

POLITICA DE STAT ÎN DOMENIUL PROTECȚIEI OBIECTELOR DE PATRIMONIU CULTURAL

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***Rezumat:** Patrimoniul cultural al Republicii Moldova, este parte integrantă a culturii universale, participă la formarea și dezvoltarea intelectului unui individ, al unei societăți și al unui grup etnic și este un depozitar al memoriei istorice. Acesta include acea parte a experienței istorice multi-fațetate a societății, care ne permite să urmărim legătura inextricabilă a timpurilor, din antichitate până în prezent.*

Articolul abordează principalele modele de reglementare de stat în domeniul protecției, gestionării și utilizării obiectelor tangibile ale patrimoniului cultural, relevând particularitățile cadrului legislativ, suportul organizațional și economic, precum și rolul organizațiilor publice. Politica de stat în domeniul protecției obiectelor de patrimoniu cultural se bazează pe descentralizarea managementului în sfera culturii, precum și crearea unor mecanisme eficiente de parteneriat public-privat și interacțiunea bine pusă la punct între principalii actori implicați în activitățile de protecție a patrimoniului cultural.

Cultural heritage is the inherited component of culture, present in today's life in the form of tangible and intangible relics and cultural patterns. It encompasses all areas of culture, as they - even the most avant-garde - are based on accumulated, assimilated and adapted cultural experience. Cultural heritage is the most important testimony of the link between past and present cultural phenomena. Under this link, it is one of the defining factors of cultural identity and the most critical testimony to cultural genesis and evolution. The assets of cultural heritage belong, both by their value and by their social and cultural significance, to the whole nation, and for this reason, it is necessary to take all measures to protect and preserve them, to avoid their alienation or deterioration and, last but not least, to protect, preserve and use them in the interest of the whole nation. Historical monuments are a distinct type of immovable cultural heritage assets, protected as testimonies of history and culture, as a factor of identity and environment. The aesthetic, functional, material, etc., qualities of historical monuments are subsidiary to their quality as testimonies of history.

Protecting cultural heritage is a primary concern of international structures and individual countries. In the context of the promotion of cultural heritage as a universal value indispensable to the existence of any society and, therefore, to the whole of humanity, the protection of cultural property appears as an international obligation of the State, from which derives the responsibility of the national legislator to protect it by legal means [10, p. 45].

Since the Proclamation of Independence (1991), the Republic of Moldova has made efforts to develop a democratic society and to build a legal framework based on its aspirations, including in the field of cultural heritage protection.

At the same time, protecting historical and cultural values is a constitutional duty of each citizen. This duty is expressly laid down in art. 59 of the Constitution of the Republic of Moldova, according to which: „... *the protection of the environment conservation and protection of historical and cultural monuments constitute an obligation of every citizen*” [3].

The cultural heritage of the Republic of Moldova is an integral part of universal culture, participates in the formation and development of the intellect of an individual, a society and an ethnic group and is a repository of historical memory. It includes that part of society's multifaceted historical experience, which allows us to trace the inextricable link of time from antiquity to the present. The architectural appearance of the cities in the current area of the Republic of Moldova has been built over centuries. Each historical epoch has left its mark on the planning and construction of our country's localities, but the first half of the 19th century had a particular impact on the planimetric and architectural-spatial structure of Moldovan cities. The Republic of Moldova can boast several architectural monuments of major importance. We have a country with a rich heritage, where many churches, monasteries dating back to the 18th century and other significant historical monuments have been preserved in their original form [8, p. 75].

But let us remember that at the beginning of this century and millennium, our society is contaminated by growing indifference to inherited spiritual values. In the view of Professor Dumitru Mazilu (2003), „*traditional moral values ... are increasingly fading, while money is becoming more and more powerful*”. He believes these facts and phenomena show that: „*we are increasingly living outside traditional*

moral values, being dominated to a worrying extent by the omnipotence of money” [10, p. 93].

An increasing number of researchers, such as Fr. Francioni (2007), are aware that the values of human creation and natural and cultural heritage are not to be divided; for example, when analyzing the human habitat, the traditions of a people or a community, when describing a method of cultivating the soil, an ornamental technique, the history of a locality, etc. The international community has preferred the notion of cultural heritage to that of cultural goods, and after long debates of almost two decades, because material goods include and carry at the same time spiritual values, traditions, and knowledge attributed by the man at the same time century, a convention was drawn up by UNESCO containing the definition and principles of protection of traditional oral culture [6, p. 371].

The legislative framework of the Republic of Moldova on the protection of cultural-historical heritage is stipulated in the „*Law on the protection of monuments*” (no.1530-XII of 22.06.1993). The protection and enhancement of cultural and natural heritage are the responsibility of the Parliament, the Government, the district, municipal, town and city councils and their executive bodies, including the municipalities. According to the provisions of this law, it is the Parliament that elaborates the state policy in the field of the evidence, study, protection, conservation and restoration of monuments constituting the national heritage is elaborated by the Parliament, and the Government carries out the state programme on the protection, conservation and restoration of heritage, and a very important aspect is the financing of this programme by the state. The district, municipal, city and town councils are responsible for drawing up the Register of Monuments of Local Importance, drawing up programmes for the protection, conservation and restoration of monuments of local importance, financing these programmes and granting grants from local budgets [9].

The Agency for Inspection and Restoration of Monuments has also been highlighted by activating actions aimed at protecting the monuments of the Republic of Moldova. The „*Law on the Protection of Monuments*” (no.1530-XII of 22.06.1993) is the basic pillar of the legislative framework regarding the protection of cultural and natural heritage [9].

Within this framework, there are also several laws, such as the „*Law on the Protection of Archaeological Heritage*”, the „*Law on Museums*”, and the „*Law on Architectural Activity*”, which mention some aspects of cultural and natural heritage.

In addition to its own legislative framework, the Republic of Moldova has acceded to international conventions in heritage protection.

Thus, in 1994, on 24 May, the Republic of Moldova acceded to the European Cultural Convention, which was opened for signature by members of the Council of Europe in Paris on 19 December 1954 and entered into force on 5 May 1955 [13].

The provisions of the European Charter of Architectural Heritage, adopted on 26 September 1975, also have a major impact on protecting European architectural heritage. The „*Law on the Protection of Monuments*” (No. 1530-XII of 22.06.1993) in its chapters highlights the importance of heritage and the main actors in its conservation and preservation. However, in some of the terms used in the description of the articles, the main notions were not fully highlighted [1, p. 34].

Thus, a draft law has been proposed to de-legalize and compensate for the existing provisions, definitions and notions. In this sense, the notion of „*site*” in the existing law was defined as [11]:

- archaeological sites: human works or works resulting from the combination of human actions, as well as areas including archaeological sites with national or international value from a historical, aesthetic, ethnographic or anthropological point of view.

Regarding the number of cultural and natural sites and areas designated with priority status for protection and funding, the Government does not currently have such a list. However, out of the total number of 15,000 cultural sites, the Orheiul Vechi cultural-natural reserve has a special status, and the Government is paying more attention to it, as it is the most important cultural site in the Republic of Moldova and is in the process of being nominated for inclusion in the UNESCO World Cultural Heritage List.

Of the fifteen thousand known sites, only 5206 are included in the Register of State Protected Monuments. Out of the total number of monuments, about 8,000 represent archaeological sites; about 100 of them are earthen fortresses, 3 medieval walled cities, 6 medieval towns (Orhei, Lăpușna, Tighina, Soroca, Căușeni, Chișinău), 788 churches, 129 manor houses and several 19th centuries is historic towns (Bălți, Cahul,

Chişinău, Orhei, Soroca, Tiraspol). Of the 5206 monuments included in the register, 4086 monuments are of national importance, and 1120 are of local importance. Most monuments of national importance are located in Chisinau (419) and Edinet district (380). 2696 of the state-protected monuments are archaeological sites, 1284 – are historical monuments, 1261 – are architectural monuments and 225 – are art monuments.

The legal framework in the field of cultural and natural heritage is based on the [12]:

- Law on the Protection of Monuments (1993),
- Law on Culture (1999) Art.17,
- Law on Archival Fund (1992),
- Law on Museums (2002),
- Law on Protection of Archaeological Heritage of the Republic of Moldova (2010),
- Law on Monuments of "Public Forum" (2011),
- Law on Protection of Movable Cultural Heritage (2011),
- Law on Protection of Intangible Cultural Heritage (2012)
- and several additional laws and regulations containing aspects of cultural and natural heritage Tax Code (1997), Land Code (1997), Customs Code (2000), Civil Code (2019), Criminal Code (2002), Code on the Subsoil Regime (1993), Code on Administrative Offences (2009), etc.

State protection is exercised by Parliament, the Government, district, municipal, town and city councils and their executive bodies - the municipalities.

Decisions of state bodies on the protection of monuments, registration, research, evaluation, preservation and restoration of monuments are applied to all natural and legal persons. According to the Law on the Protection of Monuments No. 1530-XII of 22.06.1993: „*All monuments on the territory of the Republic of Moldova are part of its cultural and natural heritage and are under state protection*” [9].

The Constitution of the Republic of Moldova delegates responsibility for the protection of cultural monuments primarily to its citizens: „*The protection of the environment, conservation and protection of historical and cultural monuments is an obligation of every citizen*” [3].

The Law on the Protection of Monuments obliges state bodies and institutions to systematically investigate the condition of monuments to

draw up scientifically sound programmes for restoration and conservation work and to ensure that the material and documentary evidence for the work is provided in time. The state's protection of monuments provides works of recording, study, enhancement, rescue, protection, conservation and restoration; expansion of the material base; use and accessibility of monuments for various investigations in training and propagation [9].

Currently, the Register of State-protected Monuments of the Republic of Moldova and the National Register of Intangible Cultural Heritage are the main instruments of state inventory of tangible and intangible cultural heritage existing on the territory of the Republic of Moldova. The Parliament approves the Register of Monuments, and since its publication in the Official Monitor, it provides a basis for legal protection by the state through its executive institutions and ensures the record, inventory, and classification of national heritage [7, p. 52].

In 1993 the Parliament approved the Register of State-protected Monuments of the Republic of Moldova, but it was published in the Official Monitor in 2010, that historical monuments have the right to be protected by the state. To date, the documentary support of the Register has not been developed, most monuments do not have a passport and inventory sheets, and there is no centralized state archive or digital database with information about monuments at the national level [5, p. 67].

Local public administrations do not respect the protection zone of historical monuments, and the General Urban Plans of localities do not consider the historical cultural heritage component. Taking into account the experience of non-publication of the Register of Monuments and the damage this has caused, it is urgently necessary to draw up: the Register of Archaeological Heritage, the Register of Monuments of Public Interest, the Register of Monuments of Movable Heritage, the National Register of Audiovisual Heritage, etc., to provide them with a legal framework of protection at the state level. The Republic of Moldova has signed and ratified 11 international conventions in cultural heritage protection. The national legal framework needs to be synchronised and harmonised with the international conventions to which the Republic of Moldova has acceded, as these are largely not applied and implemented in practice at the national level [13, p. 34].

According to the law, natural and legal persons who have caused damage to a monument or protection area are obliged by law to restore both the monument and the protection area to their original condition, and if this is not possible, then they must pay compensation for the damage according to the law.

Any natural or legal person guilty of destruction shall bear material liability. Despite legal provisions on the protection of cultural heritage, many monuments of national heritage have been destroyed, and numerous complaints to the law enforcement authorities have not yielded results because no person has been held criminally responsible, notes the author Burbulea C. (2008) [2, p. 130].

To investigate this situation, on 5 October 2012, the Parliament's Committee of Inquiry on the investigation of cases of demolition and deterioration in the period 1993-2012 of historical monuments included in the Register of State Protected Monuments was established. The parliamentary committee is expected to present a comprehensive report with recommendations on the investigated cases to the parliament's plenary within six months.

As a result of the work of this Commission, changes could be proposed to the legal framework concerning the obligation to issue planning certificates for design based on the project outline only after approval by the National Council of Historic Monuments [13, p. 45].

It is important that the competent institution is empowered with the legal right to issue injunctions to natural and legal persons who violate the legislation in the field of monument protection, including the right to stop illegal intervention sites on monuments. Another recommendation would be to increase the Criminal and Contraventions Code penalties for violations of cultural heritage legislation in line with international practice in this field, according to the author Burbulea C. (2008) [2, p. 132].

In this regard, the Ministry of Culture is drafting a bill to amend the Criminal Code on offences and responsibilities of the Historical Monuments Department.

In conclusion: the laws adopted in the years immediately following independence played an important role at the time of their adoption; they guaranteed and stimulated the development of culture in general, but not the protection of monuments in particular.

In the 1990s, the Soviet system of monument protection was practically completely destroyed, and nothing was created instead, which was one of the reasons for the destruction of hundreds of monuments. This disastrous situation only began to be remedied at the end of 2009.

The Law on the Protection of Monuments (1993) requires essential amendments to meet today's challenges.

For the Ministry of Culture, meaning the State of the Republic of Moldova, to fulfil its obligations in the field of monument protection, in line with European and CIS practice in this field, the National Institute of Historical Monuments needs to be created in line with European and CIS practice in this field.

The alarming situation in the Republic's national heritage field requires synchronization with international standards through systemic and essential changes to the national legal framework in line with current requirements.

After 2009, thanks to a considerable effort by the Ministry of Culture and civil society with the support of UNESCO, the legal framework was strengthened by approving several new laws on safeguarding cultural heritage [11, p. 14].

The practical application of these laws will stimulate responsibility for heritage by citizens and local communities. In contrast to European norms and practices regarding cultural heritage, over the last twenty years, the cultural heritage of the Republic of Moldova has been subjected to unprecedented aggression and is in continuous degradation.

The assessment of the legal, institutional and policy framework in the cultural heritage field revealed that during these 20 years, efficient and transparent heritage management had not been ensured. Among the leading causes that generate dysfunctions in the field of cultural heritage are [13, p. 37]:

- lack of political will and coherent state policies;
- imperfection of the legal framework;
- corruption at all levels of immovable cultural heritage management;
- lack of a programme to safeguard cultural heritage;
- inefficient use of public funds and mismanagement of heritage by central and local public authorities;

- Poorly developed institutional framework and passivity of municipal and non-governmental public institutions in safeguarding national heritage;

- chronic lack of financial resources;
- lack of equipment and technical facilities;
- lack of specialists and qualified staff, etc.

The Republic of Moldova's tangible and intangible cultural heritage has a potential that is currently not fully exploited, and the lack of effective management based on performance indicators endangers the national cultural heritage treasure.

If the current management and funding model is not fundamentally changed, there is a risk that, in the near future, the state of the heritage will worsen beyond repair.

After all, the current management of cultural heritage in the Republic of Moldova is based on the centralised Soviet model, which has proved its inefficiency in the market economy.

In the long term, the protection of immovable heritage could be ensured by modifying and increasing the penalties in the Penal and Contraventions Code for violations of cultural heritage legislation in line with international practice in this field [4].

It is necessary to continue the identification, protection, and propagation of heritage and historical monuments through elaborating normative acts, inventory sheets, monument passports, and normative frameworks on the cadastre of historical monuments.

As heritage funding is precarious and unstable, it is recommended:

- promote corporate responsibility and public-private partnerships;
- tax exemptions for cultural heritage;
- amending the Law on Sponsorship and Philanthropy to encourage investment in the cultural sector.

For the purpose of effective heritage management, it is recommended to develop a National Programme for the Safeguarding of the Cultural Heritage of the Republic of Moldova to strengthen long-term institutional and policy capacities.

For the Ministry of Culture to fulfil its obligations in monument protection in line with European practice in this area, the National Institute of Historical Monuments needs to be created.

In this respect, it is recommended to amend the legal framework to strengthen the role of the Inspection and Restoration Agency.

It is important that the RIAM is empowered with the legal right to issue injunctions to natural and legal persons who violate the legislation in the field of monument protection, including the right to stop illegal intervention sites on monuments.

It is recommended to map cultural resources nationally to efficiently identify, protect, propagate, use and exploit cultural heritage.

In the same context, it is recommended that the National Register of Archaeological Heritage, the National Register of Public Monuments, the National Register of Audiovisual Heritage, etc., be drawn up as a matter of urgency to provide a legal framework for their protection at the state level.

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