

CONTRIBUTIONS TO THE HUNGARIAN LEGAL ASPECTS OF THE PROTECTION OF CULTURAL HERITAGE

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Abstract: *The basic idea of the protection of the irreplaceable property with the outstanding value belonging to the group of the cultural heritage appeared more hundred years ago. At the same time the European legal regulations concerning the protection of cultural heritage became stronger from the fifties, thanks to the results of the World War II's destructions. International conventions were accepted following each other in order to establish the international level of the protection. According to the international tendency, the legal basis of the protection of cultural property had been expanded and modernized continuously in Hungary.*

In the Hungarian legislation the Act of the protection of cultural heritage passed in 2001 can be characterized as a cornerstone. The above mentioned Act founded the notion of the unified protection of cultural heritage, at the same time the legal institution of the integrated heritage protection, which tendency was in accordance with the international trends. The Act of 2001 and the joined legal regulations radically transformed the system of the administrative authorities dealing with the heritage protection and their tasks.

Keywords: *cultural heritage, protection of archaeological heritage, protection of architectural heritage, protection of movable cultural goods.*

JELL Classification: *K 23.*

Scientific presuppositions

The hypothesis of my research is that the Act passed in 2001 founded a modern solution for the protection which is suited to the international conventions. At the same time, it is necessary to take it into consideration that in the world of legislation a brand new concept of the regulation can be resulted in a conflict between the normatively of the law and the unique character of the cases.

The timeliness of the topic

The explained problem in the previous point makes the topic timeliness. The joint analysis of the legal regulation, the practical dispensation of justice and Constitutional Court's measure interpreter's activity can be resulted in the estimation of the efficiency of the protection. At the same time it makes possible to find the mistakes, deficiencies in this manner.

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The aim of the research

The aim of my research work was to analyse, to evaluate the legal regulation of the cultural heritage protection and – as it was mentioned on a complex manner – to reveal the problems, deficiencies and to draw up „de lege ferenda” solution proposals.

In my work on one hand it meant a benefit, but on the other hand a disadvantage, that the research of related legal material was quite peripheral since long time in the scientific literature. That is why my work fills gap, and may be the basis of several next researches activity.

The most important arguments of the research

Thanks to the multidisciplinary character of the topic the construction of my research is the following. In the first part of the work, the aim was to give the definition of the concept of the cultural heritage protection, of the cultural administration and of the cultural law.

During the theoretical foundation the main point was that the administration of the protection of cultural heritage is a part of the cultural administration. First of all several theories can be explained in connection with organizational system of the cultural administration which can be found in the scientific literature. These were completed with my opinions. In the basis of the mentioned theories the definitions of the protection of cultural heritage and of the cultural administration were given. The explanation of the essential change of the legal regulations since 1990 concerning the topic also can be found. In this framework the definition of cultural law also was laid down.

In the second part the historical development of the cultural heritage protection was examined in international trends, and in Hungary. I dealt with the historical establishment of the heritage protection in Hungary following the presentation of the European development.

My important endeavour was to examine the accordance between the current Hungarian legal regulations, the international conventions and the European Union's regulations.

The cultural heritage protection includes three main subfields: the protection of the archaeological heritage, the protection of historical buildings and the protection of the movable cultural goods. I examined the legal regulations of three topics separately while I tried to lift the similarities appearing in the regulation and differences equally.

The methods and sources of the research

The special research methods thanks to the complex character of the topic

At the beginning of my research I did not see clearly that I started to examine a very complex field. My aim was to examine the administration of the cultural heritage protection which is the part of the administrative law, but also belongs to many other legal fields. The heritage protection is connected with the penal law, the civil law, the constitutional law, the international law and the European Union's legal regulations. During my research activity I had to analyse several branches of law. At the same time I strived for examining the topic in terms of the administrative law primarily all the time.

Through the examination of the European development of the cultural heritage protection I analysed with comparative legal method in detail the development of the protection of historical buildings in French, in Italy and in Greece. In this part of the dissertation I used special sources in French and English language. After the presentation of the European development I dealt with the historical establishment of the Hungarian heritage protection. In this part of the dissertation I elaborated special sources of legal history.

During the elaboration I had to step out from the frame of the legal literature and I had to analyze the special sources from the field of art history, of history and of archaeology.

The deficiency of the special legal literature caused huge difficulty during the analysis of the current legal regulation. I had to put the focus on the examination of the legal regulations, and of the Hungarian Constitutional Court's practice.

Summary of scientific results

The conceptual definition of the cultural heritage

After analyzing the legal definitions of the main parts of the cultural heritage (the archaeological heritage, the protection of historic buildings, and the movable cultural goods) which can be found in the current Hungarian acts, according to me the following concept can be given.

The cultural heritage is the entirety of movable and immovable properties. The outstanding value of these properties is rooted not in their economic use but in their speciality, originality, irretrievability and artistic value. As a consequence it can be laid down that these properties are some kind of work of art.

Solution proposals in connection with declaration of the protection of immovable cultural properties

The protecting of the immovable cultural properties – as mentioned – is declared in a departmental order. Against this decision there is no appeal. For the solution of this problem I explained two alternatives in the dissertation.

According to one of the solutions the Hungarian legal regulations should follow the recommendation which was formulated by the Council of Europe. In the recommendation R (2004) 20 concerning the appeal of administrative acts, the Council laid down that the possibility for the appeal against those administrative acts which are appears as a legal regulation should be insured. According to my thoughts this step would be useful in Hungary in case there would exist a separated administrative judgment.

Another theoretical solution could be if the National Office of Cultural Heritage (called KÖH hereinafter) makes an official decision with a similar content to that submission which is prepared for the Minister. The appeal can be possible against this decision. At the same time related to this concept the present structure of the administrative forum system would cause problem. In this case the KÖH would make the official decision; the appellate organ would be the ministry which organization makes the final decision in each case at the same time. In this way the current system of administrative organs do not fit for a well-organized, effective system of legal remedy.

Criminal aspects of the protection of cultural heritage

Nowadays the criminal protection of the immovable cultural properties became relatively modern and efficient. At the same time the protection of the archaeological heritage is regulated not so strictly.

According to me currently the perpetration behaviour of the state of affairs being qualified as an archaeological contravention is more dangerous to society then the conceptual element of the contravention is. Nowadays plots entailing the plunder of archaeological sites caused serious and irreparable damages. According to this fact these wrongful acts should be justified as crimes. The unprofessional exploration and plunder of a previously unknown location not only deprives the state from an outstanding value, but also may cause irreversible damages of the natural and cultural sites.

The protection of the movable cultural goods is endangered primarily by the forgery and the illegal trade with the forgeries. It would be important to determine in an act the definitions of the false work of art and also the person who can be sanctioned because of the trade of false work of art. It would be also necessary to prescribe supplying each copy with label signalling the fact of the copy. Three concepts would be the most important to distinguish: the copy, the imitation, and the forgery. It is necessary to take into consideration that only a specialist person may prepare a copy and who authenticates the creation in the case of a copy. It means that the person supplies it with his own signature, and indicates the data concerning the sizes of the original work. The aim of the imitation is already the deception. The aim of the creation of the forgery is that the creator wants to put it into illegal circulation soon, with the aim of making a profit. It would be important to regulate as well, the export and import of the forgeries in a legal level.

In my opinion it would be necessary and important to direct this problem in a legal level, because increasingly more forgery gets into the market in our days, with positively deception intention. This tendency is endangering to the Hungarian work of art s' market. The cooperation between the different administrative authorities would be important in these cases. The cooperation with the customs authorities and with the police may provide enormous help to the KÖH in the exploration of the false art objects. It would helpful to discontinue illegal trade, if the Interpol's software (Treima) being founded digital database – which already operates in Hungary – authorities would extend to the stolen pictures and to the forgeries.

It would be necessary to draw up a solution for those owners, who bought a forgery without their own fault of course on the price of the original art object. The state could pay compensation for them in some way. It does not become the owner's interest to reveal before the authorities that the art object - for example a painting - bought by him later proved false. To find the best solution for the above mentioned problems, first of all the KÖH should be asked. After this vocational survey, the development of a high-standard act can be accepted, which can be applicable by everyone, by the market of art works and by the collectors. It would be an important requirement to define the definition of the forgery and the copy, and the sanctions of the illicit circulation.

The cooperation among the above mentioned organizations can play an important role in the fight against the illegal trade of the cultural goods. According to the UNESCO Parisian convention on the illegal trade of the cultural goods adopted in 1970, it is necessary to give back the stolen art objects distributed illegally and it is necessary to give a fair compensation in case of returning. With these indulgent regulations this convention rather helped the illegal art treasure trade than prevented it. At the same time it meant an essential improvement to the protection of the cultural goods in a modern sense, because it contains one of the most important questions concerning the protection of cultural goods, namely pressing back these unlawful behaviours. The Convention created a basis hereby to the additional international and national regulation. It is necessary to notice that in spite of the fact that Hungary joined the convention decades ago; its provisions do not prevail in the current Hungarian regulations.

The legislation – as it can be seen – tries to take steps towards the legal gaps, legal loopholes. Despite this fact nowadays the illegal art treasure trade and the abuse of the cultural goods prospers. According to several specialists the illegal art treasure trade – considering its international sizes – after the illegal weapon and drug trade is the third most profitable branch of the organized crime.

Proposals which make the World Heritage Convention more efficient in the Hungarian legal system

Possible manners to fill legal gaps in connection with the world heritage sites

It is a serious problem in connection with the protection of the world heritage sites that the heritage protection Act does not include separated regulations about the world heritage sites. The Act does not regulate the procedures related to world heritage sites, such as the world heritage service plan.

In my opinion, for the discontinuing of legal gaps there would be enough the amendment of the current cultural heritage protection Act. As a first step it would be necessary to complement the Paragraph 7 of the mentioned Act, implying interpretative provisions with the definition of the cultural landscape, furthermore a separated section could be declared concerning the management of the Hungarian world heritage sites. At this time only two departmental order namely the 1/1998. (I. 23.) departmental order on the architectural-technical plan councils and the 40/1999. (IV. 23.) departmental order - mentions the notion of world heritage sites. As a conclusion it can be stated that those plans which do not concern unique ancient monuments or natural sites can not be executed. The execution of these rules depends only on the proprietors, the local governments, and their self-restraint and lobby intention.

The absence of the category of the cultural landscape in the Hungarian legal regulations

The category of cultural landscapes is absent from the current Hungarian legal regulations. I could put the focus on this problem by analyzing the situation of Tokaj-hegyalja as a Hungarian cultural landscape (wine district). As a solution the following proposal can be laid down: the definition of the cultural landscapes should be separated in the Paragraph 7 of the Act LXIV of 2001. By this amendment a special treatment can be formulated. Declaring the area as a national park makes possible to insure the increased attention, could also be an additional solution concerning the protection.

Exclusively by the application of the mentioned proposals can not solve the problem. The mayor of several local governments belonging to the area formulated a new proposal in January 2009. According to this the aim of the mayors is the reduction of the area which is the part of the World Heritage List. As a result of this reduction the severer building code would not concern the settlements taken out from the protection, so the gate would be open before the industrialization in this manner. For Hungary, this proposal would cause serious and irreversible consequences.

The UNESCO created the Operational Guidelines for the implementation of the World Heritage Convention. These Guidelines contains rules concerning the modification to the boundaries, to the criteria used to justify inscription, or to the name of the World Heritage property (Chapter number III. 1.) The document distinguishes two types of the area modifications. One of them is the so-called 'minor modification' to the boundaries, which has not a significant impact on the extent of the property nor affects its outstanding universal value. The other one is the 'Significant modification' to the boundaries which means a considerable intervention with a big measure regarding the geographical expansion of the area already.

When a State Party wishes to significantly modify the boundary of a property already on the World Heritage List, the State Party shall submit this proposal as if it were a new nomination.

There are no current rules about the results of the World Heritage Committee's process and decisions in this manner. At the same time it is necessary to analyze the earlier decisions of the Committee its opinion developed in similar cases, and its point of view. The UNESCO in 2007 in its thirty-first session, Christchurch made a decision (WHC-07/31.com/24) on the Arabian Oryx Sanctuary of Oman. In this case the State Party recommended the reduction of the area. It meant a significant modification to the boundaries. As a first step the Committee made a decision (30 COM 7B. 10.) according to

which the State Party should have the obligation under the Convention to protect and conserve the World Cultural and Natural Heritage situated on their territory, notably, to ensure that effective and active measures are taken for the protection and conservation of such heritage. Since the State Party did not satisfy this, the Committee did not keep his obligations laid down in the World Heritage Convention. According to the decision 'the State Party failed to fulfil its obligations defined in the Convention, in particular the obligation to protect and conserve the World Heritage property of the Arabian Oryx Sanctuary'. Oman has proceeded to significantly reduce the size of the Arabian Oryx Sanctuary, in violation of Paragraph 165 of the Operational Guidelines, thus destroying the property's Outstanding Universal Value and integrity. According to the aforementioned facts The World Heritage Committee deleted the area from the World Heritage List.

From this case several facts can be concluded for Hungary: in case the Hungarian government – according to the plan of the mentioned local governments – makes a proposal for the significant modification to the boundaries, it can be resulted in the deleting of the area from the World Heritage List.

According to my research I can state that this latest step would cause radical, irreversible causes for Hungary, so the problem should be solved by the mentioned amendment of the Hungarian Act on the protection of cultural heritage.

Introduction the concept of the cultural landscape to the Hungarian legal system

According to the analyzing of the current Hungarian legal regulations and the case of Tokaj-hegyalja it can be stated that the strengthening of the sociological aspect of this topic should be necessary in Hungary. The first and the most fundamental step have to be to inform the local population about all the details. In case the civil organizations play an important role in the protection the local governments would not feel themselves excluded from the decision-making process. It has to be added that the organizational background for this has not exist yet in Hungary. There are only the wine-growing communities which can help for the local farmers to take part in the decision- making. As a criticism it should be noted that in practice the wine-growing communities do not inform the farmers in a correct way. The consequence of this is a farmer of Tokaj- hegyalja does not have the information concerning the questions of the protection of the world heritage sites, so its advantages can not be utilized. The mentioned problem can be solved by the civil organs because by their activity the members of the community can get closer to the most important questions, and at the same time they can enforce their rights and interests during the decision – making process.

As the most important principal it can be declared that the market should not exploit the region's sources and values, but let him preserve it, let him maintain it, and let him develop it. The conservation of the world heritage values named in the petition is the prerequisite of the keeping of the world heritage title.

I find it important that the local inhabitants and the tourists appreciate that they may live on a huge development single cultural landscape. It is necessary to attain this aim by the cooperation between the local population, the economy, and the civil organs. The fundamental condition of this is that the values of the cultural landscape rewarded with a world heritage title already realised by everybody. It would be also necessary to pay a big attention to the young generation's information, the most efficient devices of which are the school educational and welfare work and a modern information system.

The explained current problem has some significance beyond itself: it put the focus on the absence of the legal regulations in case of other cultural landscapes. It would be necessary to declare those legal regulations which can insure the protection not only in the centre and buffer zone of the cultural landscape but also in its wider nature.

As a summary, can be related that the World Heritage Convention does not guarantee a stronger protection for the state parties. They have to establish their own national legal regulations, and framework.