

The development of the human rights factor in cultural heritage protection: Interrelationships and new international legal trends

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For citation: Hashimova, L. F. 2025. "The development of the human rights factor in cultural heritage protection: Interrelationships and new international legal trends". *Vestnik of Saint Petersburg University. Law* 1: 151–166. <https://doi.org/10.21638/spbu14.2025.111>

In the article, significant issues related to the protection of cultural heritage such as the development of the human rights factor, the interplay between of cultural heritage and human rights and new international legal trends in this direction are analyzed based on a diverse array of opinions in the legal literature, international documents and court practice. At this time, as the first direction, the mutual relations of cultural heritage and cultural rights, and as the second direction, the issues of determining the international legal bases of cultural heritage protection in international documents are defined. In the first direction, it is emphasized that the protection of cultural heritage in the modern era is assessed through the lens of cultural rights. This establishes a direct connection between the protection of cultural heritage and the provision of cultural rights. Strengthening the links between human rights and cultural heritage is crucial, particularly for safeguarding cultural heritage objects from real threats arising during armed conflicts. Damage or destruction of cultural heritage is a fundamental violation of human rights. Furthermore, the deliberate destruction of cultural heritage should be recognized as a violation of fundamental human rights and freedoms, particularly cultural rights. In the second direction, it is noted that the inseparable relationship between cultural heritage and cultural rights has broadened the normative framework for ensuring the legal protection of cultural heritage. The basics of ensuring the legal protection of cultural heritage, including international obligations in this field, are determined in general international normative documents on human rights. In those international documents, the provision of legal protection of cultural heritage is evaluated in the context of human rights. Then, by referring to specific international documents in this field, including the case law of the European Court of Human Rights, the development trends of these relations are determined.

Keywords: cultural heritage, cultural rights, human rights, international obligations, international law, case law, armed conflicts, international agreements, international cooperation.

1. Introduction

In contemporary times, the protection of human rights is a fundamental obligation of states. This international duty stems from the principle of respect for human rights and fundamental freedoms, which is one of the core, universally recognized principles of international law. Like other principles of international law, the principle of respect for human rights and fundamental freedoms is considered *jus cogens*, serving as a legal foundation for the establishment of other legal norms. It underpins the international norm-making

process and constitutes a crucial criterion within international law. The content of the principle of respect for human rights and fundamental freedoms in international law can be summarized as follows: all states have an essential obligation to uphold the fundamental rights and freedoms of all individuals within their territory; states must ensure that respect for human rights and fundamental freedoms is free from discrimination based on race, sex, language, religion, or other characteristics; all states are required to engage in international cooperation (both a right and a duty) to promote and protect human rights and fundamental freedoms, working collectively to achieve these objectives.

Thus, it can be asserted that states' obligations concerning human rights are not contingent upon their participation in existing international agreements. This assertion is supported by the primary goals committed to protection of human rights outlined by the international community (Art. 1 and 55 of the UN Charter¹) and states (specifically, Art. 12, Clause 1 of the Constitution of the Republic of Azerbaijan²).

In many instances, states evade their international obligations in several crucial areas by refraining from participating in relevant international agreements. One such area is the protection of cultural heritage. Given that the safeguarding of cultural heritage significantly impacts the interests of humanity, states should treat their obligations in this domain with utmost seriousness and measures of international accountability should be strengthened.

The protection of cultural heritage is intrinsically linked to the provision of cultural rights, which are recognized as fundamental human rights. Consequently, the safeguarding of cultural heritage must be associated with states' international obligations in this area and the respect for basic human rights and freedoms. Cultural rights empower individuals to engage in the public sphere by defining their roles within various societal contexts. The primary objective of cultural rights is to establish behavioral standards and moral values that reinforce societal solidarity and uphold individual dignity. In this context, several important international documents, including provisions from the 1966 International Covenant on Economic, Social and Cultural Rights³, must be acknowledged as key obligations for states. Ensuring and protecting cultural rights serves as a foundation for the creation of cultural heritage, making the precise definition of this interaction critical for the protection of cultural heritage during armed conflicts. Furthermore, the legal protection of cultural heritage is a vital component in safeguarding the basic human rights and freedoms of communities, ethnic groups, and individuals.

2. Basic research

2.1. *Cultural heritage and cultural rights: interrelationships*

When analyzing the intersection of cultural heritage and human rights, several key questions arise. Primarily, how does the provision of legal protection for cultural heritage relate to the safeguarding of human rights and freedoms? In response, it is essential to

¹ UN Charter. Accessed March 17, 2025. <https://www.un.org/en/about-us/un-charter/full-text>.

² The Constitution of the Republic of Azerbaijan. Accessed March 17, 2025. <https://www.migration.gov.az/content/pdf/91246527667e705ae9d62c8133910f46.pdf>.

³ Article 15 of the International Covenant on Economic, Social and Cultural Rights, adopted 16.12.1966 by UN General Assembly resolution 2200A (XXI). Accessed March 17, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

recognize that the protection of cultural heritage is inherently connected to individual human rights in their entirety. Among the various categories of human rights, cultural rights are particularly relevant and interrelated. Literature suggests that cultural rights promote the moral development of individuals, enabling them to participate meaningfully in political, moral, social, and cultural progress (Aliyev 2019, 123). Thus, cultural heritage is fundamentally linked to cultural rights, which in turn are essential to the broader framework of human rights.

Local communities, ethnic minorities, and various groups play a vital role in the relationship between cultural heritage and human rights. In this context, cultural rights encompass respect for cultural identity, cultural self-awareness, and other fundamental rights. As a central aspect of human rights, cultural rights empower individuals to establish their place in society and contribute to the public sphere in diverse ways. Therefore, cultural rights are fundamental to ensuring a standard quality of life for all individuals.

According to the theory of human rights, cultural rights and freedoms represent a distinct and complex set of rights recognized by international law and national legislation which enable individuals to realize their potential within the cultural sphere. The primary objective of cultural rights is to establish behavioral standards and moral principles that reinforce societal solidarity and uphold individual dignity. In this context, Art. 15 of the 1966 International Covenant on Economic, Social and Cultural Rights is particularly significant, as it outlines various obligations for states. Regardless of the specific nature of these obligations⁴, they form the foundation for individuals' activities in this vital area.

When analyzing the essence and content of cultural rights, it is essential to explore their interaction with cultural heritage. The provision and protection of cultural rights, which constitute a fundamental aspect of international human rights, often serve as the foundation for the creation of cultural heritage. They foster the necessary conditions for the establishment and preservation of cultural heritage objects. Clearly defining this interaction is particularly important for ensuring the protection of cultural heritage during armed conflicts. By doing so, the enhancement of measures for protecting cultural heritage underscores its significance within the framework of states' international obligations to safeguard basic human rights and freedoms.

In legal literature, it is noted that cultural rights lack a specific official definition within the international normative framework. However, important normative foundations that establish cultural rights play a crucial role in understanding these rights. The primary focus should not be on creating a single definition of cultural rights, but rather on delineating their scope. Given the multifaceted nature of cultural rights, it is impossible to encapsulate them entirely within a singular understanding. Even if such a definition were provided, it would likely fail to encompass all aspects of the legal relationships involved. Moreover, cultural rights extend beyond the mere protection of cultural objects; they also include individuals' participation in cultural life, their contributions in this area, and their access to cultural objects and events (Shaheed 2013, 1–4). Overall, cultural rights are broad and general in nature, and even when attempting to define their precise scope, certain challenges can arise.

⁴ The International Covenant on Civil and Political Rights of 1966 defines the obligations of states as obligations to be fulfilled “immediately”. According to the 1966 International Covenant on Economic, Social and Cultural Rights, these obligations are characterized as “obligations to be fulfilled gradually”.

The report of the European Court of Human Rights notes that while cultural rights are not explicitly defined as a separate category in the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the Court addresses cultural rights through its case law and decisions related to their protection. Although cultural rights lack a specific definition, they are encompassed within the broader context of human rights as articulated in various articles of the Convention. For instance, the right to respect for private and family life, as defined in Art. 8, and the freedoms of opinion, conscience, and religion outlined in Art. 9, contribute to a broader understanding of cultural rights. Additionally, Art. 10's provisions on freedom of expression, along with the right to education specified in Art. 2 of Protocol no. 1, further illustrate how cultural rights are approached in legal positions arising from cases brought before the Court. However, cultural rights are not always distinctly understood within the case law of the European Court of Human Rights. Nonetheless, the human rights and freedoms that can be attributed to this category are recognized and defined in the Court's decisions.

The principles and precedents established by the European Court of Human Rights in its decisions regarding cultural rights provide a foundation for ensuring and protecting these rights, leading to significant developmental trends in this area. According to the Court's case law, several rights can be identified as cultural rights, including the right to artistic expression, the right to access culture, the right to cultural identity, the right to language, the right to education, the right to protect cultural and natural heritage, the right to seek historical truth, and the right to academic freedom⁵. These reflect a broader approach to cultural rights and are essential for understanding their scope and conceptual framework. Many rights and freedoms must be considered and evaluated within the context of cultural rights, which is crucial for the legal protection of cultural heritage. For instance, the rights of national minorities to protect their cultural identity, particularly the right to use their mother tongue, are paramount. During armed conflicts, socially dangerous acts, including various illegal actions and omissions, often result in violations of these rights. Such acts frequently lead to the destruction of cultural heritage; for example, books, writings, and monuments in the language of a perceived enemy may be destroyed or altered. This not only results in the loss or damage of cultural heritage but also violates individuals' rights to access publications or materials in their own language, as well as the rights of peoples, ethnic groups, and national minorities to protect their cultural identity.

International documents also establish a clear link between cultural heritage and cultural rights. Cultural rights are recognized as an integral part of human rights, and their provision constitutes a direct international obligation of states. Moreover, the international obligations of states and the concept of human rights are inherently interconnected; without these obligations, the essence of human rights diminishes. Specifically, the legal protection of cultural heritage should be viewed as essential to safeguarding the basic human rights and freedoms of communities, ethnic groups, and society at large⁶. Thus, we

⁵ "Cultural rights in the case-law of the European Court of Human Rights Council of Europe". *European Court of Human Rights*. January 2011, para. 4. Accessed March 17, 2025. <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2020/12/Cultural-Rights-in-the-Case-Law-of-the-ECtHR-Artistic-Freedom-RD.pdf>.

⁶ General Comment no. 21, 2010, para. 6. Accessed March 17, 2025. <https://digitallibrary.un.org/record/683903?v=pdf>.

can conclude that cultural rights and cultural heritage are like two interconnected wheels, each supporting and reinforcing the other.

Analyses in this area indicate that cultural rights, which constitute a primary group within the broader system of human rights and freedoms, are also categorized as problematic rights. Their pace of development is notably slower compared to other groups of human rights and freedoms, and there are fundamental challenges associated with their provision (Francioni 2008, 1–4). This slower development can be attributed to the fact that cultural rights often manifest in processes closely tied to individuals' spiritual lives. Their provision is particularly significant from a spiritual perspective, as it relates to the inner worlds of individuals. Importantly, political objectives can frequently hinder the realization of these rights, contributing to the complexity surrounding this category of human rights.

Cultural heritage should be regarded as objects of special significance that require robust protection. It is important to note that during various international armed conflicts, opposing sides often target each other's historically significant sites. By destroying the historical and cultural heritage of the adversary, they inflict greater harm. A key consideration is that cultural heritage located within the territory of the opposing party may belong to the universal human heritage. Its destruction, therefore, not only damages human values but also constitutes a violation of human rights. Consequently, as the discourse on human rights has evolved, the need for legal protection of cultural heritage has emerged as a pressing issue. The protection of cultural heritage is evaluated through the lens of cultural rights, with the relationship between these two being directly proportional. International documents adopted under the auspices of UNESCO, a specialized UN agency, highlight this connection, asserting that the protection of cultural heritage is intrinsically linked to states' international obligations to uphold human rights. In this context, literature notes that while the Declaration adopted by UNESCO on the protection of cultural diversity may create non-binding international legal mechanisms, it represents a significant step toward safeguarding cultural heritage. The declaration emphasizes the necessity for special measures to protect cultural heritage, as well as cultural rights and human rights (Chakırca 2015, 21–22). These points illustrate the close relationship between cultural rights and the protection of cultural heritage. Thus, the international legal measures taken underscore the critical importance of legal protection for cultural heritage in relation to the safeguarding of cultural rights.

The close and inseparable connection between cultural heritage and human rights, particularly cultural rights, has been affirmed both in theory and practice. Linking the foundations of legal protection for cultural heritage with cultural rights within the normative framework facilitates the establishment of mechanisms to safeguard these important objects. Several factors contribute to this connection. First, cultural rights and freedoms are considered fundamental human rights, and ensuring their protection has become a primary focus of international cooperation and state obligations since the Second World War. By establishing this connection between human rights and cultural heritage, we create conducive conditions for the protection of cultural heritage objects, particularly against the real threats that may arise during armed conflicts.

Economic, social, and cultural rights, often referred to as “second generation” human rights, emerged from the struggles of individuals and communities advocating for improved economic and cultural conditions. These rights are considered “positive”

rights because they require active intervention by the state to be fulfilled. Despite certain distinctions among the generations of human rights, it is essential to recognize that all rights and freedoms are interconnected and form an integral part of international law (Lukasheva 2011, 149–151).

The interconnection between human rights and the protection of cultural resources and heritage is reflected in various international documents. Notably, a report from the UN Human Rights Council, adopted during its 17th session on March 21, 2011, emphasizes that legal protection of cultural heritage is integral to safeguarding fundamental human rights and freedoms. This relationship is further supported by norms and practices in international law. International agreements concerning the protection of cultural heritage address the identification of heritage objects, legal safeguards, and the crucial role of society in mitigating damage to these resources. These aspects are closely linked to the principle of procedural participation, which involves individuals' engagement in international human rights processes⁷. Thus, the close relationship between human rights and the protection of cultural heritage not only aligns with substantive legal norms but also emphasizes the importance of procedural regulation. This connection fosters a deeper integration of these two categories.

In a document prepared by the special rapporteur of the UN Human Rights Council, it is emphasized that protecting cultural rights is crucial, as these rights are integral to the broader framework of human rights. Armed conflicts and the destruction of cultural resources and heritage objects in occupied territories should not be regarded merely as violations of international legal norms; they also constitute violations of the fundamental human rights of the creators and communities associated with those cultural heritage examples⁸. This underscores the interconnectedness of cultural heritage and human rights as two related institutions that continually influence each other. The legal protection of cultural heritage is essential; violations in this area result in simultaneous infringements of human rights and cultural rights.

We can conclude that the damage or destruction of cultural heritage constitutes a significant violation of human rights. This issue was addressed in the UN General Assembly and is reflected in a special report on the deliberate destruction of cultural heritage, which identifies such acts as violations of human rights. The report specifically states that intentional destruction should be regarded as a violation of fundamental human rights and freedoms, particularly cultural rights. Acts that infringe upon the cultural rights held by individuals collectively also lead to violations of individual rights. Therefore, the legal protection of cultural heritage must be recognized as a crucial aspect of human rights protection⁹. In alignment with this perspective, it is important to note that violations of cultural rights can result from the destruction or damage to cultural

⁷ Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed: addendum, 2011, A/HRC/17/38/Add.2, p. 3–4. Accessed March 17, 2025. <https://digitallibrary.un.org/record/705548?v=pdf>.

⁸ Information by Azerbaijan to the study on intentional destruction of cultural heritage (Responses to the questions by Ms. Karima Bennouna, Special Rapporteur in the field of cultural rights), p. 2–3. Accessed March 17, 2025. <https://www.ohchr.org/sites/default/files/Documents/Issues/CulturalRights/DestructionHeritage/States/Azerbaijan.pdf>.

⁹ Report on the intentional destruction of cultural heritage as a violation of human rights, No. A/71/317, Issued by Special Rapporteur in the field of cultural rights, Delivered to General Assembly at its 71st session in October 2016, p. 21–22. Accessed March 17, 2025. <https://www.ohchr.org/en/documents/thematic-reports/a71317-report-intentional-destruction-cultural-heritage-violation-human>.

heritage. Conversely, damage to cultural heritage directly infringes upon the cultural rights of individuals.

The report of the special rapporteur of the UN Human Rights Council indicates that the obligation to protect cultural heritage does not rest solely with states. In addition to state representatives, local communities, non-governmental organizations, businesses, and even individuals also have responsibilities in this area. When cultural heritage is damaged or destroyed, the cultural rights of both communities and individuals are violated. This impact extends to the broader society and encompasses both individual and collective human rights¹⁰.

When analyzing cultural rights, it is possible to categorize them into three main groups. The first category pertains to basic rights related to access to cultural life. Examples include the right to cultural identity, the right to own, use, and receive information from cultural heritage objects and resources, freedom of information in cultural contexts and the right to preserve the cultural identity of national minorities. The second category focuses on cultural participation rights. This includes the right to participate in cultural life, to be a member of public organizations in the cultural sector, and to attend cultural events. A critical aspect of this category is the principle that individuals should not be forced to participate in cultural events. Furthermore, individuals have the right to decline participation in any cultural event based on their free will. Cultural and religious practices that degrade human dignity or contradict humanistic principles, as well as those that limit or violate human rights and freedoms, are considered unacceptable. The third category encompasses individuals' rights to contribute to cultural life, which primarily involves rights related to creative activity. This includes creative freedom, the right to use one's mother tongue, freedom of expression, the right to education, and intellectual property rights such as copyright and patent rights.

By analyzing the relationship between cultural rights and cultural heritage, we see that cultural rights empower individuals to protect their rightful status in the cultural sphere. They allow people to use their cultural objects and create cultural heritage for future generations through self-expression. Therefore, human rights, especially cultural rights, should not be viewed narrowly. When evaluating these relationships, it is essential to consider all relevant cases and conduct a comprehensive analysis. Legal literature notes that human rights are aimed at improving people's material conditions and ensuring their overall well-being. These rights go beyond merely protecting material assets; they encompass the rights necessary for individuals to exist in society as human beings. The ongoing existence of individuals as members of society, and as heirs to their cultural heritage, presents a fundamental challenge in the discourse on human rights (Donnelly 2003, 218–220).

It is for this reason that the purpose of ensuring human rights extends beyond merely improving people's lifestyles and providing them with the living conditions they deserve. These rights and freedoms also aim to protect the intangible aspects of the spiritual world, which are difficult to quantify materially. This understanding forms the foundation of cultural rights. The protection of cultural heritage is essential for the realization of these rights. Damage or destruction of cultural heritage can lead to significant violations of cultural rights. Therefore, when the protection of cultural rights positively influences the

¹⁰ Report of the Independent Expert in the Field of Cultural Rights, Farida Shaheed: addendum, 2011, A/HRC/17/38/Add.2, p. 3.

effectiveness of legal mechanisms for safeguarding cultural heritage, it also enhances the organization and execution of cultural heritage protection at a high level. In turn, this contributes to the realization of cultural rights.

Thus, cultural heritage is directly and closely linked to cultural rights. This relationship is evident in its connection to various defined rights. The interaction between the protection of cultural heritage and cultural rights can be viewed as a cause-and-effect relationship. Failure to provide legal protection for cultural heritage can lead to violations of cultural rights, while neglecting cultural rights can result in damage or destruction of cultural heritage.

In the context of cultural rights, provisions that support the protection of cultural heritage should be included in the normative acts designed to ensure these rights. By doing so, a broader normative framework for protecting cultural heritage can be established. Developing this existing framework can lead to meaningful improvements in the field.

2.2. Determining the international legal basis of cultural heritage protection in the main international documents on human rights

As previously mentioned, the analysis concludes that there is an inseparable relationship between cultural heritage and cultural rights. This close connection broadens the normative framework for ensuring the legal protection of cultural heritage. Additionally, international documents related to human rights contribute to this normative framework when establishing legal bases for the protection of cultural heritage. This inclusion strengthens legal protection, as the provisions outlined in international human rights norms create obligations that states must adhere to. Consequently, the fact that international legal norms on human rights serve as a foundation for protecting cultural heritage not only reinforces its legal basis but also allows for violations to be viewed as more serious breaches of law.

Literature indicates that cultural heritage and public welfare are closely related concepts. Cultural heritage, viewed as cultural capital, emerges from social efforts, leading societies to prioritize the protection of their cultural heritage objects (Harding 1999, 334–337). One key point is that cultural heritage serves as a manifestation and visual evidence of social welfare. This establishes a mutual relationship between cultural heritage and social welfare. Consequently, states have an obligation to protect cultural heritage, which arises from their commitment to ensuring basic human rights and freedoms, as well as decent living conditions for their citizens. Thus, failing to prevent harm to cultural heritage not only undermines these protections but also constitutes a violation of human rights. Moreover, many human rights include elements that pertain to the protection of cultural heritage. Therefore, the need to safeguard cultural heritage stems from states' obligations to uphold human rights.

Legal literature suggests that numerous calls and obligations for the legal protection of cultural heritage are embedded in international human rights normative documents. In these acts, the significance of protecting cultural heritage is highlighted within the context of human rights¹¹. This emphasis arises from the close relationship between cultural heritage protection and the safeguarding of basic human rights and freedoms. Thus, it is

¹¹ Report on the intentional destruction of cultural heritage as a violation of human rights, No. A/71/317.

essential to examine international human rights instruments that address cultural heritage protection. Following World War II, the process of creating international normative acts related to human rights began with the Universal Declaration of Human Rights in 1948. The adoption of this Declaration marked a significant milestone, as it was the first international document to outline a comprehensive list of human rights and provide their definitions. After the Declaration, work commenced on various international documents to establish human rights frameworks at the UN level. Although this preparatory process spanned over fifteen years, two key international human rights covenants were adopted in 1966 (Donnelly 1993, 617). These documents serve as foundational normative sources for cultural heritage protection, given their importance in regulating human rights and their necessity for safeguarding cultural heritage. Furthermore, the rights and freedoms articulated in the 1966 covenants built upon those established in the Universal Declaration of Human Rights, further enhancing the framework for human rights protection (Buergenthal, Shelton, Stewart 2009, 48).

Many international documents establishing human rights and freedoms contain provisions that support the legal protection of cultural heritage. Notably, the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenant on Economic, Social and Cultural Rights all emphasize the importance of cultural heritage protection. Given their significance in the realm of human rights, it is appropriate to analyze these norms separately.

The European Convention on the Protection of Human Rights and Fundamental Freedoms is a key international normative act in the field of human rights and serves as an important document for the preliminary protection of cultural heritage. Legal literature notes that while the Convention does not directly establish all cultural rights, it does outline fundamental human rights and freedoms that relate to cultural rights. Therefore, it is appropriate to base the protection of cultural rights on these fundamental rights and freedoms and to regulate legal relations related to culture accordingly (Vrdoljak 2008, 69–70).

The right to participate in cultural life is a fundamental human right that directly establishes the obligation to protect cultural heritage. Intellectual property rights and creative freedom also play crucial roles in fostering a more effective legal framework for this protection. These rights were first included in Art. 27 of the Universal Declaration of Human Rights, which affirms equal rights and freedoms for all individuals, and are echoed in Art. 27 of the International Covenant on Economic, Social and Cultural Rights. The Declaration outlines the right of everyone to engage in cultural life and establishes the legal basis for protecting both property and non-property rights related to creative works¹². The International Covenant broadens this definition and emphasizes the importance of international cooperation in the cultural sphere. It outlines the right to participate in cultural life, to benefit from scientific advancements, and to secure property and personal non-property rights in the context of copyright. The Covenant mandates that states protect, develop, and promote scientific and cultural achievements, ensuring creative freedom while also fostering interstate cooperation in science and culture. As demonstrated, the right to participate in cultural life enables communities to express their national and

¹² Universal Declaration of Human Rights. Accessed March 17, 2025. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

cultural identities, engage with cultural heritage, and contribute to the protection of cultural resources.

As mentioned earlier, one of the main challenges in protecting cultural heritage is establishing international cooperation in this area. Therefore, enshrining this principle in the International Covenant on Economic, Social and Cultural Rights is crucial for ensuring and developing such cooperation. This is especially important in the context of international armed conflicts, where effective international collaboration plays a vital role in protecting cultural heritage. The human rights norms outlined in the Covenant positively contribute to this protection and enhance legal mechanisms in this area. Article 15 of the Covenant recognizes everyone's right to benefit from cultural life and scientific progress while establishing the obligation of states to protect cultural heritage. Additionally, Art. 27 of the Universal Declaration of Human Rights asserts the right of every individual to freely participate in cultural life and benefit from scientific advancements. This article underscores the significance of culture within the broader context of social development and human rights.

Article 18 of the Universal Declaration of Human Rights defines freedom of religion and conscience, establishing individuals' rights to freedom of religion, conscience, and thought. This right allows individuals to practice their beliefs, whether alone or in community, and to participate in worship, religious traditions, or events. The European Convention for the Protection of Human Rights and Fundamental Freedoms elaborates on this freedom in greater detail. It affirms that individuals should have the opportunity to perform religious rites and outlines potential restrictions that may apply¹³. It is important to note that cultural heritage can encompass intangible aspects, such as religious practices and traditions. Methods of conducting religious events and established religious rules can be considered forms of intangible cultural heritage. Additionally, buildings constructed or used for religious purposes often fall under the category of cultural heritage. This right is directly linked to the legal protection of cultural heritage, particularly in armed conflicts. When religiously significant sites are targeted, this right provides a foundation for protecting cultural heritage alongside human rights. Furthermore, the Sixth Committee of the UN General Assembly rejected the concept of "cultural genocide" during the adoption of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (Quigley 2006, 9). At this time, it should be noted that during the wars in the former Yugoslavia in the 1990s, hundreds of religious and cultural sites were systematically destroyed in an attempt to eradicate the culture of targeted groups in specific areas. Considering this, from its earliest cases, the International Criminal Tribunal for the former Yugoslavia confirmed that the destruction of cultural heritage was a crime under customary international law. The International Criminal Tribunal for the former Yugoslavia also found that systematic crimes against cultural heritage could be considered crimes against humanity because all of humanity suffered as a result of the destruction of a truly unique religious culture and associated cultural sites¹⁴.

Legal literature notes that human rights can justify certain restrictions concerning individuals' cultural identity. Such restrictions may be applied when the rights and

¹³ European Convention on Human Rights. Accessed March 17, 2025. https://www.echr.coe.int/documents/d/echr/convention_ENG.

¹⁴ The International Criminal Tribunal for the former Yugoslavia. Accessed March 17, 2025. <https://www.icty.org/en/outreach/documentaries/dubrovnik-and-crimes-against-cultural-heritage>.

freedoms of others are at stake. However, it is crucial to ensure and protect human rights and freedoms related to cultural identification. To enhance the effectiveness of cultural heritage protection efforts, a comprehensive approach that includes freedom of religion and conscience is necessary (Hammer 2018, 100). This highlights the significant impact of ensuring freedom of religion and conscience, one of the fundamental human rights, on the protection of cultural heritage. Moreover, the European Convention on the Protection of Human Rights and Fundamental Freedoms includes provisions that regulate the restriction of freedom of religion and conscience. This not only prevents unnecessary interference with cultural heritage but also facilitates the realization of rights in this area. The Convention makes it clear that restrictions on freedom of religion and conscience are permissible only to the extent defined by law and accepted in democratic societies, specifically for the protection of others' rights and the maintenance of social stability. By establishing the boundaries of these restrictions, the Convention helps prevent abuses and allows for improved regulation of relationships related to cultural heritage.

Article 20 of the Universal Declaration of Human Rights establishes the freedom of opinion and its free expression. This norm grants individuals the freedom to obtain, search for, and share information according to their beliefs, making it a regulatory framework related to cultural heritage. Similarly, Art. 10 of the European Convention on the Protection of Human Rights and Fundamental Freedoms affirms this freedom. The Convention also includes provisions governing limitations on this freedom. Restrictions must not undermine the territorial integrity, national security, or public order of states. The Convention specifies that such restrictions are permissible when they adhere to legal formalities typical of democratic societies, aimed at preventing crime, protecting public health and morals, safeguarding rights and freedoms, ensuring justice, and preventing riots. It is essential to assess the activities of individuals contributing to cultural heritage within this framework. The protection of cultural heritage must ensure the completeness and integrity of information about these objects. Limiting the right to obtain and share information can hinder access to cultural heritage, impede its promotion, and adversely affect the process of cultural identification. Therefore, any restrictions on this right should be strictly confined to the limits outlined in the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Our analysis indicates a close connection between the right to education and cultural heritage. Surveys show that a significant majority of people in Europe value the integration of cultural heritage into education¹⁵. Ensuring the right to education is vital for the protection of cultural heritage. Both Art. 26 of the Universal Declaration of Human Rights and Art. 2 of Additional Protocol no. 1 to the European Convention on Human Rights¹⁶ establish the right to education. The Universal Declaration encompasses a broad understanding of this right. Cultural heritage is closely linked to creative activity; therefore, depriving individuals of the right to education in their mother tongue or imposing discriminatory restrictions on education for specific ethnic groups negatively impacts the protection of cultural heritage.

¹⁵ Special Eurobarometer 466: Cultural Heritage. Accessed March 17, 2025. https://data.europa.eu/data/datasets/s2150_88_1_466_eng?locale=en.

¹⁶ Additional Protocol no. 1 to the European Convention on the Protection of Human Rights and Fundamental Freedoms. Accessed March 17, 2025. <https://www.coe.int/en/web/echr-toolkit/protocole-1>.

A broader definition of the right to education is found in the International Covenant on Economic, Social and Cultural Rights. Articles 13 and 14 of the Covenant address this right and outline the primary duties of states in ensuring it. These provisions emphasize that the realization of the right to education should foster tolerance for cultural diversity and improve relations among cultural, social, and ethnic groups. Additionally, the Covenant highlights the importance of ensuring both the material and spiritual development of individuals as a key goal of education. One of the main factors in protecting cultural heritage is maintaining its authenticity. In some cases, policies may aim to distort cultural heritage or exacerbate tensions between conflicting nations. The provisions in the Covenant help prevent such distortions by promoting cultural diversity and encouraging respect for the heritage of different cultures.

The legal position of the European Court of Human Rights indicates that state mandates requiring mandatory participation in religious classes can violate basic human rights, specifically the right to education. This should not be interpreted as a violation of rights related to the protection and promotion of cultural heritage¹⁷. Furthermore, according to judicial precedents established by the European Court, forcing a pupil or their family to receive education that contradicts their religion and beliefs constitutes a violation of the law¹⁸. This position reinforces the importance of respecting individual rights, which in turn positively contributes to the preservation of cultural heritage.

Article 7 of the Universal Declaration of Human Rights, which establishes the right to equality, is crucial for the protection of cultural heritage and the restoration of violated rights in this context. This provision guarantees equal protection under the law and serves as a foundation for legal action against discrimination. However, discrimination can often impede the realization of cultural identities. In some cases, special privileges are granted to representatives of certain ethnic groups to support the realization of their cultural rights and to protect heritage objects associated with their culture. During armed conflicts, there is a tendency for states or individuals in control of cultural heritage sites to falsify or misrepresent the heritage of ethnic groups in their territories. This manipulation poses significant threats to the integrity of cultural heritage and undermines the rights of those communities.

The literature notes that the foundation for ensuring the legal protection of cultural heritage is rooted in the duty of states to uphold international human rights obligations. This relationship is reflected in UNESCO's World Declaration on Cultural Diversity, which emphasizes the importance of cultural rights in the context of human rights (Francioni 2004, 1212–1214). We agree with this perspective and emphasize that the close relationship between human rights and cultural rights enables the development of a more effective legal framework for protecting cultural heritage. States are continuously taking steps, adopting programs, and formulating policies to fulfill their human rights obligations. As a result, measures aimed at safeguarding human rights positively contribute to the legal protection of cultural heritage, highlighting the interconnectedness of these rights.

¹⁷ ECHR Judgement on case of Folger and others v. Norway, Grand Chamber judgment of 29.06.2007, no. 15472/02. Accessed March 17, 2025. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-81356%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-81356%22]}).

¹⁸ ECHR Judgement on case of Lautsi v. Italy, judgment of 03.11.2009, no. 30814/06. Accessed March 17, 2025. [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-95589%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-95589%22]}).

Additionally, it is important to recognize the significance of the World Declaration on Cultural Diversity, adopted by UNESCO, the leading international organization dedicated to cultural heritage protection. The declaration emphasizes the close and inseparable relationship between human rights and cultural heritage, which is commendable. This relationship serves as a guiding principle for enhancing the effectiveness of existing legal mechanisms in cultural heritage protection. Furthermore, the measures implemented to uphold and ensure human rights also promote the protection of cultural heritage objects. This interconnected approach reinforces the importance of integrating cultural rights within the broader framework of human rights protection.

The Resolution adopted by the UN General Assembly on December 19, 1991, can be regarded as an important regulatory and human rights-related document in the field of cultural heritage protection. The legal content of the resolution encourages peaceful conflict resolution, rejects armed approaches, and condemns illegal actions that violate human rights and freedoms, including discrimination, even in times of armed conflict¹⁹. While the resolution does not establish a concrete enforcement mechanism, it provides a normative foundation for the legal protection of cultural heritage within the context of human rights. Although the protection of cultural heritage is not explicitly stated, the implications of the provisions suggest that legal protection for cultural heritage is inherently supported.

The 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities establishes as one of the basic rights of the state the preservation of the existence of persons belonging to national minorities from their cultural, including religious and linguistic aspects. The representatives of national minorities have unrestricted use of cultural heritage objects belonging to that national minority, the right to participate in cultural life, as well as their religious freedom²⁰. As it can be seen, establishing the rights of the representatives of national minorities related to cultural heritage, as well as the rights that are the basis for the legal protection of the cultural heritage, determines the main obligations of the states in this field. According to the declaration, the following rights of persons belonging to minorities are guaranteed: Art. 1: Preservation of national, ethnic, cultural, religious, and linguistic existence by the state; Art. 2.1: The right to use one's own cultural resources, to worship one's religion and perform religious rites, as well as to use one's own language in public and private life; Art. 2.2: The right to participate in cultural, religious, social, economic, and state life; Art. 2.4: The right to create their own associations and ensure their activities; Art. 2.5: The right to establish and maintain peaceful relations with persons belonging to other minorities and with other members of their own group within the country and abroad; Art. 3: The right to freedom to exercise their rights alone or together with other members of the group without being subjected to any discrimination.

The 1995 Framework Convention on the Protection of National Minorities adopted by the Council of Europe should also be mentioned here. The provisions of this

¹⁹ Resolution No. A/RES/46/158, dated 19.12.1991 adopted on the reports of the Second Committee, World Commission on Culture and Development. Accessed March 17, 2025. <https://documents.un.org/doc/resolution/gen/nr0/582/46/img/nr058246.pdf>.

²⁰ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities adopted 18.12.1992 by General Assembly resolution 47/135. Accessed March 17, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-rights-persons-belonging-national-or-ethnic>.

Convention establish many cultural rights for representatives of national minorities, including the right to participate in the administration of culture, the right to use their language without hindrance, and the right to education²¹. This allows for the formation of a legal mechanism that can achieve positive results in the direction of cultural heritage protection. In this regard, the explanatory document of the Council of Europe states that restrictions may be applied to these rights of national minorities for the sake of public order and public and state interests. Importantly, this does not affect the free and unrestricted use of cultural heritage objects²². From this perspective, such an interpretation of the norm allows for better regulation of the state's activities in the protection of cultural heritage.

One of the international documents adopted in the field of human rights regarding cultural heritage protection is the Minsk Convention on the Protection of the Rights of Persons Belonging to National Minorities, adopted in 1994. This Convention allows individuals belonging to national minorities the right to be educated in their own language, hold cultural events in their own language, express themselves from an ethnic, linguistic, cultural, or religious perspective, and protect and develop their religious, ethnic, or cultural customs and objects. Article 10 of the Convention outlines the obligations of states in this area. The Convention positively contributes to the legal relations concerning the protection of cultural heritage by establishing various rights and duties for states. For instance, Art. 10 enumerates broad duties of states, including fostering international cooperation, creating conditions for the comfortable use of their own languages by national minorities, establishing mechanisms to avoid discrimination, providing opportunities for national minorities to study in their own languages, publishing materials, and protecting cultural heritage objects belonging to them (Aliyev 2019, 151). Carrying out extensive regulations in these areas not only protects the basic human rights of national minorities but also positively impacts the protection of cultural heritage. This international document further strengthens the connection between cultural rights, human rights, and the protection of cultural heritage. Specifically, by determining the state's obligation to ensure the protection of cultural heritage belonging to national minorities, it enhances the effectiveness of legal protections for cultural heritage.

As a whole, the Minsk Convention of 1994 recognizes the cultural rights of national minorities, including their rights to protect and develop their language, customs, and cultural heritage. This underscores that national minority groups have the right to preserve their culture and pass it on to future generations. In this context, the Convention establishes the rights of persons belonging to national minorities to be educated in their mother tongue and to engage in their cultural activities. These rights are crucial for the protection and promotion of cultural heritage, as language is a primary carrier of culture. According to the Convention, states are required to take necessary measures to safeguard the cultural heritage of national minorities. This includes protecting cultural objects, historical sites, and artistic expressions belonging to these groups. Additionally, the Convention emphasizes the importance of cooperation between states to ensure the rights of national minorities. This cooperation aims to protect cultural heritage and foster the

²¹ The Framework Convention for the Protection of National Minorities. Accessed March 17, 2025. <https://www.ohchr.org/sites/default/files/Documents/Publications/GuideMinorities8en.pdf>.

²² The Framework Convention for the Protection of National Minorities as well as the explanatory report, 1995. Accessed March 17, 2025. <https://rm.coe.int/16800c10cf>.

development of diverse cultures. Overall, while the Convention primarily focuses on the rights of national minorities, it considers the protection of cultural heritage an integral part of these rights. Furthermore, it establishes the obligation of states to protect the cultural heritage of national minorities by promoting mutual understanding and cooperation between different cultures.

3. Conclusions

Thus, in addition to the international legal norms adopted in this field, the international legal norms on human rights serve as a foundation for ensuring the protection of cultural heritage. This connection strengthens the legal basis for such protection and allows violations to be regarded as more serious breaches of law, facilitating the determination of measures for international responsibility. Damage or destruction of cultural heritage can lead to significant violations of cultural rights. Therefore, if the protection of cultural rights positively influences the formation and effectiveness of the legal mechanisms for safeguarding cultural heritage objects, then a robust organization of cultural heritage protection also contributes to the realization of cultural rights.

In this way, cultural heritage has a direct and close interaction with cultural rights, and this relationship can be viewed as a cause-and-effect dynamic. The right to participate in cultural life is a fundamental human right that directly establishes the obligation to protect cultural heritage. Additionally, intellectual property rights and creative freedom facilitate and promote the development of more advanced legal mechanisms for safeguarding cultural heritage.

Failure to provide legal protection for cultural heritage can lead to violations of cultural rights, while neglecting to uphold cultural rights may result in damage or destruction of cultural heritage. Given this interdependence, the provisions that underpin the protection of cultural heritage should be integrated into normative acts designed to ensure these rights. This approach would allow for the establishment and enhancement of a more comprehensive normative framework for the protection of cultural heritage.

For the first time, the Universal Declaration of Human Rights established the right to freely participate in cultural life and benefit from scientific progress, the right to education, freedom of religion and conscience, and the right to equality. These rights underscore the significance of culture within the framework of social development and human rights. Additionally, the Declaration laid the foundational principles for the protection of cultural heritage and highlighted the necessity of safeguarding it. Subsequently, the International Covenant on Economic, Social and Cultural Rights serves as an advanced international human rights document, detailing legal norms specifically related to cultural heritage protection. This Covenant emphasizes the importance of international cooperation in safeguarding cultural heritage while identifying the fundamental rights and freedoms that arise from its protection. Furthermore, the European Convention for the Protection of Human Rights and Fundamental Freedoms and its additional protocols address cultural rights to some extent, thereby facilitating the protection of cultural heritage and fostering cooperation between cultures. Although the provisions explicitly supporting the protection of cultural heritage are not directly outlined, the Convention's provisions can be broadly interpreted to support its legal protection. These points have been affirmed by precedents set by the European Court of Human Rights.

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Received: October 10, 2024

Accepted: October 30, 2024

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