romania had a start well ahead of other countries;
- Finally, although it was known, since 2004, that for the first time a city in Romania will be designated the 'European Capital of Culture', the effort to regulate the specific field of intangible cultural heritage unreasonably delayed [2].

Regulation of this area continues to slow, although in terms of specific cultural manifestations of intangible cultural heritage in the country were held and regularly organized numerous shows and performances by well known and widely recognized performers, including international participants. Although by the Law. 410 of 29 December 2005, Romania ratified the Convention for the Safeguarding of Intangible Cultural Heritage in 2003, internally, the first document was the Order no. 2138 from 24 March 2006 of the Minister of Culture for the establishment of the Commission for safeguarding of the cultural heritage 'callus tradition'. Finally, it was adopted the Government Ordinance 19 of 31 January 2007, which was repealed in its entirety by the provisions of Law no. 26 from 19 February 2008. This law corresponds to the Convention for the Safeguarding of Intangible Cultural Heritage from 17 October 2003 in Paris. However, because the law's content does not provide information about offenses and crimes, we believe that in terms of protection does not bring the expected and desired efficiency.

3.3. Legislation, cultural heritage and environmental problems

The analytical data are essential for determining the state of conservation of the object, but also to determine the causes and mechanisms of its deterioration. The analytical methods used in this field of research are those used by the modern science. Techniques developed by the advances in Physics and Chemistry are applied to both ancient and modern materials. This is why, a significant number of different modern techniques are available for cultural heritage characterization and they have already been used for the investigation of the weathering effects produced by air pollution on them, giving us information about morphology, chemical composition and structure of the materials present in the monument, archaeological artefact, or art object [5].

Changes in terms of natural environmental and climate changes have affected negatively the monumental buildings, i.e. the cultural richness of the country that they have been worn out by various natural effects for a long period of time. The traditional architecture in Romania has used natural as construction materials stone, adobe, brick, timber, etc. So, the variations in natural environment and climate conditions in Romania have caused unfavourable effects on architectural buildings. Buildings belonging to cultural heritage were deteriorated due to the temperature differences between the seasons and the day-night cycles, capillary movement of water inside the building [6], salts and other harmful chemicals, air pollution, etc.

In Romania and in other countries too, natural stones were used as construction materials of many historical and cultural buildings and monuments. Atmospheric factors such as rainfall, smog, humidity, wind, temperature and sun light etc., coupled with atmospheric contaminants affect the natural stones used for the construction of monumental buildings in various manners and cause damages and deteriorations differing just with respect to the type of stones [7].

The weathering of stone takes place due to chemical, physical, mechanical, and biological processes. This weathering produces crushing stones, leading to destruction of monuments and buildings. Physical weathering include salt crystallization, freezing-thawing cycles, thermal expansion, and loads, rot pressure of plants and microorganisms, etc.

The air pollution also contribute to the deterioration of artefacts from libraries and museums but the outdoor monuments, buildings, etc. are the most exposed to degradation.

This is one of the reasons for which is necessary to have a very good legislation on the cultural heritage protection against pollution. Unfortunately, according to our knowledge this kind of legislation is missing in Romania. There are only some shy attempts made in this direction at local levels. An example is the decision of the mayoralty council from Iasi to close the car traffic on Stephen the Great Boulevard, in weekends, in order to increase the protection against the effect of polluting gases on the UNESCO monument – the monastery Three Hierarchs. It is also interesting to see which will be the final decision concerning the projected mining activities at Rosia Montana, where also exists a valuable archaeological site.

4. Conclusions

After 2000, the juridical protection regime concerning the Romanian cultural patrimony knew an obvious improvement. The juridical frame was, thus brought in four years almost to the right standards requested by our time. Obviously, these laws are necessary to be constantly adjusted depending on the evolution of crime, the mode of expression, risks and vulnerabilities of the Romanian national heritage. However, it seems that the correlation with the problems created to the religious and cultural patrimony by the pollution of the

environment is not present in this specific legislation. We draw the attention on this fact because if we do not preserve by correct measures our cultural patrimony then we are the direct culpable for its possible loss.

Acknowledgement

This paper is supported by the Sectorial Operational Programme Human Resources Development (SOP HRD), financed from the European Social Fund and by the Romanian Government under the contract number POSDRU/56/1.2/S/36310.

References

- [1] C. Voicu and I. Geamănu, *Criminalitatea în domeniul patrimoniului cultural național. Curs de masterat*, Național, Bucuresti, 2006, 13.
- [2] I. Șandru, *Protecția juridică a patrimoniului cultural național român*. Doctoral thesis, Academia de Poliție ‚Alexandru Ioan Cuza’, București, 2009.
- [3] A. Lazăr and A. Condruz, *Corpus Juris Patrimonii/Protecția Patrimoniului Cultural Național*, București, Lumina Lex, 2007, 14.
- [4] L. Negrier-Dormont, C. Voicu, I. Vintileanu, G. Ungureanu and A. Boroi, *Introducere în criminologia aplicată*, Universul Juridic, București, 2004, 283.
- [5] N. Melniciuc-Puica and E. Ardelean, *Eur. J. Sci. Theol.*, **4(2)** (2008) 51.
- [6] B. Simionescu and M. Olaru, *Eur. J. Sci. Theol.*, **5(1)** (2009) 59.
- [7] B. Fitzner and K. Heinrichs, *Mediterranean Magazine: Science, Training and Technology*, **Special issue 1** (1999) 13-16.