

Cultural Heritage as an Object of Legal Protection in the Conditions of Digitalisation

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Abstract. This paper examines cultural heritage as an object of legal protection in the context of digitalisation. It analyses international, European and national legal frameworks and identifies key challenges related to copyright, digital reproduction and the management of digital cultural resources.

Keywords: Cultural Heritage, Digitalisation, Legal Protection, Copyright, Digital Heritage.

1 Introduction

Digitalisation of cultural heritage undoubtedly creates a number of new opportunities, not only for its preservation, but also for broader access by anyone who has an interest and wishes to come into contact with it. At the same time, this process and the broad access it provides give rise to new legal issues related to the protection and management of digital cultural resources, and to limiting abuses in this access. The aim of the present study is to analyze cultural heritage as an object of legal protection in the current rapid pace of its digitalisation, by examining international, European and national normative acts that regulate it. The challenges facing the contemporary legal framework in the digital environment are analyzed. The study examines the need to modernize and adapt the legal framework in view of the developing processes of digital transformation and points out new directions for the effective protection and preservation of cultural heritage.

2 Cultural Heritage as an Object of Legal Protection

Cultural heritage possesses cultural, historical, artistic and scientific value and is regarded as an important part of the national identity and cultural memory of society. Its preservation and safeguarding ensure the continuity of this identity and memory between generations. It also plays an important role in the cultural exchange between different states. Therefore, its protection is an important legal task. The legal protection of cultural heritage is carried out through a number of international, European and national normative acts. These acts provide a definition of the concept of “cultural

heritage” and regulate its types, as well as its preservation, use, management and dissemination.

A) In international law, a **definition of “cultural heritage”** is established in the Convention concerning the Protection of the World Cultural and Natural Heritage of 1972 (adopted by UNESCO on 16 November 1972 and promulgated in the State Gazette, No. 44 of 27 May 2005) (UNESCO, 1972). The Convention is the fundamental international framework for the protection of cultural heritage. Article 1 states that “cultural heritage” shall be understood as: first, monuments – architectural works, works of sculpture or monumental painting, elements or structures of an archaeological nature, inscriptions, caves and groups of elements of outstanding universal value from the point of view of history, art or science; second, groups of buildings – groups of separate or connected constructions which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; and third, sites – works of man or the combined works of nature and man, as well as areas including archaeological sites which are of outstanding universal value from the point of view of history, aesthetics, ethnology or anthropology. The legal and regulatory framework of cultural institutions and the international conventions of UNESCO have also been examined in the academic literature (Velev, 2019).

In the Republic of Bulgaria, a definition of the concept of “cultural heritage” is contained in the Cultural Heritage Act (CHA, promulgated in the State Gazette (SG), No. 19 of 13 March 2009) (Zakon za kulturnoto nasledstvo, 2009). It is stated that “cultural heritage encompasses intangible and tangible immovable and movable heritage as a set of cultural values that are carriers of historical memory, national identity and possess scientific or cultural value” (Art. 2, para. 1 of the CHA). Article 2, para. 2 of the CHA stipulates that “cultural values are public property and are protected by state and municipal authorities in the interest of the citizens of the Republic of Bulgaria.”

From the outlined definitions it follows that cultural heritage is a set of tangible and intangible values created in the course of the historical development of society.

In the time in which we live, creating conditions for widespread digitalisation, cultural heritage also acquires new forms through which it exists, namely: digital archives, electronic libraries and virtual museums. These new forms create new concepts, and the concept of “digital cultural heritage” is increasingly becoming established, encompassing cultural resources created or presented in digital form and accessible through digital technologies. According to the UNESCO Charter on the Preservation of Digital Heritage, it represents unique resources of human knowledge and expression, created in a digital environment or converted into digital form from existing analogue resources (UNESCO, 2003).

B) Cultural heritage consists of various cultural values, each of which is an object of legal protection. There are **different types of cultural values**, which are classified according to different criteria depending on their nature and form of manifestation. The most common division is into tangible and intangible cultural values. Tangible cultural values are objects with a physical existence that possess historical, artistic or scientific value, while intangible ones include spiritual and cultural manifestations transmitted

between generations, such as traditions, customs, folklore, rituals, festivals, and traditional knowledge and skills.

a) According to international acts, tangible cultural values include monuments, groups of buildings (ensembles), and sites (Art. 1 of the Convention concerning the Protection of the World Cultural and Natural Heritage of 1972 (UNESCO, 1972)). Pursuant to Article 2 of the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 (adopted on 17 October 2003 and promulgated in the State Gazette (SG), No. 12 of 7 February 2006) (UNESCO, 2003), cultural heritage also includes intangible forms, namely: “the practices, representations and expressions, knowledge and 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...”.

b) In Bulgarian legislation, a classification of tangible and intangible cultural values is also adopted. Article 7, para. 1 of the Cultural Heritage Act (CHA) (Zakon za kulturnoto nasledstvo, 2009) establishes that “a cultural value is an intangible or tangible testimony of human presence and activity, a natural feature or phenomenon that is significant for the individual, the community or society and possesses scientific or cultural value.”

In addition to this division, Bulgarian legislation also classifies cultural values as: archaeological, which include archaeological finds and sites related to material evidence of the life and activities of people in the past; historical, which represent objects and documents that are significant for the study of the historical development of society; artistic, encompassing works of fine art, sculpture, architecture and other artistic manifestations that possess high aesthetic value; scientific, which include objects and documents that are significant for the development of science and scientific knowledge, etc. (Art. 6 of the Cultural Heritage Act (CHA) (Zakon za kulturnoto nasledstvo, 2009)).

c) In the context of digitalisation, alongside the traditional division into tangible and intangible cultural values, a new form is also emerging – the digital form of cultural value, which leads to the emergence of new types of cultural heritage. Within the framework of the digital form, cultural values may be classified as digitized, i.e. the conversion of existing physical cultural objects into digital format (digitized cultural objects), and digitally created heritage, where cultural content is created directly in a digital environment and has no physical original (cultural resources originally created in a digital environment) (Cameron & Kenderdine, 2007). Another classification includes digital archives, virtual museums, digital libraries, and 3D models of cultural objects.

While tangible and intangible cultural values are subject to established legal protection at the international, European and national levels, the digital form of cultural value requires the development and adaptation of the existing legal framework. It would not be an exaggeration to assume that the digital form of cultural value should be established as an independent object of legal protection. In this context, it is also necessary to consider the application of principles of state responsibility in cases of damage, loss or improper management of digital cultural values (Ivanova, 2018).

C) The protection of cultural heritage is regulated at several levels: international, European and national. The aim of this multi-level legal framework is to ensure, to the greatest extent possible, the safeguarding, preservation and management of cultural values.

a) At the international level, the acts of UNESCO are of primary importance. These include:

- The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 (adopted on 21 April 1954 and ratified by Decree No. 154 of the Presidium of the National Assembly of 26 May 1956, in force for Bulgaria since 7 November 1956) (UNESCO, 1954). It was adopted under the auspices of UNESCO due to the mass destruction of cultural property during the Second World War. The Convention establishes the principles and measures for the safeguarding and protection of cultural property during armed conflicts, obliging states to take actions to prevent their destruction, damage or unlawful appropriation.
- The Convention concerning the Protection of the World Cultural and Natural Heritage of 1972 (UNESCO, 1972), which regulates the national and international protection of cultural and natural heritage, the structure and powers of the Intergovernmental Committee for the Protection of the World Cultural and Natural Heritage, as well as the conditions and procedures for providing international assistance.
- The Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 (UNESCO, 2003b), which establishes the international principles for the protection and safeguarding of intangible cultural heritage.
- The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted on 14 November 1970 and ratified by Bulgaria in 1971) (UNESCO, 1970). It regulates international measures for combating the illicit trafficking of cultural property and cooperation between states for the protection of cultural heritage.
- The Universal Copyright Convention (adopted on 6 September 1952 and ratified by Bulgaria in 1975) (UNESCO, 1952). The Convention establishes international standards for the protection of copyright in works of literature, science and art. It also creates guarantees for the international protection of copyrighted works.
- The Convention on the Protection of the Underwater Cultural Heritage (adopted on 2 November 2001 and ratified by Bulgaria in 2003) (UNESCO, 2001), which regulates the international rules for the protection of cultural objects located underwater.
- The Convention on the Protection and Promotion of the Diversity of Cultural Expressions (adopted on 20 October 2005 and ratified by Bulgaria in 2006) (UNESCO, 2005). It regulates the international principles for the protection and promotion of cultural diversity and the development of forms of cultural expression.
- The Charter on the Preservation of Digital Heritage (adopted on 15 October 2003) (UNESCO, 2003a). It provides one of the first internationally recognized

definitions of the concept of “digital heritage”. It outlines the need for the long-term preservation of digital resources, accessibility of digital heritage, and the development of national strategies for the digital preservation of cultural heritage. According to the UNESCO Charter, digital heritage includes resources of human knowledge and cultural expression that are “created in a digital environment or converted into digital form from existing analogue resources”, with the former (“born digital”) having no existence other than the digital object.

b) At the European level, the protection of cultural heritage is carried out through European acts and policies adopted mainly within the framework of the Council of Europe and the European Union, such as:

- The European Cultural Convention (adopted on 19 December 1954 and ratified by Bulgaria on 25 April 1997) (Council of Europe, 1954). It was adopted within the framework of the Council of Europe and its aim is to promote cooperation between European states in the fields of culture, education and the protection of cultural heritage.
- The Convention for the Protection of the Architectural Heritage of Europe (adopted on 5 October 1985 and ratified by Bulgaria in 1991) (Council of Europe, 1985). The Convention establishes a legal framework for the protection, maintenance and integration of the architectural heritage of Europe.
- The European Convention on the Protection of the Archaeological Heritage (Revised) (adopted on 16 January 1992 and ratified by Bulgaria on 31 May 2000) (Council of Europe, 1992). It is also known as the Valletta Convention. It represents a revision of the earlier European Convention on the Archaeological Heritage of 1969.
- The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (27 October 2005) (Council of Europe, 2005). Bulgaria has signed it but has not ratified it. The Convention emphasizes the right of every person to participate in cultural life and the active role of society in the protection and management of cultural heritage.
- Within the framework of the European Union, the protection of cultural heritage is also implemented through a number of policies and programmes, such as funding programmes (for example Creative Europe), the report of the European Union on the digitisation, accessibility and preservation of cultural heritage (European Commission, 2019), the Recommendation of the European Commission of 10 November 2021 on a common European data space for cultural heritage (European Commission, 2021), as well as the expert guidelines developed by the European Commission containing key principles for the 3D digitisation of cultural heritage (European Commission, 2020). All of them consider cultural heritage as a fundamental resource for the social, cultural and economic development of the European Union.

c) At the national level, the legal framework for the protection of cultural heritage is mainly regulated in the Cultural Heritage Act (Zakon za kulturnoto nasledstvo, 2009), which determines the conditions and procedures for the protection, preservation, research and promotion of cultural values. At the national level, the legal framework related to the use of cultural works in a digital environment is contained in the Law on

Copyright and Related Rights (promulgated in the State Gazette (SG), No. 56 of 29 June 1993) (Zakon za avtorskoto pravo i srodnite mu prava, 1993). The law regulates the exclusive rights of authors over the reproduction and distribution of works (Art. 18 of the Law on Copyright and Related Rights (Zakon za avtorskoto pravo i srodnite mu prava, 1993)), as well as the cases of free use, including for educational, scientific and cultural purposes (Art. 24 of the Law on Copyright and Related Rights (Zakon za avtorskoto pravo i srodnite mu prava, 1993)), which is also relevant to the processes of digitalisation of cultural heritage.

D) The role of law in the protection of cultural values is to regulate their protection, preservation and management, as well as to ensure that they will be passed on to future generations. This is achieved, first of all, through the establishment of a legal regime that determines which objects are considered cultural values and introduces special rules for their protection, use and management, as well as procedures for the identification, registration and declaration of cultural values, and the conditions for their conservation and restoration. Secondly, through legal norms, administrative and criminal sanctions are established in cases of unlawful destruction, damage, illegal excavations, trafficking or export of cultural values. In this way, law performs both a preventive and a repressive function. Thirdly, through the adoption of international and European acts, common standards for the protection of cultural heritage are created and cooperation between states in this field is encouraged. Fourthly, through law the access of society to cultural values is also regulated, with law playing the role of an arbiter between the interests of society, the state and the owners.

3 Digitalisation of Cultural Heritage and New Legal Challenges

In the context of rapidly developing digital technologies, the digitalisation of cultural heritage is becoming increasingly important. Digitalisation contributes to its preservation and promotion, but it also raises new legal issues regarding the protection and use of digital cultural resources. According to UNESCO, digital heritage represents “unique resources of human knowledge and expression, created in digital form or converted from existing analogue resources” (UNESCO, 2003).

A) The Process of Digitalisation of Cultural Heritage represents a set of activities aimed at converting tangible cultural values (artifacts, documents, works of art, architectural objects, etc.) into digital form, which allows them to be preserved and made accessible to a wider range of people. This process goes through several stages. First, a selection and identification of the cultural objects to be digitized is carried out, based on their historical, scientific, artistic or cultural value. This is followed by the preparation of the objects for digitalisation, which includes their inspection, cleaning or stabilization. The process continues with digital capture (scanning or photographing), whereby the cultural object is converted into digital format through the use of various technologies such as high-resolution photography, 2D scanning, 3D scanning, photogrammetry, laser scanning, etc. This is followed by the processing of

the digital files and the creation of metadata. Finally, the digital files are stored and archived, and access to and use of them is ensured.

Access may be provided through online catalogues, digital libraries, virtual museums and scientific databases. Digital cultural heritage is regarded not only as a technological process but also as a new form of interpretation and presentation of cultural resources in a digital environment (Cameron & Kenderdine, 2007). The digitalisation of cultural heritage facilitates scientific research, expands access to cultural values, and also promotes cultural heritage in a global digital environment.

B) Although the legal framework contributes to the digital transformation, a number of **challenges facing this process** are also evident, similar to broader developments in digital legal systems and electronic justice (Ivanova, 2023). The creation, preservation and dissemination of digital copies raise new questions regarding the legal regime of cultural values. In the academic literature, the following groups of problems are most commonly highlighted:

a) The main challenges are related to the protection of copyright and related rights over the works that are digitized. Issues concerning copyright, the public domain and access to cultural resources in a digital environment are examined in detail in the academic literature (Guibault & Hugenholtz, 2006). This is due to the fact that not all cultural objects are in the public domain. In addition, digital reproduction, online publication or the provision of access through electronic libraries may require the consent of the rights holders. Questions also arise regarding the rights over the digital copies themselves (photographs, 3D models, digital databases). This creates legal uncertainty both for authors and for platforms.

b) Expanded access to cultural values is of great importance in the digitalisation of cultural heritage; however, at the same time, this broad public access creates the need for a legal regime to regulate it. It is necessary to explicitly regulate who has the right to use digital content, what the conditions are for reproduction, sharing or publication, and how free access to cultural heritage can be balanced with the legal protection of the content.

c) It is also necessary, through appropriate legal frameworks, to guarantee the protection of the authenticity of cultural values. In the process of digitalisation, it should be ensured that digital copies are accurate and reliable, that manipulation or unauthorized alteration of cultural content is not allowed, and that the link between the original object and its digital representation is preserved.

d) It is also necessary to pay attention to the fact that digital content is distributed globally, which also raises a number of legal problems. First, piracy and the illegal distribution of digital content are increasing due to the easy access to online platforms and the complexity of cross-border control, which places authors and content creators in a disadvantageous position. Second, there are differences in the legal regimes governing copyright in different countries. Third, there is a need for coordination between international organizations and states in the protection of digital heritage. At the international level, a number of legal acts should be adopted with the aim of regulating the issues outlined above and harmonizing these acts with national jurisdictions. This should be done as quickly as possible, considering the pace at which digitalisation is developing.

C) The long-term preservation of digital data is also a legal and institutional issue, in order to protect cultural heritage from loss, technological obsolescence or cyberattacks. Appropriate legal acts should define and outline the powers of the institutions responsible for maintaining digital archives.

4 Perspectives for the Development of Legal Protection in the Context of Digitalisation

The development of information technologies and digital platforms leads to significant changes in the ways cultural heritage is preserved, studied, managed and promoted. Digitalisation provides a number of new opportunities for access to cultural values; at the same time, however, challenges related to the protection of cultural content in a digital environment are also present. A balance can and must be found only through law. This creates a need for the development and adaptation of the legal framework so that it can effectively guarantee the protection of cultural heritage in the context of digitalisation.

A) The legal framework needs to be adapted to the digital environment. At present, legislation in the field of cultural heritage and copyright mainly regulates the protection of tangible cultural objects. In the context of digitalisation, however, new legal relations arise. This requires the updating of legal norms, both national and international, so that they reflect the specific characteristics of the digital environment, including issues related to online access to cultural resources, the management of digital collections, and the protection of copyright in digital content. In this process, international and European standards are of particular importance, such as the recommendations of international organizations, which contribute to the harmonization of national legislation among different states and encourage them to develop policies for the protection of digital cultural heritage. Although such instruments already exist, such as the Charter on the Preservation of Digital Heritage (UNESCO, 2003a), at the European level this also includes the Recommendation of the European Commission of 27 October 2011 on the digitisation and online accessibility of cultural material and digital preservation (2011/711/EU), which encourages Member States to expand access to cultural heritage through digital technologies (European Commission, 2011). In the same direction is the Europeana initiative (Europeana Foundation, 2020), which brings together digital collections from museums, libraries and archives in Europe and creates a common space for access to European cultural heritage. Nevertheless, in the field of cultural heritage and copyright, the legal framework is still not fully developed and effective.

B) Effective protection of cultural heritage in a digital environment also requires the development of long-term policies for the digital preservation of cultural resources. This again is a matter within the competence of law. It should regulate these policies for the creation of digital archives, electronic libraries and online platforms for access to cultural collections. Unified legal standards for digitalisation should be established to guarantee the quality and sustainability of digital copies. At present, in this area there are mainly the programmes of UNESCO.

C) State institutions, museums, archives, libraries and various cultural organizations play a key role in the process of digitalisation and the legal protection of cultural heritage. They actively participate in the creation and maintenance of digital collections. Cooperation between them at the national level, as well as between national and international institutions and organizations, is particularly important for the exchange of good practices and for the development of effective mechanisms for the protection of cultural heritage in the global digital environment (Valkova, 2024).

D) In view of the challenges we face in the digital era in which we live, it is necessary to improve the legal regulation in the field of cultural heritage. Possible directions for development include: the creation of clearer rules regarding the digitalisation and use of cultural resources in electronic form; the promotion of open access to digital cultural collections while respecting copyright; as well as the strengthening of international cooperation in the field of the protection of digital cultural heritage. These and similar measures will contribute to the more effective preservation and promotion of cultural values in the context of a rapidly developing digital environment.

5 Conclusion

The digitalisation of cultural heritage represents an important stage in the development of contemporary mechanisms for its preservation, research, management and promotion. The transformation of cultural resources into digital form creates new opportunities for broader access, but it also raises a number of legal issues related to the protection of copyright, the management of digital content and the long-term preservation of digital resources. In this context, international and European policies developed by organizations such as UNESCO are of particular importance, as well as the initiatives of the European Commission and the Europeana platform (Europeana Foundation, 2020), which promote the development of policies for digitalisation and access to cultural heritage. Europeana represents a leading European digital platform that provides online access to millions of digitized objects from museums, libraries, archives and other cultural institutions in Europe (Europeana Foundation, 2020).

Effective legal protection in the context of digitalisation requires the adaptation of the existing legal framework to the specific characteristics of the digital environment. It also requires the harmonization of legal norms between different states, which will allow effective interaction between them. Only in this way can the management and preservation of digital cultural resources be ensured and guaranteed to the greatest extent possible.

Only through the combination of legal, technological and institutional mechanisms can the sustainable protection of cultural heritage and its transmission to future generations in the digital era be guaranteed.

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