ELSA LEGAL RESEARCH GROUPS

MULTILATERAL LEGAL RESEARCH GROUP

PROTECTION OF CULTURAL HERITAGE

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MULTILATERAL LEGAL RESEARCH GROUP
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FOREWORD

What is ELSA?

The European Law Students' Association (ELSA) is a non-political, non-governmental, non-profit making, independent organisation which is run by and for students. ELSA has 43 Member and Observer countries with more than 375 Local Groups and 60 000 students. The Association was founded in 1981 by five law students. Since then, ELSA has aimed to unite students from all around Europe, provide a channel for the exchange of ideas and opportunities for law students and young lawyers to become internationally minded and professionally skilled. The purpose of the Association is to contribute to legal education, to foster mutual understanding and to promote social responsibility of law students and young lawyers. Our focus is to encourage individuals to act for the good of society in order to realise our vision: "A just world in which there is respect for human dignity and cultural diversity".

What is a Legal Research Group?

A Legal Research Group (LRG) is an academic, legal writing project that provides law students and young lawyers with the opportunity to develop various legal skills, such as legal English, legal research and writing skills, as well as soft skills. The LRG involves a group of law students and young lawyers conducting research on a specified topic of law with the aim to make their work publicly accessible. The project can work at local, national, or international level. The first working LRG was formed by ELSA International in 1996 on aspects of "International Criminal Law". Since the publication of that first research in 1997, ELSA International has launched LRGs on different topics of law, making the project more appealing and popular to its National Groups.

What is the Multilateral LRG on the Protection of Cultural Heritage?

The following project represents the combined efforts of the national ELSA groups of Austria, Bulgaria, Georgia, and Lithuania. The LRG introduces a never-before-examined theme by any LRG – cultural heritage and its protection in international and national contexts. We believe that it represents a unique look at cultural rights as human rights and hope that the fruits of our joint labour will be helpful for anyone interested in cultural heritage, but also will bring the ELSA network's attention to the importance of the matter, especially in present times where we are faced of an increasing number of war conflicts and magnitude of natural disasters.

ACKNOWLEDGEMENTS

The Multilateral LRG on the Protection of Cultural Heritage would not have been possible without the help and support of many individuals. ELSA Austria, ELSA Bulgaria, ELSA Georgia, and ELSA Lithuania would like to thank and warmly congratulate all researchers and authors who worked on this project. It involved under- and postgraduate law students who were passionate enough to accept the challenge to work on this broad topic. We would like to thank you for your dedication, your creative thinking and writing skills that made this project not only a reality, but a sure success.

We would also like to express our gratitude to our Academic Supervisors, Ilona Andriušienė, Tamta Shamatava, Krasimir Manov, Peter Strasser, and Violeta Petkevičienė for supporting us and providing valuable guidance throughout our journey of making this LRG a reality. All this would not have become a reality if it were not for those who were cautious for the things we looked over – a special thank you goes to all Linguistic and Technical Editors and Designers.

Thankfully yours,

Danielė, Fabio, Ketevan and Velina

Coordinators of the Multilateral Legal Research Group on the Protection of Cultural Heritage

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8. De lege ferenda

LIST OF ABBREVIATIONS

Common

CoE	Council of Europe
ICC	International Criminal Court
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICOMOS	International Council on Monuments and Sites
INTERPOL	International Criminal Police Organisation
IUCN	International Union for Conservation of Nature
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific, and Cultural Organisation

Austria

ABGB	Allgemeines bürgerliches Gesetzbuch, Civil Law Code
BDA	Bundesdenkmalamt, Federal Office for the preservation of monuments
B-VG	Bundes-Verfassungsgesetz, Federal Constitutional Law
DMSG	Denkmalschutzgesetz, Monument Protection Act 92/2013
StGB	Strafgesetzbuch, Criminal Code
StGG	Staatsgrundgesetz, Austrian Bill of Rights of 1867
VwGH	Verwaltungsgerichtshof, Administrative court of justice

Bulgaria

NIICH	National Institute of Immovable Cultural Heritage
SG	State Gazette

Georgia

NACHPG	National Agency for Cultural Heritage Preservation of Georgia

Lithuania

BRHC	Baltic Region Heritage Committee

INTRODUCTION

By Velina Stoyanova and Ketevan Makharashvili

To sweep the gold and silver, however, into their own coffers was perhaps reasonable; for it was impossible for them to aim at universal empire without crippling the means of the rest of the world, and securing the same kind of resources for themselves. But they might have left in their original sites things that had nothing to do with material wealth; and thus at the same time have avoided exciting jealousy, and raised the reputation of their country: adorning it, not with pictures and statues, but with dignity of character and greatness of soul. I have spoken thus much as a warning to those who take upon themselves to rule over others, that they may not imagine that, when they pillage cities, the misfortunes of others are an honour to their own country. The Romans, however, when they transferred these things to Rome, used such of them as belonged to individuals to increase the splendour of private establishments, and such as belonged to the state to adorn the city. . .

Polybius – Histories, 9.10 The Spoils of Syracuse: Works of Art Taken to Rome[1]

Humans throughout history have always been fond of their own past, as knowledge of sociocultural origins is fundamental for the development of individual and social identity. Ever since Antiquity people developed the idea of safeguarding their society's cultural artefacts for future generations.[2] Despite being recognised long ago as a topic of important discussions around the increasing threats of destruction by the traditional causes of decay, but also by worsening social and economic conditions in some areas which provide with more cases of damage or destruction, cultural heritage is currently the subject of increasing attention both by scholars and the general public. Nowadays, the international community, driven by the understanding that objects of cultural noteworthiness are of value to humanity and must be passed onto future generations, has made significant efforts to create a working system of protection. What is even more, the conceptual scope of cultural heritage is expanding due to the new perspectives related to sustainability[3] and economic impact as a means to stimulate economic activity in less developed regions.[4] For one to acquire the necessary knowledge and appreciation for cultural heritage, both tangible and intangible, it is necessary to give a proper introduction to the matter. The Legal Research Group's report begins with an attempt to provide the reader with a definition

[1] Polybius, The histories of Polybius Translated from the text of F Hultsch by ES Shuckburgh (Macmillan 1889) <http://data.perseus.org/citations/urn:cts:greekLit:tlg0543.tlg001.perseus-eng1:9.10> accessed 15 September 2023

[2] One of the most prominent examples being Cicero's speeches against Verres, who was prosecuted for excessive looting of Sicilian cities while being Sicily's governor. Much later on Hugo Grotius and Emmerich de Vattel separately established principles stating that, as works of art were not useful to the military effort, they should be protected.

[3] cf A Pereira Roders and R van Oers, 'Editorial: Bridging Cultural Heritage and Sustainable Development' (2011) 1 Journal of Cultural Heritage Management and Sustainable Development 5

[4] J Blake, 'On Defining the Cultural Heritage' (2000) 49 International & Comparative Law Quarterly 61

of cultural heritage in its various forms. Then it is this research's objective to present a brief overview of the historical development of international law in the field of cultural heritage and discuss the current development of the matter in the EU context. However, examining only the European Union's efforts in safeguarding cultural heritage will negatively affect the objectivity and comprehensiveness of the study. Moreover, it is long ago recognised by society that cultural practices are of value to humankind and their safeguarding encourages international co-operation and prevents conflicts, which naturally arises the need for protective measures to most definitely be taken on a larger scale. In the context of this statement one of the points brought up in the Foreword is that of international protection standard-setting and the role of other intergovernmental organisations in the quest to protect cultural heritage. Regarding the presented national reports of Austria, Bulgaria, Georgia and Lithuania, their research scope is focused predominantly on tangible cultural heritage.

Section 1: Definition of cultural heritage

Every society creates its own traditions and monuments that hold the collective memory and cultural significance to its members and is passed down to the next generations with great care and symbolism as a form of heritage. We are not only surrounded by this heritage in our everyday life, but also continue to create mundane objects that may attain cultural or historical significance or reflect a prevailing fashion. This shows that above all cultural heritage is a "living organism" – consequently, it would be wrong for one to only imagine it as "items created long ago in the past and brought in the present". It is more accurate and modern to think of cultural heritage as an exponentially growing phenomenon which is enriched continuously to this day by new creations. Its ever-expanding scope defines easy description or definition due to this particularity. Attempts at defining terms such as 'cultural heritage', 'cultural property' or 'antiquities' in a legal context, however, in order to elevate certain objects of significant value to a higher realm of preservation have occurred regionally in legislation policies over the past 200 years. In the context of international legal cooperation cultural heritage was first addressed in relation to the customs of war in 1889 with the Hague convention and since then a large number of international treaties dedicated to its protection for future generations have been developed by UNESCO and other intergovernmental organisations such as the EU and the Council of Europe. Nowadays the efforts of giving a clear definition to what should be considered cultural heritage in relation to providing adequate protective measures are made mostly on an international level through the adoption of international conventions addressing the importance of shielding 'cultural heritage".

Despite this frequent usage of the term in UN and UNESCO Conventions and Recommendations, there is no generally acceptable definition of the concepts of "cultural heritage" or "cultural property". Each legal instrument has employed a different definition drafted for its specific purposes. This phenomenon is not a consequence of an unwillingness to make an advancement in this direction, but rather has another specific explanation. Globalisation, technological advancements, and digitalisation of arts combined with the constant implementation of international instruments have led to the ever-expanding scope of the term and the areas in which it is used, as each treaty or text introduced a new aspect of cultural heritage. Based on these particularities there is a difficulty to pinpoint the core of the concept of "cultural heritage" and its limits. The fast fashion of development of the concept requires a workable definition of what could be considered cultural heritage. This was noted by Prott and O'Keefe and according to them, "...for various reasons each Convention and Recommendation has a definition drafted for the purposes of that instrument alone; it may not, at this stage be possible to achieve a general definition suitable for use in a variety of contexts".[5] However, it is unsatisfactory to have each international instrument include its own definition which lists or describes the subject of interest and lack of any generally accepted by scholars and practitioners' definition, as this absence opens the doors to interpretations without reference to any set of principles.[6]

The problem becomes more complex when we consider that national legislation may not serve as a starting point to give a proper definition, as it employs a wide variety of methods to delimit what is to be considered cultural heritage - ranging from the use of general language to the nomination of specific objects that are protected by the law. Strati rightfully notes: "The terminology used reflects different ideological points of view regarding such property. As States are primarily concerned with their own national heritage, the definitions which they have adopted reflect the specific characteristics of their cultures".[7]

Regardless of the above-mentioned problems of definition, it is widely accepted that **cultural heritage** is the heritage of tangible (movable, immobile and underwater objects, monuments, and sites) and intangible assets (embedded into cultural, and natural heritage artefacts) of a group or society that is inherited from past generations and considered to be of significant value to said group, society, or all nations of the world. Cultural heritage encompasses a wide variety of natural

[5] LV Prott and PJ O'Keefe, *Law and the cultural heritage* (Butterworth & Co Ltd 1984) 8
[6] cf Blake (n 4) 61–85
[7] A Strate̅, 'The Notion of the Underwater Cultural Heritage', The protection of the Underwater Cultural Heritage: An emerging objective of the contemporary law of the sea (Martinus Nijhoff Publishers 1995) <https://brill.com/display/book/9789004479463/B9789004479463_s006.xml> accessed 19 October 2023

or human-made sites, monuments, artefacts and practises a society may regard as important to its collective history due to symbolic, historic, artistic, aesthetic, ethnological or anthropological, scientific, and social noteworthiness, and demanding of conservation. In this case, contrary to the more widely used meaning of "heritage," it does not consist of property in the legal sense, but of culture, values, and traditions.

Historically, the legal concept of cultural heritage on an international level and the understanding of the importance it holds to humankind appears in the Hague Convention of 1954, regarding its protection in the case of armed conflict. The convention introduces a definition of "cultural property", which tries to encompass all objects of cultural value by eliminating the distinction between them based on national origin or current ownership in an attempt to provide as vast of a protection as possible. The provisions put emphasis on the importance cultural property holds to people. Two years later in 1956 the UNESCO Recommendations on International Principles Applicable to Archaeological Excavation opted the principles of these excavations to be applied to all remains, the preservation of which is of public interest due to their artistic and historic significance.[8] UNESCO recognises that study of works of the past fosters mutual understanding between nations and that the history of man implies the knowledge of all different civilizations to have existed. It is understood by the international community that cultural heritage is of general interest to all countries and therefore it is necessary that all remains and objects of cultural significance be studied and taken into safe keeping.

However, at that period of time documents still lacked a proper definition of what is to be considered cultural heritage and what not. It was in 1964 when the international community would try to define this concept by the composition of the International Charter for the Conservation and Restoration of Monuments and Sites (Venice Charter). Cultural heritage is presented as "imbued with a message from the past" and its monuments "remain to the present day as living witnesses" of people's age-old traditions.[9] The Charter defines "historic monument" in article 1, specifying that: "The concept of a historic monument embraces not only the single architectural work but also the urban or rural setting in which is found the evidence of a particular civilization, a significant development, or a historic event. This applies not only to great works of art but also to more modest works of the past which have acquired cultural significance with the passing of time."[10]

[8] UNESCO, Recommendation in International Principles Applicable to Archaeological Excavations (New Delhi 1956)
[9] ICOMOS, International Charter for the Conservation and Restoration of Monuments and Sites (Venice 1964)
[10] ibid

Following the Venice Charter, international documents gradually widened the scope of the aforementioned definition by incorporating new elements. In the UNESCO Convention on the protection of world, cultural and natural heritage (1972), the expression 'cultural heritage' encompasses monuments, groups of buildings and sites, all of which are of "outstanding universal value" from a historical, artistic, scientific, aesthetic, or ethnological point of view.[11] Next the Charter for the Conservation of Historic Towns and Urban Areas made an important innovation – it recognised both tangible and **intangible** heritage as the object of protection. This was made possible by underlining that historic cities embody the values of traditional urban culture, values which have dimensions both material and spiritual.[12]

With time, the focus of protection shifts to both tangible and intangible heritage, hence the Charter of Krakow 2000, a monument is defined as an entity "the bearer of worth and forming a support to memory. In it, memory recognises aspects that are pertinent to human deeds and thoughts, associated with the historic timeline."[13]

a. Tangible cultural heritage

Also referred to as cultural property, it includes the physical, or "tangible" heritage of a culture, whether natural or human made. It denotes **physical artefacts** produced, maintained, and transmitted intergenerationally in a social group. These could be e.g. artworks, manuscripts, monuments, natural phenomena, and buildings. By the notion of tangible heritage, we denote aspects of one society's culture grounded in various physical objects and architecture landmarks. It includes both the creation of said physical items of significant cultural, spiritual, symbolic, or religious value and their usage in everyday life or special cultural practices.

Generally, this category of tangible cultural heritage is divided into two main subgroups of movable and immovable objects of cultural value. However, in recent years new developments in international legal-making have introduced contemporary categories of cultural objects – underwater heritage as a specific undervalued (but in need of special care) up until the 21st century subgroup and documentary and digital heritage as a reflection of the ongoing digitalisation of the world.

i. Movable cultural heritage

Movable cultural heritage denotes material creations or other objects of significance due to cultural value, which are movable by their designation and nature. In 1978 the UNESCO

[11] Convention Concerning the Protection of the World Cultural and Natural Heritage, art 1
[12] Charter for the Conservation of Historic Towns and Urban Areas (Washington Charter)
[13] The Cracow Charter 2000, Principles for the conservation and restoration of built heritage

Recommendation on Movable Cultural Property provides the international community with the following definition of this term, thus stating that movable cultural property is "all movable objects which are the expression and testimony of human creation or of the evolution of nature and are of archaeological, artistic, scientific or technical value or interest'.[14] These objects fall within one or more of the categories of objects of ethnography, military history, objects of decorative or fine art, books, records, documents, photographs, graphic, film or television material or sound recordings. The Recommendation is intended to widen the existing legal framework of protection of movable cultural property and identifies some measures to safeguard it in cases of damage, alteration or loss resulting from transportation or exhibiting, environmental conditions and other unfavourable conditions.

ii. Immovable cultural heritage

This notion is defined as any permanent structures, land or other objects of historical value that are connected to the ground by a fixed foundation. Immovable cultural heritage includes buildings, residential projects or other historic places and monuments.

iii. Underwater cultural heritage

A legal definition of this type of cultural heritage is given by the Convention on the Protection of the Underwater Cultural Heritage adopted in 2001 by the General Conference of UNESCO. The convention intends to protect "all traces of human existence having a cultural, historical or archaeological character" which have been underwater for over 100 years. The definition includes any object that has been partially or totally immersed, periodically or permanently, under bodies of water – oceans, lakes, or rivers. Along with the 100-year limitation period, the Convention accepts "cultural, historical or archaeological character" as qualifying concepts that define the core of underwater cultural heritage. This provision is made explicitly as some underwater objects lose their significance when taken out of water.

The adoption of the convention was strongly motivated by the understanding that underwater cultural heritage is largely undervalued, thus leaving it to be particularly vulnerable. Furthermore, this legal instrument has the objective of creating a customary framework to help combat illegal looting and piracy in waters worldwide. As per the provisions of the convention States are obligated to preserve sunken cultural property within their territory and the high seas as well. New measures regarding the creation of a common framework for States on how to identify, research and protect underwater heritage under their jurisdiction while ensuring its preservation.

[14] UNESCO (1978) Recommendation for the Protection of Movable Cultural Property <http://portal.unesco.org/en/ev.php-URL_ID=13137&URL_DO=DO_TOPIC&URL_SECTION=201.html> accessed 10 August 2023

The mission of preservation is quite significant as it allows for the retelling of historical events to future generations.

Some examples of objects that fall under the category of underwater cultural heritage include shipwrecks, sunken cities, prehistoric artwork, treasures that may be looted, submerged landscapes, burial sites, and old ports that cover the oceans' floors.

iv. Documentary and digital heritage

Documents are objects that contain analogue or digital content (testimonies) and the carriers themselves on which the content resides. Thus, they have two main components: the information content and the carrier on which it resides. The content itself may contain various codes (such as text), images and sounds. The carrier of this information may have aesthetic, cultural or technical qualities important to the preservation of cultural heritage. The guidelines of the Memory of the World Programme, which oversees the heritage housed in museums, archives, and libraries around the world, provide a definition of documentary heritage as a collective term for "single or groups of documents with significant or enduring value to a community or to humanity generally, and whose deterioration or loss would be a harmful impoverishment".[15] Some of its characteristics are that such artefacts must be mobile, consisting of signs/codes, sounds and/or images, can be conserved in some way, and may be reproduced.

Documents may be different kinds. This kind of heritage is traditionally associated with archives, museums, and libraries, but the new technologies have revolutionised methods of identification, protection, transmission, and reproduction to create digital archives, which may be accessible to a wider audience. It is widely accepted that in this category of cultural heritage involves various types of documents ranging from the well-known text documents (manuscripts, books, newspapers, correspondence), non-text (drawings, maps, music scores) to the newer content of audiovisual (films, photographs) and even virtual documents (websites). When it comes to text documents their content may be recorded in ink, paint, digits or other and the carrier itself may be paper, papyrus, parchment, stone, fabric, hard disk, data tape or other material. Similar is the character of non-text documents. When it comes to the last two kinds of documents, audiovisual ones on physical carriers are similar to the above-mentioned carriers, however if they are digital, they are more similar to virtual documents that carry data on different devices.

Traditionally, analogue text documents are considered as original sources of information. Such documents may owe their importance as cultural heritage objects to the unusual nature of their

[15] UNESCO (2021) General guidelines of the Memory of the World (MoW) Programme, UN Doc CI/MOW-REG/2021/Guidelines/1

carrier (illuminated manuscript) or historical and cultural link (a music score written by Tchaikovsky, or a collection of letters written by Merlyn Monroe). In the case of machine-readable or reproducible documents like audiovisual and digital documents, the carrier is usually of lesser importance in regard to cultural value, as digital and audiovisual information is preserved by migration from one storage platform to the other periodically. However, it most definitely must be noted that in some instances particular types of carriers hold importance – for example motion picture film where the carrier's characteristics (such as the obsolete colour process) give it significance.

Documentary heritage is of global importance and should be fully preserved and protected for all, with recognition of cultural mores. It provides the means for understanding social, political, and collective history. For each community, its documentary heritage reflects memory and identity.

Closely related to the preservation of documentary heritage is digital cultural heritage. This concept serves to encompass action related to the maintenance or preservation of cultural objects through digitisation. In its core it uses the achievements of modern digital media to help recognise and preserve cultural or natural heritage of all kinds. The importance of digital heritage is recognised by UNESCO as well. The international organisation has adopted in 2003 the Charter on the Preservation of Digital Heritage which gives a definition of this type of cultural heritage in article 1: "The digital heritage consists of unique resources of human knowledge and expression. It embraces cultural, educational, scientific, and administrative resources, as well as technical, legal, medical, and other kinds of information created digitally, or converted into digital form from existing analogue resources".[16]

The digitisation of cultural heritage serves to ensure permanent access of present and future generations to culturally significant objects or intangible heritage (literary masterpieces, paintings, buildings, archaeological sites, natural phenomena, oral traditions, customs, traditional dances). Digital materials include (but are not limited to) texts, databases, images, audio, graphics, web pages. The main objective of digitalisation is the transformation of material objects into virtual copies. New technologies nowadays enable easy access for all to digitised cultural heritage objects no matter their physical location. Aside from providing access, the creation of digital heritage is also used by researchers to monitor heritage sites to help with preservation. It aims to observe any changes or deterioration that may occur.

[16] UNESCO (2003) Charter on the Preservation of the Digital Heritage, UN Doc CL/3865

b. Intangible cultural heritage

In contrast to tangible heritage, intangible cultural heritage consists of nonphysical intellectual wealth which may manifest through practices, representations, expressions, knowledge, or skills that social groups consider as part of their culture. In other words, this type of heritage encompasses peoples' oral traditions and language, performing arts, various in nature social practices, rituals and festive events, knowledge and practices concerning nature and different traditional artisanry. Hence, intangible heritage is sometimes referred to as "living cultural heritage".[17] Today we understand that cultural heritage is composed not only of the tangible properties, but also of the living culture of communities.

Until the end of the 20th century the main goal of preserving cultural heritage was directed towards tangible cultural expressions, which could be evaluated on the basis of a standardised perception of artistic, aesthetic, architectural, and scientific value. The international community in this period had the confidence (judging by the lack of legislative will on the matter) that immaterial cultural heritage is well protected locally due to its importance to the social identity of societies. We could agree that for many centuries that the carriers of intangible cultural heritage have been successful at transmitting to future generations knowledge and traditions, hence the lack of needed action by the international community. However, it could be argued that such action should have been considered when acknowledging the effects of armed conflict on cultural heritage as a whole – armed conflicts affect not only the material side of heritage (as in e.g. artworks, monuments, manuscripts), it brings cultural prevarication and the imposition of the cultural models of the aggressors. Another factor developed in more recent years, is globalisation, which intensified intercultural contacts and by the words of Henriette Rasmussen globalisation in respect to Indigenous peoples is "another form of colonisation" and leads to "the reduction of man to uniformity".[18]

The end of the 20th century brought forward action regarding the recognition of intangible heritage as a fundamental element of cultural heritage. The Declaration on Cultural Policies from 1982 offered an updated definition of culture as "the whole complex of distinctive spiritual, material, intellectual and emotional features that characterise a society or social group. It includes not only the arts and letters, but also modes of life, the fundamental rights of the human being,

[17] cf F Lenzerini, 'Intangible Cultural Heritage: The Living Culture of Peoples' (2011) 22 European Journal of International Law 101

[18] cf L Wong (ed), 'Protecting the Heritage of Indigenous People', Globalization and Intangible Cultural Heritage: International Conference 26-27 August 2004, Tokyo, Japan (United Nations 2005) <http://unesdoc.unesco.org/images/0014/001400/140090e.pdf> accessed 17 November 2023

value systems, traditions, and beliefs".[19] Culture is an expression of human creativity, and it finds testimony in languages, rites, beliefs, historic places and monuments, literature, works of art, archives, and libraries. In 1989 UNESCO adopted the first specific international legal instrument in the scope of immaterial cultural heritage, which is the Recommendation on the Safeguarding of Traditional Culture and Folklore. This Recommendation has a limited reach as the concept of "folklore" involves far less practices than intangible cultural heritage. However, it still should be recognised as a significant first step in the right direction. The Recommendation emphasised the importance of folklore as "part of the universal heritage of humanity" and a means "of bringing together different peoples and social groups and of asserting their cultural identity".[20] The reflection on "folklore" by the international community was an important stage in the shift toward the idea of intangible heritage and commenced a progressive shift from considering cultural expressions only as material/objects to including the process of creating cultural tradition.[21]

The most important step on the international level was the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage in 2003. It gives a broad definition of intangible cultural heritage, as practices, representations, expressions, knowledge, skills (as well as the instruments, objects, artefacts, and cultural spaces associated) that social groups and in some cases, individuals recognise as part of their culture. Notably, it is transmitted from older generations to future generations, is constantly recreated by communities in response to their environment, their interaction with nature and their history, and provides social groups with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, underlines "the importance of cultural diversity for the full realisation of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognised instruments". Safeguarding of immaterial heritage is mandatory for ensuring the effectiveness of certain categories of universal human rights. Some of these rights may include (but are not limited to) the right to freedom of thought, conscience, and religion which at their core are strongly connected to one's identity, something that manifests in intangible heritage. This particularity is evident in article 18 of the Universal Declaration of Human Rights, which set the standard that all have the freedom "either individually or in community with others and in public or private, to manifest [their] religion or belief in worship,

[19] UNESCO (1982) Declaration on Cultural Policies, World Conference on Cultural Policies
[20] UNESCO (1989) Recommendation on the Safeguarding of Traditional Culture and Folklore
[21] In this sense, C Bortolotto, 'From Objects to Processes: UNESCO's 'Intangible Cultural Heritage' (2007) 21 Journal of Museum Ethnography

observance, practice and teaching". What this means is that proper conditions to ensure that intangible cultural heritage is freely and effectively enjoyed by communities and persons must be created.

Section 2: International and EU standards of protection of cultural heritage

a. Historical context of the development of international cooperation

Cultural heritage has been a subject of destruction, looting and trafficking due to its high value throughout history, particularly during military conflict. The social and economic significance of cultural heritage requires the adoption of a set of international standards that determine the minimum requirements for the proper identification, protection, and management of tangible and intangible heritage values. Since the 17th century the need for protecting cultural goods became a focus for the international community. The Royal Placat of 1666 issued by the governing council under the minority of King Charles XI of Sweden is often cited as the first cultural heritage protection law in modern times,[22] which focused on the protection of national monuments. Soon other countries followed with implementation of legal acts protecting archaeological and architectural sites. At this time, the main concern was around safeguarding heritage as a basis of national identity.

The 20th century brought cooperation regarding the topic on an international level. The development of international awareness of the value of cultural heritage for all societies gave rise to new regulations, principles and collective agreements aimed at the protection of heritage. Thus in 1899 and 1907 the Hague conventions introduced a set of standards of protection of cultural heritage in time of war as in that time it was finally understood by the States that heritage extends beyond the national borders and brings importance to humanity as a whole. The existing legal instruments were, however, powerless before the devastating effects of WWI and WWII, as mass destruction of cities and sites, and snatching of art have always been a part of war ever since ancient times.

After the devastating wars, the international community concluded that a new systematic approach for the protection of cultural heritage was needed that would involve the united efforts of countries. This is in the same period when states were in active search for the creation of a brand-new efficient system of protection that insured peace and cooperation on a broader international level. The united efforts of the international community brought to life original

[22] T Adlercreutz, 'The Royal Placat of 1666. Briefly about Background and Further Importance', Historical Perspective of heritage Legislation, Balance between Laws and Values, International conference 12-13 October 2016, Niguliste Museum Tallinn, Estonia Conference proceedings (ICOMOS Estonia NC 2017), where an English translation of the text can be found.

international organisations such as UNESCO. This international body under the UN is dedicated specifically to education, science, and culture for all people. One of the main purposes of its creation was and remains to play a regulatory role in safeguarding the historical heritage of all cultures – past and present – for the future generations. UNESCO has initiated the adoption of many conventions and other standard-setting instruments regarding the protection of cultural heritage, the first being in 1954 – the Convention for the Protection of Cultural Property in the Event of Armed Conflict, and the most recently adopted document in 2015 – Recommendation Concerning the Protection and Promotion of Museums and Collections, their Diversity, and their Role in Society.

UNESCO's response to current global obstacles was the creation of legal instruments designed to preserve heritage against the threats of the new times such as illicit trade, ransacking and terrorist attacks. The number of international crimes related to the looting and trafficking of cultural heritage has been worryingly high for the past years. They pose a huge threat to international security as such acts are often linked to financing of terrorist groups.

For example, the Convention concerning prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property of 1970 and the Convention on the Protection of the World Cultural and Natural Heritage of 1972 were introduced as the first steps in this direction of legislative measures. This development continued successfully with the Convention on the underwater heritage signed in 2001 and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in 2005. Important in the aspect of recognising the right to cultural heritage as a human right was the adoption of the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003.

War devastations caused the international community to take action progressive development of the laws of armed conflict led to the modernisation of the legal framework regarding not only war practices, but also the horrifying results of war – Protocols I and II of 1977 to the Geneva Convention of 1949 deal with the prohibition of any kind of hostile acts against historical monuments, works of art and places of worship which are of cultural or spiritual heritage as well as their use in any military effort or as the objects of retaliation. The UNESCO Convention of 1970 tries to control illegal international trade of cultural goods, as movable cultural objects were often taken from occupied territories. The Convention of 1972 on the Protection of the World Cultural and Natural Heritage provided a Training list of World Heritage in danger, as one of the greatest risks for cultural and natural heritage assets remains even today armed conflict. An important aspect of the evolution of the legal framework was to introduce regulations to local conflicts, not only those of international character.

Modern times made another significant change to the principles of international public law by recognising individuals as actors in international law. The Declaration on the intentional destruction of cultural heritage of 2003 made provisions concerning the destruction of cultural goods, both in wartime and in peacetime. This declaration makes a huge step in the right direction by recognising the responsibility of both States and individuals in regard to destruction of cultural heritage. Individuals bear legal responsibilities for criminal activity involving objects of cultural value. In relation to this, crimes against and affecting cultural heritage are a pervasive feature of the atrocities within the International Criminal Court's jurisdiction (ICC). The Office of the Prosecutor to the ICC has investigated and prosecuted crimes against or affecting cultural heritage. The Office first brought charges relating to cultural property against an individual in the Al Mahdi case in the Situation of Mali in September 2015. In 2016, Mr Ahmad al-Faqi al Mahdi was convicted of the war crime of intentionally directing attacks against buildings dedicated to religion and historic monuments. This case focused solely on crimes against cultural heritage and sent an example that the intentional targeting of objects of cultural significance is a serious crime against humanity since it affects not only locals, but the international community as well.

Thus, we can confidently conclude that in the first stages of international standard-setting most attention was devoted to the protection of objects of cultural significance during international and local armed conflicts. However, this aspect has not lost its significance entirely and new measures are being developed regarding this issue.

b. Protection of cultural heritage in the EU

It must be noted that action is taken not only on an international level, but also on a more regional level. In the European Union policymaking in this area is primarily the responsibility of Member States. However, the EU is strongly committed to safeguarding the continent's cultural heritage as a shared resource. This is why the European Commission introduces several policies and programmes in this area. The Commission is not the only EU institution that devotes attention to the matter of cultural heritage. The European Parliament, the Council of the European Union, the Committee of the Regions and the Economic and Social Committee are all involved in the process of promoting cultural heritage across Member States' policies. EU institutions recognise culture's role as one of the major assets for Europe and how it facilitates social inclusion on many levels, and its economic impact on the Union as a whole. The Council of the EU for example adopts incentive measures and recommendations in this area. In its most recent recommendation from 2020 concerning risk management in the area of cultural heritage attention is drawn to the importance of protecting cultural heritage against the various types of risks such as natural hazards, climate change and human-made threats. Another institution – the

European Committee of the Regions – has set forward the objective for underlining the crucial role local and regional authorities play in the management, promotion, protection, and safeguarding of cultural heritage.

The year 2018 was especially important on the matter, as it was the European Year of Cultural Heritage, which resulted in the adoption of the European Framework for Action on Cultural Heritage. The Framework aimed to set a common direction for heritage-related activities in EU policies and programmes and looked at tangible, intangible and digital dimensions of cultural heritage as inseparable and interconnected, thus encompassing a comprehensive approach to the topic. The actions in regards to protection that the Framework include identifying good practices on disaster risk management, providing strategies and tools at EU level entitled "Study on Safeguarding Cultural heritage from Natural and Man-Made Disasters"; fighting against illicit trafficking of cultural goods and researching the use of technologies to combat it, while contributing to a deeper understanding of this type of criminal activity and how to curb it; helping local authorities to investigate heritage-related crimes and eliminate the European art market of illegal trade of cultural objects; and mobilising the preservation sector in connection to climate change.

An important result of the European Year of Cultural Heritage was the legislative proposal of the European Parliament and the Council for a Regulation on the import of cultural goods. Thus, in 2019 Regulation (EU) 2019/880 of the European Parliament and of the Council on the introduction and the import of cultural goods became a fact. This act sets out the conditions for the introduction of cultural goods originating from countries outside the European Union,[23] and the procedures for their import, in order to prevent the illicit trade, in particular where such trade could contribute to terrorist financing or money laundering through the sale of pillaged cultural goods. It provides for a system of import licences for endangered cultural valuables. As a result of the implementation of the Regulation there is now a total prohibition of introduction of cultural heritage objects that were illegally removed from their countries of origin. This set of standards of importation undoubtedly brings Member States closer towards harmonisation of competition conditions in the art market.

It should be noted, however, that Regulation 2019/880 does not apply to cultural goods which were created or discovered in the customs territory of the Union. The protection of goods which are considered national treasures of the Member States is regulated by two other acts – Council

[23] Regulation applies exclusively to cultural property originating outside the Union. Cultural goods which were created or discovered on the territory of the Member States or those which are brought back within EU borders do not fall within the scope of the Regulation.

Regulation (EC) No 116/2009 and Directive 2014/60/EU of the European Parliament and of the Council. The first act introduces uniform control measures ensuring exports of cultural goods, which are subject to trade with third countries. Annex I to the Regulation presents the categories of cultural goods which require special protection when a subject of trade with third countries. These goods include archaeological finds older than 100 years which are the products of excavations, handmade paintings in any medium and on any material, sculptures or statuary, mosaics in any material executed by hand, and books more than 100 years old. Protection applies regardless of whether the cultural goods which are to be exported are classified by Member States as national cultural property. A significant measure is the obligation for exported goods to have acquired prior to exporting a licence. Said licence is issued by a competent authority designated by the Member State and is valid throughout the EU.

Directive 2014/60/EU sets out goals to be achieved by Member States in the field of the return of cultural objects unlawfully removed from the territory of a Member State. In contrast to Regulation 2019/880 which provides with a list of objects that are considered cultural goods, the scope of the Directive includes any cultural object classified by a Member State under national legislation as a national treasure. Consequently, the act covers objects of historical, ethnographic, artistic, archaeological, numismatic, or scientific value, regardless of whether they are public or private property, provided that they are classified or defined as treasures of national importance within the meaning of article 36 TFEU. One of the most important objectives of the Directive is to take effective measures for prevention and combating crime concerning cultural objects whenever they have been unlawfully removed from the territory of Member States. Such unlawful removal could happen in the cases when cultural goods are taken from the territory of a Member State in breach of its rules or in breach of Regulation (EC) No 116/2009, or in some other instances when they are not returned at the end of a period of lawful temporary removal.

A more in-depth approach in the matter of criminal activity surrounding cultural heritage was taken in 2022 with the EU action plan against trafficking in cultural goods. This plan aims to deter criminals effectively, to address evolving security threats and to protect cultural heritage within and, interestingly, beyond the EU. It addresses ongoing challenges through boosting international cooperation, including with source and transit countries of cultural goods in conflicts and crises. This action plan aims to provide a framework for the EU and Member States to advance prevention, detection, and criminal justice response to cultural goods trafficking. The action plan sets out four objectives for developing an effective strategy for combating trafficking which include its prevention and detection, strengthening the capabilities of law enforcement, deepening international cooperation, and gaining the support of key stakeholders. In respect to

the first objective, as cultural goods trafficking is usually a cross-border crime, Member States are encouraged to participate actively in cooperation and information sharing among customs authorities and with the Commission. This involves ensuring that public and private collections in the State duly register their possessions in databases. The second objective is best met on an international level by sharing information trafficking cases with Europol and Interpol to improve the intelligence, and locally by training law enforcement units and prosecutors, customs, and border officers to properly identify cultural goods.

c. How will we protect cultural heritage in the near future?

During the years, the focus on the area of protection of cultural heritage has shifted. This development is natural, given the recentness of major war conflicts in the first half of the 20th century. The 21st century, however, came with the discussion on the need for developing a legal framework for the protection of cultural heritage in times of peace. In recent years protection measures have acquired a humanitarian dimension. It is now recognised that there is a strong relation between people and their cultural heritage. Cultural rights are human rights. It is not only people's right to merit from cultural heritage, but also their obligation to take an active role in its safeguarding.

Today, conflicts in many parts of the world may have subsided, but new issues have come to light such as the worsening environmental conditions in all parts of the world, illegal trafficking of cultural valuables, and acts of vandalism. In recent decades, organised groups have become one of the main actors by providing professional services to a growing demand for cultural valuables. Goods are being unlawfully excavated, stolen, looted, and exported with the help of modern technologies and then sold through the Internet sometimes without leaving a trace that could be successfully followed. The high monetary value of cultural heritage trafficking has led to the temptation and subsequent corrupting of some customs, border officials, law enforcement, and dealers.

It is clear that fast action must be taken, as the damage caused to cultural heritage is irreversible. While as profitable as trade of cultural goods may be, it eradicates cultural diversity from the territories from which it is looted. This naturally leads not only to loss of irreplaceable cultural heritage but has an even more detrimental effect - it leads to heinous violations of human rights and fundamental freedoms. Due to the high importance of cultural heritage for all people, measures only in a European context are not enough. There is a strong need for implementation on a much larger scale of relevant international instruments, as the protection of cultural heritage is an integral part of global peace-building efforts. An important step is to increase the collection

of data by States and the use of tools such as the INTERPOL database of stolen works of art. It is recognised that we do not have enough knowledge of trafficking routes and real financial gains from consequent trades. In this regard there is a crucial need to facilitate their data collection. There is a need for the harmonisation of domestic legislation and effective international cooperation in investigations and legal procedures surrounding the protection of cultural heritage from illicit trafficking. However, public efforts are not enough, as the effectiveness of measures will be a reality only if they are met with the support of the private sphere when preventing illegal transit and trafficking, unlawful conduct, and disrupting criminal networks.

Section 3: The importance of UNESCO and of the Council of Europe in the field of cultural heritage

Preserving and safeguarding cultural heritage stands as a paramount responsibility in the global community, transcending borders, and generations. The protection of cultural heritage not only fosters a sense of identity and continuity but also contributes to the richness and diversity of human civilization. In this context, international organisations play a pivotal role in formulating frameworks and initiatives to ensure the safeguarding of cultural treasures for the benefit of present and future generations.

Two prominent entities that wield significant influence in the field of cultural heritage protection are the United Nations Educational, Scientific and Cultural Organisation (UNESCO) and the Council of Europe (CoE). These organisations, each with its unique mandates and approaches, converge in their commitment to preserving the world's cultural legacy.

UNESCO, established in 1945, operates under the belief that cultural heritage is a bridge between the past and the future. The organisation is dedicated to promoting international collaboration in the fields of education, science, and culture. Within the realm of cultural heritage, UNESCO has developed various conventions and initiatives to safeguard tangible and intangible cultural assets, recognising their intrinsic value to humanity.

The Council of Europe, founded in 1949, serves as another cornerstone in the protection of cultural heritage. While UNESCO has a broader global mandate, the Council of Europe focuses specifically on the European continent. Through conventions such as the Faro Convention, the Council of Europe emphasises a holistic and inclusive approach to cultural heritage, stressing the importance of community involvement and cultural democracy.

a. UNESCO

The importance of UNESCO in the field of cultural heritage cannot be overstated, as the organisation serves as a global champion and steward for the preservation and promotion of cultural diversity. UNESCO's significance in this domain is multifaceted and extends across various dimensions.

UNESCO administers the World Heritage Convention,[1] a landmark initiative that identifies and safeguards sites of outstanding cultural and natural significance worldwide. The inscription of a site on the UNESCO World Heritage List[2] not only bestows international recognition but also commits nations to the responsible management and preservation of these iconic landmarks. This designation fosters a sense of shared responsibility for the protection of humanity's collective heritage.

UNESCO acts as a catalyst for international cooperation in cultural heritage preservation. Through various programs and partnerships, UNESCO facilitates collaboration among nations, encouraging the exchange of expertise, resources, and best practices. This collaborative approach strengthens the global community's ability to address common challenges such as the illicit trafficking of cultural artifacts, natural disasters, and armed conflicts that pose threats to cultural heritage.

UNESCO has played a pivotal role in developing comprehensive legal frameworks and conventions that guide member states in the protection of cultural heritage. The 1972 World Heritage Convention, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage are examples of key instruments that provide a foundation for international efforts to preserve and protect cultural heritage.

Recognising that cultural heritage extends beyond physical artifacts, UNESCO has actively promoted the safeguarding of intangible cultural heritage. Through the 2003 Convention, UNESCO acknowledges and supports living traditions, rituals, and expressions that are passed down from generation to generation. This inclusive approach ensures that the diverse ways in which communities express their identities are valued and protected.

UNESCO emphasises the educational and awareness-raising aspects of cultural heritage preservation. By fostering a sense of appreciation and understanding of cultural diversity, UNESCO contributes to the creation of a global citizenry that recognises the importance of

[1] Convention Concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972
[2] Available at: <https://whc.unesco.org/en/list/> accessed 20 November 2023

preserving and respecting different cultural expressions. Education and awareness are key components of sustainable cultural heritage preservation.

UNESCO plays a crucial role in responding to emergencies that threaten cultural heritage, such as armed conflicts and natural disasters. The organisation provides expertise and support for the protection of cultural sites during crises and actively engages in post-conflict reconstruction efforts, helping nations recover and rebuild their cultural heritage.

In essence, UNESCO's importance in the field of cultural heritage lies in its role as a unifying force that transcends geopolitical boundaries, fostering a collective commitment to the preservation of the world's cultural treasures for the benefit of present and future generations. Through its initiatives, conventions, and collaborative efforts, UNESCO stands as a beacon of cultural diplomacy and a guardian of humanity's shared heritage.

b. Council of Europe

The Council of Europe (CoE) holds significant importance in the field of cultural heritage, particularly within the European context. Its contributions and initiatives underscore a commitment to the preservation, appreciation, and understanding of the diverse cultural heritage that enriches the continent.

The Faro Convention, adopted in 2005, is a cornerstone of the Council of Europe's approach to cultural heritage. Unlike traditional preservation-focused conventions, the Faro Convention emphasises a dynamic, people-centred perspective. It promotes cultural democracy by recognising the fundamental role of communities in identifying, interpreting, and safeguarding their own cultural heritage. This approach ensures that cultural heritage is not only conserved but actively embraced and valued by the communities that it represents.

The Council of Europe's emphasis on cultural democracy represents a departure from conventional top-down approaches to heritage preservation. By actively involving communities in decision-making processes, the Council recognises that cultural heritage is not a static entity but a living force that shapes contemporary identities. This people-centric philosophy fosters a sense of ownership and responsibility among communities for the cultural assets that define their collective identity.

The Council of Europe's Framework Convention on the Value of Cultural Heritage for Society, adopted in 2016, underscores the multifaceted contributions of cultural heritage to societal well-being. It emphasises the role of cultural heritage in fostering social cohesion, sustainable development, and reconciliation in post-conflict situations. This comprehensive approach

positions cultural heritage as a dynamic force that goes beyond historical significance to actively contribute to the quality of life and cohesion within societies.

The Council of Europe has been actively involved in addressing the challenges posed by armed conflict to cultural heritage. Recognising the vulnerability of cultural sites during times of conflict, the Council's initiatives aim to mitigate the impact of war on heritage and support post-conflict reconstruction efforts. The Council's involvement in conflict zones underscores its commitment to protecting cultural heritage as an essential element of human identity and civilisation.

Through its activities and initiatives, the Council of Europe promotes intercultural dialogue as a means of fostering understanding and respect among diverse communities. Cultural heritage serves as a powerful tool for promoting dialogue and mutual respect, and the Council recognises its role in building bridges between different cultures and fostering a shared European identity.

The Council of Europe places a strong emphasis on education as a means of promoting awareness and appreciation of cultural heritage. Educational programs and initiatives support the transmission of knowledge about cultural heritage, ensuring that future generations understand the significance of their heritage and actively participate in its preservation.

In summary, the importance of UNESCO and CoE in the field of cultural heritage lies in its innovative and inclusive approach, emphasising cultural democracy, community involvement, and the broader societal value of cultural heritage. By recognising the dynamic nature of cultural identity and heritage, these organisations contribute to the development of a more interconnected and culturally rich community.

ELSA Austria

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1. National cultural heritage in the international context

a. Is the country a party to any conventions on cultural heritage?

Austria has ratified several conventions on cultural heritage. It is part of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict. Other international acts that concern the protection of cultural heritage in armed conflicts that Austria has ratified include the Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, the Convention (IX) concerning Bombardment by Naval Forces in Time of War, the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), as well as the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II, as amended on 3 May 1996) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects.

Some of the more general international acts ratified by Austria include the Rome Statute of the International Criminal Court, the Convention for the protection of the world cultural and natural heritage, the Constitution of the United Nations Educational, Scientific and Cultural Organisation, the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and the Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property.

On a more regional level Austria has sanctioned the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, the European Cultural Convention, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society, the European Convention on the Protection of the Archaeological Heritage (Revised), as well as the Council of Europe Convention on Cinematographic Co-Production (revised).

Furthermore, the following more specialised conventions have been signed by Austria – the Protocol on Environmental Protection to the Antarctic Treaty, the Convention on Biological Diversity, the Convention for the Protection of the Architectural Heritage of Europe, the European Convention for the Protection of the Audiovisual Heritage, the Protocol to the

European Convention for the Protection of the Audiovisual Heritage, on the Protection of Television Productions, and lastly – the Convention for the Protection of the Architectural Heritage of Europe.

b. Does the country contribute to international registers and lists regarding cultural heritage?

In the World Heritage List, Austria has 12 entries some of which are the historic centre of Vienna and Santzburg and the Semmering Railway. The Memory of the World Register includes 15 entries from Austria part of which are the Gutenberg Bible and the Klagenfurt Manuscript of the "Song of the Nibelungs". The Representative List of the Intangible Cultural Heritage of Humanity has 10 Austrian entries such as Schemenlaufen. Austria is part of 14 European Cultural Routes, which include the European Mozart Ways and Via Habsburg. The least amount of entries Austria hold in the European Heritage Label (3) and the European Capitals of Culture (2).

c. Was the country once a member in any international commissions to rule about cultural heritage in the international context?

Between 2016 and 2020 Austria was part of the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage. Austria has been part of the Committee for the Protection of Cultural Property in the Event of Armed Conflict between 2005 and 2012 and again since 2019. The country is also part of the Governing Board of the Enlarged Partial Agreement on Cultural Routes.

2. National context of the protection of cultural heritage: Legislation and institutions

a. Are there specific national acts regulating the protection of cultural heritage?

The main legal text governing the protection of cultural heritage in Austria is the Monument Protection Act (*Österreichisches Denkmalschutzgesetz*, hereinafter "DMSG"). This aims to protect various movable and immovable assets with a cultural, historical, or artistic value from alteration or destruction and thus to preserve them, and above all to protect movable assets from being illegally transferred abroad.[1]

The scope of the Monument Protection Act includes human-made immovable and movable objects, as well as traces and remains of human processing, and artistic and culturally significant

[1] D Kolonovits et al (eds), Besonderes Verwaltungsrecht, Wien [2]2017, 603; DMSG BGBI I No 92/2013, art 1 sub-s 1

ground formations, with a cultural, historical, or artistic significance. The preservation of these objects must be of public interest. The term "monument" covers a wide variety of cultural assets, such as immovable property, for example, secular and sacred buildings, as well as according to article 1 paragraph 12 DMSG all parks mentioned in Anhang 2 of DMSG, but also movable property, for example, coins, jewellery, sculptures, or paintings. The essential goal is to protect the objects in question and thereby preserve the regional and national cultural landscape for future generations.[2]

Based on the "petrification theory",[3] the concept of a monument, which was previously clarified, is interpreted by the Constitutional Court in a narrower sense. The interpretation is made in the sense of the competence article of the Federal Constitutional Law (*Bundes-Verfassungsgesetz*, B-VG)[4], which was legally given at the time of entry into force. Due to the petrification theory, various problems arise with the newer and extended competences of monument protection, such as ensemble protection or the protection of garden monuments since nature protection as such falls under the competence of the federal states. Since gardens and parks, however, represent a human-made form of nature, they are covered by monument protection, due to the provision of article 1 paragraph 12 DMSG.[5] All gardens and parks protected by DMSG are listed in Appendix 2 of DMSG.[6]

In addition to the distinction between movable and immovable property, a distinction must be made in case of immovable property between an object as an individual monument and an ensemble, which can be understood to mean, for example, a historic town centre.[7]

The term *"Ensembleschutz"* refers to the blanket protection of a group of monuments according to the DMSG, even if not all the objects covered by the protection exhibit the characteristics of a monument. The ensemble protection is not self-evident due to the admissibility of the federal legal regulation under the Komptetenzbestimmungen in B-VG, as this can also refer to the protection of the townscape of several objects, which falls under the competences of the federal states.[8] The protection of objects that form a unified whole is provided for under article 1 DMSG, even if article 1 DMSG does not stipulate that all objects must have the character of a monument, the protection should nevertheless pursue exclusively monument protection goals,

[2] A Pfeffer and RA Rauter (eds), Handbuch Kunstrecht, Wien [2]2020, 467f; DMSG (2013) art 1 sub-s 1f
[3] Petrification theory or Versteinerungstheorie: Constitutional terms are to be understood as they were understood by the legal system at the time of their entry into force
[4] B-VG BGBI No 85/2022
[5] Pfeffer and Rauter (n 2) 467f; DMSG (2013) art 1 sub-s 12
[6] DMSG BGBI I No 170/1999
[7] Pfeffer and Rauter (n 2) 468f, 474f.
[8] B-VG BGBI No 85/2022, art 15, sub-s 1

leaving out any aesthetic aspects, as these fall under the Local Image Protection Act (*Ortsbildschutz*), which regulates aesthetic and artistic components. For this reason, groups of monuments are often subject to both the protection of the townscape and the protection of monuments.[9]

In addition to ensemble protection, there is also the possibility of protecting collections. A collection is an accumulation of movable and immovable objects, which are thus protected as a whole. The distinction from an ensemble is made by the lack of uniformity in the ensemble. An ensemble can consist of both movable and immovable objects from completely different areas, which must have a historical, artistic, or other cultural connection. Protection must be based solely on the ensemble as a whole, and this entire collection is thus also protected and subject to the provisions of the DMSG, thus enjoying the same protection as individual monuments, although individual special regulations apply, for example, permission from the BDA is required for the sale of an object.[10] The protection of the objects is established by decision for both the collection and the ensemble.[11]

In addition to the various options for the protection of cultural assets according to the DMSG, it is also possible to protect immovable cultural assets according to the protection of the townscape. The protection of the townscape is a federal state competence – for this reason, this form of protection is structured differently in all federal states. Depending on the federal province, there are separate acts regulating the protection of the townscape, but in some cases this function is also assumed by the building regulations or the building law. The sources of legislation are listed below alphabetically by federal province:[12]

- Burgenland: Building law (*Baurecht*)
- Carinthia: Local Care Act (*Ortspflegegesetz*)
- Lower Austria: Building Code (*Bauordnung*)
- Upper Austria: Building Code (*Bauordnung*)
- Salzburg: Local Heritage Protection Act (*Ortsbildschutzgesetz*)
- Styria: Local Heritage Act (*Ortsbildgesetz*)
- Tyrol: Town and site conservation law (*Stadt- und Ortsbildschutzgesetz*)

[9] Kolonovits et al (n 1) 607; DMSG (2013) art 1 sub-s 3
[10] ibid
[11] Kolonovits et al (n 1) 609; DMSG (2013) art 5, sub-s 7
[12] S Lampert et al (eds), Österreichisches Baurecht 1. Salzburg, Tirol, Vorarlberg, Wien 2020, 3, 51f

- Vorarlberg: Building Act (*Baugesetz*)
- Vienna: Building Code (*Bauordnung*)

Despite the regulation in different legislatures, they have some common features. The protection of the townscape, regardless of whether it is stipulated separately or as part of the building regulations, aims to preserve the original design of towns and villages and maintain the typical characteristics of a town centre, and essentially preserve its appearance despite changes in the surroundings. In this context, the protection of the townscape does not only mean the protection of individual buildings or the ensemble but also gives the municipalities the possibility to regulate and prevent building activities or alteration measures in the immediate surroundings. The main aim of these measures is always to preserve the old town as a whole in an original form as possible. This is usually done in the form of protection, ensemble protection, and visual zones and leads to a stricter approval requirement for planned alteration measures in these zones. In addition, the Local Image Protection Act (*Ortsbildschutz)* often provides for targeted subsidies for conservation measures or changes in the sense of local image protection. Furthermore, the laws on the protection of the townscape also provide for penal provisions for the violation of the protection of the townscape and its protection zones.[13]

b. Which government authorities are in charge of the management and supervision of cultural heritage preservation? What are their functions regarding the protection of cultural heritage?

In Austria, the protection of monuments is a federal competence in terms of enforcement and legislation[14]. The legal basis for the protection of monuments is the Federal Act on the Protection of Monuments due to their Historical, Artistic or Other Cultural Significance or the Monument Protection Act (*Denkmalschutzgesetz* , DMSG).[15] Matters of monument protection will be conducted under direct federal administration.[16]

In Austria, the Federal Office for the Protection of Monuments (*Bundesdenkmalamt*, BDA) with its departments in the federal provinces, the *Denkmalbeirat* of the Federal Ministry for Education, the Arts and Culture, and the State Archives are centrally responsible for the implementation and

[13] S Lampert et al (eds), Österreichisches Baurecht 1. Salzburg, Tirol, Vorarlberg, Wien 2020, 3, 51f
[14] Kolonovits et al (n 1) 603f; Pfeffer and Rauter (n 2) 466f; B-VG BGBI No 85/2022, art 10, sub-s 1 Z 13
[15] Pfeffer and Rauter (n 2) 466f
[16] Kolonovits et al (n 1) 603f; B-VG BGBI. No 85/2022, art 102, sub-s 2

development of the law on the protection of monuments. The BDA in particular sets and monitors measures that are taken to restore, and conserve listed objects.[17]

For example, gardens and parks also fall under the protection of monuments according to the DMSG,[18] as these represent a type of human-made nature. This is the demarcation from nature conservation, which is a competence of the federal states.[19] There is a question of demarcation between the Monument Protection Act and, among other things, the competences of nature conservation, protection of the townscape, building law, and spatial planning, which fall under the competence of the federal states in legislation and enforcement according to article 15 paragraph 1 B-VG.[20]

The demarcation between the protection of the townscape and the protection of ensembles is based on the characteristics that are protected. This is also interpreted very narrowly by the Constitutional Court and confirmed in case law VfSlg 14.266.1995.[21] The protection of townscape, which falls under the competence of the federal states and represents a sub-area of building law, is particularly aimed at the typical appearance of a part of a locality.[22] In contrast, ensemble protection is part of the DMSG. The ensemble protection aims at the preservation of a group of several monuments, the majority of which exhibit the characteristics of a monument in precisely this composition, and this complex is to be protected from significant changes through the protection.[23] An important distinction between townscape protection and ensemble protection is that townscape protection is intended to guarantee the protection of the appearance of the building, in particular the façade, while heritage protection also protects the interior of a building.

The Federal Monuments Office is located in the Vienna Hofburg and is the central authority. The organisation and distribution of responsibilities are regulated by the statutes of the Federal Monuments Office. The President is responsible for the management of the office, and the *Fachdirektoren* are the final scientific authorities responsible for the expert opinions. The Bundesdenkmalamt's[24] expert officers, who function as official experts, are responsible for the

[17] Kolonovits et al (n 1) 603; Pfeffer and Rauter (n 2) 466f; DMSG (2013) art 24, sub-s 1
[18] B-VG No 13, art 10, para 1, no 13
[19] Kolonovits et al (n 1) 603f; B-VG BGBI No 85/2022, art 10, sub-s 1 Z 13
[20] Kolonovits et al (n 1) 603f; B-VG BGBI. No 85/2022, art 15, sub-s 2
[21] VfSlg 14.266.1995
[22] Kolonovits et al (n 1) 604
[23] B Blauensteiner, Denkmalschutzrecht im Überblick (Wien 2006) 76
[24] Bundesdenkmalamt (BDA) is the Austrian Federal Monuments Office

evaluation of the objects and their monument characteristics.[25] The officials are coordinated by the general conservator or, in the field of architecture, by the architectural director.[26]

All federal provinces have provincial conservatories, designed as field offices, whose task is to fulfil the tasks of official monument protection in the respective province and to exercise decision-making powers directly.[27]

The BDA has a monocratic structure; all bodies work for the President of the BDA by virtue of the entry into force of the internal mandate. Although the departments have independent approval authority, the President still has the authority to issue directives and is responsible for them.[28]

Pursuant to article 15 DMSG, the BDA is assisted by a *Denkmalbeirat*, which consists of at least seven permanent members and a chairperson. The members come from relevant disciplines and are appointed for six years for this unpaid honorary activity.[29] This committee has an advisory function and, according to article 5 paragraph 5 DMSG, must be consulted in the event of the destruction of an immovable monument.[30] The members may also be called upon by the BDA or the Federal Ministry of Education, Science, and Research in an advisory capacity.[31]

A special case is the protection of historical monuments around archival records according to article 25 paragraph 1 DMSG. The BDA is not responsible for archival records and written material; in accordance with article 24 DMSG, the Austrian State Archives take their place, and the Federal Minister for the Interior, Arts, and Culture is replaced by the Federal Chancellor.[32]

c. Is there a procedure for identification of cultural heritage? How is an object granted cultural value status?

Cultural assets worthy of protection and significant cultural assets are not automatically protected under the BDA. The objects must be placed under protection by means of a procedure, of which only public and sacred buildings and objects are exempt, both movable and immovable, as these are very often protected by virtue of legal presumption under article 2 DMSG.[33]

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[25] Personal- und Geschäftseinteilung des Bundesdenkmalamts (Erlassen am 1 April 2022, aktualisiert 6 März 2023), Staff and business organisation of the Federal Monuments Office

[26] Blauensteiner (n 23) 29; BDA-Statut 2021

[27] Blauensteiner (n 23) 29; DMSG (2013) art 8, sub-s 1-3

[28] Blauensteiner (n 23) 29

[29] Blauensteiner (n 23) 30f; DMSG (2013) art 15

[30] DMSG (2013) art 5, sub-s 5

[31] Blauensteiner (n 23) 30f

[32] DMSG (2013) art 24 and art 25, sub-s 1

[33] Pfeffer and Rauter (n 2) 468-470; DMSG (2013) art 2

In order to safeguard the monument stock, the DMSG knows the method of protection according to article 2et sqq DMSG. Monuments whose preservation is in the public interest for the sake of their cultural significance are placed under protection, thereby protecting objects with a special value from destruction or alteration.[34]

It should be noted that the protection of historical monuments in Austria is referred to and understood as passive protection of historical monuments; in contrast to active protection of historical monuments, this does not result in an obligation to renovate the protected objects, which means that the owner cannot be forced to carry out maintenance measures concerning the object. Here the Administrative Court argues about the inviolability of property since the protection of monuments is only a restriction of property and not an expropriation. The principle of the least possible protection applies.[35]

The owners are prohibited from altering or destroying the property, but this does not mean that no further alterations can be made to the property. In cooperation and agreement with the BDA, it is possible to make additions and alterations to the protected properties and to make use of subsidies.[36]

The criteria for assessing the conservation interest of a monument are the quality, variety, and distribution in the Austrian cultural stock. Another important factor for assessing the preservation interest is the historical documentation according to article 1 paragraph 2 DMSG. The concretisation of these criteria results from the published materials on the DMSG and the case law of the Austrian administrative court of justice (VwGH). Originally, there were two possibilities for the protection of an object. Firstly, protection by virtue of a legal presumption of public interest in preservation – in this case, the object is not formally protected by means of a decision, cf section 2 DMSG. Today, this case is only applied to movable objects in public ownership. All other objects are placed under protection by means of a decision (*Bescheid*) in accordance with article 3 DMSG.[37]

The Federal Office for the Protection of Monuments has to proceed officially and may not proceed at its own discretion. The protection can only be granted if it has been determined in advance according to the ordinance. The Federal Office for the Protection of Monuments creates a list of objects that must be examined for their monument characteristics – these monuments

[34] Pfeffer and Rauter (n 2) 468-470; DMSG (2013) art 2ff

[35] Art 1 European Convention in Human Rights BGBI III No 68/2021; art 5 StGG BGBI No 684/1988; A Pfeffer and RA Rauter (eds), Handbuch Kunstrecht, Wien ²2020, 470-472; DMSG (2013) art 4

[36] Pfeffer and Rauter (n 2) 470-472; DMSG (2013) art 5

[37] Pfeffer and Rauter (n 2) 468-470; DMSG (2013) art 1, sub-ss 2, 3 and 5

are potential objects to be eventually protected by DMSG. In addition, private individuals and public institutions often submit objects that may need protection to the Office for the Protection of Monuments. Another possibility is that the local building authority informs the Monuments Office about planned conversion and renovation work on historic properties.[38]

d. Does the country have a Minister of Culture? What are their functions regarding the protection of cultural heritage?

Austria has a Ministry of Culture, which is part of the Federal Ministry of Arts, Culture, Public Service, and Sport. The Ministry brings together various bodies, advisory boards, boards of trustees, authorities, and offices, which are also involved in the protection of cultural assets. These sub-institutions of the Ministry are competent for the promotion and regulation of the cultural sector and are thus also jointly responsible for the protection of cultural heritage in Austria. The Federal Ministry also provides information on monuments in the form of scientific publications, publishes and documents the monuments, and coordinates the Federal Monuments Office and the provincial conservatories, which are bound by instructions to the Ministry. In addition, research on monuments is often commissioned, accompanied, or financed by the Federal Ministry.[39]

e. What is the role of civil society and private entities regarding the protection of cultural heritage?

There are often private initiatives for the protection of monuments and cultural assets in Austria, as the Monuments Office is often too slow in its legal action, but also the protection of monuments only comes into effect in Austria when there is an imminent danger due to its passive interpretation. The initiatives aim to ensure the necessary protection for the cultural assets concerned. In addition, universities, but also museums, private museum initiatives, cultural associations, and societies participate in the research of cultural assets and monuments. These organisations function as sponsors of the research projects and thus collect information on the history, provenance, and significance of these cultural objects, which is essential for their preservation. In addition to the institutional research of cultural assets, private sponsors often appear on the scene, who are both responsible for the research and also act essentially as patrons for the research. Cities and municipalities also often per up for the protection of cultural assets within their sphere of influence, and in this context also initiate research.

[38] Pfeffer and Rauter (n 2) 468-470
[39] ibid, 466f

A distinction can be made between different typical forms of initiatives. On the one hand, citizens' initiatives (regional or country-wide), other private initiatives, but also institutional initiatives, which are intended to contribute to the protection of cultural assets and to place them under protection. The formation of initiatives often happens in connection with planned demolition, reconstruction, or destruction of monuments, but also of other cultural assets such as places, monuments, buildings, or similar objects. In this process, these changes are usually also critically discussed within society.

Education in relation to monuments and other cultural assets is also important. This takes place within the framework of university studies, at schools, in museums, but also in initiatives of the Federal Office for the Protection of Monuments. Many of these activities and programmes by the Federal Office for the Protection of Monuments, but also at museums or by associations, aim to open the eyes of children in particular to cultural assets and thus to shape the skilled handling of cultural assets. This is intended to promote cultural education among the population as well as to impart cultural and historical knowledge.

3. Right to ownership of cultural heritage: How is ownership of cultural heritage determined?

a. Are excavations and the discovery of archaeological findings regulated by law?

Excavations and archaeological findings are outstanding from a historic point of view. As a consequence, archaeological findings are an irreplaceable source of life and inspiration and touchstones, points of reference and identity. This includes immovable and movable objects, such as structural remains of Bronze Age barrows, Roman villas, Roman coins, pottery shards, or Palaeolithic stone tools. Therefore, it is of great importance to protect against illegal excavations and the associated damage, which is almost impossible to quantify. Therefore, DMSG provides the same protection provisions as for other monuments. In accordance with Section 1(1) DMSG archaeological findings are protected against destruction and alteration as well as illegal transfer abroad.[40]

According to Section 1(1) DMSG, monuments are immovable and movable objects created by humans (including remains and vestiges of workmanship as well as artificially generated or constructed soil formations) of historical, artistic, or other cultural significance. In order to be able to address the requirements of archaeological monument protection, the concretisation in

[40] F Forsthuber and E Pieler, Archäologischer Kulturgüterschutz und das Strafrecht, RZ 2013, 130 (130) (1 June 2013, rdb.at) Universität Wien, Archäologische Raubgrabungen (22 March 2023, kultur.univie.ac.at/themen/archaeologische-raubgrabungen/)

brackets was added in the course of the amendment of the DMSG 1990. This refers in particular to soil discoloration and grave mounds.[41]

Archaeological finds comprise both movable and immovable objects, such as structural remains of Bronze Age grave mounds, Roman villas, medieval castle mounds, Roman coins, pottery shards, or Palaeolithic stone artefacts.[42] From an archaeological point of view, it is important to note that there is always a connection between the object and its place where it was found. The find and its context form an inseparable unit, since the position of the object in the ground and its stratigraphic classification provide important information about the find. According to the DMSG, the find and its context are combined as a unit under the concept of a ground monument and are consequently covered by its scope of protection.[43]

The exact rules and regulations regarding the protection of ground monuments are included in Section 8 et sqq. DMSG, which relate in particular to reports of finds and excavation permits. The protection includes monuments that are found under the surface of the earth or water.[44] They standardise in particular the notification of finds and excavation permits. These special regulations ensure that accidental finds are reported to the Federal Office for the Protection of Monuments and that excavations are only conducted by qualified persons. Section 9(3) DMSG provides for the ex lege protection of discovered archaeological monuments from the time of discovery up to a maximum period of six weeks from the time of notification. Export without the approval of the Federal Monuments Office is illegal (cf Section 16(1) subsection (1) DMSG). According to Section 11(8) DMSG, a permit from the Federal Monuments Office is also required for the use of metal detectors on properties with protected monuments.[45]

The ownership of archaeological finds (ground monuments) is also regulated in Section 10(1) DMSG. Regardless of their market value, ground monuments are always regarded as treasure finds, which is why the provisions on treasure finds also apply to ground monuments (Section 398 et sqq. of the Austrian Civil Law Code (*Österreichisches Allgemeines bürgerliches Gesetzbuch*, "ABGB"). According to Section 399 ABGB, the ownership of the treasure is to be divided between the finder and the landowner.[46] The landowner acquires original half ownership by virtue of law with the discovery of the treasure. Accordingly, for the acquisition of ownership by

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[41] F Forsthuber and E Pieler, Archäologischer Kulturgüterschutz und das Strafrecht, RZ 2013, 130 (132) (1 June 2013) <rdb.at>

[42] *Universität Wien*, Archäologische Raubgrabungen (22 March 2023) <kultur.univie.ac.at/themen/archaeologische-raubgrabungen/>

[43] *Pieler/Forsthuber*, Archäologischer Kulturgüterschatz und das Strafrecht, RZ 2013, 130 (133) 1 June 2013) <rdb.at>

[44] *Pieler/Forsthuber*, Archäologischer Kulturgüterschatz und das Strafrecht, RZ 2013, 130 (132) (1 June 2013) <rdb.at>

[45] *Universität Wien*, Archäologische Raubgrabungen (22 March 23) <kultur.univie.ac.at/themen/archaeologische-raubgrabungen/>

[46] Pieler and Forsthuber, Archäologischer Kulturgüterschatz und das Strafrecht, RZ 2013, 130 (131) (1 June 2013) <rdb.at>

the landowner, be it without knowledge and will, the appropriation or seizure is not required first. However, according to Section 400 ABGB the finder loses his share if he is guilty of an unlawful act, has searched without the knowledge of the owner or has concealed the find.[47]

Destruction or alteration is defined by the DMSG as any potential influence on the inventory or the substance, or the traditional appearance and the artistic results. This refers to melting down a Roman gold coin, smashing an earthenware vessel, or levelling a burial mound.[48] Any destruction or "alteration" of a monument without the approval of the Federal Office for the Protection of Monuments pursuant to Section 37(1) DMSG is to be punished by the courts. This is sanctioned with fines of up to 360 daily rates.[49] The DMSG protects not only the destruction of another's property, but also the destruction of owner's property. Protection against destruction of another's thing and consequently of a monument, can also be ensured according to Sections 125 and 126 of the Criminal Code (*Österreichisches Strafgesetzbuch*, hereinafter "StGB"). The protection under criminal law is granted to the injured party regardless of the monument status and therefore broader than the protection against destruction provided by the DMSG. It should be noted, however, that only the intentional destruction can be prosecuted (Section 7(1) StGB).[50]

b. Is it possible for natural persons and legal entities to acquire, keep, sell, or donate ownership of cultural heritage objects?

Both natural persons and legal entities under private or public law can be the owners of a listed object. Immovable objects (ensembles) and collections are to be protected by virtue of the legal presumption of public interest if they are owned by the federal government, a province, other public corporations, institutions, funds, legally recognised churches, religious societies, including their institutions (Section 2(1) DMSG). This also applies *legis citatae* if the sole or predominant ownership of legal persons according to the first sentence is only established by a majority of the co-ownership shares of the persons mentioned.[51]

The marketability of a monument or individual objects of a collection protected by monument law are affected with regard to the sale and encumbrance pursuant to Section 6 DMSG as well as

[47] ibid

[48] ibid, 130 (132); J Sprecher in Fiedler, Jayme, and Sieher, Beschränkungen des Handels mit Kulturgut und die Eigentumsgarantie (2004) 77f

[49] In Austria, fines are assessed in daily rates according to the personal and economic capacity of the convicted person. The fines shall amount to at least two daily rates, with a daily rate ranging from a minimum of EUR 4 to a maximum of EUR 5 000. If the fine is uncollectable, a custodial sentence shall be imposed. Whereby one day of substitute punishment is approximately equal to two daily rates, Geldstrafen (8 March 2023) <oesterreich.gv.at-Redaktion>

[50] Pieler and Forsthuber, Archäologischer Kulturgüterschatz und das Strafrecht, RZ 2013, 130 (132) (1 June 2013) <rdb.at>

[51] L Klever, Die Denkmaleigenschaft im Gewährleistungsrecht, bbl 2017, 83 (83)

the export pursuant to Section 16 DMSG.[52] The sale of monuments which are protected by virtue of a legal presumption are subject to prior approval by the Federal Monuments Office (Section 6(1) DMSG). Pursuant to Section 6(1) DMSG, the sale must also be notified to the Monument Authority within two weeks, naming the purchaser.[53] The authorisation expires *leg. cit.* if it is not used within five years. Disposals or encumbrances without the permission of the Federal Monuments Office are void according to Section 879 ABGB. A "partial" disposal is also not permissible. According to Section 6(5) DMSG analogously, partial alienation is to be sanctioned with nullity.[54]

c. What are the rights and obligations of owners of cultural values? Are there differences between State institutions, private persons, and religious communities regarding cultural heritage and its protection?

The Federal Monuments Office shall place monuments under protection if their preservation is in the public interest. According to Section 2 *legis citatae,* preservation is in the public interest if the monument is cultural property, of which the loss would mean an impairment of the Austrian cultural property stock in its overall view with regard to quality as well as sufficient variety, diversity, and distribution.[55]

Immovable objects (ensembles) and collections of movable objects (Section 1(1) and (3) DMSG) *legis citatae* which are in the sole or predominant ownership of the federation, a state or of other public corporations, institutions, funds as well as of legally recognised churches or religious societies including their institutions are ex lege placed under monument protection (Section 2(1) DMSG). The presumption of public interest in their preservation exists until the Federal Office for the Protection of Monuments has not determined the contrary at the request of the owner or ex officio (Section 2(1) DMSG). This legal presumption also applies *legis citatae* if the sole or predominant ownership of legal persons according to the first sentence is established merely by a majority of the co-ownership shares of the persons mentioned.[56]

The protection of a monument entails considerable restrictions of ownership for the owner. As mentioned above, a monument within the meaning of Section 1(1) DMSG is protected against destruction or alteration in accordance with Section 4(1) DMSG. Without a permit issued by the Federal Monuments Office, it is not possible to affect the status quo. The transfer of a

[52] G Klingenberg in Fenyves, Kerschner, and Vonkilch, Großkommentar zum ABGB – Klang Kommentar[3] (2018) Art 398 Rz 13
[53] Klever (n 51) 83, 84
[54] Sprecher (n 48) 78; M Kisslinger, "Gesetzliche" Zubehöreigenschaft iSd Art 294 ABGB durch Denkmalschutz, JBl 2012, 583 (583, 587)
[55] Klever (n 51) 83
[56] DMSG (2013) ss 1(1), 1(3), and 2(1)

monument abroad is also subject to prior approval by the Federal Office for the Protection of Monuments in accordance with Section 16 of the DMSG. Pursuant to Section 6(1) DMSG, the sale must also be notified to the Federal Monuments Office within two weeks.[57]

Section 4(1) subsection 2 DMSG standardises a maintenance obligation of the owner of a listed object for "absolutely necessary maintenance measures". This obliges the owner to repair the monument if the existence of the monument-specific features is endangered. Moreover, the obligation exists irrespective of whether and to what extent there is a maintenance obligation under building law. It is in the interest of monument preservation to maintain the existing condition of the monument as intact as possible against alteration, destruction, or sale. Renovations in accordance with monument law are considerably more costly than conventional maintenance measures, which is why owners of listed properties are often exposed to significantly higher costs. The limit of this special preservation obligation therefore results from the economic reasonableness, which can be derived either from fundamental rights or the "intention to destroy". The omission of the necessary maintenance measure is in any case not conducted with obvious intent to destroy if the implementation is economically unreasonable for the owner, whereby funding commitments by third parties are to be considered for the assessment of economic reasonableness.[58]

As an economically reasonable maintenance measure, the DMSG *legis citatae* mentions the replacement of individual broken roof tiles and the closing of open windows. Measures that any averagely diligent owner would conduct on their own initiative on an ongoing basis and measures that are covered by public funds are also economically reasonable for the owner. However, the DSMG does not impose an active maintenance obligation. Rather, the prohibition of intentional "letting things lapse" is standardised.[59]

In addition, the owner's ability to dispose of his property is restricted by the requirements of the Federal Monuments Office in the choice of structural measures, in that he is prevented from carrying them out without its prior approval. The factual justification of the property restriction is covered by the public interest in preservation. In addition, the owner of a listed object receives benefits for costs incurred through the entitlement to public subsidies according to Section 32(1) DMSG. Furthermore, the owner is entitled to tax relief on the depreciation period of only ten years for acquisition and production costs in the interest of monument preservation if no public subsidies or investment allowances are used.[60]

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[57] Klever (n 51) 83, 84
[58] Case VwGH JBl 1994, 272 (276)
[59] Klever (n 51) 83
[60] Klever (n 51) 83f

d. What rules apply to private collections?

The provisions of Section 1(1) of the DMSG also apply to collections of movable objects that form a unit because of their historical, artistic, or other cultural context and their preservation as a unit is in the public interest.[61]

For objects from collections under monument protection, the DMSG provides for special protection provisions in Section 6 DMSG. This contains regulations on the disposal and encumbrance of monuments[62] and of individual objects from a collection protected as a monument.[63] Accordingly, individual objects from a listed collection of several movable monuments may only be disposed of and encumbered with the approval of the Federal Office for the Protection of Monuments. Nevertheless, disposals or encumbrances without the approval of the Federal Office for the Protection of Monuments are null and void according to section 879 ABGB. A "partial" sale is also not permissible. According to section 6(5) DMSG, this is also to be sanctioned with nullity by analogy.[64]

Pursuant to sections 4(1) and 5(1) DMSG, a collection under monument protection is also protected against destruction as well as alteration. Pursuant to section 37(1) DMSG, destruction is to be punished by the court with a fine of up to 360 daily rates, unless the act is punishable by a stricter penalty under another provision. On the other hand, alteration is to be punished by the district courts with a fine, provided that the act does not constitute an act falling within the jurisdiction of the criminal courts.[65]

In order to avert the danger of destruction, alteration, or sale, the competent administrative authority shall, at the request of the Federal Office for the Protection of Monuments, take the appropriate measures and issue the appropriate orders, such as making the collection subject to state supervision.[66]

e. Is it possible for the State to confiscate cultural heritage of private ownership and under what conditions?

The institution of property is guaranteed by the property guarantee. It is a constitutionally guaranteed subjective right in the sense of article 144 Austrian Constitution ("B-VG"). The existing property guarantee in Austria is based on two foundations: the Austrian Bill of Rights of 1867 (*Österreichisches Staatsgrundgesetz,* "StGG") and the European Convention on Human Rights

[61] JBl 1994, 272 (273)
[62] DMSG (2013) s 6(1)-(4)
[63] ibid s 6(5)
[64] Sprecher (n 48) 78; Kisslinger (n 54) 583, 587
[65] Kisslinger (n 54) 583
[66] JBl 1994, 272 (274)

(ECHR), which has constitutional status in Austria. According to article 5 StGG, property is inviolable and can only be expropriated against the will of the owner in the cases and in the manner permitted by law. The inviolability of property also means that interference with property is only permissible with special legal authorisation.[67]

Section 364(1) and section 365 ABGB contain provisions on the exercise of the right to property and expropriation at the statutory level, which are consulted in the interpretation of the constitutional concept of property. According to section 364(1) ABGB, the exercise of the right of ownership only takes place as far as it neither interferes with the rights of a third party nor transgresses the restrictions prescribed in the laws for the preservation and promotion of the general welfare. In particular, the owners of neighbouring properties must show consideration for each other when exercising their rights (cf section 364(1) ABGB). Furthermore, section 365 AGBG stipulates that expropriation by the state, in return for appropriate indemnification, requires a general interest. According to recent practice, the admissibility of an intervention in property requires not only a public interest, but also proportionality and, in particular, economic reasonableness. The freedom to enter private-law contracts within the framework of private autonomy is encompassed by the constitutional right to property.[68]

In persistent practice, however, the Constitutional Court fundamentally rejects the derivation of constitutional claims for compensation from the property guarantee. This applies to expropriations as well as to property restrictions. However, there are two exceptions to this established case law for foreigners and "special victims". According to article 1 of the ECHR, foreigners are entitled to compensation and "special victims" can be awarded compensation based on the principle of equality.[69]

4. What criminal or administrative offenses are related to destruction, damage, or theft of cultural heritage? What penalties would be imposed in such cases?

The Act for the protection of cultural heritage (DMSG) punishes damage, destruction, and theft of cultural heritage as an administrative offence under article 31, 36f DMSG as well as an administrative offence and criminal offence.[70]

The law on the Protection of Monuments aims to protect monuments from destruction and acts of changing their original appearance. This protection aims to preserve the cultural heritage for

[67] Sprecher (n 48) 63
[68] ibid, 63f; M Winner in P Rummel and M Lukas (eds), ABGB[4] Art 365 Rz 5 (1 July 2016) <rdb.at>
[69] Sprecher (n 48) 64
[70] Pfeffer and Rauter (n 2) 472; DMSG (2013) arts 31, 36 and 37, sub-s 2-4

the next generations, although sometimes it is not enough to protect due to the passive protection of cultural heritage in Austrian law which only sanctions the already happened destruction or damage of the monument.[71]

The Federal Office for the preservation of monuments (BDA) has the possibility to mandate a security measure under article 31 DMSG in case there is a possibility of damage or destruction of a monument. This action should only cost little funds – otherwise the Federal Office would be required to grant a subsidy for the measures to preserve the monument.[72] If a monument has been unlawfully altered or destroyed, the district administrative authority can order the restoration of the previous condition at the expense of the guilty party in accordance with article 36(1) of the DMSG.[73] Furthermore, the DMSG provides for a criminal offence to be enforced by the courts as well as several criminal administrative offences against violations.[74]

In principle, the intentional destruction of a monument or ensemble can also be prosecuted under criminal law. This special provision provides not only for damage or destruction by third person, but also by the owner(s). If the monument is intentionally destroyed by strangers, article 125 et sqq of the Criminal Code (StGB) (damage to property) come into play.[75] The other offences fall under the jurisdiction of the district administrative authority and range from unlawful alteration of a monument to digging without a permit according to article 37 paragraphs 2-4 DMSG; a fine is provided as a sanction.[76]

a. Does national law distinguish between theft, destruction, or damage of a "normal" item and of an item with cultural, historic, or religious value?

The Austrian Criminal Code (*Strafgesetzbuch*, hereinafter "StGB") distinguishes between the theft of a "normal" item and an item of cultural, historic, or religious value as well as between the material damage of a normal item and an item of cultural, historic, or religious value.[77]

Austrian criminal law provides for suspicion of damage to property pursuant to article 125 StGB; however, in the case of damage to property with a religious, cultural, or historical value or a monument pursuant to the DMSG, a suspicion pursuant to article 126 StGB paragraphs 1-4 is

[71] Pfeffer and Rauter (n 2) 470, 472; DMSG (2013) art 31
[72] Pfeffer and Rauter (n 2)472; DMSG (2013) art 31
[73] Pfeffer and Rauter (n 2) 472; DMSG (2013) art 36
[74] Pfeffer and Rauter (n 2) 472
[75] Pfeffer and Rauter (n 2) 472; StGB BGBI No 242/2021, art 125 et sqq
[76] Pfeffer and Rauter (n 2) 472; DMSG (2013) art 37, sub-s 2-4
[77] StGB BGBI No 242/2021, arts 125-128

applied. Article 126 concerns serious damage to property, which means that objects of conservation value are punished more severely than "normal" objects.[78]

This is managed similarly in the case of theft of objects with a religious, cultural, or historical value or in the case of theft of objects which are protected under the DMSG. In contrast to normal objects, these objects are automatically subject to aggravated theft according to article 128 sub-paragraphs 2 and 3 StGB. Persons or groups of people who commit theft of such objects are therefore automatically punished more severely than persons who steal a "normal" object. Thus, criminal law also differentiates here between cultural property and normal objects.[79]

b. Is there a possibility to have insurance on cultural heritage?

It is possible to insure a property that is a listed building. It should be noted that the protection of a listed building is considered by the insurance companies to be a risk factor for the insurance of these objects. Nevertheless, many movable objects are insured, especially if they are in museums. Especially if an object is frequently transported, as in case of museum loans but also in the art trade, there is usually insurance cover for the objects. However, it is also common for the owners to ensure real estate or similar objects that are protected as historical monuments.[80]

Many insurance companies point out that it is in fact impossible to estimate an insurance premium reasonably and seriously for such objects, especially sacred buildings. In most cases, an attempt is made together with the Federal Office for the Protection of Monuments and special experts record the work in its entirety and thus to estimate it. A wide variety of factors must be considered here, such as existing fire protection measures. UNIQA provides insurance for cultural assets in Austria. The insurance company states that it will cover damage caused by water, fire, theft, or storm, for example, up to an individual maximum compensation for the building in question. The individual needs of the objects are also examined and included in the assessment of the insurance premium – some of the factors may be the organ, fresco furnishings, monument protection, bells, but also art objects found in a building, which are now also included in the insurance cover. Due to the high risk, it is always important for the insurance companies to determine the exact value, which is to be insured, what requires a precise case-by-case examination.[81]

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[78] C Bertel et al (eds), Österreichisches Strafrecht, Besonderer Teil 1, Wien [13]2015, 162f; StGB BGBI No 242/2021, art 125f

[79] Bertel et al (n 78) 178f; StGB BGBI No 242/2021, art 127f

[80] Pfeffer and Rauter (n 2) 513-524

[81] ibid

5. Does the legal system have provisions on the protection of cultural heritage against natural disasters?

a. Which institution as the "first responder" would be responsible to safeguard cultural heritage during natural disasters?

The Austrian system designed to cope with natural disasters is characterised by great complexity since it is an issue that falls into the competencies of different entities within the state administrative structure. Before elaborating on which entities are designated to respond to catastrophes, it is helpful to first clarify in which situations the Austrian legal system enables these administrative structures to act and thus protect.

The Austrian Constitution hardly addresses this issue for reasons related to the division of competencies between the Bund and the different states, yet it contains an important provision in article 79 paragraph 2 of the Austrian Constitution which regulates the subsidiary assistance of the army in cases of natural disasters and accidents of exceptional magnitude.

The latter is interpreted widely in a way that does not give relevance to the cause of the accident. In other words, regardless of whether the emergency is caused by humans or a natural disaster, the army can be summoned for assistance. Furthermore, the army can be used in extraordinary situations in which the normally competent entities are incapable of acting anymore. Thus, the army may only be summoned when further assistance is needed but only on a subsidiary basis to prevent the system's collapse. However, to find an adequate response to the question above, the cited provision in the constitution lacks any clarification of who the primarily responsible organs for tackling catastrophes are.[82]

As indicated above the Austrian approach to protection against catastrophes is extremely fragmented. This is due to the Austrian competency regulations incorporated within the constitution which distribute the different kinds of state tasks between the most important state entities such as the federal government, the federal states, and on the most local level, the communities. According to article 15 of the Austrian Constitution any matter that is not specifically designated to the federal government automatically falls to the federal states. That includes both the power of legislation and execution. As catastrophe management is only mentioned in the context of subsidiary army assistance, the primary responsibility for disaster management falls to each of the nine Austrian federal states.[83] For this reason, each state has its

[82] J Müllner, Rechtliche Rahmenbedingungen der Katastrophenbekämpfung, Verlag Österreich (2016) p 8 et seq
[83] Dr G Potyka, 'Analyse des Rechts der Europäischen Union betreffend die grenzüberschreitende Katastrophenhilfe_Länderbericht für Österreich', 12

own disaster relief law (*Naturkatastrophenhilfegesetz*), which distributes responsibilities and tasks between state authorities. However, when viewed as a whole, there are only a few differences, making it easier to take a uniform view. For example, all federal states use a similar concept of disaster. All have in common that they do not differentiate between whether a catastrophe was caused by men or by natural disaster. Furthermore, State entities are supposed to act not only when protected rights such as property or human life are directly under attack but already at an earlier more preventive stage, such as when from an objective point of view, a concrete danger for things or people can be determined. The permanent analysis of the extent of danger is extremely important as its assessment will be decisive for determining at which state level within the state measures will be taken.[84]

It is essential to point out that the scope of catastrophe management also comprises measures that include the protection of cultural heritage. Thus, if the following sections elaborate on catastrophe management, the reader needs to be aware that this includes cultural heritage protection as well.

A closer look at the different state laws reveals a similar pattern regarding the assignment of tasks and the division of powers characterised by the principle of subsidiarity. First, as it is common with so-called *vis maior* events the affected property or cultural heritage owner bears the primary weight in such emergency situations and needs to help themselves first. In the provinces of Burgenland, Upper Austria, Tyrol, and Vorarlberg, this is initially the municipality under the leadership of the mayor in case of cross-municipality disasters, the locally competent district administrative authority. In the provinces of Carinthia, Lower Austria, Salzburg, and Styria, the locally competent district administrative authority acts directly. In the province of Vienna, the magistrate acts as the district administrative authority.[85]

As stated above, the primary responsibility for disaster management clearly lies within the states. However, the federal government also has a significant coordinating role to play. Based on article 10(1)(2) and (7) of the Austrian Constitution, which assign the task of regulating the maintenance of public order, security, and foreign affairs to the federal government, the Federal Ministry of the Interior has established the so-called State Crisis and Disaster Management (hereinafter "SKKM"). This is a coordination committee that includes representatives from federal ministries, states, emergency organisations, and the media. The committee is responsible for coordinating and aligning the necessary measures at federal and state level in the event of large-scale threat situations. It should be emphasised that the SKKM is primarily to be

[84] Müllner (n 82)
[85] Potyka (n 83) 17

understood as a platform for exchange, as the committee itself does not have any directive powers.[86]

Moreover, the important role of auxiliary organisations such as rescue services, fire departments, and police cannot be neglected. In the event of a disaster, they are all available to the competent authority. They also sit on the most important regional and national disaster management committees, which means they are directly involved in the decision-making process.[87]

Finally, section 31 of the Monument Protection Act allows the Federal Monuments Office, in cases where a monument is at risk, to request preventive safety measures from the responsible district administration authority. This may include protection measures for a monument located in flood, avalanche, or rockslide-prone areas, or in danger of potential landslides.[88]

If the monument is unexpectedly damaged, for example by a flood or storm, the Federal Monuments Office will first assess the object and conduct a condition analysis. This analysis will serve as the basis for all subsequent steps, such as safety measures or restoration work. These monument-related works must be coordinated with the Federal Monuments Office and require approval by the monument authority in accordance with section 5(1) of the Monument Protection Act. The execution of such work is usually accompanied by the Federal Monuments Office.[89]

b. Is the boundary between human activity and natural disaster regulated by law or other rules?

As outlined in the section discussing question a, Austrian catastrophe management must be viewed primarily as a bundle of state laws within the federal system which, considering their modality and aim of regulation are very alike, especially when it comes to assigning various tasks to state or private authorities in cases of emergency.

For immediate disaster response and monument protection, the question of whether a disaster and therefore the endangerment of a monument was caused by humans or natural events is irrelevant. All state laws are characterised by defining a disaster as an event of extraordinary magnitude that can be of natural, technical, or human origin, and that affects the most important

[86] Bundesministerium für Inneres, „Staatliches Krisen- und Katastrophenschutzmanagement (SKKM)". Federal Ministry of the Interior, State Crisis and Disaster Management
[87] Niederösterreichische Landesregierung, „NÖ Krisen- und Katastrophenschutzmanagement".
[88] Stadt Wien, „Denkmalschutz - Umgebungsschutz, Sicherung, Wiederherstellung, Rückholung".
[89] Bundesdenkmalamt Österreich, „Veränderung an Denkmalen / Instandsetzungsverfahren".

assets such as life, health, and property. Additionally, the event must require the coordinated use of forces that must be used to avert or eliminate the damage or danger.[90]

It is particularly interesting to explore the human or natural causes of disasters. Where is the boundary between the two causes to be drawn? However, as previously mentioned, this question is not relevant for immediate disaster response, which is why Austrian scholars assign it a limited role in the disaster relief laws. All these federal state laws have in common that occurrences that have their immediate origin in nature are understood to belong to the category of natural causes, while human causes exist when they are directly caused by human activity. Remarkably, even events that were indirectly caused by humans but were directly caused by a natural event are already classified as natural causes according to the doctrine. An example of this would be a poorly planned river straightening that causes water levels to rise over the banks during heavy rainfall. The rains are the direct cause of the disaster, which is why the cause for the natural disaster is categorised as a natural one.[91] This distinction, developed by jurisprudence and doctrine in the context of disaster relief laws, is relevant but far less important in practice than the separation in tort law that will be explained later.

Although there are provisions in the monument protection law[92] and the criminal code[93] that penalise damage to monuments or property caused by human misconduct, these provisions do not provide a definition of the distinction between accidental events such as natural disasters. This is because the main focus of these provisions is on dealing with the negligent or intentional behaviour of humans, and therefore accidental events do not play a role in this context.

The central point of reference for determining the distinction between human behaviour and natural disasters is found in civil law. The study of the Austrian Civil Code, a collection of the most important civil law provisions in Austrian law, in connection with other laws that are based on the principles of the Civil Code and contain other relevant liability provisions, provides insight into how the Austrian legal system differentiates between human behaviour and accidental events such as natural disasters. It does not matter whether the damaged objects are monuments or other property, as the resulting principles for the distinction are always the same and therefore also form the basis for insurance activities.

Austrian liability law generally regards natural disasters as *vis maior* or force majeure. This refers to unforeseeable, extraordinary, and unavoidable events that could not be prevented even with the

[90] E Adam, Katastrophenmanagement bei Hochwasser", Recht & Finanzen für Gemeinden 1, No 2008 (1 January 2008) <https://rdb.manz.at/document/rdb.tso.LIrfg20080103#/doc-b_1_2_1_2_1_2>

[91] Müllner (n 82) 24

[92] DMSG BGBI I No 92/2023 art 37

[93] StGB BGBI I No 135/2023 art 126

utmost care. The concept and classification as force majeure are relevant in terms of liability because only in the case of force majeure and thus when the above-mentioned criteria of the principle of *casum sentit dominus* in article 1311 of the Civil Code are met, the victim must bear the damage caused by the natural event on their property. However, if human intervention occurs that interferes with natural events by causing or intensifying them, it is no longer considered pure force majeure, and liability for the respective perpetrator is established. This interpretation derived from case law and doctrine implies that in terms of liability, natural disasters are only conceived as force majeure when they are based purely on a causal chain inherent in nature and human causes are not present.[94]

c. Is it considered a natural disaster if loss or damage of cultural heritage was caused by human activity?

The answer to this question depends on the law under which it is considered. From the perspective of country-specific disaster relief laws and the existing doctrine, it is important to determine what caused the disaster directly. Specifically, in the example contained in the question, this means that even though humans may have contributed to the event, if the rain was the immediate cause of the disaster, it should be classified as a natural disaster. However, this distinction is of little importance for immediate disaster relief, as mentioned above.

The situation becomes much more complex when viewed from the perspective of civil liability law. Both the victim's claim for damages and any potential insurance claims depends on the classification discussed in question c. Unlike the terminology in disaster relief laws, which strictly focuses on the most immediate cause of the disaster for the purpose of differentiation, it is possible in the civil liability regime that both natural and human-defined causes can coexist. Concerning the example mentioned above, this means that even though the rain was undoubtedly the most immediate cause of the damaging event, human behaviour, particularly if other criteria such as unlawfulness and fault are present, can lead to liability, making it no longer solely an act of *vis maior*.

This implies that from a civil liability standpoint, an event can only be considered as pure *vis maior* or a natural disaster if it occurred solely due to natural causes without any human intervention. This differentiation is extremely important for the victim, as according to the Roman principle *casum sentit dominus* under article 1311 of the Austrian Civil Code, in case of pure powers of nature, the victim must bear all damages. However, if it can be proven that human action interfered with a natural causal chain, thereby significantly increasing the risk of damage, the

[94] A Fenyves (ed) Großkommentar zum ABGB – Klang Kommentar, Verlag Österreich GmbH (2018)

victim may have a claim for damages. Typical examples, as recognised by case law, include rockslides that were facilitated by deforestation and landslides that were triggered by construction or excavation work.[95] Additionally, there have been cases where claims for state liability were successful due to unlawful building permits issued in flood-prone areas, where the municipality had knowledge of the flood risk in the designated area but still designated it as building land, thereby significantly increasing the risk of damage to property owners.[96]

In conclusion, the legal assessment of the above question depends on the applicable law. Different conclusions are possible depending on the perspective taken. The relevant civil liability law and associated case law show that human behaviour that enables or exacerbates a natural event must be considered, and therefore, in this context, it can no longer be classified as *vis maior* only.

6. Are there special provisions in national legislation on the protection of cultural heritage in the event of armed conflict?

Austrian law does not provide any special protection for cultural property in the event of an armed conflict within the Monument Protection Act, but article 13 of the Monument Protection Act provides for the application of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Section 13 of the DMSG specifies a number of conditions for the application of the Hague Convention and for the selection of objects to be protected under the Hague Convention.[97]

The Hague Convention is generally incorporated into Austrian law through its inclusion in article 13 of the Monument Protection Act. For this reason, article 13 of the DMSG lists various measures and criteria that must be fulfilled for an object to be included in the list in the sense of the Hague Convention. For this purpose, the object in question must be of highest importance for the Austrian cultural property stock according to article 13 paragraph 2 DMSG. This paragraph also formulates the obligation that the significance of an object for the national cultural property stock must be determined according to the international interpretation criteria of the Hague Convention.[98] If an object is to be included in the list of cultural objects worthy of protection according to the Hague Convention, these objects must be protected as monuments according to the Monument Protection Act; if this is not the case, the procedure for protection

[95] ibid
[96] OGH 5Ob48/75; 1Ob178/06t
[97] DMSG (2013) art 13
[98] DMSG (2013) art 13, sub-s 2; Blauensteiner (n 23) 120f

must be initiated immediately.[99] Objects that fall under the protection of the Hague Convention due to the fact that they serve to store objects worthy of protection but do not themselves have the character of a monument are exempt from this.[100] Section 13(4) of the DMSG regulates the possibilities of objection for the Federal Minister of Defence and Sport, the governor of the province concerned, the mayor and the owners of the object. If an object is included in the list of the Hague Convention, there is an obligation to affix a marking in accordance with the Hague Convention to the object in question. Failure to affix a marker is prohibited.[101]

The entry of objects into the list shall take the form of an administrative procedure. In this case, the persons named in article 13 paragraph 4 are parties to the procedure and have the possibility to file applications for the rejection of the entry into the list or to file applications for the deletion of the object from the list. Should the object nevertheless be inscribed, the Federal Monuments Office must issue a decision, otherwise, the procedure is terminated informally without the issue of a decision concerning the entry into the list.[102]

7. Is it possible to terminate the protection of objects of cultural heritage and under which conditions?

It is possible to terminate the protection of an object according to the Monument Protection Act. The cancellation is usually due to the poor condition of a monument, which is partly due to the suboptimal care and protection of an object by the owners. A prerequisite for the revocation of protection is that the object in its current condition no longer fulfils the monument characteristics as defined by the Monument Protection Act according to article 1 DMSG and is thus no longer classified as worthy of preservation. If an object is destroyed by the owner or a third party, even though it still fulfils the properties of a monument, the Federal Office for the Protection of Monuments has the option of taking penal measures in accordance with the Criminal Code or administrative criminal law.[103]

The DMSG characterises the destruction of an object as follows in article 4 paragraph 1 No 1: "An object is deemed to have been de facto destroyed, even if it has still been preserved in parts if the significance of the individual parts is no longer in the public interest."[104] The destruction of a monument is only possible if permission for the destruction of the monument has been

[99] Monument Protection Act, art 13, para 3
[100] DMSG (2013) art 13, sub-s 3; Blauensteiner (n 23) 120f
[101] W Fürnsinn, Kommentar Denkmalschutzrecht, Wien/Graz 2002, 125-130; DMSG (2013) art 13, paras 5-6
[102] DMSG (2013) art 13, sub-s 4; Blauensteiner (n 23) 121
[103] DMSG (2013) art 1; Blauensteiner (n 23) 85
[104] DMSG (2013) art 4, sub-s 1 Z 1

granted by the Federal Office for the Protection of Monuments in accordance with Article 4 paragraph 1 DMSG. If an application for the destruction of a monument is filed, the applicant themselves must prove that the reasons for the approval of the destruction meet the criteria according to Article 4 paragraph 1 DMSG.[105]

The monument properties can be lost due to various factors – the passage of time, an accident or unlawful destruction without a permit according to Article 5 paragraph 1 DMSG. Furthermore, the loss of monument character can also result from a scientific re-evaluation of the protected object. However, an object or its remains remain under monument protection until the Federal Office for the Protection of Monuments has determined ex officio or upon application pursuant to Article 26f DMSG that there is no further public conservation interest in the object in question. This leads to a procedure for the revocation of monument protection. The revocation of monument protection must take place within six months.[106]

If the destruction of a monument is approved after the abolition of monument protection (Article 5 paragraph 1 DMSG), the Advisory Council on Monuments (Article 15 DMSG) must be consulted; this obligation can only be waived if there is imminent danger. The obligation to obtain a permit can also be waived if the object is a ground monument.[107] The authorisation for the destruction of a monument according to Article 5 paragraph 5 DMSG expires after three years, however, it is possible to extend the period by another three years if other authorisation procedures are running at the same time.[108]

Monument protection can be revoked by means of a monument revocation procedure (*Denkmalschutzaufhebungsverfahren*), which is possible in cases where a monument loses its character as a monument and thus its public interest in preservation. The revocation can refer to an entire object or ensemble, but also only to parts of an object.[109]

8. De lege ferenda

The Federal Office for the Protection of Monuments and the Provincial Conservation Offices repeatedly call for the improvement and further development of monument protection in Austria. A major problem is the competence. The protection of monuments as such falls under the competence of the federal government, while the protection of townscape, building law and nature conservation fall under the competence of the provinces due to the federal structure of

[105] DMSG (2013) art 4, sub-s 1 Z 1; Blauensteiner (n 23) 85-87
[106] DMSG (2013) art 5, sub-s 1; Blauensteiner (n 23) 85-87
[107] DMSG (2013) art 5, sub-s 5
[108] ibid, art 5, sub-s 6
[109] Blauensteiner (n 23) 85-87

Austria. This distribution leads to practical problems with jurisdiction, as well as with the enforcement of protection. The further development of the protection of cultural assets in this area would be an improvement especially for cultural assets on the borderline between nature conservation and monument preservation, but also for immovable monuments, especially historic towns, and city centres, which are subject to regulations under both building law and monument protection law.[110]

In particular, the protection of the environment (Article 7 DMSG) would benefit from the elimination of these jurisdictional tensions between the two areas of law.[111] A consistent regulation at the federal level would have a greater effect and provide greater legal certainty as well as better protection for cultural property. The current state of affairs means that the effective protection of natural monuments suffers from the limitations of the competences of monument protection, especially when it comes to the connection between designed nature and an architectural monument.[112] In this context, the protection of the townscape itself can also be mentioned, which alone does not lead to an object being protected. Here, the joint regulation of these adjacent areas of law would lead to better protection of the objects themselves.[113]

Article 31 of the DMSG does provide for protective measures, but this protection is considered too weak to guarantee the long-term protection of cultural assets. Here, the representatives of the Federal Office for the Protection of Monuments criticise the merely passive protective effect. The protective effect of the Monument Protection Act only unfolds shortly before or during the intervention and is limited to the ordering of merely minor protective measures. In order to ensure the long-term protection of cultural objects, a change in the Monument Protection Act would bring advantages with regard to the ordering of protective measures. The Federal Office for the Protection of Monuments would have the possibility to order earlier and larger protective measures with corresponding subsidies.[114] Although Article 4 paragraph 2 DMSG states that a lack of maintenance measures by the owner is tantamount to destruction, the sanctions are not far-reaching enough. Once damage has been done to a property, it is not infrequently irrevocably lost. In individual cases, it has happened that owners have deliberately omitted restoration measures in order to cause the loss of the monument's character and thus cancel its protection. Especially for such cases, an adaptation of Article 4 DMSG in the direction of active protection would be a solution, so that the Monument Authority would have the possibility to order

[110] VfGH, 19 March 1964, Slg 4680

[111] DMSG (2013) art 5, sub-s 5

[112] Fürnsinn (n 101) 23f; DMSG (2013) art 7

[113] VwGH Wirtshaus in Korneuburg ZI.93/09/0228, 30 June 1994; Fürnsinn (n 101) 23-25

[114] DMSG (2013) art 31

protection measures at an early stage and prevent losses in the cultural landscape.[115] A similar point in which changes are desired is the sanctions. Although there are penal provisions in the sense of administrative penalties and the Penal Code, separate offences within the DMSG would have a protective effect, especially for the failure to take precautionary measures.

[115] DMSG (2013) art 4

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1. National cultural heritage in the international context

a. Is the country a party to any conventions on cultural heritage?

During the past 50 years, Bulgaria has ratified and become a party to the main international instruments regarding cultural heritage. First, the Hague Convention for the Protection of Cultural Property was ratified by Decree No 154/26 May 1956 of the Presidium of the National Assembly and entered into force in Bulgaria in 1956. Twenty years later, in 1975 Bulgaria ratified the Convention Concerning the Protection of the World Cultural and Natural Heritage. In 1991 Bulgaria became a party to the European Cultural Convention. Four years later in 1995 Bulgaria ratified the Convention for the Protection of the Architectural Heritage of Europe. In 2003 Bulgaria ratified the Convention on the Protection of the Underwater Cultural Heritage and lastly, in 2005 – the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

b. Does the country contribute to international registers and lists regarding cultural heritage?

Bulgaria has ten World Heritage Sites among which seven pieces of cultural heritage and three natural sites. The first four sites were listed in 1979.[1] Four more sites were listed in 1983 and one in 1985.[2] In addition, from 1984 to 2022 Bulgaria has recorded 16 sites on its tentative list. Another three documentary heritages are included in the Memory of the World Register, one in 2011[3] and two in 2017.[4] Another eight Bulgarian practices are included in the Lists of Intangible Cultural Heritage[5] and the Register of good safeguarding practices.[6] Bulgaria has been a Member State of the Enlarged Partial Agreement on Cultural Routes since 2011 with five Cultural Routes within the country.[7] Regarding the European Heritage Label Sites, Bulgaria has only one – the Thracian Art in Eastern Rhodopes: Aleksandrovo Tomb (added 2021).

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[1] These were the Boyana Church, the Madara Rider, the Rock-hewn Churches of Ivanovo, and the Thracian Tomb of Kazanlak

[2] These sites are Rila Monastery, Ancient City of Nessebar, Srebarna Nature Reserve, Pirin National Park, and the Thracian Tomb of Sveshtari

[3] The Enina Apostolos, a fragment of an Old Bulgarian Cyrillic manuscript of the 11th century

[4] The Synodicon of King Boril and the Gospels of Tsar Ivan Alexander

[5] Bistritsa Babi, archaic polyphony, dances and rituals from the Shoplouk region (inscribed in 2008; performing arts), Nestinarstvo, the Panagyr of Saints Constantine and Helena in the village of Bulgari (2009; performing arts), The tradition of carpet-making in Chiprovtsi (2014; craftsmanship), the Surova folk feast in Pernik region (2015; performing arts), the Cultural practices associated to 1 March (2017; craftsmanship) and Visoko multipart singing from Dolen and Satovcha (2021; performing arts)

[6] The Festival of folklore in Koprivshtitsa (inscribed in 2016; performing arts) and the Bulgarian Chitalishte (Community Cultural Centre) (2017; cultural education)

[7] ATRIUM - Architecture of Totalitarian Regimes (2014), Roman Emperors and Danube Wine Route (2015), European Route of Industrial Heritage (2019), Cyril and Methodius Route (2021), Women Writers Route (2022)

c. Was the country once a member in any international commissions to rule about cultural heritage in the international context?

Bulgaria has had three Mandates to the World Heritage Committee – 1978-1983, 1985-1991 and 2021-2025. Bulgaria is also a member of other international organisations that deal with cultural heritage, such as the International Council on Monuments and Sites (ICOMOS) and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).

2. National context of the protection of cultural heritage: Legislation and institutions

a. Are there specific national acts regulating the protection of cultural heritage?

i. Constitutional law

The protection of cultural heritage is guaranteed under the Constitution of the Republic of Bulgaria in its article 23 which provides that the State takes care of the preservation of the national historical and cultural heritage.[8] Moreover, in accordance with article 54 every citizen has the right to access the national and common human cultural values.[9] Historically, with the current constitution (from 1991) the term "protection of cultural heritage" is introduced for the first time at constitutional level. The previous Bulgarian constitutions guaranteed merely the right of citizens to access to culture in general, their "obligation to increase the cultural power of the nation".

When it comes to the jurisprudence of the Constitutional Court of Bulgaria article 23 is usually referred to as one of the constitutional values that limit the right of property along with the protection and reproduction of the environment (article 15) and the preservation of arable land for agricultural purposes (article 21).[10] Thus, the Court maintains that "by their very nature, prohibitions of and restrictions on activities contrary to the objectives of protection (…) are a legally established instrument for carrying out these constitutional orders".

The Constitutional Court construes article 54 as the right of citizens to "develop their cultural needs by benefiting from the general human and national cultural values".[11] Thus, it stipulates

[8] Art 23: The state creates conditions for the free development of science, education and the arts and supports them. It takes care of the preservation of the national historical and cultural heritage

[9] Art 54(1): Everyone has the right to benefit from national and universal cultural values, as well as to develop their culture in accordance with their ethnic affiliation, which is recognised and guaranteed by law

[10] Decision No 14 from 15 October 2020 of the Constitutional Court in Constitutional Case No 2/2020; Decision No 14 from 12 October 2021 of the Constitutional Court in Constitutional Case No 14/2020

[11] Decision No 7 from 29 September 2009 of the Constitutional Court in Constitutional Case No 11/2009 – at the request of the Ombudsman of the Republic of Bulgaria to establish unconstitutionality of article 113 of the

that there must be an equilibrium between the interest of collectors of movable objects representing cultural values and the universal right of citizens to access these values. Therefore, so the Constitutional Court, the right of ownership of movable cultural property cannot be treated, as it is in the general case, as a property right with a definite monetary equivalent, which is inviolable and which is subject to the unlimited power of its bearer, since it relates to the realisation of the cultural rights of every citizen and their guarantee through the exercise of the public obligation of the state to protect the cultural heritage. Objects of ownership of cultural values do not represent a simple element of their owner's property, nor do they have a purely economic value. Hence, the Constitutional Court argues that it is a matter of public interest to establish a legal regime for their protection by the state, in order to satisfy the non-property needs of persons beyond the circle of owners of movable cultural values.

ii. Parliamentary statutes

The Cultural Heritage Act represents the fundamental legislative act when it comes to protection of cultural heritage in Bulgaria. It was promulgated in 2009 and has been changed 16 times ever since. The Act is composed by 12 chapters: I. General Provisions, II. The National System for Preservation of Cultural Heritage, III. Intangible Cultural Heritage, IV. Tangible Cultural Heritage, V. Preservation of the Immovable Cultural Heritage, VI. Preservation of the Movable Cultural Heritage, VII. Archaeological Cultural Heritage, VIII. Conservation and Restoration of Cultural Values, IX. Reproduction and Dissemination of Cultural values, X. Presentation and Documentation of Cultural Values, XI. Control, and XII. Administrative Penalty Provisions. It was intended to create conditions for preservation and protection of the cultural heritage, sustainable development of its preservation policy, and to ensure equal access of citizens to cultural values.[12] Furthermore, article 3 reiterates the main principles of the policies for preservation of cultural heritage: equal treatment of the various types of cultural heritage in the course of its protection, decentralisation of management and financing of the cultural heritage preservation activities, as well as openness and transparency in the management of cultural heritage preservation activities.

The Cultural Heritage Act provides a legal definition of cultural heritage:[13] The cultural heritage shall include the non-tangible and tangible immovable and movable heritage as an aggregate of cultural values which bear the historical memory and national identity and have scientific or cultural importance. In addition to the abstract definition in article 2, the Cultural Heritage Act in

Cultural Heritage Act on the grounds that it contradicts the inviolability of private property. The Court nevertheless rejected his request.

[12] Cultural Heritage Act, art 3

[13] Cultural Heritage Act, art 2

article 6 provides a list of different categories considered to fall under the term "cultural heritage" – for instance, historical, ethnographic, and architectural sites and compounds, works of fine and applied art, garden art and landscape architecture, anthropological remains, industrial heritage, folk crafts, medicine and games, culinary tradition, oral tradition and language, customs, rituals, and beliefs.

Noting the existence of this list is important, as the Bulgarian Cultural Heritage Act makes a distinction between "cultural heritage" and "cultural values". In the definition provided in article 7 we read that "cultural values" are firstly non-tangible or tangible evidence of human presence and activity, any natural sight or phenomenon, which are significant from a scientific or cultural point of view, and secondly non-tangible or tangible evidence of human presence, which are significant for the Bulgarian Orthodox Church or the other registered religious denominations. In this category of values, the national legislation includes also fragments of archaeological or other objects that are in disintegrated form, comprise a small part of the authentic whole of the original object, are largely defaced, devoid of any important cultural, scientific, or artistic value, and can be defined as bulk material. The analysis of both definitions helps to understand that the law sees "cultural heritage" as something bigger in its nature, as an aggregate of "cultural values", whereas values by themselves are individual objects or fragments of such.

The Cultural Heritage Act differentiates between intangible and tangible cultural heritage. The regulation of intangible cultural heritage is unsatisfactory – it provides only with a list of what is classified as intangible heritage, its identification and it lays the foundation for the creation of the National Intangible Cultural Heritage Counsil, which is responsible for safeguarding and promotion of this heritage. In chapter 4 the legislator regulates "Tangible Cultural Heritage", where immovable and movable cultural values are classified in terms of their belonging to a specific historical period. The law recognises cultural values of most recent times to be part of cultural heritage and benefit from the same protection as values from past generations. The Cultural Heritage Act deals with protection of cultural values extensively by regulating their identification, declaration before authorities, granting of status as culturally significant with their classification categorisation and appropriate preservation regimes. In addition to this for movable cultural values the law regulates private collections, transfer of ownership on objects, export from the territory of the country, whether permanent or temporary.

In chapter 7 the law provides with specific provisions for archaeological cultural heritage, which involves any movable or immovable remains of human activity located or discovered underground or on the surface, or underwater. There is no requirement on the historical period from which they originated from except the formula "past epochs". The classification of cultural

values as "archaeological" comes from the distinction in terms of research and cultural field. Other categories from this classification are historical (related to historical landmark events and personalities), architectural and structural, artistic (works of fine arts), urban (part of settlements and communities), ethnographic, and literary values.

An interesting term used in the Cultural Heritage Act is the so called "national treasure". This is a specific status granted to movable cultural values depending on their scientific and cultural significance. These objects considered by the law as of immense importance to science, culture, nature or technological progress and the destruction of which is an irreparable loss to society. Such values in order to hold the status of national treasure must be either one of a kind from the time period they were created in, authentic with high artisanal importance, or are a testimony for ideas, believes, events or outstanding figures all of which were of decisive significance to the development of society.

Another crucial legislation, the Protection and Development of Culture Act, determines the main principles and priorities of the national cultural policy, cultural organisations, and bodies for the protection of culture, national identity, and the ways of supporting and financing cultural activities and artists. This Act proclaims the core principles of the national culture policy such as democratism, freedom of artistic creativity, equality among artists and cultural organisations, preservation of cultural and historical heritage, preservation of the Bulgarian language, traditions and customs, protection of national cultural identity, incl. of Bulgarian communities abroad, promotion of cultural diversity, promotion of donation, patronage, and sponsorship in the field of culture.

An important act is the Protection and Promotion of Culture Act, which set the priorities of the national policy surrounding culture, culture organisations and the bodies for protection of culture and the ways of supporting and financing cultural activities and artists. The act introduces a vast set of principles of the national cultural policy. Consequently, the policy is laid on the foundations of democratism, freedom of artistic creativity and prevention of censorship. A basic principle set by the Act is the preservation and enrichment of the cultural heritage, both tangible and intangible. However, despite having legal effects only within the borders of the country, the Protection and Promotion of Culture Act set an ambitious goal to ensure through diplomatic institutional action the protection of the national cultural identity and the culture of the Bulgarian communities living abroad.

The Patronage Act regulates the gratuitous provision of assistance by individuals and legal entities ("patrons"), for the creation, preservation, and promotion of works of culture. Its main objective

is to stimulate private entities and individuals to support the development of Bulgarian culture. In accordance with article 3 of the Patronage Act archaeological research, restoration, and conservation, related to the preservation of the cultural and historical heritage, are defined as "creative activities" and can also be subject of a grant under the meaning of this Act.

The Criminal Code represents another fundamental source of law on the protection of cultural heritage, in particular in regard to crimes against the cultural heritage. Its provisions regarding the protection of cultural heritage are examined in the following chapters.

iii. Executive regulations

In terms of protection of tangible cultural heritage, the following regulations by the Council of Ministers occupy a central place in the regulatory system:

- Statute for the Ministry of Culture;
- Order No 1 of 18 July 2018 on the procedure for issuing permits for conducting commercial activity with movable cultural assets and for keeping the register under Article 116, Section 1 of the Cultural Heritage Act – it introduces special provisions for deals and auctions that involve movable cultural heritage;
- Order No 2 of 25 February 2014 on the procedure for issuing permits for export, temporary export and temporary export of movable cultural assets and the certificate under article 128, section 3 of the Cultural Heritage Act for removal and temporary removal;
- Order No 10 of 28 October 2021 on the procedure for the creation of museums under article 25, section 2 of the Cultural Heritage Act.

b. Which government authorities are in charge of the management and supervision of cultural heritage preservation? What are their functions regarding the protection of cultural heritage?

In accordance with article 11 of the Cultural Heritage Act the National System for the Preservation of Cultural Heritage includes the central and local government authorities in charge of the management and supervision of cultural heritage preservation activities, museums, cultural organisations within the meaning of the Protection and Promotion of Culture Act,[14] as well as the Holy Synod of the Bulgarian Orthodox Church and the head offices of the other registered

[14] Cultural organisations as per the Protection and Promotion of Culture Act are organisations that carry out activities on the creation, distribution, and protection of cultural values and by form of ownership they are state owned, municipal, private, or with mixed participation

religious denominations. They conduct their activities in cooperation with the Bulgarian Academy of Sciences, the schools of higher education, artists unions, professional associations, and other non-governmental organisations.

i. Government authorities

The Council of Ministers[15], as head of the executive branch in Bulgaria, plays a central role, as it directs and implements the State policy in the field of cultural heritage.[16] As per article 2a of the Protection and Promotion of Culture Act it issues the National Strategy for the Development of Culture[17] at the suggestion of the Minister of Culture with a horizon of ten years. It sets strategic goals for the management and protection of cultural heritage after broad discussions with scientific and cultural organisations, non-profit legal entities, and registered religious denominations. The Council of Ministers also adopts plans for the protection and management of immovable cultural values and establishes cultural institutes at the proposal of the Minister of Culture. It also provides the relevant departments and municipalities with the immovable archaeological cultural values, which are state property, for conducting activities related to their preservation and presentation. In case of a property within the category "world significance" or "national significance", when it is owned by individuals or private entities, with a decision of the Council of ministers this property is to be exchanged for an equivalent private state property.

The Minister of Culture of Bulgaria is a member of the government, i.e. of the executive power (the Cabinet), manages and coordinates the cultural sites on the territory of the country and implements its cultural policy. He is elected by the Parliament or appointed by the Head of State of Bulgaria. His role in the protection of cultural heritage will be discussed below.[18] Linked to the Minister is the Ministry of Culture, which is an administration that supports him in the exercise of his powers and conducts administrative service activities of citizens and legal entities. The Directorate General "Inspectorate for the Preservation of Cultural Heritage" supervises the implementation of the Cultural Heritage Act by natural and legal persons. It also is competent to carry out preliminary, ongoing and ex-post control of compliance with the requirements of the Cultural Heritage Act and of other acts issued on the basis of it relating to field and underwater

[15] More on the Council of Ministers can be found on https://www.gov.bg/bg/administratsia/funktsii-i-struktura/ustroystven-pravilnik

[16] Cultural Heritage Act, art 2

[17] The most recent strategy was issued in 2019. It envisions a ten-year action plan which includes the creation of conditions for support and development of cultural processes, creative industries and innovation, both in the context of European and global trends, as well as in terms of preserving traditions and Bulgarian national identity. Another goal is making artists active participants in the creation of contemporary culture. Most importantly the strategy aims at making culture a strategic resource for sustainable social and economic development, <https://mc.government.bg/files/5495_Strategy_culture_.pdf> accessed 6 December 2023

[18] See section 5d

archaeological investigations; the implementation of territorial planning and protection of immovable cultural property; the protection of movable and immovable cultural property in museums; the conservation and restoration of movable and immovable cultural property; the performance of transactions with movable cultural property, export and temporary export of the same; and the reproduction of cultural property. This body has a head office and regional inspectorates. Another specialised directorate is the "Cultural Heritage, museums and fine arts" Directorate, which aids with strategic planning, digitalisation of movable cultural heritage, keeps the registry of museums and other functions.

ii. Local authorities

Local government authorities that are empowered in the field of protection of cultural heritage include mayors of municipalities and the Municipal council. The former implements the preservation policy within the territory of the municipality. By their order, each municipality has to have a public council for the protection of cultural heritage as a consultative body. The Municipal councils on the other hand are mainly occupied with adopting a strategy for the preservation of cultural heritage for the territory of the respective municipality and develop rules on the structures and activities of municipal museums. The Council is also responsible for funding activities related to preservation of cultural heritage objects.

iii. National Institute of Immovable Cultural Heritage (NIICH)[19]

This body is closely related to the Ministers responsible for immovable cultural heritage. It assists him in the implementation of the state policy in the field of the preservation of immovable cultural heritage by conducting complex assessments and making proposals for the registration of immovable cultural property. It participates in the process of creating proposals for the regimes of their preservation and develops plans for the management of immovable cultural heritage.

The Institute conducts research activities on the search and study of the immovable heritage and develops the methodology for this activity. It also is responsible to the maintenance of the National Register of Immovable Cultural Property[20] and the National Archive of Immovable Cultural Heritage.

[19] Additional information on the structure, history, and on-going projects of the NIICH can be found at http://ninkn.bg/# accessed 5 December 2023

[20] This list is created on a territorial basis – by regions, municipalities, and cities, in accordance with article 41, paragraph 7 of Order No 3 on the procedure for identifying, declaring, granting status, and determining the category of immovable cultural properties, as well as the access and circumstances subject to registration in the National Public Register of Immovable Cultural Properties. Lists by municipalities can be found here: http://ninkn.bg/Documents/categoryPreview/13# accessed 5 December 2023

c. Is there a procedure for identification of cultural heritage? How is an object granted cultural value status?

According to Bulgarian law identification of cultural heritage represents a systematic process that involves several steps. These steps are seeking out immovable sites and object or movable values of cultural significance, their careful study, followed by a preliminary evaluation of the site/object as a cultural value. The process of identification differs between immovable and movable heritage. For the former the above-mentioned steps involve seeking out, which is to be understood as per article 56 of the Cultural Heritage Act as establishing the location and the generic type of the site/object by means of on-site examination or alternatively the study of archives and physical evidence. The process of studying calls for an interdisciplinary research process involving on-site exploration, identification of the scientific and cultural characteristics of the site and recording of all findings. The preliminary evaluation must conclude in the identification of characteristics of the site/object as immovable cultural value. For all sites and objects that that have been through the process and for which there is evidence that they hold cultural significance must be declared before the Minister of Culture with a proposal. The Minister may issue an order of declaration or refusal. All sites/objects are a subject of a second and final evaluation of their cultural, scientific, and societal importance, their authenticity and lastly their current material state. In order to protect the sites and objects while the procedure lasts, they are granted a temporary status as immovable cultural values until they are registered as such. If the final evaluation ends with a negative conclusion on importance, authenticity or other, the Minister issues a new order which ends the temporary protection. However, in the case where the final evaluation has found sites or objects as possessing the needed characteristics of immovable cultural values, the Director of the NIICH shall submit a proposal to the Minister of Culture on their classification, categorisation, and preservation regimes with regard to the granting of immovable cultural value status to such sites or objects.

The status of immovable cultural values is granted to three main groups. The first group includes immovable cultural values in the category of "universal importance", which are granted the status upon their entry into the World Heritage List by the UNESCO World Heritage Committee.[21] The second group is in the category of "national importance" and is granted status by order of the Minister of Culture (or a deputy minister designated by the latter), in coordination with the Minister of Regional Development, and in cases where there are protected areas, falling within the boundaries of the immovable cultural value, also in coordination with the Minister of the

[21] Cultural Heritage Act, art 50, 65

Environment and Waters.[22] All other cases (third group) go through the general procedure of granting the status with an order of the Minister.[23]

When it comes to seeking out movable cultural heritage the law envisions two main scenarios, the first when values are intentionally searched for by consulting sourced and/or conducting on-site surveys. In this case on-site surveys represent search for archaeological items, excavations, or observations. Surveys are conducted after a permission is given by the Minister of Culture. However, the practice shows that it is possible that movable values (for example treasure) could be found accidentally by people. Those who do happen to encounter a value are obligated by law to inform the nearest museum about the find. There the value goes through a process of identification as a value, classification, and categorisation. Identification could be conducted by a private museum as well, given that they possess the proper permission for this type of activity from the Minister. After the appraisal if the object is concluded to be a cultural value, the director of the museum which conducted the identification will order its entry into the inventory books of the museum.

Identification can be requested by natural or legal persons, who are the rightful owners of objects that could be considered as cultural values. It can be requested by merchants holding a license to deal in cultural value as well, except for works of Bulgarian visual arts created after 1900 and Bulgarian printed books published after 1805[24]. Another explicit exception applies to archaeological items, coins, works of visual arts imported into Bulgaria and originating from other countries, where such items are accompanied by a document of origin and of the manner of their acquisition. After the appraisal if the object is concluded to be a cultural value, the director of the museum which conducted the identification issues a certificate and instruction on its safekeeping. However, the director of the museum will not grant a certificate, nor will Minister of Culture issue an order in cases where there is substantial evidence that the objects that are subjected to identification have been illegally acquired or are counterfeit works of art or archaeological artefacts. Not only will there be a refusal by the competent authorities, but they inform the Ministry of the Interior Affairs and the public prosecution offices.[25]

[22] ibid
[23] ibid
[24] Cultural Heritage Act, art 97
[25] ibid art 101

d. Does the country have a Minister of Culture? What are their functions regarding the protection of cultural heritage?

The Minister of Culture is the main governmental body when it comes to managing and preserving cultural heritage. By their proposal, the Council of Minister adopts the National Strategy for Development of Culture, which is in effect for ten years. On the international level the Minister in entrusted with making proposals on the entry of immovable cultural values into the World Heritage List. In the context on national classification of heritage, they may grant national treasure status to movable cultural values. It is in their competence to issue licenses for on-site archaeological excavations, licenses for the establishing of private museums, registration certificates to dealers of cultural values, licenses for the making of replicas of cultural values; export licenses pursuant to Council Regulation (EC) No 116/2009 of 18 December 2008 on the Export of Cultural Goods and temporary export licenses for movable cultural values. They also supervise the return of unlawfully exported movable cultural values considered to be national treasures. The Minister of Culture controls the provision and use of grants from the patrons given for creation, preservation, and promotion of culture. They may exercise also other powers provided by law.

e. What is the role of civil society and private entities regarding the protection of cultural heritage?

The law has made a point of ensuring the democratic approach in management, popularisation, and protection of tangible and intangible cultural heritage. This is most evident in the policies surrounding intangible cultural heritage – in the forms of folk traditions, traditional dances, and songs, traditional artisanry – where the role of creative unions and enthusiastic individuals is extremely prominent. In the field of tangible cultural heritage, however, the state adopts a more active main role, given the facts that tangible heritage faces different endangering factors such as natural destruction, the effective protection from which requires centralised state policy and strategies and, moreover – substantial financial supports for conservation efforts. In contrast to intangible heritage, which in some cases is protected by the goodwill of motivated individuals, with tangible heritage there is a major need for monetary support.

The Cultural Heritage Act ensures that the Holy Synod of the Bulgarian Orthodox Church and the head offices of the other registered religious denominations are part of the national system for the preservation of the cultural heritage. All religious denominations have specific rights and obligations relating to tangible cultural heritage. The law explicitly states that cultural values may be either public (owned by the State or municipalities) or private property belonging to the

Bulgarian Orthodox Church and the other registered religious denominations, as well as natural or legal persons. Religious authorities have the right to propose to the Minister of Culture the registration of cultural values of significance that are not of so much of national importance, but rather significant for them due to their religious and ceremonial character. This provision clearly shows the importance of religious freedom and tolerance in the Rule of Law. With this right comes the obligation of religious authorities to implement rules for preservation of the cultural values managed by them and to set up management bodies in accordance with the regimes for their preservation. To ensure the proper safeguarding of these values all head offices of the registered religious denominations must submit to the Minister of Culture annual reports on their efforts for the preservation of cultural values during the preceding year[26].

In the event of natural disasters or armed conflicts the main actor in the preservation of the cultural heritage in the State, however, all measures must be taken in accordance with the Bulgarian Orthodox Church or other registered religious denominations – owner of the targeted values.[27]

Another important actor in the protection of cultural heritage are scientific institutions – the Bulgarian Academy of Sciences and schools of higher. They also are a part of the national system for the preservation of the cultural heritage. Museums are guided in terms of their scientific work exclusively the Academy. The Academy has created a special research division "Cultural-historical Heritage and National Identity", which undertakes task in several areas. The research in this division is aimed at studying, preserving, and popularising the Bulgarian cultural and historical heritage as part of the common European cultural tradition and history. The division implements at a large electronic publishing and digitisation of bulk information of the cultural, historical, and scientific heritage, and digital repositories are created to systematise the samples of this heritage and to make effective access to them. Moreover, the division can conduct planned, rescue or emergency archaeological research and field studies. It takes active participation in the preparation to national infrastructure projects – highways, gas pipelines, by examining the possibility of having a heritage site on the premise of the project.

The search for and study of immovable cultural values, except for archaeological ones, is conducted by the NIICH, research organisations, schools of higher education, museums, natural and legal persons. In the case of movable heritage scientific institutions and schools of higher education assist museums in the prosses of identification. Schools, NGOs, and registered religious denominations may create public collections and exhibitions, which are of social

[26] Cultural Heritage Act, art 13
[27] ibid art 5

significance. The management of such public collections takes place in accordance the Minister of Culture.

Protection and Development of Culture Act asserts that the national policy on protection and development of culture must be developed with the participation of artists and creative unions. The Ministry of Culture must guarantee publicity in the development of this policy through access to the information on its activities, meetings with creative artists, eminent figures of culture and experts on current issues of the cultural policy. This ensures transparency and participation of the civil society in the safeguarding of the common heritage.

3. Right to ownership of cultural heritage: How is ownership of cultural heritage determined?

There is no legal definition of the right of ownership in Bulgarian law. However, most definitions are based on defining what the owner may do with the object. As with 'regular' right of ownership, tangible cultural heritage objects' property right can be determined as the owner's ability to possess, enjoy the use of, and to dispose of property. There are specific rules for the ownership of some tangible cultural heritage objects (such as archaeological sites and objects), preservation of the tangible cultural heritage, and the discovery of such objects.

a. Are excavations and the discovery of archaeological findings regulated by law?

Excavations and the discovery of archaeological findings is regulated by the Cultural Heritage Act. The legal definition of 'archaeological sites and objects' means all movable and immovable material remains of human activity in past epochs, located or discovered in the earth's strata, on their surface, on the ground or underwater, for which on-site surveys are the main source of information.[28] Analysing the rule, the court has found that archaeological objects are not only the discovered one, but also an immovable property estate if it can be presumed that such objects can be located there.[29]

According to article 2a, only the state can be the only owner of archaeological findings, as it constitutes public state property. As such, these objects cannot be subject to transfer of ownership.[30] Furthermore, archaeological findings are given protection by the law as cultural heritage objects, regardless of whether they are declared or registered according to the procedures in chapter V of the Cultural Heritage Act.[31]

[28] Cultural Heritage Act, art 146, para 1
[29] Decision No 11841/4 October 2018 of the Supreme Administrative Court
[30] State Property Act, art 7, para 1
[31] Decision No 13107/21 December 2021 of III division of the Supreme Administrative Court

b. Is it possible for natural persons and legal entities to acquire, keep, sell, or donate ownership of cultural heritage objects?

Cultural values may be private property on natural persons and legal entities if they are acquired by the means of a deal, by statute of limitations or other legal way on the condition they do not constitute state or municipal property.

Except for archaeological findings, there are no specific rules for the ownership of immovable cultural heritage objects.[32] However, the basic restrictions for owning immovable property apply. Such an example is article 22, paragraph 1 of the Constitution, which regulates, that foreigners are forbidden from acquiring ownership over land, apart from the conditions set in ratified international agreements and the conditions, ensuing from the accession of the Republic of Bulgaria to the European Union.

Having an immovable property object given the status of a cultural heritage object, only adds to the value of the property. Therefore, when proclaimed to be a cultural heritage object, as well as having a certain function based on the location, the real property has the purpose of adding to the historical memory, national identity, science, and culture. For example, if a property is located in a forest area it has the function protecting and increasing the forest area,[33] but also the function to add to the cultural heritage. As a result, the major restriction to an owner is that any action of his that could endanger the added cultural value is forbidden.[34] However, no other restrictions for acquiring, keeping, or selling/donating immovable cultural heritage objects exists, based on the special status given by the Cultural Heritage Act.

There are restrictions for preserving and sustaining development of an immovable cultural heritage object.[35] For example, conservation and restoration shall be executed only after receiving an explicit order of acceptance by the Minister of Culture. If such actions are executed without an order, they constitute an administrative offence.

As for movable cultural heritage objects, mutual assent contracts are valid, only if the object is identified and registered according to chapter VI, article 113, paragraph 1 of the Cultural Heritage Act. Such contracts are to be concluded only after the Minister of Culture is notified. This is done in order to give the state the pre-emptive right to buy the movable cultural heritage object according to the same terms and conditions set in the offer.[36] The state also has the pre-

[32] Z Orsov, *Pozemleno Pravo* (Sofia University publishing 2022) 276-277
[33] Forestry Act, art 1, para 2, subpara 1
[34] ibid
[35] Cultural Heritage Act, art 83(a)(l)
[36] ibid, art 113, para 2

emptive right if the cultural heritage object is offered in an auction.[37] In both cases, the law if the pre-emptive right is not exercised, a deal can be concluded with another person.

There are specific rules for exercising commercial activity with cultural heritage objects. First, the person, being legal person or a legal entity, should be registered under the Commerce Act or the Cooperatives Act. Second, such a person should be entered into a register established and kept by the Ministry of Culture, which is done by issuing a license.[38] The terms and conditions for the issuance of such licenses, terms and conditions for the conservation of cultural heritage objects, and for the trade therein, and the register keeping procedure shall be set out in an ordinance issued by the Minister of Culture.[39] Such an is Ordinance No 1 of 18 July 2018 for the procedure for the trade of movable cultural heritage objects and for keeping the register under article 116, paragraph 1 of the Cultural Heritage Act.

c. What are the rights and obligations of owners of cultural values? Are there differences between State institutions, private persons, and religious communities regarding cultural heritage and its protection?

The moment the rights and obligations according to the Cultural Heritage Act are to be recognised is an important question for the proper implementation of the law. According to Ruling No 1411/26 November 2014 of IV division of the Supreme Administrative Court, this moment is the issuance of the certificate that the object is of cultural heritage value.

The Cultural Heritage Act sets a list of rights and obligations of owners of immovable cultural heritage values in section IV of chapter V. The owner of an immovable cultural heritage object is entitled to consultations, expertise, and recommendations by the competent authorities for the preservation of the cultural valuable.[40] Any owner is also entitled to receive revenues from entrance tickets, promotional materials, as well as reproductions pursuant to the provisions of the Act.[41] There is the right to apply for support from municipal, government and/or European programs for the purposes of carrying out emergency works needed for the protection of the tangible cultural heritage.[42] The owner is also entitled to raise and receive voluntary monetary or other aid and donations from individuals, legal persons, and institutions.[43]

[37] ibid, art 124, para 1
[38] ibid, art 116, para 1
[39] ibid, art 127
[40] ibid, art 70, subpara 1
[41] ibid, art 70, subpara 2
[42] ibid, art 70, subpara 3
[43] ibid, art 70, subpara 4

Whoever owns an immovable cultural heritage object is obliged to take care to preserve, keep and maintain them in good condition, while observing the provisions of the Act and the related secondary legislation.[44] A breach of such obligation is the mount of an antenna on the facade of a house, identified and declared as part of the cultural heritage.[45] The law obliges the owner to inform the National Institute of Immovable Cultural Heritage, regional inspectorates for the preservation of cultural heritage or municipal authorities, for any damage or action against the cultural heritage object.[46] If the breach of these obligations leads to the destruction of the immovable cultural heritage object, the owner should restore it to the original form, with the original parameters, architectural and artistic features, within a time limit to be determined by the Minister of Culture.[47] Any owner is also obliged to provide public access, where the use of the object is related to preservation and to provide free-of-charge public access for the research purposes provided that this will not disturb its normal use or damage the legitimate interest of the owner.[48] These obligations are based upon the fact, that the object has historic/cultural as well as "consumer" value. Lastly, the owner of the immovable cultural heritage object is obliged to coordinate investment projects with the competent administration and to provide the required documents and ensure access and assistance to the competent authorities in the exercise of their powers provided by law.[49] The law provides a thorough list of rules for the execution of orders in case of breach of the obligation of the owner of the immovable cultural heritage object.

The Cultural Heritage Act also sets a list of the rights and obligations of owners of movable cultural heritage objects in section IV of chapter VI. Similarly, to the right in article 70, subparagraph 1, the owner of the movable cultural heritage object is entitled to free-of-charge consultations, expertise, and recommendations by the competent authorities for the preservation of the object.[50] Some rights are involved with the utilisation of the added value the object has, for example, the right to exhibit it in museums, and the right to receive remuneration for letting the object take part in national and international exhibitions.[51] The owner is also entitled to tax concessions provided by law.[52] Furthermore, as the object is movable, the law provides, that in case the owner is not able to provide for the appropriate safekeeping of the object, they are

[44] ibid, art 71, para 1, subpara 1
[45] Decision No 7488/28 July 2022 of III division of the Supreme Administrative Court
[46] Cultural Heritage Act, art 71, para 1, subpara 2
[47] ibid, art 71, para 2
[48] ibid, art 71, paras 5-6
[49] ibid, art 71, para 1, subparas 3-4
[50] ibid, art 111, para 1, subpara 1
[51] ibid, art 111, para 1, subparas 3-4
[52] ibid, art 111, para 1, subpara 7

entitled to deliver the object for temporary safekeeping to a museum, in which case, the relationship between the owner and the museum is to be settled in a written contract.[53]

There are four obligations the law sets for the owner of movable cultural heritage objects under article 112 of the Cultural Heritage Act. They are obliged to maintain the object in good faith; to fulfil the instructions given on their preservation; to inform the buyer that the object is of cultural value and protected by law; in transfer of property, to provide access to and assist the supervisory authorities in the exercise of their competency; and to inform the competent authorities in the event of damage and tortious interference.

There are no specific differences between state institutions, private persons, and religious communities being owners, regarding cultural heritage objects and its protection. Some general rules apply, notwithstanding the added value of the object. For example, according to article 31 of the Administrative Procedure Code, the request for administrative action should be issued by a different administration than the one addressed, the administration should send it to the competent administrative body. In this case, the request, filed in term before the incompetent body, shall be considered filed in term. As a result, if the owner is an administration and there is a specific term for administrative action, the term starts from the moment the owner becomes acquainted with the circumstances, because the owner is obliged to send the information to the competent administrative body, in fear of missing the procedural terms. This is the result of the *ex officio* principle in administrative law.

d. What rules apply to private collections?

According to article 108 of the Cultural Heritage Act, a collection is a totality of movable cultural heritage objects, which, in their entirety and thematic connection, are of scientific and cultural importance. In Decision No 110/15 October 2020 of the Supreme Court of Cassation, the court held, that the law requires for each object, part of the collection to be a cultural heritage object on its own. If this requirement is not met, the objects that do qualify as cultural heritage are given the protection of the law separately.

The law defines collector as any person who owns or possesses a collection, which has been registered under the register of movable cultural heritage objects under articles 102-109 of the Cultural Heritage Act. The collector is obliged to keep a register containing a descriptive and photographic catalogue of each cultural value in the collection, information about its

[53] ibid, art 111, para 2

conservation and restoration, as well as a certificate or passport issued under the rules for identification and registration for movable cultural heritage objects.[54]

e. Is it possible for the State to confiscate cultural heritage of private ownership and under what conditions?

The state can confiscate a privately owned cultural heritage object, only as a criminal penalty. Therefore, the first condition that needs to be met is for the law to provide for confiscation as a penalty for the crime. There is no general clause to confiscate cultural heritage objects. Secondly, a verdict that sets confiscation of the objects should have entered into force. Only if these conditions are met, the confiscation can be executed.

Furthermore, article 53 of the Criminal Code stipulates that in the event of a deliberate crime, if the cultural heritage object was the subject of the crime or was intended or used for committing the crime, then the object is to be seized. This is possible only if the cultural heritage object was owned by the criminal. In both cases, a penalty can be executed only if it has entered into force, therefore no need for a compensation payment is foreseen.

Nevertheless, a compensation is foreseen in the case of seizure according to the State Property Act. Chapter III of this Act regulates the procedure for compulsory expropriation of private real estates for state needs. It is possible only if the governments need cannot be met in any other way and upon preliminary and equivalent compensation. In Decision No 6/4 July 2006, the Constitutional Court of the Republic of Bulgaria set the standard, that preliminary compensation meant that the compensation is meant to be paid, in order for the seizure procedure to begin. No such procedure can begin though, based only on the cultural value of the object. It is meant only to meet the needs of the state.

4. What criminal or administrative offenses are related to destruction, damage, or theft of cultural heritage? What penalties would be imposed in such cases?

Both penal and administrative liabilities are present in Bulgaria's legal system regarding offenses of cultural heritage. The main source for criminal offences is Bulgaria's Criminal Code 1968, last amended October 2023. There is no specific chapter or section concerning crimes against cultural heritage, however, most of them are grouped in chapter 8, section 1 of the Special Part of the Criminal Code – 'Crimes Against the Governing Order'.

The criminal offenses of cultural heritage can be separated in five groups.[55]

[54] Cultural Heritage Act, art 110

The first group is crimes concerned with uncovering of cultural heritage objects, all of which are punishable by imprisonment, and most with a second penalty – financial fine. Such a crime is the uncovering of archaeological objects without the appropriate permit, the penalty for which is imprisonment for up to five years.[56] Similarly, performing (or ordering the performance of) terrain archaeological excavations or other research in breach of the legal order, without the appropriate permit, and on the territory of an immovable cultural asset (or within its security zone) is punishable by imprisonment of up to six years and by financial fine from 2000 to 20 000 BGN.[57]

Another crime, concerned with uncovering of cultural heritage assets is the illegal creation, keeping or hiding of objects, for which the criminal knows or assumes are intended for seeking, storing, changing, or moving of archaeological objects. This crime is punishable by imprisonment of up to six years and the court may impose deprivation of certain rights.[58] The Supreme Court of Cassation found a person guilty and sentenced him to two years of imprisonment for creating and keeping two hand-made metal detectors.[59]

Other crimes, concerned with uncovering of cultural heritage are finding a cultural heritage asset, without notifying the authorities[60] and discovering a treasure, containing a cultural heritage asset, without notifying the authorities[61], both of which are punishable by imprisonment and a fine.

The second group involves crimes concerned with destruction, damaging or modification of a cultural heritage object.

First, the law differentiates between destruction of cultural heritage objects, depending on who the owner is. If the person destroying or damaging the object is its owner, then the punishment is imprisonment of up to three years or alternatively a financial fine from 500 to 2000 BGN.[62] Furthermore, any official who illegally authorises the destruction or damaging of the cultural heritage object is punishable by imprisonment of up to five years or by fine from 1000 to 5000 BGN, and the court may deprive the official of the right to hold state or public office, cumulatively to the other sanctions.[63] If the act of illegal authorisation resulted in destruction or

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[55] K Manov, *Nakazatelnopravna zashtita na kultulturnoto nasledstvo v Republika Bulgaria* (Sibi 2015) 140-142
[56] Criminal Code, art 277a, para 1
[57] ibid, art 277a, para 2
[58] ibid, art 277a, para 7
[59] Decision No 50174/2022
[60] Criminal Code, art 278
[61] ibid, art 208, para 4
[62] ibid, art 278b, para 1
[63] ibid, art 278b, para 2

damaging, then the punishment is imprisonment from one to six years, as well as the other punishments under the previous paragraph.[64]

Second, if the cultural heritage object was found without notifying the authorities, and results in destruction or damaging of the object, when it is not intended, the punishment is imprisonment of up to four years and a fine from 1000 to 5000 BGN – used cumulatively.[65] Higher sanctions are imposed if the object possesses considerable value.[66]

Another crime is, when someone orders or fails to prevent illegal activity in a protected territory for preservation of cultural heritage, which is punishable by imprisonment of up to five years and financial fine from 2000 to 10 000 BGN.[67] Whoever resumes, orders, or fails to prevent the continuance of the activity under article 277a, paragraph 4 of the Criminal Code, after it was stopped by the competent authorities, shall be punished by imprisonment from one to six years and financial fine from 3000 to 20 000 BGN.[68] If a person organises or leads the activity under the previous paragraphs, knowing or assuming it is carried in breach of the Cultural Heritage Act is punished with the same sanctions.

Whoever, without the appropriate permit, performs or orders the performance of terrain archaeological excavations or research in breach of the legal order undertakes excavations works on the territory of unmovable cultural valuable or within its security zone shall be punished by imprisonment of up to six years and a financial fine from 2000 to twenty 20 000 BGN.[69] These actions are criminalised, as they endanger the cultural heritage object, if the necessary actions are not taken.[70]

Other crimes concerned with destruction, damaging, or modification of a cultural heritage asset are common crimes qualified, because of the object. Such is the case with arson of objects with historic, scientific, or artistic value, that have considerable worth.[71] Similarly, arson of a building resulting in the destruction of an object with historic, scientific, or artistic value, having considerable worth is also criminalised.[72] Both crimes are punishable by imprisonment from three to ten years. The same punishment is provided if the destruction is a result of an explosion.[73] The threat for the abovementioned crimes is criminalised, if the threat could give rise to a justified

[64] ibid, art 278b, para 3
[65] ibid, art 278, para 3 in connection with para 1
[66] ibid, art 278, para 3 in connection with para 2
[67] ibid, art 277a, para 4
[68] ibid, art 277a, para 5
[69] ibid, art 277a, para 2
[70] Manov (n 55) 194
[71] Criminal Code, art 330, para 2, subpara 3 cl 1
[72] ibid, art 330, para 2, subpara 3 cl 2
[73] ibid, art 333

fear of its fulfilment, the punishment for which is imprisonment of up to two years.[74] The preparation for these crimes is also punishable by imprisonment of three to eight years, but no more than the penalty stipulated for the respective crimes.[75]

The third group are crimes concerned with identification and registration of cultural heritage objects. Keeping an unidentified and unregistered archaeological object is punishable by imprisonment of up to four years and a financial fine from 2000 to 10 000 BGN, and if the objects are three or more, the sanctions are higher.[76] There is also the possibility for the court to impose confiscation of up to half of the convicted person's property and to deprive them of rights to hold state or public office, or to practice a particular profession or activity.

Another crime in this group is when an official fails to request identification and registration of a cultural heritage object, which is punishable by imprisonment of up to two years and the court may also deprive the official of their right to hold state or public office.[77]

The last crime in this group is when someone offers transfer of property or transfers the property of a cultural heritage object, which is unidentified or unregistered, punishable by imprisonment from one to six years and a financial fine from 1000 to 20 000 BGN.[78]

A fourth group of crimes are ones that have been included in 2019 by an amendment of the Criminal Code and are in article 278b[1]. This new article criminalises forgery of a work of art, sculpture, graphic or archaeological objects, for the purpose of acquiring property, which is punishable by imprisonment of up to one year and a financial fine from 2000 to 20 000 BGN.[79] The same punishment shall be imposed on any person offering to sell or selling as authentic any works of art, sculpture, graphics, or archaeological objects.[80]

The fifth and last group of crimes is the one concerned with trafficking of cultural heritage objects. Whoever, without the appropriate permit, exports across the borders of the country a cultural heritage object is punishable by imprisonment of one to six years and a financial fine of 1000 to 20 000 BGN.[81] Actions of illegally creating, keeping, or hiding tools, knowing or assuming they are intended for exporting of a cultural heritage object are punishable by

[74] ibid, art 320a
[75] ibid, art 356a
[76] ibid, art 278, para 6
[77] ibid, art 278, para 5
[78] ibid, art 278a, para 1
[79] ibid, art 278b[1], para 1
[80] ibid, art 278b[1], para 2
[81] ibid, art 278a, para 4

imprisonment of up to six years and the court may cumulatively deprive the person committing the crime of the right to practice a particular profession or activity.[82]

Administrative liability is the second type of sanction provided by law for the defence of cultural heritage objects. The Administrative Offences and Penalties Act sets the types of administrative penalties for all administrative offences – public reprobation, fines, temporary deprivation of right to practice a definite profession or activity, and unpaid labour in favour of the society.[83] The administrative penalties provided by the Cultural Heritage Act are all punished by administrative fines, and if the perpetrator is a sole proprietor or a legal entity – financial sanction.

As with the crimes, administrative offences can also be separated in four groups. The first is offences concerned with unlawful trade with cultural heritage objects.[84] Such an offence is engaging in transfer transactions for consideration with unidentified and unregistered movable cultural heritage objects, punished with an administrative fine ranging from 5000 to 10 000 BGN or a financial sanction from 10 000 to 15 000 BGN.[85] There is a specificity with this offence, as the item involved must be seized to the benefit of the State.[86] The problem with the administrative offence is the similarity with the crime in article 278a, paragraph 1 of the Criminal Code. The crime is concerned with only one transaction, whereas the text in the Cultural Heritage Act is concerned with many transactions, as indicated by the plural form of the word. Furthermore, the administrative offence is concerned with transactions for consideration when the crime can be committed even with donations. As a result, the differentiating criteria should be that a crime will be committed if conducted by the will of a criminal organisation, which can only be implemented after legislative change.[87]

Another administrative offence in this group is engaging in transfer transactions for consideration with movable cultural heritage objects, which rank as national treasure, without informing the Minister of Culture.[88]

Whoever engages in auctions with movable cultural heritage objects without the permission of the Minister of Culture is punishable with a sanction ranging from 20 000 to 100 000 BGN.[89] Organising auctions without permission[90] is also punishable and falls in this category.

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[82] ibid, art 277a, para 7
[83] Administrative Offences and Penalties Act, art 13
[84] Cultural Heritage Act, arts 207-216
[85] ibid, art 206, para 1
[86] ibid, art 206, para 2
[87] K Manov, 'Competition between administrative and criminal liability for offenses related to the culture' in T Sivkov et al (eds), *50 years Administrative Offences and Penalties Act – history, traditions, future* (St. Kliment Ohridski University Press 2020) 264
[88] Cultural Heritage Act, 207, para 1

The second group of offences is concerned with unlawful recreation of cultural heritage objects. For example, whoever engages in the making of copies, replicas and commercial items requiring direct contact or impact on the cultural heritage object without registration shall be punished with an administrative fine from 1000 to 3000 BGN or a sanction from 5000 to 10 000 BGN.[91] Making copies, replicas, or commercial items without the consent of the owner of the cultural heritage object is also punishable with the same administrative penalties.[92]

These administrative offences are similar to the crime in article 278b[1] of the Criminal Code. As a result, the doctrine has given a resolution to the conflict, regarding which type of liability should be engaged. If the offence formally breaches the rules of recreation, administrative liability should be engaged, whereas criminal liability should be engaged for intentionally presenting a recreation as the original cultural heritage object.[93]

In this group of offences falls the creation, usage, or dissemination of photographic, computer-generated, video, or any other images of a cultural value or elements thereof for commercial purposes, or use of such images as a trademark symbol in the manufacture of goods, labels, and designer solutions, or for advertising, without a valid contract with the owner of the cultural heritage object, punishable with a fine from 5000 to 15 000 BGN, or a sanction from 20 000 to 50 000 BGN.[94]

Another group of administrative offences are concerned with trafficking of cultural heritage objects. Whoever exports a movable cultural heritage object without a license or export certificate shall be punishable with a fine from 5000 to 10 000 BGN, or a sanction from 10 000 to 20 000 BGN, unless the action constitutes a crime.[95] This offence is identical to the crime in article 278a, paragraph 4 of the Criminal Code. Therefore, only two cases for applying administrative liability are left. The first one is if the act formally contains the signs of a crime stipulated by the law, due to its minor importance, or its social danger is obviously negligible.[96] The second case for applying article 217 of the Cultural Heritage Act is when the perpetrator is a sole proprietor or a legal entity.

Administrative offence concerned with trafficking of cultural heritage objects is the act of exporting an object, ranking as national treasure, or registered in the main stocks of museums,

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[89] ibid, art 212
[90] ibid, art 214
[91] ibid, art 224
[92] ibid, art 226
[93] Manov (n 87) 261
[94] Cultural Heritage Act, art 226a
[95] ibid, art 217, para 1
[96] Manov (n 87) 265

temporarily for the purposes of presentation or conservation for longer than four years.[97] The fine ranges from 5000 to 10 000 BGN.

The next group of administrative offences is concerned with failure to fulfil obligations under the Cultural Heritage Act. For example, the owner, concessioner, or user of a cultural heritage object is liable for failure to take care to preserve, keep and maintain it in good condition, if the act does not constitute a crime.[98] These offences are punishable with fines, starting from 5000 BGN. The problem that arises is concerned with differentiating these acts from the crimes in article 278b, paragraph 1 and article 216 of the Criminal Code. Therefore, administrative liability would be present when the act only formally constitutes failure to fulfil obligations and no destruction or damaging of the cultural heritage object is present.[99]

Whoever fails to undertake immediate action for the safety of an immovable cultural value or to inform the competent authorities is punishable with a fine ranging from 500 to 1000 BGN, or a sanction ranging from 3000 to 5000 BGN.[100] Whoever fails to take measures to preserve open structures and findings and to immediately inform the relevant authorities is punishable with a fine ranging from 3000 to 5000 BGN, while sole proprietors and legal entities shall be punished with a sanction ranging from 5000 to 10 000 BGN.[101] Both acts are similar to the crime of uncovering a cultural heritage object in article 278, paragraph 1 of the Criminal Code. The crime is concerned with discovering an object and not informing the authorities in a period of seven days. In the first administrative offence, the law punishes the perpetrator for lack of taking action or informing. As a result, someone might be liable for not informing with both administrative and criminal sanctions. The same can be argued for the second case, where the law punishes the act of not informing the authorities immediately. As a result, differentiating between which liability should be used by the competent authorities is a problem, which has been criticised.[102]

Administrative liability is also present for acts of destruction or damaging of cultural heritage objects. For example, article 200a, paragraph 1 of the Cultural Heritage Act sets the rule, that whoever destroys or damages a cultural heritage object is punishable with a fine ranging from 15 000 to 30 000 BGN, and if the perpetrator is a sole proprietor or a legal entity, a sanction ranging from 25 000 to 50 000 BGN, if the act does not constitute a crime. The crime in article 278b, paragraph 1 of the Criminal Code is always done intentionally, therefore, administrative liability is

[97] Cultural Heritage Act, art 218
[98] ibid, art 197, paras 1-2
[99] ibid, art 261
[100] ibid, art 198
[101] ibid, art 221
[102] ibid, art 268

present when the act is unintentional. If the object is owned by the perpetrator, then criminal liability is always present, non-dependant on the question of intention.

Article 200b of the Cultural Heritage Act punishes authorising or allowing the destruction of or damage to a cultural heritage object by an official, punishable with a fine ranging from 3000 to 6000 BGN. The action of authorising is identical to the ones criminalised in article 278b, paragraph 2 of the Criminal Act. Therefore, only one option is left for having administrative liability, and that is when the crime is of minor importance according to article 9, paragraph 2 of the Criminal Code, whereas the act of allowing is practically possible to be implemented.[103]

Other administrative offences are concerned with official failing to fulfil their obligations, for example articles 200d and 201 of the Cultural Heritage Act.

The law broadens the applicability of administrative liability with article 228c of the Cultural Heritage Act, by ordering that "[a]ny other violation of this Act and of the secondary legislation pertinent to its implementation shall carry a fine of 200 to 2000 BGN and where the defaulting party is a sole proprietor or a legal entity, a sanction of 300 to 5000 BGN, unless the misdeed constitutes a criminal offence."

a. Does national law distinguish between theft, destruction, or damage of a "normal" item and of an item with cultural, historic, or religious value?

The Criminal Code generally does not distinguish between destruction or damaging of a "normal" item and one with cultural, historic, or religious value. However, there are some exceptions. For example, destruction or damaging of someone else's property is punishable by imprisonment of up to five years.[104] Generally, the destruction or damaging of someone else's cultural heritage object will be treated as "regular" destruction. However, since the cultural heritage object is of importance not only to the owner, but also of national interest, destruction of personal property with cultural value is criminalised.[105] The act of authorising the destruction of a cultural heritage object is also criminalised, but this is not the act of destruction, rather giving the permission.

The Criminal Code also penalises the act of unintentional destruction or damaging of a cultural heritage object, which was found, but the authorities were not notified for its discovery.[106] The difference concerned with finding of another's chattel, without informing the owner,[107] or a

[103] ibid, art 262
[104] Criminal Code, art 216, para 1
[105] ibid, art 278b, para 1
[106] ibid, art 278
[107] ibid, art 207

treasure, without reporting it to the authorities,[108] is that the law does not criminalise their destruction as a specific severely punishable case of the same crime.

The law does not differentiate between theft of a "normal" item and a cultural heritage object. There are no specific crimes concerned with theft of cultural heritage objects. Therefore, regular rules for theft are applicable.

b. Is there a possibility to have insurance on cultural heritage?

The possibility to have insurance on cultural heritage is based on the general rules of property insurance, set in chapter 13 of the Insurance Code 2016, last amended 29 March 2022.

Article 399 of the Insurance Code sets the rule, that the subject of a property insurance contract may be any right, which for the insured person may be evaluated in money. As a result, the main question for the possibility to have insurance on a cultural heritage object is whether its value can be evaluated in money. While this question is hard to answer for intangible cultural heritage, when concerned with tangible cultural heritage, it is easier to estimate the value. At the very least, the main worth of the materials can be the value of the object for the insurance contract. However, this approach does not consider the question of cultural, historical, or religious value of the object. Therefore, both the material value and the added value should be considered. This approach is still dependent on the good will of both the insured person and the insurance company to sign an insurance contract.

The Insurance code has general requirements to the contracts for insurance against damages, one of them being against what could a contract be signed. The insurance risk for which a contract can be signed are set in annex 1 of the Insurance Code.[109] These risks are for any damage or loss to property, as a result of fire, explosion, storm, natural disasters, other than storm, nuclear energy, landslide, hail, frost, or any event like theft.

However, the Cultural Heritage Act regulates that measures should be taken to provide for the insurance or provision of a state guarantee, when museums present movable cultural heritage objects through permanent or temporary exhibitions.[110] Similarly, for temporary presentations before foreign audience of national treasures and cultural heritage objects, registered in the main stocks of museums, the relevant financial guarantee shall be provided by means of insurance policy or shall be taken over by the state subject to decision of the Council of Ministers upon the

[108] ibid, art 208
[109] Insurance Code, art 385
[110] Cultural Heritage Act, art 182, para 3

proposal of the Minister of Culture.[111] In both cases, having insurance of a cultural heritage object is only a possibility, as seen by the word "or". There is no rule to provide for mandatory insurance of such objects. These two cases rest upon the good will of the insurance company, as well as the European standards for such occasions.

5. Does the legal system have provisions on the protection of cultural heritage against natural disasters?

According to the Cultural Heritage Act, the State plans for the preservation of the cultural heritage in the event of disasters and armed conflicts. The preservation of cultural objects in such cases shall be conducted according to the procedure determined by an act of the Council of Ministers. This procedure should be created and proposed before the Counsil either by the Minister of Culture, the Minister of Defence, or the Minister of Internal Affairs. The Council must develop the National Disaster Protection Program and a National Plan for rescue and emergency recovery operations. Moreover, it is responsible for providing financial funds for safeguard measures.

The Council is supported by another governmental organisation – the Interdepartmental Commission for Recovery and Assistance. According to the Disaster Protection Act, its function is to direct and control the funds from the national budget for financing the National Disaster Protection Program.[112]

The Cultural Heritage Act creates a special classification of immovable cultural heritage regarding their level of exposure to danger.[113] In terms of this criteria the distinguishes two main groups of values. The first group is cultural values at risk, for which there exists a potential threat of damage or destruction. The threat comes from either their specific location in seismic areas, areas of large-scale construction work, their vicinity of territories exposed to a great risk of floods or ongoing changes resulting from geological, climatic, and other natural factors. The second group includes endangered cultural values, for which there exists a real threat of damage, vandalism, destruction, or serious impairment of their integrity due to rapid disintegration of their original substance, leading to substantial change in their structure, rapid degradation of the environment or visible loss of their authentic appearance.

Another important provision concerns the protection of cultural heritage after a declaration of disaster. According to the Disaster Protection Act, state of disaster denotes a regime, which is

[111] ibid, art 129, para 4
[112] Disaster Protection Act, para 18
[113] Cultural Heritage Act, art 49

imposed in the disaster-stricken area by the bodies, defined by law, related to implementation of measures for a specified period of time, in order to bring the disaster under control and perform rescue and emergency recovery works.[114] It may be declared in case a disaster is still in progress, has occurred or there is a risk that it will occur in the near future, related to the loss of human life, and/or impairment of health, and/or significant damage to property and/or the economy and/or significant impact the environment, related to contamination of the soil, water, or air by chemical, biological, or radioactive agents or to destruction of biological species. Three authorities may declare such a state – the municipality mayor for the territory of the municipality or parts of it; the regional governor for the region or parts of it; and last the Council of Ministers for the territory of more than one region or on the territory of the entire country. After the declaration of state of disaster measures for deconcentration must be taken. According to article 1, paragraph 21 of the Additional Provisions of the Disaster Protection Act, deconcentration represents the organised removal of cultural and material valuables from threatened areas and their transfer and conservation in safe areas.

Depending on the timing of preparation and notification, deconcentration may be immediate – in the event of earthquakes, nuclear or radiation emergencies, hazardous materials incidents, airplane crashes, wildfires, and other hazards – or after warning and notification – floods, hurricanes, storms, sever snowstorms. However, it must be noted that if the situation does not allow such measures due to the hazardous nature of the event, deconcentration may not acute and only persons, domestic and farm animals would be removed. Deconcentration includes the removal of cultural values, their transportation and preservation and later return to their original location. Subject to deconcentration will be valuable historical and archival documents, scientific and technical documentation, and all movable cultural property.

a. Which institution as the "first responder" would be responsible to safeguard cultural heritage during natural disasters?

Management of crisis is regulated by the Disaster Protection Act, which prescribes that disaster protection is provided at national, regional, and municipal level and the executive authorities, legal persons, and sole proprietors shall organise disaster protection in accordance with the functions, assigned to them by this and by other acts.[115] In the event of a natural disaster, cultural values would be subjected to deconcentration, which would be carried out by the bodies of the executive power, legal entities, and sole traders and/or by natural persons independently. The

[114] Disaster Protection Act, art 48
[115] ibid, art 5

management of deconcentration on the regional and municipal level is led by the regional governor and the municipal mayor. They are aided in the operative action by special headquarters.

b. Is the boundary between human activity and natural disaster regulated by law or other rules?

The legal distinction between "human activity" and "natural disaster" is made in the additional provisions of the Disaster Protection Act. It is stated that a "natural phenomenon" is a result from natural forces, whereas "accidents", "breakdowns", and all other events are a consequence from human activity. However, this clarification does not have a practically oriented implementation in the law itself, since article 2 defines the word "disaster" as a consequence from "a natural phenomenon and/or human activity which leads to significant disruption of the normal functioning of society" – the used conjunctions make it possible for the two hypothesises to be present either alternatively or cumulatively. What remains at focus is the result, being the disruption of the functioning of society, rather than the reason for its occurring.

The boundary is more prominent in guidelines for insurances where possible events are carefully listed. For instance, the relevant articles in an insurance company's contract often mention both "fire" and an "arson", despite the result is the same. The difference between both is present in the Criminal Code, where arson is a cause for seeking criminal liability. Another example is that provisions of insurance companies mention both an explosion due to natural causes and due to human activity. The argument for seeking criminal liability for a human-induced explosion remains here as well. One reason for the detailed listing of events, covered by a company's policy, is for sure the client's right to know what they are being insured of. The inclusion of both natural phenomena and human-induced disruptive events, is proof that the protection against disasters tends to be present without taking in mind the reason for the occurring of the event, as much as considering the final, disruptive-for-society result and taking measures against it.

Regarding the protection of cultural heritage, the border between natural causes and human activity is not as relevant in the legislation. In article 49 of Cultural Heritage Act the human factor is indeed considered when the reasons for a cultural object to be classified as "at risk" or "endangered" are listed – amongst the natural causes are included as well armed conflict, terrorism, and vandalism. This speaks of the law's equal treatment of the causes for disruption of cultural heritage.

However, this does not mean that the violators do not face negative consequences. A person, whose activity is a cause for a disaster, negatively impacting valuable assets, must take administrative liability. In the Cultural Heritage Act, a fine from 15 000 to 30 000 BGN is facing

whoever destroys or damages a valuable asset and for legal entities the amount varies from 25 000 to 50 000 BGN. By argument on the stronger ground, we can claim that a human-induced disaster with negative impact on cultural heritage, falls into the hypothesis of the abovementioned provision and deserves the respective punishment.

The Cultural Heritage Act predicts the institute of "declaring" any cultural objects, which is a prevention against disruptive factors.[116] Furthermore, valuable assets are included in the National Public Register of Cultural Heritage. The consequences of this are that the object's owner would receive the right for expert advice and financial aid, and the respective obligations of taking appropriate care and maintaining the object in a proper condition. This act of declaring binds the owner with rights and obligations towards cultural heritage and hence contributes to its overall protection.

To conclude, both law and non-binding guidelines prioritise the consequences from disasters and the actions following them, rather than focusing on the prevention of such events. Bulgarian Law[117] has the institute of "declaring" the cultural objects which may not be effective in the hypothesis of a disaster, but it is effective towards smaller threats. The financial sanctions are relatively effective only in the hypothesis of a human-induced disaster. Regarding to natural phenomena, Bulgaria has laws dedicated to environmental protection, but they are not sufficiently focused on long-term strategies for prevention against natural or human-induced disasters, and ought to be improved.

c. Is it considered a natural disaster if loss or damage of cultural heritage was caused by human activity?

The answer to the question would be positive. The Bulgarian legislator does not differentiate between the two hypotheses. This is also clear from the provision of article 5 of the Cultural Heritage Act, where the word "disaster" is mentioned only there, which leads us to the conclusion that this is not a technical term for the needs of this normative act and the definition given in article 2 of the Disaster Protection Act may be applied.

In article 49 of the Cultural heritage Act the legislator has foreseen two possibilities for the cultural values at risk. First, the human factor is considered in the cases of military conflicts, terrorist attacks or vandalism. On the other hand, natural factors, such as location in earthquake zones or progressive changes from geological, climatic, and other natural factors, or floodings are

[116] Cultural Heritage Act, arts 58-63
[117] ibid

not differentiated by whether they were caused by human activity or not. The law makes no distinction on the nature of the hazard even if human activity is identified as the root cause.

However, this conclusion is only valid if it is established that the specific natural factors is unintentionally caused by human. If the natural disaster was intentionally cause by a human with the aim of achieving a specific result, it would be considered a crime justifying the direct responsibility of the person for the created disaster and the damage caused to the cultural heritage.

6. Are there special provisions in national legislation on the protection of cultural heritage in the event of armed conflict?

Special provisions on protection of cultural heritage in the event of armed conflict are present in the Criminal Code. According to article 414, paragraph 1 of the Criminal Code,[118] whoever, in violation of the international rule for waging war, destroys, damages, or renders unfit cultural or historic monuments and objects, works of art, buildings and installations of cultural, scientific, or other humanitarian importance shall be punished by imprisonment of one to ten years. This type of crime is specific, as it does not have a particular rule that is violated. Rather it refers to the international law. As there is a rule in the Constitution of Bulgaria, which regulates, that an international agreement, if ratified, promulgated, and having come into force with respect to the Republic of Bulgaria, shall be considered part of the domestic legislation of the country, only such international agreements must be considered in respect to article 414, paragraph 1 of the Criminal Code.[119] Such an agreement is the Convention for the Protection of Cultural Property in the Event of Armed Conflict 1954, ratified in Bulgaria in 1956. As a result, whoever violates the Convention for the Protection of Cultural Property in the Event of Armed Conflict, and this results in destruction or damaging of a cultural heritage object, shall be punished by imprisonment of one to ten years.

The same penalty is imposed on those who steal, misappropriate, or conceal cultural heritage objects in violation of the international rule for waging war, or impose contribution/confiscation regarding such objects.[120]

[118] Under chapter 14 Crimes Against Peace and Humanity, section II Crimes Against the Laws and Customs of Waging War
[119] Constitution of Bulgaria, art 5, para 4
[120] Criminal Code, art 414, para 2

7. Is it possible to terminate the protection of objects of cultural heritage and under which conditions?

It is possible to deregister an immovable cultural value from the Register of immovable cultural values. Often, in addition to the quality of declared immovable cultural value, the buildings are also part of the territory with cultural and historical heritage with the status of group immovable cultural value and/or part of a group cultural monument. There is only one legal way of deregistration, and that is the procedure of recategorisation of registered immovable cultural values[121] and deregistration from the register of cultural values. The procedure for immovable cultural values is conducted according to the order of their declaration and granting of status.

The procedure begins with a proposal by the director of the National Institute for Immovable Cultural Heritage addressed to the Minister of Culture to change the status or write off the immovable cultural value.[122] The proposal is examined by a Specialised Expert Council for the Protection of Immovable Cultural Values, after which an opinion is drawn up to the Minister of Culture. Based on the opinion issued, the national institute prepares the final materials that are necessary for issuing the order of the Minister of Culture. This is the formal procedure outlined by the Act.

It is our understanding, however, that the delisting of the cultural value is almost impossible, due to the fact that before that the authority is obliged to take the actions for the protection of the object. Once the property has received the status of cultural value, it cannot be removed due to bad factual condition. Therefore, it may be concluded that enough guarantees have been established that this will not happen, and on the contrary, the cultural value will be maintained and protected, regardless of whether its owner is a State, a municipality, or a private legal entity.

Despite what has been said, in certain cases, when the examination shows the irretrievable loss of the monument or its complete absence through collapse, for example, restoration activities are impossible and endanger those working on the eventual restoration. This is a valid and basic reason for the deletion of the relevant value from the appropriate register, respectively terminating the protection of the cultural value.

In summary, we can say that in some cases, there is indeed a reason for delisting a building included in the Register of Immovable Cultural Values and it is proper to have a clear and legal mechanism for its delisting, in full consideration of the value they have for societies cultural

[121] Cultural Heritage Act, arts 62 and 69
[122] Ibid, art 62

monuments. In other cases, however, the competent authorities should use all legally established mechanisms and procedures for the protection of cultural heritage.

8. De lege ferenda

When proposing changes in the legislation concerned with offenses related to cultural heritage objects in Bulgaria, first, theft of such an object should be implemented in the Criminal Code. This is based upon the fact, that this type of object has both "physical" and historic/cultural value, and the law *de lege lata* does not differentiate between these actions.

Second, administrative liability for the destruction and damaging of cultural heritage objects as it is in articles 200a to 200c of the Cultural Heritage Act should be abolished in favour of criminal liability. This should be done by criminalising unintentional destruction of a cultural heritage object, not owned by the perpetrator.

Article 278a of the Criminal Code should be changed, to reflect that it is for actions of higher public danger, than the acts in article 206 of the Cultural Heritage Act. Another solution for the duplication between the two acts is by abolishing article 206 of the Cultural Heritage Act.

There is a legislative flaw when the right of ownership of cultural heritage object is concerned. The rules about collective cultural heritage objects and specifically archaeological findings do not set if an archaeological finding is a cultural heritage object on its own, or if all findings are a cultural heritage object as a collection, or if the real estate, where the findings were uncovered, is the cultural heritage object. Therefore, the law must differentiate between them and set rules and definitions for each type. As a result, it can be argued, that the law should define each archaeological finding as a separate cultural heritage object, due to the fact that each object has historic and cultural value on its own. This is not the case for private collections.

The legislator set the definition for a private collection as a collection of movable cultural heritage objects. However, in the hypothesis where a collection of all the works of an author is hardly discoverable, due to the scarcity of only one book, is a book, part of the collection, which is easily findable, a cultural heritage object on its own? It could be argued that the collection as a whole has cultural and historic value. As a result, the law should be changed and article 108 of the Cultural Heritage Act should be as follows: "Collection is a totality of movable objects, which, in their entirety and thematic connection, are of scientific and cultural importance".

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1. National cultural heritage in the international context

a. Is the country a party to any conventions on cultural heritage?

Georgia, in its commitment to the safeguarding of cultural heritage, has ratified multiple international conventions specifically addressing both tangible and intangible aspects of heritage. The ratified conventions serve as foundational frameworks, offering essential guidance and principles to inform the development of Georgia's national policies, legislative measures, and operational practices concerning the protection of cultural heritage. These conventions, operating as benchmarks of international standards, extend their influence beyond mere legal commitments, shaping the strategic direction of Georgia's cultural heritage management. They notably contribute to delineating nuanced approaches to the preservation, conservation, and sustainable development of cultural sites within the national context. In adhering to these international accords, Georgia not only acknowledges its global responsibilities but also endeavours to align its cultural heritage practices with widely accepted principles, fostering a harmonious integration of its rich heritage into the global cultural landscape. Throughout the years, Georgia has joined and ratified several conventions: Convention on the Protection of the World Cultural and Natural Heritage (World Heritage Convention), the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, European Cultural Convention, Convention for the Protection of the Architectural Heritage of Europe, European Convention on the Protection of the Archaeological Heritage, European Charter of Local Self-Government, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Convention on the Safeguarding of the Intangible Cultural Heritage, European Landscape Convention, and lastly – the Framework Convention on the Value of Heritage for Society.

b. Does the country contribute to international registers and lists regarding cultural heritage?

Georgia actively engages in the international discourse on cultural heritage preservation by making substantive contributions to diverse registers and lists, administered by esteemed organisations such as UNESCO, the Council of Europe, and the European Union. This participation reflects the nation's commitment to collaborative efforts on a global scale and signifies a proactive stance in aligning its cultural heritage practices with internationally recognised standards and benchmarks.

i. UNESCO World Heritage List

Georgia has contributed to UNESCO's World Heritage List by nominating several sites within the country for inclusion. Currently Georgia has four properties inscribed in the World Heritage List: Colchic Rainforests and Wetlands (2021), Gelati Monastery (1994) Historical Monuments of Mtskheta (1994) Upper Svaneti (1996).[1] By participating in UNESCO's World Heritage List, Georgia enters a collaborative framework with the international community, sharing the responsibility of preserving and celebrating cultural diversity.

ii. UNESCO Memory of the World Register

Georgia has several documents and archives included in the Memory of the World Register, which aims to preserve and promote the world's documentary heritage. The following nominations from Georgia have been inscribed in UNESCO's Memory of the World Register:[2]

(1) Georgian Manuscripts of Byzantine Era – 2011;

(2) "Description of Georgian Kingdom" and "Geographical Atlas" by Vakhushti Bagrationi – 2013;

(3) Manuscripts of "The Knight in the Panther's Skin" by Shota Rustaveli – 2013;

(4) Ancient manuscripts preserved in the National Archives of Georgia – 2015;

(5) The Tetraevangelion-palimpsest – 2017.

iii. UNESCO Representative List of the Intangible Cultural Heritage of Humanity

Georgia has several cultural practices and traditions inscribed on this list, including four elements: Chidaoba, wrestling in Georgia (2018); Living culture of three writing systems of the Georgian alphabet (2016); Ancient Georgian traditional Qvevri wine-making method (2013); Georgian polyphonic singing (2008).[3]

iv. CoE European Cultural Routes

Georgia is crossed by five certified Cultural Routes of the Council of Europe, which incorporate its beautiful landscapes and rich and diverse cultural heritage: The European Route of Jewish

[1] UNESCO, World Heritage Sites – Georgia, <https://www.unesco.org/en/countries/ge> accessed 10 August 2023
[2] UNESCO, Memory of the World Register, <https://unesco.ge/?page_id=543&lang=en> accessed 10 August 2023
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Heritage, Iter Vitis, Prehistoric Rock Art Trails European Route of Historical Thermal Towns and European Route of Historic Gardens.[4]

c. Was the country once a member in any international commissions to rule about cultural heritage in the international context?

Georgia has not been a member of any international commissions to rule about cultural heritage in the international context.

2. National context of the protection of cultural heritage: Legislation and institutions

a. Are there specific national acts regulating the protection of cultural heritage?

The primary legislative instrument dictating the framework for cultural heritage protection in Georgia is the Law of Georgia on Cultural Heritage[5], formally enacted in 2007. This comprehensive legislation serves as the cornerstone for delineating the legal parameters governing the safeguarding, management, and utilisation of cultural heritage throughout the nation. Its provisions are designed to establish a robust legal foundation, articulating the responsibilities and mechanisms essential for the preservation of Georgia's diverse cultural legacy.

Beyond the overarching Law of Georgia on Cultural Heritage, the legislative landscape is further nuanced by the presence of additional legal instruments. These supplementary legislative measures are crafted to regulate specific aspects of cultural heritage protection within the country. Their targeted focus allows for a more granular and context-specific approach to the diverse facets of cultural heritage management.

The Law of Georgia on Museums, for instance, governs the establishment, management, and operation of museums.

The Law of Georgia on Culture provides the legal basis for the protection and preservation of cultural heritage sites, objects, and intangible heritage in Georgia. One of the key provisions of the Law of Georgia on Culture related to cultural heritage protection is the recognition of cultural heritage as a national asset. The law establishes the legal basis for the protection, preservation, and promotion of cultural heritage as an essential part of the country's identity and heritage.

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[4] CoE, Cultural Routes of the Council of Europe in Georgia, Cultural routes: Newsroom, 28 September 2021, <https://www.coe.int/en/web/cultural-routes/-/cultural-routes-of-the-council-of-europe-in-georgia#:~:text=Currently%2C%20Georgia%20is%20crossed%20by,Towns%20and%20European%20Route%20of> accessed 7 November 2023

[5] Law of Georgia on Cultural Heritage, 8 May 2007

The Law of Georgia on Export and Import of Cultural Valuables was enacted in 2015, and it outlines the legal procedures for the export and import of cultural valuables in the country.

This multifaceted legislative framework acknowledges the intricate nature of cultural heritage, encompassing tangible and intangible elements that contribute to the nation's rich historical and cultural tapestry. Each legislative instrument, in conjunction with the primary law, serves as a specialised tool addressing distinct dimensions of cultural heritage protection. This academic observation underscores the meticulous legal infrastructure Georgia has established to address the multifaceted challenges and opportunities inherent in the preservation and management of its cultural heritage assets.

b. Which government authorities are in charge of the management and supervision of cultural heritage preservation? What are their functions regarding the protection of cultural heritage?

The Ministry of Culture, Sport, and Youth of Georgia ("the Ministry"), the Ministry of Justice of Georgia, municipality bodies, as well as other State bodies, and legal persons of public and private law, shall exercise powers for the State protection of cultural heritage within their scopes of authority as determined by the legislation of Georgia. In the territory of the Autonomous Republics of Abkhazia and Ajara, the given powers shall be exercised by the relevant State bodies of the Autonomous Republics of Abkhazia and Ajara.[6]

i. Ministry of Culture, Sports, and Youth of Georgia

This Ministry is responsible for the development and implementation of policies related to cultural heritage preservation and management at the national level. Its functions include the establishment of legal and regulatory frameworks for cultural heritage protection, the development of strategies and action plans for heritage conservation, and the coordination of activities with other government and non-governmental organisations.

ii. National Agency for Cultural Heritage Preservation of Georgia (NACHPG)

Legal Entity of Public Law is an operational institution responsible for the implementation of national cultural heritage policy. Established according to the decree of the President #533 of 3 November 2008, it was founded on the base of museum-reserves and museums existed in the different regions of Georgia. This agency is a sub-agency of the Ministry of Culture, Sports and Youth of Georgia and is responsible for the protection and management of cultural heritage sites and monuments in the country. Its functions include the identification, registration, and

[6] Law of Georgia on Cultural Heritage, art 4(1)

documentation of cultural heritage assets, the development of conservation plans and guidelines, and the implementation of conservation and restoration works.

iii. Regional and Local Governments

Regional and local governments play a role in the protection and management of cultural heritage assets in their respective territories. They are responsible for the monitoring and maintenance of cultural heritage sites and monuments, as well as the promotion of cultural heritage tourism in their regions.

iv. Museum Reserve

A museum reserve is a legal entity under public law, which is established by an ordinance of the Government of Georgia, and on the basis of a recommendation from the Ministry, and in the administrative territory of the Autonomous Republic of Ajara on the basis of a recommendation from the government of the Autonomous Republic of Ajara. Fully or partially State-owned cultural property and objects of archaeological interest and other assets shall be transferred to the museum reserve in accordance with the procedures determined by the legislation of Georgia. The State control of the museum reserve shall be implemented by the authority determined by the ordinance of the Government of Georgia on the Foundation of the Museum Reserve. The objective of the museum reserve is to protect, exhibit and promote movable and immovable objects of cultural heritage within its ownership or use, as well as to conduct scientific and research work.

c. Is there a procedure for identification of cultural heritage? How is an object granted cultural value status?

The cultural heritage status of a property is granted on the basis of its historical or cultural value, which may be attributed to its antiquity, uniqueness, or authenticity. Additionally, in cases where physically, functionally, historically, or territorially interconnected objects of cultural heritage represent a topographically identifiable unit, cultural property status may be granted to such a combination of objects. In such cases, the procedures prescribed for movable and immovable objects of cultural property under this Law shall apply to their respective movable and immovable parts.

An object may be granted cultural property status through an appropriate decision of the Council, an individual administrative legislative act of the Minister, or through a recommendation of the Ministry upon a decree of the Government of Georgia, specifically within the administrative borders of Tbilisi municipality.

In instances where the essence of a property cannot be defined, or where data related to its historical or cultural value needs verification or additional investigation, the Minister may include the object in the List of Cultural Heritage, whereupon the legal regime prescribed by Chapters VI and IX of this Law shall apply.

The property may be included in the List of Cultural Heritage for up to six months, with a possible extension of the same duration only once. The Ministry shall submit data to the Council to obtain an appropriate report for the determination of the type, significance, state, historical or cultural value, and category of a cultural property, with a view to rendering a decision on granting the status of cultural property to an object included in the List of Cultural Heritage.

If it is revealed, following appropriate investigations, that there are no grounds under this Law for granting the status of cultural property to an object included in the List of Cultural Heritage, the Minister is entitled to exclude the said property from the List of Cultural Heritage before the expiry of the time period determined by the Law of Georgia on Cultural Heritage.[7]

An individual and administrative legislative act of the Minister on including or excluding a property in or from the List of Cultural Heritage or on granting or revoking cultural property status shall become effective upon promulgation in accordance with the procedures established by the legislation of Georgia.

Data on granting or revoking cultural heritage status shall be recorded in the State Registry of Cultural Properties and published on the website of the Ministry within one month of the entry into force of the relevant legislative act.

d. Does the country have a Minister of Culture? What are their functions regarding the protection of cultural heritage?

Georgia has a Minister of Culture, Sport, and Youth. The Ministry is responsible for supervising the protection of cultural heritage and preparing and implementing State policy for the protection and development of cultural heritage. The functions of the Ministry regarding the protection of cultural heritage are determined by the Law of Georgia on Cultural Heritage and include managing and coordinating the discovery, protection, promotion, and systematic examination of the state of cultural heritage throughout Georgia; ensuring the examination and State registration of discovered objects of cultural heritage and establishing relevant procedures; monitoring the treatment of and archaeological works conducted on cultural property and establishing commissions for the approval of works performed; controlling the import of objects

[7] Law of Georgia on Cultural Heritage, art 15, para 5

of cultural heritage which are abroad; ensuring inventory surveys of historical areas; and drawing up drafts of normative acts regulating buffer zones for the protection of cultural heritage sites and developing projects of activities to be carried out within such zones.[8]

The Minister is also responsible for creating an integrated information system and database of cultural heritage, preparing, and implementing target and State programmes for the discovery, protection, and promotion of objects of cultural heritage, and conducting State procurements. The Minister can suspend any activity posing a threat to cultural heritage in coordination with the relevant State authorities in accordance with the procedures established by the legislation of Georgia. Additionally, the Ministry cooperates with other State authorities and legal entities under public and private law to detect, respond to, and prevent administrative offenses in the field of cultural heritage protection and prepare reports on administrative offenses within the scope of its authority.

The Minister of Culture, Sport, and Youth of Georgia has the authority to delegate the right to issue individual legislative acts, falling within the authority of the Ministry, to its territorial bodies or structural units on the basis of a legislative act. The Minister can also delegate the right to issue acts related to cultural heritage protection to legal entities under public law within the governance of the Ministry on the basis of an administrative agreement, in accordance with the procedures established by the legislation of Georgia.

The Cultural Heritage Protection Council, an advisory body of the Minister, is established within the Ministry. The Council is composed of experts and public figures in the field of cultural heritage protection and reviews matters related to granting and revoking cultural property status, scientific and methodological matters related to the treatment to be performed on cultural properties and other objects of cultural heritage, draft urban development documents, matters related to the inclusion of cultural property in the World Heritage List, State projects, and programs to be implemented in the field of cultural heritage, and other matters falling within its scope of authority in accordance with the statute of the Council.

e. What is the role of civil society and private entities regarding the protection of cultural heritage?

The protection of cultural heritage is a responsibility shared by both the State and civil society in Georgia. According to the Georgian Law on Cultural Heritage Protection, natural and legal persons have certain rights and duties in the protection of cultural heritage.[9] First, they are

[8] ibid, art 5
[9] ibid, art 9

obliged to protect and preserve cultural heritage. This means that they should take necessary measures to safeguard cultural heritage from any potential threats and ensure its sustainability for future generations.

Second, if natural and legal persons discover or recover any cultural heritage, or if they become aware of any circumstances that may pose a threat to cultural heritage, they must immediately notify the relevant State authorities, including the Ministry of Culture, and municipalities involved in cultural heritage protection. This notification will enable the authorities to take necessary measures to protect the cultural heritage.

Last, natural and legal persons may find themselves obligated to collaborate with museums and reserves, aiding in the assessment of the state of cultural heritage within their possession or utilisation, particularly in designated operational areas. Additional rights and duties pertaining to cultural heritage protection for these individuals and entities are stipulated by the legislative framework of Georgia. This legal provision underscores the intricate web of responsibilities and cooperative actions required from both the State and its citizens to effectively ensure the protection and sustainable preservation of Georgia's cultural heritage.

3. Right to ownership of cultural heritage: How is ownership of cultural heritage determined?

a. Are excavations and the discovery of archaeological findings regulated by law?

Archaeological excavations, along with archaeological activities and reconnaissance, are encompassed by Georgian legislation. The elucidation of their conceptual framework is delineated in both the Law on Cultural Heritage and the Law on Protection of Cultural Heritage. It is noteworthy that a distinct chapter is exclusively devoted to this subject within the Law on Cultural Heritage. According to this legal framework, archaeological work is defined as a scholarly pursuit aimed at the identification and analysis of artifacts of archaeological significance. This includes the entire process of tracing, excavating, restoring, and conserving such artifacts, along with scientific research activities related to them.

The legislation further delineates archaeological excavations as terrestrial or underwater operations conducted to unearth artifacts of archaeological interest, facilitating subsequent research endeavours. Additionally, archaeological investigations involve the identification of archaeological artifacts, determining their stratigraphy and chronology through visual inspection or test pits.

In the Law on Cultural Heritage, a dedicated chapter[10] addresses archaeological works, specifying the types and conditions of such works through positive taxation. It is noteworthy, however, that the law does not explicitly define the term "archaeological discovery." Instead, the culmination of archaeological efforts results in the identification of an object, subsequently conferred with the status of a cultural heritage monument. While the term "findings" is not explicitly defined, the legislation employs the terms "archaeological monuments" and "archaeological finds."

Importantly, not all archaeological findings automatically attain the status of cultural heritage. Rigorous criteria and distinctive features must be established to authenticate their cultural significance and confer upon them the status of a protected cultural heritage object or monument.

In summary, the legal framework regulates archaeological discoveries and associated matters by designating them as archaeological monuments. An archaeological finding is thus characterised as an archaeological site unearthed through archaeological works, excavations, and similar activities.

b. Is it possible for natural persons and legal entities to acquire, keep, sell, or donate ownership of cultural heritage objects?

All monuments fall under the purview of the general normative acts specified by law, and hence, our legislation does not assign distinct terms for entities such as archaeological findings. It is pertinent to highlight that the law furnishes a definition for the term "archaeological monument", denoting archaeological remains bestowed with monument status as per legal provisions. Furthermore, the term "archaeological site" is explicated in the legislation as any remnants or cultural layers, either partially or entirely interred underground or preserved underwater for a duration exceeding a century. Such strata may result from human activities or alterations to the natural environment, or they may bear imprints of human impact.

Legal frameworks governing archaeological endeavours are delineated in the legislation, exemplified by article 12 of the Law on Cultural Heritage, which outlines prerequisites for conducting archaeological excavations. These prerequisites include on-site preservation for the sake of archaeological heritage and authorisation for excavation granted only when imperative for scientific inquiry or when the archaeological heritage faces potential harm due to construction, agricultural, industrial, or natural activities. The legislation mandates proper conservation or reclamation of excavated objects or archaeological finds post the completion of archaeological works to prevent damage, destruction, or loss. Additionally, provisions are in place to address

[10] Law of Georgia on Cultural Heritage, ch 6

situations where extraction and transportation of high-value archaeological objects prove unfeasible.[11]

The term "archaeological find" is used in the article without a formal definition within the legislation.[12] It is noteworthy that all archaeological undertakings, including excavations and investigations, necessitate approval as stipulated in article 47 of the Law on Cultural Heritage. This legal foundation establishes the basis for treating cultural property and conducting archaeological works, emphasising the issuance of permits for such activities. A permit is required for on-site treatment of cultural property, with distinct conditions outlined for rehabilitation works and research activities impacting immovable cultural property.

Permits for archaeological works serve as a legal basis and may be granted exclusively for endeavours physically affecting archaeological sites. The issuance of permits falls under the jurisdiction of the Ministry, or a designated body authorised by government ordinance. Importantly, qualifications in the relevant field are a prerequisite for individuals conducting treatment and archaeological works, with certification procedures outlined in accordance with Georgian legislation.

In conclusion, while our legislation effectively regulates archaeological excavations, the term "archaeological discoveries" lacks explicit definition and separation within the legal framework. Nevertheless, related matters are generally governed as cultural heritage monuments. It is imperative to note that the legislation does not explicitly address finds unearthed during archaeological excavations lacking cultural significance.

c. What are the rights and obligations of owners of cultural values? Are there differences between State institutions, private persons and religious communities regarding cultural heritage and its protection?

The legislation of Georgia delineates between two categories of monuments: immovable and movable. Distinct regulations are established for each in different chapters, prompting a consideration of property rights on both types individually. The Law of Georgia on the Protection of Cultural Heritage circumscribes the eligibility criteria for owners of immovable monuments. Ownership of an immovable monument is vested in the State, local self-government, and governance bodies, as well as natural persons and legal entities. This enumeration signifies the inclusivity of both natural and legal persons in the statutory framework governing ownership of cultural heritage.

[11] Law of Georgia on Cultural Heritage, art 12
[12] Ibid, art 3

The Law of Georgia on the Protection of Cultural Heritage permits the alienation or transfer of an immovable monument with prior notification to the ministry by the owner. Such notification must be submitted one month in advance of alienation. Upon alienation or utilisation, the protective zone of the immovable monument remains subject to the same legal regime as the monument itself. Importantly, hereditary rights stipulated by Georgian legislation are applicable to immovable monuments. These legal provisions pertain exclusively to immovable monuments.

Conversely, the second category of monuments encompasses movable monuments. Even in the case of movable monuments, legislation delineates a precise list of potential owners, including the State, local self-government, and governance bodies, as well as natural and legal persons. This comprehensive list accommodates both legal and natural persons as legal subjects. In the event of alienation, the owner is obligated to inform the Ministry in advance, detailing the conditions of alienation. If a natural or legal person auctions the monument, the organisers must furnish the auction item list to the Ministry 30 days before the auction.

Should the owner lack proper conditions for storage and protection of the movable monument and be unable to create them within the Ministry's stipulated timeframe, transfer to another party is mandated based on a transfer contract. Analysis of the aforementioned facts indicates that both natural and legal persons are empowered to engage in civil legal actions such as alienation, ownership transfer, and utilisation of both movable and immovable monuments.

Regarding the rights and responsibilities of owners, the legislation meticulously enumerates them. Owners of immovable monuments are entitled to use, derive income, avail tax benefits, request consultations from State bodies, and demand compensation in the event of forced confiscation. Simultaneously, they are obligated to protect, maintain, provide information to State bodies, sign protection agreements, facilitate inspections, and adhere to specified conditions. Analogously, rights and duties are separately outlined for owners of movable monuments, including maintenance, income generation, tax benefits, consultations, reporting changes, preventing modifications, and facilitating inspections.

Ultimately, the legal framework extends rights and responsibilities to both natural and legal persons who own immovable monuments, while distinct regulations govern owners of movable monuments. The rights and duties elucidated are contingent upon the contractual agreements reached with the owner and are defined by the legislation of Georgia.

The Law of Georgia on Cultural Heritage autonomously delineates the rights and obligations of proprietors. An owner (legitimate user) of cultural property is mandated to a) Furnish information on the current state of the cultural property to the Ministry/municipality within one

month of notification, utilising a form sanctioned by the Ministry, and engage in an agreement with the Ministry/municipality pertaining to the upkeep of the cultural property. This agreement ensures protection against damage, deterioration, and the preservation of its historical and cultural significance; b) promptly notify the Ministry/municipality of any changes regarding the state, storage conditions, and environment of the cultural property; c) Facilitate duly authorised bodies and specialists during examinations, submit information upon request, unless classified as state, commercial, or other secrets under legal stipulations; d) prohibit unauthorised interference with the cultural property, including remodelling, fragmenting, dismantling, and appending parts, or fragments; e) Provide advance notice to the Ministry/municipality regarding the alienation of the property and furnish the purchaser with preliminary information on the status of the cultural property; f) Ensure public access to the cultural property in compliance with procedures established by the legislation of Georgia; and g) adhere to other obligations stipulated by the legislation of Georgia.[13]

The owner (legitimate user) of cultural property is entitled to a) Utilise the cultural property in accordance with the Law and derive income; b) Avail tax and other exemptions as per Georgian legislation; and c) Seek scientific-methodological and legal consultations, free of charge, for the cultural property under their ownership (use) from State authorities engaged in cultural heritage protection.

If a municipality enters into an agreement per article 1(a), it must inform the Ministry within one week or submit a copy of the agreement. Monument transfer is constrained to possession and use rights for a specified or indefinite period in compliance with Georgian legislation. Following the handover of State-owned immovable monuments, a protection agreement is executed between the Ministry and the recipient. State-owned movable monuments are non-denumerable, and their alienation to legal or physical persons is prohibited. This underscores the State's distinct approach to cultural heritage ownership compared to private individuals. Alienation, ownership, and right of use of State- or municipality-owned monuments and cultural assets in archaeological protection zones occur in concurrence with the Ministry's stipulated maintenance conditions.

Inalienability is upheld for State-owned monuments on the world heritage list. Transfer to use is only permissible with ownership and use rights, contingent upon maintenance and protection conditions, excluding residential and non-residential areas. Documents (movable monuments) of the national archival fund owned by the State and municipality are not subject to alienation. The

[13] Law of Georgia on Cultural Heritage, art 1

state's transfer of ownership rights is constrained relative to natural and legal persons, although the state retains certain advantages, such as preferential purchase rights for archaeological objects.

Religious communities, while lacking comprehensive legislative information, seemingly possess advantages, particularly in conflicts where religious rights take precedence over public access rights to monuments. The State officially recognises Orthodox churches, monasteries (active and inactive), their ruins, and the associated land throughout Georgia as Church property. Protection zones, maintenance, and usage rules are established in collaboration with the church, aligning with applicable legislation. Church property and items used by other religious denominations diverge from State rules.

State bodies and religious communities share a similar legal standing, unlike private individuals. In this legal dynamic, the Ministry holds privileges, and cultural heritage owned by private individuals is subordinated to the State or the Ministry. This legal relationship aligns with the theory of subjects. Regarding general monument protection, individuals, both natural and legal, are obligated to: a) safeguard and preserve cultural heritage; b) promptly inform the Ministry, other State authorities, and municipalities engaged in cultural heritage protection about discoveries, recoveries, or threats to cultural heritage; and c) aid museum reserves in examining the state of cultural heritage within their ownership or use within a designated operational area.

Additional rights and duties of those involved in cultural heritage protection are delineated by the legislation of Georgia.

d. What rules apply to private collections?

Extant legal provisions do not address the intricate dynamics associated with private collections, necessitating the inference that, now, such collections are subject to the broad, yet general, stipulations designed for individual monuments or other analogous entities. This legal lacuna underscores the absence of specific and tailored regulatory frameworks governing the intricate realm of private collections within the current legal apparatus.

Compounding this deficiency is the dearth of judicial precedent from the Supreme Court on this particular matter within our jurisdiction. The absence of authoritative judicial decisions compounds the ambiguity surrounding the legal status and treatment of private collections. The Supreme Court's silence on this matter leaves a void in jurisprudential guidance, further accentuating the challenges in ascertaining the legal norms and principles that should govern the relationships and obligations pertaining to private collections.

This regulatory and jurisprudential vacuum prompts a critical evaluation of the existing legal framework to discern its applicability to private collections. Consequently, scholars and legal practitioners are compelled to engage in a nuanced analysis, drawing parallels with analogous legal entities, and endeavouring to extrapolate principles that may govern the complex legal terrain of private collections. The pressing need for comprehensive legal attention to private collections is evident, given the evolving nature and significance of such holdings in contemporary society. As the legal landscape continues to adapt to the changing dynamics of cultural and artistic ownership, the imperative for legislative and judicial attention to this domain becomes increasingly pronounced.

e. Is it possible for the State to confiscate cultural heritage of private ownership and under what conditions?

The legal provisions of Georgia encompass a mechanism for the confiscation of monuments as stipulated by legislation[14]. In the context of immovable monuments, the State possesses the authority to forcibly confiscate such structures from the owner should the owner fail to uphold the requisite protective measures mandated by the Law of Georgia on Debts for the Protection of Cultural Heritage. The failure to adhere to these stipulations places the monument at risk of potential harm, destruction, or illicit removal. In instances where the owner's actions pose a credible threat to an immovable monument, the Ministry is obligated to issue written warnings and delineate specific deadlines for rectifying errors in the monument's maintenance. If the owner remains non-compliant with the Ministry's directives, the Ministry is entitled to pursue legal recourse through filing a lawsuit in court.

Similarly, in the case of movable monuments, the State reserves the right to forcibly confiscate the artifact from its owner if the owner fails to ensure the requisite protection, thereby exposing the monument to potential damage or destruction. The Ministry, in the event of identified risks to a movable monument, is mandated to furnish written warnings to the owner, specifying deadlines for rectifying maintenance errors. Failure by the owner to comply with the Ministry's directives empowers the Ministry to initiate legal proceedings by filing a lawsuit.

A crucial precondition preceding the confiscation of a monument is the provision for compensation as outlined by the law. Notwithstanding the absence of specific amounts and limits articulated by the legislator, the law stipulates a general framework for compensation. In the event of the State's compelled confiscation of an immovable monument, the affected individual is entitled to demand appropriate compensation. Analogously, in instances of forced confiscation

[14] Law of Georgia on Debts for the Protection of Cultural Heritage, ch 2

of movable monuments by the State, owners reserve the right to seek just compensation. This entitlement constitutes one of the rights conferred upon the owner, explicitly enumerated within the comprehensive list of rights and duties. The determination of the compensation amount is contingent upon negotiations between the involved parties, influenced by a myriad of circumstances. In cases of disagreement during the compensation negotiations, the parties retain the right to escalate the matter into a legal dispute, seeking resolution through judicial intervention.

4. What criminal or administrative offenses are related to destruction, damage, or theft of cultural heritage? What penalties would be imposed in such cases?

a. Does national law distinguish between theft, destruction, or damage of a "normal" item and of an item with cultural, historic, or religious value?

The legal framework in Georgia underscores a comprehensive approach to the protection of cultural heritage. Embedded within the Criminal Code is a distinct chapter that precisely addresses offenses committed against cultural, historic, or religiously significant items. This demonstrates a clear recognition of the unique value these items hold in the country's spiritual and material development[15].

Article 259 of the Criminal Code specifically targets intentional damage or destruction of cultural heritage monuments. Offenders found guilty of such acts may face either a fine or imprisonment for a period of up to two years. This provision is crucial in fostering a legal environment that discourages deliberate harm to elements that play a pivotal role in connecting the nation to its past and shaping its future.

Moreover, the legal system acknowledges the diverse range of threats cultural heritage faces. While natural disasters and environmental factors are acknowledged, equal attention is given to human-induced risks. Acts such as vandalism or incorrect restoration practices are highlighted as potential menaces to cultural heritage. This nuanced understanding ensures that legal measures can be applied not only reactively but also proactively to prevent harm.

The inclusion of administrative responsibilities alongside criminal penalties further emphasises the seriousness with which Georgia approaches the protection of cultural heritage. This dual-track approach acknowledges that offenses related to cultural heritage require a multifaceted response. It also reflects a commitment to preserving the integrity of cultural sites and objects,

[15] Criminal Code of Georgia, ch 32

preventing unauthorised removal, and fostering a collective responsibility for the stewardship of the nation's cultural wealth.

The reference to specific cases, such as the Urbnisi Cathedral, serves as a tangible example of the potential consequences of unauthorised alterations. By narrating instances where cultural heritage has been compromised, the legal provisions gain real-world relevance, reinforcing the need for strict measures to deter such actions. In doing so, the legal system not only upholds the rule of law but also serves as a custodian of the nation's cultural legacy.

b. Is there a possibility to have insurance on cultural heritage?

In Georgia, the provision of insurance coverage for cultural heritage, herein referred to as "art insurance" or "heritage insurance", is a viable undertaking. This specialised form of insurance is crafted to safeguard items of considerable cultural, historical, or artistic value, encompassing artefacts, artworks, antiques, and analogous entities. In the Georgian context, insurance companies offering such specialised coverage, possessing requisite expertise in the realm of cultural heritage protection, extend policies tailored to the unique exigencies encountered by proprietors, institutions, museums, or galleries entrusted with the custodianship of these invaluable cultural assets.

Art insurance policies in Georgia are meticulously designed to mitigate an array of risks that may imperil the preservation and integrity of cultural heritage items. These risks encompass, inter alia, potential damage, theft, vandalism, and other perils that could compromise the physical or intrinsic value of culturally significant artefacts. It is imperative for stakeholders – be they individuals or institutional entities – to collaborate closely with insurance providers versed in the nuanced considerations inherent in the protection of cultural heritage.

Given the inherent diversity in the nature and significance of cultural heritage assets, the terms and conditions of art insurance policies may exhibit variances, necessitating a discerning approach during policy selection. As such, an informed consultation with the insurance professionals adept in the intricacies of art and heritage insurance becomes paramount. This academic discourse posits that individuals or entities contemplating the insurance of cultural heritage items in the Georgian context should engage in judicious deliberation with knowledgeable insurance practitioners. This collaborative effort ensures a comprehensive assessment of specific needs and facilitates the identification of insurance policies that optimally secure these culturally invaluable assets.

5. Does the legal system have provisions on the protection of cultural heritage against natural disasters?

In legal discourse, the predominant sources of law are typically grounded in codifications, national legislation, and judicial precedents, a paradigm that remains consistent in the Georgian legal framework. The context under consideration does not deviate from this norm, as it navigates the intricacies associated with natural disasters within the legal ambit in Georgia. Despite the absence of a specific legal definition within Georgian legislation, a natural disaster finds conceptualisation within the legal domain as either an "irresistible force" or "force majeure".

The Civil Code of Georgia, while refraining from explicit delineation of the term "force majeure", frequently employs this concept, particularly in legal proceedings. Consequently, judicial interpretation becomes pivotal, offering a basis for conceptualising force majeure, inclusive of natural disasters. Operationally, force majeure is construed as an uncontrollable event rendering an individual incapable of fulfilling a contractual obligation. It comprehensively encompasses both natural occurrences (e.g., earthquakes, hurricanes, floods) and societal upheavals (e.g., war, strikes).

A distinctive feature of force majeure is its inherent lack of culpability, necessitating two essential criteria for its identification: exceptionality and insurmountability. While force majeure is prominently deployed in civil legal relations, specifically within the law of obligations, its presence extends to diverse legal domains, including cultural heritage laws in Georgia. Two key legislations govern cultural heritage: the Law of Georgia on Cultural Heritage and the Law of Georgia on Protection of Cultural Heritage.

Chapter V of the former law addresses the safeguarding of immovable monuments, emphasising the preservation of properties and environments that underpin their cultural, historical, scientific, aesthetic, and spiritual value. Furthermore, article 32 introduces a system of protective zones, intricately managed by relevant State bodies, indicating an inherent protective measure against activities that might jeopardise cultural layers and monuments.

Chapter IX of the same law concentrates on the protection of movable monuments, underscoring the preservation of features constituting their historical, artistic, aesthetic, and spiritual value. While explicit provisions for safeguarding against natural disasters may not be expressly articulated, the analysis reveals that protection is executed on a case-by-case basis, contingent upon surrounding circumstances.

Article 3(i) of the law defines the protection of cultural heritage as a multifaceted system involving legal, institutional, scientific, and practical measures. Significantly, the responsibility for crafting protective measures is delegated to State bodies identified in articles 4 and 5, with the Ministry of Culture taking a pivotal role. Notably, the term "conservation" emerges as a key component, representing measures undertaken to maintain the current state of a cultural property, thereby encompassing protective actions during natural disasters.

In situations where natural disasters pose imminent threats, article 51 offers a provision for issuing permits based on incomplete project documents, acknowledging the urgency of preventive conservation. Moreover, the broader legislative framework stipulates the issuance of permits for various activities, including conservation, as elucidated in article 40.

While the Georgian legal structure has yet to expressly address force majeure, it is evident that the protective mechanisms embedded in cultural heritage laws serve as a nuanced response to potential threats, including those posed by natural disasters. The systematic approach, particularly the establishment of protective zones, underscores the legislative intent to mitigate risks and uphold the integrity of cultural heritage in unforeseen circumstances. Despite the absence of a codified definition for force majeure in the legal fabric of Georgia, the efficacy of protective measures signals a proactive stance in cultural heritage preservation, navigating challenges posed by natural disasters within the broader legal landscape.

a. Which institution as the "first responder" would be responsible to safeguard cultural heritage during natural disasters?

In Georgia, the responsibility for safeguarding cultural heritage during natural disasters typically falls under the purview of cultural heritage institutions, emergency management agencies, and relevant government authorities. The specific first responders may vary depending on the nature and severity of the disaster. Here are some key entities that may be involved.

i. Ministry of Culture and Monument Protection of Georgia (or equivalent)[16]

This ministry or department is often responsible for the protection and preservation of cultural heritage in many countries. They may have plans and protocols in place to respond to emergencies and disasters affecting cultural heritage sites.

[16] More information on the Ministry: http://culture.gov.ge/, accessed 5 December 2023

ii. Emergency Management Agency

The national or regional emergency management agency plays a crucial role in coordinating responses to disasters. They may work closely with cultural heritage institutions to ensure a coordinated effort to safeguard cultural artifacts, historic sites, and other cultural assets.

iii. National Archives, Museums, and Libraries

These institutions are the custodians of valuable cultural artifacts and documents. They are likely to be involved in efforts to protect and preserve these items during and after a natural disaster.

iv. Local Authorities

Local government agencies and authorities, including municipal governments, may be the first on the scene in the event of a disaster. They can play a critical role in coordinating immediate responses and mobilising resources.

v. Non-Governmental Organisations (NGOs)

NGOs focused on cultural heritage preservation and disaster response may also be involved. They often collaborate with government agencies to provide expertise, resources, and support during emergencies.

It is important to note that effective response to natural disasters often involves collaboration among various stakeholders, including government agencies, cultural institutions, NGOs, and local communities. In many cases, there may be established protocols and plans in place to ensure a swift and coordinated response to protect cultural heritage during emergencies.

b. Is the boundary between human activity and natural disaster regulated by law or other rules?

The boundary between human activity and natural disasters in Georgia is regulated by a combination of laws and other legal instruments. The legal framework encompasses various aspects, including disaster risk reduction, emergency management, and insurance guidelines. Here is an overview:

i. Disaster Risk Reduction and Emergency Management Laws

Georgia has laws and regulations addressing disaster risk reduction and emergency management. These laws outline measures for preparedness, response, recovery, and mitigation of the impact of disasters, both natural and human made. They often define the roles and responsibilities of relevant government agencies and establish protocols for coordinating responses to disasters.

ii. Environmental and Land Use Regulations

Laws related to the environment and land use may also indirectly address the interface between human activity and natural disasters. Zoning regulations, for instance, might aim to prevent or mitigate risks associated with certain types of development in areas prone to natural disasters.

iii. Insurance Guidelines

While insurance itself is a voluntary financial mechanism, there may be guidelines and regulations set by relevant authorities that influence how insurance companies assess and underwrite risks related to natural disasters. These guidelines might encourage or require individuals and businesses to consider the potential risks of natural disasters when obtaining insurance coverage.

iv. Non-Binding Guidelines and Best Practices

In addition to formal laws, there may be non-binding guidelines and best practices developed by governmental and non-governmental organisations. These documents can provide recommendations on disaster risk reduction, building codes, and land use planning to mitigate the impact of natural disasters.

It is essential to note that the boundary between human activity and natural disasters is a complex and multifaceted issue. The legal and regulatory framework in Georgia likely involves a combination of statutes, regulations, and guidelines aimed at minimising risks and ensuring a coordinated response to natural disasters. The effectiveness of these measures depends on their implementation, enforcement, and the ongoing adaptation of policies to changing conditions and emerging risks.

c. Is it considered a natural disaster if loss or damage of cultural heritage was caused by human activity?

In Georgia, as in many other places, the categorisation of an event as a natural disaster typically depends on the primary cause of the event. If the loss or damage of cultural heritage is caused by human activity rather than a natural event, it may not be classified as a natural disaster. Instead, it would likely be categorised as a human-made or anthropogenic event.

Natural disasters are events triggered by natural forces, such as earthquakes, floods, hurricanes, tornadoes, and other geological or meteorological phenomena. These events are considered beyond human control and are not intentionally caused by human activities.

On the other hand, human-made events, such as armed conflicts, acts of vandalism, arson, or construction activities, can lead to the loss or damage of cultural heritage. In such cases, the event would be characterised as a result of human activity rather than a natural disaster.

It is important to note that both natural and human-made events can have significant impacts on cultural heritage, and there may be different strategies and responses required for each type of event. Preservation efforts may involve different authorities, such as law enforcement agencies, cultural heritage institutions, and conservation experts, depending on the cause of the damage.

6. Are there special provisions in national legislation on the protection of cultural heritage in the event of armed conflict?

The preservation of cultural heritage within the specific context of armed conflict holds poignant significance in Georgia, particularly given the historical backdrop of the 2008 war with Russia, during which numerous cultural monuments suffered irreversible damage. This historical experience underscores the inherent vulnerability of cultural heritage during times of conflict.

Recent instances, such as the documented damage to 248 sites in Ukraine since 24 February 2022, further emphasise the ongoing global imperative to regulate and safeguard cultural heritage in the face of armed conflict. The resonance of this imperative is particularly acute in Georgia, where the scars of the 2008 conflict with Russia, which witnessed the deliberate targeting and damage to historical monuments, remain palpable.

Georgia, as an active participant in the international legal framework, has fortified its commitment through adherence to the 1954 Hague Convention on the Protection of Cultural Property during Armed Conflict. The country's accession to the Convention's No 2 Protocol in 2009, alongside its subsequent election to The Hague Committee for the protection of cultural values during armed conflicts in 2013, serves as a testament to Georgia's enduring dedication to upholding these principles.

Within the framework of Georgian legislation, the Hague Convention establishes a foundational framework, mandating a minimum standard of respect that all States Parties, including Georgia, must uphold. Article 4 of the Convention articulates these commitments, with consideration for punitive measures in instances of infringements. Simultaneously, the Rome Statute, integral to the legal fabric of the International Criminal Court, designates attacks against cultural landmarks, including religious, educational, artistic, scientific, and historical monuments, as war crimes in both international and non-international armed conflicts.

In the wake of the 2008 conflict, Georgia, in alignment with its commitment to cultural heritage preservation, has undertaken a range of obligations as outlined in the international legal framework. These encompass the formulation of emergency measures, the distinct marking of significant structures, and the active promotion of the convention within diverse segments of Georgian society, such as the military and law enforcement agencies. Notably, Georgia's positive evaluation by UNESCO in terms of fulfilling its contractual obligations under Protocol 2 of the Hague Convention was underscored during an international conference convened by the Swiss government and UNESCO in Geneva. This attestation underscores Georgia's effective and diligent efforts in upholding its responsibility to protect cultural heritage amidst the exigencies of armed conflict, informed by the historical experiences etched in its own landscape.

7. Is it possible to terminate the protection of objects of cultural heritage? If yes, under which conditions?

The protection of cultural heritage objects is essential for maintaining the historical and cultural fabric of a society. However, it is important to acknowledge that circumstances may arise under which the safeguarding of certain cultural properties needs to be reconsidered. In the context of Georgia, the protection and preservation of cultural heritage are governed by the Georgian Law on Cultural Heritage, which outlines specific criteria and procedures for the potential withdrawal of cultural property status.

The Georgian Law on Cultural Heritage serves as a legal framework designed to ensure the proper management, conservation, and protection of the nation's cultural treasures. Within this legal framework, provisions are established to address situations where the continuation of protection may no longer be appropriate or feasible. The criteria and procedures outlined in the law delineate circumstances that could lead to the revocation of protection for cultural heritage objects.

Article 5 of the Georgian Law on Cultural Heritage establishes the Cultural Heritage Protection Council ("the Council") as a crucial advisory body within the Ministry, following Georgia's legislative procedures. Constituting a legal entity under public law, the Council is subject to state oversight by the Ministry of Culture and Monuments Protection. Its establishment emanates from the amalgamation of fourteen state museums-reserves and museums. Comprising experts and public figures with specialised knowledge in cultural heritage protection, this council assumes a vital function in deliberations pertaining to the status of cultural heritage[17].

[17] Law on Cultural Heritage of Georgia, art 5(5)

Within the purview of its responsibilities, the Council is mandated to review two critical aspects concerning cultural heritage. Primarily, it delves into matters related to granting and revoking cultural property status. This involves intricate discussions and assessments surrounding the official recognition and protective measures afforded to specific cultural properties. Additionally, the Council is entrusted with matters related to assigning categories to objects of cultural property and potentially changing them. In this context, the focus is on the classification and potential modifications to the categories assigned to various cultural property objects. This implies a careful examination and evaluation of the existing categorisation, with the Council having the authority to recommend adjustments based on its deliberations.[18]

Article 17 of the Georgian Law on Cultural Heritage is a pivotal provision that intricately defines the criteria and procedures governing the potential revocation of cultural property status. This legal framework ensures that the process is delineated by specificity and procedural integrity, emphasising that revocation can only transpire under well-defined circumstances and through designated authorities.

In accordance with the stipulations set forth in article 17, the revocation of cultural property status is contingent upon specific conditions that warrant careful consideration. Importantly, the authority vested in effecting such revocations lies with designated bodies, adding an additional layer of procedural rigor to the process. This restriction serves to safeguard against arbitrary or unwarranted revocations, reinforcing the commitment to preserving cultural heritage in a judicious manner.

Crucially, the provision mandates that any decision regarding the revocation of cultural property status must emanate from the Cultural Heritage Protection Council. This underscores the Council's pivotal role as the authoritative body responsible for evaluating and adjudicating on matters pertaining to cultural heritage protection. The requirement for an official decision from the Council highlights the significance of a thorough, informed, and considered assessment by a panel of experts and public figures specialised in cultural heritage protection.

By placing the authority for revocation in the hands of the Council, the Georgian Law on Cultural Heritage emphasises the importance of expertise and specialised knowledge in the decision-making process. This approach ensures that any potential revocation is based on a comprehensive understanding of the cultural, historical, and societal significance of the property in question. Consequently, the legal framework reflects a commitment to preserving the integrity

[18] Ibid, art 5(6)

of cultural heritage and acknowledges that decisions regarding revocation demand a nuanced evaluation by a competent and informed body.

Furthermore, the allocation of authority for the revocation of cultural property status is a nuanced aspect of the legal framework. Notably, the Minister possesses the authority to initiate the revocation process through an individual and administrative legislative act. This underscores the gravity and significance attached to decisions involving the alteration of cultural property status, necessitating a formal and legal process.

In the administrative confines of the Tbilisi municipality, a distinct set of conditions and procedural steps come into play. Here, the revocation of cultural property status is contingent upon the prudent decision of the Council, guided by the preceding recommendation of the Ministry. However, the ultimate step in this process involves the issuance of a decree by the Government of Georgia, further reinforcing the stringent administrative checks in place.

It is imperative to note that the specified conditions for the revocation of cultural property status underscore the gravity of the circumstances that justify such actions. The legal framework allows for revocation when a cultural property within the Tbilisi municipality has endured destruction or damage to an extent that restoration becomes an impractical endeavour, resulting in the irreversible loss of its historical and cultural value. This criterion emphasises the severity of situations warranting revocation and aligns with the overarching objective of preserving the integrity and significance of cultural heritage within the specific administrative context of Tbilisi.

In an alternative scenario, the justification for revocation extends to situations where the cultural property has undergone alterations to a degree that it has lost the fundamental characteristics for which it was initially granted cultural property status. This provision, encapsulated in article 17, adds a layer of discernment to the revocation process, indicating that changes rendering the property significantly different from its original cultural essence can warrant a re-evaluation of its protected status. The careful and well-defined framework outlined in Article 17 ensures that the decision-making process for the revocation of cultural property status is approached judiciously. The intention behind these provisions is to uphold the preservation of Georgia's historical and cultural heritage. By explicitly detailing the circumstances under which revocation is justified, the legal framework strikes a balance between acknowledging the dynamic nature of cultural assets and maintaining a commitment to safeguarding their intrinsic value.[19]

This approach acknowledges that the evolution or transformation of cultural properties may occur over time, but it stipulates that certain alterations could reach a threshold where the essence

[19] Georgian Law on Cultural Heritage, art 17

and significance that initially granted the property its cultural status are compromised. By delineating these criteria, article 17 provides a methodical and principled approach to decision-making, ensuring that revocation is not arbitrary but based on a careful assessment of the property's enduring historical and cultural importance. In essence, the legal framework seeks to navigate the delicate balance between acknowledging the fluidity of cultural heritage and safeguarding its core attributes for the benefit of present and future generations. It is crucial to note that, following the revocation of cultural property status, these objects will no longer benefit from the protective status afforded to cultural heritage objects.

8. De lege ferenda

In the pursuit of preserving its rich cultural heritage, Georgia has taken commendable strides by enacting a comprehensive law aimed at safeguarding and regulating legal relations within this domain. However, despite these proactive measures, persistent challenges continue to underscore the intricacies inherent in the preservation efforts. Among these challenges, a notable concern arises in the determination of regulation zones and regimes for development. This intricate aspect of cultural heritage management navigates the delicate balance between conservation imperatives and the evolving demands of development, encapsulating a dynamic interplay that necessitates careful consideration and thoughtful regulation.

The regulation zone of development constitutes a territory where fragments of historical developments, street networks, planning structures, individual cultural properties, and other immovable objects of cultural value are preserved in their original and authentic form. This zone may also serve as an additional buffer for the protection of cultural heritage. The primary objective of establishing the regulation zone is to facilitate the harmonious integration of historical and contemporary developments. It entails strengthening and restoring historically developed spatial dominants to influence the architectural and spatial organisation of the environment.[20]

Moreover, the architectural setting of cultural properties and other immovable objects of cultural value, as well as the structure or fragments of historically developed urban planning, must be preserved within the regulation zone. Construction activities within the regulation zone are permissible if they adhere to the stipulations outlined in this article and article 35 of the law.

Despite these regulatory measures, challenges persist, particularly concerning the strict enforcement of building regulations surrounding cultural heritage. Therefore, there is a growing need for more stringent measures to ensure the effective protection and preservation of

[20] Georgian Law on Cultural Heritage Protection, art 38

Georgia's cultural heritage. Stringent measures are vital to ensure the effective protection and preservation of Georgia's cultural heritage. This includes safeguarding historical developments and their prominent structures, which are integral to the nation's identity and contribute significantly to its cultural narrative. By enforcing stricter measures, Georgia can safeguard its rich cultural legacy against potential threats and urban development challenges that may compromise the integrity of its cultural heritage sites.

According to the Administrative Offenses Code, individuals violating regulations regarding urban planning, environmental protection, and cultural heritage face sanctions, primarily in the form of fines.[21] Notably, these penalties extend to officials, individuals, and legal entities, encompassing various sanctions. The Criminal Code of Georgia further addresses crimes against cultural heritage and the environment, outlining stricter measures for offenses such as illegal archaeological activities, damage to cultural heritage objects, and violations within protected areas.[22]

Nonetheless, a considerable challenge endures. There is a noteworthy gap between committed violations and crimes against cultural heritage and the identification and punishment of perpetrators. This gap is exacerbated by a lack of coordination among responsible authorities. Additionally, citizens' apparent indifference to the detection and prevention of these crimes further complicates the identification of culpable individuals. Consequently, those responsible for offenses against cultural heritage often go unpunished, highlighting a critical flaw in the current system. Addressing this issue requires enhanced coordination, public awareness, and a more rigorous approach to identifying and penalising violations to better safeguard and preserve Georgia's cultural heritage.[23]

Georgia, known for its profound historical legacy, is home to a multitude of monuments and cultural heritage sites, rendering the conservation of this wealth a matter of utmost importance. To ensure the protection and longevity of these invaluable assets, the Georgian legal framework must adopt strict measures, particularly in terms of liability. The intricacies of cultural preservation are such that once damage is inflicted, restoring the affected elements to their original state becomes an exceedingly challenging endeavour.

This responsibility extends beyond the purview of government entities and legal entities subject to administrative law, it is a shared obligation that involves every citizen. Everyone must be

[21] Administrative Offenses Code of Georgia, art 88
[22] Criminal Code of Georgia, art 259
[23] Council of Europe Report on Cultural Heritage, Available at: < https://rm.coe.int/168070b5f5> accessed 11 December 2023

equally and comprehensively informed about the potential consequences, liabilities, and responsibilities associated with the preservation of cultural heritage. This collective awareness is essential in fostering a sense of shared responsibility and commitment.

This challenge is not of static nature but rather an ongoing and dynamic issue that necessitates sustained attention and concerted efforts. The perpetual and collective engagement with this matter is imperative to guarantee the effective preservation of Georgia's cultural heritage for the benefit of succeeding generations.

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1. **National cultural heritage in the international context**

The Constitutional Court of the Republic of Lithuania has stated in its ruling that "cultural values are passed onto future generations, they are the foundation for the survival and continuity of the nation and the state, and therefore they are protected and guarded by the Constitution. Culture is a national treasure with universal significance. The Constitution obliges the state to guarantee freedom of culture, promote culture, and protect cultural monuments and values. Ensuring cultural freedom, state support for culture, and the protection of cultural monuments and treasures are in the public interest, and an important function of the state – the function of state support and protection of culture."[1] Thus, cultural heritage, as an integral part of each country's identity and, by virtue of its importance, a guarantee of national security, must therefore be adequately protected because of its great importance for society.

Incompatibilities between national laws in the field of protection of cultural inheritance have been evident in Lithuania for a considerable time. More recently,[2] a public consultation was published on the draft Law on the Amendment of the Law on the Protection of the Immovable Cultural Heritage of the Republic of Lithuania (hereinafter "Law on the Protection of Immovable Cultural Heritage"), which aims to introduce a harmonised and clear legal framework. It is thus evident that the protection of cultural heritage is currently a particularly important topic in the legal discourse.

a. Is the country a party to any conventions on cultural heritage?

Lithuania is participating in the common international effort to ensure survival and access to the cultural heritage of one's land by future generations. Lithuania's strategic decision to accede to a comprehensive suite of international conventions dedicated to the preservation of cultural heritage represents a profound commitment to the protection and perpetuation of its cultural identity within the global arena. International agreements entail protection in the form of general measures, from the preservation of physical landscapes and architectural masterpieces that make up the built environment of the country to the protection of intangible cultural expressions that are reminiscent of its ancestral heritage. These international accords encompass a wide array of protective measures, ranging from the conservation of physical landscapes and architectural marvels that constitute the nation's-built environment, to the safeguarding of intangible cultural expressions that carry forth its ancestral heritage.

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[1] Constitutional Court Resolution of 8 July 2005, *Valstybės žinios*, 2005, No 87-3274

[2] Lietuvos Respublikos Kultūros Ministerija "Paskelbta viešoji konsultacija dėl Nekilnojamojo kultūros paveldo apsaugos įstatymo pakeitimo", 11 October 2023. <https://lrkm.lrv.lt/lt/naujienos/paskelbta-viesoji-konsultacija-del-nekilnojamojo-kulturos-paveldo-apsaugos-istatymo-pakeitimo/> accessed 28 November 2023

Therefore, Lithuania is a party to several conventions on cultural heritage. The conventions that have been ratified include: European Landscape Convention; European Cultural Convention; Convention on the Value of Cultural Heritage for Society (Faro Convention); Convention for the Safeguarding of the Intangible Cultural Heritage; European Convention on the Protection of the Architectural Heritage; Unidroit Convention on Stolen or Illegally Exported Cultural Objects; Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict; Convention on the Protection of the Underwater Cultural Heritage; European Convention on the Protection of the Archaeological Heritage (revised); and Convention Concerning the Protection of the World Cultural and Natural Heritage.

b. Does the country contribute to international registers and lists regarding cultural heritage?

Regarding international legal acts, Lithuania contributes to several lists, including the World Heritage List, the Intangible Cultural Heritage List, the Memory of the World Register, and the Register of Good Safeguarding Practices.

On a regional basis, Lithuania participates in the European Heritage Label and European Cultural Routes under the Council of Europe. Additionally, it also contributes to the HEREIN database, a tool that collects data and information related to financing mechanisms, legislation, documentation systems.

c. Was the country once a member in any international commissions to rule about cultural heritage in the international context?

Lithuania has been a part of several international commissions related to cultural heritage. The state is a member of the Committee for the Protection of Cultural Property in the Event of Armed Conflict, as well as UNESCO World Heritage Committee.

Additionally, Lithuania is also a member of UNESCO advisory organs such as the International Council on Monuments and Sites (ICOMOS), the International Union for Conservation of Nature (IUCN), and the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM).

On a regional level, Lithuania has a membership in the Baltic Region Heritage Committee (BRHC) which aims to protect and promote cultural heritage in the Baltic Sea region.

2. National context of the protection of cultural heritage: Legislation and institutions

a. Are there specific national acts regulating the protection of cultural heritage?

In Lithuania there are special legal acts regulating the protection of cultural heritage. The Law on the Protection of Immovable Cultural Heritage and the Law on the Protection of Movable Cultural Property of the Republic of Lithuania ("Law on the Protection of Movable Cultural Property")[3] are the main specialised legal acts in the field of protection of cultural heritage. There is also a separate law On the Implementation of the Law on the Protection of Immovable Cultural Properties of the Republic of Lithuania.

In the field of protection of cultural heritage are also relevant other national laws as: the Law on Architecture of the Republic of Lithuania ("Law on Architecture"),[4] the Law on Protected Territories of the Republic of Lithuania ("Law on Protected Territories"),[5] the Law on Construction of the Republic of Lithuania ("Law on Construction"),[6] the Law on Land of the Republic of Lithuania ("Law on Land"),[7] the Law on Museums of the Republic of Lithuania ("Law on Museums"),[8] the Law on Documents and Archives of the Republic of Lithuania ("Law on Documents and Archives"),[9] the Law on Protected Territories of the Republic of Lithuania ("Law on Protected Territories"),[10] and the Law on Special Terms of Use for the Use of Land of the Republic of Lithuania ("Law on Special Terms of Use for the Use of Land").[11]

[3] Lietuvos Respublikos kilnojamųjų kultūros vertybių apsaugos įstatymas (Žin., 1996, No 14-352; 2008, No 81-3183), https://www.e-tar.lt/portal/lt/legalAct/TAR.C5DA698A4015/asr, accessed 17 February 2024
[4] Lietuvos Respublikos architektūros įstatymas (TAR, 2017-06-19, No 2017-10247)
[5] Lietuvos Respublikos saugomų teritorijų įstatymas (Žin., 1993, Nr. 63-1188; 2001, No 108-3902; TAR, 2023-12-23, No 2023-25321), https://www.e-tar.lt/portal/lt/legalAct/ea80d52054f211e7846ef01bfffb9b64, accessed 17 February 2024
[6] Lietuvos Respublikos statybos įstatymas (Žin., 1996, No 32-788; 2001, No 101-3597; TAR, 2016-07-13, No 2016-20300), https://www.e-tar.lt/portal/lt/legalAct/TAR.F31E79DEC55D, accessed 17 February 2024
[7] Lietuvos Respublikos žemės įstatymas (Žin., 1994, No 34-620; 2004, No 28-868; TAR, 2022-07-15, No 2022-15638), https://www.e-tar.lt/portal/lt/legalAct/TAR.CC10C5274343, accessed 17 February 2024
[8] Lietuvos Respublikos muziejų įstatymas (Žin., 1995, No 53-1292; 2003, No 59-2638; TAR, 2023-03-28, No 2023-05449), https://www.e-tar.lt/portal/lt/legalAct/TAR.863886C4199F, accessed 17 February 2024
[9] Lietuvos Respublikos dokumentų ir archyvų įstatymas (Žin., 1995, No 107-2389; 2004, No 57-1982), https://www.e-tar.lt/portal/lt/legalAct/TAR.1FEF229DA7C6, accessed 17 February 2024
[10] Lietuvos Respublikos saugomų teritorijų įstatymas (Žin., 1993, No 63-1188; 2001, No 108-3902; TAR, 2023-12-23, No 2023-25321), https://www.e-tar.lt/portal/lt/legalAct/TAR.FF1083B528B7, accessed 17 February 2024
[11] Lietuvos Respublikos specialiųjų žemės naudojimo sąlygų įstatymas (TAR, 2019-06-19, No 2019-09862), https://www.e-tar.lt/portal/lt/legalAct/420f4dd0927c11e9ae2e9d61b1f977b3, accessed 17 February 2024

b. Which government authorities are in charge of the management and supervision of cultural heritage preservation? What are their functions regarding the protection of cultural heritage?

The policy for the protection of cultural heritage is formed by the Seimas of the Republic of Lithuania, the Government and the Ministry of Culture, taking into account the assessments, analyses and proposals provided by the State Commission for Cultural Heritage, and is implemented by the Department of Cultural Heritage under the Ministry of Culture, the municipality, the State Service of Protected Areas under the Ministry of the Environment, the Directorate of Protected Areas, State Territorial Planning and Construction Inspectorate under the Ministry of Environment and the Office of Government Representatives in Counties.

i. State Commission of Cultural Heritage (Valstybinė kultūros paveldo komisija)

The State Cultural Heritage Commission is an expert and advisor to the Seimas of the Republic of Lithuania, the President of the Republic of Lithuania, and the Government of the Republic of Lithuania on the issues of state cultural heritage protection policy, its implementation, evaluation, and improvement. Its activities are regulated by a special law of the State Cultural Heritage Commission of the Republic of Lithuania.

The State Cultural Heritage Commission provides conclusions to the central and self-governing institutions regarding the implementation of the cultural heritage protection strategy and priority funding, submits proposals to the Parliament of Lithuania (Seimas) the Government and the President of the Republic regarding the signing or ratification of international agreements in the field of cultural heritage protection, conducts analyses of the current state of cultural heritage, the compatibility of policies in this area with other areas, evaluates the use of budget funds and the annual reports of cultural heritage protection institutions.[12] The State Cultural Heritage Commission also considers and approves proposals regarding the declaration of cultural heritage objects, areas as cultural monuments and their granting/deprivation of protection, the declaration of objects of national importance that are not considered cultural monuments as (not) protected by the state, decides on the recording of movable cultural assets in the Cultural Register or deletion from it.[13]

[12] Law of the State Cultural Heritage Commission of the Republic of Lithuania, art 5.1
[13] ibid

ii. Department of Cultural Heritage under the Ministry of Culture (Kultūros paveldo departamentas prie Kultūros ministerijos)

The Department of Cultural Heritage performs the functions of protection of immovable cultural heritage and movable cultural assets assigned to it by laws and other legal acts: supervises and manages cultural assets, conducts accounting, supervision and control of cultural heritage, presents cultural heritage to the public, and also contributes to the formulation and implementation of national policy in the field of cultural heritage protection.[14]

iii. Municipalities

Municipalities conduct the protection of cultural heritage based on the functions assigned to them by the Law on Local Self-Government. This law stipulates that one of the functions of municipalities is "management and protection of landscape, immovable cultural values and protected territories established by the municipality, protection, management and creation of greenery and greenery located in the territory of the municipality, inventory, accounting, cadastral measurements of individual greenery land plots and recording in the Real organisation and monitoring of the property register". The functions also include territorial planning, the implementation of municipal general plan or general plans and detailed plans of parts of the municipality, the determination of special architectural requirements and the issuance of documents allowing construction in accordance with the procedure established by law, and the organisation and execution of geodesy and cartography works assigned to municipalities by law. Among the exclusive competences of the municipal council is the establishment of municipally protected territories in accordance with the procedure established by the Law on Protected Territories, the announcement of local natural and cultural heritage objects protected by the municipality.

iv. State Service of Protected Areas under the Ministry of the Environment (Valstybinė saugomų teritorijų tarnyba prie Aplinkos ministerijos)

The state tasks of the Protected Areas Service under the Ministry of Environment are to ensure the protection of protected areas and their rational use, landscape stability, preservation of landscape and biological diversity, as well as to create conditions for educational tourism in protected areas and to use EU support for the maintenance and management of protected areas.

The functions assigned to this institution are the following: to supervise the directorates subordinate to it, to ensure the preparation of planning documents and management projects of

[14] Law on the Protection of Immovable Cultural Heritage, art 5.10

protected areas and the implementation of their solutions, the accumulation of data on protected areas, to organise the protection and management of protected areas, to implement the policy of protected areas. The State Service of Protected Areas together with directorates implements protection and management measures for protected areas, organises scientific research, assigns directorates to monitor and monitors protected areas, coordinates activities related to informing visitors of protected areas and creating information infrastructure. It also prepares and distributes information about the state of protected areas.[15]

v. The Directorate of Protected Areas (Saugomų teritorijų direkcijos)

The main functions, common to all directorates, related to the protection of cultural heritage are the following: supervises, controls and monitors the territory subordinate to the directorate, organises scientific research related to the preservation of cultural heritage, educates the public by promoting the preservation of cultural heritage, participates in the preparation of territorial planning documents and structures in the processes of project preparation and coordination, submits proposals for legal acts necessary to implement the goals set in the regulations of the directorates.[16]

Directorates of protected areas provide the services of coordinating cadastral measurement plans of land plots and issuing special requirements for the protection and management of protected areas.[17]

vi. State Territorial Planning and Construction Inspectorate under the Ministry of Environment (Valstybinė teritorijų planavimo ir statybos inspekcija prie Aplinkos ministerijos)

The State Inspectorate for Territorial Planning and Construction under the Ministry of the Environment ensures that territorial planning and building construction take place legally, and that administrative services in these areas are provided transparently.

If the State Office of Protected Areas under the Ministry of the Environment stops the construction of the structure, the builder can apply to the State Planning and Construction Inspectorate under the Ministry of the Environment and request permission to conduct conservation work on the structure.

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[15] Law on the Protection of Immovable Cultural Heritage, art 5

[16] Law on Protected Territories, arts 27.4 and 27.5

[17] ibid

vii. Office of Government Representatives (Vyriausybės atstovų įstaiga)

The representative of the Government is a public official appointed by the Government, who performs administrative supervision of the activities of municipalities, that is, supervises whether the municipalities comply with the Constitution of the Republic of Lithuania (hereinafter the Constitution) and laws, or implement the Government's resolutions.[18] The functions of the office of the government representative are related to the protection of cultural heritage to the extent that municipalities are related to the protection of cultural heritage and to the extent that it is necessary to monitor the performance and quality of municipal functions.

c. Is there a procedure for identification of cultural heritage? How is an object granted cultural value status?

i. Procedure for protection of immovable cultural heritage

Pursuant to the Law on the Protection of Immovable Cultural Heritage, Immovable Cultural Heritage is inventoried by listing all works and other items that can be attributed to it. Inventory data is constantly refined, accumulated, and systematised.[19] The inventory procedure description is approved by the Minister of Culture. Research is being conducted to reveal immovable cultural values.[20] Based on the data of these studies, the significance of cultural heritage objects or areas and their valuable properties is determined, and the boundaries of their territories are defined or refined.

Disclosure of specific immovable cultural values is organised by the Department of Cultural Heritage and municipal institutions. Traditional religious communities, associations and centres, science and studies and other state research institutions can organise the inventory and disclosure of cultural heritage corresponding to their field of activity or owned by ownership, coordinating their actions with the Department of Cultural Heritage.[21]

The significance of immovable cultural values, the valuable properties of cultural heritage objects or areas, and the limits of their territories and cultural heritage objects protection zones are determined by immovable cultural heritage evaluation councils formed by the Department of Cultural Heritage and municipalities.[22]

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[18] The Constitution of the Republic of Lithuania, art 123

[19] Law on the Protection of Immovable Cultural Heritage, arts 8.1 and 8.2

[20] ibid, art 8.3

[21] ibid, art 8.4

[22] ibid, art 8

Immovable cultural values are registered after the assessment board decides that the value needs protection. Such values are registered as individual, complex or complex cultural heritage objects or areas of great scientific, historical, or cultural significance. The decisions of the evaluation councils are published on the websites of the Department of Cultural Heritage and the municipalities that formed the evaluation councils, and information about registration is in the Register of Cultural Values according to the procedure established by legal acts.[23]

ii. Procedure for protection of movable cultural heritage

Procedure for protection of movable cultural heritage is established in the Law on the Protection of Movable Cultural Property. In Lithuania, the state accounting of movable cultural values consists of:

1. Accounting documents of movable cultural assets of museums and libraries;
2. Accounting documents of the National Document Fund;
3. Register of cultural values.[24]

The Minister of Culture, based on the conclusion of the Movable Cultural Values Evaluation Commission, with the approval of the State Cultural Heritage Commission, decides to enter into the Register of Cultural Values or delete from the Register of Cultural Values cultural objects that meet the criteria for the evaluation of movable objects to be entered into the Register of Cultural Values established by the Ministry of Culture.[25]

The owner of an object, the State Commission for Cultural Heritage, the Ministry of Culture, the Department of Cultural Heritage, the Chief Archivist of Lithuania, the municipality can propose to enter a movable object in the Register of Cultural Values.[26] If the movable object is not registered in the Register of Cultural Values, the Minister of Culture must provide a reasoned answer to the person or institution that submitted the proposal.[27]

d. Does the country have a Minister of Culture? What are their functions regarding protection of cultural heritage?

The Minister of Culture is head of the Ministry of Culture. The Ministry of Culture has 5 policy groups and 6 departments. One of the political groups dedicated specifically to the protection of

[23] ibid
[24] Law on the Protection of Movable Cultural Property, art 5.1
[25] ibid, art 6.1
[26] ibid, art 6.3
[27] ibid

cultural heritage is the Cultural Heritage Policy Group, whose regulations specify the group's tasks: to help form the protection of immovable cultural heritage and protected territories, the protection of movable cultural assets, the search, return and presentation of cultural objects significant to Lithuania abroad to the public, intangible cultural heritage protection policy, to organise, coordinate and control the implementation of the cultural heritage policy. The functions of the group are as follows: submits proposals for drafting laws, other legal acts and amending existing legal acts, provides conclusions on draft legal acts, prepares draft legal acts, participates in the activities of international organisations, coordinates the activities of cultural institutions subordinate to the Ministry and assigned to its management area, provides proposals regarding their activities to the leadership of the ministry.

e. What is the role of civil society and private entities regarding the protection of cultural heritage?

In Lithuania, the general public is not directly involved in the assessment of cultural heritage, as state institutions decide on the designation of objects as heritage. However, civil society can suggest state bodies to involve some object to the list of cultural heritage; initiate protection of some cultural heritage which is not yet formally protected. In the case of a violation of the public interest of the society, when it concerns cultural heritage objects, the general public can submit complaints, as regulated by the Law of Territorial Planning of the Republic of Lithuania.

3. Right to ownership of cultural heritage: How is ownership of cultural heritage determined?

a. Are excavations and the discovery of archaeological findings regulated by law?

To analyse exactly how archaeological findings are legislated, one must firstly determine what it means. In the Law of the Protection of Immovable Cultural Heritage, they are described as "the items or remnants thereof which have been created by man or bear signs of human existence, found during research or otherwise and possessing, either on their own or in relation to other signs, a scientific value of the knowledge of history.[28] The former owner of these items cannot be identified normally due to a considerable lapse of time since the burying or disposal of the said items. Bodies of the ancients or remains thereof shall also be considered as archaeological findings." That established, archaeological findings are mainly regulated by the Law on the Protection of Immovable Cultural Heritage and Law on the Protection of Movable Cultural Property.

[28] Law of the Protection of Movable Cultural Property, art 2

The former regulates the initial protection of immovable cultural heritage with article 9 "Initial protection of Cultural Heritage", stating that in the case of archaeological findings being discovered, the persons involved must notify their municipality's heritage protection division, which similarly would have to inform the Department of Cultural Heritage Protection. It must then decide on whether or not to initiate registration of a discovered immovable cultural property, declaration of an object of cultural heritage protected or making of the discovered valuable property known and adjustment of the protection requirements. It may also restrict or prohibit operations for up to six months, in order to not damage said valuable properties if found needed.

The same law also states in article 18 "Research of immovable cultural heritage", that archaeological findings discovered during research should be exhibited in the place they were found, except in the cases when the Ministry of Culture allows it, then they may be handed over to museums that have the proper conditions to preserve and exhibit them. The same article also specifies certain conditions necessary for the conduct of archaeological research.

Similarly, archaeological findings are protected by the Law of the Protection of Movable Cultural Property, stating that it's prohibited to purchase, sell, exchange, give as a gift, mortgage, lease, give as loan for use archaeological findings or to otherwise transfer the rights of ownership or possession thereof, with the exception of the archaeological findings which have been lawfully acquired in other states and imported into the Republic of Lithuania or when the acquisition involves museums.[29] It is also stated that compensation is paid to persons for accidentally discovering archaeological findings possessing historic, cultural, or archaeological value.[30]

b. Is it possible for natural persons and legal entities to acquire, keep, sell, or donate ownership of cultural heritage objects?

While it is possible to acquire, keep, sell, or donate ownership of certain cultural heritage objects for natural and legal persons, such action is highly regulated. For example, one may engage in trade in antiques entered in the Register of Cultural Property or created/manufactured until 1800 only under a licence issued by the Department of Cultural Heritage Protection. Such a licence and its way of acquisition, possible suspension and revocation is further regulated.[31] That is specific to movable cultural heritage objects. Immovable cultural heritage objects, however, only allow natural persons to manage the preparation of a special territorial planning documentation of immovable cultural heritage protection or proceed with maintenance operations only if they

[29] ibid, art 13
[30] ibid, art 12
[31] ibid, art 13

meet specific requirements[32] and must acquire a certification. Immovable cultural heritage objects can be, however, inherited, if it was owned by the family before being considered a cultural heritage.

Although it must be pointed out, that Lithuania also protects intangible cultural heritage preservation, which cannot be tangibly given or taken, any person has the right to it. It is also protected by UNESCO.[33]

c. What are the rights and obligations of owners of cultural values? Are there differences between State institutions, private persons, and religious communities regarding cultural heritage and its protection?

While the owner of a cultural heritage object may have the right to use and enjoy the cultural heritage value, may transfer said object to another party (all within the bounds of law and regulations), receive support for the upkeep and maintenance, and file proposals,[34] there are many more obligations to consider. One of such is the obligation to notify relevant authorities if a cultural heritage object is found on their property.[35] They must also take measures to preserve and protect said objects, grant access to it for research purposes if required, cooperate with the authorities for proper documentation, conservation, and restoration.[36]

There are key differences in the subject governing cultural heritage. For example, state institutions may have ownership of nationally significant cultural heritage objects, while others may not. This includes archaeological sites, valuable artefacts, and historic buildings. They regulate and oversee cultural heritage activities, issuing permits and enforcing preservation standards. The state is also tasked with safeguarding cultural assets of the public interest – that is why some objects with exceptional significance may remain only under the state's ownership.[37]

Private persons, on the other hand, are subjected to many legal regulations and have many legal responsibilities regarding the ownership of cultural heritage objects, which were mentioned previously. Religious communities, in this instance, stand out, because they may own the cultural and religious objects, such as icons, artefacts of religious significance, manuscripts and the like.

[32] Protection of Immovable Cultural Heritage, art 22(10)
[33] Official UNESCO portal, Intangible Cultural Heritage, Lithuania, "Periodic reporting on the Convention for the Safeguarding of the Intangible Cultural Heritage" <https://ich.unesco.org/en/state/lithuania-LT?info=periodic-reporting#:~:text=Lithuania%20continues%20to%20improve%20and,stimulating%20and%20supporting%20traditional%20craftsmen.> accessed 28 November 2023
[34] Protection of Immovable Cultural Heritage, art 14
[35] ibid, art 9
[36] ibid, art 14
[37] ibid, art 6

The preservation of such objects is under their care, although it may also involve a collaboration with relevant authorities.[38]

d. What rules apply to private collections?

In Lithuania, collections, selections, sets or other objects, as a whole, regardless of the value or types of individual parts; collections of palaeontological, ethnographic, or numismatic interest are considered one whole cultural object. The owner is required to keep and transfer the ownership of the collection as a whole.[39] All other rights and obligations are similar to owners of single cultural heritage objects.

e. Is it possible for the State to confiscate cultural heritage of private ownership and under what conditions?

The State may confiscate immovable and/or movable cultural heritage object private ownership if the private owner did not comply with the regulations set in the following articles – Protection of Immovable Cultural Heritage article 9 "Initial protection of immovable cultural heritage" and article 14 "Export of movable cultural property and antiques from the Republic of Lithuania" – if the cultural heritage in question was named a cultural monument with national significance,[40] or if the acquisition of ownership was done illegally.

In article 10 of the Protection of Immovable Cultural Heritage, it is mentioned that the previous owners' expenses of management operations and heritage protection will be reimbursed. Compensation is also paid to persons for accidentally discovering archaeological findings possessing historic, cultural, or archaeological value in article 12 "Acquisition of rights of ownership and possession of movable cultural property and movable items holding cultural value." No other compensation in case of confiscation is specified.

4. What criminal or administrative offenses are related to destruction, damage, or theft of cultural heritage? What penalties would be imposed in such cases?

Protecting cultural heritage requires that society as a whole must be obliged to make proper use of cultural heritage objects, to prohibit damage to them, and to impose certain necessary restrictions to prevent damage to cultural heritage objects.[41] It should be noted that certain

[38] Protection of Movable Cultural Property, arts 14(9) and 16(3)
[39] ibid, art 3
[40] Protection of Immovable Cultural Heritage, art 5
[41] K Krikštaponienė, (2012) 'Boundaries of Competence of State Service for Protected Territories and the Department of Cultural Heritage in territories of national parks', Master's thesis, Mykolas Romeris University, 13

relations relating to the use of cultural heritage are also regulated by the dispositive method inherent in civil law, but such relations must be regulated in such a way as not to harm the public interest. By the earlier considerations, the protection of cultural heritage is, by its very nature, part of public law.

Therefore, we can identify the following national legal sources for the protection of cultural heritage in Lithuania:

1. The Constitution – the legal norms established in the Constitution that oblige the state to protect cultural monuments and values.
2. General laws of the Republic of Lithuania – the Code of Administrative Offences of the Republic of Lithuania (Code of Administrative Offences), the Law on Administrative Proceedings of the Republic of Lithuania (Law on Administrative Proceedings), the Civil Code of the Republic of Lithuania (Civil Code), the Criminal Code of the Republic of Lithuania (Criminal Code). These laws apply to an indefinite range of subjects. As sources of cultural heritage protection law, they regulate the following cultural heritage protection relations: issues of taking private property into state ownership, application of legal liability, settlement of disputes on cultural heritage protection and others.
3. Special (main ones) – the Law on the Protection of Immovable Cultural Heritage, the Law on the Protection of Movable Cultural Property, the Law on Museums, the Law on Documents and Archives and the Law on Libraries of the Republic of Lithuania (Law on Libraries).
4. Sub-legislative acts – Resolutions of the Seimas, Government Resolutions, Orders of the Minister of Culture, which specify the provisions of the Law on Protection of Cultural Heritage.

This shows that the protection of cultural heritage is not only a part of law areas, such as, civil, criminal, and other, which are mainly regulated by special laws: the Law on the Protection of Movable Cultural, the Law on the Protection of Immovable Cultural Heritage.

a. Does national law distinguish between theft, destruction, or damage of a "normal" item and of an item with cultural, historic, or religious value?

i. Administrative offences relating to the destruction, damage, or theft of cultural heritage objects

In the Code of Administrative Offences, offences relating to objects of cultural heritage are set out in the chapter "Administrative offences relating to the protection of the environment, the use

of natural resources and the protection of heritage". However, it should be noted that the legal norms set out in this chapter are of a blanket nature, meaning that they essentially refer to specific laws such as: The Law on the Protection of Immovable Cultural Heritage and the Law on the Protection of Movable Cultural Property.

Article 314 of the Code of Administrative Offences stipulates that if a general entity, i.e. natural persons, violates the requirements for the protection of cultural heritage, they shall be liable to a fine ranging from 150 to 300 euros, and special entities, i.e. the directors of legal persons and other persons in charge shall be liable to a fine ranging from 300 to 860 euros. In case of violation of the requirements for the protection of cultural heritage in the course of management, construction, design or planning works, natural persons shall be liable to a fine of between 300 to 560 euros, and heads of legal entities and other responsible persons – between 850 and 1500 euros. In the case of an offence committed during the search for movable heritage of cultural value by excavation or by the use of metal detectors or any other search equipment, natural persons shall be fined from 300 to 560 euros, and the heads of legal persons and other persons in charge shall be fined from 560 to 1200 euros.[42] It should be noted that repeated offences of this kind result in a correspondingly higher fine.

Article 305 of the Code of Administrative Offences a stipulates that in case of violation of the regime of protection and use of state parks or biosphere reserves, natural persons shall be given a warning or a fine of 30 to 90 euros, and the heads of legal entities or other responsible persons shall be fined 60 to 170 euros. In case of violation of the protection and use regime for the territories of nature reserves, conservation areas, natural heritage sites, or state parks or biosphere reserves and the territories of nature reserves or conservation areas, state parks or biosphere reserves, and the territories of natural heritage sites located in them, defined by their boundary plans, natural persons shall be liable to a fine from thirty to one hundred fifty euros, and heads of legal persons or other responsible persons to a fine from one hundred fifty to two hundred thirty euros. In case of violation of the regime for the protection and use of protected areas by illegally erecting, storing or using for accommodation, lodging, catering or other purposes vans or other movable objects or facilities, natural persons shall be liable to a fine from thirty to three hundred euros, and heads of legal entities or other responsible persons – from 60 to 600 euros.[43] It should be noted that repeated offences of this kind result in a correspondingly higher fine.

To summarise, it can be stated that the legislator has established legal liability for offences related to the protection of cultural heritage in Code of Administrative Offences, but it can also be seen

[42] The Administrative Offences Code of the Republic of Lithuania, art 314
[43] ibid, art 305

that the legislator refers to other laws in the hypothesis of the legal norm when naming the offences for which there is legal liability. For example, the first paragraph of article 314 refers to "violation of the requirements for the protection of cultural heritage laid down by law", which does not make it clear exactly what kind of violation it is, but if we look at specific laws, such as the Law for the Protection of the Immovable Cultural Heritage or the Law for the Protection of Movable Cultural Property, it would become clear.

ii. Criminal offences relating to the destruction, damage, or theft of cultural heritage objects

Unlike the Code of Administrative Offences, the Criminal Code does not have a separate chapter concerning offences relating to cultural heritage, but in the present case it is clear that such legal provisions are integrated into all other offences, as an additional qualifying element aggravating legal liability.

Article 178 of the Criminal Code stipulates that the theft of valuables of great scientific, historical, or cultural importance is punishable by up to eight years' imprisonment.[44] Article 187 of Criminal Code stipulates that destruction or damage to scientific, historical, or cultural property of particular significance is punishable by criminal arrest or imprisonment for up to five years.[45] Article 188 of Criminal Code establishes a legal provision that provides that negligent damage to valuables of major scientific, historical, or cultural importance is punishable by public works or a fine, or by restriction of liberty or imprisonment for up to two years. And if the act is committed in violation of the special rules on safety of behaviour established by law, it is punishable by a fine or arrest or imprisonment for up to three years (in which case the legal person is also liable to punishment).[46] Article 106 of Criminal Code establishes the legal norm that, if, on the grounds of military necessity, an unjustifiable order is given to destroy or has destroyed historical monuments, objects of culture, art, education, science or religion protected by international treaties or by domestic legislation of the State, or to plunder national treasures in the occupied or annexed territory, and if the damage caused thereby is substantial, the punishment is deprivation of liberty for a term of between three and 12 years.[47]

As can be seen, the offences referred to above are established specifically in the Criminal Code. Therefore, the legislator has established that such an act as destruction, damage, or theft of an object of cultural heritage carries the strictest of all legal liabilities – criminal liability.

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[44] Criminal Code, art 178
[45] ibid, art 187
[46] ibid, art 188
[47] ibid, art 106

iii. Differences in legal liability in case of damage, destruction, or theft of traditional and cultural heritage objects set out in the Code of Administrative Offences

As already mentioned, since the law on the protection of cultural heritage is part of public law, the Code of Administrative Offences has a separate chapter entitled "Administrative offences related to the protection of the environment, the use of natural resources and the protection of heritage", which separates the legal liability for violation of the requirements for the protection of cultural heritage from the legal liability for any other offences. Difference between the legal liability for damaging, destroying, or stealing an "ordinary object" and a cultural heritage object will be analysed further.

Article 108 of the Administrative Offences Code, Chapter "Administrative offences relating to property, property rights and property interests", establishes the legal liability for minor theft, fraud, embezzlement, or misappropriation as a fine from 90 to 400 euros.[48] In contrast, the Administrative Offences Code does not regulate this type of offence in relation to objects of cultural heritage, which is punishable by a criminal penalty of up to eight years' imprisonment. Article 115 of this Code establishes the legal liability for the intentional destruction or damage of property as between 50 and 700,[49] while the legal liability for the destruction or damage of an object of cultural heritage is also not specified in this Code, since such an act is punishable by criminal liability – criminal arrest or imprisonment for up to five years.

Thus, comparing the legal liability for the destruction, damage or theft of an "ordinary" object in the Code of Administrative Offences with the legal liability for this type of act in relation to cultural heritage objects, it is visible that damaging, destroying or stealing a cultural heritage object is not even a question of its value, as it should be noted that in the case of an "ordinary object", it is the value of the object that is evaluated and that is what determines whether it will be subject to administrative or criminal liability, whereas, in the case of the destruction, damage or theft of cultural heritage, it is not the value of the object that is important, and it is immediately subjected to criminal liability, which is a much more severe form of criminal liability.

To summarise, the legislator has clearly distinguished in the Administrative Offences Code between the legal liability for violation of the requirements for the protection of cultural heritage and the liability for the other offences provided for in this Code, and, among other things, as can be seen from the analysis of the legal norms, the liability for violation of the requirements for the protection of cultural heritage is considerably higher.

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[48] The Administrative Offences Code of the Republic of Lithuania, art 108

[49] ibid, art 115

iv. Differences in legal liability in case of damage, destruction, or theft of traditional and cultural heritage objects set out in the Criminal Code

As the Criminal Code integrates the legal provisions governing offences relating to the destruction, damage, or theft of objects of cultural heritage with the legal provisions on legal liability for damage, destruction, or theft of "ordinary objects", we can clearly see and compare the differences in criminal liability:

- In the case of theft, the appropriation of an object of cultural heritage is not distinguished from the appropriation of other objects: Criminal Code provides that the theft of another person's property shall be punishable by community service or a fine or restriction of liberty or deprivation of liberty for up to three years, and if the property is taken by breaking into a room, a depository or a protected area, then it shall be punishable by a fine or an arrest or restriction of liberty or imprisonment for up to five years. In this case, theft of large amounts of another person's property is punishable by up to seven years' imprisonment.[50] It should be pointed out that since cultural heritage objects, being of high social significance, are consequently of high value, we can presume that the theft of a cultural heritage object, although the norm does not explicitly mention the theft of a cultural heritage object, in the context of the above, we can conclude that a more severe punishment would be imposed (as in the case of theft of a high value property) than in the case of theft of a simple (not of a cultural value) item.
- In the case of damage or destruction of property, damage or destruction of a cultural heritage object is subject to greater legal liability than damage or destruction of an ordinary object: Destruction or damage of high value foreign property or particularly significant scientific, historical or cultural property is punishable by arrest or imprisonment for up to five years, while destruction or damage of an ordinary (foreign) object is punishable by community service or a fine, or by restriction of liberty, or imprisonment for up to two years.[51] Hence, it can be clearly seen that in the case of theft or destruction of property, the legislator explicitly states in the qualifying elements of the legal norm that the destruction or damage of an object of cultural heritage is subject to greater legal liability than the destruction or damage of an "ordinary" object.

Thus, as can be seen, the differences between the legal liability for damaging, destroying, or stealing ordinary and cultural heritage objects in the Criminal Code are clear: damaging,

[50] Criminal Code, art 178 para 3
[51] ibid, art 187

destroying, or stealing a cultural heritage object is subject to a higher level of criminal liability than theft of an "ordinary object".

b. Is there a possibility to have insurance on cultural heritage?

As a national treasure, culture should be fully protected. Thus, in order to protect cultural heritage sites, it is important not only to ensure legal liability for their violation, but also to take additional action, such as the insurance of the sites.

In Lithuania, the insurance of cultural heritage is regulated by the Law on Construction, which establishes that in the case of construction works on a cultural heritage building, the insurance of such a building is mandatory.[52]

The article specifies that under the compulsory insurance of construction works and civil liability of a cultural heritage building, the insurer shall compensate the builder (client), the policyholder and third parties for damage caused by the policyholder and the insured to the building, to the health of a third party, to the life of a third party, or to the property of a third party. It also states that the prohibition of construction works for the maintenance of a cultural heritage building is only mandatory during the construction period, until the date on which the contractor has handed over all the results of the construction works to the builder (the client). However, it is noted that in the case of domestic construction (where the work is carried out by the person themselves or by hiring separate construction teams), there is no obligation to prohibit the construction, reconstruction, renovation, repair, refurbishment (modernisation), demolition, or maintenance works on a building of cultural heritage.

Thus, there is no obligation to insure in Lithuania, and it is up to the institutions and managers of cultural heritage objects to decide whether or not to insure such objects. Insurance companies claim that ensuring cultural heritage buildings involves individual insurance terms and conditions, indemnity principles, risk minimisation and risk management issues. In Lithuania, there is an issue that the insurance business is reluctant to insure objects of cultural heritage because the artistic and monumental value of the object, the value of the movable property inside, which includes antiquities and liturgical relics, cannot be objectively evaluated, both due to the lack of accounting and the fact that it is difficult to objectively determine the value of these objects in Lithuania, and it is therefore not clear at what level of value to insure them and how to compensate for the damages, and, in such cases, when the risk is not clear, it is not possible to offer an insurance service or to determine the insurance fee. Insurance companies also note that state-owned heritage and cultural sites are often not equipped with adequate fire safety or fire detection

[52] Law of the Republic of Lithuania on Construction, art 46

measures, so insurance cover cannot be offered in the absence of the necessary risk management factors.[53]

Thus, in Lithuania, the protection of cultural heritage in terms of insurance is not sufficiently developed, and there are still a lot of problematic issues, which are still being solved in order to soften the conditions of insurance and in order to insure more cultural heritage objects.

5. Does the legal system have provisions on the protection of cultural heritage against natural disasters?

As with all regulation, the source of protection of cultural heritage against natural disasters is firstly found in the Constitution. Article 42(2) of the Constitution provides that the State shall support culture and science and shall take care of the protection of Lithuanian historical, artistic, and other cultural monuments, as well as other culturally valuable objects. Thus, Lithuania has assumed responsibility for the implementation of processes for the protection of cultural property, which should include the prevention of natural disasters (as far as is objectively possible) and the minimisation of their potential consequences.

The national regulation provided for in laws and other legislations can be broadly divided into three groups. First, norms provide the general protection of cultural heritage. If taken in advance, these provided measures can help to avoid or significantly reduce the negative impact of natural disasters. Second, norms which provide the conduct of institutions, bodies, organisations, or other persons in preparation for, during and in order to eliminate the adverse effects of a specific natural disaster. Last, norms providing the recording and restoration of cultural property.

General protection rules provide a broad range of norms designed to protect cultural heritage from the normal effects of human activity and nature. The protection of objects of cultural heritage is provided for in the Law on the Protection of Immovable Cultural Heritage, the Law on Protected Territories of the Republic of Lithuania, and the Law on Territorial Planning of the Republic of Lithuania. Article 11(6) of the Law on the Protection of Immovable Cultural Heritage provides for the establishment of a buffer protection zone to mitigate the adverse effects of human activities on a protected object or a site. If the area is subject to a restrictive zoning of human activities, the land plots (or parts of them) within it, together with the immovable objects, forest, and water areas therein, may be subject to restrictions on human activities. It should be noted that the boundaries of a cultural property and a buffer protection zone often do not coincide, and the protected zone is usually much larger than the boundaries of

[53]Lietuvos rytas, "Kodėl pleška kultūros paveldas? Atsakymai aiškūs" <https://www.lrytas.lt/kultura/meno-pulsas/2017/08/12/news/kodel-pleska-kulturos-paveldas-atsakymai-aiskus-2210138> accessed 28 November 2023

the cultural heritage property.[54] Restricting certain human activities within this zone can protect objects from physical, chemical, biological, ecological, and other causes, and increase the likelihood of natural phenomena due to the indirect influence of humans. Finally, before any action can be taken with cultural heritage objects and sites, it is necessary to ascertain the impact of that action on the property. For instance, in the case of archaeological investigations, it must be ensured that the site of the investigations, the archaeological structures, the finds, and the human remains will be protected from the effects of collapse of the ground or structures, flooding, natural disasters, and the negative actions of third parties.[55] The protection of movable cultural property is provided for in the Law on Protection of Movable Cultural Property. According to the procedure laid down in this law, movable cultural property may be stored by the state (usually in museums, archives, libraries, or, in the case of those of particular importance, in state repositories), or by other persons. In the case of the storage of cultural property by private persons (the owners, managers, or users of the property), they are obliged to observe the requirements of the regulations on protection of cultural property. If the owner of a cultural object is found not complying with the regulations, holding it in an unsustainable manner, or causing a risk of destruction of the object, the object may be taken from the owner in exchange for compensation. The purpose of these actions is to avoid impacts, including environmental impacts, resulting from the negligent actions of owners. These provisions not only help to ensure that cultural property is not destroyed and is preserved, not only in day-to-day activities, but also reduces the negative impact in the event of natural disasters. For example, in the event of torrential rainfall and flooding, cultural property housed in water-resistant structures will be less vulnerable to these impacts than that which has been kept completely unprotected.

The Republic of Lithuania has also adopted legal norms providing for the protection of cultural heritage in preparation for, during and in the aftermath of a specific potential disaster. It should be noted that in Lithuania these norms are established to regulate in general the protection of cultural heritage in armed conflicts and other emergencies.[56] Often, various national level legislation acts and programmes are developed to deal with the consequences of armed conflicts and other emergencies. The greater distinction between them is more often seen in localised

[54] 5 November 2013 Resolution of the Government of the Republic of Lithuania No 1025 On Approval of the Rules for Establishing Protection Zones for Cultural Heritage Sites and Areas, <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.459712/asr.> accessed 25 November 2023

[55] Law on the Protection of Immovable Cultural Heritage, art $18^1(7)(3)$

[56] The Law on Crisis Management and Civil Protection of the Republic of Lithuania defines an emergency event as a natural, technical, ecological or social event that meets the established criteria and poses such a threat to the life or health of the population, their basic living/working conditions, their property, the environment, the performance of vital functions of the state, or to public order, that an emergency situation may be declared. Thus, this provision also covers natural disasters.

legislation or action plans. Therefore, the basic principles are in line with those laid down in the international conventions on the protection of cultural heritage in the event of an armed conflict, the UNESCO Convention, adopted in The Hague in 1954, and the First and Second Protocols to the Geneva Convention adopted in 1977. Even though directly human-made events and natural disasters are conceptually quite different, this peculiarity of the legal system of the Republic of Lithuania should not be considered as a major drawback, as the actual consequences for cultural heritage may be similar. For example, regardless of whether a fire is human-made or naturally occurring, the fire needs to be properly contained and, if necessary, the relevant property evacuated, or other necessary measures taken.

As a rule, the criteria and actions to be taken for the protection of cultural property are laid down at national level and made mandatory for each institution, body, organisation, or person designated to protect cultural property. For example, the proper protection of movable cultural objects must include an evacuation action plan, the designation of persons responsible for it, the prioritisation of the objects to be evacuated and the locations of temporary storage, the marking of the objects with the prescribed signs, the expenditure of time, money and labour, and the means of preserving the records.[57] It is usually recommended to discuss natural phenomena common in Lithuania (e.g., floods, storms, snow, tornadoes, extreme temperatures, dangerous communicable diseases, animal infectious diseases, plant diseases, parasite infestations, earthquakes, landslides, fires, avalanches), events caused by human error or omission (e.g., building collapses, breakdowns of communication systems, power failures, mechanical breakdowns, explosions, fires, accidents), events deliberately caused by human beings (e.g., arson, bombs, civil disturbances, military attacks, riots).[58] Each institution, body or person subsequently implements these measures falling within the scope of the legislation, and the Ministry of Culture of the Republic of Lithuania and the Department of Cultural Heritage under the Ministry of Culture verifies the adequacy of their implementation. Of course, municipalities may set higher (or more detailed) protection standards or guidelines in certain areas by local self-government acts.[59] Thus, the various levels of law provide for a sufficiently detailed and specific

[57] 18 July 2007 Order No ĮV-500 of the Ministry of Culture of the Republic of Lithuania On the approval of the Instruction for the protection and evacuation of movable cultural property in museums, libraries, archives and religious buildings, < https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.302283/zXShVdasmI?jfwid=-1c5gsqi7z2 > accessed 25 November 2023

[58] 31 December 2019 Order of the Ministry of Culture of the Republic of Lithuania No ĮV-872 On Approval of Methodological Guidelines for the Preparation of Emergency Management Plans by Managers of Cultural Institutions with Movable Cultural Property and Immovable Cultural Heritage Objects, < https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9150a7822e6811ea8f0dfdc2b5879561?jfwid=-1c5gsqi6tj.> accessed 5 October 2023

[59] 15 December 2015 Order No 1-AĮ-814 of the Anykščiai District Municipality Administration On the approval of the Recommendations for strengthening fire safety in district institutions and cultural heritage objects intended for

course of action in the event of a natural disaster in order to avoid or minimise the destruction of cultural property in the event of a natural disaster.

Last set of provisions regulates the accounting for existing cultural heritage and restoration work when an object is damaged or destroyed. Cultural heritage recording consists of inventorying, discovery of specific cultural property (particular investigations are conducted to research cultural property and to clarify information) and registration. It should be noted that accounting is particularly important for the protection of cultural heritage during natural disasters, as it helps practitioners to know the amount of heritage held, to identify the most valuable works and to prepare for their evacuation or other protection in extreme circumstances.[60] Data on movable and immovable objects of cultural heritage are stored in the Register of Cultural Property of the Republic of Lithuania. The data in the public register may be later used to make decisions on the salvage of the property that also depend on the value, location, and uniqueness of the property.

Currently, cultural heritage in Lithuania is not only recorded in photographs, schemes and various documents containing measurements of the objects, but also in digital models (in 3D form).[61] As the technology of capturing the object digital form has been developed, one can record objects and their current state with a high degree of accuracy. The aim of such action is to facilitate the processes of destroying these objects or to preserve the data on their former existence for future generations in a durable medium. The restoration and rehabilitation of cultural property is supported by the Republic of Lithuania, which provides for the financing of research, conservation and restoration works on certain objects from the State budget, if such work is conducted by suitably qualified persons and in accordance with the established procedures. According to article 23(4) of the Law on the Protection of Immovable Cultural Heritage cultural heritage objects which are destroyed by natural disasters or by human beings may be restored, without endangering the surviving remains, parts or elements of their valuable properties, if the possibility of restoration is substantiated by data from historical sources and physical research, the object has a special artistic or symbolic significance and the public approves of it. This means that the recording and documentation of an object provides important technical possibilities for

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the storage and exhibition of movable cultural property <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/76693b80a43811e59010bea026bdb259?jfwid=-1c5gsqi7z2.> accessed 6 October 2023

[60] GS Dacytė (2017) 'Protection of movable cultural property and emergency management: the case of two Lithuanian memory institutions' *Knygotyra*, 69, 145

[61] At present, digital models have been created for the Church of the Transfiguration of the Lord located in Kaunas (Radvilėnų pl 1A) and the Customs Building located in the municipality of the Rokiškis district, Pandėlio municipality (Suvainiškis township, Paupio st 4). It was also planned in 2022 to make four more digital models of the objects of cultural heritage. Furthermore, their creation in the future is also encouraged <https://saf.ktu.edu/news/ktu-ir-kulturos-paveldo-departamento-projektas-paveldui-saugoti-centimetro-tikslumo-skaitmeniniai-modeliai/.> accessed 17 November 2023

the subsequent restoration of an object or part of an object that has been damaged by various factors, including natural catastrophe.

Thus, in Lithuania, the detail of cultural heritage protection varies according to the hierarchy of legal acts, as usual for many other problems of the law. The highest-ranking legislation refers to the protection of cultural heritage against natural disasters in the abstract, usually the protection it provides for covers natural phenomena implicitly. In general, legislation provides regulation at a general level, which, while giving some idea of how certain hazards should be dealt with (e.g., in the event of a minor flood, for which normal measures would be sufficient to protect the property), it does not provide legal clarity on how to deal with catastrophes. Whereas natural disasters and other events are dealt with in sub-legislative acts. These essentially provide guidance to institutions, bodies, organisations, and other persons on how to organise the protection of cultural heritage, what actions to take and at what to pay attention to. The most detailed and specific protection of cultural heritage is provided in the acts that are adopted by the entity in charge of a particular site or group of sites. Mostly these entities provide evacuation plans, schemes, decisions, and other documents. They specifically assess the likelihood and potential consequences of a given natural disaster and provide a specific plan of action to avoid or mitigate the consequences of the situation. Acts and measures drawn up by these entities are reviewed by the Ministry of Culture of Lithuania and the Department of Cultural Heritage under the Ministry of Culture in order to ensure the level of adequate protection. The combination of all these legal and local acts constitutes the appropriate legal basis for the protection of cultural heritage objects during natural disasters.

a. Which institution as the "first responder" would be responsible to safeguard cultural heritage during natural disasters?

One of the main challenges in the event of a natural disaster that may damage cultural heritage is to react to the situation quickly enough and to minimise its impact as much as possible. In this regard, the first duty to respond to the event is to the employees and officials of the site where the cultural property is located. This is not only because they are in a position to react quickly to the problem (they are usually on site and can take action), but also because they have knowledge of which cultural objects should be protected first, their exact location and how it should be overseen.

Usually, the first response action in "activating" an emergency management plan is to be taken by the head of the institution, body, or another organisation. This person is supposed to notify the Emergency Service Centre and the local government civil protection officer. Depending on the

situation, nearby agencies, institutions, or organisations whose employees' safety may be at risk may also be notified. Employees and visitors shall be accordingly informed about the situation. In the event that the director decides to evacuate, the evacuation of employees and visitors shall be conducted first. If the need is clear, the removal of cultural property and material assets to other secure premises or secure areas may be initiated.

In the event of a high-risk situation (e.g. fire), the obligation to notify the Emergency Centre shall be placed on the employee or the officer who observed the situation first. This person must also take the first measures to control the situation and inform other persons about the danger. Subsequently, before the arrival of the relevant authorities (such as the Fire and Rescue Service), the employee responsible for civil protection has to evacuate and coordinate the evacuation of employees and visitors. Only after the evacuation of persons has been conducted, shall the protection of cultural property and material assets begin. The protection of cultural property in the event of a natural disaster may be conducted by various emergency service institutions, usually the Fire and Rescue Service. It should be performed considering the objects at risk most of destruction, their cultural and material value, and the objective possibilities of relocation. Objects may be relocated to a predefined temporary relocation site. Objects may be returned at a later stage after the risk has been removed and the conditions have been restored.

The duty of "first response" and situation management is thus assigned to the institution, body or organisation which hosts the object, or which manages the cultural heritage site concerned. Subsequently, the management of the situation and the remediation of the consequences may be organised on a localised basis, with the involvement of local authorities.

b. Is the boundary between human activity and natural disaster regulated by law or other rules?

In Lithuania, there is no direct distinction in the legislation that regulates cultural heritage protection against human-made and natural disasters. Often, protection against these risks is provided with the usage of general regulation rules. Meanwhile, sub-legislative acts provide more detailed instructions to institutions, bodies, organisations, and other persons to consider not only natural and man-made disasters, but also to assess whether the damage caused by human actions would be due to human error (omission) or intentional actions.[62] These factors must be

[62] 31 December 2019 Order of the Ministry of Culture of the Republic of Lithuania No ĮV-872 On Approval of the Methodological Guidelines for the Preparation of Emergency Management Plans by Managers of Cultural Institutions where Movable Cultural Property is Protected and Managers of Immovable Cultural Heritage Objects <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/9150a7822e6811ea8f0dfdc2b5879561?jfwid=-1c5gsqi6tj> accessed 9 October 2023

considered by institutions, bodies, organisations, and others when drawing up disaster management schemes, plans or other documents.

However, whether the damage to cultural heritage was caused by natural or human-made causes may be relevant to the assessment of whether the fact of causing the damage will be considered an insured event, i.e. whether it will be covered by an insurance relationship. For example, article 6.1014(5) of the Civil Code provides that, unless otherwise provided for in the insurance contract, the insurer may be exempted from payment of the insurance benefit if: 1) the insured event occurred as a result of hostilities or the effects of radioactive radiation, 2) the damage was caused by the confiscation of the property, its seizure or destruction by order of the state authorities, or 3) in any other case provided for by law. Thus, in the normal case (unless the insurance contract provides otherwise), the insurer may avoid paying an insurance benefit because of certain human acts. Accordingly, the principle of freedom[63] of contract provides that the parties may agree on other exclusions or implicitly provide for cases where the insurance would (not) apply.

c. Is it considered a natural disaster if loss or damage of cultural heritage was caused by human activity?

In all cases, if it is found that the damage may have been caused by human activity as well as natural causes, an assessment is made of whether there is a causal link between the human action/omission and the damage caused. In such cases, it is particularly important to ascertain whether there is a factual causal link (whether the harmful effects result from an unlawful act, i.e. whether the harmful effects would have occurred in the absence of the unlawful act) and a legal causal link (whether the effects are not too far removed from the unlawful act/omission in legal terms).[64] It is the influence of man on the various events that have caused damage that is the decisive criterion for whether an event will be considered a natural or man-made disaster. However, in these cases, other factors such as the likelihood of a natural disaster occurring in the normal course of events, historical facts about past disasters, and various other influences that may have had an impact on the event must also be considered. For example, when the Gediminas Castle hill in Vilnius, Lithuania, began to slip, there were various speculations that these events could have been caused by the felling of trees or the presence of a funicular railway.[65] However, the actual cause of this event is still not entirely clear, as historical data shows periodic recurring

[63] Civil Code, art 6.156(1)

[64] Judgement of the Supreme Court of Lithuania of 4 April 2023 in civil case No e3K-3-108-381/2023

[65] E Činga, Real Causes of the Fall of Gediminas Castle Hill <https://madeinvilnius.lt/vilniaus-istorija/realios-gedimino-pilies-kalno-griuvimo-priezastys/> accessed 10 October 2023

events. Thus, in all cases, a slight human intervention is not sufficient to consider a phenomenon that is common in nature as human made.

6. Are there special provisions in national legislation on the protection of cultural heritage in the event of armed conflict?

There are no special provisions in Lithuanian national legislation for protecting cultural heritage in the event of armed conflict. In this context, Lithuania's membership of the UNESCO Committee for the Protection of Cultural Property in the Event of Armed Conflict must be mentioned.

7. Is it possible to terminate the protection of objects of cultural heritage and under which conditions?

In Lithuania, the protection of objects of cultural heritage can indeed be terminated, however, certain criteria have to be met. Regarding the Immovable cultural heritage, The Law on Immovable Cultural Heritage provides for the possibility of revoking the status of a protected cultural heritage object in cases where the object has severely decayed, been destroyed or its value has been lost in another way. However, before taking any action, the cause of an object of cultural heritage losing its value must be determined.

Before revoking the status of a protected cultural heritage object, a thorough assessment must be carried out by experts from the Cultural Heritage Department[66] and/or the local municipality.[67] The assessment considers various factors such as the object's cultural, historical, scientific, or artistic significance, and its relationship to the local community.

If after a thorough assessment, it is determined that a cultural heritage object has lost its value and the cause of it, any plans to remove its protection have to be publicly announced at least three months prior to any action. It is important to mention that even though the object is no longer granted protection, it is not removed from the list and its status as an object of cultural heritage is maintained.[68]

Concerning the movable objects of cultural heritage, protection can also be terminated. However, it follows a slightly different process. The object can be removed from the Register of Cultural Property by the decision of the Government, following the suggestion from the Minister

[66] Law on the Protection of Immovable Cultural Heritage, art 10.3.23
[67] ibid, art 6.3.3
[68] ibid, art 10.6

of Culture which must be based on the conclusion of the Commission for the Evaluation of Movable Cultural Property and approved by the State Commission for the Cultural Heritage.[69]

8. De lege ferenda

Legislation related to the protection of cultural heritage in Lithuania is quite broad but needs to be sufficiently harmonised and, more broadly, lacks systematicity. Many specialised laws regulate particular areas of protection that are sufficient in practice. However, some limitations may appear when evaluating the protection of cultural heritage as a system of norms.

The latest publicly available information shows that no new proposals for current legislation are pending. However, recent public consultation on the amendment of the Law on the Protection of Immovable Cultural Heritage is an improvement, and it is reasonable to expect that there will be new developments in this area shortly.

[69] Law on the Protection of Movable Cultural Property, art 9

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