National cultural heritage built: legislative risks and administrative deficiencies

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Abstract

Cultural heritage is one of the most valuable values of past, present or future generations. Faced with the dangers it faces, we have the moral and spiritual duty to react promptly, within our limits of competence. The present study is an expression of this task, with the proposed analysis aiming at raising awareness of the danger of a recently initiated legislative intervention by means of which the means of protection of the cultural heritage built would be seriously impaired. This danger is overlapped with the one caused by the lack of reaction and even the implicit support of this initiative by the public administration, which according to the institutional framework in this field has the duty to act as a true guardian of the national cultural heritage.

Keywords: *built cultural heritage, national identity, centenary, public administration, legislative initiative.*

JEL Classification: K23

1. Premises of the study

The special significance of 2018, both from a national perspective, namely that of celebrating the Centenary of the Great Union on 1 December 1918, and from a European perspective, that of declare this year as the European Year of Cultural Heritage[2], has led us to grant a special attention to the institution of cultural heritage in our research[3].

This initiative has a complex mission and tends to satisfy both a social need, but above all a scientific and legal need.

On the one hand, the initiative has the manifested vocation to join the signals drawn in the sense of awareness of the essential role of the cultural heritage in the life and identity of the current and future society, as well as in understanding the

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[2] Decision (EU) 2017/864 of the European Parliament and of the Council of 17 May 2017 on the European Year of Cultural Heritage 2018, published in the Official Journal no. 131 of 20 May 2017, pp. 1-9

[3] In this respect, we can consult: Cosmin Soare, *National cultural heritage: interdisciplinary approaches. Reflections on the institution of responsibility in the matter*, „Perspectives of Law and Public Administration", Vol. 7, Issue 1, 2018, p. 43-51 and Cosmin Soare, *Spre un Cod al patrimoniului cultural* (*Towards a Cultural Heritage Code)*, „Revista de Drept Public" Supplement 2018, p. 168-175.

existence of its indissoluble interference with a series of other factors, among which a major role is played by the public administration.

On the other hand, the research of national cultural heritage from a legal perspective implies a real necessity in the present Romanian legal space, taking into account the social dimension of the law and the new social and legal realities. The legal research of the phenomena accompanying the constant and rapid evolution of the cultural heritage institution is a duty that we therefore find fit to answer through this initiative.

In the initial prefigured order of our studies, this article should have matched an analysis of cultural heritage as a strategic resource for a sustainable Romania and Europe.

However, the recent evolution of the national legislative process has prompted us to focus on a stringent issue that has the potential to seriously and irreparably damage one of the essential and representative categories of the national cultural heritage, namely historical monuments.

We refer here to the legislative proposal initiated by a number of thirteen deputies from the Romanian Parliament for the repeal of letter a) of article 24 of the Law no. 50/1991 regarding the authorization of construction works, registered on 27 March 2018 at the Senate of Romania under no. L339/2018.

2. Legislative proposal and statement of reasons

The legislative proposal initiated under Art. 74 par. (1) of the Constitution of Romania by a number of thirteen deputies has in its content a unique article and concerns exclusively the repeal of letter a) of article 24 of the Law no. 50/1991 regarding the authorization of the execution of construction works, republished in the Official Gazette of Romania, Part I, no. 933 of 13 October 2004, as subsequently amended and supplemented[4].

In particular, the provision whose repeal is intended to establish the following: "*The following acts shall be punishable by a penalty of three months to one year or by a fine: a) execution without construction or abolition authorization or failure to comply with its provisions provided in art. 3 par. (1) lit. b), c), e) and g), with the exceptions provided by the law*".

The works that are executed without a building or dismantling permit or with the non-observance of its provisions and which are in the present regulation infringements are: "*Civil, industrial, agricultural, maintenance, installation and technological equipment, for infrastructure of any kind or any other nature may be carried out only with respect to the building permit and the regulations for the design*

[4] The content of the legislative proposal, registered at the Romanian Senate under no. L339/2018, can be consulted at https://www.senat.ro/legis/PDF/2018/18L339FG.pdf, consulted by the author from 15 September 2018 to 15 October 2018.

and execution of constructions, for: b) construction, reconstruction, extension, repair, consolidation, protection, restoration, preservation, and any other work, irrespective of their value, to be performed on all categories of historical monuments stipulated by law - monuments, ensembles, sites - including annexes thereof, identified in the same building - land and/or constructions, constructions located in monument protection areas; and in build areas protected according to the law, or to constructions of special architectural or historical value, established by approved urbanism documentation; c) construction, reconstruction, modification, extension, repair, modernization and rehabilitation works on communication routes of all kinds, forestry roads, art works, networks and technical and communal facilities, connections and connections to utility networks, hydrotechnical works, land improvements, works for infrastructure installations, works for new generation, transport, distribution and/or thermal power generation, as well as rehabilitation and refurbishment of existing ones; (e) drilling and excavation works necessary for conducting geotechnical and geological prospecting, designing and opening quarries and gravel sites, gas and oil wells, and other underground and underwater surface operations; g) the organization of tents, cottages or caravans".

According to the Explanatory Memorandum, the rationale of the legislative initiative essentially resides in the intention of relieving the activity of courts of law and civil servants from the State Inspectorate of Construction. Thus, the initiators point out: "*Since there are several thousands of files pertaining to the execution of works without authorization, but 99% are sanctioned with a simple fine, we consider that such an initiative has the role of decongestion the activity of the courts, and the need for no longer requiring to file criminal complaints for each permit that has expired for a few days*".

In particular, the initiators distinguish three general disputes in court, namely: a) those in which the construction authorization expired for a few days and the works continued, being well-known that the approval of a new permit lasts for the best 30 days, but in practice it has been proven that it can take much longer; b) cases of people who, for better living, have raised money and have paved or paved roads without asphalting projects issued by the authorities and opened criminal cases; c) tens of special monuments across the country collapse each month without the owners making any improvements at the facades, as long as such authorizations can last for years. Moreover, at the level of the Ministry of Culture, the competent commission had for months not working for various reasons, and the owners who made urgent repairs were filed criminal files.

I note from these situations that the rationale of the legislative proposal to decriminalize criminal offenses and of particular gravity is, at least apparently, to invoke the state's own fault through its authorities and institutions to respond to urgent and elementary social and legal needs.

3. Running the legislative procedure[5]

In accordance with art. 93 of the Senate Regulation[6], the legislative proposal enters into the legislative process only after receiving the legal opinions from the Legislative Council, the Government, the Economic and Social Council.

On May 2, 2018, according to art. 3 of the Law no. 73/1993 on the establishment, organization and functioning of the Legislative Council[7], the Legislative Council approved the legislative proposal, with some observations and proposals. Thus, he pointed out that by repealing art. 24 letter a) of Law no. 50/1991, the accomplishment of those facts would no longer be sanctioned, being exempted from the offense. In this respect, according to the authors' wording, the effect of adopting it would be to eliminate any form of liability. As such, the Legislative Council proposed to amend the provisions of art. 26 par. (1) letters a) and b) so that the facts are included in the category of contraventions.

Firstly, we underline that the opinion of the Legislative Council has, according to the law, the object of the concordance of the proposed regulation with the Constitution, with the framework laws in the field, with the European Union regulations and with the international acts to which Romania is a party. This analysis is completely lacking, and its implications are major. Also, if we were to follow the proposals of the Legislative Council, its opinion would be considered a negative one.

Further, the Government of Romania, which, according to art. 11 of Law no. 90/2001 on the organization and functioning of the Romanian Government and the ministries[8], has as its main attributions: a) the general management of the public administration and b[1]) issuing opinions on the legislative proposals and submitting them to the Parliament within 60 days from the date of the request, non-observance of this term being equivalent to the implicit support of the initiator's form.

Neither the Government of Romania nor the Ministry of Culture and National Identity have formulated a point of view in the legal term and, from our examinations, has not yet communicated an official position regarding the proposed amendments, implicitly supporting the legislative proposal.

The Economic and Social Council did not communicate its opinion but was not even asked.

Further, with respect to the provisions of art. 69 of the Senate Regulation, the legislative proposal was sent for consideration to the relevant committees for the purpose of drafting the reports or opinions. The Joint Standing Commission of the Senate and the Chamber of Deputies for Relations with UNESCO and the Commission for Public Administration and Territorial Organization issued an opinion and a report on this legislative proposal.

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[5] The legislative procedure can be consulted at https://www.senat.ro/legis/lista.aspx, consulted by the author from 15 September 2018 to 15 October 2018.
[6] Published in the Official Gazette no. 72 of 25 January 2018.
[7] Republished in the Official Gazette no. 1122 of November 29, 2004.
[8] Published in the Official Gazette no. 164 of 2 April 2001.

We note that the Standing Bureau of the Senate has not been notified by the Committee on Culture and the Media, which has the power to examine legislative initiatives in its specific area of culture.

Regarding the commissions we have noted, we note that the opinion of the Standing Committee on Relations with UNESCO was negative, and the Report of the Commission for Public Administration and Territorial Organization was rejecting the legislative proposal.

In its reasoning, the report contains the same arguments as the Legislative Council. It also points out, as the Legislative Council, that the statement in the Explanatory Memorandum that "the law provides for a sanction of contravention for letters b, c, e and g in an amount designed to discourage the start of works without authorization" is erroneous as long as these facts are expressly exempted from the sanctioning contravention regime.

At the Senate meeting on September 3, 2018, it was proposed and approved to resubmit the legislative proposal, and it was considered that "it is good for the committee members to take this initiative more closely, requiring a decongestion of the work of the courts, and officials in state building inspectorates will no longer have to file criminal complaints"[9].

In its Additional Report, the Senate Commission for Administration maintained its decision to reject the legislative proposal.

However, in relation to the provisions of art. 75 par. (2) the third sentence of the Romanian Constitution and the provisions of art. 93 par. (7) of the Senate Regulation, the legislative proposal was tacitly adopted on October 8, 2018, as a result of expiration of 45 days from the date of its submission to the Permanent Bureau[10]. On the same date, the draft was sent to the Chamber of Deputies as a decision-making chamber.

4. Some considerations on the basics of the legislative initiative

Although this is not the purpose of this paper, we can not ignore the so-called substantiation of the legislative initiative, with some general considerations.

After all, the basis of the Explanatory Memorandum is the intention of a group of deputies to relieve the work of the courts and officials of the State Building Inspectorate. Of course, the intention, taken *ad litteram*, is welcome. However, in a very brief analysis of the content of the Explanatory Memorandum, we observe a series of elements that lead to a different approach.

First of all, we can not fail to notice that in its very beginning, the Explanatory Memorandum proposes an erroneous argument, in contradiction with the very content of the law targeted by the legislative proposal. Thus, the statement that "the law provides for a sanction with contraventions for letters b, c, e and g in an amount designed to discourage the commencement of works without

[9] Extract from the Senate's Session of 3 September 2018, available at: https://www.senat.ro/legis/PDF/2018/18L339AT.pdf, consulted by the author on September 15, 2018 - October 15, 2018.

[10] The draft was submitted to the Standing Bureau of the Chamber of Deputies on 4 June 2018.

authorization" is erroneous given that these facts by criminalizing them as crimes, were expressly exempted from the sanctioning regime.

Secondly, I note that no concrete information is given either on the degree of loading of the courts and officials of the inspectorates caused by the legal provision whose repeal is sought or on the impact of the possible adoption of the legislative proposal on that degree loading. So, *de plano*, the legislative proposal is shrouded in uncertainty. Therefore, only by means of additional legislative intervention these acts could be sanctioned by contravention.

Furthermore, under the umbrella of this initiative, we discover a number of specific situations envisaged by the initiators, which, on the one hand, invoke the incapacity of some public administration authorities to carry out their public tasks, to satisfy the general interests and to ensure the good functioning of public services, and on the other hand, apparently random, three categories of litigation pending in the courts, on which the initiators clearly do not have a full understanding of the importance and seriousness of the investigated facts.

As it is known, administration is the fulfillment of daily tasks[11], and the task of solving citizens' problems lies with the public administration[12]. Therefore, we consider the principle of continuity of public services, considered in the literature as one of the most important principles governing the civil service, as a natural consequence of the state's permanence and the need to ensure the needs of general interest without interruption[13]. Along with this, of course, we have in mind the principle of legality, as a principle that governs all the activity of the public administration.

However, the arguments in the Explanatory Memorandum state that, at the legislative level, it is proposed to recognize the violation of the two essential principles by the public administration in its activity. Moreover, it is proposed to accept and perpetuate this situation.

In this respect, it follows from the initiators that: a) in practice it has been demonstrated that the legal deadline of 30 days for the approval of a new authorization may take several months; b) Given the lack of local projects by local authorities in order to improve living conditions, such as asphalt works, citizens have landed or stoned the roads themselves; c) because of the late settlement of the requests by the competent commission of the Ministry of Culture and National Identity or even the cessation of the functioning of this public institution, dozens of monumental buildings collapse every month throughout the country.

Here we are in the paradoxical situation in which, ascertaining the incapacity of some public administration institutions to fulfill their public duties in a timely

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[11] Verginia Vedinaș, *Tratat teoretic și practic de drept administrativ,* vol. I, Universul Juridic Publishing House, Bucharest, 2018, p. 56.

[12] Ioan Alexandru, *Reflecții privind evoluțiile contemporane ale democrației constituționale,* „Revista de Drept Public" no. 3/2006, p. 5.

[13] G. Dupuis, J.M. Guedon, *Droit administratif*, 3eme éd., Armand Colin, Paris, 1991, p. 444; Verginia Vedinaș, *Tratat teoretic și practic de drept administrativ,* vol. II, Universul Juridic Publishing House, Bucharest, 2018, p. 407.

manner, to satisfy the general interests and to ensure the good and permanent functioning of the public services, members of the the legislature instead of proposing urgent measures to correct these malfunctions, to reorganize, to make efficient and to professionalize the administrative apparatus, come to the extreme situation of proposing the decriminalization of some criminal acts. But not only is it proposed to decriminalize certain offenses, but it is accepted to remove those facts entirely from the sanctioning, not only criminal, but even contraventional and civilian regime.

Such a proposal is not only shrouded by uncertainty as I said, but it has a potential for risk that can hardly be measured. We can imagine the creepy case of demolishing a historic monument without demolition authorization precisely on the grounds of the absence of a sanction prescribed by law. Or, starting from one of the initiators' examples, we imagine the risks of public transport in the condition of public roads being paved in the absence of the technical project, the necessary permits and authorizations, rudimentary resources and techniques, by their nature and lack of experience, expertise and technology, to lead to loss of life. Of course, the latter may be an example that merely expresses the extreme situation of a community that can no longer overcome the passivity or incapacity of public authorities to fulfill their obligations, but no matter how difficult the circumstances may be, the removal of the rule can not be accepted law, security, legality, observance of the basic principles of public law in general and of administrative law in particular.

Concluding, we note from the mere general analysis of the Explanatory Memorandum that the legislative initiative is not based on a preliminary assessment of the proposed regulation, it was not preceded by a scientific documentation and analysis activity, it does not determine the social and legal impact of the proposed solution, considering the foreseeable negative effects of the proposed solution and causes a legislative gap, in contradiction with the express provisions of art. 6, 7, 20, 23, 24 and 31 of Law no. 24/2000 regarding the normative technical norms for the elaboration of normative acts[14].

5. Some considerations on the legislative procedure

The parliamentary legislative procedure includes all the rules for preparing the debate, debating and voting on a draft law or a legislative proposal in Parliament[15]. As shown, the legislative initiative registered under no. L339/2018, was tacitly adopted by the Senate on October 8, 2018, and is currently being submitted for adoption to the Chamber of Deputies, as the Chamber of Deputies.

[14] Republished in the Official Gazette number 260 dated April 21, 2010.
[15] Ștefan Deaconu, *Instituții politice,* ed. 3, C.H. Beck Publishing House, Bucharest, 2017, p. 191.

Without proposing a detailed analysis of the progress of the legislative procedure in this particular case, we highlight some elements over which it is impossible to overlook. These do not look directly at our theme, but we appreciate that they are related to the subject matter, as we will see below.

Under the first aspect, we note that the legislative proposal has received no express favorable opinion. Thus, the Legislative Council gave its opinion with comments (the lack of compliance with these observations equating to a negative opinion), the Standing Committee of the Senate and the Chamber of Deputies for the relationship with UNESCO gave a negative opinion and the Commission for Public Administration and the Organization of the Territory issued twice, a negative report.

Regarding the Legislative Council, we recall a particularly important nuance regarding its attribution, according to art. 3 of the Law no. 73/1993. This legal provision establishes that the opinion issued by the Legislative Council has as its object the concordance of the proposed regulation with the Constitution, with the framework laws in the field, with the European Union regulations and with the international acts to which Romania is a party. However, it is clear from the content of the opinion of the Legislative Council that there is no reference or analysis in this respect.

Under the second aspect, we note that the only public authority that implicitly supported the legislative initiative in the proposed form is precisely the Government, which, according to art. 11 of Law no. 90/2001 exercises the general management of the public administration. Regarding the content of the Explanatory Memorandum and our arguments in the previous chapter, the situation appears to be again paradoxical. Both the role of the Government and the ministry in preserving, protecting and capitalizing on the national cultural heritage, as well as the National Culture and National Heritage Strategy 2016-2022, is even more difficult to accept the support of this legislative project.

Under the third aspect, we note the lack of notification from the Senate Commission on Culture and the Media to issue its opinion or report, the only commission that has competence to examine legislative initiatives in the specific field of culture.

Under the fourth aspect, we note that this legislative proposal, with a significant burden in terms of irreparably harmful potential especially to historical monuments, historical monument protection areas, protected built areas, constructions with special architectural or historical value and works of art has been tacitly adopted by the Reflection Chamber, without even having a concrete, pertinent, scientific and professional debate on it.

6. Considerations on the role and attributions of public administration in the protection of nationally built cultural heritage

6.1 National institutional framework responsible for the protection of cultural heritage built. The draft of the Cultural Heritage Code and the public policies assumed at national level in the field[16].

The Romanian state recognizes 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 world[17].

In fulfilling their constitutional role[18], governments exercise a political role[19] in ensuring the achievement of the country's internal and external policy and, on the other hand, an administrative role embodied in the general management of the public administration[20].

Ministries, as specialized bodies of the central public administration, are organized and operate only in the subordination of the Government and aim to achieve governmental policy in their specific fields of activity[21].

The protection of cultural heritage is achieved mainly 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, including the cultural heritage of the present generation, the protection and preservation of the nation's cultural values for the benefit of future generations[22].

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 heritage[23].

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[16] See Cosmin Soare, *op. cit. (National cultural heritage: interdisciplinary approaches. Reflections on the institution of responsibility in the matter)*, pp. 48-50.

[17] According to the provisions of art. 33 of the Constitution of Romania.

[18] 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.

[19] For an analysis of this government role, see Dana 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.

[20] Verginia Vedinaș, *Tratat teoretic și practic de drept administrativ,* vol. I, Universul Juridic Publishing House, Bucharest, 2018, p. 55.

[21] According to the provisions of art. 34 and 35 of Law no. 90/2001.

[22] See art. 2 of the Government Decision no. 90/2010 on the organization and functioning of the Ministry of Culture and National Identity.

[23] See Art. 3 of the Government Decision no. 90/2010.

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*"[24].

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 institutions[25].

For this purpose, on November 29, 2016, Government Decision no. 905 for the approval of the Preliminary Theses of the Cultural Heritage Code project[26].

Reported strictly to the topic under consideration, the Preliminary Theses adopted by the Government expressly refer to the situation of aggressions against cultural heritage, including the sanctioning regime of this category of deeds.

To this end, less than two years ago, through an administrative act that still has legal effects, the Government indicated that the overall orientation of the future regulation is aimed at enhancing voluntary compliance, discouraging deeds by simplifying procedures for asset management of the national cultural heritage, but reinforced by the control and monitoring capacities and, in particular, bringing the sanction regime more in the contravention area and less in the criminal area, except for serious facts that involve substantial frauds or substantial and irreversible destructions. It was emphasized on this occasion that the offenses in the matter should be limited to deeds that can be assimilated to destruction.

The orientation of the public authorities with attributions in the field will, according to the Government, be made to regulate the procedures and the relations of collaboration/subordination in the processes of monitoring the state of cultural heritage and the establishment of detailed annual plans for monitoring. In addition, it was envisaged to strengthen the structures of authorities with attributions in this field, both in terms of the existence of sufficient numerical and professional staff, capable of meeting the needs of the cultural heritage and of the citizens, as well as in combating the criminal phenomenon by identifying and sanctioning it.

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[24] Check out the address: http://gov.ro/en/print?modul=programul politicii&link=cultura#null, consulted during 15 September 2018 - 15 October 2018.

[25] See Art. 2 and later. of Law no. 422/2001 on the protection of historical monuments, 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 the Government Ordinance no. 43/2000 on the protection of archaeological heritage and the declaration of some archaeological sites as areas of national interest, republished in Official Gazette of Romania no. 352 of 26 April 2005.

[26] Published in the Official Gazette with the number 1047 dated December 27, 2016.

Taking into account the legal provisions mentioned, we note that public administration plays a fundamental role in the entire activity and in the whole body of mechanisms and operations necessary to protect and enhance the national cultural heritage.

We find that at the political and declarative level, for the public administration, through the institution of the Government that leads it, the main urgency of the cultural policies is the preservation of the built heritage. Also, by means of administrative acts of a normative nature, a firm position and direction were assumed regarding the activities of protection, prevention and punishment of acts of aggression.

However, the concrete situation, highlighted by the legislative initiative L339/2018 and its implicit support by the Government in the legislative procedure, leads us to the conclusion that the cultural policies assumed by the public administration are a simple form without a substance which, in specific cases, the intervention of the competent authorities is required, is not able to give the impulses necessary for proportionate and appropriate responses.

As far as the legal attributions and the essential role of the competent public administration authorities in the matter is concerned, it is clear that in the analyzed case they have not been respected, including by implicit support of the legislative initiative. This is all the more important to be emphasized, as according to the data published by the Ministry itself for the first 6 months of 2016, the General Police Inspectorate registered the finding of 323 crimes of cultural material patrimony which a majority proportion of 56% saw the violation of the building permit regime.

Likewise, the position of the Government is all the more difficult to understand in terms of the content of the Explanatory Memorandum of the legislative initiative. As we have seen, serious dysfunctions in the work of the public administration institutions and authorities, including cases of non-observance of the law and even breach of the principle of continuity of public services, are highlighted.

Against this background, it can be concluded that, in the case under consideration, the public administration as a whole, through authorities with powers and competences in this field, chose to ignore its essential role as guardian of the nationally built cultural heritage and even to acquire measures which have no other effect than the decriminalization and the legality of aggressions against the national cultural heritage built.

6.2 The legislative initiative and some relevant European and international regulations

As we are going, the legislative initiative seems to contradict European and international regulations in the matter, which should be taken into account first and foremost by the initiators, and especially by the public administration authorities with attributions in the matter for the purpose of their emergency notification.

The Treaty on European Union expressly states that the Union "*shall see to the protection and development of the European cultural heritage*"[27]. The Treaty on the Functioning of the European Union also refers to a "*common cultural heritage*"[28].

The decision establishing the European Year of Cultural Heritage shares the view that effective participatory governance is required for the full exploitation of cultural potential, involving the involvement of all stakeholders, including public authorities - the cultural heritage sector, private actors and civil society organizations[29].

By decriminalizing the deeds of building or demolition without authorization provided by legislative initiative L339/2018, the protection and development of the built cultural heritage and, above all, the existence of a cultural heritage that benefits future generations are seriously questioned.

At international level, we mention one of the reference regulations, namely the Convention for the Protection of the Architectural Heritage of Europe adopted by the member states of the Council of Europe in Granada on 3 October 1985[30].

Through this Convention the signatory parties have assumed a number of firm obligations in the field of cultural heritage protection at the legislative level.

Thus, they undertook: (i) to establish a legal regime for the protection of architectural heritage; (ii) apply, under the legal protection of the goods considered, appropriate control and authorization procedures; (iii) introduce into its legislation provisions for the submission to the competent authority of demolition or alteration of monuments already protected or subject to a safeguard procedure for approval; (iv) introduce into its legislation provisions for the submission to the competent authority for approval of projects that affect all or part of an architectural complex or site and which involves the demolition of buildings, the construction of new buildings, the construction of new buildings, important changes that would affect the nature of the architectural ensemble or site; (v) to ensure that offenses against the architectural heritage protection legislation are subject to appropriate and sufficient action by the competent authority. These measures may, if necessary, require the perpetrators of the offense to demolish a new, illegally constructed building, or restore the status of a protected property.

It could hardly have imagined another situation whereby a legislative proposal, through a single article dealing with a single paragraph in a single article, would have the vocation to offend so many provisions in international regulations. Observing the obligations assumed by the Granada Convention it is clear that all of them are being violated by the text and the effects of the legislative proposal.

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[27] See Article 3 of the Treaty on European Union.

[28] See Article 167 of the Treaty on the Functioning of the European Union.

[29] See, to that effect, recital 16 of Decision (EU) 2017/864.

[30] Ratified by Romania through Law no. 157/1997 on the ratification of the Convention for the Protection of the Architectural Heritage of Europe, adopted in Granada on 3 October 1985, published in the Official Gazette no. 274 of 13 October 1997.

6.3 Some legal consequences of the eventual adoption of the legislative initiative

The legislative initiative under consideration, the advanced stage of the legislative procedure regarding its adoption, the total lack of reaction of the public administration authorities with attributions and competences in the sphere of the protection of the national patrimony built and, in particular, some serious legal consequences of the eventual adoption of the legislative initiative, require the manifestation of a firm stand by us on the path of this research.

We note that, in particular, through the legislative initiative, the execution of building, reconstruction, extension, repair, consolidation, protection, restoration, preservation, restoration, restoration, restoration, restoration, restoration, restoration, restoration, as well as any other works, regardless of their value, to be carried out in all categories of historical monuments, in constructions located in protected areas of monuments and in protected built areas, in constructions with special architectural or historical value or in works of the art.

In this context, referring to the legislative framework in force, respectively to the provisions of Law no. 50/1991 and Law no. 422/2001 on the protection of historical monuments[31], we note the imminence of a legislative gap and the division of the powers of the public control authorities in the field.

Regarding the first normative act, I have already noted that the abrogation of art. 24 letter a) leads to the decriminalization and exclusion of facts from any sphere of responsibility. Regarding the second normative act, the framework law on the protection of historical monuments, the only relevant legal provision is identified in art. 24 paragraph (3) which states that: "*In the case of unauthorized works, without advice or in breach of the expert opinions, authorized inspection staff have the right to interrupt works until the lawfulness enters into force, to impose sanctions and, where appropriate, to order the return to the initial situation and refer the criminal investigation bodies*".

However, the effects of repealing the provisions of Law no. 50/1991 will have a direct impact on the provision in the framework law. Thus, the authorized inspection staff, who are in a position to declare construction or demolition without authorization, will no longer have the right to apply sanctions nor to bring the lawfulness (because the former illegality becomes a legality) or to notify the criminal investigation bodies (because the criminal act is no longer incriminated). Only in the absence of endorsements or works that violate expert opinions may inspection staff have the right to discontinue work, but the application of such a measure in the context of the absence of a sanction, including the continuation of work, is like a form without a fund.

[31] Published in the Official Gazette of Romania no. 938 of 20 November 2006.

The only legal provision with an impact on the protection of the built cultural heritage that would appear to be unaffected by the adoption of this legislative initiative would be that of art. 253 par. (3) Penal Code according to which the destruction, degradation, rendering inoperative or preventing the taking of conservation or rescue measures, as well as the removal of the measures taken regarding the assets belonging to the cultural patrimony shall be punished by imprisonment from one to five years.

However, even in this situation, the criminal liability of a perpetrator can be seriously questioned by the inaccuracies of legal notions and incidents of legal uncertainty (for example, if the legislator chose to disincline the crime of demolition without a permit of a cultural heritage building what would be the different situation of destroying or bringing into use such a building?). In the same way, it may also be considered that the provisions mentioned in the Criminal Code would be tacitly abrogated within the limits of interpretation that overlap with the new regulation.

Simply reading these consequences of the legislative initiative should give us a thrill, while under its impact, the national cultural heritage built up would lack an adequate and effective level of legal protection against acts of aggression against it.

This is all the more so since we have already noticed the lack of reaction of the public authorities responsible for the protection of the built cultural heritage, the contradiction with the national public policies in the field and with some international and European regulations. Finally, we will try to identify a possible justification for the general passivity, with some exceptions, at the level of the whole of society in relation to this legislative project.

7. Instead of conclusions - possible explanations for the lack of firm reaction at the level of society towards the legislative initiative and its effects

At the level of society, we have not yet identified a firm, tedious response from the public administration authorities in the field of cultural heritage protection. Moreover, with the exception of professional or non-governmental organizations[32] and media articles, civil society has remained impassable in the face of this real danger.

Being at a time when socio-political events of the last two years have made some coagulation among civil society towards sensitive subjects of particular interest at national level, we have asked ourselves why this lack of reaction to such a stringent subject?

[32] In this regard, we are considering the Order of Architects in Romania and the Architecture Association. Restoration. Archeology.

Our response, based solely on the personal experience resulting from everyday interaction and thus lacking in a scientific basis, tends to assert that 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, 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.

Equally, we are aware that cultural heritage does not essentially have a particular, individual, concrete dimension, but transcends it in a collective dimension. Thus, damages to cultural heritage do not find their effects directly and immediately in the life of each of us, hence the relative inability to internalize and empathize in the absence of the consciousness I previously referred to. Passivity, as well as aggressions against cultural heritage values, however, leave scars deeply over national identity and society as a whole, their healing being sometimes impossible by the irreversible nature of aggression, and sometimes requiring particularly burdensome efforts.

In this context, we can conclude that we have every duty to promote a specific education on the role and place of cultural heritage in the society of yesterday, today and tomorrow.

Turning to the situation of the legislative initiative that determined this study, we can only express ourselves in the sense of firm disapproval of it.

We also hope that, before it is too late, the public administration authorities will give their point of view and, if the arguments in the Explanatory Memorandum are grounded, quickly identify the solutions that are needed to remedy them that the initiative remains unhelpful. We are convinced that any concrete and motivated proposals for measures that can meet the needs of protecting historical monuments and the needs of citizens (including measures to build a sufficient body of professionals) can become reality through appropriate legal steps. Otherwise, if the arguments in the Explanatory Memorandum are not substantiated, it is necessary to present the concrete data it holds in order to remove those particularly serious statements that undermine the prestige of the public administration.

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