

NATIONAL CULTURAL HERITAGE: INTERDISCIPLINARY APPROACHES. REFLECTIONS ON THE INSTITUTION OF RESPONSIBILITY IN THE MATTER

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Abstract

The research of the national cultural heritage from a legal perspective is a necessity in the present Romanian legal space. The attention paid to this field has the vocation to contribute to shaping a national consciousness on the importance of cultural heritage in the life and identity of Romanian society. The article proposes an objective approach to regulations in the field, with the presentation of relevant examples from national and international jurisprudence as an expression of the current state of cultural heritage protection. The development and adaptation of specific regulations, policies and operations to the real needs of the cultural patrimony presupposes the concurrence of a complex of factors, among which the public administration, through its authorities, institutions and specialized bodies, plays a key role.

Keywords: *cultural heritage law, administrative law, administrative accountability, public administration, national identity.*

JEL Classification: H41, K23

1. The justification of research

The present research has the mission to be part of the signals drawn in the sense of awareness of the essential importance of the cultural heritage in the life and identity of the present and future society, as well as in understanding the existence of its indissoluble interference with a number of other factors, and public administration.

The people's living environment, the quality of life and the common identity of a society are also influenced by the cultural, material or immaterial space, as well as the physical, natural or built space. As far as physical space is concerned, we dedicated it to a separate article from the perspective of urbanism, by virtue of its protection of general interests². On the other hand, cultural space, from the perspective of cultural heritage, receives due attention through this research³.

Without fear of mistakes, it can be appreciated that the current state of national cultural heritage is the expression of a history of lasting shaken age, marked by radical changes in vision and political action, profound social transformations and inadequate legal and moral protection.

Despite all this, a genuine national consciousness that draws in its depth the notion of cultural patrimony seems often fragile or even latent. Such consciousness is not a given, but it must be built with great care, it must be explained with patience and understood in its essence, it must be cultivated and nourished with the desire to know the past, the present, and to prospect our common future. We have a duty to promote a specific education on the role and place of cultural heritage in society.

Also, taking into account the social dimension of the law, the new social and legal realities, it is recommended to separate and recognize a new branch of law, namely that of cultural heritage. This would undoubtedly contribute to the crystallization of the notions specific to this subject, to the strengthening and development of the institutions that make up them, to in-depth research and, finally,

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² The article is to be published in the Public Law Magazine number 1/2018 and is titled "The Codification of Urban Planning in Romania. The European context. Reflections on the need for interdisciplinary approaches."

³ These researches are part of a complex of articles predicted by the author, under the guidance of Prof. Univ. Dr. Virginia Vedinaş, having two central reference elements, namely: (i) awareness of the importance of cultural heritage and urbanism in the life and identity of current and future society; and (ii) understanding of the indiscriminate interference of different branches or subjects such as cultural heritage and urbanism, with a number of other factors, among which a key role is played by the public administration. The results of this research will substantiate and support in the future an in-depth analysis of the institution of patrimonial administrative accountability in Romanian administrative law, to which the author is currently working as a PhD student at the Faculty of Law of the University of Bucharest.

to an educational process adapted to the present needs. Ultimately, as Professor L. Josserand⁴, notes so profoundly, "the soul of law lies in its social destination," a dictum that should be assumed especially by practitioners of public law branches, irrespective of their quality, namely lawyers, academia, civil servants, and so on.

It is no less true that cultural heritage does not have a particular, individual dimension, but it transcends into a collective dimension. Thus, any damage to cultural heritage can not directly and immediately affect the lives of each of us, hence the relative inability to internalize and empathize in the absence of the conscience I previously referred to. However, passivity, as well as aggression against cultural heritage values, leaves scarce scars on national identity and society as a whole, their healing being sometimes impossible by the irreversible nature of aggression, and sometimes requiring particularly burdensome efforts.

2. The current context in national, European and international regulation

2.1. A short historical perspective of national legislation

The germs of the protection legislation in the field of cultural heritage have been identified since the second half of the 19th century by the invitation⁵ of the Secretary of the Ministry of Education of that period, Spiru Haret, to the director of the National Antique Museum, G. Tocilescu.

The words spoken at that time by Gr. G. Tocilescu in the Senate of Romania are telling to understand the aspirations of the great statesmen: "*If we pretend to be a cultural state, let us submit to the conditions of a cultural state. Do you know we are less than Turkey and Japan on the field of monument preservation? There is no State in Europe that does not have a monument-protecting law.*"⁶ A comparison nowadays regarding the preservation of monuments in Romania, the situation in Turkey and Japan, would undoubtedly cause deep feelings of pain for the patrimony disappeared definitively or degraded.

The operations of the authorities at that time focused on the inventory of monuments and the establishment of the system to take over and protect them in a controlled manner. The legislative desideratum was achieved by voting in November 1892 of Haret-Tocilescu laws, namely the Law for the preservation and restoration of public monuments and the Law for the discovery of ancient monuments and objects, followed by their regulations in January 1893, proposed to the Parliament by Tache Ionescu as Minister Cults and Public Instruction⁷.

Later, 1913 marked the adoption of a new Law for the preservation and restoration of historical monuments, elaborated by the initiative of Ioan Kalinderu, president of the Commission for Public Monuments and promoted by C.G. Dissescu, Minister of Cults and Public Instruction. This new normative act brought about a change of conception by widening the attributions and establishing new institutions meant to support and develop the concerns of the Public Monuments Commission. However, the law was replaced in 1919 by the Decree-Law ratified by King Ferdinand on July 1, 1919, called the Law for the Preservation and Restoration of Historical Monuments, which develops the competence of the Commission but at the same time establishes deconcentration rules by recognizing the right to transfer some of its authority to the regional sections on the basis of a special regulation approved by the ministry. The Law on the Organization and Operation of Public Libraries

⁴ L. Josserand, *De l'esprit des droits et de leur relativité. Théorie dite de l'abus des droits*, ed. Dalloz, 1939.

⁵ From the content of the invitation, dated November 25, 1885, we recall: "*I have seen the content of your report (...) and to prevent, at least, the greatest vandalism against the historical monuments, I have the honor to ask you to -have a bill for this end.*", apud C. Mucenic, *Legislația privind monumentele istorice din România. 1892-1992*, „Revista Monumentelor Istorice”, Year LXI, no. 2, 1992, p. 14.

⁶ *Senate. Ordinary session. The sitting of March 26, 1892*, published in the Official Gazette of Romania no. 26 of April 10, 1892, p. 167.

⁷ The previous stages were marked by the Boerescu regulation, decreed in 1874, which provided for the composition, functioning and powers of the "Commission of Public Monuments", followed by the decree of 14 April 1890 appointing the first honorary members and the initiative of V.A. Urechia to propose a "Draft Law on the Preservation of National Monuments". For an overview of the evolution of legislation, see C. Mucenic, *op. cit.*, pp. 14-20.

and Museums of April 14, 1932, stipulating that the patrimony can not be removed from the territory of the country, and in case of sale, the state had a pre-emptive right.

The reinforcement of the communist regime after the Second World War brought about a number of changes in the field. Thus, the national cultural heritage regime was regulated by Decree no. 46/1951 for the scientific organization of museums and preservation of historical and artistic monuments. In addition, the Council of Ministers Decision no. 661 of April 22, 1955, which sanctions the entry of most of the historical monuments into state property and the selective financial support of only those state property. Subsequently, Law no. 63/1974 for the protection of the national cultural heritage of the Socialist Republic of Romania, which is characterized by a coherent and articulate content in a unitary legislative body for the whole matter.

By Decree no. 90 of 5 February 1990 on the establishment and organization of the Museum and Collections Commission was repealed Law no. 63/1974. Also, Government Ordinance no. 27 of 26 August 1992 on some measures for the protection of the national cultural heritage, and then Government Ordinance no. 68 of 26 August 1994 on the protection of national cultural heritage.

A continuation of a wave of regulations, normative acts adopted in the field of national patrimony, on a variety of species, namely historical monuments, mobile national cultural heritage, archaeological heritage, intangible cultural heritage, museums and public collections, technical and industrial patrimony, libraries, archives, protected natural areas. Currently, the applicable law encompasses an impressive body of dozens of laws, ordinances, judgments and orders. Legislative inflation adds a series of inherent problems, such as legislative parallelism, excessive fragmentation, inconsistency, inaccurate or sometimes contradictory terminology, and so on⁸.

2.2. European and international regulatory framework

By comparison, at European and international level, concerns and results in the field of cultural heritage protection are significantly more developed and better outlined.

The international protection of cultural heritage is characterized by a series of regulations, with the Hague Convention of 14 May 1954 on the Protection of Cultural Property in the Event of Armed Conflict⁹, with its protocols adopted under the aegis of UNESCO. The Convention marks an essential moment in which the signatory states have become aware of the consequences of world wars that damage to cultural goods belonging to any people is in fact damaging to the cultural heritage of all mankind as each nation contributes to world culture.

Also in 1954, the Council of Europe adopted the European Cultural Convention, which entrusted each state with the concern to safeguard its contribution to Europe's shared cultural heritage and to encourage development.

Another milestone is the Convention on the Protection of the World Cultural and Natural Heritage of 23 November 1972¹⁰, adopted under the aegis of UNESCO. On this occasion, it was remembered that cultural heritage and natural heritage are increasingly threatened by destruction, not only because of the usual causes of degradation but also by the evolution of social and economic life which aggravates them through phenomena of alteration and destruction and even more serious. Equally, it has been emphasized that the protection of this patrimony on a national scale is often incomplete due to the scale of the means it requires and the insufficiency of the economic, scientific and technical resources of the country on whose territory the safeguard asset is located.

⁸ Law no. 422/2001 on the protection of historical monuments, republished in the Official Gazette no. 938 dated November 20, 2006; Law no. 182/2000 on the protection of the mobile national cultural heritage, republished in the Official Gazette no 259 dated April 9, 2014; Law no. 26/2008 on the protection of intangible cultural heritage, published in the Official Gazette no 168 of 5 March 2008; Law no. 311/2003 of museums and public collections, republished in the Official Gazette no. 207 of March 24, 2014; GO no. 43/2000 on the protection of archaeological heritage and declaring archaeological sites as areas of national interest, republished Official Gazette no. 352 of 26 April 2005, et al. To consult the impressive list of applicable normative acts in this field, see <http://www.cultura.ro/resurse-legislative>, accessed from 1-20 April 2018.

⁹ Ratified by the Decree of the Great National Assembly no. 605 of 1957, published Official Bulletin no. 6 of 28 January 1958. The Second Protocol to the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was ratified by Law no. 285/2006.

¹⁰ Accepted by Romania through Decree no. 187 of 30 March 1990, published in the Official Gazette no. 46 of March 31, 1990.

Relatively recently, we note the adoption by the Council of Europe of the Framework Convention on the value of cultural heritage for society on 27 October 2005 in Faro, which proposes a broad definition of cultural heritage with the objectives of human development and quality of life¹¹.

Going forward, the United Nations has proposed Agenda 2030 for Sustainable Development, recognizing cultural diversity and intercultural dialogue as fundamental principles of global development¹².

At European Union level, the Treaty on European Union expressly states that the Union "shall see to the protection and development of the European cultural heritage"¹³. While the Charter of Fundamental Rights of the European Union does not recognize the right to culture as a fundamental right, it refers to the diversity of cultures and traditions of peoples that need to be protected. On the other hand, at Union level, a number of concrete measures aim at protecting and capitalizing on the cultural heritage among which we mention the declaration of 2018 as the European Year of Cultural Heritage by European Parliament Decision (EU) 2017/864 and Council of 17 May 2017¹⁴.

The decision emphasizes that cultural heritage has a clear European dimension¹⁵, but at the same time acknowledges that policies for the maintenance, restoration, preservation, reuse, accessibility and promotion of cultural heritage and related services are primarily national, regional or local responsibilities¹⁶.

There is a shared view that effective participatory governance is required for full exploitation of cultural potential, involving the involvement of all stakeholders, including public authorities - the cultural heritage sector, private actors and civil society organizations¹⁷.

A number of other conventions, books and resolutions have also been adopted in the field at international and European level on the different species of cultural heritage¹⁸.

¹¹ For a detailed presentation of the Convention, see also Sergiu Nistor, *Importanța pentru România a Convenției-cadru a Consiliului European privind valoarea patrimoniului cultural pentru societate*, „Transsylvania Nostra”, no. 1/2013. It is important to underline that, apart from the latter, Romania has ratified all the Council of Europe conventions in the field of cultural heritage: the European Cultural Convention, ratified by Law 77/1991, the Granada Convention on the Protection of the European Architectural Heritage of 1985 was ratified by Law 157/1997, the revised Convention on the Protection of the Archaeological Heritage, adopted at the 1992 La Valetta Convention, was ratified by Law 150/1997, the European Landscape Convention of Florence 2000 was ratified by Law 451/2002.

¹² Available at https://www.un.org/pga/wp-content/uploads/sites/3/2015/08/120815_outcome-document-of-Summit-for-adoption-of-the-post-2015-development-agenda.pdf, accessed between April 1-20, 2018.

¹³ See Article 3 of the Treaty on European Union

¹⁴ Published in the Official Journal no. 131 of 20 May 2017, pp. 1-9.

¹⁵ It should be remembered that Article 167 of the Treaty on the Functioning of the European Union confers on the Union the task of contributing to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time highlighting the common cultural heritage.

¹⁶ See, to that effect, recital 14 in the preamble to Decision (EU) No 2017/86. See also the Commission Communication of 22 July 2014 entitled "Towards an integrated approach to European cultural heritage", available at <http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52014DC0477&from=RO>, Council conclusions of 21 May 2014 on cultural heritage as a strategic resource for a sustainable Europe, available at [https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014XG0614\(08\)](https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014XG0614(08)) and the Conclusions of the Council and of the Representatives of the Governments of the Member States, meeting within the Council, on a Work Plan on Culture (2015-2018), working document available at [https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014XG1223\(02\)](https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014XG1223(02)). Addresses were accessed between April 1-20, 2018.

¹⁷ See, to that effect, recital 16 in the preamble to Decision (EU) 2017/864. Additionally, see the Council Conclusions of 23 December 2014 on participatory governance of cultural heritage available at [http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52014XG1223\(01\)&from=RO](http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52014XG1223(01)&from=RO), Council conclusions of 26 November 2012 on cultural governance, available at [http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52012XG1219\(03\)&from=RO](http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52012XG1219(03)&from=RO), as well as the Council Conclusions of 21 May 2014 on Cultural Heritage as a Strategic Resource for a Sustainable Europe, available at [http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52014XG0614\(08\)&from=EN](http://eur-lex.europa.eu/legal-content/RO/TXT/HTML/?uri=CELEX:52014XG0614(08)&from=EN). Addresses were accessed between April 1-20, 2018.

¹⁸ By way of example, the Paris Convention of 14 November 1970 on measures to be taken to prohibit and prevent the import, export and transfer of illicit property in the field of cultural goods, supplemented by the Ramsar Convention of 2 February 1970 on the Protection of Wetlands of Importance internationally, in particular as a habitat for migratory species and the UNIDROIT Convention of Rome, 1995, on stolen or illegally exported cultural goods; The Resolution of the Council of Europe of 14 April 1976 on the adaptation of national laws and regulations to the requirements of integrated conservation of architectural heritage; The European Convention on Offenses in respect of Cultural Property, signed at Delfi on 23 June 1985; Convention for the Safeguarding of the Architectural Heritage in Europe, signed in Granada on 3 October 1985; Convention for the Protection of the Archaeological Heritage, signed at La Valetta on 16 January 1992; The European Landscape Convention, adopted in Florence on 20 October 2000, and so on. Of note, is Resolution no. 2.347 / 2017 adopted by the Security Council at the 7907th meeting of 24 March 2017 condemning the unlawful destruction of cultural heritage, among other things, the destruction of religious sites and artifacts and the plundering and smuggling of cultural goods from archaeological sites, museums, libraries, archives and other sites in the context of armed conflicts, especially by terrorist groups, available at <https://www.un.org/sc/suborg/en/s/res/2347-%282017%29>, accessed from April 1-20, 2018.

2.3. Relevant jurisprudence issues

The legislative evolution, as well as the educational process, the internalization and the appropriation of cultural heritage notions and institutions, are inherently mirrored in everyday life, in the concrete state of the cultural patrimony, in the actual measures taken to protect it or to punish those who have harmed it. In this respect, we consider relevant the presentation of two situations in international and national judicial practice.

For the first time in international jurisprudence, in the case of Prosecutor Ahmad Al-Faqi Al Mahdi, the destruction of some religious and historical buildings classified as patrimony in the world was considered a war crime.

By decision of September 27, 2016¹⁹, the First Instance Court of the International Criminal Court found that Ahmad Al Faqi Al Mahdi, a state national of Mali and a leader of a jihadist movement, was guilty of war crimes within the meaning of Art. 25-3 of the Rome Statute of the International Criminal Court, respectively committing and co-authorizing the commission of war crimes.

The deeds consisted of deliberately leading attacks against religious and historical edifices in Tombuctu, Mali, between June and July 2012, and for these were sentenced to nine years in prison. In particular, the convict ordered the destruction of ten mausoleums, nine of which were included in the UNESCO inventory.

Correlatively, the Court ordered the sentenced person to be ordered to pay 2.7 million euros as individual and collective damages to the Tombuctu community.

On the other hand, we bring to light a recent example of national jurisprudence that can be understood as an expression of the current situation in the patrimony protection activity.

Thus, by the final decision no. 254 of 23 March 2018²⁰, the Alba Iulia Court of Appeal, the Criminal Section, paid nine out of ten defendants sued for committing thefts of goods belonging to the national patrimony, constitution of a criminal group, and so on.

The reason for the payment was represented by the intervention of the criminal liability prescription. Thus, the defendants were accused that between 1997 and 2005 they were associated to make unauthorized detection and excavations in the archaeological sites of the Orăștie Mountains, classified as a historical monument, for the localization, misappropriation and misappropriation of archaeological treasures and their capitalization on the international black market of antiquities. They have removed several archaeological treasures from the site of Sarmizegetusa Regia, some of them redeeming them on the black market of antiquities.

We note that through the indictment of 5 August 2008 in criminal file no. 151/P/2005²¹ showed that the goods "belonged to the Thesaurus category and belonged mainly to the national patrimony and, secondarily, to the universal patrimony."

In fact, six Dacian gold bracelets valued at 2,572,400 euros, 200 coins of Lysimachos gold valued at 130,000 euros, 500 silver coins valued at 75,000 euros, 25 silver denars, 58 imperial denarii were stolen and stolen, 99 silver denarii republicans, 43 Romanian silver deniers in clay pot valued at 16,300 euros, 105 archeological pieces representing different types of weapons and dacic tools from iron, bronze and lead, valued at 30,000 euro, 4,000 archeological pieces (coins, vessels, weapons, etc.) valued at 40,000 euros, etc.

By comparison, we notice that an international court has succeeded in condemning the culpable within four years of the attack on cultural assets, while national institutions and courts needed 21 years of at the time of the first attack, in order to give final judgment. The attackers also operated for 9 years, the criminal investigation file lasted 3 years, and the file before the courts was held for almost 11 years, in order to finally find out the intervention of the criminal liability prescription the guilty.

¹⁹ The decision pronounced in the Prosecutor's case c. Ahmad Al Faqi Al Mahdi no. ICC-01/12-01/15 is available at https://www.icc-cpi.int/CourtRecords/CR2016_07244.PDF, accessed April, 20, 2018.

²⁰ See file no. 04652/221/2008 *, information available on the Courts' Portal at: <http://portal.just.ro>, accessed April, 20, 2018.

²¹ The indictment in the criminal file no. 151/P/2005 of the Prosecutor's Office attached to the Alba Iulia Court of Appeal is available at https://www.scribd.com/document/374732930/Rechizitoriu-151-P-2005#download&from_embed, accessed April, 20 2018.

Thus, in essence, we retain the essential role of regulations adapted to current needs, of a pragmatic and efficient state and administrative apparatus, of a specific education, all brought to the common interest towards cultural heritage. In this respect, we believe that the prescription regime on liability for illicit acts prejudicing the national cultural heritage should be rethought. As long as the effects of these facts are an attack on our national identity, often irreversible, the extension of prescription periods or even the determination of the imprecise nature of liability for such acts can be properly taken into account.

3. Public administration and cultural heritage. Reflections on the need for interdisciplinary approaches

The Romanian state, organized according to the principle of separation and balance of powers²², acknowledges the free access to culture, assuming its duty to ensure the preservation of spiritual identity, to support the national culture, to protect and preserve the cultural heritage, to develop creativity, to promote the cultural values of Romania in the world²³.

In fulfilling their constitutional role²⁴, the succeeding governments exercised, on the one hand, a political role²⁵, consisting in ensuring the realization of the domestic and foreign policy of the country, and, on the other hand, an administrative role embodied in the general leadership of public administration²⁶.

There is a close link between the political role of the governments and the administrative role, the latter being the basis of the very first mentioned. It is essential for the Government to have the legal authority to transmit to the authorities of public administration the political impetus of government, in the absence of which the government remains a mere formal operation without a fund²⁷.

In order to be able to operate efficiently in an unprecedented development of social life in general, the administration has to specialize. At present, it may be said that the work of the administration is subject to a genuine principle of competence specialty²⁸.

Social developments have led to an increase in public administration tasks and responsibilities. This in turn led to the need to break down some administrative law institutions into real branches. Among these, we can remember the branch of urbanism and land planning law, but also a branch which we have characterized as being in the process of training and which is of interest to the present study, namely that of cultural patrimony²⁹. For these branches, administrative law with its norms and principles is the common law.

The protection of the cultural heritage is mainly achieved through the activity of the public administration, through the ministry, the deconcentrated services, the subordinated specialized institutions and the local public administration authorities.

The Ministry of Culture and National Identity has the duty to ensure the respect and promotion of fundamental freedoms and rights in terms of free, unrestrained and equal access to culture,

²² According to the provisions of art. 1 par. (4) of the Constitution of Romania "The state is organized according to the principle of separation and balance of powers - legislative, executive and judicial - within constitutional democracy."

²³ According to the provisions of art. 35 of the Constitution of Romania.

²⁴ According to the provisions of art. 102 par. (1) of the Romanian Constitution, the Government, according to its program of government accepted by the Parliament, ensures the realization of the country's internal and external policy and exercises the general management of the public administration.

²⁵ For an analysis of this government role, see D. Apostol Tofan, *Un punct de vedere în legătură cu noua reglementare privind organizarea și funcționarea Guvernului României și a ministerelor*, „Revista de Drept Public” no. 2/2011, pp. 55-70.

²⁶ V. Vedinaș, *Drept administrativ*, ed. X revised and updated, Universul Juridic, Bucharest, 2017, p. 138.

²⁷ A. Iorgovan, *Tratat de drept administrativ*, vol. I, ed. 4, ed. All Beck, Bucharest, 2005, p. 365.

²⁸ For a comprehensive analysis of competence and administrative capacity, see O. Podaru, *În căutarea autorului actului administrativ (I) – eseu asupra competenței actelor administrative*, „Revista de Drept Public” no. 2/2008, Ed. C.H. Beck, pp. 12-31.

²⁹ For some relevant considerations regarding a right of cultural and natural heritage, an emerging branch of law and still too little known or recognized, see M. Dușu, *Patrimoniul cultural și natural și Dreptul său*, available at <https://juridice.ro/essentials/1247/patrimoniul-cultural-si-natural-si-dreptul-sau>, accessed on April, 20, 2018.

including the cultural heritage of the present generation, the protection and preservation of the nation's cultural values for the benefit of future generations³⁰.

The fundamental principles guiding the activity of the ministry are, inter alia, the protection of national cultural heritage as a determinant of Romania's cultural identity and as a non-renewable resource, the protection and respect of cultural identities, material and immaterial heritage³¹.

According to the cultural policies assumed by the ministry, "*national culture is the most comprehensive expression of national identity, understood in its depth and historical diversity, and cultural heritage is the most important dowry that the nation can bring to the European common space. Preservation of built heritage is the main urgency of cultural policies. The protection and knowledge of national cultural heritage of a unique diversity in Europe must become a priority for the entire Romanian society by introducing this theme into formal and informal education. In this way, culture will become a good public constitution of democratic citizenship, both national and European*"³².

The protection of the national, mobile or immovable cultural heritage, built, either natural or immaterial, is, above all, a public responsibility, achieved through public administration authorities and specialized public institutions³³.

The notion of responsibility logically corresponds to the notion of legal liability for non-fulfillment of the legal obligations that fall within the responsibility of the authorities and institutions of public administration, as well as to the burden of individuals, in case of damage to the national cultural heritage in any of its forms.

Rightly, almost a century ago, Professor Louis Josserand pointed out that "*in every matter, in all directions, this problem of accountability is reached. In public law and in private law, in the field of people or family, and in that of goods, it is all the moments and all situations. Liability becomes the common neuralgic point of all our institutions*"³⁴. The affirmation is now fully up to date, and the time that will pass from here can not change this situation³⁵.

The legal liability of public authorities and institutions and civil servants in managing, protecting, preserving and capitalizing on assets belonging to the national cultural heritage is currently overly fragmented but also inadequately regulated. In general, each of the normative acts adopted on specific subjects contains, at the end of the text, provisions according to which the violation of the provisions of that law "brings disciplinary, material, civil, contraventional or criminal liability, as the case may be".

Such a legislative, fragmentary and unequivocal body of responsibility has and has played a decisive role in the current situation of the national cultural heritage, as we have also noted in the aforementioned jurisprudence, imposing without delay the necessary steps to safeguard the national cultural patrimony through a regulation that meets current needs.

Prospects for the adoption of the Administrative Code of Romania, following the approval of the Preliminary Theses by Government Decision no. 196/2016 are some positive for the studied

³⁰ See Art. 2 of GD no. 90/2010 on the organization and functioning of the Ministry of Culture and National Identity, published in the Official Gazette no. 116 of February 22, 2010.

³¹ See Art. 3 of GD no. 90/2010.

³² http://gov.ro/ro/print?modul=programepolitici&link=cultura#null_, accessed between April 1-20, 2018.

³³ See Art. 2 and later. of Law no. 422/2001 on the protection of historical monuments, republished in the Official Gazette no. 938 of 20 November 2006, art. 2 and later. of Law no. 182/2000 on the protection of the mobile national cultural heritage, republished in the Official Gazette no. 259 dated April 9, 2014, art. 9 and later. of Law no. 26/2008 on the protection of intangible cultural heritage, published in the Official Gazette no. 168 of 5 March 2008, art. 6 and following. Law no. 311/2003 of the museums and public collections, republished in the Official Gazette no. 207 of March 24, 2014, art. 3 and Next. of GO no. 43/2000 on the protection of archaeological heritage and the declaration of some archaeological sites as areas of national interest, republished Official Gazette of Romania no. 352 of 26 April 2005 a.o.

³⁴ L. Josserand, preface to A. Brun's thesis, *Rapports et domaines des responsabilités contractuelle et délictuelle*, Lyon, 1930, p. V.

³⁵ C. Soare, *Considerații referitoare la codificarea administrativă. Reflecții privind reglementarea răspunderii administrative în viitorul Cod*, article published in volume *Codificarea administrativă. Abordări doctrinare și cerințe practice*, ed. Wolters Kluwer, Bucharest, 2018.

subject, but within certain limits. At present, the draft normative act is in the legislative procedure, working at the standing committees of the Senate³⁶.

According to this project, the institution of administrative (general) responsibility would be aware of a unitary regulation in a single joint legislative body. Responsibility for administrative disciplinary contravention liability and administrative responsibility patrimonial will be included in Part VII of the draft Administrative Code, supporting the interpretation and application of the unitary character of the institution of administrative responsibility.

However, to the specific matter of national cultural heritage, we consider that the regulation of administrative, envisaged in the draft Administrative Code would not be fully able to meet all requirements for protection of cultural heritage, requiring particular requirements and further information on specific violation of rules in this area.

A possible solution in this respect could be identified from the point of view of codification in the field of cultural heritage legislation, as is apparent from Government Decision no. 905 of November 29, 2016 for the approval of the preliminary theses of the Cultural Heritage Code project³⁷.

On a preliminary analysis of the preliminary theses, however, it can be noticed that the institution of administrative accountability does not seem to have been given special attention. We appreciate, however, that the legislature has the task to identify and distinguish the cases attracting administrative responsibility for violation of the rules, penalties, including institutions that are responsible determined unequivocally to ensure compliance with these rules³⁸. Only in this way can a real contribution be made to protect the national cultural heritage.

4. Conclusions

Starting from the considerations developed in this research, we note that the current situation of the cultural heritage, reflected also in the case-law I have referred to, is, among other things, the result of some malfunctions between the political and administrative role of the governments of the last decades. The activity of public administration plays an essential role in the implementation of public policies and policies in general, and in the private sector.

That is why the full assumption of this function, its understanding by the entire central and local administrative apparatus, its designing in concrete activities and operations are essential for ensuring the right to culture, for the protection, cultivation, development and valorisation of the national cultural heritage for the good our common.

The activity of the public administration, however, must correspond to a normative body that regulates unitary, unambiguous and specific, on the one hand, the entire legislation in the field, and, on the other hand, the cases and the limits of liability for violation of legal obligations public authorities and institutions in the field of national cultural heritage.

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³⁶ To consult the state of the art for the future legislative act, please consult: https://www.senat.ro/legis/lista.aspx?nr_cls=L132&an_cls=2018, accessed between April 1-20, 2018.

³⁷ Published in the Official Gazette with the number 1047 dated December 27, 2016.

³⁸ These issues are currently the subject of separate research, the result being published in a separate, preliminary article titled "Towards a Cultural Heritage Code. Reflections on Administrative Accountability in the Matter ", seen as a natural continuation of this one.

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