MYKOLAS ROMERIS UNIVERSITY
MYKOLAS ROMERIS LAW SCHOOL
INSTITUTE OF INTERNATIONAL AND EUROPEAN UNION LAW

ANNA HAIDUK
(INTERNATIONAL LAW PROGRAMME)

PROTECTION OF CULTURAL RIGHTS

Master thesis

Supervisor –
Doc. dr. Dovilė Gailiūtė-Janušonė

Vilnius, 2020

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LIST OF ABBREVIATIONS

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

Committee – Committee on Economic, Social and Cultural rights,

Commentary No. 21 – General comment no. 21, Right of everyone to take part in cultural life

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

TFEU – Treaty on the Functioning of the European Union

UDCD – Universal Declaration on Cultural Diversity

UDHR – Universal Declaration of Human Rights

UNESCO – United Nations Educational, Scientific and Cultural Organization

UNDRIP – United Nations Declaration on the Rights of Indigenous Peoples

INTRODUCTION

Problem of research.

Cultural rights are often characterized as underdeveloped compared to other human rights. Lack of attention leads to the fact that sometimes they are considered as rights having a lower priority value. The implementation of cultural rights has been historically a problematic area in international human rights law theory and practice. Among other problems, the history of neglect of these rights has meant that the means to prevent and remedy violations remain underdeveloped.

In many ways, cultural rights have become fundamental and priority, as they are directly related to the individual and his or her dignity. Thanks to these rights, the person has the opportunity to express his inner desire and views on the world as well as the opportunity to live in a particular culture and stick certain traditions. Cultural rights are also one of the most effective means of developing a world of freedom of social rights as well as respect for human rights.

Cultural rights include a certain number of issues such as creativity, self-expression, art in all its manifestations, language, culture, and its vision, leading a particular lifestyle, education and access to it, access to cultural life, access to cultural heritage, which includes both material and non-material culture. Despite this, the relationship of many such concepts and human rights remain unexplored in International Law.

The main problematic questions of the master thesis: 1) how cultural rights generally are regulated and protected in International Law; 2) what legal problems of the implementation of the protection of certain cultural rights, such as the right to artistic expression and creation and the right to the protection of cultural and natural heritage, exist in International Law.

Research relevance.

The issue of the protection of human rights is currently one of the most significant because they are an integral part of any human being. If earlier the most crucial was the protection of civil, political or socio-economic rights, now, in the 21st century, the century of globalization, society has already prepared the basis for the protection of cultural rights.

There is no doubt that from year to year, attention to cultural rights is increasing, since without access to culture, without increasing cultural potential, a high level of development of society cannot be achieved. For example, under the Resolution 10/23 of 26 March 2009 the Human Rights Council decided to establish, for a period of three years, a new special procedure

entitled "independent expert in the field of cultural rights"[1], as set out in the relevant United Nations human rights instruments.

However, even though the relevance to cultural rights is increasing in International Law, there are still many unexplored issues or unregulated cultural rights. It has insufficient regulation of these rights since the documents that govern this issue, in one sense or another, sometimes do not give an exact answer.

Moreover, studying the problems concerning the protection of cultural rights during the COVID-19 quarantine in most parts of the world is very relevant, because culture is one of the spheres that is affected the most[2]. "This impact is social, economic and political – it affects the fundamental right of access to culture, the social rights of artists and creative professionals, and the protection of a diversity of cultural expressions." [3] Museums, cinemas, theatres, libraries, tourist places, and objects of world heritage are closed, although certainly, some of these objects try to make online access to events. Still in a global perspective this is just a small part of helping to realize cultural rights.

Therefore, this industry has its own place in the doctrine of International Law and therefore requires some improvements. In other words, cultural rights are an integral part of human development as they deserve attention not only from the person perspective but also from the position of the state, that is obliged to act as a guarantor as all catalogue of rights as cultural rights in particular.

Scientific novelty and overview of the research on the selected topic.

It should be admitted that some topical issues of cultural rights were explored. Many scholars have studied the regulation of cultural rights in International Law as a separate group of human rights, such as Mădălina Virginia Antonescu[4], John Clammer[5]. It is also important to point out the fundamental book "Right to Culture"[6], written by Anna Młynarska-Sobaczewska. In this book, the author pays special attention to the examination of cultural rights. The author also indicates that culture is such a complex and ambiguous concept that any attempt to define and incorporate it into an institutional framework makes as much sense as "catching the wind in a cage".

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[1] "Information on the mandate", United Nations Human Rights Office of the High Commissioner, Accessed 15 November 2019, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/MandateInfo.aspx.
[2] "Coronavirus (COVID-19) and cultural and creative sectors: impact, innovations and planning for post-crisis", OECD, Accessed 12 May 2020, https://www.oecd.org/cfe/leed/culture-webinars.htm.
[3] "Culture & COVID-19", United Nations Educational Scientific and Cultural Organization, Accessed 12 May 2020, https://en.unesco.org/sites/default/files/issue_1_en_culture_covid-19_tracker.pdf.
[4] Mădălina Virginia Antonescu, "Cultural Rights at the Beginning of the 21st Century", *Annals of the Academy of Romanian Scientists Series on History and Archaeology*, 6, 2 (2014): 53.
[5] John Clammer, *Cultural Rights and Justice. Sustainable development, the Arts and the Body* (Singapore: Palgrave Macmillan, 2019), 2.
[6] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 88.

Separately, some particular cultural rights were also examined. For example, Andrzej Jakubowski[7], Atnasios Yupsanis[8], Deeyan Knah[9], etc., devoted their works to the right to artistic expression and creation. Nevertheless, there is a lack of research related to the restrictions that apply to this right. Consequently, the study of application of restrictions to this right is one of the manifestations of the novelty of this master thesis. As for the Right of the Protection of Cultural and Natural Heritage, it is worth mentioning that this right has been studied more comprehensively, and this is also confirmed by the number of cases of the ECtHR. Scholars who worked in this industry are Marie-Theres Albert[10], Michele D'Addetta[11], Ondřej Vícha[12] etc.

Thus, in spite of the fact that some aspects of the protection of cultural rights have indeed been studied, but there is no integrated work that will include doctrinal researches, legislative provisions and judgements.

Significance of the research.

The theoretical importance of this master thesis lies in study and disclosure of the concept of cultural rights, their characteristics and the allocation of some cultural rights, such as the right to artistic expression and creation and the right to access to cultural heritage. The international legal aspects of the protection of cultural and natural heritage were analyzed in detail, which can serve as the basis for further and more specific research of these issues.

The practical significance lies in using of analysis, conclusions, and other provisions of this master thesis in regulating cultural rights by states. Particular parts of this master thesis can be helpful for practising lawyers and specialists who work in the field of protecting human rights, employees of special bodies for the protection of cultural heritage. This research can also be used by students and lecturers in such courses as International Protection of Human Rights or International Human Rights Law at the universities.

The aim of research.

The research aims to examine cultural rights as a separate group of human rights based on existing norms of International Law, as well as analyze the protective provisions.

The objectives of research.

The main objectives of the research are the following:

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[7] Andrzej Jakubowski*, Cultural Rights as Collective Rights*, (Brill Nijhoff, Boston 2016), 20.
[8] Atnasios Yupsanis, "The Meaning of 'Culture' in Article 15 (1)(a)of the ICESCR – Positive Aspects of CESCR's General Comment No. 21 for the Safeguarding of Minority Cultures", *German Yearbook of International Law,* 55 (2012): 357.
[9] Deeyah Khan, "Honorary and Goodwill Ambassadors", United Nations Educational, Scientific and Cultural Organization, Accessed 10 January 2020, http://www.unesco.org/new/en/goodwill-ambassadors/deeyah-khan/.
[10] Marie-Theres Albert, Birgitta Ringbeck, *40 Years World Heritage Convention* (Germany: Walter De Gruyter GmbH, 2013), 122.
[11] Michele D'Addetta, "The Right of Access to and Enjoyment of Cultural Heritage", *Cultural Heritage. Scenarios*, 2015-2017: 475.
[12] Ondřej Vícha, "The Concept of the Right to Cultural Heritage within the Faro Convention", *ICLR 14*, 2 (2014): 26.

1. to specify the notion and historical development of the concept “cultural rights” in International Law;

2. to outline the mechanisms for protecting cultural human rights on International and European Law level;

3. to determine the scope and particularities of the right of artistic expression and creation and the right to access to cultural heritage as the part of cultural rights and the existing legal mechanisms of their protection in International Law;

4. to evaluate the role and functions of UNESCO in the protection of cultural and natural heritage;

5. to analyze case-law of international and regional judicial and quasi-judicial institutions related to the cultural rights.

Research methodology.

Several methods served as the foundation for writing this Master thesis. Primarily, the general dialectical method of cognition was the main method for the writing of the thesis, which allowed to determine the notion of “cultural rights” and other related concepts and ideas. The formal legal and linguistic methods helped to analyze and interpret international treaties and other international legal acts concerning cultural rights. In particular, the International Bill of Human Rights, sources of “soft law”, like comments and positions of some international organizations, case-law, etc. The historical method was used to establish the historical sequence of acts and positions of researchers in International Law regarding the protection of cultural rights, as well as to highlight the features they existed provisions and opinions at different times. The critical method became the basis for the transfer and reflection of the author’s personal position in the work on issues related to the protection of cultural rights in International Law; the use of the logical method allowed the author to draw some conclusions.

Structure of research.

There are several parts in this master thesis, such as: an introduction, three substantial chapters, which are comprised of subchapters, conclusions, and recommendations, a list of bibliography, abstract, summary and Honesty declaration.

The first chapter “Protection of Cultural Rights in International Law” is a general part, that is devoted to defining the concept of cultural rights, International Law mechanisms of cultural rights regulation and protection; and determining the place of cultural rights in the International Law and particular legal systems.

The second chapter “Protection of Right to Artistic Expression and Creation” and the third chapter “The Protection of Cultural and Natural Heritage” constitute a special part of the master thesis.

The second chapter covers legal regulation of the right to artistic expression and creation as a kind of cultural rights and devoted to the examination of the mechanisms of its protection in International Law.

The last, third chapter describes the problematic aspects of protection of cultural and natural heritage, which has a special current interest for present and future generations, as well as international tools, which are intended to protect the right to access to cultural heritage. In this charter, special attention is focused on UNESCO as a specialized international organization, one of the goals of which is the protection of the world's natural and cultural heritage.

Defence statements.

1. The concept of cultural rights, which is relatively new and comprehensive, as combines a plurality of natural cultural diversity, is predominantly protected by the soft law instruments.

2. The activity of national and regional courts, such as the ECtHR, has a significant impact on the protection of cultural rights through their judgments, which indicate violations of individual's rights and systemic problems associated with inadequate protection of cultural rights by the states. Even though cultural rights are not directly guaranteed by the ECHR, ECtHR protects these rights through conventional provisions, related to other groups of rights.

CHAPTER 1. PROTECTION OF CULTURAL RIGHTS IN INTERNATIONAL LAW

In this chapter the concept of cultural rights, its regulation and determining the place of cultural rights in the International Law and legal systems will be analysed.

It should be pointed out that protecting human rights is one of the main goals of contemporary International Law. In the science of International Law, especially in the field of human rights, there is a classification of rights by spheres. Such as civil, political, economic, social, and cultural rights have also appeared. Our world went through different stages of a difficult life in the 20th century. Two World wars made a significant imprint in the life of the international community. As a result, many essential international documents appeared which are still the main ones and have not lost their value. The main one was the International Bill of Human Rights, which consists of the UDHR, the ICCPR with its two Optional Protocols and the ICESCR. It means that all these international instruments were devoted to each of the abovementioned spheres of rights. Despite this, it is essential to establish the level of protection of cultural rights in contemporary International Law.

1.1. Concept of Cultural rights in the International law (historical background, notion)

As the 21st century is the century of globalization, the century of new knowledge and terms in many areas of life and study, a lot of new tendencies in culture began to appear, which sometimes may even differ from the one that was before. The 21st century is unthinkable without culture and gives impetus to the emergence of controversies of discussions and controversial opinions concerning culture. All this shows that progress does not stand still and people try to keep up with the times.

Since culture also fills everything around, it becomes necessary to investigate whether the bearers of this culture, the bearers of cultural rights, are protected. At this time, scientists are discovering a lot of new information every day, which makes it possible to more and more thoroughly explore a particular area. The science of International Law is also treated without exception.

Talking about cultural rights, it should highlighted be that international legal instruments do not include a right to culture but refer to cultural rights. The International Bill of Human Rights, which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights human rights are divided into civil, political, economic, social, and cultural. “The first four categories have, for decades, been the object of study and analysis from a variety of approaches and in different combinations. Discussion of the concept, content, and scope of

cultural rights, on the other hand, has only recently come to the fore, since with the exception of UNESCO and the ICCPR Human Rights Committee, international organizations and human rights treaty bodies have paid scant attention to them."[13]

According to the ICESCR in its articles there is only some mention about cultural rights. The right of everyone to take part in cultural life is guaranteed in Article 15 of the ICESCR. Although, in Article 13 of ICESCR provides that:"[t]he States Parties to the present Covenant recognize the right of everyone to education"[14]. Despite such a rather weak regulation, UNESCO has made a massive contribution to its recommendations and conclusions. That is why more information and interpretations have appeared.

The theoretical debate on the economic, social and cultural rights has focused on a pragmatic view. "Since the exercise of such rights is affected by the resource-related policies and programmers of the states, by their concrete ability to execute engagements of social, integration, solidarity and equality among people, taking the adequate measures, for the protection of vulnerable groups such as the poor, disabled persons, local people, ethnic minorities etc."[15]

Furthermore cultural rights were included in a separate category of human rights after the World Conference on Human Rights, which was held in Vienna in 1993. They were also clearly established regardless of other rights.

Scientists of International Law distinguish three large generations of human rights that are interconnected by a hierarchy. "From the chronological perspective, the first generation of human rights is represented by the civil and political rights, based on the principle of equality and non-discrimination (or subjective rights)."[16]

"The second generation of rights is represented by the economic, social and cultural rights, implying concrete measures taken by the states to create material and social conditions for their exercise, according to the doctrine and international legal documents; finally, the third and most recent generation of rights is represented by the rights to solidarity, which not only the states but also the entire community is called to observe ("[t]he right to peace and security, the right to development, the right to a healthy environment")."[17] It can be concluded that cultural

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[13] Athanasios Yupsanis, "The Concept and Categories of Cultural Rights in International Law - Their Broad Sense and the Relevant Clauses of the International Human Rights Treaties*", Syracuse Journal of International Law and Commerce Syracuse Journal of International Law and Commerce* 37, 207 (2010): 2, https://www.researchgate.net/publication/328409887_The_Concept_and_Categories_of_Cultural_Rights_in_International_Law .

[14] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 28 October 2019, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

[15] Ion Diaconu, *Drepturil omului în dreptul internaŃional contemporan* (Teorie şi practică, 2Nd edition, Lumina Lex, Bucharest, 2009), 133, quoted in Mădălina Virginia Antonescu, "Cultural Rights at the Beginning of the 21st Century", *Annals of the Academy of Romanian Scientists Series on History and Archaeology*, 6, 2 (2014): 53.

[16] Ibid, 54.

[17] Ibid, 54.

rights belong to the second category, which includes the right to freely participate in the cultural life of society; the right to creativity; the right to use the results of scientific progress, etc.

Therefore, an important nuance is that there is still no the single legal definition of the concept of cultural rights in International Law. Some scholars and documents defined it. The matter was raised early, in one of the first international meetings of experts on cultural rights held at UNESCO headquarters in 1968, when Boutros Ghali, later Secretary General of the UN, pointed out that "[i]t is impossible to define cultural rights without first understanding and analysing the concept of 'culture"[18]. For this reason, it seems logical to divide term "cultural rights" separately in order to better understand this definition.

"**'Right'** is an abstract idea of that which is due to a person or governmental body by law or tradition or nature." [19] Eleanor Roosevelt said: "[r]ight is not what someone gives you; this is something that no one can take away"[20].

Talking about **'culture',** it can be also mention some facts: for example in 1952, in fact, an anthropological study recorded a total of 164 definitions of culture proposed by anthropologists. Below it can be given a couple of examples.

"'**Culture**' is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society (Tylor 1871)"[21]. "**'Culture'** is an active process of meaning making and contestation over definition including of itself. (Street 1993)"[22].

If it takes into account the opinion of scientists it is worth taking into consideration reference to O'Keefe, who discerns in the term 'culture' three distinct, overlapping, and equally valid meanings:

a) "'culture' in the classic sense, which refers to the traditional conception of art, literature, music, theatre and architecture ('high art');

b) 'culture' in a more pluralistic interpretation, denoting all the products and manifestations of the impulse for creation and expression, a definition which is not limited to 'high culture', but includes mass phenomena like commercial television and radio, the popular press, contemporary and folk music, crafts, and organized sport;

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[18] Athanasios Yupsanis, "The Concept and Categories of Cultural Rights in International Law -Their Broad Sense and the Relevant Clauses of the International Human Rights Treaties*", Syracuse Journal of International Law and Commerce Syracuse Journal of International Law and Commerce* 37, 207 (2010): 15, https://www.researchgate.net/publication/328409887_The_Concept_and_Categories_of_Cultural_Rights_in_International_Law .

[19] "Definitions for right", Definitions, Accessed 28 October 2019, https://www.definitions.net/definition/right.

[20] "Top 25 Eleanor Roosevelt Quotes to Inspire Your Greatness", Goalcast, 17 October 2019, https://www.goalcast.com/2017/04/25/top-eleanor-roosevelt-quotes-inspire-greatness/.

[21] Susan Wright, "The Politicization of Culture", *Anthropology Today 14*, 1 (1998): 7, https://www.jstor.org/stable/2783092?read-now=1&seq=1#page_scan_tab_contents .

[22] Ibid.

c) ‘culture’ in an anthropological light, which does not simply imply the products or artefacts of creativity and expression”[23].

Boutros-Ghali, former United Nations Secretary General and ex-member of the Expert Committee on Cultural Rights, defined the right to have access to culture as follows: “By the right of an individual to culture, it is to be understood that every man has the right of access to knowledge, to the arts and literature of all peoples, to take part in scientific advancement and to enjoy its benefits, to make his contribution towards the enrichment of cultural life”[24].

Summing up, it is worth emphasizing that the concept of culture by its nature certainly cannot have one meaning, which would be used by all and in all spheres of life.

There were many different variations and types of the term. It can only be explained by the fact that the concept of culture was by its nature extensive. According to this term, many industries and spheres can be characterized. They include not only the area of jurisprudence but also the field of theatre and cinema. But it is also worth mentioning that, e.g., Committee today also interprets the concept of culture when it asks ICESCR state parties to describe measures taken to create institutional infrastructure aimed at facilitating mass participation in culture, for example, cultural centres, museums, libraries, theatres, cinemas, and traditional arts.

It is also necessary to take into account and investigate how UNESCO interprets this concept. In its “Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It” (1976) it was stated that “[c]ulture is not merely an accumulation of works and knowledge which an elite produces, collects and conserves in order to place it within the reach of all culture is not limited to access to works of art and the humanities, but is at one and the same time the acquisition of knowledge, the demand for a way of life and the need to communicate”[25].

Yvonne Donders proposed his definition of cultural rights: “Cultural rights can be broadly defined as human rights that directly promote and protect cultural interests of individuals and communities and that are meant to advance their capacity to preserve, develop and change their cultural identity”[26].

Also in “Universal Declaration on Cultural Diversity” (2001), which was adopted by UNESCO, was fixed that: “[c]ulture should be regarded as the set of distinctive spiritual,

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[23] Francesco Capotorti, “Study on the rights of persons belonging to ethnic, religious and linguistic minorities*”, UN. Centre for Human Rights*, 5 (1991): 588.

[24] Pok Yin S. Chow, “Culture as Collective Memories: An Emerging Concept in International Law and Discourse on Cultural Rights”, *Human Rights Law Review*, 14 (2014): 612.

[25] “Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It”, United Nations Educational Scientific and Cultural Organization, Accessed 28 October 2019, http://portal.unesco.org/en/ev.php-URL_ID=13097&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[26] Donders Yvonne, “Cultural Human Rights and the UNESCO Convention: More Than Meets the Eye? In Globalization, Culture and Development”, *Palgrave Macmillan*, (2015): 117.

material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs."[27]. It should also be emphasized that all people have some connection between themselves and culture, and it is manifested depending on their lifestyle and manner of life.

Taking into consideration all the above mentioned, some conclusions should be done. The concept of culture has several different interpretations; it all depends on what sphere it defined. All the meaning of this concept until 1990, have a broad idea, no specifics. At the same time a later in the 2000s, UNESCO already gave details.

Also, it can be presumed that the concept of 'culture' includes some positions:

1. this concept has an extensive and comprehensive distribution. It can be used by all, without exception, and in part, by those who in one way or another have a connection with it;
2. culture has peculiar indicators that emphasize its specificity.

Thus, cultural rights are a set of rights that exist in various documents and are protected both internationally and at the national level. Cultural rights were no different from other human rights. They also have their features and characteristics. Firstly, these rights belong to the group of fundamental rights. Secondly, these rights reflect the spiritual and cultural aspects of people's lives. Thirdly, without fixing these rights, a person cannot develop both spiritually and culturally. Nowadays, there are many groups of people who bear a specific cultural value for society.

1.2 International Legal Protection of Cultural Rights at universal level (the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights)

It should be pointed out that cultural environment today is one of the critical criteria of modern society and has a multi-level system. It is worth noting that cultural rights are an integral part of human existence. It can be seen that talking about the recognition of human dignity, it should be emphasized that this dignity includes many factors, one of which is the human right to cultural life. If it takes into account that the topic of cultural rights, it makes sense in our time, then it would be logical to understand the regulation of this issue at different levels.

Since the adoption of the first international human rights instruments, the United Nations has constantly emphasized the importance, interconnection and complementarity of all human rights and freedoms: civil, political, economic, social and cultural. In the 1948 Universal

[27] "UNESCO Universal Declaration on Cultural Diversity", United National Educational Scientific and Cultural Organization, Accessed 28 October 2019 http://portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html.

Declaration of Human Rights the whole complex of human rights and freedoms was reflected. The Universal Declaration of Human Rights proclaims their "common standards of achievement". Its progressive nature is obvious. It is the first international act recognizing the ethical and legal value of economic, social and cultural human rights and their equal status and interconnected nature with civil and political human rights[28].

Having analysed UDHR it should be noted an inevitable conclusion. Firstly, it was one of the first human rights documents. Secondly, this document was aimed at regulating fundamental freedoms that relate to the first and second generation of human rights.

Understandably, that the topic of cultural rights was raised only in a small prism, as evidenced by the Article 27 of UDHR: "1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"[29].

Following this article, it can be noticed that in general there are references to cultural rights such as: participating in the cultural life of society, enjoying art, participating in scientific progress and using its benefits but what is important is that this declaration did not imply the concept of cultural rights, but only lists of some of them.

To sum up, the Universal Declaration of Human Rights included a comprehensive the range of civil, cultural, economic, political and social rights covered in one international human rights treaty, without distinguishing between them. This was probably the first comprehensive recognition of economic, social and cultural rights.

Moreover, UDHR cannot explain everything related to cultural rights. Firstly, this is due to the lack of proper regulation and, secondly, because of the situation in the world when the Declaration was adopted (since at the time of writing this declaration the special significance of cultural rights was not taken into account).

"In 1966 the United Nations and its constituent states signed two additional treaties. They were the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights."[30] Moreover, ICESCR is one of the first documents in which there is a clear consolidation of cultural rights and their significance in the international arena.

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[28] "What are human rights?", United Nations Human Rights Office of the High Commissioner, Accessed 3 November 2019, https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx.

[29] "Universal Declaration of Human Rights", United Nations, Accessed 3 November 2019, https://www.un.org/en/universal-declaration-human-rights/.

[30] John Clammer, *Cultural Rights and Justice. Sustainable development, the Arts and the Body* (Singapore: Palgrave Macmillan, 2019), 2.

"The Committee on Economic, Social and Cultural Rights control state enforcement their obligations under the ICESCR. It issued a number of concluding observations concerning States periodic reports on their implementation of the provisions of the ICESCR and also adopted a number of general comments on interpretation and application of various provisions of the ICESCR"[31]. Also, "The General Assembly of the United Nations has repeatedly emphasized the importance of the 'strictest compliance' by States parties with their obligations under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights"[32].

Provision of Article 15 of ICESCR guarantees everyone's "right to participate in cultural life, enjoy the benefits of scientific progress and its applications; and benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"[33]. This article has an importance in the topic of cultural rights because it is one commonly used article since it gives a general description of rights.

Also, Article 13 of the ICESCR acknowledges the right of any person to education ("[a]s a right directly related to the full development of the human personality and the sense of dignity, strongly emphasizing the observance of human rights")[34].

Taking into account the sources of "soft law", it is worth noting General Comment No. 21 According to which, cultural rights are universal and invisible. "Also, according to it, all the rights that are specified in Article 15 of ICESCR have a connection with the right to education, which is guaranteed in Articles 13 and 14 of ICESCR." [35] It should be pointed out that these rights are universal. This is manifested in the fact that they can be used regardless of citizenship, religion or any other factor.

Then it is worthwhile to understand in detail who can use these cultural rights. Whether these rights apply to all individuals or they can be used only by a particular group of people.. Regarding to Article 15 of ICESCR: "[t]he term 'everyone' is used in it but on the other hand the term 'cultural life' itself strongly suggests the collective"[36].

The Committee emphasized that each individual citizen of a State is entitled and able to take part in cultural activities. Yet when calling on State to preserve distinctive ways of life, be

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[31] "Economic, Social and Cultural Rights Handbook for National Human Rights Institutions", Office of the United Nations High Commissioner for Human Rights, Accessed 3 November 2019, https://www.ohchr.org/Documents/Publications/training12en.pdf.

[32] "General Assembly resolution 40/115", United Nation, Accessed 5 November 2019, https://undocs.org/en/A/RES/40/115 .

[33] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 5 November 2019, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

[34] Ibid.

[35] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 88.

[36] "Report of the independent expert in the field of cultural rights", United Nation, Accessed 7 November 2019, https://digitallibrary.un.org/record/680585.

they minority or majority ones, the Committee seems to approach Article 15 of ICESCR as a group right [37].There is no juridical reason why the right embodied in Article 15 of ICESCR did not characterize as both an individual and a group right, depending on the context in which it is sought to be exercised[38].

Moreover, it is necessary to emphasize several important points. First and foremost, many declarations taking into account cultural rights such as collective rights. It is important to point out that there were many discussions about the existence of cultural rights as collective ones. "This is based on the moral-philosophical view according to which "a collective entity can have value independently of its contribution to the well-being of individual human beings"[39]. Moreover "the most important implication of value collectivism is that collective rights can at times override the individual rights of group members, a viewpoint which is patently clear in certain instances of existing legal practice."[40]

Secondly, it is worth understanding what makes these rights collective. The most crucial argument is that these rights belong to a specific group. According to this, this group has the opportunity to protect their rights and interests directly, "Accordingly, what distinguishes such groups from juristic persons as a distinctive type of right-holders is, first, that they 'do not come into being by way of association but are simply given, and, second, in order for them to be capable of bearing rights, they need to be officially recognized by the state"[41].

Also, to go in more detail of legal regulation of collective rights, several documents should be noted. For example, in Article 3 para. 1 of Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities stated "[p]ersons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination".[42]

Furthermore, Article 1 of the United Nations Declaration on the Rights of Indigenous Peoples declares that "[i]ndigenous people have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the

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[37] Roger O'Keefe, "The Right to Take Part in Cultural Life under Article 15 of the ICESCR", *The International and Comparative Law Quarterly* 47, 4 (1998): 910.

[38] "Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It", United Nations Educational Scientific and Cultural Organization, Accessed 7 November 2019, http://portal.unesco.org/en/ev.php-URL_ID=13097&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[39] Michael Hartney, "Some Confusions Concerning Collective Rights", *Cambridge University Press*, 4 (1991): 292.

[40] Allen Buchanan, "Liberalism and Group Rights in Jules L. Coleman and Allen Buchanan (eds)", *Harm's Way – Essays in Honour of Joel Feinberg* (1994): 1–15, quoted in Andrzej Jakubowski, *Cultural Rights as Collective Rights*, (Brill Nijhoff, Boston 2016), 20.

[41] Ibid, 22.

[42] "Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", United Nations Human Rights Office of the High Commissioner, Accessed 8 November 2019, https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx.

United Nations, the Universal Declaration of Human Rights and international human rights law".[43] According to the articles, it is important to point out that the subjects of cultural rights may also be certain groups of people, not only individuals.

It is also essential that international documents have some differences among themselves; they are small but significant. Nimni noted that: "the collective dimensions to the right to take part in cultural life are crucial for the accommodation of national and ethnic minorities in multinational or multi-ethnic settings" [44] .

Furthermore, the Committee on Economic, Social and Cultural Rights, in its General Comment No. 17 stated that " 'the term 'everyone' […] may denote the individual or the collective' "[45]. Also, in General Comment No. 21 para. 15, underlined that "cultural rights may be exercised alone, or in association with others or as a community"[46]. Moreover, the Committee has the opinion that Article 15, para. 1(a) "also includes the right of minorities and of persons belonging to minorities to take part in the cultural life of society, and also to conserve, promote and develop their own culture"[47]. In other words, the Committee in its work determined by whom exactly cultural rights can be realized. It can be both: an individual or an individual together with someone as, well as this right may be exercised by a group or community.

The collectivist dimension of cultural rights is also stressed in the first report of the Independent Expert in the Field of Cultural Rights. According to her opinion, it is not only that "the debate about collective cultural rights 'constantly arises in international human rights law', but that it can be safely argued that the term 'the community' from Article 27 of the UDHR must be now interpreted by its plural 'communities', which is, furthermore, vindicated by other relevant international legal instruments"[48].

It should be pointed out that the concept of cultural rights covers both rights that apply to individuals as well as to collectives. At the same time, the scope of rights does not change,

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[43] "Resolution adopted by the General Assembly on 13 September 2007", United Nations, Accessed 8 November 2019, https://undocs.org/A/RES/61/295.
[44] "Collective Dimensions of the Right to take Part in Cultural Life", United Nations, Accessed 8 November 2019, https://www2.ohchr.org/english/bodies/cescr/docs/discussion/EphraimNimni.pdf.
[45] "General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author (Art. 15, Para. 1 (c) of the Covenant)", UN Economic and Social Council, Accessed 8 November 2019, https://www.refworld.org/docid/441543594.html.
[46] "Derechos Culturales:La Práctica Del Comité De Derechos Económicos, Sociales Y Culturales", United Nations Human Rights Office of the High Commissioner, Accessed 9 November 2019, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/Documentation.aspx.
[47] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 10 November 2019, https://www.refworld.org/docid/4ed35bae2.html.
[48] "Report of the independent expert in the field of cultural rights", United Nation, Accessed 7 November 2019, https://digitallibrary.un.org/record/680585.

and each individual has the right to participate in the cultural life, of using the result of scientific progress or to have access to cultural heritage, etc.

It should be agreed with researcher Morsink, who claimed that the suspicions could arise when the definitive article in the first paragraph is used twice: "Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits"[49].

> The article does not say, as it might have, that everyone has a right "to participate in the cultural life of his or her community. This pluralistic wording would have allowed for the possibility and the likelihood that being a citizen of a certain State and participating in the cultural life of one's community are for some people, not one and the same thing". Instead, Article 27 [of the UDHR] seems to assume that the 'community' one participates in and with one identifies culturally is the dominant one of the nation-State. There is no hint here of multiculturalism or pluralism"[50].

Summarizing all the above mentioned, it can be presumed that the ICESCR, in its way, ambiguously interprets to whom exactly cultural rights belong, but at the same time makes references in most cases that these rights relate to group rights. Furthermore, the Committee mentioned that: "minorities have the right to their cultural diversity, traditions, customs, religion, forms of education, languages, communication media (press, radio, television, Internet) and other manifestations of their cultural identity and membership"[51]. At the same time, there is no one approach to define whom cultural rights belongs to: an individual or to a collective. However, what exactly is clear - that if it takes into account that cultural rights can be collective, then these rights should be in the interests of a certain circle of people.

Moreover, the fact that some rights can be exercised only jointly does not, in and of itself, deny the individual nature of the right; and vice versa – the fact that some rights can be exercised only individually is not conclusive proof that they are not collective rights. "As a consequence, collective rights can also be exercised in three ways: by an individual member of the right-holding collective (e.g. the right to use one's mother tongue in communication with local authorities); by a collective entity as such (e.g. the right to self-determination); or, by a representative body of the right-holding collective (e.g. the right of a minority to design educational programs conducted in the minority language)." [52]

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[49] Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (1999), 269, quoted in Atnasios Yupsanis, "The Meaning of 'Culture' in Article 15 (1)(a)of the ICESCR – Positive Aspects of CESCR's General Comment No. 21 for the Safeguarding of Minority Cultures", *German Yearbook of International Law,* 55 (2012): 357.

[50] Ibid, 357.

[51] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 10 November 2019, https://www.refworld.org/docid/4ed35bae2.html.

[52] Andrzej Jakubowski, *Cultural Rights as Collective Rights*, (Brill Nijhoff, Boston 2016), 21.

Accordingly, both individuals – acting individually or in a group with others and collectives, acting qua collectives, – may 'participate in' have 'access to', and 'contribute' to cultural life, which are all aspects of the broader concept of 'participation'. [53]

It is also worth considering that Article 15 of ICESCR has several references to cultural rights. It concerns as a circle of people who can use these rights and also what is included in the concept of cultural rights. According to Article 15 of ICESCR, each person "can take part in cultural life and use the results of scientific progress"[54]. Although at the same time there is no clarity in the elements of the right to participate in culture. Comment did not also answer the question about the aspects of culture. Only in section 16 of Comment no 21, it emphasizes the conditions for the exercise of this right, according to which "the following are necessary conditions for the full realization of the right of everyone to take part in cultural life on the basis of equality and non-discrimination: availability, accessibility, acceptability, adaptability, appropriateness." [55]

In the literature, there are five of the above criteria for the realization of cultural rights.

These rights should be available to everyone. Which means, for example, that all educational and cultural places, such as museums, libraries, libraries, libraries should be accessible. Likewise, people should not have any obstacles to access to cultural rights. Moreover, those values that belong to the intangible group (traditions, languages, customs and history) should not have borders and barriers, access to all these benefits enables a person to fulfil his desires, just as important is the nuance that using these rights a person must remember that he should not only receive them but also share them and even sometimes look for them.

It should also be emphasized that in Comment No. 21 the Committee indicated obligations under which the state would not violate Article 15 of ICESCR. The State should to "adopt policies for the protection and promotion of cultural diversity […]; and measures aimed at enhancing diversity through public broadcasting in regional and minority languages; promoting the exercise of the right of association for cultural and linguistic minorities for the development of their cultural and linguistic rights; take appropriate measures or programmers to support minorities or other communities […] in their efforts to preserve their culture"[56].

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[53] Andrzej Jakubowski, *Cultural Rights as Collective Rights*, (Brill Nijhoff, Boston 2016), 28.
[54] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 10 November 2019, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.
[55] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 12 November 2019, https://www.refworld.org/docid/4ed35bae2.html.
[56] Atnasios Yupsanis, "The Meaning of 'Culture' in Article 15 (1)(a)of the ICESCR – Positive Aspects of CESCR's General Comment No. 21 for the Safeguarding of Minority Cultures", *German Yearbook of International Law* 55 (2012): 359.

"One of the most striking elements of this set of obligations is the taking of measures to support broadcasting in regional and minority languages, an issue that is related to respect for and safeguarding of the linguistic diversity to which the Committee ascribes particular importance and upon which it insists with pertinent questions"[57]. It should be pointed out that in its Commentary No. 21, the Committee repeatedly refers to the fact that language rights have an essential function in people lives and also represents a particular way of communication between people. Language allows people to portray their culture as well as uniqueness.

The rights guaranteed by the ICESCR are multifaceted, which means that these rights must be protected by many areas and many branches of law in their various manifestations. And the fact that such rights should also be regulated by the state at different levels.

Also, it must be pointed out the Optional Protocol to the ICESCR was adopted in 2008. In Articles 1 and 2 it is stated: "Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party."[58]

Analysis of the jurisprudence of the Committee revealed that so far there is only one complaint on cultural rights No E/C.12/58/D/3/2014 from a mother of a boy against Ecuador on discrimination against a foreign minor in respect of participation in youth soccer tournaments. One of the points of the complaint was regarding violation of cultural rights in the field of sports. Having examined this complaint, the Committee decided that it is inadmissible[59]. Nevertheless, at the same time, this complaint underlined the fact that the mechanism of Articles 1 and 2 of Optional Protocol to the ICESCR work and people, who think that their cultural rights were violated, can submit a complaint.

The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights confirmed that the package of rights that are enshrined in ICESCR has a universal character. "In 1986, a group of prominent international experts in the field of International Law, met at the University of Limburg in Maastricht, the Netherlands, with the aim to discuss the nature and extent of the obligations of States parties to the International

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[57] Atnasios Yupsanis, "The Meaning of 'Culture' in Article 15 (1)(a)of the ICESCR – Positive Aspects of CESCR's General Comment No. 21 for the Safeguarding of Minority Cultures", *German Yearbook of International Law* 55 (2012): 361.

[58] "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 11 November 2019, https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx.

[59] "Communication No. 3/2014. Views adopted by the Committee at its fifty-eighth session (6 to 24 June 2016). E/C.12/58/D/3/2014.", United Nations Human Rights Office of the High Commissioner, Accessed 05 November 2019, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F58%2FD%2F3%2F2014&Lang=en.

Covenant on Economic, Social and Cultural Rights, and developed a set of principles, which is called the Limburg Principles"[60]. Since the Limburg Principles were adopted in 1986, the economic and social conditions have declined at alarming rates for over 1.6 billion people, while they have advanced also at a dramatic pace for more than a quarter of the world's population[61].

That is why, the authors had a primary purpose to stress in these principles, that fundamental rights of the ICESCR cannot be breached and in case of a violation of a specific right, a person would have the opportunity to protect them at any level. However, it is also worth noting that how these rights will be exercised is more dependent on the state itself because it has the largest control lever it.

The Limburg Principles emphasized that "states parties provide effective remedies, including, inappropriate Cases, judicial remedies" (principle 19)[62]. "Because the proceedings of individual complaints under the Covenant did not exist on the time of adopting the Limburg Principles, complete the exercise of all rights specified in this document was all the more dependent on the availability of appropriate laws and remedies at the national level"[63].

Moreover, the issue of judicial review of these matters is gaining relevance over time. Perhaps this issue has become relevant because a person must also know how he can protect his interests and probably because this topic has become popular not so long time ago. It's clear that now the question of cultural rights and its challenge is already taking place since such cases began to appear in the courts, and thus precedents started to be created. Taking into consideration, it can be noted that human rights have been and will be one of the priority areas in International Law. Therefore, high responsibility for the observance of these rights lies with the state. For this reason, those norms that are specified in the above list of agreements have a place to be and be executed in a manner that is appropriate.

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[60] "Economic, Social and Cultural Rights Handbook for National Human Rights Institutions", Office of the United Nations High Commissioner for Human Rights, Accessed 11 November 2019 https://www.ohchr.org/Documents/Publications/training12en.pdf.

[61] "Human Development Report 1996", United Nations, Accessed 11 November 2019, http://hdr.undp.org/sites/default/files/reports/257/hdr_1996_en_complete_nostats.pdf.

[62] "Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights", International Network for Economic, Social and Cultural Rights, Accessed 11 November 2019, https://www.escr-net.org.

[63] "Economic, Social and Cultural Rights Handbook for National Human Rights Institutions", Office of the United Nations High Commissioner for Human Rights, Accessed 11 November 2019 https://www.ohchr.org/Documents/Publications/training12en.pdf.

1.3 Legal Protection of Cultural Rights at the European level (on the examples of the European Convention on Human Rights, legislation of the European Union and some European states)

Recognition of the existence of cultural rights in the legal space requires going beyond the boundaries of traditional ideas about the nature of certain social and legal institutions. At the present stage of development the topic of cultural rights, it is important to note that this issue is regulated at the international level, at the level of some European states, including European Union Member States and at the level of other regions.

"A special role in the globalized reality is played by cultural exchange and the developing sectors of the cultural industry and cultural services. The protection of cultural identity of the whole Europe is certainly bound to be gaining in importance in confrontation with the influx of persons culturally different from the Europeans, coming from dynamically developing regions of the world."[64]

First of all, the most significant instrument of right's protection, including cultural rights, at the European level is European Convention on Human Rights. The European Convention on Human Rights is grounded both on a universal and a regional inspiration. The ECHR "was also fulfilling the aim of Council of Europe of achieving a greater unity between the Member States, since the maintenance and further realization of human rights and fundamental freedoms were methods to achieve this aim"[65].

Furthermore as "the Strasbourg Court has reiterated in interpreting the ECHR, regard must be given to its special character as a treaty for the collective enforcement of human rights and fundamental freedoms. The ECtHR is also speaking about the general spirit of the ECHR. Therefore its interpretation has to be connected to maintaining and promoting the ideals and values of a democratic society"[66].

It is notable that the system of protection of cultural rights is not complete at the level of the ECHR. The ECHR does not contain direct article concerning right to culture. However, it cannot be argued that the ECHR does not protect cultural rights in general, because indirect protection of cultural rights can still be noted. There were certain articles that were related to cultural rights. They are: Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion) and Article 10 (freedom of expression) of the Convention, as well as Article 2 of Protocol No. 1 (right to education).

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[64] Anna Magdalena Kosińska, *Cultural Rights of Third-Country Nationals in EU Law*, (Switzerland: Palgrave Macmillan, 2019), 54.
[65] Jukka Viljanen, "The Role of the European Court of Human Rights as a Developer of International Human Rights Law", Corte Interamericana de Derechos Humanos, Accessed 15 November 2019, http://www.corteidh.or.cr/tablas/r26759.pdf.
[66] Ibid.

It should also be emphasized, that the "ECtHR does not have an ability to combat major human rights problems on its own. The Court's case law is developed case by-case basis with the strict interpretation against the expansion of the Convention rules outside of the text of the Convention. However, after the international human rights network has reacted to a particular problem through treaties and soft-law, the Court's role becomes important in the development process, transforming itself into the most authoritative source of human rights case law"[67].

It is worth noting that cultural rights, like all other human rights, impose obligations on states. It is also essential for the state to create all possible conditions, which will help people to have the opportunity not only to have these rights but also to use them regardless of their status or origin. Therefore, an important factor will be the carrying out of certain events according to which it is possible to convey to people how these rights can be exercised.

Protection of cultural right in European Law legislation should be started with the Charter of Fundamental Rights of the European Union. This document sets forth some fundamental rights as well as articles that are directly related to cultural rights. "The Charter substantially modified the existing approach to the classification of fundamental human rights and freedoms, moving away from the generally accepted, "classical" scheme for dividing them into rights of the first and second generations. All rights stipulated by the Charter are divided into chapters and systematized on the basis of such fundamental values as dignity, freedom, equality, solidarity, etc."[68]

It should be stressed that this Charter includes the regulation not only of economic and social rights but also cultural rights. It is notable that the realization of cultural rights is reflected not only at international levels but also at the European level as well. It is clear that this document did not list all possible cultural rights, but at the same time, it defines several of them.

The main provisions concerning cultural rights are enshrined in such articles: Article 11 "Freedom of expression and information", Article 13 "Freedom of the arts and sciences", Article 14 "Right to education", Article 17 "Right to property", Article 21 "Non-discrimination", Article 22 "Cultural, religious and linguistic diversity" of Charter of Fundamental Rights of the European Union[69].

The next one instrument at the European Union level, which protects cultural rights, is Treaty of Lisbon (in force from 2009), which practically set the basis for a new European Union

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[67] Jukka Viljanen, "The Role of the European Court of Human Rights as a Developer of International Human Rights Law", Corte Interamericana de Derechos Humanos, Accessed 15 November 2019, http://www.corteidh.or.cr/tablas/r26759.pdf.

[68] Д.А.Сандавов, "Права Человека в ЕС: Сравнительный Анализ Действующего Законодательства", *Марийский юридический вестник*, 8 (2011): 274, https://cyberleninka.ru/article/n/prava-cheloveka-v-es-sravnitelnyy-analiz-deystvuyuschego-zakonodatelstva/viewer.

[69] "Charter of Fundamental Rights of the European Union", Official Journal of the European Communities, Accessed 15 November 2019, https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

and contains of Treaty on European Union and Treaty on the Functioning of the European Union. According to the Article 2 of Treaty on European Union: "[t]he Union expressly takes upon the legal obligation to respect its rich cultural and linguistic diversity, and [...] ensure that Europe's cultural heritage is safeguarded and enhanced[70]". In Article 2 (e) of Treaty on the Functioning of the European Union is fixed: "[t]he Union (as original political entity, endowed with its own competences) takes upon specific obligations in relation to the cultural domain (to take specific actions of coordination, support and supplementation of the actions taken by the member states)"[71].

It is essential to note the fact that each person, regardless of citizenship or religion or belief, has a certain opportunity to use as well as benefit from cultural rights such as using their language or participate in the cultural life of their community. Moreover, it has the right to participate in cultural life and to observe its specific traditions and rites. A person in this world has the most freedom for life if only this freedom does not go beyond the law.

In accordance with paragraph 3 of Article 167 of the Treaty on the Functioning of the European Union: "[t]he Union and the Member States are fostering cooperation with third countries and international organizations in the sphere of culture (in particular with the Council of Europe)"[72]. According to this article, it turns out that the European Union, by its functions, must take into account certain cultural aspects. Moreover, these actions show respect and commitment to the diversity of cultures as well as their prosperity.

It must be pointed out that European Union should take cultural aspects into account in its actions in order to respect and to promote the diversity of its cultures under paragraph 4 of Article 167 TFEU[73]. In paragraph 4 Article 167 TFEU, the wording "diversity of 'its' cultures" implies the European Union's interest in the domestic, original cultures, not the diversity of cultures in the sense of immigration[74].

In some ways, the European Union has advanced further in protecting cultural rights and has adopted a special act in relation to the cultural rights of indigenous peoples. This can be explained by the fact that the European Union is a mixture of not only 27 cultures of different member countries, but also cultures of indigenous peoples of these countries. The Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the

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[70] "Consolidated Version of the Treaty on European Union", Eur-Lex, Accessed 16 November 2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12016M/TXT.
[71] Mădălina Virginia Antonescu, "Cultural Rights at the Beginning of the 21st Century", *Annals of the Academy of Romanian Scientists Series on History and Archaeology* 6, 2 (2014): 55.
[72] "The Treaty on the Functioning of the European Union", Eur-Lex, Accessed 16 November 2019, http://data.europa.eu/eli/treaty/tfeu_2012/oj.
[73] Ibid.
[74] "The Treaty on the Functioning of the European Union", Eur-Lex, Accessed 16 November 2019, http://data.europa.eu/eli/treaty/tfeu_2012/oj.

Community and Members States of 30 November 1998[75] emphasized the importance of preserving the culture of indigenous peoples of the EU member states

> The Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States of 30 November 1998 provides the main guidelines for support to indigenous peoples. […] The Resolution states that "Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource to the entire planet". It thereby acknowledges the importance that indigenous peoples attach to their own "self-development", that is, the shaping of their own social, economic and cultural development and their own cultural identities[76].

Authors of "The European Union Guidelines on Human Rights Defenders" wrote that one of the most crucial goals of human rights defenders in the EU is seeking the promotion and protection of cultural rights and other rights. However, it cannot be argued that the authors single out only a group of cultural rights, since they listed all groups of rights, such as civil, political, economic and social rights[77]. These document also imposes two particular obligations on the state with respect to cultural rights: "The State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their […] cultural rights" and "[t]he State shall ensure and support […] the creation and development of further independent national institutions for the promotion and protection of human rights […]"[78].

Analysing the above mentioned legal act of the EU, it is crucial to turn to the examples of some European states with the aim of examining what minimal actions the state does to ensure citizens with their cultural rights. It must be pointed out that the understanding of cultural rights as rights to participate in cultural life exists in different countries in different ways. "In accordance with the principle of subsidiarity of the international system of human rights, cultural rights are protected primarily at the national level and guaranteed in the constitutional provisions."[79]

For example, the paragraph g of Article 41 of section 2 of Swedish Constitution, for instance, in the chapter entitled "Social objectives" stated that: "the Confederation and the

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[75] "Council Resolution of 30 November 1998 "Indigenous peoples within the framework of the development cooperation of the Community and the Member States", Indigenous peoples' center for documentation research and information, Accessed 16 November 2019, https://cendoc.docip.org/cgi-bin/library.cgi?a=p&p=home&l=en&w=utf-8.

[76] "Pamphlet No. 14. The European Union: Human Rights and the Fight Against Discrimination", Office of the United Nations High Commissioner for Human Rights, Accessed 11 November 2019, https://www.ohchr.org/Documents/Publications/GuideMinorities14en.pdf.

[77] "Ensuring protection – European Union Guidelines on Human Rights Defenders", Deutsche Botschaft Kiew, Accessed 16 November 2019, https://kiew.diplo.de/blob/1247462/48c6a1e75d6c2ad10334963409e0cca3/leitlinien-eu-eng-data.pdf.

[78] Ibid.

[79] A. Młynarska-Sobaczewska, "Prawo do kultury w katalogu praw człowieka", *Przeglą d Prawa Konstytucyjnego*, 3 (2013): 27–56, quoted in Anna Magdalena Kosińska, *Cultural Rights of Third-Country Nationals in EU Law*, (Switzerland: Palgrave Macmillan, 2019), 58.

Cantons shall, as a complement to personal responsibility and private initiative, endeavour to ensure that children and young people are encouraged to develop into independent and socially responsible people and are supported in their social, cultural and political integration." [80]

The Article 23 of Belgian Constitution said: "everyone has the right to lead a life in keeping with human dignity. At the end, the laws, federate laws and rules referred to in Article 134 guarantee economic, social and cultural rights, taking into account corresponding obligations, and determine the conditions for exercising them "[…] the right to cultural and social fulfilment".[81]

It is also worth mentioned that the state in one way or another trying to introduce cultural rights into life in small steps. Furthermore that article gives residents the opportunity for cultural development and the possibility of realization.

Moreover the list of countries regulating cultural rights goes on. As an example, it is needed to look in Article 17 of the Constitution of Finland of 1999: "The right of everyone to use his or her own language, either Finnish or Swedish, before courts of law and other authorities, and to receive official documents in that language, shall be guaranteed by an Act. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis."[82] According to this article, it turns out that the state takes part in cultural life and cultural diversity with one degree or another, thereby definitely showing its intentions. The fact is that some countries in their constitutions give a specific analysis and list of cultural rights.

For example, the Constitution of Estonia 1992 contains such provisions concerning cultural rights:

1. Article 37 – "everyone has the right to education."
2. Article 38 – "science and art and their instruction are free".
3. Article 39 – "an author has the inalienable right to his or her work. The state shall protect the rights of the author".[83]

Also, similarly is in Article 42 of Lithuanian Constitution 1992 said that: "[c]ulture, science and research, and teaching shall be free." [84]

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[80] "Federal Constitution of the Swiss Confederation", The Federal Assembly — The Swiss Parliament, Accessed 15 November 2019, https://www.parlament.ch/en/%C3%BCber-das-parlament/how-does-the-swiss-parliament-work/Rules-governing-parliamentary-procedures/federal-constitution.

[81] "The Belgian Constitution", Belgian Official Gazette, Accessed 15 November 2019, https://www.dekamer.be/kvvcr/pdf_sections/publications/constitution/GrondwetUK.pdf.

[82] "The Constitution of Finland", Ministry of Justice Finland, Accessed 15 November 2019, https://oikeusministerio.fi/en/constitution-of-finland.

[83] "The Constitution of the Republic of Estonia", Riigi Teataja, Accessed 15 November 2019, https://www.riigiteataja.ee/en/eli/530102013003/consolide.

[84]" Constitution of the Republic of Lithuania", Lietuvos Respublikos Seimas - Dokumento tekstas spausdinimui, Accessed 15 November 2019,

It should also be emphasized that each state interprets and has in mind the concept of cultural rights in a certain way. Still, at the same time, these examples show the level of readiness of European states to implement norms in their domestic legislation. It is also worthwhile to determine the difference between the concepts of human rights and citizens' rights. Human rights were defined as rights that include all the rights that belong to people regardless of their citizenship. Thus, the citizens' rights inherently belong to a particular circle of people who have a specific nationality of one particular country.

It is also essential to indicate that at the European level, the level of development of cultural rights is still not so high. This is because there is no common cultural policy in states, each state, due to its development, interprets this concept differently. Therefore, at this stage, there are not many legal acts that would directly guarantee cultural rights. Also, the opportunity to protect cultural rights is also limited due to the separation of competences that are in the agreements between the European Union and their parties.

At the beginning of the twenty-first century, cultural rights entail a clash between tradition and modernity – they are a melting pot reflecting the changes in cultural life, but also potential conflicts. Hence, guaranteeing the realization of cultural rights at both the national and supranational level at present requires of the decision-making bodies to demonstrate a high level of sensitivity concerning cultural identities. "On the other hand, it is necessary to set clear priorities which will allow for the protection and promotion of the values common for the European civilization and will curb the creeping civilizational and cultural crisis"[85].

Summarizing all the above mentioned, it can be clear that cultural rights have a place to be not only in the international arena but also at the European level. The state is the main subject, which must not only fix cultural rights in its legislation but also guarantee the exercising of these rights by citizens and other persons. However, one can still notice that the states of Europe do not pay as much attention to the regulation of cultural rights compared to other categories of rights. Thus, for these rights to coexist and have a proper image, some work and improvement must be done.

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http://europam.eu/data/mechanisms/COI/COI%20Laws/Lithuania/Lithuania_Constitution_1992,%20amended%20in%202003.pdf.

[85] Anna Magdalena Kosińska, *Cultural Rights of Third-Country Nationals in EU Law*, (Switzerland: Palgrave Macmillan, 2019), 70.

CHAPTER 2. PROTECTION OF RIGHT TO ARTISTIC EXPRESSION AND CREATION

This section will explore one of the widespread cultural rights such as the right to artistic expression and creation, its place in human life and the conditions for holding this right in International Law.

2.1. General Characteristic of the Right to Artistic Expression and Creation.

The right to artistic expression and creation is a reasonably creative kind of right and is usually associated with creative people. Moreover, this right can generally be considered as an independent industry that allows individuals to create without boundaries. It is also worth noting that creative life is an integral part of the cultural and spiritual growth of people. As a rule, its existence brings enough positive emotions and also the creation of new masterpieces. Generally, the right to artistic expression and creation is not limited to any time frame or age; it is somewhat unique right.

Nowadays, the number of rights that were included in cultural rights, have an extensive list, but some rights constitutes the primary basis of cultural rights. These rights include the right to artistic expression and creation.

For a better understanding of such right, the first thing to do is to determine what artistic expression and creation matters. "Both of these concepts mean freedom to perform any artistic activity, including the free choice of form and methods of execution, as well as freedom to disseminate its results. Being able to freely publicise the results of artistic activity is an indispensable prerequisite for its performance, since art is a kind of human activity whose characteristics assume their final form only during the contact between the work and the audience."[86]

Right to artistic expression and creation has complete freedom of expression of the author's thoughts. "Furthermore *(right to artistic expression and creation)* is connected very closely with the very essence of being a human as well as human autonomy and dignity, which constitute the cornerstone of the modern universal human rights systems and many national ones. Thus, the first important issue while considering the extent to which freedom of artistic creation is exercised within the scope of artistic expression will be to examine whether such assimilation of both these values has in practice (primarily the ECtHR jurisprudence) contributed to the development of specific characteristics of freedom of artistic expression that distinguish such a form from other forms of expression"[87].

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[86] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 88.
[87] Ibid, 89.

This concept includes all stages of the creation of an object (imagination, creating, and implementation). Also these circuits that are essential factors should not be created by the influence of censorship of any interference, or pressure, this is the right of every person to his free creativity in his country for the benefit of society and the satisfaction of certain public ambushes.

Artistic creativity is manifested in images of the language through which the author see. Away his thoughts, feelings, ideas and experiences it is also worth noting that the artistic images and language of the work on expressing the individuality of the author are subject to legal protection. Since each work has its artistic language, the literary one has its musical one, and this all has a direct relation to freedom artistic expression and creation therefore, it is worth noting the importance of the relationship of these terms both in theory and in practice.

To go in more detail about the objectives of this right, the general expression of the European Court of Human Rights about the right to artistic expression, which is under the scope of protection of Article 10 of the ECHR, should be noted. According to research division, the Court states:

> […] it has applied a high level of protection when it has dealt with artistic works such as novels, poems, paintings, etc. On the one hand, artistic works afford the opportunity to take part in the exchange of cultural, political and social information and ideas of all kinds, which is essential for a democratic society. On the other hand, when assessing the character of some of the expressions contained in the artistic work which might justify the interference of the State, the Court has taken into account the limited impact of the form of artistic expression at stake […], which generally appeals to a relatively narrow public compared to, for example, the mass media. Therefore, the Court has considered throughout its jurisprudence that visual arts, literary creation or satire may be considered as forms of artistic expression and are therefore protected by Article 10 of the Convention[88].

Deeyan Knah pointed out that "the rights of artists to express themselves freely are under threat worldwide. Art has the extraordinary capacity to express resistance and rebellion, protest and hope. It injects a vital contribution to any flourishing democracy"[89].

It should be emphasized, that the freedom of artistic expression and creation is directly related to other fundamental human rights. However, this also includes freedom of thought, freedom of speech, the right to education, freedom of the media, and the right to association. To go in more detail it is also worth noting that all of the above rights and freedoms intersect with each other which also leads to the conclusion that all this is an integral part of human rights.

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[88] "Cultural Rights In The Case-Law Of The European Court Of Human Rights", European Court Of Human Rights, Accessed 17 January 2020, https://www.echr.coe.int/Documents/Research_report_cultural_rights_ENG.pdf.

[89] Deeyah Khan, "Honorary and Goodwill Ambassadors", United Nations Educational, Scientific and Cultural Organization, Accessed 10 January 2020, http://www.unesco.org/new/en/goodwill-ambassadors/deeyah-khan/.

Finally, "the freedom of creation means not only the freedom of the creator, but also the freedom of the public – the right of everyone to free and accessible use of the output of artistic creation – of contemporary cultural life as well as access to cultural heritage"[90].

The next step is the examining of the regulation of this issue. Essentially, the definition of this right did not have a clear consolidation at the international level or the state level. Since this right is associated with creativity, and as a rule, creativity is that, by its origin, the concept is vague. In this case the regulation of this right is equally hard defined.

Firstly, the regulation on the International Law level can be analysed. According to Article 15 (3) of ICESCR, under which States: "undertake to respect the freedom indispensable for…creative activity"[91].Also, in the ICCPR in the Article 19 which guarantees the right to hold one's own views and the right to freedom of expression, which includes the freedom to "seek, receive and impart information and ideas of all kinds, regardless of national borders, either orally, in writing or in print, in the form of art, or through any other media of his choice"[92].Therefore in Article 27 of UDHR said that: "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."[93]

At this stage of the study, it is clear to note that in general the freedom of artistic expression and creation has basically regulation at the international level. It should be stressed that, judging by these articles, the flight of human creativity should not have borders, just like a person has the full right to enjoy the work of independent activity from no obstacles and restrictions.

Moving on, it should be pointed out some additional acts that regulate this right. According to the Article 10 of ECHR, which guarantees everyone's "right to freedom of expression", including freedom to hold opinions and to receive and communicate information and ideas without interference from public authorities and regardless of national borders.[94] "In the European system for the protection of human rights, freedom of artistic expression was therefore initially derived from freedom of expression, which largely determined the directions of jurisprudence and the very analysis of this freedom." [95]

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[90] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 89.
[91] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 10 January 2020, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.
[92] "International Covenant on Civil and Political Rights", United Nations Human Rights Office of the High Commissioner, Accessed 10 January 2020, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
[93] "Universal Declaration of Human Rights", United Nations, Accessed 10 January 2020, https://www.un.org/en/universal-declaration-human-rights/.
[94] "European Convention on Human Rights", European Court of Human Rights, Accessed 11 January 2020, https://www.echr.coe.int/Documents/Convention_ENG.pdf.
[95] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 91.

It is also important to note the fact that the concept of freedom of artistic creation includes not only this concept. It also includes freedom of thought, freedom of religion, and freedom of expression of personal views. Art itself did not exist because it always has additional factors. Also, no normative act regulates at a sufficient level the issue regarding the definition types of creativity. There was also no definite list of this sphere. Therefore, there are several so-called cases of abuse in this area since it is difficult to define boundaries. At the same time, it should be noted that freedom cannot exist without restrictions. There were certain limits and freedoms of artistic expression. These limits were inherently created to protect other values as well as people and state. It should be pointed out that human imagination has no boundaries, so these prohibitions only help to direct this fantasy in a specific direction. As a rule, these faces are set at the level of law; case law plays an important role here.

It should be mentioned that artistic expression and creation are very closely interconnected with copyright. "Artists don't create their works in a vacuum. Like everyone else, they have myriad needs and responsibilities in their lives that affect their freedom to create artistic works. Copyright's role in giving artists the economic freedom to meet their basic needs—by generating income from their art—is an important part of the relationship between copyright and creative freedom"[96]. "Nevertheless, the central aims of the freedom of artistic creativity and copyright legislation are not irreconcilable, and international and state judiciaries in conjunction with a variety of IP scholars have articulated theories of cohesion between the two systems of right"[97]. It turns out that this right also has a close relationship with various industries. It is worth mentioning that artist as well as other people associated with creativity in their work, they somehow overlap with copyright. After all, copyright, in turn, it imposes some restrictions on these works. Furthermore, a big plus of the connection of copyright with freedom of expression and creation is those creative people (it can be both artists and musicians as well as all those who are somehow or other connected with these rights) they can use their work and be protected. Because they can both sell and lease in other words, they can earn profits for their labor, as well as a lot of other things and be in absolute security from the fact that they have the right to own this thing. Without the right of ownership the author would have been limited in his actions, thereby he could have done almost nothing with his work.

The fact that this right also intersects with religion is very important for the protection of this right. Since this area is pervasive, it, therefore, relates to many areas. In 2006 and 2007 the Council of Europe adopted two important documents which are associated with creative

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[96] Matthew Barblan, "Copyright as a Platform for Artistic and Creative Freedom", *Geo. Mason L. Rev*. 23, 4, (2016): 794, https://www.georgemasonlawreview.org/wp-content/uploads/Barblan-FINAL.pdf.

[97] Christophe Geiger, "Freedom of Artistic Creativity and Copyright Law: A Compatible Combination?", *UC Irvine Law Review* 8, (2017): 6, https://ssrn.com/abstract=3053980.

freedom. Para. 11 of Resolution 1510 "Freedom of expression and respect for religious beliefs" stated:

> Whenever it is necessary to balance human rights which are in conflict with each other in a particular case, national courts and national legislators have a margin of appreciation. In this regard, the European Court of Human Rights has held that, whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, a wider margin of appreciation is generally available when regulating freedom of expression in relation to matters liable to offend intimate personal moral convictions or religion. What is likely to cause substantial offence to persons of a particular religious persuasion will vary significantly from time to time and from place to place[98].

This paragraph also confirms the fact that at the moment there is no single regulation regarding the issue of permissible boundaries. Nowadays everything is decided from case to case.

Moreover, it must be pointed out another para. 12 from Resolution of Council of Europe 1510: "the Assembly encourages religious communities in Europe to discuss freedom of expression and respect for religious beliefs within their own community and to pursue a dialogue with other religious communities in order to develop a common understanding and a code of conduct for religious tolerance which is necessary in a democratic society"[99].

This paragraph of the Resolution applies directly to religious organizations and communities. At the same time, it is believed that the scope of this law is much wider than religion alone, and covers all sectors of not only culture, but also all areas of life. That is why, states must interpret the broad scope of this right with the aim to reduce in the future cases of complaints regarding the boundaries of freedom.

Recommendation 1805 (2007) "Blasphemy, religious insults and hate speech against persons on grounds of their religion" should also noted. According to para. 8: "The Assembly recalls the relevant case law on freedom of expression under Article 10 of the Convention developed by the European Court of Human Rights. Whereas there is little scope for restrictions on political speech or on the debate of questions of public interest, the Court accepts a wider margin of appreciation on the part of contracting states when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion"[100]. According to this article, as well as to the rest of the text of the

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[98] "Resolution 1510 (2006) Freedom of expression and respect for religious beliefs", Parliamentary Assembly, Accessed 11 January 2020, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17457&lang=en#.

[99] "Resolution 1510 (2006) Freedom of expression and respect for religious beliefs", Parliamentary Assembly, Accessed 11 January 2020, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17457&lang=en#.

[100] "Recommendation 1805 Blasphemy, religious insults and hate speech against persons on grounds of their religion", Parliamentary Assembly, Accessed 12 January 2020, https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17569&lang=en.

Recommendation, it turns out that the boundaries of freedom of artistic expression remain open. In the same way, the Council of Europe camouflages this issue a little bit and shows that it is not ready to consider this issue.

Summing up the above mention, it can be noted that the right of artistic expression and creation is also an essential part of the system of cultural rights. Moreover, this right is one of the main elements of the right to culture, which is gaining popularity from year to year. The right of artistic expression and creation can also be closely characterized as a right that is a particular part of a person's essence because it enables a person to create and to show his creativity.

2.2. Restrictions of the Right to Artistic Expression and Creation

It is generally accepted that human rights and freedoms should not be limited in any way. But as a rule, along with such rights, there are certain restrictions. In general, a restriction should be understood as specific interventions in human rights and freedoms in a particular area of law. These restrictions should, in turn, be legal as well as proportionate in a particular area.

Further, the focus will be put on to explore restrictions that can be made by the State in this area. Since the right of artistic expression and creation, in its essence, cannot be unconditional since it can entail an inevitable abuse and will go beyond what is permitted. At the same time, it should be noted that the restriction should be only in those cases when it is indispensable.

According to Article 4 of ICESCR: "limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society."[101] Limitations must be necessary and proportionate, and established by legal rules that are transparent and consistently applied in a non-discriminatory way[102].

In Article 19 of ICCPR stated: "the right to freedom of expression, including in the form of art, may be subject to certain restrictions that are provided by law and are necessary (a) for the respect of the rights or reputations of others; or (b) for the protection of national security or of public order, or of public health or morals"[103]. According to this provision, that definition of restriction is still permissible but in specific measures. This also proves the fact that the freedom of the artistic expression and creation is not unlimited. Of course, on the one hand, this

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[101] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 12 January 2020, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.

[102]" Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed", United Nations Human Rights Office of the High Commissioner, Accessed 12 January 2020, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/FaridaShaheed.aspx.

[103] "International Covenant on Civil and Political Rights", United Nations Human Rights Office of the High Commissioner, Accessed 14 January 2020, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

framework to some extent restricts the freedom of thought of the author, but on the other hand, it provides an opportunity to be protected by the authorities and other people.

As an example of such a restriction may be the following: under article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination states, with due regard to the principles embodied in the UDHR, "shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof."[104]

The case *Müller and Others v. Switzerland* was the first ruling on the freedom of artistic expression, examined by the European Court of Human Rights. The case was about Article 10 of the ECHR. According to the facts from the case, an artist's exhibition was organized in Fribourg, where works by various artists were presented. One of the artists, namely Joseph Felix Muller performed an intimate scene in his works. Moreover, this exhibition had free access, i.e., everyone had the opportunity to visit it. For the demonstration of this kind of creativity, the author was fined. The Court found that the imposition of a fine was a violation of Article 10 of the ECHR.[105]

Overall the case provisions of the Court has expressly confirmed that this freedom covers both the process of creating and disseminating the results of creative work: "those who create, perform, distribute or exhibit works of art contribute to the exchange of ideas and opinions which is essential for a democratic society. Hence the obligation on the State does not encroach unduly on their freedom of expression"[106].

Therefore, according to the para. 34 of the case *Müller and Others v. Switzerland*: "Artists and those who promote their work are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10 (art. 10-2). Whoever exercises his freedom of expression undertakes, in accordance with the express terms of that paragraph, "duties and responsibilities"; their scope will depend on his situation and the means he uses (see, mutatis mutandis, the Handy side judgment previously cited, p. 23, § 49)"[107].

Summing up the results of this case, it can be argued that there are certain restrictions in the field of creativity that usually relate individually and happen from case to case. Also, the

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[104] "International Convention on the Elimination of All Forms of Racial Discrimination", United Nations Human Rights Office of the High Commissioner, Accessed 15 January 2020, https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx.
[105] "Case of Müller and Others v. Switzerland", European Court of Human Rights, Accessed 11 January 2020, http://hudoc.echr.coe.int/eng?i=001-57487.
[106] Ibid.
[107] Ibid.

Court takes a rather cautious approach to interfering in the discretion of national courts and interpreting the condition that a reduction is necessary for the protection of public morality[108]. Summarizing previous case, it can be noted some aspects. ECHR protects not only the subject itself (a painting or any other work of art) but also the creative process of creating this work. As well as people who create these works, they may be limited in their work due to certain circumstances or obligations. It should be stressed that, this case confirms that not always freedom in specific actions takes place to be in its full manifestation, there are also certain restrictions on all freedoms.

It should be noted that when carrying out certain restrictions, it is necessary to have a clear distinction between certain things. Firstly, to determine the framework in which it will be clear which opinion is criminally punishable and which is not. Secondly, the degree of punishment for these acts should also be within the permitted. It is also worth distinguishing moral charters from criminal ones. After all, for everybody, they are individual, and therefore there will be an essential fact of differences.

It is also worth paying attention to the scope of Article 10 of the ECHR. The following case just clearly shows the scope of this article. According to the materials of the case *Kula v. Turkey*, Onur Bilge Kula, a professor from one of the universities, was invited to one of the television programs to participate in the debate. Still, his dean was against such debate, but Onur Bilge Kula took part in it. After his participation, he was brought to disciplinary responsibility as well as a reduction in wages[109]. The Court emphasizes that this actions did not cause any harm, or interfere with the performance of his duties as an employee, but that the use of punishment in the form of wages was reduced due to the Dean's orders not being complied. It was a violation of Article 10 of the ECHR[110].

All in all the Court also emphasized that the right of university employees to freedom of expression guarantees the freedom to communicate information, as well as "seek and disseminate knowledge and truth without restriction". This means that this article 10 of ECHR also applies not only to writers or artists, but its scope is very extensive.

Therefore, it should be noted when interference with this right will be justified and when not. In this regard, the Court noted that even if the intervention was "prescribed by law", it should have the requisite safeguards, which are necessary for a democratic society. If these safeguards are, it is unnecessary for the Court to check "whether the interference had pursued a

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[108] Anna Młynarska-Sobaczewska, *The Right to Culture*, (Warsaw: Scholar Publishing House, 2018), 95.
[109] "Case of Kula v. Turkey", European Court of Human Rights, Accessed 11 January 2020, http://hudoc.echr.coe.int/eng?i=002-12059.
[110] Ibid,

legitimate aim" [111]. Thus, it must be pointed out that any interference or restriction, which is connected with rights, proclaimed in Article 10 of the ECHR, can take place only when there are weighty reasons, which are necessary for a democratic society.

These cases, in turn, emphasize and demonstrate that conflicts of interest arise due to certain not-before-adjusting borders. Each of them is a definite precedent. Also, in these conflicts, the freedom of creativity crosses with the standards of moral, religion as well as ethics. Therefore, the question arises of the precise regulation of these boundaries.

Also, "[s]tates shall bear in mind that they shall not single out some individual conceptions of the beautiful or sacred for official protection, as all persons are equal before the law and are entitled without any discrimination to the equal protection of the law (article 26 of ICCPR). Moreover, "it is not compatible with the [ICCPR] for a restriction to be enshrined in traditional, religious and other such customary law"[112].

Then, it should be pointed out that this right to artistic expression inherently unites not only authors but also people who receive these services. It turns out that everyone who uses or invents this product becomes the subject of this right. As well as all guarantees that this right has, they are distributed equally to each participant. "Threats to artistic freedom can arise from government regulations and laws. At the governmental level, threats to the arts may be seen in crackdowns on free speech in various countries. Other threats to artistic freedom can arise from laws regarding blasphemy, obscenity, morality, defamation, national security laws, or overly rigorous classification systems."[113]

However, to explain by example whether the State can establish a specific framework or not, as well as areas in which it will be acceptable, it's worth turning to the practice of ECtHR case law. In the judgment *Ibragim Ibragimov and Others v. Russia*, the Court considered:

> Having regard to the above considerations and its case-law on the subject, the Court finds that the domestic courts did not apply standards which were in conformity with the principles embodied in Article 10 and did not provide "relevant and sufficient" reasons for the interference. In particular, it is unable to discern any element in the domestic courts' analysis which would allow it to conclude that the book in question incited violence, religious hatred or intolerance, that the context in which it had been published was marked by heightened tensions or special social or historical background in Russia or that its

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[111] Ibid,

[112] "Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed", United Nations Human Rights Office of the High Commissioner, Accessed 15 January 2020, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/FaridaShaheed.aspx.

[113] "Exploring the Connections Between Arts and Human Rights", European Union Agency for Fundamental Rights, Accessed 15 January 2020, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017_arts-and-human-rights-report_may-2017_vienna.pdf.

> circulation had led or could lead to harmful consequences. The Court concludes that it was not necessary, in a democratic society, to ban the book in question[114].

This case confirms that the establishment of these frameworks is a fragile line that is usually interpreted differently from case to case, from country to country. It is thereby emphasizing once again the fact that these positive obligations must exist in a democratic society. It helps to prevent arising from other cases in the future.

It should be also outlined about other examples of restrictions. "In a large number of cases, States resort to imposing restrictions authorized under International Law in inappropriate or abusive ways, favouring some worldviews over others. Consequently, stakeholders lose confidence in State institutions, leading to a loss of credibility of Governments, including when they legitimately impose limitations in accordance with articles 19 ICCPR. This effect is amplified when rules are ambiguous and procedures are not transparent"[115].

It appears that any obstacles that can be created by the State and not only have a particularly negative effect on society. This is especially true for creative people as well as those who are closely associated with this area. Also, these actions, in one way or another will limit the ability of people in the future to participate in cultural life.

It is also worth noting that the State can impose a restriction not only on a person, but on the right of various non-state actors such as the media, multiple companies, various educational institutions, etc. which play an essential role in human consciousness in our time.

According to the case "*Cengiz and others v Turkey*", the applicant, who was a professor at one of the institutes, did not have access to YouTube video hosting, which caused damage to his professional activities. YouTube was blocked according to the countries law in Turkey, and no one had access to it.[116]

The Court in its judgment rendered that YouTube as a vital source of information and emphasizing the contribution of this hosting to the development of journalism. The ECtHR claims that Turkey violated Article 10 by holding those access restrictions may be applied to specific resources. Blocking the entire site is a violation of freedom of expression.[117]

> […] the Court reiterates that Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas and that no distinction is made according to the nature of the aim pursued or the role played by natural or legal persons in the exercise of that freedom. Article 10 applies not only to the content of information but also to the means of dissemination, since any

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[114] "Case of Ibragim Ibragimov and Others v. Russia", European Court of Human Rights, Accessed 15 January 2020, http://hudoc.echr.coe.int/eng?i=001-185293.

[115] Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed", United Nations Human Rights Office of the High Commissioner, Accessed 15 January 2020, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/FaridaShaheed.aspx.

[116] "Case of Cengiz and Others v. Turkey", European Court Of Human Rights, Accessed 17 January 2020, http://hudoc.echr.coe.int/eng?i=001-159188

[117] Ibid.

> restriction imposed on such means necessarily interferes with the right to receive and impart information. Likewise, the Court reaffirms that Article 10 guarantees not only the right to impart information but also the right of the public to receive it[118].

It should be outlined that this case once again proves that bans can be imposed on any freedoms. Sometimes, as practice shows, these prohibitions are not legal as a result of which suffer innocent people.

Moreover "restrictions on artistic freedom are often implemented through unclear regulations or directives without legal basis. In too many cases, regulations are implemented without consistency by non-transparent mechanisms with no possibility of appeal. In the area of cinema or public art in particular, artists may be required to obtain additional permits from State and non-State, as well as official and non-official authorities, "giving influential parties and individuals the power to interfere and restrict freedom of expression". Difficulties multiply when overlapping laws and regulations are used to prevent public access to artworks."[119]

The other one requirement to the restrictions is that they "must be formulated with sufficient precision to enable an individual to regulate his/her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution. Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.[120]"

Summing up the above, states may impose some legal restrictions that must meet certain criteria. The practice of the Strasbourg court shows how the right to artistic expression and creation is protected from non-legal restrictions. The state should refrain from any negative actions, and this may include interference in this area and any other efforts that in one way or another could harm the participants in this process.

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[118] Ibid.

[119] Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed", United Nations Human Rights Office of the High Commissioner, Accessed 17 January 2020, https://www.ohchr.org/EN/Issues/CulturalRights/Pages/FaridaShaheed.aspx.

[120] "General comment No. 34", Human Rights Committee, Accessed 17 January 2020, https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf.

CHAPTER 3. PROTECTION OF CULTURAL AND NATURAL HERITAGE

Nowadays, when the world does not stand still and develops every day, it is sometimes difficult to keep track of all spheres and industries. The same situation exists in the field of protection of cultural and natural heritage: because all this globalization processes, people can lose their connection with it. Therefore, in our time, the topic of protection of cultural and natural heritage is especially relevant. In this section, special attention will be paid to the right to the protection of cultural and natural heritage and the role of the UNESCO in these processes.

3.1. Protection of Right to Access to Cultural Heritage

Cultural heritage, like other cultural rights, is an integral part of human rights. Therefore, consideration of this right is also necessary for the current society. Cultural heritage is a shared resource that belongs to everyone without exception; it can also be called a common good. The primary function of the cultural heritage is to preserve a valuable object as well as the opportunity to use it in the future. Thereby, it is interlinked with the rights of communities and individuals. For access to cultural heritage is an integral attribute of all people, including societies and communities.

The term “universal heritage” was established in the 20th century. It was borrowed in International Law from its founder - the Dutch philosopher, lawyer and statesman Hugo Grotius. It was introduced into the modern circulation in 1967 when developing documents on the legal regulation of the sea bottom and its bowels, Arvin Pardo, representative of Malta to the UN. The further concept “Universal Heritage” was enshrined in the Agreement on the Activities of States on the Moon and other celestial bodies in 1979. [121]

V. O. Neshataeva noted that: “the concept of ‘cultural heritage’ becomes a generic concept at the international level and reflects the general trend of globalization in the international community, which entails severe changes in legal regulation ownership of cultural objects. The definition of objects belonging to the category of ‘cultural heritage’ is one of the most challenging legal issues of the modern period.” [122] It is also worth mention that cultural heritage is one of the essential foundations for the development of person as an individual. Moreover, this right includes its development in intellectual, spiritual, creative as well as cultural forms, as a whole, cultural heritage permeates all aspects of human life.

It must be pointed out that the topic of cultural heritage is still popular and also multifaceted. It includes both the linguistic heritage and the cultural heritage of others. This topic has been repeatedly emphasized by the UN Committee. According to the General comment no.

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[121] Жуков Дмитрий Валерьевич, “Право на Доступ к Культурным Ценностям: Сравнительно-Правовой Анализ Зарубежного Законодательства”, *Журнал зарубежного законодательства и сравнительного правоведения,* 4 (2017): 82.
[122] Ibid, 83.

21 the Committee states that: "cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others."[123]

Cultural heritage has two essential aspects. The first is the creative aspect - living culture - folk art and crafts, continually developing and updating. The second aspect of cultural heritage concerns its historical value - monuments of architecture and history, and the museum exhibits reminiscent of the past. These objects make people feel the continuity of their identity. [124]

In general, it turns out that cultural heritage is essential both in the life of the country as a whole and in the presence of each individual. It is also worth emphasizing that there is no single exact definition in the science of the concept of cultural heritage that would be universal for everyone. As a whole, under this concept, takes a specific part of the culture, it can be either material or non-material part, which was created over generations of a particular time. As a rule, what was created by these generations and accepted as a valuable and historically spiritual heritage.

For the first time, a detailed justification of the concept appeared in the UNESCO Convention on the "Protection of the World Cultural and Natural Heritage." The Convention includes "cultural heritage": places, ensembles and monuments that have outstanding universal value in terms of history, art, aesthetics, ethnology, anthropology or science. [125] It should be also outlined the **"**Framework Convention on the Value of Cultural Heritage for Society" according to which cultural heritage : "…cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time." [126]

Summing up the above definitions, it can be noted that cultural heritage can be divided into two groups, tangible and intangible. In turn, the tangible heritage includes buildings or specific places that carry an absolute value and significance (historical or cultural). To intangible

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[123] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 7 February 2020, https://www.refworld.org/docid/4ed35bae2.html.

[124] Медведева Н.В, Понятие «Культурное Наследие » и Основные Теоретические Подходы к Его Изучению, *Cyberlelinka*, Accessed 12 February 2020, https://cyberleninka.ru/article/n/ponyatie-kulturnoe-nasledie-i-osnovnye-teoreticheskie-podhody-k-ego-izucheniyu.

[125]"Convention Concerning the Protection of the World Cultural and Natural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 14 February 2020, https://whc.unesco.org/en/conventiontext/.

[126] "Framework Convention on the Value of Cultural Heritage for Society", Council of Europe, Accessed 12 February 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680083746.

can be attributed to some tradition, charters, customs, or a variety of languages, also intangible include parks or natural areas that have historically formed.

It is notable that cultural heritage does not have a single unified document in which everything would be clearly described. Therefore, the consolidation of this heritage is available in various international documents and treaties. As was previously indicated, cultural heritage was divided into groups, and therefore its protection has an essential nuance in International Law. Moreover, the preservation of the intangible heritage takes place in the law since according to it, all cultural identity is linked. Thus, the conservation of the intangible heritage is an important nuance, especially for protecting its integrity and stability and uniqueness.

It is also worth highlighting how the Committee highlighted about cultural heritage. In the General comment no. 21 states: **"**The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group: d)To have access to their own cultural and linguistic heritage and to that of others; In particular, States must respect free access by minorities to their own culture, heritage and other forms of expression, as well as the free exercise of their cultural identity and practices. This includes the right to be taught about one's own culture as well as those of others States parties must also respect the rights of indigenous peoples to their culture and heritage and to maintain and strengthen their spiritual relationship with their ancestral lands and other natural resources traditionally owned, occupied or used by them, and indispensable to their cultural life." [127]

In practice, there are also cases when there was a violation of the right to access to cultural heritage. As an example a case*, Akdaş v. Turkey*, can be used. According to it, the applicant translated an erotic novel which contained scenes of sexual intercourse with various practices, such as sadomasochism. After , the applicant was convicted under the Criminal Code and also ordered to destroy all copies. The Court in its judgment recognized that Turkey had violated the right of access to cultural heritage.[128]

Moreover, the court noted that: "It considers that the scope of this margin of appreciation, in other words, the recognition accorded to the cultural, historical and religious singularities of the member countries of the Council of Europe, cannot go so far as to prevent public access of a given language."[129]

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[127] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 14 February 2020, https://www.refworld.org/docid/4ed35bae2.html.

[128] "Case of Akdas v. Turkey", European Court Of Human Rights, Accessed 17 January 2020, http://hudoc.echr.coe.int/eng?i=001-97297. [70]

[129] Ibid.

It should be pointed out that cultural heritage includes many objects that have a great importance in life because the definition of cultural heritage has an important function. “Further, power differentials must be taken into consideration, as they impact on the ability of individuals and groups to effectively contribute to the identification, development and interpretation of what should be considered as a common “culture” or shared cultural heritage.”[130] Therefore, of particular importance is the participation of specific individuals or communities in resolving issues related to cultural heritage. This is due to respect for the human rights of the individual to participate in cultural life not only their own but also respect for the participation of the cultural life of other people.

As evidence for these types of cultural heritage, it can be given an example from Convention for the Safeguarding of the Intangible Cultural Heritage. According to Article 2 it states that : “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”[131] It is important to note that cultural heritage is a dynamic mechanism that includes many different objects that were inherently passed down from generation to generation. It is also worth noting that cultural heritage has the function of unification, which means that according to it, the past, present and future can be combined.

It should also be emphasized the hallmarks of cultural heritage. It can be :

1. Anthropogenic (cultural value is the result of a person’s creative activity);

2. Possession of a particular, usually extensive cultural significance (historical, artistic, scientific, etc.) for society;

3. Authenticity (in the absence of authenticity, an object or object loses its relevance)[132].

Also speaking about cultural heritage, it is worth noting that this can be considered as a particular form of heritage that individuals or communities are trying to pass on to the future. According to them, the person can convey not only a certain object or building, but also convey the meaning of the worldview as well as the essence of the subject. Cultural heritage is also worth accepting as a specific resource that contributes to the development of generations.

It should be also outlined the regulation of the cultural heritage in the sphere of law. According to the Article 15(1) of the ICESCR: “…the States Parties recognize the right of

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[130] “Report of the independent expert in the field of cultural rights”, United Nation, Accessed 14 February 2020, https://digitallibrary.un.org/record/680585.

[131] “Convention for the Safeguarding of the Intangible Cultural Heritage”, United Nations Educational Scientific and Cultural Organization, Accessed 14 February 2020, https://ich.unesco.org/en/convention.

[132] Медведева Н.В, Понятие «Культурное Наследие » и Основные Теоретические Подходы к Его Изучению, *Cyberlelinka*, Accessed 14 February 2020, https://cyberleninka.ru/article/n/ponyatie-kulturnoe-nasledie-i-osnovnye-teoreticheskie-podhody-k-ego-izucheniyu.

everyone to take part in cultural life." [133] Para. 16 of the Commentary no 21 suggest that there are some necessary conditions for the "full realization of this right on the basis of equality and non-discrimination". The first of these conditions is that of the 'availability' of cultural goods and services, including elements of both tangible and intangible cultural heritage.[134] It can be noted that according to this Comment, cultural heritage should be preserved, enriched and transmitted to future generations. This also means that humanity must take care to preserve and also restore certain places, monuments and other objects of cultural heritage. Moreover, it shows the fact that humanity seeks to transfer experience from generation to generation in order to create some dialogue between cultures. By doing this, it helps people to become rich in culture.

Furthermore, as suggested by these considerations of the Committee, "States obligations related to the right to take part in cultural life imply the respect and protection of cultural heritage in all its forms. In other words, although the General Comment does not explicitly mention a right to cultural heritage, it identifies the preservation and transmission of such heritage as a condition sine qua non for exercising the right to take part in cultural life."[135]

Article 3 of UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage states that: "States should take all appropriate measures to prevent avoid, stop and suppress acts of intentional destruction of cultural heritage, wherever such heritage is located."[136] Also, according to the Preamble – "cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights".[137] It can be noted that regulation in the field of cultural heritage has some common specificity, which lies in the fact that these articles emphasize general concepts and terms, as well as general characteristics for the protection of cultural heritage.

It is also worth mentioned that many aspects of human rights are related to cultural rights. Therefore, when studying the issue of cultural rights, many interrelated questions arise, such as whose competence is to protect cultural rights and who is responsible for this, as well as which objects should be protected. Also important is the fact of determining the limits of participation of specific categories of individuals and communities.

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[133] "International Covenant on Economic, Social and Cultural Rights", United Nations Human Rights Office of the High Commissioner, Accessed 14 February 2020, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx.
[134] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 14 February 2020, https://www.refworld.org/docid/4ed35bae2.html.
[135] Michele D'Addetta, "The Right of Access to and Enjoyment of Cultural Heritage", *Cultural Heritage Scenarios*, (2015-2017): 475.
[136] "UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 17 February 2020, http://portal.unesco.org/en/ev.php-URL_ID=17718&URL_DO=DO_TOPIC&URL_SECTION=201.html.
[137] Ibid.

According to the Article 1 of European Cultural Convention: "each contracting party shall take appropriate measures to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe." [138]

Furthermore, it is also outlined the Convention on the Value of Cultural Heritage for Society (Faro Convention). This convention also plays an essential role in the cultural heritage because it can attributed to the most significant in a given branch of law since it most of all regulates many vital points. "The Faro Convention is innovative in linking the concept of the common heritage of Europe to human rights and fundamental freedoms for which the Council of Europe remains one of the historic guardians. The Faro Convention provides an original contribution to the issues related to living together, quality of life and the living environments where citizens wish to prosper." [139]

According to Article 4 of the Faro Convention states that: "everyone, alone or collectively, has the right to benefit from the cultural heritage and to contribute towards its enrichment." [140] This statement once again emphasizes the importance of cultural heritage, not only as a mandatory fact for people but also for countries. It must be pointed out that in this Convention a considerable emphasis is placed on human rights in the field of cultural rights, which also emphasizes the importance of these rights.

It is also worth taking into account the definition of cultural heritage under this convention. According to Article 2 of Faro Convention : "cultural heritage is a group of resources inherited from the past which people identify, independently of ownership, as a reflection and expression of their constantly evolving values, beliefs, knowledge and traditions. It includes all aspects of the environment resulting from the interaction between people and places through time". [141] This definition draws particular attention to the environmental dimension, recognizing the inseparability of human and natural influences in landscape and also the inherited context of cultural environment. It thus goes beyond the concept of historic environment, which tends to be concerned mainly with tangible aspects of the inherited environment. [142] It should be pointed out that in this definition, the blow sending to the right of ownership, which makes it clear that the cultural heritage can be considered in different areas. On the one hand, it can be the legacy of one particular community; it can also be the legacy of

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[138] "European Cultural Convention", Council of Europe, Accessed 17 February 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/018.
[139] Ondřej Vícha, "The Concept of the Right to Cultural Heritage within the Faro Convention", *ICLR* 14, 2 (2014): 26.
[140] "Council of Europe Framework Convention on the Value of Cultural Heritage for Society", Council of Europe, Accessed 18 February 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/199.
[141] Ibid.
[142] Ondřej Vícha, "The Concept of the Right to Cultural Heritage within the Faro Convention", *ICLR* 14, 2 (2014): 26.

some different communities or groups of people. On the other hand, it should not discard the possibility of having the cultural heritage of individual people.

It should be emphasized it will be one or a group of people all of them become responsible for respecting this heritage as well as the heritage of other people. Once again, it emphasizes that specific measures must be applied to protect cultural heritage. "Exercise of the right to cultural heritage may be subject only to those restrictions which are necessary in a democratic society for the protection of the public interest and the rights and freedoms of others."[143]

Equally important is the question of the possibility and also the ability to preserve cultural heritage. It is all because time does not stand still and therefore, in the era of globalization as well as various technical developed; it is sometimes difficult to maintain or develop a cultural heritage. It is also worth mention that the preservation of cultural heritage at any time was a particular problem. This is primarily due to the fact that in the past there were certain conflicts as well as wars, which in the first place brought a lot of damage to the population. It is also worth taking into account the fact those specific communities that, for example, have some heritage, they don't want to put it on display by themselves, and they do not allow other members of the community to enjoy it. Of course, by doing so, these communities show an absolute disrespect for their ancestors and their history; but unfortunately, these moments still exist in our time.

It is also essential to consider the relationship between access to cultural heritage and the use of cultural heritage. In most articles of Conventions related to cultural heritage, the concept of access to cultural heritage was mentioned. But the focus will be put in detail, and it turns out that access and use are interconnected concepts that come up one by one. These concepts, in sum, have specific characteristics that are in the ability to know to participate, to use, as well as to visit certain cultural places with cultural heritage. Therefore, to solve conflicts in this matter, UNESCO created a document in which carefully described what it means by the concept of access to culture. According to the Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It especially Article 2 a: "access to culture is meant the concrete opportunities available to everyone, in particular through the creation of the appropriate socio-economic conditions, for freely obtaining information, training, knowledge and understanding, and for enjoying cultural values and cultural property."[144] Also worth considering the General comment No. 21 according to which: "Access covers in particular the

[143]"Council of Europe Framework Convention on the Value of Cultural Heritage for Society", Council of Europe, Accessed 18 February 2020, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/199.
[144] "Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It", United Nations Educational Scientific and Cultural Organization, Accessed 20 February 2020, http://portal.unesco.org/en/ev.php-URL_ID=13097&URL_DO=DO_TOPIC&URL_SECTION=201.html.

right of everyone — alone, in association with others or as a community — to know and understand his or her own culture and that of others through education and information, and to receive quality education and training with due regard for cultural identity".[145] These articles once again confirmed the fact that access to cultural heritage cannot be limited to a particular circle of people; that is, cultural heritage should be accessible to everyone without exception.

It is also important to note some elements related to cultural heritage. Firstly, it is a physical factor, which can manifest itself through accessibility through information technology.[146] Secondly, it is an accessible factor, which means that the information can be so accessible that the person himself can take advantage of finding and transmitting it. Thirdly, it is an economic factor which means such financial accessibility to this right that every person can use it.

It must be stressed that the fact that concerning cultural rights, not only there should be specific actions from people, but also they should be from the state. The state must act or not interfere with specific actions. In other words, the country has to protect human rights to access to cultural heritage, which means respect for these rights, implementation and protection. It is also important to emphasize that specific measures should be directed by the state to protect the cultural heritage (which in turn means that it should protect against unintentional interference), but at the same moment sometimes the state must refrain from them. According to paragraph 50 General comment no. 21, states parties are obliged to: "(a) Respect and protect cultural heritage in all its forms, in times of war and peace, and natural disasters; (b) Respect and protect cultural heritage of all groups and communities; (c) Respect and protect the cultural productions of indigenous peoples, including their traditional knowledge, natural medicines, folklore, rituals and other forms of expression".[147]

According to the points mentioned above, it can be emphasized that the state must protect and prevent any illegal actions. Moreover, what is essential in our time, the state must protect against illegal constructions or the exploitation of territories or lands that originally belong to minorities or people. But the state does not always comply with these points, and violations by the state itself are sometimes observed.

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[145] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 20 February 2020, https://www.refworld.org/docid/4ed35bae2.html.

[146] "Charter on the Preservation of Digital Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 20 February 2020, http://portal.unesco.org/en/ev.php-URL_ID=17721&URL_DO=DO_TOPIC&URL_SECTION=201.html#:~:text=The%20digital%20heritage%20consists%20of,form%20from%20existing%20analogue%20resources.

[147] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 22 February 2020, https://www.refworld.org/docid/4ed35bae2.html.

In the case *Debelianovi v. Bulgaria*, examined by the European Court of Human Rights, the applicants had obtained a court order for the return of a house that had belonged to their father and had been turned into a museum in 1956 after expropriation. The National Assembly introduced a moratorium on restitution laws with regard to properties classified as national cultural monuments. Although the Court found a violation of the right to property, on the ground that the situation had lasted for more than 12 years and the applicants had obtained no compensation, it held that the aim of the moratorium was to ensure the preservation of national heritage sites. Also in its judgement, the Court reiterated that: "The Court reiterates on this point that this implies the existence of a reasonable relationship of proportionality between the means employed and the aim pursued. In monitoring compliance with this requirement, the Court must conduct a global examination of the various interests involved and may be required to assess the behaviour of the parties to the dispute, including the means employed by the State and their implementation."[148] This case confirms the fact that sometimes the state takes measures that in one way or another have a negative attitude towards citizens.

It is also worth noting what the state should do for its part for the realization of the right to cultural heritage to have a positive effect. Firstly, specific programs should be created thanks to which any person will be able to access cultural heritage without any obstacles. Of course, it would be great if most of these programs were free so that the accessibility was at the highest level. Still, unfortunately, in the current realities, it is not always possible to achieve one hundred per cent. What is also important is the creation of such programs according to which cultural heritage will be supported; it can be programs that are created to restore and also preserve the cultural heritage.

In addition to internal functions to protect cultural heritage, the state also has specific international responsibilities. It may include assistance, cooperation or assistance between countries. This item has an important fact, because according to this fact, the state shows its attitude to others.

It should be mentioned that cultural heritage is regulated not only in Human rights law but also in other branches of law. For example in International Humanitarian law there is also a reference to cultural heritage "[s]ince the destruction of cultural heritage may be used as a strategy to undermine the moral condition of the enemy, cultural heritage is considered in international humanitarian law primarily as an object that requires special protection during armed conflict."[149]

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[148]"Case of Debelianovi v. Bulgaria", Department for the Execution of Judgements of the European Court of Human Rights , Accessed 22 February 2020, https://www.coe.int/en/web/execution/submissions-bulgaria.

[149] "Rome Statute of the International Criminal Court", International Criminal Court, Accessed 22 February 2020, https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf.

According to the case *Kordić & Čerkez* of the International Criminal Tribunal for the Former Yugoslavia, the destruction of cultural property for reasons of discrimination against a particular cultural community can be qualified as a crime against humanity. Also, the deliberate destruction of cultural and religious wealth and symbols can be considered as a fact confirming the intention to destroy a group of people within the meaning of the Convention on the Prevention of the Crime of Genocide.[150] These theses once again emphasize the importance of cultural heritage in the life of society and also shows the fact that cultural heritage is protected not only by a narrow sphere of human rights but also by other branch of law.

It is also worth noting that in the law of cultural heritage, the communities also play an essential role. Moreover, with the helping of these groups of people, the cultural heritage has the opportunity, first and foremost, to emerge, as well as to develop and convey certain values to generations in the future. To reaffirm the importance of local communities, it is worth noting that in 2007 the World Heritage Committee introduced one of the new strategic goals according to which states should strengthen the role of communities. "Besides, The Operational Guidelines considers local communities as partners and reinforces community involvement in nomination, management and monitoring, which is a significant step." [151]

Also, in the Convention for the Safeguarding of the Intangible Cultural Heritage states that: "communities, in particular indigenous communities, groups and, in some cases, individuals, play an important role in the production, safeguarding, maintenance and re-creation of the intangible cultural heritage, thus helping to enrich cultural diversity and human creativity." [152]

It should also be noted that those only by a single agreement are limited to the regulation of cultural heritage. UNESCO treaties also provide for an obligation to include cultural heritage issues in educational programs and to increase awareness of the existence and significance of cultural heritage. For example, in Article 27 of the Convention concerning the protection of the world cultural and natural heritage states: "the States Parties to this Convention shall endeavour by all appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect by their peoples of the cultural and natural heritage defined in Articles 1 and of the Convention."[153]

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[150] "*Kordić & Čerkez* (IT-95-14/2)", United Nations International Criminal Tribunal for The Former Yugoslavia, Accessed 20 February 2020, https://icty.org/case/kordic_cerkez.

[151] "The Operational Guidelines for the Implementation of the World Heritage Convention", United Nations Educational Scientific and Cultural Organization, Accessed 25 February 2020, https://whc.unesco.org/en/guidelines/.

[152] "Convention for the Safeguarding of the Intangible Cultural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 25 February 2020, https://ich.unesco.org/en/convention.

[153] "Convention Concerning the Protection of the World Cultural and Natural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 25 February 2020, https://whc.unesco.org/en/conventiontext/.

Moreover, it is worth noting that in Convention for the Safeguarding of the Intangible Cultural Heritage more specifically, the text sets what actions should be taken by the state for cultural heritage. According to the Article 14 states that : "(a) ensure recognition of, respect for, and enhancement of the intangible cultural heritage in society, in particular through, (i) educational, awareness-raising and information programmes, aimed at the general public, in particular young people; (ii) specific educational and training programmes within the communities and groups concerned".[154] It should also be emphasized that according to these articles, it can be concluded that States should take specific measures that are related to the preservation of cultural heritage. Of course, these measures have a recommendatory nature, but at the same time, it is worth noting that states should implement these measures. Since the cultural heritage can disappear, that is why all possible actions must support it.

Also speaking about the cultural heritage, which includes many different subparagraphs, it is worth noting one of the essential points that concern the development of regional or minority languages. One of the crucial documents in this area is the European Charter for Regional or Minority Languages. It should be pointed out that this Charter has a vital function in International Law. It also has a critical capacity: to help protect and develop historical regional languages as well as minority languages, which also implies the development of certain traditions as well as their maintenance. "Firstly, the Charter proclaims the goals and principles of which the contracting parties undertake to adhere to all regional and minority languages used on their territory: respect for the geographical boundaries of each language; the need for its development; promotion and / or encouragement of the use of these languages in written and spoken language, in public and private life (in assistance of appropriate measures of training and education, language exchanges with other states where they speak the same or similar languages). Secondly, the Charter establishes several specific measures to promote regional social and minority languages in public life. Each contracting party undertakes to fulfil at least 35 points or subparagraphs by selecting them from the above measures, including some mandatory standards selected from the "core" of the list." [155]

Summarizing all the above mention, it can also be noted that despite the availability of a sufficient number of documents that govern the theme of cultural heritage, there is still not enough one associated text in law that would cover all the problems and nuances. It is also worth noting that in practice it is also necessary to clearly describe what the cultural heritage is and

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[154] "Convention for the Safeguarding of the Intangible Cultural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 25 February 2020, https://ich.unesco.org/en/convention.

[155] "The European Charter for Regional or Minority Languages", Council of Europe, Accessed 25 February 2020, https://rm.coe.int/168007bf4b.

how to protect it since from year to year it sometimes happens that some elements already lose their function. Of course, this task is not simple but still feasible.

3.2 International Practice of Implementation of the Right to the Protection of Cultural and Natural Heritage

Preservation and protection of cultural heritage in modern conditions is not a new topic, but still prevalent. As a confirmation of this, it is seen that the number of conferences as well as publications of scientists still grow up from year to year. It should be noted that the importance of cultural heritage lies in it performs and a certain number of essential functions, contributes to raising the general culture to the highest level. At the same way, cultural heritage has tasks for the growth of the prevailing culture of the population. To go in more detail, cultural heritage can also be compared with the spiritual wealth of the whole humanity, following which culture, cultural exchange, and also all modern science are formed.

"In a broad sense, objects of cultural and natural heritage are kind of documents from which people read a variety of uses, including meaningful cultural information. The popularization of cultural heritage objects allows a person to save them in various iconic systems: copies, layouts, codes, texts, languages, dialects, folklore, rituals, etc. Accordingly, opportunities of cultural development become expanding". [156]

Many historical and cultural monuments are symbols of country, where they are situated, as its "calling card". For example: people associate the pyramids with Egypt or the Great Wall of China – with the Celestial Empire. According to Simon Anholt, an expert in foreign policy: "branding, cultural heritage shows the global perception of the heritage of each country and includes an assessment of the level of its modern culture."[157]

It is essential to note that the term cultural heritage is also used with the concepts of conservation and protection. The protection of cultural heritage is becoming more and more difficult from year to year, this is because there is no absolute stability, and it is understandable.

Many factors affect this situation: firstly, instability in the world, sometimes wars, and conflicts and also varying degrees of the case still occur; secondly – unpreparedness of the whole society for some world tasks. Of course, the protection of cultural heritage, as well as natural heritage, should be outside of all these situations, but unfortunately, they are interconnected.

It should be mentioned that the concept of protection of cultural heritage sometimes causes a double meaning in the aspect of the word protection. As a rule, everyone perceives this

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[156] Палий К.Р, "Реализация политики в области сохранения материальных объектов культурного наследия: европейский опыт", *Управленческое консультирование,* 12 (2018): 153.
[157] Anholt S, "Some important distinctions in place branding", *Place Branding* 1, 2(2005): 121.

at their discretion. As evidence of it, there is a case of *Ehrmann and SCI VHI v. France.* According to the materials, the artist transformed the 18th-century mansion into an art museum. However, changes in the building were not agreed with the local authorities. As a result, the owner of the alarm was fined for accidentally changing the landscape and repairing the wall. The general interest, which in the present case is constituted by the protection of heritage, requires that the applicants comply with certain planning regulations. The ECtHR found that there had been no violation of Article 10 in the present situation and that the actions taken by the applicants had violated domestic law and damaged cultural heritage. Therefore, the sanctions imposed by state courts are proportionate to the violation[158].

The whole 'world heritage'[159] has an essential role in all international relations and as a rule, serves as the basis for the development of international cooperation between countries. The 'world heritage'[160] is also an indicator of how countries recognize the values of other countries and interact with each other.

Before starting research on the protection of cultural heritage, first of all, it is necessary to determine what is meaning of the concept of 'protection'. In the dictionary, the term 'protection' means – "the activity of protecting someone or something."[161] In this case, under the concept of protection, some specific measures are taken in the field of human rights in cases where these rights are violated.

Moreover, one of the main reasons why the issue of protecting cultural heritage become popular is globalization and migration change. "Furthermore, the influence of demographic change on heritage in the context of globalization in the broadest sense also needs to be considered. It is no longer just a matter of the consequences of ageing societies, an extreme form of which can be found in China, for example, and exacerbated by that country's one-child policies. In particular, these concerns the qualification options that can ensure the future of young people in and for societies that are changing rapidly and thus require new forms of qualification."[162]

It should be pointed out that nowadays several issues are related to the guarantee and realization of cultural human rights, as well as in particular the rights to cultural heritage. There are specific reasons for this. Firstly, these rights, if secured, acquire an absolute social value that

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[158] "Case Ehrmann and SCI VHI v. France", European Court Of Human Rights, Accessed 30 April 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-500%22]}.
[159] "Convention Concerning the Protection of the World Cultural and Natural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 01 March 2020, https://whc.unesco.org/en/conventiontext.
[160] Ibid.
[161] "Definitions for protection", Definitions, Accessed 01 March 2020, https://www.definitions.net/definition/protection.
[162] Marie-Theres Albert, Birgitta Ringbeck, *40 Years World Heritage Convention* (Germany: Walter De Gruyter GmbH, 2013), 122.

implies particular action. Secondly, these actions must be performed by someone. Often the state acts as the subject. The state has one of the main functions to protect cultural rights. But how the state will provide this depends on himself. Also in the sphere of the implementation of these rights, certain factors can be identified that in one way or another can affect the effectiveness of enforcement:

1. Social factor;
2. Political factor;
3. Economic factor.

"In legal science, there is no unity of views on the problem of types of guarantees of rights and freedoms in the field of culture. The following two large groups of such guarantees can be distinguished:

1. international legal (ratification of international legal acts on human rights, international judicial protection of human rights, international legal sanctions, etc.);
2. domestic (political, socio-economic, legal).

Recently, the role of international forms and means in the realization of person's rights and freedoms in general and in the field of culture, in particular, has grown significantly."[163]

Furthermore, not everything depends only on the state. This chain can also include various kinds of the organization as well as a person. In this case, it is worth starting with a consideration of the protection of cultural heritage at the regional level.

The world community recognized the importance of cultural and natural heritage in case that heritage is one of the ways to develop the life of humanity. Therefore, it is imperative to maintain its integrity for future generations. Thus, the loss of such an essential element of culture will soon lead to a crisis and a lack of general knowledge. Of course, globalization has become easier to maintain the vital activity of heritage objects. At the same time, now it is no longer possible to return those objects that were destroyed before.

The first mention of the protection of cultural heritage was already in the 19th century. "In 1889, as part of the world exhibition in Paris, the First International Congress on the Protection of Works of Art and Monuments was held about some essential questions. During the Congress, participants spoke about the importance of developing an international convention on the protection of cultural heritage during the war and the creation of the Red Cross of monuments".[164]

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[163] "Protection of Cultural Heritage", Council of Europe, Accessed 1 March 2020, https://www.coe.int/t/dg4/majorhazards/ressources/pub/handbookfiles/4c.pdf.

[164] Astrid Swenson, " 'Heritage' on Display: Exhibitions and Congresses for the Protection of Ancient Monuments at the World's Fairs 1855-1915", *Junior Visiting Fellows' Conferences*, 19 (2006), https://www.iwm.at/publications/5-junior-visiting-fellows-conferences/vol-xix/astrid-swenson/.

Then, in 1904, Nicolay Roerich developed the idea of protecting cultural and historical works of art at the First International Congress for the Protection of Works of Art and Monuments.[165] Therefore, the Roerich Pact can be considered as one of the first international acts in the field of cultural heritage protection.

Later, in 1964, the International Charter for the Conservation and Restoration of Monuments[166] was adopted. This Charter emphasized the need to preserve the monuments to pass them to future generations as a spiritual heritage and the role of each state in their care and proper care.

To go in more detail, a Council for Cultural Cooperation was found in the framework of the Council of Europe[167]. There are four Committees in this Council that are related to culture and education. One of them is the Committee on Cultural Heritage, which helps to solve tasks under the European Cultural Convention.

Among the countries of the Commonwealth of Independent States, there is a similar Council. It is called the Council for Cultural Cooperation of States[168]. Furthermore, within the framework of this Council, Working Groups on the cultural policy of states have been created which, in turn, hold many conferences and various types of events. It is worth noting that at the primary stage of the development of cultural heritage, there are still definite results in the field of creating some norms as well as tasks.

Therefore, not only European countries defined a concept of protection as well as the preservation of cultural heritage. As an example, American states can also be cited. "Within the framework of the Organization of American States, there are several instruments for the protection of cultural human rights. An essential document is the American Convention on Human Rights of 1969, as well as the Protocol of San Salvador-Additional Protocol in the field of economic, social and cultural rights of 1988."[169]

According to this Protocol, States must take measures to ensure the full realization of this "right to the good of culture", must guarantee the freedom necessary for scientific research and creative activity, and should encourage international cooperation in the field of science, culture and art. The Convention on the Protection of the Archaeological, the historical and

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[165] "U.S.Committee of the Blue Shield", Roerich Pact, Accessed 02 March 2020, https://uscbs.org/1935-roerich-pact.html.

[166] "International Charter for the Conservation and Restoration of Monuments and Sites", International Council on Monuments and Sites, Accessed 02 March 2020, https://www.icomos.org/charters/venice_e.pdf.

[167] Publications Office of the European Union, Accessed 03 March 2020, https://op.europa.eu/en/web/eu-vocabularies/at-concept/-/resource/authority/corporate-body/COU_EUR_CDCC/ .

[168] Совет по культурному сотрудничеству государств – участников СНГ, Accessed 03 March 2020, http://cis.minsk.by/page/11148 .

[169] "Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights", United Nations High Commissioner for Refugees, Accessed 03 March 2020, https://www.refworld.org/docid/3ae6b3b90.html.

artistic heritage of the American states in 1976 "contributes to the protection of the cultural rights of Americans".[170]

It is important to point out that the cultural heritage, as well as its protection, is a priority not only in Europe and the American States. In general, all countries deal with this issue. As an example of the African continent, considerable attention is also paid to the protection of cultural heritage, and this is not strange. A large number of cultural heritage is preserved in such countries in case its culture is unique and perfect, and therefore, people are sympathetic to all this and invest a big contribution to this.

Within the framework of the Organization of African Unity, and then within the framework of the African Union, a number of acts were adopted to address this issue. The most important documents are the African Cultural Charter of 1976[171], the African Charter of Human and People Rights of 1981[172] and the Charter cultural revival of Africa 2006[173]. The development and protection of moral and traditional values recognized by society is the duty of the state. Besides, Article 22 of the Charter states "that all peoples have the right to their cultural development, with due regard to their freedom and identity and with equal access to the common heritage of humanity. According to Article 29 of the Charter, a person "is obliged to maintain and strengthen positive African cultural values in his relations with other members of society in the spirit of tolerance, dialogue and consultation and, in general, contribute to strengthening the moral foundations of society."[174]

Today, the protection of cultural heritage is perceived as a critical mission not only for its countries of origin but also for the whole world community. This is confirmed, in particular, by the growing attention of the United Nations to this issue, as well as the intention of states to develop new international legal instruments aimed at protecting cultural heritage objects[175].

Further, as regards the state itself, it is clear that almost every state is a party to a treaty in the field of cultural rights and is also a party to international organizations in this sphere. In turn, international agreements in the field of cultural rights establish certain boundaries for the

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[170] "Convention on the Protection of the Archeological, Historical, and Artistic Heritage of the American Nations (C-16)", The Organization of American States, Accessed 03 March 2020, http://www.oas.org/en/sla/dil/inter_american_treaties_C-16_Convention_Protection_Archeological_Heritage.asp.

[171] "Cultural Charter for Africa", United Nations Educational Scientific and Cultural Organization, Accessed 04 March 2020, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/CulturalCharterAfrica.PDF.

[172] "African Charter on Human and Peoples' Rights", African Commission on Human and Peoples' Rights, Accessed 04 March 2020, https://www.achpr.org/legalinstruments/detail?id=49

[173] "Charter for African Cultural Renaissance" , United Nations Educational Scientific and Cultural Organization, Accessed 04 March 2020, http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Dakar/pdf/CharterAfricanCulturalRenaissance.PDF.

[174] "African Charter on Human and Peoples' Rights", African Commission on Human and Peoples' Rights, Accessed 04 March 2020, https://www.achpr.org/legalinstruments/detail?id=49.

[175] "Members of the Intergovernmental Committee", United Nations Educational Scientific and Cultural Organization, Accessed 03 March 2020, http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/intergovernmental-committee/members/.

implementation of these rights and also determine their content. Also, the task of each state is manifested in the practical implementation of these norms. There are cases when the state signs on paper to fulfill obligations, but in reality, there is nothing. Therefore, as a rule, the state itself has a function to protect the cultural and natural heritage and also to develop all the necessary implementation mechanisms.

In the Preamble to the Resolution 2347 (2017), which was adopted by the Security Council at its 7907th meeting, on 24 March 2017, was stressed that "the unlawful destruction of cultural heritage, and the looting and smuggling of cultural property in the event of armed conflicts [...] and the attempt to deny historical roots and cultural diversity in this context can fuel and exacerbate conflict and hamper post-conflict national reconciliation, thereby undermining the security, stability, governance, social, economic and cultural development of affected States"[176].

It should also be emphasized that the UN Security Council also took part in the protection of cultural heritage. One of the Security Council briefings unanimously adopted "Resolution No. 2347 on measures to protect the cultural heritage from terrorists and in situations of armed conflict"[177]. This resolution was taken after the protection of the cultural heritage was undergoing an inevitable collapse at this stage.

As it was mentioned above, enough norms and acts in the areas of cultural and natural heritage have been adopted. It shows that the world community has realized the need to create specific mechanisms that will regulate all issues related to this industry. Despite the fact of adoption by the community of the entire cultural base, there are still some problems. One of the main issues is that all the norms that are adopted, they based on democratic principles as well as on the state's consciousness regarding the proper implementation of everything. However, sometimes it happens that the policy of the country is oriented in a different spectrum. Therefore, there will be some problems with the execution of some resolutions and obligations.

Each state, under its actions, should protect cultural as well as natural heritage, because it is not only a national treasure but also a part of the entire world heritage. Regrettably, nowadays, some countries are not able to take care of cultural and natural heritage due to particular circumstances, maybe even due to different political or financial interests. One of the best examples is Kosovo.

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[176] "UN Security Council adopts historic resolution for the protection of heritage", United Nations Educational Scientific and Cultural Organization, Accessed 03 March 2020, https://en.unesco.org/news/security-council-adopts-historic-resolution-protection-heritage.

[177] "UN Security Council Highlights the Role of Cultural Heritage for Peace and Security", United Nations Educational Scientific and Cultural Organization, Accessed 03 March 2020, https://en.unesco.org/news/security-council-highlights-role-cultural-heritage-peace-and-security.

The temples of Kosovo are the most significant part of the heritage of the Serbian state. In Kosovo, more than anywhere else, various trends were felt, representing the cultures of the eastern and western world. In architecture and sculpture, stylistically sophisticated forms coexisted and intertwined, sometimes creating completely unexpected symbioses. "Since the deployment in 1999 of the United Nations international military and civilian forces in this part of the territory of the Republic of Serbia, the problem of preserving and protecting the Serbian cultural heritage as part of the European cultural heritage has become one of the priorities. Therefore, the Regulation of Resolution 1244 on "Places of the Serbian Heritage" was adopted. Nevertheless, this resolution did not begin to be implemented."[178] Of course, this is only a cursory look at the current situation, but at the same time, it is an excellent example of how politics and all other factors can harm the protection of the heritage. "According to the statistical data Kosovo has 41 geomorphological objects with national and international importance. Of them, 19 objects have international importance (international scale), with 14 belonging to glacial relief and 5 belonging to periglacial relief), and 3 objects have regional (Balkan) importance".[179] Despite so many cultural and natural heritage sites, Kosovo is still not a member of UNESCO.

However, all internal and external conflicts are extreme ways to resolve conflicts; they are still present in our realities. As a result, these conflicts usually cause significant damage not only to people but also to several other elements; national culture can also be attributed to this. Of course, after the end of the conflict, the restoration will require a lot of funds to resume them.

The number of threats to elements of cultural heritage does not always depend only on the state itself. Indeed, globalization, as well as all the processes that are associated with it, makes a great contribution to the life of people, moreover this progress sometimes causes certain losses to the people. Nowadays it is not new that the destruction of heritage can be due to the human factor, this may include many different actions related to human being.

It must be pointed out of another case of a gross violation of the cultural heritage, where the person was found guilty in the International Criminal Court for the destruction of cultural heritage. "An activist of an Islamic group was sentenced by The Hague court to nine years in prison for the destruction of architectural monuments located in Timbuktu (Mali)."[180] This case once again proves that the attitude to the protection of cultural heritage does not always have the same meaning, and sometimes the human factor prevails over everything. In most cases, a lot depends on the whole state and on which vector of policy it has chosen.

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[178] А.Х. Абашидзе, "Прогрессивное развитие международного права по вопросу защиты объектов культурного наследия", Accessed 04 March 2020, https://www.sovremennoepravo.ru/m/articles/view.

[179] Behxhet Mustafa, Avni Hajdari1, Valmir Mustafa, Bledar Pulaj, "Natural Heritage in the Republic of Kosovo: Looking for Potential UNESCO Sites", *Landscape online* 63, 16 (2018): 5.

[180] "Mali Islamist jailed for nine years for Timbuktu shrine attacks", BBC News, Accessed 04 March 2020, https://www.bbc.com/news/world-africa-37483967.

In general, the state has a full choice of freedom as regards the implementation of cultural rights, though all measures should be built on a non-discriminatory basis. Additionally, everything that is accepted by the state should be following all human rights standards. It is also worth pointing out that not all measures that should be taken by the state are material in nature. Therefore the implementation of some of them does not require significant investments or some specific implementation procedure. As an example, access to cultural heritage does not always have only the material side, but also the spiritual side. Thus, in any case, the state for itself should characterize specific goals for the full realization of cultural rights and gradually move towards it.

"In particular, the UN Committee on Economic, Social and Cultural rights encourages States parties to make the greatest possible use of the valuable cultural resources that every society possesses and to bring them within the reach of everyone, paying particular attention to the most disadvantaged and marginalized individuals and groups, in order to ensure that everyone has effective access to cultural life"[181].

It also should be stressed that nowadays states should go beyond the framework that relates to the exercise of cultural rights. Moreover, everything often is limited to museums, libraries and monuments, but this is not only the whole essence of cultural heritage. It also includes specific measures that relate to intangible objects, and it may be language, tradition or knowledge. Therefore this right is more progressively facilitated by their enforcement since these objects themselves can be classified as intangible.

Today, there are some new tendencies in the protection of cultural heritage in the doctrine of International Law:

1. "the transition from the protection of only outstanding monuments to the protection of historical buildings reflecting the lifestyle of ordinary people city dwellers"[182];
2. "the shift from protection only tangible heritage for the safeguarding of the intangible heritage, which includes traditions, lifestyle"[183];
3. "the transition from the protection of only monuments to the protection of monuments of the XX century"[184];
4. "the active participation of society, especially residents, in the preservation of cultural heritage"[185];

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[181] "General comment no. 21, Right of everyone to take part in cultural life (art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights)", Refworld, Accessed 05 March 2020, https://www.refworld.org/docid/4ed35bae2.html.

[182] "Сохранение и Возрождение Малых Исторических Городов – Путь к Возрождению Величия", Совет Федерации федерального Собрания Российской Федерации России, Accessed 05 March 2020, http://council.gov.ru/events/news/17435/.

[183] Ibid.

[184] Ibid.

5. "the integration of heritage into the daily life of the city and its transformation into an integral and obligatory element"[186].

Moreover, the protection of cultural and historical monuments is one of the priority areas of activity of most countries. After all, these objects are essential in society as well as they are inherently valuable and unique. That is why, in addition to the state itself, public organizations and the same various movements of citizens should also be involved in this protection, because of this whole well-coordinated system, an excellent result can be obtained at the end.

Consequently, all the strategies and methods that the state will translate into reality in the field of cultural rights: firstly must be created in the field where there were not adequate methods of protection. The constitutions of many countries indicate an obligation to protect cultural heritage and also recognize the right to access to cultural heritage. In this case, this demonstrates the importance that is attached to the cultural heritage of the states. No doubt, all these goals must have the same meaning: that access must be unlimited, and also must be aimed at preserving it.

Problems arise in obtaining information on cultural heritage recognition procedures in some countries. Still, efforts are being made to ensure the participation of individuals and communities, in particular, in resolving issues related to the intangible heritage and so on. The experience of Austria, Syria and Portugal can be used as a model example.

> In Austria, […] groups and individuals create, support and transmit the intangible heritage; holders and custodians of traditions may, with the consent of the respective communities, request the inclusion of an element of tradition in the national register of cultural heritage sites. Syria encourages the participation of holders and custodians of traditions in the process of identifying cultural heritage, and communities take an active part in protecting it. In Portugal, there are specific examples of the participation of stakeholders and groups in the process of establishing cultural heritage, as well as a national register of intangible cultural heritage, which will soon be published on the Internet with the aim of ensuring the maximum participation of communities, groups and individuals in preserving their intangible heritage and compiling registers.[187]

It is not a secret that every self-respecting state will try to take at least minimal steps regarding cultural and natural heritage. Still, again, everything is always individual and depends on many factors.

Canadian researchers have identified four significant roles for the state regarding cultural heritage:

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[185] Ibid.
[186] Ibid.
[187] "Report of the independent expert in the field of cultural rights", United Nation, Accessed 7 November 2019, https://digitallibrary.un.org/record/680585.

"1. "Architect" – assistance to the socio-cultural sphere by the state is part of its program to improve the welfare of society. State support is expressed in long-term direct financing.

2. "Engineer" – all means of cultural activity are in the possession and disposal of the state. It supports art that meets its political goals.

3. "Assistant" – the country focuses on supporting and developing non-profit professional and amateur art. The state does not intervene in the meaningful processes of cultural activity, but with the help of tax benefits, it stimulates financing of the cultural sphere by individuals and corporations. Management tools, in this case, are limited to determining the number of tax benefits.

4. "Patron" – the state encourages artistic excellence through scholarships and grants."[188]

Furthermore, it would be appropriate to come up with a fifth example. The name of it will be "Pest", which implies the complete inactivity of the state in the field of cultural heritage and a desire to not help in any way in the development of the heritage.

Definitely, it should be pointed out that the state has the right to control certain aspects in the field of cultural heritage and this is logical without any control the state will lose touch with all elements of the heritage. It even has evidence in the case *Beyeler v. Italy*:

> "The Court considers that the control by the State of the market in works of art is a legitimate aim for the purposes of protecting a country's cultural and artistic heritage. The Court points out in this respect that the national authorities enjoy a certain margin of appreciation in determining what is in the general interest of the community […]. As regards works of art by foreign artists, the Court observes that the UNESCO Convention of 1970 accords priority, in certain circumstances, to the ties between works of art and their country of origin. It notes, however, that the issue […] does not concern the return of a work of art to its country of origin. That consideration apart, the Court recognises that, in relation to works of art lawfully on its territory and belonging to the cultural heritage of all nations […][189].

It is also possible to single out certain principles which should be adhered to state and society. These principles constitute specific guidelines and norms that can be enshrined in the national legislation of countries. Norms can be determined on the basis of the analysis of international and national bases. It may include:

1. The neutrality of cultural heritage because it will help in the future from the solution of many national conflicts;

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[188] С. М. Шестова, "Принципы Охраны Всемирного Культурного Наследия и Глобальные Вызовы", *Вестник МГУКИ 6*, 68 (2015): 125.

[189] "Case of Beyeler v. Italy", European Court of Human Rights, Accessed 05 March 2020, https://www.ilsa.org/Jessup/Jessup17/Batch%201/Judgment%20of%20the%20ECHR-%20Beyeler%20v.%20Italy%20-2000.pdf.

2. Popularization of heritage;
3. Bringing to public information related to cultural heritage;
4. Harmless access to cultural heritage.

Moreover, all the methods for solving cultural and natural heritage protection issues must be understandable, logical and acceptable for resolving. It is also worth mention that countries should exchange their experience with each other, because, as a rule, this helps in the future development of international relations. Moreover, cooperation between countries allows the formation of specific criteria as well as the opportunity to introduce new practices in the industry. This cooperation should always be present because it is part of the international exchange. Also, according to such participation, financial assistance can be involved, which is also an essential nuance in the field of preservation of cultural and natural heritage.

The last one significant fact about the natural heritage should be outlined. "The concept of natural heritage is linked to another concept of International Law – sustainable development. Preservation of the common heritage requires the achievement of sustainable development of all countries. The interests of both developed and developing countries should be taken into account. These two concepts mostly carry the idea of the rational use of natural resources and respect for the environment."[190]

Summarizing all the above mentioned, first of all, the importance of cultural and natural heritage for society, state and all world should be stressed. Secondly, such heritage has the unique and absolute value according to which history can transmit from generation to generation. Thirdly, the cultural heritage is a reflection of the country's strength, so its conservation should be carried out at a high level.

3.3 Role of the UNESCO in Protection of Cultural and Natural Heritage

Nowadays, one of the glaring issues of our time is the protection of cultural and natural heritage both in a single country and in the whole of humanity. It is one of the most important components of world well-being since the cultural connection is transmitted from ancestors to descendants thanks to this precisely this. International Law also comes to the rescue, because it regulates many vital issues in the field of cultural and natural heritage protection. It should be stressed that the development of international relations contributes to the development of cultural and natural heritage. One of such organizations that operate in this sphere in International Law is UNESCO.

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[190] А. С Изануров, "Исторические этапы формирования международно-правовой базы в сфере защиты культурного наследия человечества", *Вестник АГУ*, 3 (2017): 33.

"Cultural diversity is expressed in numerous subcultures replete with their respective preferences in terms of traditions, art, economy or religion. The needs and expressions of humanity, marked by national or regional, cultural or social influences, make it possible for people to understand and interpret their own histories, also allowing them to overcome present challenges and shape their futures."[191]

Therefore, sometimes it is necessary to revise all the methods and approaches according to which the heritage is developed and protected. After all, it carries both the preservation of the past and the movement into the future of all humanity, therefore, different methods are needed to preserve and also protect it, at different levels. Modern law is a collection of various documents of different fields of activity and also of different legal significance. In International Law, there are also documents of international and regional importance that in turn regulate the activities of various bodies in the field of cultural and natural heritage. International organizations play a vital role in the issue of cultural and natural rights, they are also subjects of International Law and; moreover, they are an influential element. Among all, UNESCO as organization occupies one of the most critical positions.

It can be emphasized that the UNESCO's Charter founded "for the establishment of member bodies of national commissions on communication and coordination of participation of various governmental institutions and associations in its activities it is due to the breadth of the organization. National commissions, as an independent body, perform essential functions and can significantly contribute to the expansion of international cooperation"[192].

It should be mentioned that there is a tendency that there is an increasing number of threats to cultural heritage monuments as well as threats to natural heritage sites in the world. That is why several essential documents in such sphere to prevent harmful effect appear.

UNESCO took the first steps in the field of heritage protection in 1954 in the Hague Convention.[193] It was the first international document where was mention the protection of cultural heritage. This step showed the importance of safeguarding the cultural heritage of the world community and the fact that specific measures are still possible in this area.

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[191] Marie-Theres Albert, Birgitta Ringbeck, *40 Years World Heritage Convention* (Germany: Walter De Gruyter GmbH, 2013), 179.

[192] "Manual of the General Conference, 1973 edition, including texts and amendments adopted by the General Conference at its seventeenth session, Paris, 1972", United Nations Educational Scientific and Cultural Organization, Accessed 05 March 2020, https://unesdoc.unesco.org/ark:/48223/pf0000246811.

[193]" Convention on Civil Procedure", Hague Conference on Private International Law, Accessed 06 March 2020, https://www.hcch.net/en/instruments/conventions/full-text/?cid=33.

The main UNESCO goals are "protection of the world's inheritance of books, works or art and monuments of history and science, and recommending to the nations concerned the necessary international conventions."[194]

In 1972, at the General Assembly of UNESCO in Paris:

> [r]epresentatives of the participating countries pointed out that certain weaknesses still existed at the national level in the protection of cultural and natural heritage, and the "Convention Concerning the Protection of the World Cultural and Natural Heritage" came into being. The standard for classification of 'World Heritage' is therefore the heritage's own value; therefore the entire heritage around the world with 'outstanding interest' or 'outstanding universal value' would be eligible to be listed, thus facilitating conservation in the country where the heritage is located. To some extent, the classification made in the "World Heritage Convention" actually reflects the common understanding of the heritage officials of the States Parties."[195]

In the modern world, the cultural policy of each country is usually a definite system that includes many subparagraphs. Still, the main goal of this system is to develop cultural heritage and its preservation. Of course, in every country, this appears at different stages and also in various forms but what unites all these countries is the awareness of people in the importance of this issue. Moreover, countries try to take an example from more developed countries, and those in turn, in, take an example from UNESCO.

In general, "UNESCO summarizes a particular platform for negotiations, according to which the settlement of issues is carried out. The UNESCO program in the field of culture assumes that acquaintance and knowledge of the culture of different countries contribute to a mutual understanding of peoples, and this is a guarantee of peace in the minds of people. It is fashionable to attribute to the main problems facing UNESCO:

- preserve the cultural heritage of various peoples with all its local, national and regional characteristics;
- make the best cultural values widely available to the people who are their creator;
- to promote the development of exchange in the field of culture through the application of modern methods of disseminating knowledge about the culture."[196]

Even though these problems are a priority for UNESCO, but their implementation does not depend only on this organization, but also on the countries of participants, too. Because these points they deserve full support as well as the approval of various entities.

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[194] "Constitution of the United Nations Educational, Scientific and Cultural Organization", United Nations Educational Scientific and Cultural Organization, Accessed 10 March 2020, http://portal.unesco.org/en/ev.php-URL_ID=15244&URL_DO=DO_TOPIC&URL_SECTION=201.html.

[195] "Convention Concerning the Protection of the World Cultural and Natural Heritage", United Nations Educational Scientific and Cultural Organization, Accessed 10 March 2020, https://whc.unesco.org/en/conventiontext/.

[196] "Protecting Our Heritage and Fostering Creativity", United Nations Educational Scientific and Cultural Organization, Accessed 10 March 2020, https://en.unesco.org/themes/protecting-our-heritage-and-fostering-creativity.

It is equally important to note that in its work, UNESCO also collaborates with some international organizations that are also related to the cultural sphere. Here may be indicated the "International Council of Museums"[197],"the International Theatre Institute"[198], "the International Union of Architects"[199], as well as several other organizations. Moreover, all of the above organizations are inferior in their methods and ways of acting. In comparison with them, UNESCO has the most active policy in the field of cultural and natural heritage. At the same time, all UNESCO activities are built on a particular system without punishment. Accordingly, these decisions are based on the phrase "support the initiative", and then, as a rule, it goes on consideration by the state itself.

In the field of protection, it is also worth mention the Stockholm Declaration [200], which also made some contribution in this sphere. Even though the provisions of this convention are not obligatory, but it reflects all those values that the international community spoke. One of the reasons for the adoption of this declaration is related to the environmental problem. These problems often arise due to the absence or insufficient development of countries in this area. This declaration calls all countries to revise their vision of the problems that are associated with the work of humanity. Also calls for thinking about future generations and understanding the fact that humanity must have a definite common goal according to which everyone will act.

Principle 21 of the Stockholm declaration states: "In accordance with the Charter of the United Nations and the principles of International Law, states have the sovereign right to develop their own resources in accordance with their environmental policy and are responsible for ensuring that so that activities within their jurisdiction or control do not harm the environment of other states or areas beyond the limits of national jurisdiction."[201] Moreover, one of the purposes of this declaration can also be called as a kind of educational work. It also has a place to be in modern society, because the influence of a person on the world around it, as a rule, does not always bring a positive effect.

One more essential achievements of UNESCO is a World Heritage Centre[202]. This centre is a massive structure which includes many elements. One of the main functions of this centre is that it places objects of cultural and natural heritage "on a specific list, according to which all necessary measures will be carried out in the future. Listing a property on the World

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[197] International Council of Museums, Accessed 10 March 2020, https://icom.museum/en/about-us/.
[198] International Theatre Institute, Accessed 12 March 2020, https://www.iti-worldwide.org/.
[199] "The International Union of Architects", Accessed 13 March 2020, https://www.uia-architectes.org/webApi/en/about.
[200] "Declaration of the United Nations Conference on the Human Environment", Audiovisual Library of International Law, Accessed 13 March 2020, https://legal.un.org/avl/ha/dunche/dunche.html.
[201] Ibid.
[202] "World Heritage Centre", United Nations Educational Scientific and Cultural Organization, Accessed 14 March 2020, https://whc.unesco.org/en/about/.

Heritage List is an essential step for the country that owns the property. After all, this contributes to the broad representation of its culture, the attraction of tourists from foreign countries, and the support provided by UNESCO in preservation and development of cultural heritage objects"[203].

As of 2019, the World Heritage List contains: "1121 objects, of which 869 are cultural, 213 are natural, and 39 are mixed in 167 countries of the UNESCO Convention for the Protection of the World Cultural and Natural Heritage."[204]. Moreover, each object has its identification number. These figures show that countries interested to be in cooperation with UNESCO as well as they are interested in the future of their country. After all, these figures are increasing every year, which indicates the awareness of this problem of cultural and natural heritage, and the importance of its protection.

It should be stressed that the inclusion of a particular object in the UNESCO list gives positive and negative sides. Talking about the positive sides it can be seen:

1. 'Popularity' and also soon the possibility of developing this object as a popular tourist destination. It will enable the country to increase the level of tourism and get income from it. "According to it, a joint program of the World Heritage Centre and the EU General Directorate created a document called "World Heritage Routes EU". This framework consists of four thematic routes which combine into a single tourist system world heritage sites with lesser-known European sites heritage, local creative industries and elements of intangible heritage."[205].

2. " 'Financing' since the object of cultural or natural heritage will be protected, it will be possible to get financial support. It can be both from the local budget and UNESCO."[206] This also means that the integrity and safety of the object will be ensured through funding.

3. 'Informational popularity' means that it will be written in different resources books and booklets about it. Individual conferences or scientific meetings are also possible, according to specific issues. In general, the popularity of the object will be relevant not only among tourists but also among the countries themselves and even scientists.

Regards to the negative sides:

1. Despite the popularity among tourists, it will also have an imprint from the negative side. In case the number of tourists is usually not regulated - therefore it can cause damage to the safety of this object.

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[203] Ibid.
[204] "World Heritage List", United Nations Educational Scientific and Cultural Organization, Accessed 17 March 2020, http://whc.unesco.org/en/list.
[205] "Site Managers Forum", United Nations Educational Scientific and Cultural Organization, Accessed 17 March 2020, https://whc.unesco.org/en/events/1394/.
[206] "65 ways UNESCO benefits countries all over the world", United Nations Educational Scientific and Cultural Organization, Accessed 17 March 2020, https://unesdoc.unesco.org/ark:/48223/pf0000190306.

2. The next point is regarding the preservation of the object during military conflicts or any threats. As practice shows, during such actions, the objects are destroyed because, in these situations, it is difficult to maintain integrity and safety.

Thus, the inclusion of the object in the UNESCO World Heritage List [207] has both positive and negative sides. As a rule each year, the process of approving an object becomes stricter, and the process is more laborious. It is done for the purpose that objects that are potential to be included have to be genuinely significant for the world and society

Also, an essential element in the activities of UNESCO was the creation of a "Single Database"[208]. The nature of this base was preceded by the fact that the turnover of the illegal movement of objects of cultural heritage was growing. Therefore, it was necessary to stop this flow somehow. The UNESCO Database of National Cultural Heritage Laws was founded in 2003 as an international solution to combat the illicit traffic of cultural property: "by compiling on the Internet the national laws of its Member States, UNESCO offers all stakeholders involved […] a complete and easily accessible source of information. In the event of a legal question about the origin of an object (which may have been stolen, pillaged, or illegally exported, imported or acquired), it is useful to have rapid access to the relevant national laws"[209].

As the example, "the World Heritage Fund provides about $4 million annually to support activities requested by States Parties in need of international assistance. It includes compulsory and voluntary contributions from the States Parties, as well as from private donations."[210]

Despite such colossal amounts for safeguarding heritage, it is also worth paying attention to how they are formed. "UNESCO members make certain payments, according to which the budget is formed, but not everything is so perfect and simple because according to February 29, 2020, there is a debt for the countries participating at that time, this amount amounted to $ 2,026,212."[211] These figures show once again that despite the very active activity of this organization, not everything depends only on its working methods.

It should also be noted another relevant UNESCO document –"Declaration concerning the Intentional Destruction of Cultural Heritage."[212]. Besides the fact that one of the UNESCO

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[207] "World Heritage Centre", United Nations Educational Scientific and Cultural Organization, Accessed 14 March 2020, https://whc.unesco.org/en/about/.
[208] "UNESCO Databases of Resources on Education", United Nations Educational Scientific and Cultural Organization, Accessed 17 March 2020, https://en.unesco.org/themes/education/databases.
[209] "UNESCO Database of National Cultural Heritage Laws", United Nations Educational Scientific and Cultural Organization, Accessed 17 March 2020, https://en.unesco.org/cultnatlaws.
[210] "World Heritage Fund", United Nations Educational Scientific and Cultural Organization, Accessed 19 March 2020, https://whc.unesco.org/en/funding/.
[211] Ibid.
[212] "UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage". United Nations Educational Scientific and Cultural Organization, Accessed 19 March 2020, http://portal.unesco.org/en/ev.php.

goals is to preserve the cultural heritage, but there is still another essential goal, one of it- is protection. “Such declaration clearly describes what constitutes intentional destruction it is defined as “an act committed to destroying cultural heritage in whole or in part, thereby undermining its integrity, in a way that constitutes a violation of International Law or an unjustified attempt on the principles of humanity and requirements of public consciousness.”[213] Moreover, the criminal liability for such actions indicated in this declaration.

The adoption of these acts “is committed to the fact that they sometimes are ‘cultural purges’. They take to a new level the practice of terrorizing the population by attacking even its history and are an immediate threat to cultural rights, which requires a prompt and thoughtful response from the international community.”[214]

Still, in all pluses, there is a minus of UNESCO’s activities. Some countries accuse UNESCO of being a politicized organization in one way or another. There are several reasons for this:

1. Some countries claim that there is such a practice according to which, other countries try to promote some military monuments as a cultural heritage. Thereby they decide to change the course of history.

2 This is the suspension of membership of some countries. At the moment, “the United States and Israel suspended their membership”[215], thereby cease to pay membership dues. Both countries accused UNESCO of anti-politics concerning these countries. The United States plans to carry out further participation in the activities of the organization only in the status of an observer state. It is worth emphasizing that the United States accounted for a significant share of UNESCO funding “since American contributions accounted for at least 22% of the organization’s total budget”.[216]

Summing up, it is notable that now UNESCO is one of the crucial organizations that take care about the cultural and natural heritage. Moreover, according to this organization, many countries can negotiate among themselves which in future can prevent to appear some problems between them.

UNESCO, in its activity, also faces with many problems in the form of exposure from different angles by different methods. With the activity from UNESCO countries that are writing down, some difficulties can count on some help. Indeed, UNESCO receives a specific

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[213] Ibid.
[214] “Report of the Special Rapporteur in the field of cultural rights”, United Nations Educational Scientific and Cultural Organization, Accessed 19 March 2020, https://www.refworld.org/docid/56f174dd4.html.
[215] “Member States List”, United Nations Educational Scientific and Cultural Organization, Accessed 20 March 2020, https://en.unesco.org/countries.
[216] “Convention Concerning the Protection of the World Cultural and Natural Heritage”, United Nations Educational Scientific and Cultural Organization, Accessed 14 February 2020, https://whc.unesco.org/en/conventiontext/.

compassionate allowance which helps countries to improve living standards. After all, one of the main goals of this organization is to increase demand for cultural heritage objects thereby when countries; they help primarily those objects that are in these countries.

UNESCO has all the potential in the future to become one of the top organizations. According to which level of awareness will increase and the whole world, heritage will be protected as well as in integrity and security. Thus, UNESCO will be able to coordinate and propose some new methods as well as different proposals in this area, thereby gaining the support of states.

Taking everything into account, such conclusions can be done. Firstly, the cultural and natural heritage or the world heritage is common property; therefore, to prevent its destruction, it is needed a precise regulation with penalties. Moreover, this regulation should be carried out among all countries for which the further fate of their people is essential. Secondly, people should take a responsible approach to preserve this heritage, because protection primarily depends on the awareness of citizens. Thirdly, the concept of sustainable use of heritage should be regulated, and there should be a specific regulatory framework.

It is clear that people current attitude towards the preservation of heritage has already a different approach and significance than it was in the past. This fact shows the development of the nation and the people as a whole. This awareness cannot block the nuance that many monuments and even villages have already been destroyed, and as a result, it is impossible to restore them. Of course, nature itself (flood fires as well as any other phenomena) also poses a threat to the destruction of heritage. Therefore, it is crucial, as far as possible, to maintain the heritage and contribute to it.

CONCLUSIONS AND RECOMMENDATIONS

1. There is increasing attention to cultural rights on the current stage of international relations and states development. Despite the fact of prevalence, there is no single and accurate definition of the concept of cultural rights. The reason for this is because cultural rights are so closely linked to other human rights that it is sometimes difficult to draw a line between cultural and other rights. The recognition of cultural rights is an indispensable prerequisite for the exercise of other human rights.

2. As the concept of cultural rights is comparatively modern, simultaneously complex and combines a plurality of natural and cultural diversity each scholar interprets it differently. Meanwhile, there is still no single definition of whether these are individual or group rights. Summing up a certain number of approaches, it can be admitted that cultural rights are universal rights that have an essential function to reflect the spiritual and cultural aspects of people's lives, that make it possible for everyone to enjoy these rights. The aim of cultural rights is to provide spiritual development of human beings and self-expression, respecting his/her dignity on an equal and non-discriminative basis.

3. Nowadays, the protection of cultural rights is carried out both at the international and national levels. At the international level, there are several universal mechanisms for the protection of cultural rights, which fairly often are enshrined in international documents, that mostly contain soft law provisions. States should transfer these mechanisms to their national legal systems. Furthermore, the protection of cultural rights at the European level is related to the insufficient fixation of cultural rights in national legal systems, e.g., the absence of a defined list of rights and protection mechanisms. The constitutions of some European states covers the issue of cultural rights superficially. In this regard, states are recommended to amend their national legislation and guarantee the exercising of these rights by citizens and other people.

4. Analysis of judicial decisions demonstrates that the most common causes of violation of cultural rights arise due to incorrect implementation of international protective mechanisms into national legal systems. States, aiming to reduce the number of lawsuits due to violations of cultural rights, could eliminate typical breaches of cultural rights through legislation amending. Wherein states should also investigate the best national practices and consider it.

5. As for regulation at the European level, the main goal of states is to create an effective harmonized mechanism for protecting cultural rights. However, at this stage, some nuances are usually associated with the fact that there is no unified cultural policy in all states, and, as a result, there is no single approach to the restrictions that may apply to cultural rights. It is brightly demonstrated by the judgements of national courts and ECtHR, which stressed about increasing of illegal restrictions of these rights by the states.

6. The right to artistic expression and creation is one of the main varieties of cultural rights and, at the same time, human freedom. In general, this right can be described as the ability of an individual to create objects for the benefit of society in a manner that is pleasing to the author. The main objective of this right is the freedom of expression of views and thoughts of the author. Also, this expression should not be influenced by any factor, except for the restrictions that are provided for by international instruments. States should implement existing international standards to protect this right in national legislation and judicial practice.

7. Moreover, as the case-law of ECtHR shows, the right to artistic expression is very often controversial in terms of restrictions in this area. Therefore, as one of the recommendations, states should establish clear limits, that could be applied to the right of artistic expression and creation, fixing the boundaries of what is prohibited in artistic terms. It will be a kind of preventive method, which helps states to recognize the prerequisites for violations of cultural rights and prevent such violations.

8. The cultural and natural heritage unites the past, present, and future generations. Therefore, it has substantial value and popularity. Moreover, this heritage can be characterized as vulnerable as it is frequently destroyed that usually occur during international conflicts and national disorders. Accordingly, the right to access cultural and natural heritage is one of the most critical cultural rights, which must be protected both on international and national levels. In general, on the international level, there are precise mechanisms for their protection, e.g., recommendations, guidelines and comments of international bodies and organizations. As for the national level, some issues arise here, related to the implementation of these mechanisms.

9. The protection of cultural and natural heritage is mainstream research in modern doctrine. The importance of protecting cultural heritage has already been established as it is an integral part of the development of humanity. Therefore, special attention was given to this topic. As it was demonstrated in this investigation, a lot of factors affect the implementation of protection of this right. It is also imperative to be able to maintain the integrity of these objects, and the same need to understand their importance for future generations.

10. UNESCO's activities are inherently multifaceted. One of the significant directions in its activity is the protection of cultural and natural heritage. UNESCO, in its activities, organically supplements certain obligations and also has precise decision mechanisms. This international organization adopted many relevant documents, as well as put into effect various protection programs. It also has the opportunity to assist countries in the implementation of cultural and natural rights provisions. Therefore, the existence of this organization benefits not only for the world's cultural and natural heritage but for the particular state.

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ABSTRACT

Haiduk A. / Protection of Cultural Rights / Master thesis in International Law. Supervisor — Doc. dr. Dovilė Gailiūtė-Janušonė Vilnius: Mykolas Romeris University, Mykolas Romeris Law School, Institute of International and European Union Law, 2020.

Cultural rights, by its nature, are one of the possibilities of expressing views as well as different desires of a person. Therefore the protection of these rights is one of the direct tasks of International Law. Master thesis “Protection of Cultural Rights” is devoted to examining cultural rights as a separate group of human rights based on existing norms of International Law, as well as analysing the provisions aimed at protecting them through: specifying the notion of the concept “cultural rights”; outlining the mechanisms for protecting cultural human rights at the level of International Law in general and the European continent in particular; analyzing what the right to artistic expression and creation and the right to access to cultural heritage as the examples of the cultural rights mean and what mechanisms of International Law protect these rights; considering the necessity of protection of cultural and natural heritage and impacts from International Law’s provisions on these processes; and establishing the role and functions of UNESCO in the protection of cultural and natural heritage.

Master thesis “Protection of Cultural Rights” is divided into general and specific parts, which provide the definition of the concept of cultural rights; International Law’s mechanisms of cultural rights regulation and protection; legal regulation of the right to artistic expression and creation as a kind of cultural rights; the examination of the mechanisms of its protection in International Law; the problematic aspects of protection of cultural and natural heritage, which has a special current interest for present and future generations, as well as international tools, which are intended to protect the right to access to cultural heritage; the determination UNESCO as a specialized international organization, one of the goals of which is the protection of the world's natural and cultural heritage.

Keywords: cultural rights, right to artistic expression and creation, cultural and natural heritage, UNESCO.

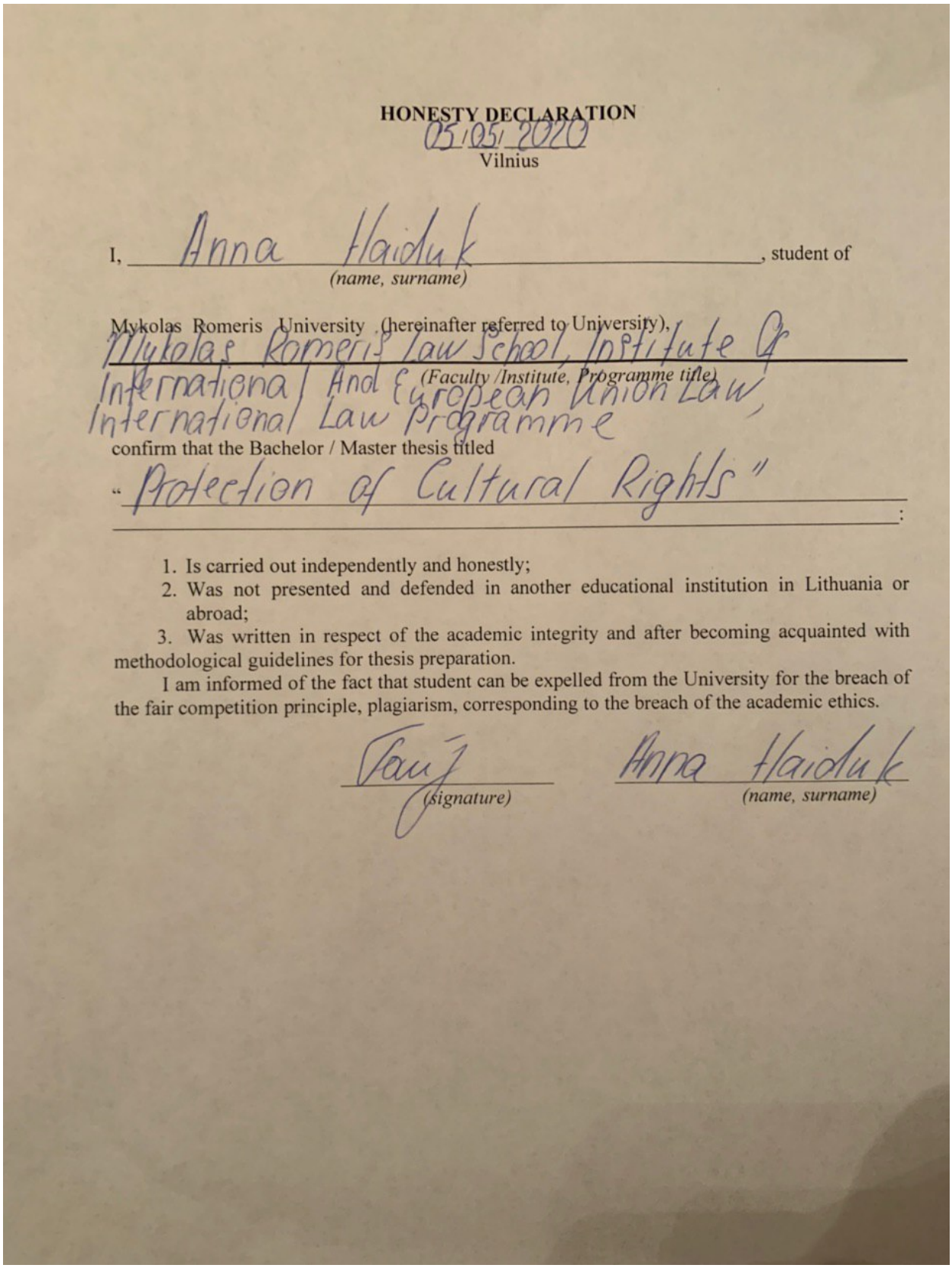
SUMMARY

Cultural rights are often characterized as underdeveloped compared to other human rights. Master thesis “Protection of Cultural Rights” has a goal to examine cultural rights as a separate group of human rights based on existing norms of International Law, as well as analyze the protective provisions. The main objectives of the research are the following: to specify the notion and historical development of the concept “cultural rights” in International Law; to outline the mechanisms for protecting cultural human rights on International and European Law level; to analyze the scope and particularities of the right of artistic expression and creation and the right to access to cultural heritage as the part of cultural rights and the existing legal mechanisms of their protection in International Law; to consider the necessity of protection of cultural and natural heritage and impacts from International Law’s provisions on these processes; to determine the role and functions of UNESCO in the protection of cultural and natural heritage.

Master thesis “Protection of Cultural Rights” is divided into general and specific parts, which provide the definition of the concept of cultural rights; International Law’s mechanisms of cultural rights regulation and protection; legal regulation of the right to artistic expression and creation as a kind of cultural rights; the examination of the mechanisms of its protection in International Law; the problematic aspects of protection of cultural and natural heritage, which has a special current interest for present and future generations, as well as international tools, which are intended to protect the right to access to cultural heritage; the determination UNESCO as a specialized international organization, one of the goals of which is the protection of the world's natural and cultural heritage.

As a result of the study, the following conclusions can be made: 1. There is no single and accurate definition of the concept of cultural rights because cultural rights are so closely linked to other human rights that it is sometimes difficult to draw a line between cultural and other rights. 2. The aim of cultural rights is to provide spiritual development of human beings and self-expression respecting his/her dignity on an equal and non-discriminative basis. 3. Nowadays, the protection of cultural rights is carried out both on the international and national levels. 4. The main goal of states is to create an effective harmonized mechanism for protecting cultural rights. 5. The right to artistic expression and creation is one of the main varieties of cultural rights and at the same time human freedom and can be described as the ability of an individual to create objects for the benefit of society in a manner that is pleasing to the author. 6. The protection of cultural and natural heritage is a mainstream research in modern doctrine. 7. One of the UNESCO's significant directions in its activity is the protection of cultural and natural heritage.

HONESTY DECLARATION



HONESTY DECLARATION

05/05/2020
Vilnius

I, Anna Haiduk, student of
(name, surname)

Mykolas Romeris University (hereinafter referred to University),
Mykolas Romeris Law School, Institute Of International And European Union Law, International Law Programme
(Faculty /Institute, Programme title)

confirm that the Bachelor / Master thesis titled

"Protection of Cultural Rights":

1. Is carried out independently and honestly;
2. Was not presented and defended in another educational institution in Lithuania or abroad;
3. Was written in respect of the academic integrity and after becoming acquainted with methodological guidelines for thesis preparation.

I am informed of the fact that student can be expelled from the University for the breach of the fair competition principle, plagiarism, corresponding to the breach of the academic ethics.

Anna Haiduk
(signature) *(name, surname)*