

PROBLEMS OF LEGAL REGULATION OF THE PROTECTION OF CULTURAL HERITAGE AS A TOURISM OBJECT

DALIA, PERKUMIENĖ¹
LARBI, SAFAA²

Abstract

The relevance of this study. International legal efforts to protect cultural heritage have undergone quite contrasting changes in the recent period. It should be noted that cases of destruction and looting of cultural heritage protection cause concern and anxiety. Attention should be drawn to the cultural heritage protection conflicts in the former Yugoslavia, as well as in Iraq and Afghanistan, as well as Ansar Dine in Mali. There is more than one definition of cultural heritage in the scientific literature. In the laws of the Republic of Lithuania, cultural heritage is understood in a broad sense as material, which consists of movable and immovable values, and intangible heritage – traditions, knowledge, and abilities passed from generation to generation, cultural, historical landscape, reflecting the relationship of man with the environment. **The main problems.** Cultural rights and intellectual property rights are recognized as human rights in the Universal Declaration of Human Rights (1948). Some researchers have argued that the right to cultural heritage can be one of the basic human rights that is associated with intellectual property rights (Shyllon, 2015) other researchers believe that this right does not fall into the category of basic human rights: these rights can be considered economic and/or commercial rather than social or cultural. **The following tasks:** 1. To analyze the concept of cultural heritage. 2. To analyze legal regulation of cultural heritage protection. 3. Based on the data of the performed analysis, to submit conclusions. **The aim of research** – to analyze legal aspects and problems of immovable cultural heritage as a tourism object. The paper concluded that cultural heritage protection has a public interest. This obliges both state institutions and society to be active in order to preserve and integrate cultural heritage protected objects in today's world. **The novelty** of the analyzed topic is that protecting immovable cultural heritage is not easy because there are many interest groups at work. The article emphasizes that immovable cultural heritage is a public interest. This obliges both state institutions and society to be active in order to preserve and integrate cultural heritage protected objects in today's world. The used methodology document analysis, systematic analysis, comparative analysis, logical – analytical and meta – analysis methods.

Keywords: cultural heritage, protection, human rights, tourism object

Introduction

Statement of the problem

International legal efforts to protect cultural heritage have undergone quite contrasting changes in the recent period. It should be noted that cases of destruction and looting of cultural heritage protection cause concern and anxiety. Attention should be drawn to the cultural heritage protection conflicts in the former Yugoslavia, as well as in Iraq and Afghanistan, as well as Ansar Dine in Mali. There are many definitions of cultural heritage in the scientific literature. In the laws of the Republic of Lithuania, cultural heritage is understood in a broad sense as material, which consists of movable and immovable values, and intangible heritage – traditions, knowledge, and abilities passed

from generation to generation, cultural, historical landscape, reflecting the relationship of man with the environment. Immovable cultural heritage is a public interest. This obliges both state institutions and society to be active in order to preserve and integrate cultural heritage protected objects in today's world. Protecting immovable cultural heritage is not easy because there are many interest groups at work. The article analyzes how state institutions, bound by law, have to maneuver in order to protect and properly administer cultural heritage, but at the same time not to prohibit business entities from developing infrastructure, opening up the opportunity for the public not only to see, but also to be a part of cultural heritage.

Relevance of the topic.

According to Vrdoljak (2015), current regional and civil armed conflicts target and destroy millennia-old historical sites and, at the same time, tourist attractions. The researcher examines the concept of the cultural heritage of humanity, which is the basis of international cooperation, paying particular attention to the application of the World Heritage Convention in conflicts from Yugoslavia to Mali (Vrdoljak, 2015).

Corresponding author:

¹ Vytautas Magnus University (Kaunas, Lithuania)

E-mail: dalia.perkumiene@vdu.lt

ORCID iD: 0000-0003-4072-3898

Studentų str. 11, Akademija, Kaunas district LT-53361

² Cadi Ayyad University (Marrakesh, Morocco)

E-mail: safaa.larbi@gmail.com

ORCID iD: 0000-0002-1696-2445

Av Abdelkrim Khattabi, B.P. 511 – 40000

When we talk about attacks on cultural objects, the 2012 attack in Timbuktu should be mentioned. At the ICC, the Al Mahdi case became the first case in which a single perpetrator was charged only with the war crime of destroying cultural heritage (Ba, Oumar, 2020). Emberling et. al. (2018) investigated the interpretation and use of ancient Near Eastern cultural heritage. According to the researchers, current legal and other measures are at odds with more recent efforts to protect cultural heritage. These include the establishment of national antiquities laws, antiquities offices and museums, as well as international conventions that have attempted to limit the trade in looted antiquities and protect cultural heritage during wartime. The contemporary development of cultural heritage laws, government services and museums in the Middle East according to scientists reflects the diversity of claims and uses of cultural heritage for colonialism, collectors and nationalistic political and economic interests (Emberling et. al. (2018).

The concept of cultural heritage is associated with centuries-old castles, mansions, city squares, natural works of nature, etc. However, it was not easy to preserve this, especially in the 20th century, when the wars that affected the world affected the public's attitude to the history, art and traditions surrounding us, so all the listed processes encouraged the states to unite and create a common protection of real cultural heritage (Smith, 2007).

Today, in many countries, it is clearly understood that the activities of creating, using, preserving and integrating "heritage" into everyday life are related to the maintenance of group identity in a global world that is losing stability and continuity, and to the problems of individual or communal memory and the transmission of social values to future generations (Glemzha, 2002).). In Lithuania relatively recently, since the restoration of independence, the search for identity in the cultural heritage of the state has begun anew. As information about cultural heritage objects is constantly increasing, and the professionalism of specialists in this field is increasing, the lists of protected cultural heritage objects are constantly being filled and revised. Cultural heritage buildings and manor houses, which were not sufficiently valued during the Soviet period due to political motives, are also important (Glemzhas, 2002). It is also important to mention the active society, which is not always alone, what is done, how the old architecture of the cities and the environment of the areas are integrated. All this promotes the vitality of the national culture, gives it common features of identity recognition, as well as gathers interested

groups of society, defines the conditions of modern life and encourages creativity (Ashworth, et. al., 1994).

This article focuses on immovable cultural heritage as a tourism object, which is clearly regulated by the Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania and other legal norms, but which increasingly causes legal problems regarding the inventorying, accounting and announcements of heritage objects under the protection of cultural heritage, the planning of protected areas and the possibility of collateral. In addition, when discussing immovable cultural heritage, it is important to pay attention to the public interest of society, i.e. i.e. the consequences of cultural heritage protection problems, the dissatisfaction of professionals, communities, and business entities with the performance of state cultural heritage protection functions, the increasing number of complaints submitted to the responsible departments and courts about endangered and destroyed or improperly administered cultural heritage – all this reflects not only on the lack of funds, but also on disruption of administrative functions. Thus, protecting immovable cultural heritage is not easy because there are many interest groups at work. The article emphasizes that immovable cultural heritage is a public interest. This obliges both state institutions and society to be active in order to preserve and integrate cultural heritage protected objects in today's world.

The object of research– protection of immovable cultural heritage as a tourism object in a legal context.

The aim of research– to analyze legal aspects and problems of immovable cultural heritage as a tourism object.

The main research methods: document analysis, (SWOT) analysis, systematic analysis, comparative analysis, logical – analytical and meta – analysis methods.

Results

The concept of cultural heritage

For thousands of years, the development of nations has been based on tradition – the most reliable sociocultural tool for establishing, protecting and continuing the identity of groups (Markevičienė, 2016). Nations supported the vitality of their heritage, and decayed things were naturally replaced with similar ones, knowledge (how and what to do) was considered extremely important, and it had to be passed down from generation to generation. For several centuries, individual monuments and objects of architecture, art or history were considered cultural heritage. However, with the formation of the mod-

ern industrial and post-industrial society, with the strengthening of globalization, traditions began to disappear faster and only from the 20th century. In the second half, the cultural heritage was considered the totality of the cultural and natural environment (Universal Lithuanian encyclopedia, 2022).

According to Loulanski (2006), the conceptual focus of cultural heritage has shifted along three interrelated and complementary directions: 1) from monuments to people; 2) from objects to functions; thus 3) from conservation per se to targeted conservation, sustainable use and development.

The protection of cultural heritage is a special tool developed in modern times, designed to preserve the testimonies of the past (Markevičienė, 2016).

According to Avrami, 2000 the existence of cultural heritage and its function in society is determined historically. Preservation of the old heritage was also a matter of tradition for the society. Regulations and legal norms specifying what constitutes heritage are defined by concepts such as "masterpieces", "intrinsic value" and "authenticity".

The Supreme Court of Lithuania has stated that "cultural heritage objects that can be registered as immovable cultural values<...>can be recognized as such, cultural heritage structures (buildings, their parts, engineering structures and other immovable objects) and cultural heritage areas, but not cultural territories of the heritage object; the presence of an engineering structure (or other object) in the territory of a cultural heritage object per se (by itself) does not mean that such an engineering structure is a cultural heritage object <...>. The recognition and registration of the status of an engineering structure as a cultural heritage object and its effects are regulated by special legal acts regulating the legal relations of cultural heritage protection. In contrast to the recognition of a structure as an engineering structure, when deciding on the qualification of a structure as an object of cultural heritage, it is necessary to take into account the data of the Register of Cultural Values" (Ruling of the Supreme Administrative Court of Lithuania, 2018).

The Law on the Protection of Immovable Cultural Heritage defines a cultural heritage object as single, complex or complex objects that are registered as immovable cultural assets and buildings or other immovable objects in their parts that have valuable properties (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004).

In the laws of the Republic of Lithuania, cultural heritage is defined as "<...> cultural values that are inherited, inherited, created and transmitted from gen-

eration to generation, important from an ethnic, historical, aesthetic or scientific point of view" (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004). It can be said that heritage can be anything that people want to preserve, but objects protected by the state become heritage only when they are protected and officially recognized in accordance with the law (Bagočius et al., 2011), after all, heritage is "important, the part of the economy that creates added value, which must be managed and used in order to preserve all heritage values and preserve the rights of future generations" (Resolution of the Seimas of the Republic of Lithuania, 2010). In the Western world, modern heritage is understood in symbolic and ecotopical terms (Pociūtė, 2005). The symbolic concept of heritage is characterized by the fact that the greatest attention is not paid to the preservation of the authenticity of objects, but the aim is to use them for the consolidation of historical memory, the emphasis is not on the whole (cultural or natural territory), but on individual objects. In the context of the ecotopic concept, cultural heritage is understood as an everyday part of life, inseparable from the surrounding environment. Cultural heritage is associated with natural heritage and it is treated as a whole.

Immovable cultural heritage – preserved or non-preserved material cultural values built, equipped, created or emphasized by historical events, directly related to the territory occupied and required for their use (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004). Immovable cultural value is the set of valuable features that determine the significance of a cultural heritage object or location, important to society as its cultural property, regardless of who owns it by right of ownership (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004).

A fairly universal (encompassing the concepts of various eras), sufficiently precise (separating heritage from what cannot be called heritage) definition of heritage could be as follows: heritage is an object or phenomenon that has three characteristics: realistic duality, social relevance and certainty (Kulevičius, 2016). Heritage is a cultural value that has lasting historical value (Gražulevičiūtė-Vileniškė, 2008). In summary, it can be said that heritage connects the past with the present and the future, people with the traditions and values of their region, and combines into an inseparable whole with the natural heritage.

Legal regulation of cultural heritage protection

It should be noted that the main role in cultural heritage law is given to universality both in terms of

the rhetoric used by UNESCO and other actors, as well as in international legal acts created to protect heritage (UNESCO/Culture <https://www.unesco.org/en/culture...>, 2022).

The practice of the European Court of Human Rights on the protection of cultural values states that "the protection and sustainable use of cultural heritage is important for maintaining the quality of life and maintaining the historical, cultural and artistic roots of the region and its inhabitants. These are values whose protection and promotion binds public administration institutions" (Ruling of the Supreme Administrative Court of Lithuania, 2018). Thus, in order to preserve the state cultural heritage, each state provides legal measures for the protection of cultural heritage, obliging people to act according to certain rules and norms. So, in a general sense, there are various methods of heritage protection, and it all depends on the national heritage protection policy, financial possibilities, condition of the heritage object, type, etc. The most common are the following: accounting, announcement as protected, storage, when institutions authorized by law check compliance with legal norms and protection requirements, as well as knowledge, its dissemination and the extremely important process – restoration/revival of disappearing or decayed objects (Bagočius, 2011). And cultural heritage itself is understood in a broad sense as material – it consists of movable and immovable values, as well as immaterial – its essence is the traditions, knowledge and abilities passed down from generation to generation, the cultural and historical landscape, which reflects the relationship between man and the environment (Republic of Lithuania Resolution of the Seimas, 2010). Movable cultural values and immovable cultural heritage are legally regulated in Lithuania. Movable cultural values – according to their purpose and nature, they are movable material works of human activity and other movable objects that have cultural value and are included in the state accounting of movable cultural values (Law on Protection of Movable Cultural Assets of the Republic of Lithuania, 2008). Also referred to as antiques – all immovable material works of human activity and other movable objects or their parts created 50 years ago or earlier, regardless of their cultural value. Immovable cultural heritage – "a part of cultural heritage that consists of preserved or non-preserved material cultural values built, equipped, created by past generations or emphasized by historical events, directly related to the occupied territory and required for their use." Thus, in this work, all attention is paid to immovable cultural heritage, its regulation and administration.

The national policy for the protection of immovable cultural heritage of Lithuania is formed by the Seimas of the Republic of Lithuania, the Government and the Ministry of Culture, the development of which is assisted by the State Commission for Cultural Heritage, which has the authority to provide assessments, proposals and analyzes of trends and heritage protection experience (Law on Immovable Cultural Heritage Protection of the Republic of Lithuania, 2004). Analyzing the State Commission of Cultural Heritage, she is an expert and advisor on issues of the state policy of cultural heritage and its implementation, to the Seimas of our country, the President of the Republic and the Government. The commission is accountable to the Seimas and in its activities is guided by the Constitution of the Republic of Lithuania, laws regulating the protection of cultural heritage, regulations of the State Commission for Cultural Heritage approved by the Commission and other regulatory legal acts. Pursuant to the Law on the State Cultural Heritage Commission of the Republic of Lithuania, the commission consists of 12 members, of which: 2 members are appointed and dismissed by the President of the Republic, 4 members by the Seimas (at the recommendation of the Education, Science and Culture Committee of the Seimas), 4 members by the Prime Minister (at the recommendation of the Minister of Culture), 2 members are elected and revoked by public organizations registered in accordance with the law, whose activities are related to the comprehensive promotion of culture (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004).

The State Commission for the Protection of Cultural Heritage is an advisor and expert on the protection of immovable cultural heritage for subjects of the legislative and executive authorities of Lithuania. Article 5 of the Law on the State Heritage Commission specifies its main tasks, such as: to participate in the formation of cultural heritage protection policy and strategy; also submit proposals to the Seimas, the President of the Republic, the Government and other state institutions regarding the policy and strategy of cultural heritage protection; to submit conclusions and proposals to state institutions on matters of cultural heritage protection; to inform the Seimas, the President of the Republic and the Government about the implementation problems of the state policy of cultural heritage protection; prepare drafts of laws and other legal acts related to cultural heritage protection, consider cultural heritage protection problems, proposals and perform other functions established by law, etc.

Article 5 of the Law on the Cultural Heritage Commission. It is stated that the commission evaluates the programs implementing the policy and strategy of cultural heritage protection and the use of budget funds intended for the protection of cultural heritage, considers and approves proposals to declare cultural heritage values as cultural monuments or cancel their protection, evaluates the responsible state institutions and bodies performing the functions of cultural heritage protection annual reports and activities of municipal institutions and institutions from the point of view of cultural heritage protection.

The international practice of cultural heritage protection shows that in order to achieve sustainable development, economic and social well-being, and improving the quality of life, the protection of cultural heritage must be integrated into broad state social and economic programs that strategically and systematically unite broad areas of modern society's life, and this can be achieved by integrating the protection of intangible, movable and immovable cultural heritage, natural heritage and landscape into programs jointly implemented by the Government and various ministries (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004). The Law on Protection of Immovable Cultural Heritage of the Republic of Lithuania states that the state administration in the field of protection of immovable cultural heritage is organized and responsible for it only by the Minister of Culture. Normative legal acts in the field of immovable cultural heritage protection are adopted by the Government, the Minister of Culture, the Director of the Department of Cultural Heritage under the Ministry of Culture and municipal councils. The government is obliged to declare cultural heritage objects and areas of national significance as cultural monuments, and is also responsible for the implementation of heritage protection obligations assumed by international agreements, and performs other functions established by law. Normative legal acts of the Government, ministries, other Government bodies related to the protection of immovable cultural heritage must be submitted to the Ministry of Culture for coordination in accordance with the procedure established by legal acts before their adoption. Thus, cultural heritage interests are represented at the level of the Minister of Culture.

According to the Law on the Protection of Immovable Cultural Heritage, the conditions for the design of the cultural heritage structure for administrative construction works (temporary protection regulations) and the permits to carry them out are issued in accordance with the procedure established by the

Law on Construction. Prior to issuing the permit, no later than one month from the date of project submission, the heritage protection (special) expertise of these works and the structural project expertise must be carried out in accordance with the procedure approved by the Minister of Culture – in cases and procedures approved by the Ministers of Environment and Culture (Law on the Protection of Immovable Cultural Heritage of the Republic of Lithuania, 2004).

For example, the Supreme Administrative Court of Lithuania examined a case (Decision of the Supreme Administrative Court of Lithuania, 2018) in which the applicants sought to form a parcel of land in the territory of the city of Palanga, following the procedures for the restoration of property rights. Palanga city municipality refused to form a plot of land, because the desired location of the plot of land was in the territory of cultural values, which cannot be divided into parcels. In this regard, the court stated that the plot of land requested by the applicants to be formed falls within the territory whose status is immovable cultural value (preserved for public knowledge and use), accordingly it came to the conclusion that the Administration legally and reasonably refused to form a plot of land for the restoration of property rights in kind, having established that this plot is land redeemable by the state in accordance with Article 12, paragraph 1, item 3 of the Restoration Law, which, among other things, stipulates that the land is redeemable by the state if it is occupied by the territory of cultural property protection.

In the practice of the Supreme Administrative Court of Lithuania, a case was examined (decision of the Supreme Administrative Court of Lithuania, 2018), where a dispute arose regarding the decision of the Vilnius branch of the Department to refuse to approve the capital repair project of a residential building (located in the old town of Vilnius). The department argued its refusal to approve the project by the fact that the installation of two rows of skylights is not typical in the context of the old town of Vilnius. The applicant, presenting photos of several houses to the court, argued that there are buildings in the Old Town of Vilnius that have several rows of skylights and there is no scope of legislation prohibiting the design of such skylights. Considering the abundance and dynamism of legal issues that arise in real life, it is impossible for the legislator to regulate in detail all possible situations, therefore in certain cases it is limited to more abstract legal norms". The case also established that the applicant, apart from the photographs, did not provide any other evidence (expert

conclusions, etc.) that would establish that two-row skylights are typical of the old town of Vilnius.

In one more case of the Supreme Court of Lithuania (Decision of the Supreme Court of Lithuania, 2013), the issue of arbitrary construction in the territory protected by the state was examined. The assessee carried out arbitrary construction (built a brick extension) without having a coordinated project of the extension and a construction permit. It is important to note that a construction permit was issued for the main building to perform reconstruction works. When making its decision, the court took into account the fact that the building, next to which the disputed building was built, is located in the territory of the old town of Ukmergė, which is included in the list of urbanized areas of the register of immovable cultural values (decision of the Supreme Court of Lithuania, 2013). The factual circumstance of the case is particularly important, that when obtaining a permit for the reconstruction works of the main building, the appraiser knew that it was a protected state territory, but he started the construction of the extension completely without any legal basis, and did not take any steps to obtain permits from the relevant institutions (in this case, the Department). Courts, when deciding cases of this type, regarding the civil legal consequences of illegal construction, emphasize that the norms of public law "do not establish the legal possibility to recognize the construction of a built building as legal, if the building was built without a permit, design documentation, deviated from the essential parameters of the design decisions. If the necessary documents for the construction are not obtained, there is no reason to claim that, with long-term use of illegally built structures, there is a reasonable expectation of the legalization of such construction" (ruling of the Supreme Court of Lithuania, 2013). It should be emphasized that the court must assess in each case, "<...>which of the values – the correct planning and use of the protected area or the stability of the relations for the implementation of the right to construction – is more important in a specific case of public interest protection." Thus, in the aforementioned case, the court found that the public interest in the relationship between the planning and use of the protected area outweighs the implementation of the builder's right to construction.

In conclusion, it is important to emphasize that the demolition of a structure is an extreme measure of illegal construction, and this especially affects territories of national significance, the preservation of which for future generations is the duty of the state.

Court practice states that if the owner of the property knows where he is purchasing the real estate, what is its importance and significance in the territory of Lithuania, the violated public interest outweighs the builder's interest in acquiring the ownership right to the disputed buildings (Lithuania Supreme Court ruling, 2010). Therefore, the person who manages the property in the cultural heritage territory must take responsibility and the requirements of the state, but accordingly, such a real estate owner should be provided with suitable conditions to get to know, consult, receive all the necessary information about the significance of the cultural heritage and the duty to protect it, and should do this outside of the real culture competent institutions responsible for proper administration of heritage protection.

It is important to note that the recognition of a structure or area as a cultural heritage object or cultural heritage site creates obligations for the owners or managers of the structures located in it, the essential purpose of which is the protection of cultural heritage. All legal regulation related to this must be evaluated precisely for this purpose – to ensure the protection of cultural heritage and valuable properties by creating proportional restrictions on the owners of objects. However, it is the duty of the state to ensure that the concepts describing cultural heritage are clear and understandable, so that there are as few variations as possible, while maintaining the principle of proportionality (constraints on the interests of owners and managers proportionate to the public interest) – to preserve immovable cultural values as a public interest and to maintain the constitutional right to property.

Conclusions

1. Cultural heritage is a public interest. This obliges both state institutions and society to be active in order to preserve and integrate cultural heritage protected objects in today's world.

2. Cultural heritage objects that can be registered as immovable cultural values<...>can be recognized as such, cultural heritage structures (buildings, their parts, engineering structures and other immovable objects) and cultural heritage areas, but not cultural territories of the heritage object; the presence of an engineering structure (or other object) in the territory of a cultural heritage object per se (by itself) does not mean that such an engineering structure is a cultural heritage object.

3. The main role in cultural heritage law is given to universality both in terms of the rhetoric used by UNESCO and other actors, as well as in international legal acts created to protect heritage.

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