

MUSEUMS IN THE CULTURAL HERITAGE CODE DRAFT LAW

Muzeele în proiectul Codului patrimoniului cultural

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ABSTRACT

The paper refers to the current legislation drafting on cultural heritage in Romania, with a view to the amendments regarding museums and public collections. It debates both on the positive and the negative stipulations in the draft Code of Cultural Heritage, published by the Romanian Ministry of Culture early in 2022. The main subjects presented in the paper are: the revision of the definition of national movable cultural heritage, stating that all cultural goods are subject to legal protection, the emphasis on the public interest in protecting the cultural heritage as well as new and needed clarifications on the public property legal regime of cultural goods in the public domain, new centralized inventories and registries, new procedures regarding the classification as "National Treasury" and the new ex lege general protection regime for public collections, accredited museums and religious institutions, new obligations regarding the strategic planning of museum collections management and accessibility for the public.

Key-words: museum, law, legislation, cultural heritage, draft law, code of cultural heritage, cultural policy, Romania.

On February 10, 2022, the Ministry of Culture made available online¹ the Cultural heritage code draft law for public consultation, in accordance with Law No 52/2003 on transparency in public administration decision-making. The intention to codify special legislation for cultural heritage protection appeared more than 15 years ago, when informal working groups were set up within the Ministry of Culture for preliminary discussions

The 2013-2016 Government Programme² took over the idea of codifying this legislative body, including among the fundamental cultural objectives „the drafting, submission for public debate and legislative promotion of the

1 <http://www.cultura.ro/proiect-de-lege-13> (Accessed: 24.02.2022).

2 <https://lege5.ro/Gratuit/gm4tknzzgm/programul-de-guvernare-2013-2016-din-21122012> (Accessed: 24.02.2022).



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Cultural Heritage Code". In this context, in 2014, a new working group was set up at the Ministry of Culture, whose work resulted in the first drafts of some of the principles subsequently taken up in the Preliminary Theses of the Draft Cultural Heritage Code, approved by G.D. no. 905/2016³.

Subsequent government programmes have also contained similar objectives, including the drafting of the National Heritage Code as a legislative priority - the Government programme in force between 2015 and 2017⁴, the Government Programme in force from 2019-2020⁵ (denouncing the previous government's failure to implement the Cultural Heritage Code), the Government Programme 202-2024⁶, Government Programme 2021--2024⁷ - which, apparently, suggests a political consensus on the opportunity of this legal act.

As a result of these government objectives, two commissions⁸ were set up in 2016 by order of the Minister of Culture, composed of specialists from outside the structure of the Ministry of Culture. As mentioned above, the activity of the two commissions culminated with the approval of the Preliminary sentences.

Since July 2018, the Ministry of Culture has started implementing of the project «Historical Monuments - Strategic Planning

and Optimized Public Policies» SIPOCA 389/SMIS 115895⁹, funded through the Operational Programme for Administrative Capacity, the drafting and approval of the Cultural Heritage Code being one of the expected results of the project. For the purpose of creating the draft law, several specialists¹⁰ in the areas concerned - movable heritage, immovable heritage, cultural landscape, intangible heritage - were contracted along with legal professionals to draft the general sections - definitions, sanctions, transitional and final provisions - and to harmonize the legislative proposal as a whole.

The structure of the project «Historic Monuments-strategicplanningandoptimized public policies» also included carrying out of preliminary thematic analyses, aimed at identifying factual and legal problems in several areas and, implicitly, formulating solutions to these problems in the draft Code. The areas of analysis were authorities and institutions responsible for heritage protection, movable heritage, immovable heritage, cultural landscape, intangible heritage, vocational training, financing of cultural heritage protection, administrative tasks, heritage-holding institutions, general provisions, transitional and final provisions, sanctions. The analyses were drawn up in accordance with a predefined structure¹¹ and were not at the sole discretion of the specialists that carried them out. In relation to the areas of reference, the structure is not exhaustive, but relevant to many of the issues or regulatory shortcomings that are currently creating practical difficulties. In addition, an analysis of the legislation in force in terms of its compliance with the rules of legislative technique was carried out by the specialists delegated by the Legislative Council to take part in the preliminary stages of drafting

3 Government Decision no. 905 of November 29, 2016 for the approval of the preliminary theses of the Cultural Heritage Code draft law, published in O.G. no. 1047/27.12.2016 - <https://legislatie.just.ro/Public/DetaliuDocument/185068> (Accessed: 24.02.2022).

4 Published in M.Of. no. 853/17.11.2015 - <https://lege5.ro/Gratuit/ha2dgmjxg4/program-de-guvernare> (Accessed: 24.02.2022).

5 Published in M.Of. no. 888/4.11.2019.

6 Published in M.Of. no. 1284/23.12.2020 - <http://www.monitoruljuridic.ro/act/program-de-guvernare-din-23-decembrie-2020-pentru-2020-2024-emitent-parlamentul-publicat-n-monitorul-oficial-235589.html> (Accessed: 24.02.2022).

7 Published in M.Of. no. 1122/25.11.2021 - <https://gov.ro/ro/obiective/programul-de-guvernare-2021-2024> (Accessed: 24.02.2022).

8 The author of this paper was a member of both committees.

9 <https://www.umpcultura.ro/monumenteistorice> (Accessed: 24.02.2022).

10 The author of the paper was part of the team of specialists in charge of drafting the legislation.

11 The analysis was formulated by Arch. Adrian Crăciunescu, as coordinator of the elaboration process.

the Code. Based on 12 review reports, an integrative report was drawn up summarizing the issues discovered and the suggested solutions, which were subsequently included in the initial text of the draft Code.

While drafting the reports (which were carried out in a very short period of time¹²), numerous formal and informal consultations took place with specialists and public and private organizations with activities and responsibilities in the area of heritage protection. Furthermore, once all review reports were finalized, they were published online¹³ and submitted for public consultation. The Ministry of Culture made available an online form to those interested in expressing their opinions on the documents in question and held four public meetings between November and December 2019.

The form proposed by the Heritage Code draft team for the normative project was therefore based on a solid foundation of preliminary analysis, consultation with professionals in the field and with all categories of public and private, administrative and specialist organizations involved in the protection of cultural heritage, in addition to the professional training and experience of members of its team¹⁴.

Prior to public consultation, this form underwent several changes during the internal approval procedure. As previously mentioned, while the initial form relied

on a solid documents and review reports, which constituted the foundation on which the regulatory solutions put forward were chosen and formulated, no reasons were provided for the changes made to the draft law during internal consultation - neither with regards to the inadequacy of the initial proposal nor with regards to the superior appropriateness of the changes made - and the form made available for consultation incorporated these changes, which were, in part at least, questionable. The Ministry of Culture set an initial deadline for comments on the published draft for March 11, 2022, deadline extended to April 11¹⁵ and subsequently until May 11 2022¹⁶, while also announcing¹⁷ public debates.

At the time of writing, following the public consultation concluded in May, the revision of the draft legislation is still ongoing.

I will now discuss the main novelties with regards to museums, which, even though not groundbreaking, were my suggestion while working as an expert and coordinating the drafting of the Cultural Heritage Code between June 2019 and July 2020 and subsequently while working as a representative of drafting team in internal discussions with other departments within the Ministry of Culture, with the role of endorsing the draft legislation. I would like to stress that the form made available for public consultation underwent certain changes during internal approval, changes that did not reflect my view.

12 Between 80 and 88 working hours, spread over two calendar months, as stated in the Integrative Report by the author, Alis Vasile, p. 4 - https://www.umpcultura.ro/monumente-istorice_doc_983_rezultatele-proiectului_pg_0.htm (Accessed: 12.08.2022).

13 The reports are available online on the website of the Project Management Unit within the Ministry of Culture: https://www.umpcultura.ro/monumente-istorice_doc_983_rezultatele-proiectului_pg_0.htm (Accessed: 12.08.2022).

14 Ioana Lidia Ilea, Raluca Capotă, Diana Culescu, Roxana Ionescu, Alis Vasile, Pîrvu Ionică, Cătălin Andrei Neagoe, Irina Balotescu and Cristian Gavrilă also participated in the drafting of the analysis reports

15 <http://www.cultura.ro/prelungire-dezbateri-publica-referitoare-la-proiectul-de-lege-privind-codul-patrimoniului-cultural> (Accessed: 29.06.2022).

16 <http://www.cultura.ro/prelungire-dezbateri-publica-referitoare-la-proiectul-de-lege-privind-codul-patrimoniului-0> (Accessed: 29.06.2022).

17 <http://www.cultura.ro/precizari-dezbateri-publica-referitoare-la-proiectul-de-lege-privind-codul-patrimoniului-cultural> (Accessed: 24.02.2022).

Defining national movable cultural heritage

As a result of inaccurate wordings in the legislation currently in force regarding the types of cultural goods that are part of the legal category „national cultural heritage” and, above all, of some interpretations more interested in circumventing the law rather than applying it for the purpose of heritage protection, on quite a few occasions it has been stated that only inventoried cultural goods are part of national cultural heritage.

Setting aside the more or less good intentions, such statements are obviously deeply erroneous: the overwhelming majority of cultural goods in museum inventories have not been classified, a procedure establishing which heritage categories they belong to, with a stricter protection regime, for practical and financial reasons - this is a complicated and lengthy procedure, it requires paying for experts and does not offer significant benefits for cultural goods. It is obvious that, for example, an art work by N. Grigorescu, whether classified or not, is part of the national cultural heritage, as are objects of no particular value to Romania or humanity (citing the criteria in Law 182/2000¹⁸, for classification in the special categories „Fund” and „Treasury”), but relevant to local history, for example, are undoubtedly part of the national heritage.

Thus, the draft Code project purposely states that national cultural heritage is not solely made up of classified cultural goods, listing as follows several specific categories of movable goods, organized on the criterion of belonging to a certain scientific field, but also by owner, form of organization or age:

Art. 281. Movable cultural goods and collections of movable cultural goods part of the national movable cultural heritage

For the purpose of this law, the following are part of the national movable cultural heritage:

- a) state-owned movable cultural goods or movable cultural goods owned by administrative and territorial units;*
- b) movable cultural goods owned or administered by public-law museums and collections, public-law archives and libraries, the Romanian Academy and other public-law organizations;*
- c) movable cultural goods belonging to recognised religious orders;*
- d) movable cultural goods owned or administered by national companies, autonomous companies, national enterprises or other fully or partially state-owned companies;*
- e) movable cultural goods from terrestrial and underwater archaeological finds, archaeological sites or archaeological collections which are more than 100 years old;*
- f) movable cultural goods - items which are or have been an integral part of historic monuments, currently dismembered and older than 100 years;*
- g) movable cultural goods classified under law as national cultural heritage “Treasury” and those which have the potential to be classified as such;*
- h) movable cultural goods owned by museums and private-law public collections;*
- i) protected collections of movable cultural goods, designated as such by order of the Minister of Culture;*
- j) movable cultural goods protected as “sites of communal memory”.*

The above text is the original wording of the draft legislation, the version made available for consultation does not contain item j) and adds „archaeological parks” to item h).

¹⁸ Law no. 182/2000 on the protection of national movable cultural heritage, republished in O.J. no. 259 of April 9, 2014, as subsequently amended and supplemented (in force since June 29, 2022)

I would like to mention that, during the internal approval phase, I expressed my disagreement on the introduction of the uncertain category "archeological park" (both as a heritage or organizational category) noting that, from an institutional point of view, it would have the same functions as a museum, being virtually the same in all respects but its name. There is no need for particular legislation to designate a site as an "archeological park", as it can operate as a museum-affiliated structure or entity.

With regard to the category „sites of communal memory”, suggested by Arh. Adrian Crăciunescu, I find it redundant, as, in accordance with the Administrative Code, local authorities already have the possibility to register various sites as being of local importance, should they deem such an approach necessary.

Defining the concept of „heritage protection” and emphasizing the public interest in protecting cultural heritage

In order to prevent a lack of state intervention tools, with the goal of saving cultural goods - whether through conservation and restoration or by placing or returning them to the public circuit, just to give two examples of circumstances in which public authorities could implement concrete heritage protection measures - the text of the draft legislation expressly stipulates that cultural heritage protection is public interest and may constitute grounds of public interest:

Art. 20¹⁹ Protejarea patrimoniului cultural național

(1) The protection of national cultural heritage is the set of scientific, legal, administrative, financial, fiscal and technical measures designed to ensure the identification, research, inventory, recording, classification, maintenance, conservation, restoration,

Going back to the categories of protected goods under special regime (which, once again, does not exclude them from national cultural heritage and all other cultural goods), stipulated by art. 281 of the draft Code, the wording has also taken into account the international and European provisions, as well as the harmonization with the status of public property goods stipulated by Romanian law; we note, therefore, the legal protection of cultural goods belonging to the heritage of public institutions, private specialized institutions and religious cults, as well as the necessary introduction of the category „protected collection” - protected as a cohesive set of cultural goods, especially against dismemberment that would lead to a substantial loss of cultural, perhaps memorial and, certainly, contextual value of collections of movable cultural goods.

security and enhancement of national cultural heritage, to ensure the current generation has access to national cultural heritage and that national cultural heritage is passed on to future generations.

(2) The protection of the national cultural heritage is a set of measures of public interest.

(3) The protection of cultural goods part of national cultural heritage may constitute grounds of public interest.

To the support of public authorities, two novelties complement these provisions: **the extension of the possibility of expropriation to classified movable cultural goods on grounds of public utility, on the one hand, and the extension of the right of pre-emption to the purchase of movable cultural goods, by including local authorities as right holders, alongside the Ministry of Culture.**

The initial draft of the Code proposed **a new way of exercising the right of pre-emption,**

¹⁹ Unless otherwise specified, the numbering of the articles is that of the draft published for consultation on the website of the Ministry of Culture - <http://www.cultura.ro/proiect-de-lege-13> (Accessed: 29.06.2022).

in line with the provisions of the Civil Code, i.e. the application of the principle of the right of priority in competition with other potential buyers and the elimination of the current practice of bilateral negotiations, in the absence of other real purchase offers, on the basis of questionable valuations and with excessive deadlines for completion (or non-completion, if we recall the notorious case of Constantin Brâncuși's "The Wisdom of Earth"). Moreover, in order to simplify administrative procedures and protect the right of ownership of potential sellers of cultural goods, subject to the State's right of pre-emption, the initial draft provided

for the post-factum application of the right, i.e. the nullification, at the initiative of the right-holding authority, of sale contracts concluded with third parties, within a reasonable period of time, with the possibility to tacitly express the non-exercise of this right, by allowing the respective deadline to expire, the initial sales document being nullified until the aforementioned deadline. For unknown reasons, the draftsmen have reverted to the current 'methodology', which is unclear, unpredictable and bureaucratically burdensome for all parties involved.

Disclosure measures - public disclosure of the legal framework for protection of cultural goods

Another new measure introduced by the draft legislation to support buyers of cultural goods is the **disclosure of their legal status and the obligation to verify and mention it in official sales documents**. Below follows the contents of the article in question:

Art. 3 Obligations relating to the disclosure of the legal protection status of national cultural heritage goods

(1) Instruments of incorporation or transfer of real rights over national cultural heritage goods shall include the provision of the legal protection regime corresponding to the goods in question,

set out in accordance with this Code and its provisions for implementation.

(2) Public Notaries, authorities and persons empowered by the State with public authority for the purpose of authenticating documents shall be obliged to verify and mention the protection status of the goods subject to the provision of the instruments mentioned in paragraph (1) which they authenticate.

(3) The instruments mentioned in paragraph (1) concluded in breach of the provision of paragraphs (1) and (2) shall be null and void.

Centralized record-keeping

Also, applying the same principle of public awareness of the system of the protection of cultural goods, the aim is to resume the already historical steps undertaken to draw up a centralized national inventory of cultural goods and intangible heritage, making it compulsory to establish several new registers for cultural goods in public ownership, cultural goods owned by specialized institutions, cultural

goods in the owned by religious cults [art. 37 par. (2) and art. 156]. The draft published for consultation did not include the original proposal for a centralized inventory of protected collections.

In order to fulfil the obligation to disclose the status of certain cultural goods, it is necessary to complete the draft Code or to specify, in its provisions for implementation, the obligation to create a

register of objects which have undergone the classification procedure without been labeled as “Treasury”. This means that the goods in question either enjoy temporary protection status for the entire duration of

the classification procedure or enjoy the conditions for movement of unclassified goods, at least until the eventual resumption of the classification procedure, within the time frame set out by the Code.

Public ownership of cultural goods

Further pursuing and developing the above-mentioned idea, according to which the protection of cultural heritage is of public interest, the draft law (art. 24) stipulates that all “state-owned cultural goods or goods owned by administrative-territorial units are of public use and interest and are subject to public property laws», being inalienable, imprescriptible and non-excludable. This way, the aim was to remove ambiguities created by the laws in force, which stated that cultural goods could be public or private state property or owned by administrative and territorial units, ignoring the fact that they cannot be private property of the state/administrative-territorial units, in accordance with the provisions of the Administrative Code, in view of their manifest quality as goods of public interest and use, in practice opening up the possibility of assimilating them to common goods.

Following the same legal logic and with the goal of harmonizing legislation in mind, the initial draft code provided for the subordination of public museums according to the importance of their heritage - national, regional or local, and in accordance with the provisions of the Administrative Code pertaining to the importance of certain goods and, consequently, their ownership as State public property - for goods of national importance, respectively of the counties or municipalities, cities or communes - for goods of regional or local importance.

The published text of the Cultural Heritage Code draft did not keep this solution, reverting to the wording of Law No 311/2003 of museums and public

collections, which is in logical contradiction with the above mentioned general legal provisions and which has led to numerous cases of museums that were classified of national importance, being subordinated to local authorities and whose repository of heritage is representative only for a certain region of the country (as implied by their names themselves).

We must eliminate such normative inconsistencies in order to avoid future administrative difficulties and comply with the provisions of legislative technique, which stipulate that „the draft legislation must set out a series of required, sufficient and possible rules leading to the greatest possible legislative stability and efficiency. The included solutions must be fully substantiated, taking into account the social interest, the legislative policy of the Romanian State and the requirement to correlate with all national regulations (...).”²⁰.

On the same note of specifying the public ownership of certain cultural goods, the draft legislation (art. 26) stipulates **the prohibition of private ownership of archaeological goods resulting from chance discoveries and goods from the national archival fund**, in the absence of supporting documents attesting their origin. Following the Italian regulatory model, the measure was designed to discourage illicit trafficking in cultural goods, archaeological poaching and theft and loss of public domain heritage.

²⁰ Law no. 24 of March 27, 2000 on the legislative technique provisions for drafting regulatory acts, republished in O.J. no. 260 of April 21, 2010, as subsequently amended and supplemented, art. 6 par. (1) (in force since June 29, 2022).

Regrettably, the published draft did not keep the entire solution detailed in the original draft, eliminating the possibility for legitimate holders of such goods to be legalized by submitting solemn declarations to the competent authorities, which are valid until proven otherwise, creating the premises for damages and even abuse.

Classification

The current classification procedure stipulated by Law No 182/2000 and G.D. No 886/2008²¹, has proved to be neither feasible nor relevant, at least as far as the classification of cultural goods owned by specialized public institutions is concerned. If, according to the National Institute of Statistics²², in 2020 there were more than 30 million cultural goods in the repositories of museums alone, by July 15 2022, 85096 items had been classified, of which 39202 in the 'Treasury' category and 45894 in the 'Heritage'²³, category, both as museum heritage and as heritage owned by public or private organizations and individuals.

As mentioned above, the difficulty of drawing up classification documentation, the small number of experts who can draw up classification reports - compared to the number of cultural objects, the high cost of paying experts and, above all, the lack of positive practical consequences in the management of classified cultural goods, led to a discrepancy between the total number of cultural goods and the number of classified

Last but not least, the draft Code (art. 341) stipulates **the removal of the obligation for public authorities to return cultural goods in kind** as a result of court proceedings. Alternatively, it provides for the **possibility of granting financial compensation**, limited to 500 000 lei for each item returned, in order to limit the loss of goods of great cultural value in public circulation.

goods and, above all, of goods that have undergone classification. The number of the latter is unknown and can only be estimated based on practical experience by the specialist directorate within the Ministry of Culture and information that travels informally among museums and is certainly significantly lower than the number of cultural items currently identified.

The inefficiency of classifying public museum heritage goods is obvious. The special regime for classified goods essentially consists of a ban on their permanent export, obligations regarding their conservation and restoration in authorized laboratories and with the help of accredited staff, obligations regarding insurance and the incidence of the State's right of pre-emption for sale of public goods. As for public property goods, their permanent export and sale are impossible in view of their public property status. In practice, museum goods are preserved and restored by qualified staff in specialized laboratories. The public heritage status of museum goods already ensures, on paper and in practice, the protection of classified movable cultural goods. The classification of movable cultural goods owned by public-law museums is absolutely redundant, and it's just an administrative burden that's eating up already insufficient resources which could be otherwise directed towards effective and urgent measures (such as conservation, research, enhancement, digitalization).

The solution offered by that the initial Code draft is comparable to an ex officio

21 Government Decision no. 886 of August 20, 2008 approving the Rules for the classification of movable cultural heritage, published in the O.J. no. 647 of September 11, 2008 (in force since July 15, 2022).

22 30010226 items - National Institute of Statistics, "Activity of cultural-artistic establishments in 2020" - <https://insse.ro/cms/ro/content/activitateaunit%C4%83%C5%A3ilor-cultural-artistic-%C3%AEn-anul-2020-0> (Accessed: 15 iulie 2022).

23 According to data reported by the National Heritage Institute - <http://clasate.cimec.ro/> (Accessed: 15 iulie 2022).

classification in accordance with the law, i.e. the **establishment by law** for all cultural goods in museum heritage of a **protection regime enforceable to all goods part of the national movable cultural heritage**, without having to undergo some special procedure.

The categories of goods protected by law, without the need of undergoing classification, are set out in art. 281 of the draft Code:

- a) *state-owned movable cultural goods or movable cultural goods owned by administrative and territorial units;*
- b) *movable cultural goods owned or administered by public-law museums and collections, archaeological parks, public-law archives and libraries, the Romanian Academy and other public-law organizations;*
- c) *movable cultural goods belonging to recognised religious orders;*
- d) *movable cultural goods owned or, where applicable, administered by national companies, autonomous companies, national enterprises or other fully or partially state-owned companies;*
- e) *movable cultural goods from terrestrial and underwater archaeological finds, archaeological sites or archaeological collections which are more than 100 years old;*
- f) *movable cultural goods - items which are or have been an integral part of historic monuments, currently dismembered and more than 100 years old;*
- g) *movable cultural goods owned by museums, private-law public collections as well as archeological parks.*

Through an administrative, legal, and scientific procedure, „classification” will be applicable to a much narrower category of movable cultural goods, essentially private-owned ones (with the exception of religious cults and private-owned museums), which must be identified as special value goods and also have their circulation, conservation and restoration monitored and controlled.

Classification would be mandatory in key situations where it's possible to identify cultural goods of exceptional value and, at the same time, imperatively necessary to protect them: change of ownership, goods in need of conservation-restoration, export, offences, or crimes involving cultural goods. I find it particularly worrying that the sale of cultural goods was removed from these key circumstances during the internal approval phase of the initial Code draft.

This elimination (which needs to be revised) does not comply with the obligations assumed by Romania upon accession to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970)²⁴. In practice, it prevents the identification of exceptionally valuable goods in civil use and taking the necessary measures to preserve, research and enhance these goods, and renders the state's preemptive right ineffective.

Another measure to be introduced with the new regulation is the **abolition of the legal category “Fund”** regarding national movable cultural heritage, a necessary change, given how similar content-wise the current two categories, “Treasury” and “Fund”, are and the inconsistency of international legislation. International documents only reference the concept of “national treasury”, as do legal documents similar to Law no 182/2000 in other European Union countries and elsewhere. It should be recalled that Law no. 182/2000²⁵ Another measure to be introduced with the new regulation is the abolition of the legal category “Fund” regarding national movable cultural heritage, a necessary change, given how similar content-wise the current two categories, “Treasury” and “Fund”, are and

24 Law No 79 of 11 November 1993 on Romania's accession to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization in Paris, 14 November 1970, published in Official Gazette No 268 of 19 November 1993 - see art. 10, a).

25 Art. 39, art. 40 (in force since July 15, 2022).

the inconsistency of international legislation. International documents only reference the concept of "national treasury", as do legal documents similar to Law no 182/2000 in other European Union countries and elsewhere. It should be recalled that Law no.

Consequently, the goods previously classified as "Fund" will either be integrated into "Treasury", which remains in force, or they should fall under the protection regime set out by art. 281(a)-(d), (h) cited above.

Art. 413 Status of movable cultural goods previously classified as "Treasury" and "Fund" belonging to the national cultural heritage

(1) Movable cultural goods classified prior to the enforcement of this Code as "Treasury" and "Fund" belonging to the

national cultural heritage, under Law No. 182/2000 on the protection of the national movable cultural heritage, shall acquire the protection regime applicable to goods part of the national movable cultural heritage, regime set out by this legal act, according to their classification in one of the categories provided for in art. 281 letters a) - d) and h).

(2) Movable cultural goods classified under Law no. 182/2000 on the protection of national movable cultural heritage, which do not fall under the categories provided for in art. 281 letters a)-d) and h), shall acquire the protection regime established by this Code for "Treasury" - classified goods, part of the national movable cultural heritage.

Financial valuation and revaluation of cultural goods

The problem and issue of updating the inventorying value of national cultural heritage assets, established by G.D. no. 81/2003, in fact caused by the inability of the Ministry of Culture to propose timely, correct, efficient and easy to implement solutions, but rather a huge misunderstanding of the legal frameworks, realities and priorities, has led to new tasks lacking usefulness and added value for museums, causing undue costs and, in some situations, even sanctions by the Court of Auditors. Although G.D. 81/2003²⁶ clearly stipulated that only goods for which international valuation standards exist are subject to having their inventory value updated, and that no such standards exist, in a real bureaucratic delirium, sometimes coupled with financial gains, in 2019, the drafting of detailed provisions²⁷ for re-evaluation was concluded, which not only added to the

higher hierarchical regulatory act under which they had been issued, but also, in essence, provided for an evaluation lacking uniform criteria, at the sole discretion of the evaluator. The evaluators, who should be paid for their work, initially A.N.E.V.A.R. members only, subsequently²⁸ also experts accredited by the Ministry of Culture, are far too few to be able to carry out this kind of work involving more than 33 million items²⁹ in museum heritage.

The Cultural heritage code draft law proposes a realistic, feasible, economical mechanism compared to the current formula and which builds on the premise of an objective and uniformly applicable criterion: the updating of the inventory value of cultural goods, by applying the inflation index corresponding to the previous year of evaluation, task to be carried out by specialized staff from public institutions, for their heritage goods, while

²⁶ Government Ordinance No 81 of 28 August 2003 on the revaluation and depreciation of fixed assets owned by public institutions, published in the Official Gazette No 624 of 31 August 2003.

²⁷ Order of the Minister of Culture and National Identity no. 2239 of 9 April 2019 approving the Rules on the revaluation of movable cultural assets held by public-law institutions, in order to ensure their fair representation in the accounts, published in the Official Gazette no. 307 of 19 April 2019

²⁸ With the amendment of M.M.C.I.N. No 2239/2019, by M.M.C.I.N. No 3167 of 18 June 2021, published in O.J. No 624 of 24 June 2021.

²⁹ 33544683 items in 2020, according to the National Institute of Statistics - <https://insse.ro/cms/ro/content/activitatea-unit%C4%83%C5%A3ilor-cultural-artistic%C3%AEn-anul-2020-0> (Accessed: 29.06.2022).

for other categories of goods and other types of valuation or revaluation, the task would be carried out by experts accredited by the Ministry of Culture.

Administrative simplification - reducing the number of opinions under the competence of the National Committee for Museums and Collections

The current National Committee for Museums and Collections is to be renamed, according to the published draft of the Code, „National Committee for Museums and Movable Cultural Heritage“. Following the original and current model of similar national committees in other countries (France, Italy, United Kingdom), the future National Committee for Museums and Movable Cultural Heritage would play, as it does now, a scientific and consultative role and would also fulfil certain scientific advisory functions, within the framework of specific procedures for the protection of movable heritage and the organization of the institutional museum system.

The term “opinion” needs to be clarified, as, especially in connection with procedures relating to the protection of immovable cultural heritage, its meaning has been distorted and is now informally wrongly equated with „approval” or „authorization”. According to the Explanatory Dictionary of the Romanian Language, „a aviza” means to communicate, to inform or to express an authorized opinion on a certain matter. In our current legislative context, the second definition applies. Therefore, the certification role of the scientific commissions for cultural heritage protection, working alongside the Ministry of Culture, consists of expressing expert opinions, which may or may not be accepted by the authority with the public authority authorization prerogatives. Therefore, the phrase used in the text of the draft Code, available for consultation (e.g. art. 184), referring to the powers of some commissions, “submit for opinion” is grammatically, logically and legally incorrect.

I emphasize that the prerogatives as public authority are exclusively reserved for public

functions and not scientific advisory bodies, keeping for the purposes of what is presented here the prerogatives of authorization, control, drafting of normative acts, drafting of policies, public strategies and other related documents, taking the necessary measures to implement the law, management of public funds, in accordance with the provisions of the Administrative Code³⁰. Therefore, none of these activities falls within the responsibilities of the respective specialized committees.

As regards to the powers of the National Committee for Museums and Movable Cultural Heritage to „propose the approval of the export of classified cultural goods”, to „propose the authorization of the functioning of laboratories and workshops carrying out restoration works” and to „propose the approval of the regulations for the organization and functioning of museums, archaeological parks and public collections”, powers present in the current legislation, they were not included in the initial draft Code. The purpose of their exclusion is to simplify administrative procedures and to harmonize them with other legal provisions concerning ownership rights and the right to service public goods. Regarding the export of classified goods, this has already been subject to authorization by the decentralized public departments of the Ministry of Culture, and the owners or administrators of the goods in question can also decide on its appropriateness.

The work of approving the organizational and operational regulations is redundant, given the existence of the accreditation procedure, which verifies the performance of all museum-specific functions. It could also generate conflicts of competence in relation to the possibility of public authorities deciding on the functional structures they finance and coordinate.

As regards the authorization of conservation-restoration laboratories, this procedure is to be carried out if certain scientific and

30 Emergency Ordinance No 57 of 3 July 2019 on the Administrative Code, published in O.J. No 555 of 5 July 2019, as subsequently amended and supplemented, art. 370 (in force since June 29, 2022).

technical conditions expressly stipulated by law are fulfilled. The fulfilment is to be verified on paper and in practice (while exercising the control prerogative), with a required examination of the scope.

I hope that the above-mentioned provisions will be removed from the draft legislation during the following approval stages. Also, in the initial draft, the composition of the National Committee for Museums and Movable Cultural Heritage would include representatives of the Ministry of Education, the Ministry of Finance, the Romanian Cultural Institute, the associative bodies of local public authorities, specialized higher education establishments, religious cults and collectors' associations, as well as specialized institutions; this formula was intended to ensure better cooperation between the Ministry of Culture and other authorities with a decisive role in the funding and coordination of specialized public institutions or with an essential role in the training of specialists in the field, in the education of the general public and in the international promotion of museum heritage. The published text limits the composition of the Committee to specialist institutions, continuing their quasi administrative isolation and perpetuating the misunderstanding of their role in Romanian society.

The text published for consultation is as follows:

Art. 183 National Committee for Museums and Movable Cultural Heritage

The National Committee for Museums and Movable Cultural Heritage is the specialized scientific body of the Ministry of Culture, with advisory role regarding museums and movable cultural heritage.

Art. 184 The prerogatives of the National Committee for Museums and Movable Cultural Heritage

The National Committee for Museums and Movable Cultural Heritage has the following prerogatives:

- a) makes recommendations regarding the national strategy for museums and movable cultural heritage;*
- b) formulates views on methodologies, standards and technical-scientific regulations in the field of national movable cultural heritage;*
- c) indicates priorities and necessary measures for the protection of the national movable cultural heritage;*
- d) proposes the advising of the setting up, reorganization and abolition of museums, archaeological parks and public collections;*
- e) propose the accreditation and reaccreditation of museums, public collections and archaeological parks, respectively the suspension of accreditation;*
- f) evaluates expert reports and decides on the classification of movable cultural goods;*
- g) propose the authorization of laboratories and workshops performing conservation and restoration works;*
- h) propose the suspension or withdrawal of the operating license of laboratories and workshops performing conservation and restoration operations;*
- i) propose the authorization of economic operators that sell movable cultural goods;*
- j) propose the withdrawal of the operating license of economic operators marketing movable cultural goods;*
- k) at the request of the Minister of Culture or the specialist department within the Ministry of Culture, formulates written views and recommendations, within its area of competence;*
- l) propose the approval of export of classified movable cultural goods;*
- m) proposes the approval of regulations for the organization and functioning of museums, archaeological parks and public collections;*
- n) any other powers attributed by law within its area of competence.*

The text of the original draft, the wording of which was mine, was as follows:

Art. 186. National Committee for Museums and Movable Cultural Heritage

National Committee for Museums and Movable Cultural Heritage is the specialized scientific body of the Ministry of Culture, with advisory role regarding museums and movable cultural heritage.

Art. 187. The composition of the National Committee for Museums and Movable Cultural Heritage

16 members of the National Committee for Museums and Movable Cultural Heritage are appointed by order of the Minister of Culture, on a proposal from the following organizations:

- a) public museums - 6 members;*
- b) Ministry of Education and Research –1 member;*
- c) Ministry of Public Finance –1 member;*
- d) Romanian Cultural Institute – 1 member;*
- e) Romanian Academy – 1 member;*
- f) National Archives of Romania –1 member;*
- g) National Library of Romania -1 member;*
- h) public institutions of higher specialized education – 1 member;*
- i) religious cults – 1 member;*
- j) associative structures of local public authorities – 1 member;*
- k) collectors of movable cultural goods– 1 member;*

Art. 188. The prerogatives of the National Committee for Museums and Movable Cultural Heritage

The National Committee for Museums and Movable Cultural Heritage has the following prerogatives:

- a) makes recommendations regarding the national strategy for museums and national movable cultural heritage;*
- b) indicates priorities and the necessary measures for the protection of the national movable cultural heritage;*
- c) approves the establishment, reorganization and dissolution of museums and public collections;*
- d) approves the accreditation of museums and public collections;*
- e) evaluates expert reports and decides on the classification of movable cultural goods;*
- f) makes proposals for the settlement of challenges submitted by natural and legal persons concerning the classification procedure of movable cultural goods;*
- g) approves the suspension or withdrawal of the operating license of laboratories and workshops performing conservation and restoration operations;*
- h) approves the operation of economic operators marketing movable cultural goods;*
- i) at the request of the Minister of Culture or the specialist department within the Ministry of Culture, formulates written views and recommendations, within its area of competence;*
- j) any other powers attributed by law within its area of competence.*

The organization and operation of museums

The first element arguing for the modification of the current form of organization and operation of museums, set out by Law no. 311/2003³¹,

³¹ Law No 311/2003 on museums and public collections, republished in O.J. no 207 of March 24, 2014, as subsequently amended and supplemented (in force since July 15, 2022).

contained in the initial draft of the Code, was the **revision of the classification of public museums, in order to correlate the classification** (level of importance - national, county, local) **with the public ownership of movable and immovable cultural heritage** of these institutions, as provided for in the Administrative Code, and, implicitly,

with their **subordination** to central or local public authorities, where applicable. As we have shown above, the legislative logic and harmonization of the special provisions regarding museums with the broader legal framework are circumvented in the published draft of the Cultural Heritage Code, by eliminating the respective proposals and unjustifiably replacing them with provisions similar to the current ones.

The proposal to change the status of museum managers to contract staff, with the consequence of subsequently not applying the current provisions regarding the management of cultural institutions, which has so far created difficulties for public museums, caused by management discontinuities, long-standing interim appointments, long-lasting disputes over the filling of management positions. Beyond these easily noticeable negative aspects, there is no official, concrete assessment of possible positive consequences of the implementation of the current regulations for the management of cultural institutions, and at an empirical level, they are far from obvious, if not the opposite.

Equally important, as long as they are implemented, are the provisions regarding the obligations that museums and real rights holders have regarding the performance of their functions and the social role of museums - art. 125 in the published draft of the Cultural Heritage Code, cited below entirely:

Art. 125 Obligations of real right holders of museum, archaeological park and public collections heritage, museums and their management

Owners and real right holders of museum, archaeological park and public collections heritage, as well as legal entities set up as museums or public collections and their managers have the following obligations:

a) to ensure the integrity, security, conservation and restoration of the cultural goods included in museum, archaeological park or public collection heritage;

b) to carry out paper-based and digital inventorying, documentation and recording and, where appropriate, the classification of goods included in museum, archaeological park or public collection heritage;

c) to ensure the digitalization of owned cultural goods and the inventorying, documentation, recording, research, conservation, restoration and enhancement of its own heritage;

d) to ensure the general preventive conservation of museum and archaeological park heritage, adopting measures for the integrated conservation of its own movable and immovable heritage and providing adequate microclimate conditions;

e) to ensure the research or, where applicable, to make available for research goods in museum, archaeological park or the public collection heritage, where applicable;

f) to ensure the required material and human resources for the proper management of museum, archaeological park or public collection heritage, where applicable;

g) to make use of museum, archaeological park or public collection heritage, where applicable;

h) to develop and implement own strategies and action plans for the management of its own heritage, with the following mandatory components:

1. heritage development, including procurement policy and, where applicable, asset collection;

2. loans of cultural goods, including long-term loans of more than 10 years, inside/outside the country and abroad/from abroad;

3. heritage research, including publications plan;

4. heritage conservation and restoration;

5. heritage enhancement, including exhibition programmes, educational and scientific activities, publications, digitalization;

6. *audience development and increasing the social and cultural impact of the organization.*

- i) ensure that the public and specialists have access to the goods in museum, archaeological park or the public collection heritage, where applicable, by having a visiting schedule of at least 40 hours per week over at least 5 days; museums and public collections may be closed to the public for periods of more than 2 consecutive days for conservation, renovation or other exceptional circumstances;*
- i) to prevent the use of museum, archaeological park or the public collection heritage, where applicable, for purposes other than those provided for by the legal regulations in force;*
- i) to obtain the accreditation of the museum, archaeological park or public collection in accordance with the legal provisions in force and, where appropriate, its reaccreditation;*
- i) annually and upon request, to report to the Ministry of Culture and its subordinate institutions, information about its own heritage, the activities carried out and the museum visitors;*
- i) comply with the rules for the organization and operation of museums and public collections;*
- i) prevent, locate and extinguish fires;*
- i) ensure the security of the museum, archaeological park or public collection and equip them with protection systems;*
- i) take measures to prevent and mitigate damages to museum or archaeological park heritage in the event of a natural disaster, armed conflict and other emergency situations.*

We should note as novel elements the obligation to draft own programming documents at organizational level for the management of museum collections and the obligation to have a visiting schedule in

compliance with the minimum duration set by the legislation. The initial draft of the Code also provided for the obligation to ensure a visiting schedule during public holidays - a measure that would have helped to increase the accessibility of the cultural museum offering, the necessary increase in the number of visitors and the strengthening of the social, cultural, educational and entertainment role of Romanian museums. At the risk of sounding like a broken record, I would like to point out that the removal of this provision was also not justified.

In the same direction envisioned by the drafting team, that of increasing accessibility of museums, the provision of art. 146, which would make free admission compulsory for at least one day each month, is positive; regrettably, the initial proposal for compulsory free admission during public holidays was eliminated. The same article also contains a provision that I would describe as courageous and optimistic: exempting accredited museums and collections from value added tax.

In an attempt to ensure a country-wide, minimum number of specialized staff positions, the Cultural heritage code draft law introduces the obligation for museums to have the positions of general curator, museographer with general responsibilities in heritage management and museographer or other specialized position with museum education responsibilities (art. 142).

For the benefit of museum staff, the draft Code also provides for the introduction of a new salary bonus, the toxicity bonus (amounting to 5%, 10% or 15%, depending on the specifics of a certain position), aimed at compensating for the negative impact on health over discernible levels, through specific procedures, of harsh, dangerous or harmful working conditions provided for in the legislation on the remuneration of public funded staff.

National Institute of Museology

For more than a decade now, Romania no longer has a specialized department at the central government level in charge of coordinating nation-wide museum activity.

Strategies, public policies³², national statistics, national programs and projects dedicated to museums and cultural heritage are missing from Romania's cultural and administrative landscape, with the consequence of having

32 Presently, Romania lacks any public cultural policies. According to the legislation in force, public policy documents are initiated, drafted, adopted and implemented in accordance with the provisions of Law No 90/2001 on the organisation and functioning of the Romanian Government and Ministries, Government Decision No 870/2006 and Government Decision No 775/2005, i.e. the documents drafted by the specialised authorities must be appropriated at government level and completed with action plans and budget allocations for implementation. To date, none of the documents drawn up at the Ministry of Culture classified as 'strategy' or 'public policy' has undergone the legal procedure for adoption and, implicitly, implementation, and all these documents are mere statements of intent or, or, more accurately, of opportunity. This may be relevant to how the strategic approach is (or is not) understood at central government level. The very process of drafting the Heritage Code law was not coupled with a prior public policy document, but followed the special legislative technique procedure for codifying, i.e. the drafting of prior sentences. Regrettably, the Preliminary sentences were also not drafted in accordance with the provisions of Law 24/2000, which stipulates that they must be based on scientific studies and documentation [art. 27 par. (3)]. The lack of public museum policies is certainly at least one of the causes of some of the gaps between the current situation in Romania and that in other European countries, most of the problems that our country is still facing have already been solved, and not recently, in most European countries. For example, Romania has not yet carried out a general inventory of its heritage, it is still lagging in regards to digitalization, it has no policies for visiting museums, it has not managed to implement an effective and comprehensive protection of movable heritage, nor one for the effective control of the circulation of cultural goods. Moreover, we are still facing the issue of qualification and professionalization in the museum sector, which is not the case in other countries. Countries such as France, Germany, Italy and the UK are not faced with such basic necessities issues, as matters such as inventorying, digitalization and professionalization have long been overcome. The issues of the legal provenance of museum goods, the restitution of property acquired in questionable circumstances during the colonial period, upgrading of museums as cultural objectives and pillars of social and economic cohesion, and the support of visitor policies that increase access to culture and diversify the social contribution of museums are topical in the West.

fragmented specialized practices, a lack of high-impact museum programs, integrated development of museum organizations and a cohesive community to raise the professional standard of Romanian museums.

In view of these realities, the initial draft of the Cultural Heritage Code provided for the re-establishment within the Ministry of Culture of a directorate with museum-related responsibilities - the Directorate for Museums, Collections, Movable Cultural Heritage and Government Guarantees. The initial draft also proposed the establishment of a National Institute of Museology, following the example of similar institutions abroad, such as the Institut für Museumsforschung (Institute for Museum Research) in Germany³³, Centre de Recherche et de Restauration des Musées de France³⁴, Narodowy Instytut Muzealnictwa i Ochrony Zbiorów (National Institute for Museums and Public Collections) in Poland³⁵, Instituto Brasileiro de Museus³⁶, Institute of Museum and Library Services in the United States of America³⁷, Istituto Superiore per la Conservazione ed il Restauro in Italy etc.

The main tasks of the National Institute of Museology would have been to initiate and implement programs and projects for the research, documentation, conservation, restoration and enhancement of museum cultural heritage, at the national and international level, scientific research, development of strategies, standards and best practice guidelines, publication of specialist materials, training sessions and professional mobility programs, scientific meetings and

33 <https://www.smb.museum/en/museums-institutions/institut-fuer-museumsforschung/home/> (Accessed: July 15, 2022).

34 <https://www.culture.gouv.fr/Thematiques/Musees/Formations-et-metiers-des-musees/Etablissements-d-> July 15, 2022).

35 <https://www.nimoz.pl/en> (Accessed: July 15, 2022).

36 <https://www.gov.br/museus/pt-br> (Accessed: July 15, 2022).

37 <https://www.ims.gov/> (Accessed: July 15, 2022).

exchanges of experience in the field of museology, conservation and restoration of museum heritage. None of these two structures was kept in the draft regulations made available for public consultation, and their removal from the initial draft was not motivated by the departments responsible for their approval within the Ministry of Culture.

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I end here this short presentation of the perspectives the Cultural heritage code could offer Romanian museums with the hope of a proper readjustment of the strategic vision for museums, their fundamental and indispensable role in heritage protection and the development of Romanian society.

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