

EUROPÄISCHES KULTURRECHT ALS PHÄNOMEN DER ANERKENNUNG DES INTERNATIONALEN KULTURRECHTS

Ph.D. im Gesetz Fayzullayeva Nigora
Universität für Weltwirtschaft und Diplomatie

Kurzfassung: In diesem Beitrag werden in chronologischer Reihenfolge die Frage der Entstehung und Entwicklung sowie der normativen Grundlagen und Prinzipien des europäischen Kulturrechts als Anerkennungsphänomen des internationalen Kulturrechts untersucht. Der Artikel wurde einer objektiven und systematischen Analyse des dualen Rechtssystems des Europarates und der Europäischen Union im Bereich der Regulierung der kulturellen Beziehungen unterzogen. Vergleichend werden die wichtigsten Tendenzen und Leitlinien für die Entwicklung sowohl des europäischen Kulturrechts als auch des internationalen Kulturrechts aufgezeigt. Auf der Grundlage der Analyse werden die Hauptgrundsätze der Entwicklung des internationalen Kulturrechts und praktische Maßnahmen identifiziert, die für die weitere Entwicklung, Kodifizierung und progressive Entwicklung sowohl des internationalen Kulturrechts als auch des Kulturrechts der Republik Usbekistan erforderlich sind.

Schlüsselwörter: Kultur, kulturelles Erbe, kulturelle Werte, Kulturrecht, europäisches Kulturrecht, internationales Kulturrecht, Normen, internationale Verträge, Prinzipien, Europarat, Europäische Union, UNESCO, Usbekistan

EUROPEAN CULTURAL LAW AS A PHENOMENON OF RECOGNITION OF INTERNATIONAL CULTURAL LAW

Ph.D. in law Fayzullayeva Nigora
University of world economy and diplomacy

Abstract: In this article, the issue of formation and development, as well as the normative basis and principles of European cultural law as a phenomenon of recognition of International cultural law are examined in chronological order. The article subjected to an objective and systematic analysis of the dual legal system of the Council of Europe and the European Union in the field of regulating cultural relations. In comparative terms, the main trends and guidelines for the development of both European cultural law and International cultural law are indicated. Based on the analysis, the main tenets of the development of International cultural law and practical measures necessary for further development, codification and progressive development of both International cultural law and Cultural law of the Republic of Uzbekistan are identified.

Keywords: culture, cultural heritage, cultural values, cultural law, European cultural law, International cultural law, norms, International treaties, principles, Council of Europe, European Union, UNESCO, Uzbekistan.

Modern international law is characterized by different centrifugal trends. This can be seen both in the example of the formation of new industries - international human rights law, international nuclear law, international information law, international environmental law, and a number of others - and the expansion of the subject-recognition of international intergovernmental organizations as derivatives of international law, and for individuals and transnational corporations - a limited international legal personality.

In this vein, the development of modern international law proceeds, which, among other things, is converging, carrying in itself positive aspects of classical international law, while at the same time acquiring a number of features that are not characteristic of the past centuries.

Among such positive phenomena in the system of public international law, undoubtedly, is the formation and recognition of international cultural law as an independent branch of international law. Growing on the basis of the institute of protection of cultural values, international cultural law in the modern period - is an independent industry, the subject of regulation of which is a complex of international legal relations of subjects of international law on the implementation of the full range of issues related to cultural cooperation, cultural rights and cultural values.

At the same time, it is very difficult to note with regret that the recognition of international cultural law as an independent branch of public international law is very difficult; textbooks on international law are still dominated by the classical approach in structuring - mainly the issue of protection of cultural values is covered; the number of scientific researches in this sphere is insignificant, especially in our country - the country with the richest cultural values, the homeland of great creators, such as A. Navoi, M.Z. Bobur, Omar Khayyam, Kamaliddin Bekhzod, Abu Nasr Al-Farobiy and many others. In this regard, the President of the Republic of Uzbekistan S.M. Mirziyoyev, in his speech at the opening ceremony of the International Maqom Art Forum noted in particular: "...Uzbekistan, located at the crossroads of the Great Silk Road, is one of the lullabies of civilization and culture of the East. This is clearly evidenced by the musical instrument found by archaeologists in the village of Muminabad in Samarkand region, which is three thousand years old, fresco with the image of musicians, found in the ancient settlement of Ayratom near Termez, and many other examples. Therefore, it is no coincidence that the great poet and thinker Alisher Navoi chose the pseudonym of the magic word "Navo", which means the charming sounds of music. The collection of six maqoms is "Shashmakom", which is the fruit of the musical genius of our people - like six full-flowing rivers. They flow into the ocean of world culture, complementing and enriching it. It is deeply symbolic that this unique cultural phenomenon is recognized by

UNESCO as a masterpiece of the intangible cultural heritage of humanity¹. Besides, in his speech at the first summit of the Organization of Islamic Cooperation on Science and Technology of the President of the Republic of Uzbekistan Sh.M. Mirziyoyev also noted that "the territory of Central Asia was known worldwide as the largest center of the Eastern Renaissance. When we talk about it, first of all, we name with great respect and pride the names of the great scientist, creator of the Al-Khorezmi algorithm, the scientist and encyclopedist Al-Fergani, Abu Rayhan Beruni, who made a significant contribution to the development of many sciences, including geodesy and mineralogy, Ibn Sino, known in the West as Avicenna, Mirzo Ulugbek - statesman and great astronomer².

Conceptually, we should also note that cultural law at the international level, especially in certain regions, has a profound legal structure, elaboration and, finally, regional legal framework. In this case, we would like to highlight the European experience, namely, the issue of formation and development of European cultural law as a phenomenon of recognition of international cultural law in international legal space.

As noted by the researcher of international and European cultural law S.N. Molchanov, European cultural law can be defined "as a complex legal sector, representing an integral system of legal principles and norms regulating international relations of legal entities with regard to culture, cultural values and cultural activities in Europe"³.

It should be noted that the European cultural law system can undoubtedly include the law of the Council of Europe, the law of the European Union and other integration associations (OSCE, UNECE, OECD, SS). This is European cultural law in a narrow sense.

So, here we need to distinguish two types of norms:

a) International legal norms of a universal character in force between European States within the framework of universal treaties, for example, the UNESCO Conventions of 1954, 1970 and 1972, and the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the International Convention for the Protection of All Persons from Enforced Disappearance⁴, and

b) The customary and treaty rules at the regional European level, including those in force under bilateral cultural cooperation treaties, which represent a significant normative body in the cultural field, are traditional and classical in the international legal system⁵.

These two types of international legal obligations we are also obliged to take into account and can reasonably refer them to the sphere of regulation of European cultural law.

Since all the same European states have international obligations in the field of preservation, protection and development of culture, cultural values and cultural activities both within the framework of integration associations in Europe: the EU⁶,

within the framework of the CoE, the OSCE, and outside them, regulating their direct cultural relations, as well as cultural relations with third countries, insofar as it is possible and expedient for us to try to unite them in a common legal framework and to identify the most common principles and norms.

Based on the general analysis of legal sources, S.N. Molchanov singles out "the following classical subject areas of European cultural law: art, science, education, religion and media, leisure, sports, tourism and youth"⁷. Of course, we cannot agree with such a vague and extended subject area of European cultural law, as the issues of mass media in particular relate to the sphere of regulation of European information law, sports to European sports law, science and education to European educational law, etc.

S.N. Molchanov, in particular, considers more than 400 acts⁸ to be regulated by European cultural law. In this regard, the domestic international lawyer Dr. I.M. Umarahunov quite rightly notes that "an international treaty is one of the most effective tools for regulating modern international relations"⁹.

One of the main international legal documents of European law is the European Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950, signed in Rome¹⁰, is both a source of law of the Council of Europe and a source of EU legislation. This fundamental document is explicitly mentioned in Article 6(2) (former Article F) of the Treaty on European Union, and the fundamental human rights guaranteed by it are defined as general principles of Community law.

Since this Convention is also regarded by us as a key Convention in European cultural law, there is also a convergence of one of the most important formal legal sources.

Although the number of "cultural articles" or norms concerning cultural rights in the Convention is small (Articles 9, 10, 14 of the Convention, Article 2 of Protocol No. 1, Article 1 of Protocol No. 12), this fact cannot be underestimated.

Undoubtedly, this phenomenon is directly reflected in legal sources, first of all, in the founding documents of the EU.

Thus, according to paragraph 1 (q) of Article 3, paragraph 1, of the Treaty establishing the European Community, Community activities carried out under the conditions and within the time limits provided for in this Treaty, in accordance with the objectives set out in Article 2, shall explicitly include "the contribution to education, training and cultural development in the Member States"¹¹.

This Treaty also contains Section XII. (former Section IX). Culture", consisting of one Article 151 (former Article 128), which sets out the aims and objectives of the Community's "cultural action", inter alia:

- To broaden and disseminate knowledge of the culture and history of the European peoples;
- To preserve and protect cultural heritage of European significance;
- Non-commercial cultural exchange.

According to Article 151 (4) of the Treaty, "in taking actions based on other provisions of this Treaty, the Community shall take into account their cultural aspects, first of all in order to respect and promote the diversity of cultures¹²".

Furthermore, the explicit recognition of the subjective fundamental human rights and freedoms (both individual and collective) referred to in the 1950 European Convention on Human Rights as general principles of Community law means that they are actually recognized as a normative principle of primary law and that they are given supreme legal effect in the EU legal system on an equal footing with other principles and norms of constituent instruments.

From the above comparative analysis, we can conclude that the normatively fixed cultural goals and objectives of the Council of Europe, as well as the fundamental legally significant goal and process (path) of the creation of the European Union, as well as the vector of the actual development of EU law, paradoxically at first glance, tend to a single denominator.

The above can be convincingly demonstrated by the example of a number of regional conventions¹³ and resolutions¹⁴ in the field of European cultural law adopted within the framework of the Council of Europe and the European Union.

In the light of the consideration of the legal framework of European cultural law, we believe it necessary to disclose the principles of European cultural law, because it is on the principles of the entire legal system as a whole. In this sense, as noted by S.N. Molchanov, "the entire doctrinal and logical and conceptual complexity of the definition of sectoral principles of European cultural law lies in the fact that they must "combine the incongruent", represent an analytical synthesis of two mutually exclusive principles: absolute and private, systemic and individual, common and single, spatial and temporal - to be an unconditionally legal (imperative) principle for European legal entities and at the same time - a special cultural category (cultural prices) that is, to have a *sui generis* cultural uniqueness in the universal system of international cultural law".¹⁵

On the basis of a comprehensive analysis of the system of sources we propose to highlight the following sectoral principles of European cultural law:

Principle of protection and implementation of spiritual and moral values (ideals and principles) constituting the common cultural heritage of the peoples of Europe.

The principle of respect for and protection of the unity of the common heritage of cultural property of European States.

Principle of protection of and respect for cultural diversity in Europe.

Principle of protecting and promoting the development of national contribution to the common cultural heritage (heritage) of Europe.

Principle of European States Cooperation in the Field of Culture.

Principle of respect for national, regional and local cultural identity of European States.

Principle of respect for the cultural identity of the individual, national and ethnic minorities in Europe.

Note that all the above principles are interrelated and interdependent, and should therefore be considered and implemented in direct relation to each other.

These requirements follow not only from the general scientific principle of consistency, but also from the principles, including peremptory, international cultural law and public international law, but are also a cultural imperative, a consequence of the development of the principle of integrity and integrity of European culture, cultural activities and cultural values in Europe¹⁶.

The analysis of the fundamental legal foundations of the European cultural law conducted in the present study convincingly demonstrates the fact of the effectiveness and efficiency of this branch of law at the regional level, which is a kind of precursor for the full formation of international cultural law as a whole. In this sense, it is possible to note in particular that such spheres as politics, economics and management, which are far from being cultural in nature, undergo a process of "domestication" or "culturalization", which in itself is joyful and indicative.

At the same time, we would like to emphasize the fact that neither the European Union nor the Council of Europe are parties to any European cultural treaty concluded within the framework of the Council of Europe or the EU. All this testifies to the complexity and ambiguity of the processes, tendencies and factors taking place and influencing the formation of European cultural law and its development in modern Europe.

The continued plundering of cultural property of entire peoples during wars and conflicts, the vulnerability of museums, libraries and other repositories of cultural objects, the illegal destruction of world cultural heritage sites and the substitution of cultural property in modern times all speak in one voice of the need for the rapid development of the codification process and the progressive development of international cultural law in general and cultural law in Uzbekistan in particular. In this regard, as a positive experience, we note that in order to protect, scientifically study, rationally use objects of material cultural heritage, increase their role and significance in the development of tourism potential of the country, as well as to radically improve the state control in the field of material cultural heritage was adopted the Decree of the President of the Republic of Uzbekistan "On measures to radically improve the activities in the field of protection of objects of material cultural heritage¹⁷". According to which for the first time in the national history the Department of Cultural Heritage under the Ministry of Culture of the Republic of Uzbekistan is organized, the "Roadmap" for radical improvement of protection, preservation, research, promotion and rational use of objects of material cultural heritage for 2019-2021 years was also approved, and the order was established according to which the territory of the republic, included in the UNESCO World Heritage List by its historical and cultural value, is considered to be especially protected.

It should be noted that the current stage in the development of the doctrine of European cultural law seems to us to be fundamental, but, of course, not final, it should

be followed by more extensive from the substantive and procedural point of view methodology inextricably linked with the systems of European law and international cultural law as a whole. In this regard, the development of the doctrine of European cultural law is considered by us as a scientific-theoretical and scientific-methodological basis for substantiating the formation of a new independent branch of international law - international cultural law.

From the applied point of view, in our opinion, it is necessary to accelerate the practical transformation of traditional approaches in politics, economics and law to the real and effective assertion of the principles of cultural law. In this regard, we believe that the transition to the concept of universal cultural heritage and cultural landscape is quite justified.

As a full-fledged member of the international community, the Republic of Uzbekistan, as a full-fledged subject of international law, should conduct more active international law-making activities aimed at developing culture in general and preserving the cultural heritage and heritage of the peoples of Uzbekistan in particular.

References

¹ Address by President Shavkat Mirziyoyev at the opening ceremony of the International Maqom Art Forum // <https://president.uz/ru/lists/view/2021> – 2018. - 06 September

² Address by President of the Republic of Uzbekistan Shavkat Mirziyoyev at the first summit of the Organization of Islamic Cooperation on science and technology // <https://president.uz/ru/lists/view/1018> -- 2017. - 10 September.

³ Molchanov S.N. European Cultural Law // Proceedings of the International Conference "EVA.2002. Moscow. Information for all: culture and technologies of the information society. December 2-7, 2002. M., 2002. p. 2~1~2.

⁴ For example, the Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific and Cultural Character of 10 December 1948; the Agreement of 17.06.1950 "The Convention on the Importation of Educational, Scientific and Cultural Materials (Florence Agreement); the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954; the Regulations for the Implementation of the Convention for the Protection of Cultural Property in the Event of Armed Conflict; the Protocol for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954; the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970; the Convention for the Protection of the World Cultural and Natural Heritage of 14 November 1970; the Convention on the Protection of the World Cultural and Natural Heritage of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. (The Hague, 26 March 1999); UNESCO Convention on the Protection of the Underwater Cultural Heritage, 2001; Universal Declaration on Cultural Diversity, 2001

⁵ Molchanov S.N. European Cultural Law // Proceedings of the International Conference "EVA.2002. Moscow. Information for all: culture and technologies of the information society. December 2-7, 2002. M., 2002. p. 2~1~3.

⁶ Chirvinskaya E.D. France: State and cultural heritage. - Moscow: Lawyer, 2010. p. 29-30.

⁷ Molchanov S.N. European Cultural Law // Proceedings of the International Conference "EVA.2002. Moscow. Information for all: culture and technologies of the information society. December 2-7, 2002. M., 2002. p. 2~1~3.

⁸ See above.

⁹ Umarahunov, I.M. International legal practice of the Republic of Uzbekistan: issues of theory and practice (in Russian) / Editor-in-Chief, R.T. Khakimov. - T.: Yangi asr avlodi, 2016. p. 44.

¹⁰ See: Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950). As amended on 21 September 1970, 20 December 1971, 1 January 1990, 6 November 1990, 11 May 1994, 13 May 2004 // European Convention on Human Rights. - Council of Europe, European Court of Human Rights, 2018. p. 5-33.

¹¹ See: Treaty establishing the European Community (Rome, 25 March 1957) (consolidated text as amended on April 16 2003) // https://eulaw.ru/treaties/teuratom_edit/ 2019. May 10.

¹² See: Treaty establishing the European Community (Rome, 25 March 1957) (consolidated text as amended on April 16 2003) // https://eulaw.ru/treaties/teuratom_edit/ 2019. May 10.

¹³ See e.g.: European Convention on Culture of 19.12.1954; European Convention on the Protection of Archaeological Heritage of 6.05.1969; Convention on the Conservation of European Wildlife and Natural Habitats, 19.09.1979. (Bern Convention); Convention on the Protection of the Architectural Heritage of Europe of 3.10.1985; European Convention on the Protection of Cultural Property of 1985; European Convention on the Protection of Archaeological Heritage (revised, Valletta, 16 January 1992); European Charter for Regional or Minority Languages (Strasbourg, 5.11.1992); European Convention on Landscapes (Florence, 20.10.2000); European Convention on the Protection of the Audiovisual Heritage of 8.11.2001.

¹⁴ See e.g.: Resolution (adopted on 29 March 1966) on the Revival of Monuments (66/22); Resolution No. (68)11 of 5 March 1968 on Principles and Practices for the Active Preservation and Rehabilitation of Architectural Groups and Ensembles of Historical or Artistic Significance. Resolution No. 68/12 "On the active conservation of monuments, groups of buildings and areas of historical or artistic importance in the context of regional planning", adopted on 3 May 1968; Resolution (72) 20 on temporary measures for the protection of the cultural heritage of monuments and sites (adopted on 30 May 1972.); Resolution (72) 21 on the compilation of national inventories of monuments, groups of buildings and places of historical or artistic interest (adopted on 30 May 1972); Resolution No. 76(28) of 14 April 1976 on adapting the legal and regulatory framework to the requirements of integrated conservation of the architectural heritage; Recommendation No. R (84) 7 of the Committee of Ministers to Member States on the maintenance of cultural relations of migrants with their countries of origin and leisure activities (adopted on 28 February 1984.); Recommendation No. R (85) 6 of the Committee of Ministers to Member States on assistance to artistic creation (adopted on 14 May 1985); Recommendation No. R (85) 8 of the Committee of Ministers to Member States on the preservation of European cinematographic heritage (adopted on 14 May 1985); Recommendation No. R (86) 9 on copyright and cultural policies of 22 May 1986; Recommendation No. R (88) 5 of the Committee of Ministers to Member States on the control of the physical destruction of architectural heritage accelerated by pollution of the environment; Recommendation No. R (89) 5 of 13 April 1989 on the preservation of European cinematographic heritage (adopted on 14 May 1985). regarding the protection and enhancement of the archaeological heritage in the context of urban and rural planning; Recommendation No. R 89(6) of the Committee of Ministers to Member States on the protection and enhancement of rural architectural heritage of 13 April 1989; Recommendation No. R (90) 18 of the Committee of Ministers to Member States on the role of museums in environmental education, information and training (adopted on 18 June 1990)); Recommendation No. R (90)20 of the Committee of Ministers on the Protection and Preservation of Technical, Industrial and Civil Technological Heritage in Europe of 13.09.1990; Recommendation No. R (91)6 on measures to encourage the financing of the preservation of architectural heritage (adopted on 11 April 1991); Recommendation No. R (91)13 of the Committee of Ministers to Member States on the protection of the cultural heritage

of the 20th century (adopted on 9 September 1991); Recommendation No. R (95)3 of the Committee of Ministers to Member States on the coordination of methods and systems of documentation relating to historic buildings and monuments in an architectural manner

¹⁵ Molchanov S.N. European Cultural Law // Proceedings of the International Conference "EVA.2002. Moscow. Information for all: culture and technologies of the information society. December 2-7, 2002. M., 2002. p. 2~1~5.

¹⁶ Mironova T.N. Preservation of cultural and natural heritage as the main feature of the cultural policy of the European region: Italy // Knowledge. Understanding. Skill. M., 2009. № 2. p. 41.

¹⁷ See: Resolution of the President of the Republic of Uzbekistan "On measures to radically improve activities in the field of protection of objects of material cultural heritage" dated December 19, 2018, No. PP-4068 // National database of legislation, 20.12.2018, No. 07/18/4068/2349.