Cultural and Natural Heritage and its Law

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Abstract. *Differentiating itself from the civil law individualist vision of the concept of patrimony, as a specific mark of economic liberalism, the concept of common heritage – national, European and world –, both cultural and natural, much more conservative and unproductive, has known an extraordinary development in the past few years, under the impulse of two factors: the globalization and its uniformity, on the one hand, and the dangers and menaces that threat the environment, on the other hand. This special type of patrimony or heritage (depending on the legal system of reference) introduces an element both moral and legal, in the preservation of cultural and environmental values, as collective heritages, egalitarian and solidary, transgenerational, and non-economic. Moreover, they all serve three main functions: common usage, preservation, and passing over to the future generations.*
The protection, the preservation in view of passing over, and ensuring a fair access to their benefits make up the contents of a bulk of regulations that are about to be structured into both a new branch of law, and an original scientific field: cultural and natural heritage protection law. We are also witness to the emergence of a right to fair access to these heritages. The specifics of this new branch of law are revealed by the proximal genus (administrative law, cultural law, environmental law, urban planning law) and the expression of the specific difference.

Keywords: *right to culture, common heritage, cultural heritage, natural heritage, world heritage, access to common heritage, the right to a healthy environment.*

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Introduction

The expression "cultural and natural heritage law" has recently appeared in comparative law, as the works dedicated to this subject are still rare both in search of completing its own regulatory and research object, and in capturing and expressing its specificity. In any case, this involves a set of regulations whose formal structuring, in a new branch, is under way, if not autonomous, at least identifiable through its singularity. As a first defining dimension, the new law has a specific object of protection and conservation, *the* (natural and cultural) *heritage*, otherwise a fundamental, founding notion.

It is complemented by the emergence of a right to a fair access to (natural and cultural) heritages, the materialization of specific principles or the fine-tuning of the existing ones, as well as other elements marking the next higher genre and the specific difference (*genus proximum et differentia specifica*).

1. Heritage – the Underpinning Concept

Stemming from the ancestral complex of "Noah's Ark" of peoples, an expression of the natural instinct of conservation and survival of each individual, *heritage/patrimony* is a polysemic term, a concept in movement, one of the oldest, the most persistent and intangible concepts of culture, history, and law. From an etymological point of view, it comes from the Latin *patrimonium* and it evokes the idea of legacy, more specifically, it initially signified the "asset passed on from the father", however, without embodying a legal concept, whereas *res patrimonio* represented the properties likely to be subject to private appropriation, but constituting the Roman public domain. Hence, the very etymology of the term (something which comes from parents) makes us think of transmission [Babelon, Chastel, 1994 p. 49].

At its origins and beginnings, in Roman law, *heritage/patrimony* referred to the properties of a person, but in an "objective" or "objectivist" approach, i.e. a property-centred one. At the same time, it was conceived as being collective; it consisted in all the properties necessary for the common use of a group (mostly, a family) and it existed, consequently, during this use. Also, in archaic Greece, it represented "all the land useful for family survival".

Following this vision, during the feudal period, the goods donated to Church represented the "patrimony of the poor". In 1694, *Dictionnaire de l'Académie française* defined it as "a property coming from one's father and mother, which was, in turn, inherited from one's father and mother", and for *l'Encyclopédie d'Alambert* it was "a family property; something transferred by succession or donation in direct line". More recently, the *Littré* dictionary considers it, in general, "an inherited property coming, according to law, passed on from fathers and mothers, to their children". By extension, the term has come to designate properties of the Church, of the Crown, and then, since the 18th century, properties having a national significance and value, on the one hand, and a universal significance and value, on the other hand (scientific heritage, plant and animal heritage…).

2. Metaphysics of a Concept

As indicated above, in terms of primary significances, any *patrimonium* implies a *pater*, and for jurists, any *pater* originates from *pater familias*: the main player in the Roman private law, the one who legitimately exerts a *potestas* over family members, some of them acquiring the *patrimonium*, through inheritance. Thus, speaking about patrimony/heritage means, before referring to the so-called patrimony matters (in everyday language: which can be assessed in money), speaking about *legitimate power* and about the patrimony holder as a legitimate *inheritor* of a *pater*, who, in his turn, had inherited the patrimony in question: so, speaking about patrimony as an object of a *tradition*, more precisely: of a *paternal* tradition. Could this mean that mothers are left aside? Certainly not, as long as, by excellence, legitimate families are established nowhere else but within a *matrimonium*, where the inheritors of the *patrimonium* are born, i.e. within a marriage, which, by no coincidence stands under the sign of maternity, so, of the mother, described by the Spanish novelist Alvaro D'Ors as a "protagonist of the human species perpetuation", which is a distinct and complementary function to the one held by the father, as an "administrator of the land entrusted by God to the human species for its administration"[D'Ors, 2011, p. 13]. As such, the *land* itself stands out, by excellence, as the *archetype* of *patrimony/heritage,* being, at the same time, as Carl Schmitt wrote in the first phrase of an epochal work, the „mother of law" [Schmitt, 2011, p. 13]. In so far as it is true that, as Savigny wrote, the law of a people "develops in the same way as its language", and that the language that

defines from a cultural point of view the identity of each individual is the *mother* tongue (and not the paternal one), then the *legitimate* exercise of power cannot be separated from the *legitimate* transmission of law [Duţu, 2013, p. 164 et seq.].

Although, at first sight, they seem self-evident, nowadays, these truths prove to be more than ever subject to attack, and this is due to the correlation – systematically concealed – between legitimacy and family, a correlation overly highlighted in the concept of "mother country", today more defied than ever. Just like the French Revolution explicitly intended to separate legitimacy from paternity ("plus de pères!"), similarly, the separation of law from the maternal dimension of land and language which form together the existential determination of a people, is due to the fundamental mutation operated by Modernity whereby man becomes autonomous in relation to God, his own people and family, and society transforms itself from a family of families into a collectivity of individuals. "This is the heir. Come, let's kill him and take his inheritance" (Matthew 21, 38); today mother tongue tends to become for the identity of individuals as irrelevant as their own country *(ubi bene ibi patria*!); the patrimony/heritage which was inherited and meant to be passed on is replaced by a profit-generating capital, which is in turn guaranteed by the technique of legality which replaces the legitimacy based on family and inheritance. Thus, one can still say today, along with Alvaro D'Ors and Carl Schmitt, that "disclaiming legitimacy by virtue of moving away from a legitimate society organized in families" and the "indissoluble link among the three institutions of family (marriage), inheritance, and patrimony/heritage represent the most important concern of today's jurist" [Schmitt; d'Ors, 2004, p. 190-191]. It is from this perspective that we are going to approach, for instance, the cultural and environmental heritage understood not as a capital meant for a profitable appropriation and use, but as a "vineyard" (Matthew 21, 38) entrusted to a mankind differentiated by peoples, families, and successive generations of co-workers.

3. Differences and Essences

On a certain scale of history development and of law progress, the concept of legal person arises and, along with it, the concept of legal personality; the patrimony/heritage will be associated to a person and will represent his/her economic pendant, his/her material facet on the legal scene. Thus, it came to be

understood as a "subjective" or "subjectivist" approach and it was conferred a specific role: that of being economically liable for all the actions of its holder.

Hence, two visions, two meanings, with different functions and significations, which coexist and mutually reinforce one another: the "civilian" one, which is individualistic, as an obvious imprint of the economic liberalism, and the other one, related to common (cultural and natural) heritages, which is much more conservative and non-productive, but which continues to develop the original approach, with progress according to the imperatives of our times [Turianu; Duţu, 2016, p. 247 et seq.].

For the "civilian" approach, patrimony/heritage is "a mass in movement, whose assets and liabilities cannot be dissociated", and where all future elements are called to attach, whereas patrimonial property implies a monetary assessment, an onerous transfer and transmission *mortis causa.* In other words, "All the properties and obligations of a person, seen as a universality of right …"

Beyond the transition from an objective approach to a subjective one, today, the concept deals with two phenomena which will strongly mark its significations and legal status: on the one hand, disclaiming the idea of a unique patrimony/heritage, associated to an individual and responsible for all his/her acts, and the separation into several patrimonies, depending on the individual's major moments of life: private, professional, specific responsibilities etc., and, on the other hand, the resurgence of its primary, ancient, and persistent significance, which has known an extraordinary impetus, that of common collective heritages, to be preserved and passed on to future generations. Indeed, the integrating and unifying character of virulent globalisation, seen over the last decades, has generated, as a necessary response, by virtue of the instinct of conservation, the need to protect historical traditions and identity values, pertaining to the cultural heritage and the reassessment of its meanings and legal regime. At the same time, the global environmental imperative and collective needs, dependent upon certain natural resources: water, air, biodiversity, ancestral knowledge etc. have generated a new hypostasis, that of natural heritage.

By capturing, acknowledging, and legally expressing the interdependencies generated by the primary unity between natural and cultural, the emergence of a new concept was favoured, a concept, by excellence, of our present times, but especially of the future: that of cultural and natural heritage.

Although the new concepts do not entirely fall within the traditional definition of patrimony/heritage, they are characterized by the fact that, on the one hand, they are based on a paradox: they tend to regroup into elements (resources) which can have an economic value, but whose aggregation within the patrimony/heritage is organized precisely to avoid their valorisation and market play, thus becoming "non-patrimonial heritages", and, on the other hand, they are no longer associated to an individual, but to a collective holder (thus referring to a common heritage of mankind, of Europe or of every nation).

Hence, the "publicist" concept of patrimony/heritage moves on to a new stage, that of a heritage ensuring the conservation, preservation, and passing on of the cultural and natural legacy of collectivities, the solidarity of communities and their future sustainability.

4. Emergence of Common Heritages

The expression "common heritage" appeared and spread in the legal language in the 1960's; the concept, as such, was meant to mark the collective importance of certain natural-cultural elements and to express the need to preserve common character, and to protect and conserve their status. Gradually, the concept separated into several hypostases, however keeping its defining essence.

Thus, in international law, *common heritage of mankind* appeared and asserted itself as a way of internationalising certain areas, justified by its global interest for mankind, with its own legal regime, applicable to specific areas: the Antarctic (by virtue of the Treaty of Washington, of 1 December 1959), the cosmos (under the Outer Space Treaty of 27 January 1967), the Moon (Treaty of 1969), sea-beds and ocean floors and their resources, beyond the national jurisdiction of countries (according to the Convention on the Law of the Sea signed in Montego Bay, on 10 December 1982). Then, it extended to nature, regarding landscape, biodiversity, monuments, and, in a symbolic way, to the human genome (according to the Universal Declaration on Human Genome and Human Rights, UNESCO, 11 November 1997). Therefore, the international environmental law dedicated the concept of heritage to the environments which need to be preserved or jointly managed.

At the EU-level, the "European Union common heritage" appeared; it refers, for instance to "migratory species" (Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora) or to architectural achievements (Convention for the Protection of the Architectural Heritage of Europe signed in Granada, on 3 October 1985).

Finally, the concept of "nation's common heritage" or "national heritage" started to be used as of 1980's with reference to a national collective interest. Thus, in comparative law, water, language (French language), land, natural areas, resources and environments, sites and landscapes, air quality, animal and plant species, environmental diversity and balance etc. are acknowledged as such.

The emergence and diversification of the range of common heritages are the result of the action and pressure of several factors. First of all, we deal with the scarcity and quality degradation of certain environmental elements (natural resources) such as water, pure air, some animal and plant species. Legally, the concept of *common* (natural or cultural) *heritage* replaced the concept of *res nullius,* which had become inappropriate, and which referred to a regime according to which the items in question were considered ownerless property and belonged to the first taker. Gradually, the resources in question became vulnerable and limited, even exhaustible, which implied their integration within "common heritages", in order to preserve them and organize their use to everyone's benefit.

Then followed, in the same direction, claims of an economic nature and with an ideological touch, for the access and use, to everyone's benefit, of certain resources, and for the profit they can generate. This is the reason why, for instance, more and more resources have important economic or vital interests and are inappropriately granted through private appropriation: this is the case of water or of vital medicines, some populations not having the necessary means to provide them. Similarly, other resources, especially immaterial, such as information, research results, ideas etc. are claimed to be accessible for all, on behalf of the public interest. For these reasons, law fostered the categorisation into *res communis* (common goods), i.e. appropriated goods for collective use, with a regime ensuring this common appropriation and use. Then, from this perspective, the concept and status of common heritage evolved, to add the ideas of aggregation of these resources into a whole, into the interest of a specific community of beneficiaries (nation, the

European Union, mankind) and to insist upon the function of passing it on to future generations [Rochfeld, 2011, p. 389 et seq.].

Finally, in recent times, the concept of heritage tends to be complemented by the concept of *global public assets,* which comprise: environment, health, food security, financial stability, and dissemination of knowledge [PNUD, 2002].

In its turn, in the *Laudatio si* Encyclical of 18 June 2015, Supreme Pontiff Pope Francis makes a global call for the protection of the "common home" and envisages an "integral ecology" to this effect.

4.1. Genus Proximum et Differentia Specifica. Common heritage is not an ordinary heritage, seeking to introduce an element, both moral and legal, in the preservation of cultural and environmental values and distinguishes itself from its traditional concept at least from four reasons. First of all, we speak of *collective heritages,* which are not associated to an individual, but to a community; its holders are a group, of a different coverage: a local collectivity, a nation, mankind in its entirety or even future generations. Certainly, from a legal point of view, what matters is the capacity as a subject, as a holder, as a representative of the rights and obligations related to this status, which have to be exercised and asserted as such. Then, they are characterized by being *"solidaristic and egalitarian",* in the sense that they allow the consideration of juxtaposed interests which go beyond the interests of individuals; they lead to solidarity among the people integrated within that community, in relation to the use and management of the elements comprising it.

These heritages are deemed as *transgenerational;* there must be solidarity both among present generations, and especially between present and future generations.

Finally, they are seen, to a certain extent, as "anti-economical", by the fact that they are established to avoid the use of the resources they incorporate (natural, cultural resources etc.) in a disorganised way by everyone – in the case of *res nullius* – but also to avoid an ordinary movement of goods. Thus, the establishment of these heritages aims at making the elements comprising them unappropriable or, at least, at setting up certain terms and rules in relation to their movement as goods.

4.2. Legacy, Preservation and Transfer of the Collective Usage Right. Another major difference for this type of heritage as opposed to the "classical" genus proximum refers to its common and rational use, to the benefit of the members of those communities, of its component elements, the protection, the preservation and,

as much as possible, the enrichment of its defining data and ensuring its passing on to future generations. The concern for the future, the prospective and redistributive character are the mere essence of this concept. Therefore, regrouping component elements into such a heritage implies, *per se,* ensuring their passing on to future generations; those components – be they biological, natural, cultural, architectural, rural, or landscape heritages etc. – must be able to be passed on to these generations and used for their benefit. This dimension objectively implies the function of preserving this heritage; so that they could be transferred, its elements must be preserved and fostered. In fact, such a concern justifies the exclusion of these resources from the exchange of goods and the ordinary legal trade.

In addition to the fundamental requirement of *legacy and preservation,* common heritage implies ensuring the collective use of resources in the interest of the community in question. A valuable example is, in this respect, the international, EU, and national legal regime related to water.

4.3. A Sort of Conclusions. As a somewhat "sketchy" conclusion, we believe that three paradoxes should be highlighted, as they mark the significations of *common heritage,* express its power to assert itself and the future it can enjoy. Firstly, it is to be noted that the resources it integrates thus become non-patrimonial assets! Therefore, in order to fulfil its functions of preservation, transfer and collective use, this type of heritage implies the need to be subject to a legal regime which excludes it from the ordinary exchange of goods, or at least, which places it under strict rules. With the integration of a natural or cultural element into one of these common heritages, its traditional asset value disappears or is minimalized and its value as a merchandise disappears. So, paradoxically, by characterising it as a heritage, its patrimonial nature disappears, as it absorbs elements which, whether patrimonial or not, in the classical understanding, are meant to become non-patrimonial.

Secondly, by integrating those elements into a common heritage, they become indifferent to things and goods in their "civilian" sense; their way of appropriation is insignificant and the existence of an owner is not essential. The link with a certain person is no longer relevant.

Finally, this type of heritage, both primary and renewed, comprises a single asset, organized in a universality affected by a common interest. Thus, under the double action of the rising historicism and, especially, of awareness of the dangers and threats stemming from industrialisation, urbanisation, and collective harms, the

term has come to designate all the goods inherited from the past, which have to be kept intact and passed on:

- either cultural (a wide range, from books and paintings, to human-organized landscapes);
- or natural (resources, sites or natural "monuments").

5. A Definition of the (Global) Cultural and Natural Heritage and the Universal Obligation to Protect it and Pass it on to Future Generations

Among the various types of common heritages, the world (cultural and natural) heritage has a specific place and legal status. Facing the threats of destruction and alteration, in the context of an insufficient action at national level and its exceptional importance, through the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage, adopted on 16 November 1972, the concept of "cultural and natural heritage of outstanding universal value" was legally acknowledged, being subject to a special protection regime, where "collective assistance" complements the action of the State concerned. The document also provides a definition "in its own spirit", both of the *cultural heritage,* and of the *natural heritage* which generate, on the regional (for instance, European) or national level, important appropriate conceptualisation criteria.

Thus, the following shall be considered as *cultural heritage:* a) *monuments* (architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; *groups of buildings* (groups of separate or connected buildings 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; *sites* (works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view) (Article 1). Also, in the same spirit, the following shall be considered as *natural heritage: natural features* consisting of physical and biological formations or groups of such formations (which are of outstanding value from the aesthetic or scientific point of view); geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and

plants of outstanding universal value from the point of view of science or conservation); *natural sites or* precisely delineated *natural areas* of outstanding universal value from the point of view of science, conservation or natural beauty) (Article 2). Each State recognizes the duty of ensuring the identification, protection, conservation, presentation, and passing on to future generations (Article 4).

Despite these clarifications, we are still far from a precise definition which would consequently trigger the application of a well-established legal regime, at all regulatory levels. As a principle, natural heritage is still generally considered as a resultant of natural forces, without man's intervention, except that "it is often difficult to identify a pure nature where man has not taken any action to organize, assign its destinations, and even enhance its value". After all, between environment and cultural heritage there can certainly be only a false opposition and, in any case, a very real complementarity even if we only consider the legal texts in the field.

Certainly, the UNESCO Convention had an important influence on the development of this concept, as expressed in the subsequent international and national texts; thus, it had a real influence on the creation of a shared vision and the establishment of the new law.

6. Towards a Law for (Protecting) the Cultural and Natural Heritage?

It is a question which implies both a challenge and, especially, the search for an answer and for underpinning considerations. Indeed, the tremendous development of legal regulations in the field and the obvious specificity of their object raise the issue of a possible establishment of a new law branch or, at least, of a novel field of concerns and specific regulations, which is about to be set up under the form (name) of "law of the natural and cultural heritage". In order to have a clear, appropriate and comprehensive response, we need, first of all, an analysis of the conceptual and positive law prerequisites.

Without being able to find a final and indisputable solution to the problem, firstly, it should be noted that, although heritage protection was first provided for in national law, there was a relatively fast need for an international protection, maybe even more important and more appropriate; in its turn, EU law on the free movement of goods and environment protection did not disregard this issue. As such, common (cultural and natural) heritage law is strongly related to *culture law*

and *environment law,* can even be confused in some respects, and has important connections with *urban planning law, rural law, civil law etc.*

6.1. Thus, the international protection of cultural heritage is subject to the first specific rules in the texts relating to the law of war, namely The Hague Convention of 1907 with respect to the laws and customs of war on land or concerning bombardment by naval forces, and then The Hague Convention of 1923 on the air warfare. The Hague Convention of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict, and its protocols, as well as those of 1977 to the Geneva Convention of 1949, adopted under the auspices of the International Committee of the Red Cross, have reinforced the relevant legal arsenal. Important documents in the field have been adopted under the auspices of UNESCO, a specialized institution within the United Nations; in this respect, in addition to the Convention concerning the Protection of the World Cultural and Natural Heritage of 1972, one should mention the Convention adopted in Paris on 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, supplemented by the UNIDROIT Convention adopted in Rome in 1995 on Stolen or Illegally Exported Cultural Objects and by the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat, adopted on 2 February 1971 (as amended in 1982 and 1987) [Bories, 2011, p. 283 et seq.]. In its turn, the Council of Europe developed specific policies in the heritage field, both in terms of technical issues, and within the legal and institutional cooperation. Under the European Cultural Convention of 1954 each state is entrusted to safeguard and to encourage the development of its national contribution to the common cultural heritage of Europe. The European Charter of the Architectural Heritage, adopted on 26 September 1975 in Amsterdam, aims at an integrated conservation of heritage. A resolution of 14 April 1976 concerning the adaptation of national laws and regulations to the requirements of integrated conservation of the architectural heritage sets out provisions in the field of integrated protection and commits to promote policies for public information and awareness-raising. Other significant international documents in the field are: the European Convention on Offences relating to Cultural Property, signed in Delphi, on 23 June 1985, the Convention for the Protection of the Architectural Heritage of Europe signed in Granada, on 3 October 1985, the Convention on the Protection of the Archaeological Heritage (signed in La Valetta on 16 January 1992). The European Landscape Convention, adopted in Florence, on 20 October 2000, aims

at highlighting the importance of all landscapes, without confining to a sectoral approach of patrimonial sites, or even of cultural landscapes. Finally, the Framework Convention on the Value of Cultural Heritage for Society, adopted in Faro (Portugal) on 27 October 2005, contains an important and representative definition of the cultural heritage [Frier, 2004, p. 137 et seq.]. These documents put forward and use concepts such as: "Europe's cultural heritage"; "common property for all Europeans"; "architectural heritage"; "European archaeological heritage".

6.2. In EU law, the Treaty on European Union, Article 3 (3), specifies that the Union "shall ensure that Europe's cultural heritage is safeguarded and enhanced", whereas the Treaty on the functioning of the European Union, Article 167, refers to a "common cultural heritage", but in accordance with the principle of subsidiarity, with EU action confined to overlapping the action of Member States, especially by using labels such as "European Capital of Culture" and "European heritage". More precisely, the text of the article in question paragraph (1) specifies that the Union "shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore"; among the fields of EU action, alternatively, the "conservation and safeguarding of cultural heritage of European significance" are also to be noted.

Moreover, in the *Preamble* to the Charter of Fundamental Rights of the European Union the "spiritual and moral heritage" and the respect of "the diversity of the cultures and traditions of the peoples" are put forward.

As concrete EU actions, we may refer to specific programmes such as: *Raphael* (covering the heritage's immovable, bookish, archive, archaeological, and architectural dimension), *Culture 2000* (covering all cultural policies) or *Creative Europe*, in conjunction with the structural funds developed within the economic and social cohesion policy.

Finally, the Romanian Constitution requires the State's obligation of "protection and conservation of the cultural heritage" [Article 33 (3)].

6.3. In the light of the traditional separation between public and private law, a real "collection" of special administrative prescriptions, heritage law belongs, firstly, to public law, as it is "a sovereign right of administrative easements, basically relying on powers pertaining to derogatory procurement procedures" [Frier, 1997, p. 28].

To ensure the best possible protection of the (cultural and natural) heritage, fiscal instruments are an important incentive, whereas incriminations and (contravention and penal) sanctions have, obviously, a deterrent effect. Last but not least, civil law cannot remain indifferent to the field, as it provides the general legal regime where the common patrimonial particularities and the specificities of their object of protection are rooted.

6.4. At the crossroads among different types of law, *cultural and natural heritage law* borrows components from *culture law,* but treats them in a particular way, in terms of the cultural heritage, which must be preserved, enriched, and passed on[1]. The connections with *environment law* mainly focus on nature conservation, in relation to the protection of species, areas, and aesthetics. In environment law, the concept of heritage does not necessarily pertain to property, in the sense that it designates a set of goods, which do not necessarily have an economic value. Even if they can have a market value, when patrimonialized, they have mostly a symbolic interest: in terms of history, culture, art, science, identity, and often ecology. From this perspective, it is important to "preserve the elements which are deemed essential and which must be passed on intact to future generations" [Chamard, 2004, p. 557] because, according to the European Charter of the Architectural Heritage (1975) "Each generation has only a life interest in this heritage and is responsible for passing it on to future generations". In terms of environment law, "heritage" was considered to go beyond the concept of property, since there are environment elements which must be preserved and managed as a "bon père de famille" and calls for the idea of a legacy inherited from previous generations, that we have to pass on intact to future generations [Prieur, 2016, p. 100]. Thus, properties and areas considered as "heritage" in environment law require a special attention, not only from their legal owner (if any), but especially from the entire community. Considering the privileged relationship with urban planning law, both in terms of land use, and of the requirement that planning documents should include, among others, the protection of historical monuments, of their surroundings, and of the sensitive natural areas, urban planning authorizations have

[1] *Culture law* is the law related to cultural goods, activities, and services, a specific law, whose object is the cultural creation, the access to culture, cultural diversity, common heritage protection. From this perspective, cultural heritage law is a component of culture law, which also comprises the law on performing arts and cultural creation, literary and artistic property, freedom of expression.

important particularities. There is even talk about the existence of a so-called *protective urban planning,* developed and established as a heritage law [Monnier, 2013, p. 125]. Certainly, urban planning law has not consistently aimed at protecting heritage and fostering architectural quality, but it has gradually undertaken them. Thus, during the first half of the 20th century, it moved away from the cultural and aesthetic concerns, in order to focus on economic and social concerns related to urban development, distinguishing itself from heritage law by 1970; after that date, life quality requirements tend to impose on quantitative urban planning. Heritage protection becomes more and more essential insofar as it represents one of the aspects of heritage policy aimed at safeguarding cultural identity and protecting aesthetics. Combining its primary, defining aim of governing land use with the aim of protection, the latter took on a new scope at the beginning of this century, being included in the larger issue of societal responsibility which also covers the concept of sustainable development.

As a branch primarily of public law, urban planning law allows to ensure the protection of a heritage designed as a property, beyond the ownership rules, a property which represents a collective asset and allows, especially to the State, to act in the public interest. Protective urban planning is based on a set of rules stemming from various legal acts, to meet the economic, social, and ecological expectations. Therefore, such a law would rearrange the set of legal protection rules, applicable to urban planning, setting out the available means of intervention and protection by the State and public authorities on the immovable heritage, with their own management regimes. There were also significant developments in relation to other types of law, such as rural law, spatial planning law, or even architecture law. Indeed, as far as the latter is concerned, law becomes the guardian of "Beauty, of the beautiful monument, of the beautiful heritage, of the beautiful town" [Huet, 2001, p. 6].

7. All these rules form a specific system, stemming from the indissoluble unity of cultural and natural heritage, the fact that they are common heritages, meeting collective requirements of utmost importance, which, by their intrinsic value, must be conserved, preserved, and passed on to future generations. Moreover, whereas, in comparative law, the issue is covered by a code or a special framework law, by a specific doctrinaire presentation and didactic approach, the acknowledgement of an independent regulatory area for cultural and natural heritage becomes self-imposed. Through their multiplicity and diversity, national, EU and international

sources reveal both the existence and the essence of the new law. It includes all the rules of law and the institutions which contribute to the identification, demarcation, protection, conservation, preservation, and passing on of common natural and cultural heritages to future generations. In this regard, the new regulatory and doctrinaire reflection area encompasses significant sectors horizontally and vertically governed by legal rules pertaining to international, EU, and national law, to public and private law, culture law, environment law or to urban planning law [Guillot, 2017, p. 15]. From that point of view, cultural and natural heritage law is part of the so-called "mixed disciplines", namely of the branches of law which have been set up to bring together, into a single body of rules, having one and the same object, without taking into account their private or public, internal or international nature. Furthermore, this involves a "segmented" law, in the sense that its object, the "cultural and natural heritage", besides having common principles and rules, touches several legal fields, mainly governed by other law branches, starting with culture law and environment law. In relation to the other overlapping types of "law", *common heritage,* like a chameleon, takes on the colour (especially the tinge!) of the traditional branch it refers to. In any case, by acknowledging and fostering the thesis of setting up a *cultural and natural heritage* law, there is a strong impetus towards the development and adaptation of the positive law to the specificities of the field, and towards the deepening of the doctrine.

8. Right to a Fair Access to the National, European, and World Heritage

By their very definition, common heritages, such as the cultural and natural heritage, imply a legal action aiming at conserving and organizing their use to everyone's benefit, i.e. precisely to ensure everyone's access to an essential resource for life, welfare, and biodiversity preservation, so that the collective cultural and spiritual identity should be preserved and perpetuated in general. The establishment of common (national, European, and world) heritages also aims to allow each individual to benefit from an "asset" which can only have a collective existence, being established through everyone's contribution, previous and present generations, an asset from which everyone should benefit and which everyone must preserve, enrich, and pass on to future generations. In this perspective, access to common national, European or world heritages gradually materializes into a new fundamental human right, by excellence of solidarity and survival. There are

arguments in favour of acknowledging and guaranteeing everyone's equal and fair access to common heritage. Among others, its legal existence would allow the establishment of rights and procedures which would ensure the preservation, passing on, and the sustainable and inclusive management of common heritages. Until then, the two fundamental rights significant in this field, the right to culture and the right to environment, indirectly accomplish this role.

Moreover, it would constitute an important pillar, around which the new law branch would be structured.

9. Conclusions

The acknowledgement and development of the idea of establishing a cultural and natural heritage law, as a new regulatory field and an innovative area of dogmatic reflection, and of the emergence of a new fundamental human right to access, to solidarity, the right to a fair access to common national, European and world heritages are required by the obvious developments of social realities and of the relevant legal regulations. Accepting and promoting such actions would firstly contribute to the strengthening and appropriateness of the legal response to phenomena such as cultural globalisation and its adverse, standardising effects, or the degradation and large-scale depletion of the natural resources essential for life and for the individual and general well-being. This would foster the concerns regarding the development, rationalisation, appropriateness and modernization of the legislation on the cultural and natural heritage preservation, including in terms of a codification process and the development of a Romanian Heritage Code. The existence of such a complex regulatory act and of sufficient and effective regulations in the field would promote a better integration and presence of the Romanian cultural and natural values on the European and world scene. At the same time, the need for a specific field and the efforts to set up an innovative fundamental right would foster and lead to significant theoretical developments, and to concerns related to the establishment of professionals or, at least, to the provision of a complementary training in an increasingly important area.

All these legal progress issues would lead to a better identification, valorisation, conservation, preservation, and enrichment of the Romanian cultural and natural heritage, and to its higher presence and visibility at European and world level.

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