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LEGAL REGULATION OF CULTURAL HERITAGE: HUNGARY - SERBIA - SLOVENIA

The paper analyses some major questions of the protection of cultural heritage from a comparative law perspective, drawing parallels between the relevant Hungarian (Act LXIV of 2001 on the Protection of Cultural Heritage, Act CXXV of 2017 on Sanctions for Administrative Violations, and Government Decree No. 191/2001 (18. X) on Heritage Protection Penalties), Serbian (Act on Cultural Heritage of 2021, and Act on Cultural Assets) and Slovenian (Act on the Protection of Cultural Heritage of 2008) regulatory backgrounds. The main points of the analysis include, for example: basic terminology, key institutions in charge of tasks relating to the protection of cultural heritage, main responsibilities of ministers concerned in cultural heritage conservation, requirements relating to experts and the training of concerned parties, provisions on removing cultural assets to a foreign country, registers and sanctions (system of penalties). The paper aims to highlight the main similarities and differences between the Hungarian, Serbian and Slovenian regulatory backgrounds on cultural heritage.

Keywords: cultural heritage, legal regulation, Hungary, Serbia, Slovenia.

1. MAJOR INTERNATIONAL ANTECEDENTS

The origins of monument protection in Europe go back 2000 years in time (Goóg, 2016, p. 89). Structured and institutional monument protection is rooted in the Greek and Roman traditions of European antiquity. Although the devoted guarding, protection, and conservation of the shrines of Greek temples built for the Gods and of buildings erected by Roman emperors cannot be unequivocally regarded as conscious monument protection activity, nevertheless, it proves the fact that this was the first era that had seen the conservation of past relics and the recognition of their importance. However, unfortunately, the Middle Ages that followed were not characterized by heritage protection activity. Therefore, the evolution of conscious monument protection in Europe can

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only be dated from the 18th century. As one of the European cradles of consistent heritage and monument protection one may regard France since it was in that country that endeavours to save cultural assets came into focus in the aftermath of the destruction brought about by the French Revolution of 1789. In the 1790s a forerunner of cultural heritage and heritage protection was the French Édouard Pommier, who also created the term „*patrimoine national*” (national heritage). The said expression had originally referred to assets of historical importance seized from the clergy. With a view to ensuring effective monument and heritage protection, the *Musée des Monuments Français* was set up in 1791 upon the initiative of French archaeologist and artist Alexandre Lenoir. All this contributed to setting other European countries on the path of monument protection (Goóg, 2016, pp. 76-79).

At the beginning of the 20th century, more precisely, in 1905, art historian Georg Gottfried Dehio, who belonged to the Vienna School and was of German origin, defined the basic principles relating to monuments and made a distinction between the terms „*Kunst und Altertum*” (artistic and historic monument) and „*Denkmal*” (monument) (Goóg, 2016, pp. 79-80).

At its 13th session in 1964, the UNESCO General Conference adopted a resolution to prevent the illicit import, export and transfer of cultural property, which may be considered a landmark resolution as, for the first time, it provided an internationally uniform definition for the notion of cultural heritage, and it also prescribed measures to be taken by the member countries to ensure effective protection of cultural property (Ney, 1980, p. 11).

UNESCO adopted the World Heritage Convention in 1972 with the aim of protecting the cultural and natural heritage of mankind having outstanding value. The States Parties undertake the obligation to protect and conserve world heritage sites situated in their territory. Pursuant to the underlying basic idea of the said Convention, deterioration or disappearance of any item of the cultural or natural heritage constitutes a harmful impoverishment of the heritage of all the nations of the world, therefore, (cultural, natural or mixed) heritage sites of outstanding interest need to be preserved as part of the world heritage of mankind as a whole and passed on to future generations. This requires comprehensive international cooperation, an essential element of which is constituted by the World Heritage List (set up in 1978) (Hungarian National Commission for UNESCO).

The topic of the 20th UNESCO session of 30 November 1978 was, repeatedly, the enhanced protection of cultural property, since there had been a substantial increase in acts of vandalism, theft and illicit traffic involving cultural property in some countries. In its Recommendation, the session formulated such measures that could provide protection against criminals, and the high significance of the Recommendation is also manifested in creating a possibility for the systematic inventorying and cataloguing of cultural property. Pursuant to the document, movable cultural property means all movable objects that are the products of human creation and are of archaeological, historical, artistic, scientific or technical value and interest. Therefore, cultural property includes: archaeological finds (obtained either by way of excavations conducted on land or under water); antique

tools, coins, gems, seals, weapons, inscriptions, mummies, tombs etc.; objects of outstanding historical interest; material of anthropological and ethnological interest; items relating to history (relics of technology, science, social or military history, and legacies of national leaders, artists or scientists); items of artistic interest (such as paintings and drawings, excluding industrial designs and manufactured articles decorated by hand); original photographs, prints and posters; original artistic assemblages and montages (regardless of material); artistic sculpture; practical works of applied art made of such materials as ceramics, wood, glass or metal; publications of special interest, manuscripts, incunabula, documents, codices or books; items of numismatic interest (coins or medals) and specialty stamps of philatelic value; archival material (written records, cartographic materials, photographs, cinematographic films, sound recordings or reports); old dresses, carpets, items of furniture or musical instruments; as well as geological, botanical and zoological specimens. The above division of movable cultural property is only of authoritative (and not binding) character; therefore, it was based on the fact that the Member States have elaborated their own national regulations (Ney, 1980, pp. 11-12).

2. PROTECTION OF CULTURAL HERITAGE FROM A COMPARATIVE LEGAL APPROACH: HUNGARY – SERBIA – SLOVENIA

In the following part, the paper provides a comparative legal analysis of specific major issues relating to the protection of cultural heritage by drawing parallels between the relevant regulatory frameworks in Hungary (Act LXIV of 2001 on the Protection of Cultural Heritage – hereinafter: the Hungarian Act; Act CXXV of 2017 on the Sanctions for Administrative Violations; and Government Decree No. 191/2001 (18. X.) on Heritage Protection Penalties), Serbia (Act on Cultural Heritage of 2021 – hereinafter: the Serbian Act; and Act on Cultural Assets) and Slovenia (2008 Act on the Protection of Cultural Heritage – hereinafter: the Slovenian Act, following the (Latin) alphabetical order of the (English) names of the mentioned countries).

While specific rules referencing “UNESCO” and world heritage is made in the relevant Hungarian, and Serbian legislation, the same is not the case with the Slovenian Act.

The Hungarian Act does not contain the expression “UNESCO”, but lays down (in Section 71 (1) e) that the competent authority shall keep an authentic register of world heritage sites and tentative world heritage sites and areas. In 2011 the Hungarian National Assembly adopted a separate act governing world heritage (Act LXXVII of 2011 on World Heritage), which contains provisions on such matters as a world heritage management plan (Sections 8-9), a world heritage management body (Section 10) and related financing (Section 12).

The Serbian Act lays down, among others, that all cultural heritage sites on the UNESCO World Heritage List require special protection and care (Article 40) and that the central institutions for protection are in charge – among others – of setting up a list of cultural property nominated to be included in the UNESCO List (Article 91). It also establishes the National Committee on Tangible Cultural Heritage and the National

Committee on Intangible Cultural Heritage, which perform responsibilities relating among others to UNESCO and cultural property featuring on and nominated to be added to the UNESCO List (Articles 94-96). In addition, some of the articles of the Serbian Act which will become applicable once the Republic of Serbia joins the European Union deal with tasks that may be associated with the UNESCO List (Articles 94-96).

On the other hand, the Slovenian Act mentions neither the word “UNESCO”, nor the expression “world heritage”.

Points of analysis to be covered further on in this part comprise: basic terminology, main institutions in charge of tasks relating to the protection of cultural heritage, ministers concerned with cultural heritage and their main responsibilities, requirements relating to experts and the training of concerned parties, provisions on removing cultural assets to a foreign country, registers and sanctions (the system of fines).

2.1. Basic terminology

The Hungarian Act consists of 100 articles which are divided into four parts and it has two Annexes. The first annex is referred to as “Non-protected cultural goods subject to an export licence”, while the second annex contains two separate parts: “names and delimitation of National Memorial Sites of Outstanding Importance (The Building of Parliament and its surroundings)” and “National Memorial Sites” which covers 20 sites. The Serbian Act consists of fifteen parts comprising 138 articles. The Slovenian Act consists of fourteen parts containing 148 articles. It is revealed on the comparison that the Hungarian Act contains the fewest sections numerically (but incorporates two annexes), while the Serbian Act and Slovenian Act are composed of nearly the same number of sections (and both contain no annexes).

Table 1: Major correspondences between basic terms presented in the given pieces of legislation (based on relevant provisions of the abovementioned acts, as edited by the author)

Hungarian Act	Serbian Act	Slovenian Act
	Cultural goods	
	Public collection	
	Immovable cultural heritage	Immovable heritage
	Movable cultural heritage	Movable heritage
	- Register of Cultural Goods, - Central Register, - National Register of Intangible Cultural Heritage	Heritage register (register)
Archaeological find		Archaeological find
Archaeological site		Archaeological site
Monument		Monument (cultural monument)
Collection		Collection

All three pieces of legislation provide definitions of basic terms. More concretely, Article 7 of the Hungarian Act, Article 3 of the Serbian Act and Article 3 of the Slovenian Act are relevant in that regard. When it comes to major differences and correspondences

which may be found in the terms listed in the above provisions, it is noteworthy that only the Hungarian Act contains definitions of ‘military heritage’ or ‘national memorial site’. On the other hand, the Serbian Act is particular as only it provides a definition of ‘cultural heritage in danger’ or ‘preliminary protection’. In a similar vein, the Slovenian Act is distinctive as it contains a definition of ‘museum’ and ‘living masterpiece’. The most significant correspondences are presented in Table 1.

2.2. Main institutions in charge of tasks relating to the protection of cultural heritage

The Hungarian Act specifies those entitled to carry out archaeological excavation, namely: the Hungarian National Museum, the Budapest History Museum, city museums with county authority, regional museums with archaeological collections, higher education institutions entitled to organize master’s programmes in archaeology, the Research Centre for the Humanities, the body responsible for cultural heritage protection set up by law and the Hungarian Research Institute (Section 20 (4)). The institutions performing the excavation are obliged to arrange for the security of the elements of archaeological heritage during the excavation, as well as for their protection, stabilization and further preservation after the completion of the excavation (Section 27 (1)). Furthermore, they are obliged to carry out the documentation of the excavation and the primary processing of the archaeological finds (Section 27/A (1)), and also to provide for the temporary storage of the finds exposed (Section 27/B (1)). The Hungarian Act mentions the National Heritage Institute (NHI), which carries out administrative, supervisory, management and operating tasks relating to memorial sites (Section 60/D), as well as documents archives, video and audio archives (Section 46).

Under Article 82 of the Serbian Act, the institutions responsible for protection are: the Institute for the Protection of Cultural Monuments of Serbia, the Museum and Gallery, the Archives, the Audio-Visual Archives, and the Library for the Protection of Old and Rare Library Materials. The Serbian Act on Cultural Assets in Article 70 also classifies institutions for protection. Most of them overlap with the institutions specified by the Serbian Act. Namely, the Act on Cultural Assets among the institutions for protection includes the Institute for the Protection of Cultural Monuments (which, pursuant to Article 74 of the Act on Cultural Assets, is responsible for the protection of cultural monuments, spatial cultural and historical units, archaeological excavation sites and landmarks), the Museum (whose task under Article 83 of the Serbian Act – together with the Gallery – is to protect and conserve museum materials and intangible cultural heritage), the Archives (the task of which pursuant to Article 83 of the Serbian Act is to protect and conserve archival materials) and the Cinematheque (which is tasked under Article 74 of the Act on Cultural Assets with the protection of film materials). In addition, the Serbian Act on Cultural Assets gives the library for the protection of old and rare books the status of an institution of protection. Under Article 74 of the Act on Cultural Assets, its task is to protect old and rare books. Pursuant to the Serbian Act, the network of institutions of protection in the Republic of Serbia consists of three levels (Article 89), the highest level of which is constituted by the following central institutions of protection: the Institute for the Protection of

Cultural Monuments of the Republic, the National Museum of Serbia, the State Archives of Serbia, the National Library of Serbia, and the Yugoslavian Cinematheque. In addition, a significant role is played by the Centre for Intangible Cultural Heritage of the Ethnographic Museum of Belgrade which performs the tasks of the central institution of protection as an entrusted work (Article 90).

The Slovenian Act in its Article 3 determines the following competent organizations: the Institute for the Protection of Cultural Heritage of Slovenia (for the protection of immovable heritage), the national or authorized museum and the National and University Library (for the protection of movable heritage), and the Coordinator for the Protection of Intangible Heritage (for the protection of intangible heritage). The Institute for the Protection of Cultural Heritage (Article 83 paragraph 2) comprises: the Service for the Protection of Cultural Heritage which, pursuant to Article 84, performs tasks such as: cooperating in the preparation of the heritage protection strategy, preparing proposals for proclamations of immovable monuments and providing professional supervision and the Institute for Nature Conservation which, pursuant to Article 85, performs tasks in the field of the conservation and restoration of monuments.

2.3. Ministers concerned with cultural heritage and their main responsibilities

Under the Hungarian Act, six national ministers have a role in this area. These are the minister responsible for the protection of cultural heritage, the minister responsible for nature conservation, the minister for culture, the minister of tourism, the minister responsible for taxation policy and the minister of national defence.

Most tasks are assigned to the minister responsible for the protection of cultural heritage. For instance, Article 6 of the Hungarian Act envisages that in the context of the protection of cultural heritage, the minister provides for the coordination and professional direction of protection activities, exercises supervision over and controls the authorities acting in the relevant field. In addition, the Hungarian Act also envisages that the approval of the minister responsible for nature conservation is required, under Section 15, for granting protected status to archaeological sites registered as situated in natural or protected natural areas. The minister for culture also plays a relevant role since, under Section 55 (3) c), the said minister may refuse approval of the temporary export of specific objects on loan. Moreover, the minister of tourism, cooperates with NHI in implementing sustainable use and in presenting memorial sites in accordance with Section 61/D (3) c). Finally, approvals of the minister responsible for taxation policy and the minister of national defence are also required under the Hungarian Law. More specifically, the approval of the minister responsible for taxation policy is required under Section 93 (3) concerning administrative service fees applicable to official registration for heritage protection purposes, while the approval of the minister of national defence is required under Section 93 (7) in order to declare the protection of military heritage sites and termination of such protection.

The Serbian Act mentions only the minister responsible for culture, whose tasks *inter alia* include to make a proposal to the Government for the adoption of the programme

for the protection and conservation of the cultural heritage of the Republic of Serbia in conformity with the culture development strategy (Article 10) and to lay down certain rules relating to registers (Article 63). In addition, under the Serbian Act, the minister responsible for culture is in charge of adopting a decision proclaiming cultural heritage in danger (Article 71 (3)). Finally, the said minister is also responsible pursuant to Article 85 of the Act on Cultural Assets for defining the competence of the individual institutions for protection.

The Slovenian Act specifies the following three Slovenian ministers with a role in this field: the minister with responsibility for heritage, the minister for nature conservation, and the minister for culture. The minister with responsibility for heritage is in charge of most of the tasks, such as deciding in the case of doubt as to whether a certain item of movable heritage constitutes a national treasure (Article 10); adopting a decree on the temporary proclamation of the monument, if required (Article 21); and determining the heritage protection areas (Article 25 (9)). On the other hand, the minister for nature conservation is authorized to give under Article 16 needed for a proclamation of a monument of national or local significance in an area protected under laws of nature conservation, while the minister for culture, *inter alia*, determines the amount of funds to be granted in specified cases for the restoration of cultural heritage pursuant to Article 40.

In order to provide a better overview, a table comparing the ministers mentioned in the given pieces of legislation is developed (Table 2).

Table 2: The ministers specified in the given pieces of legislation (drafted by the author based on the relevant provisions of the three legal acts)

Hungarian Act	Serbian Act	Slovenian Act
Minister responsible for culture		
Minister responsible for cultural heritage protection		Minister responsible for cultural heritage
Minister responsible for the protection of nature		Minister responsible for nature conservation
Minister responsible for tourism		
Minister responsible for tax policy		
Minister responsible for national defence		

2.4. Requirements relating to experts and the training of concerned parties

The Hungarian Act contains no express provisions relating to the training of the working staff concerned. However, it does state that the body responsible for cultural heritage protection shall provide expert services in order to safeguard the respective scientific research process and ensure the evaluation of the protected elements of cultural heritage (Section 6 (4)). In addition, if the use of experts is needed in a matter related to heritage protection and required expertise, only such expert may be used who, among others, is professionally qualified in conformity with the applicable legal regulations (Section 75/A (2)).

The Serbian Act stipulates that the specified qualifications and the successfully completed qualifying professional examination constitute requirements for obtaining a job connected with the protection and conservation of cultural heritage. Also, Article 86 of the Serbian Act envisages that the professional suitability of a candidate must be assessed through various professional examination programmes. The Serbian Act on Cultural Assets lays down that the professional examination programmes and the method of exam-taking are to be prescribed by the minister for culture (Article 67). It further stipulates that the trainees are to choose and take a qualifying professional examination depending on their job. For instance, they may take such exams in the Institute for Cultural Monument Protection of the Republic, or in the National Library of Serbia. The Serbian Act envisages for the first time that the costs of the professional examination are to be borne by the institution for protection where the candidate is being employed (Article 68). Pursuant to the Serbian Act, the central institutions for protection must ensure, among others, continuous training (Article 91, point 7)).

The Slovenian Act lays down that individuals carrying out professional work in museums and in the field of conservation and restoration must have, as a minimum, the required secondary qualifications, or depending on their job title, they may be required to have higher education qualifications or to undergo further training courses or pass a qualifying professional examination for obtaining their professional title (Article 103 (1)). The Slovenian Act further emphasizes that individuals who work in the field of cultural heritage protection have both the right and obligation to in-service training for professional development (Article 104). For example, the Cultural Heritage Protection Service provides for the training of staff in the field of immovable heritage protection, while the Cultural Heritage Protection Institute lays down the requirements with regard to the technical competence of the performers of specialised works.

Based on the foregoing, in summary, it may be established that the Hungarian Act does not undertake to spell out the details of training. On the other hand, both the Serbian and Slovenian legal acts do so *inter alia* by placing emphasis on the qualifying professional examination.

2.5. Provisions relating to the removal of cultural property to a foreign country

With regard to the export of cultural goods, the Hungarian Act states that the detailed rules of the relevant procedure shall be established in separate legal act (Section 54 (2)). The Hungarian Act provides in general that the cultural goods enjoying protected status by virtue of the said Act may be exported subject to a temporary (fixed-term) export licence issued by the competent authority, under obligation to return (Section 55). Unprotected cultural goods are classified into 15 categories under Annex 1 to the Hungarian Act. They may be exported subject to the licence of the competent authority with a certificate to accompany the artefact, both of which are issued for a maximum of ten years (Section 56). On the other hand, cultural goods not falling within the scope of Sections 55 or 56 may be exported without the licence of the competent authority (Section 57).

Part XI of the Serbian Act deals, among others, with the rules applicable to export and lays down that cultural goods and archaeological objects cannot be permanently exported from the territory of the Republic of Serbia (with the proviso that in the case of some cultural goods exchange is possible) (Article 108); Cultural goods may be exported temporarily for a definite period for purposes defined by Article 109 of the Serbian Act, while movable property under preliminary protection may be exported subject to a licence under its Article 110.

The Slovenian Act lays down that the permanent export of national heritage is prohibited, with the exception of certain specified cases of exchange. Under the Slovenian Act, the temporary export is permitted subject to an authorization issued by the Minister for a defined period (Article 46).

In a nutshell, it is conspicuous that all three acts prohibit final permanent export in specific cases, but as an exception, the Serbian Act and the Slovenian Act stress the possibility of exchange.

2.6. Registers

In the Hungarian Act, Sections 71-74/C are focused on registers. The Hungarian Act lays down, for example, that the competent authority shall keep on record in a central, authentic register of archaeological sites, archaeological excavation licences and documentations, archaeological sites which granted protected status, historic monuments, areas of historic significance, historic environments and historic landscapes, as well as of world heritage sites and tentative world heritage sites and areas (Section 71 (1)).

Article 3 of The Serbian Act provides definitions of the following terms: 'register of cultural goods', 'central register' and 'National Register of Intangible Cultural Heritage', while Part V of the same statute contains various rules which are applicable to registers. The latter specifies data which should be recorded in the registers (Articles 56 and 58), determines that registers of cultural goods are generally kept by the institutions of protection (Article 59), states that the central register is kept by the central institutions of protection (Article 60), and regulates the individual electronic information systems of cultural heritage (Articles 67-68).

The definition of the term 'heritage register' is already included in Article 3 of the Slovenian Act. Part VII of the same act deals with the register in detail by specifying, among others, that the register consists of three interconnected parts (immovable, movable and intangible heritage), describing the data to be recorded in the register (Article 66) and by stipulating that the register is to be kept by the Ministry (Article 67 (1)).

Contrary to the Hungarian Act, it is conspicuous that the Serbian Act and Slovenian Act mention the term of the registers already among the basic terms and also devote a separate part to its detailed regulation. It may be concluded that in all the three countries, the registers are kept by different agencies (the authority/ the institutions responsible for protection/ the ministry).

2.7. Sanctions

Pursuant to the Hungarian Act, fines that may be issued include town and country planning fines, the maximum amount of which is HUF 10,000,000 (Section 61/K (7)); administrative fines, the amount of which - under Section 61/L - is from HUF 2,500 – to HUF 50,000, in the form of on-the-spot fine from HUF 2,500 to HUF 25,000 (consequently, the maximum limit of the administrative fine is more favourable in this case, since pursuant to Section 10 (2) of Act CXXV of 2017 on the Sanctions for Administrative Violations, in the absence of a provision of the Act to the contrary, even as high an amount as HUF 1,000,000 may be imposed); and the heritage protection fines (Sections 82-85), the amount of which is laid down by Government Decree 191/2001 (18. X.) on Heritage Protection Fines, pursuant to which the amount of fine applicable to archaeological sites and cultural goods is from HUF 10,000 to HUF 250,000,000 in the case of categories I and IV, from HUF 10,000 to HUF 125,000,000 in the case of category II, from HUF 10,000 to HUF 25,000,000 in the case of category III, and the amount of fine applicable to objects of historical monument protection is from HUF 300,000 to HUF 250,000,000 in the case of category I and from HUF 175,000 to HUF 125,000,000 in the case of category II (Section 4).

Part XIII of the Serbian Act discusses “Penalty Provisions” and lays down the five cases where a natural person, a legal person or the responsible person for the institution of protection may be punished with a fine from RSD 50,000.00 to RSD 150,000.00 (Article 130).

Part XIII of the Slovenian Act discusses “Penalty Provisions” and lays down, among others, the amounts of the imposable fines, which may vary wildly depending on the perpetrator and the activity or omission, but altogether within the bracket of EUR 100 to EUR 40,000 (Articles 125-129).

Applying the exchange rates of 1 EUR = 372 HUF (currency exchange rate applied by the National Bank of Hungary on 26 May 2023) and 1 EUR = 117.2781 RSD (currency exchange rate applied by National Bank of Serbia on 30 May 2023) it may be concluded that, overall fines may be imposed within the bracket of EUR 6.72 – EUR 672,043 under the Hungarian regulation, within the bracket of EUR 426 – EUR 1,279 under the Serbian Act and within the bracket of EUR 100 - EUR 40,000 under the Slovenian Act.

3. CONCLUDING REMARKS

Given the limited space available, the paper could not have undertaken to provide a comprehensive comparison covering all details of the Hungarian, Serbian and Slovenian regulatory frameworks relating to cultural heritage.

Therefore, the purpose of its writing was to raise several promising points of comparison and to call attention to some thought-provoking differences and similarities with regard to those issues.

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