

HEURIGHT

The Right to Cultural Heritage

Its Protection and Enforcement through Cooperation in the European Union

Cultural Heritage in the European Union: Legal Perspectives and Contemporary Challenges

20-21 April 2017

Institute of Art of the Polish Academy of Sciences
26/28 Długa St., Warsaw (Poland)
Ground floor, The Sobieskis' Hall
<http://www.ispan.pl/en>

On 20-21 April 2017, the Research Team of the project **HEURIGHT – The Right to Cultural Heritage – Its Protection and Enforcement through Cooperation in the European Union**, a project co-financed by the European Commission (JPI Heritage Plus – Horizon 2020) is organising, in cooperation with the Editorial Board of the **Santander Art and Culture Law Review**, an international conference entitled '**Cultural Heritage in the European Union: Legal Perspectives and Contemporary Challenges**'. Its main objective is to present and debate the research already undertaken within the framework of the project. Accordingly, the conference aims to discuss how human rights guarantees in relation to cultural heritage are being understood and implemented in the European Union (EU) and in its neighbouring countries. Acknowledging the changing and often contested nature of the right to cultural heritage (or more precisely the right to access or enjoyment of cultural heritage), it will endeavour to map how this right's evolving content affects the forms of protection, access to, and governance of cultural heritage, within the institutional, operational and legal structures of the EU. In particular, it will deal with the complex organizational and regulatory frameworks concerned with cultural heritage and human rights in place in the EU Members States, as well as their interaction, cross-fertilization, and possible overlaps. The event will be hosted by the Institute of Art of the Polish Academy of Sciences in Warsaw.

Registration: heuright@gmail.com

For more information see:

www.heuright.eu and www.artandculturelaw.ukw.edu.pl/jednostka/art_and_culture.



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KEYNOTE SPEAKERS:

The first speech, 'L'héritage européen et l'avenir de l'Europe', will be given by **Krzysztof Pomian**, a philosopher and historian specialising in the socio-cultural history of France, Italy, and Poland. He is the director of research emeritus at the *Centre National de la Recherche Scientifique* (CNRS) in Paris and professor of the history of culture emeritus at Nicolaus Copernicus University in Toruń, Poland. He also serves as chair of the Scientific Committee of the Museum of Europe in Brussels and as an editorial adviser to the journal *Le Débat*. Educated at the University of Warsaw, where he was awarded a Ph.D. in philosophy in 1965, he taught there until 1968 when he was dismissed because of his political opinions. In 1973, he emigrated in France where he joined the CNRS. He also taught history at the *École des Hautes Études en Sciences Sociales* and at the University of Geneva, and museology at the *École du Louvre*. His particular interests are the history of history and history of collections and museums. A member of *Polska Akademia Umiejętności* (Cracow), *Ateneo Veneto* (Venice) and of Bologna's *Accademia Clementina*, in addition to numerous articles published in scholarly journals, he is editor of two books, co-editor of four and author of fifteen others, including *L'Europe et ses nations* (1990) and most recently, *Des saintes reliques à l'art moderne. Venise-Chicago, XIIe-XXème siècle* (2003), *Ibn Khaldûn au prisme de l'Occident* (2006), *Muzea i Narody w Europie Środkowej przed pierwszą wojną światową* (2016).

The second speech, 'Right to Culture - Current Challenges in Poland', will be offered by **Adam Bodnar**, Poland's current Commissioner for Human Rights (elected in 2015). He graduated from the Central European University in Budapest, Hungary, completing a LL.M. programme in the field of comparative constitutional law. He obtained a Ph.D. from the Faculty of Law and Administration at the University of Warsaw. In 2004 - 2015 Adam Bodnar worked for the Helsinki Foundation of Human Rights, first as a co-founder and coordinator of Precedent Cases Programme and then as the head of the legal department and vice-president of the Management Board. Since 2006 he has lectured constitutional and human rights law at the University of Warsaw. He is also an expert in the Agency of Fundamental Rights of the European Union. In 2013-2014 he was a member of the board of directors of the United Nations Fund for Victims of Torture. Prior to assuming the post of Ombudsman, Adam Bodnar cooperated with various non-governmental organizations acting in the area of human rights and published extensively on human rights law.

SESSIONS' CHAIRS:

Mauro Bussani is Full Professor of Law at the University of Trieste, Faculty of Law, Italy, and Adjunct Professor at the University of Macao, Faculty of Law, Macao (S.A.R. of the People's Republic of China). Bussani's work focuses on comparative private law, including contract law, tort law, and the law of secured transactions, private law foundations of democracy and of rule of law, legal pluralism and law and development. He is a titular member of the *International Academy of Comparative Law* and of the *Société de législation comparée*. He sits on the councils of a number of scientific academies/institutions, including the *Swiss Institute of Comparative Law* (Switzerland), the *Master of Laws in Cross-Cultural Business Practice* (Switzerland), the *Fondation pour le droit continental* (France), and the *Interdisciplinary Association of Comparative and Private International Law* (Austria). Bussani is co-editor of the Cambridge University Press series '*The Common Core of European Private Law*', and a member of the editorial board of leading comparative law journals. He is the Co-Recipient of the 2016 *Advanced Grant of the European Research Council (Horizon 2020 – Excellent Science)*.

Damien Helly is the head of programme (deputy) for EU external action at the European Centre for Development Policy Management (ECDPM) in Maastricht (the Netherlands). He joined ECDPM in March 2013 and is the Deputy Head of the Strengthening European External Action Programme, where he deals with the strategic, political and institutional dimensions of EU development policies with the African, Caribbean and Pacific Group of States (ACP countries), contributing to the multidisciplinary nature of ECDPM's teamwork. Damien Helly monitors and engages in debates on, for instance, the politics of EU's aid and trade, policy coherence for development (PCD), EU's regional strategies in Africa, and EU-Africa relations more generally. He is also a visiting professor at the International Relations and Diplomacy Department of the College of Europe in Bruges where he teaches a Masters level course on the EU's Common Security and Defence Policy (CSDP). He holds a Ph.D. in political science from the *Institut d'Études Politiques de Paris* (Sciences Po) and has published extensively on the EU's external action.

Anna Młynarska-Sobaczewska is Professor at the Institute of Law Studies of the Polish Academy of Science. Her primary research areas include: constitutional law, theory of the state, human rights; especially right to information, freedom of expression, freedom of artistic creativity. She is an author of numerous articles and essays on public law; she also wrote two books ("Freedom of information in the press" 2001, "The Authority of the State. Law as legitimating mean in the transitional state" 2011). She was visiting scholar (Kosciuszko Foundation grant) in Chicago Kent College of Law (2014-2015). Now she is working on project funded by the Polish National Centre of Sciences "Right to culture – a legal model".

Roger O'Keefe has been Professor of Public International Law at University College London since September 2014. Prior to this, he taught for fifteen years at the University of Cambridge, where was Senior Lecturer in Law, Deputy Director of the Lauterpacht Centre for International Law, and Fellow of Magdalene College. He took a B.A. in History and Italian and his LL.B. (with First Class Honours) from the University of Sydney, Australia, before coming to the UK to take his LL.M. (with First Class Honours and the Clive Parry Prize for International Law) and his Ph.D. from the University of Cambridge. He has published widely on canonical topics of public international law, such as the sources of international law, the law of treaties, the relationship between international and domestic law, statehood and admission to the United Nations, title to territory, jurisdiction and immunities, and state responsibility, as well on topics in the subfields of international criminal law, international humanitarian law, international human rights law, and international cultural heritage law.

Matteo Rosati is a Programme Officer at the Culture Unit, UNESCO Office in Venice. He joined the UNESCO Office in 2005. Since then he has been working on the definition and implementation of activities for the enhancement of culture for development in South-East Europe. He contributes to the planning and implementation of activities aimed to reinforce the cooperation with, and between, the Member States covered by the territorial mandate of the Office on issues ranging from cultural heritage to the diversity of contemporary cultural expressions. He is the focal point for the Office's Gender issues and responsible for liaising with several universities and scientific institutions in Venice. Previously he worked in international relations and development cooperation, including assignments with the Delegation of the European Commission at the International Organizations in Vienna (2000), the Italian Ministry of Foreign Affairs – Local Technical Unit for Development Cooperation in Bosnia and Herzegovina (2001-2003), the World Bank (2004), and the International Management Group (2005).

PROGRAMME (ABSTRACTS AND BIO NOTES)

1. ***The Right to Cultural Heritage. Its Protection and Enforcement by European Courts (CJEU and ECtHR)*** (Mateusz Bieczyński, University of Fine Arts in Poznań)

Abstract:

The right to cultural heritage is not *explicitly* mentioned in either the EU Charter of Fundamental Rights or in the European Convention on Human Rights (ECHR). Despite this fact, both European Courts – the European Court of Justice in Luxembourg (ECJ) and European Court of Human Rights in Strasbourg (ECtHR) respectively – mention in their *case-law* culture heritage in the context of human rights. Usually, but not singularly, it is revoked by the ECtHR as a collective empowerment – limited to the ‘culture property right’ of an individual (cases: *Beyeler v. Italy*, *Ruspoli Morenes v. Spain*, *Buonomo Gaber & oth. V. Italy*, etc.). Similarly, Strasbourg Court does not mention this right in the context of individual claims to cultural access and participation, or minority cultural rights. This practice suggests that the ECtHR tends to shape cultural heritage rights as a ‘community privilege’. At the same time the ECJ does not give a strong priority to cultural heritage as an object of state control. The Court rather, limits the Member States national interest in keeping the cultural good(s) on its own territory, treating this interest as an obstacle for free trade within the EU. In a similar vein, the Luxembourg Court only seems to recognize the preservation of cultural heritage within its borders in the case of ‘national treasures’ – cultural objects of the highest value. Different definitions of the ‘right to cultural heritage’ in the *case-law* of both courts raises at least three questions, which will be analysed in this paper: 1.) is the meaning of the ‘right to cultural heritage’ equal in both legal regimes? (*objective range*), 2.) are the courts congruent in their legal application of the scope of protection of the law on cultural property rights? (*subjective range*), 3.) who is the subject of that law according to each court, and what interests are coming to the fore in their decision-making? (*axiological aspect*). While dealing with these dilemmas, the paper will also refer to another aspect of the problem – the formal, ‘normative one’. It refers to the legal framework for the coexistence of both courts, which partly influences the scope of the right to cultural heritage in both regimes. On the margin of this investigation another problem will also be addressed: is there – according to the jurisdiction of both European courts – any recognized form of a ‘collective European cultural heritage’?

Bio note:

Mateusz Bieczyński serves as Vice-Rector of the University of Fine Arts in Poznan. He holds a Ph.D. in Legal Sciences (2011) from the Institute of Law of the Polish Academy of Sciences, an M.A. in Art History (Adam Mickiewicz University in Poznan, 2008) and LL.M. in German Law (Potsdam University, 2010). He also graduated CuratorLAB – Postgraduate Program for Professionals in Arts (Konstfack – University College of Arts, Crafts and Design, 2013). Mateusz received the START scholarship for young researchers from the Foundation for Polish Science (2012) and the scholarship for the field of culture awarded by the Wielkopolska Province Marshal (2013). He is currently completing a research project titled ‘Philosophical background of the legal limitations on freedom of visual arts’ financed by the National Science Centre (2013-2016).

2. *Migrants' Cultural Rights in the European Union* (Alessandro Chechi, University of Geneva)

Abstract:

Migration is a constant in human history and a permanent feature of European societies. Nevertheless, immigration regulation is one of the most divisive and sensitive issues in the agenda of States and international organizations. In Europe there is a continuous struggle between the European Union (EU) and EU Member States about the scope of application, the limits, and implementation of EU migration policies, rules and mechanisms – even in the face of the exponentially increasing refugee crisis involving millions of people fleeing persecution and violence in the Middle East and elsewhere. EU governments look at immigration regulation as one aspect of sovereignty, in that the decision on who is allowed to enter and stay in a country is an expression of national policies and interests. As a result, many EU Member States refuse to admit certain categories of migrants – even those coming from conflict affected-settings. On one hand, this refusal to admit certain migrants has also been a response to increasingly vocal populist political parties. On the other hand, the EU regulates the free movement of persons within the internal market – be they EU citizens or not – and the entry and residence of third-country nationals in order to build up a coherent and comprehensive approach to reap the benefits, and address the challenges, deriving from migration. The tension between the EU and EU Member States stems from the fact that EU rules are binding on Member States and set out limits to Member States' freedom to prevent the entry and residence of foreigners. All actions on the national level regarding immigration regulation have to be in line with EU policies and rules. This paper looks at the cultural rights of migrants from the point of view of EU law. In particular, what this paper will provide is a critical examination of the policies and legislation that have been adopted by the EU in the field of migration to assess whether the rights of migrants in relation to cultural heritage are recognized and protected. In order to do so, this paper will provide an inventory of the cultural rights of migrants. This issue will be discussed by not only looking at EU law but also at the instruments adopted by other international organizations, such as the United Nations and the Council of Europe, to regulate one or more aspects of the phenomenon of migration and the protection of cultural heritage. Furthermore, this paper will emphasise that migration and migrants are a blessing for the culture of receiving States. Indeed, history shows that migration has a powerful creative side. All in all, the objective of this paper is twofold: to assess whether EU law has been shaped as a result of the pressure of anti-immigrant governments or in light of the need to address the various human rights issues relating to this delicate field of law; to demonstrate that long-term third country nationals should not be relegated to the periphery of European civil society as they represent a crucial factor for the social, cultural and economic development of every EU Member State.

Bio note:

Alessandro Chechi (Ph.D. European University Institute; LL.M. University College London; J.D. University of Siena) is a senior researcher and teaching assistant at the Art-Law Centre, Faculty of Law, of the University of Geneva (Switzerland), lecturer in Public International Law at the Faculty of Law of the *Université Catholique* of Lille (France), and consultant for the European Committee on Crime Problems (CDPC) of the Council of Europe. Alessandro is also a reporter for Italy for the International Law in Domestic Courts-Oxford University Press project (ILDC), and member of the Editorial Committee of the *Italian Yearbook of International Law* and the *Société internationale pour la recherche sur le droit du patrimoine culturel et le droit de l'art*. He is the author of *The Settlement of International Cultural Heritage Disputes* (Oxford University Press, 2014), and has published extensively on subjects of international cultural heritage law, international human rights law, dispute settlement and the law of international immunities.

3. Culture in the EU Trade Agreements: Current Trends of Difficult Relationship (Francesca Fiorentini, University of Trieste)

Abstract:

The paper offers an operative analysis of the EU's Trade Agreements in order to better understand how culture is dealt with in the EU trade policy with third parties. The paper analyses the structure and content of the 44 EU Trade Agreements by dividing them into three categories; agreements with European third parties, Mediterranean countries and other countries. In these agreements, the broad notion of 'culture' is defined in a series of different sub-aspects, such as considerations of cultural cooperation, promotion of cultural diversity, cultural heritage protection, cultural exchanges between institutions and artists, and the treatment of audiovisual goods and services. Another crucial part of this paper will be an analysis of the cultural cooperation protocols that may be added to trade agreements with the main purpose of establishing a specific forum for trade in audiovisual goods and services, and promoting the values of the UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions of 2005. The assessment of the pace and role(s) of culture in the EU's trade agreements will result in some observations on the current state of the relationships between the EU external cultural action, the WTO rules, and the geopolitical competition between the approaches of the EU and the U.S.A. on the 'trade and culture' dilemma.

Bio note:

Francesca Fiorentini, Ph.D. (University of Trento, Italy), is Associate Professor of Comparative Law at the University of Trieste (Italy). She is a former Research Associate at the *Max-Planck-Institut für ausländisches und internationales Privatrecht* of Hamburg (Germany) (2004-2007) and former Marie Curie Fellow at the *Zentrum für Europäisches Rechtspolitik* (University of Bremen, Germany, 2006-2007). She leads the Italian research unit of the three-year annual project 'The Right to Cultural Heritage – Its Protection and Enforcement through Cooperation in the European Union' financed in July 2014 by the EU (Heritage Plus – Horizon 2020). She has written a book on comparative secured transactions law, and more than fifty essays and articles. Her main research fields include: comparative and European law, comparative secured transactions law, comparative cultural property law; European private Law.

4. Cultural Heritages, National Treasures: How EU Member States Protect the Circulation of Cultural Property (Michele Graziadei, University of Turin and Barbara Pasa, IUAV University of Venice)

Abstract:

The European Union's institutions are witnessing a decisive investment towards a new transnational policy on the protection of cultural property. International Conventions are also contributing to this policy, showing a shared commitment to targeting illicit trade in cultural objects (Frigo; Scovazzi). Although the EU has no competence over cultural legislation (Art. 167 TFEU), and the Member States have the right to restrict the free movement of cultural objects to protect national treasures (Art. 36 TFEU), the European provisions are trying to find a compromise between the logic of market rules and heritage protection. The most important initiatives of the EU in this sector are Council Regulation (EU) n. 1215/2012, which introduced a rule of private international law in favour of the owner of a cultural object and Council Directive 2014/60 on the return of national treasures exported illegally from one Member State to another Member State. In particular the new Directive, which recasts Directive 93/7 (EC) of 16 March 1993, strengthens the protection of the 'national treasures' of the Member States and supports the 'cultural argument' for claiming the restitution of cultural objects. This paper considers the updated notion of 'national treasure' and its appropriateness as a means to capture the national treasure of a State as a whole (without

considering the Annex to Dir. 93/7, or financial or historical thresholds). Furthermore, it considers the relationship between the notions of 'national treasure' and 'cultural heritage', a liminal concept (Giannini; Casini) that is relevant to several non-legal disciplines. Although it is reasonable to include only the most important elements of national cultural heritage within the scope of application of Directive 2014/60, it is still not clear what are the *dynamic* (in relation to the *circulation* of cultural objects) components of a 'national treasure', a notion that has been tagged as 'elitist' (Cornu). The special local interpretation of national rules applicable to certain cultural objects is linked to the presence or absence of certain objects in a certain territory, but it also concerns the way each State represents cultural property and assesses its value for the community of users (Graziadei). Different national models of protection open basic questions about the possession of cultural objects and their uses by various communities, keeping in mind that a 'national treasure' may still be publicly or privately owned property. The paper highlights some features of a few relevant models (French, English, Spanish and Italian) in a diachronical perspective. Understanding these different organizational patterns is necessary to grasp what is at stake in the current debate on the protection of cultural heritage.

Bio notes:

Michele Graziadei is Full Professor of Comparative Law at the University of Torino. He is the President of the Italian Society for Research on Comparative Law (SIRD). A titular member of the International Academy of Comparative Law, he has been Visiting Professor in several universities across the globe. Michele Graziadei is the author or co-author of over 90 publications. His latest book, co-edited with Lionel Smith, is *Comparative Law: Global Perspectives* (Edward Elgar, 2017).

Barbara Pasa is Associate Professor of Comparative Law at the Iuav University of Venice. She is a research fellow at the *Scuola di Studi Superiori dell'Università degli Studi di Torino* 'Ferdinando Rossi' (SSST), an institution of excellence and higher education for the University of Turin, where she teaches 'Law, Politics and Globalization'. Prior to joining Iuav University of Venice, she was an Associate Professor at the Law Department of Turin, holding the chairs of Comparative Law and European Private Law. She received her BA and LL.M. degree from the University of Trento (Italy) and holds a Ph.D. in Comparative Private Law from the University of Trento (Italy). She is now qualified for the position of Full Professor (*idoneità prima fascia*). She is a lawyer (Italian Bar) and a member of the European Law Institute (ELI), the SIRD and of the AIDC (both Italian Societies for Comparative Lawyers). She is the author or co-author of over 60 publications. Her teaching and research interests include comparative private law, European private law, legal translation, cultural and language pluralism, as well as some core areas of private law such as contract law, consumer protection and intellectual property rights.

**5. Cultural Heritage in the European Union's External Action
(Kristin Hausler, British Institute of International and Comparative Law in London)**

Abstract:

This paper will discuss how cultural heritage has so far been considered and incorporated into the external action of the European Union (EU), including how it has been understood and defined. In order to do so, it will first consider where and how does cultural heritage fit within the European Union policy, looking back through the past two decades. It will then introduce the various types of external agreements, such as, for example, those regarding the neighbourhood policy which provides for action within the cultural heritage sector. This presentation will also highlight a number of cultural heritage projects that stem from the various agreements entered by the EU as part of its external action, including projects that sought to improve access to cultural heritage through digitisation. This broad analysis will

identify the external relations goals that the EU has sought to achieve through cultural heritage. Finally, this presentation will look at cultural heritage within the EU's most recent document on the topic, the Joint Communication adopted in June 2016 on a 'EU strategy for international cultural relations', and consider whether it reflects the efforts undertaken by the EU in this area so far.

Bio note:

Kristin Hausler (lic. iur. University of Fribourg, LL.M. University of British Columbia) is the Dorset Senior Fellow in Public International Law at the British Institute of International and Comparative Law and a Principal Investigator on the HEURIGHT project. She regularly lectures on human rights and cultural heritage matters and is a member of the Cultural Heritage Committee of the International Law Association. Kristin has a background in the cultural sector, having worked in museums and studied modern and contemporary art at Christie's in New York. She also worked at the Museum of Anthropology in Vancouver on the 'Journey Home', a field project developed with Indigenous peoples, which focused on the return of Ancestral remains to their native communities.

6. *Education in the European Union and the Concept of Common Heritage and History* (Alicja Jagielska-Burduk, Kazimierz Wielki University in Bydgoszcz)

Abstract:

The European Union plays an important role as an initiator of changes in cultural heritage management and use of available cultural resources in the Member States. All EU activities concerning culture should be in line with the values declared in the EU founding treaties: cultural policy (Art. 167 TFEU) and safeguarding of cultural heritage (Art. 3 TEU). Common responsibility for cultural heritage within the EU is subsidiary to local and national activities taken up by the Member States' authorities. The concept of common heritage and history is one of the pillars of the integrated approach to cultural heritage. Together with copyright law it becomes more and more visible in education policies and programmes of the EU Member States as building up culture awareness among citizens is the first step to enhancing sustainable development in EU countries. Educational activities supported by the EU are provided in various direct and indirect forms. Among direct means should be mentioned: introducing cultural issues in learning programmes at all stages of education with emphasis on the content of handbooks and educational materials; digitization processes of cultural goods (both privately and publicly owned); and promoting tourism together with cultural heritage sites. Indirect means could be, listed EU projects with dissemination of the obtained results, organizing workshops, engaging local groups and cooperation between local authorities and citizens. Forget Heritage Interreg 2016-2019 project can be presented as an example of a subsidised project by the EU international initiative in Central Europe, which seeks to influence the quality of life of its members and encourage private public cooperation in cultural heritage management. The aim of the project is to inspire the establishment of innovative business entities concerning creative industries in historic buildings. Accordingly, this paper will deal with the 'Europeanisation' of education systems and programmes in the EU, indicating its major characteristics and drawbacks.

Bio note:

Alicja Jagielska-Burduk (Ph.D., MBA) is Assistant Professor and head of Cultural Heritage Protection Law at the Institute of Law, Administration and Management, University of Kazimierz Wielki in Bydgoszcz, Poland. She is also the co-founder and editor-in-chief of the *Santander Art and Culture Law Review* (SAACLR). She specialises in cultural management, encompassing the issues of participation and access to culture and cultural heritage. In the course of her research work and legal practice she has gained considerable expertise in the culture sector, including focus group analysis in relation to various stakeholders and groups of interest. In 2014, the government of Poland nominated her as a mediator at the UNESCO

7. Common Culture in Abeyance: Exploring the Role of Cultural Heritage within the Constitutional Legal Framework of the European Union (Andrzej Jakubowski, Polish Academy of Sciences in Warsaw)

Abstract:

What is the legal notion of cultural heritage in the constitutional law of the European Union (EU)? Until the adoption of the Maastricht Treaty in 1992, the European Communities focused predominantly on economic and political matters. Indeed, the creation of the EU was coupled with the introduction of 'culture' as a part of the integration process and an important element in building solidarity between the EU Member States and their peoples in full respect for their history and traditions. Accordingly, the EU respects the 'rich cultural and linguistic diversity' of Europe and 'ensure that Europe's cultural heritage is safeguarded and enhanced' (Article 3(3) TEU). As determined by Article 167 TFEU, 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'. The EU's engagement *inter alia* relates to the 'conservation and safeguarding of cultural heritage of European significance'; 'non-commercial cultural exchanges'; and 'artistic and literary creation, including in the audiovisual sector'. The EU and its Member States also commit themselves to 'foster cooperation with third countries and the competent international organizations in the sphere of culture'. Moreover, both the EU and its Member States must act and legislate consistently with the EU Charter of Fundamental Rights, which provides for a certain catalogue of cultural guarantees. This paper explores the dialectics between the concept of Europe's common heritage and the Member States' national heritages within the EU constitutional legal framework. The analysis will be twofold. First, it will explore to what extent constitutional regulations of the EU Member States in relation to cultural heritage may be perceived as those truly forming EU constitutional principles, derived from common constitutional traditions of its members. Secondly, it will analyse the evolving, notion of cultural heritage within the EU primary law, constantly (re-)interpreted in the EU policy documents. Accordingly, this paper will attempt to understand whether and to what extent the concept of Europe's common cultural heritage, under EU law, goes beyond the sum of Member States' heritages and their internal cultural regulations and policies which those states reciprocally protect and enforce through the EU legal instrumentarium and mechanisms. In other words, it will discuss whether the EU constitutes just a platform to enhance, enforce and reconcile individual cultural heritage interests of its members, or perhaps it is already an organisation that has developed its own constitutional cultural heritage principles, common or collective in nature. Thus, the major aim of the paper is offer a critical re-conceptualisation of the present-day understanding and operationalisation of the 'common European cultural heritage' under the EU constitutional law.

Bio note:

Andrzej Jakubowski is an Assistant Professor at the Institute of Law Studies of the Polish Academy of Sciences (Warsaw), and serves as the HEURIGHT's Project Leader. He holds a Ph.D. in International Law from the European University Institute (Florence, Italy) and MA in art history from the University of Warsaw. He is a current member of the ILA Committee on Cultural Heritage Law. In 2014, the government of Poland nominated him as a mediator at the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation. His research interests lie in the areas of international cultural heritage law and human rights. He, *inter alia*, authored *State Succession in Cultural Property* (Oxford University Press, 2015) and edited *Cultural Rights as Collective Rights — An International Law Perspective* (Brill-Nijhoff, 2016). Andrzej is also a co-editor of (with Karolina Wierczyńska) of the volume *Fragmentation vs.*

the Constitutionalisation of International Law – A Practical Inquiry (Routledge, 2016), and serves as a member of the editorial boards of the *Polish Yearbook of International Law* and *Santander Art & Culture Law Review*.

8. The Financing of Cultural Heritage Matters: A Value Based Approach (Arjo Klamer and Anna Mignosa, Erasmus University in Rotterdam)

Abstract:

What are the values of cultural heritage? Cultural heritage presumably constitutes and contributes to the cultural capital of a region, country or international community. It can be tangible and intangible. What, then, is cultural heritage good for? Policy documents have been increasingly focused on the possible roles that cultural heritage can have for a community, a city, a region, a country. It can contribute to boost cultural, social, and economical development. Within this 'new approach' to heritage, the determination of values that can be realized is the first step. The financing of cultural heritage is an element in the actual realisation of values of cultural heritage. Proprietors and stakeholders of cultural heritage might (not always) have a choice concerning the mode of financing. The value-based approach suggests that the mode chosen may affect the outcomes in terms of realized values. Public money, for example, does best in realizing certain public values but usually fails in realizing community values. Commercial money does best in realizing financial value but may fall short of realizing public and community values. Private money could be ideal to consider community values but might not be able to cover the financial needs. The paper will present a model of five spheres for the financing of cultural heritage. In the second part, the paper will illustrate several cases to investigate the usefulness of this model. The financial crisis and the following reduction in public and private sources of funds have often reduced the possibility to support cultural heritage. Referring to specific cases, the paper illustrates how, in some cases, the source of financing has affected the values taken into consideration, and/or in other cases the prevailing values have influenced the choice of the source of financing. For instance, some examples from Turkey demonstrate that when the source of financing for heritage restoration comes from the private sphere (real estate sector), the values that are put to the fore are commercial. In these cases, these values can also influence the policies that are supposed to protect cultural heritage and in the end hindering community values. Another case, from Italy shows how the non-profit sector is best suited to give a central role to community values and can stimulate the public sphere to modify its attitude and pay more attention to community values. These cases will be used to demonstrate how the model for the financing of cultural heritage could provide an interesting tool when making choices about cultural heritage, to make sure that the choices made realise the relevant values of each stakeholder involved.

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Bio notes:

Arjo Klamer is Professor of Cultural Economics at the Erasmus University since 1994. He has published extensively and widely on cultural economics and has conducted several studies on the financing of cultural heritage. Recently he served as the president of the Association of Cultural Economics International. He is the editor of the *Value of Culture: the relationship between economics and the arts* (1997), and most recently *Doing the Right Thing: a Value Based Approach* (2017).

Anna Mignosa is currently a researcher at the University of Catania, and a visiting lecturer at the Erasmus School of History, Culture and Communication. She holds a Ph.D. from Erasmus University, Rotterdam and a B.A and M.A. in Economics from the University of Catania. Her research interests focus on cultural economics, cultural heritage, and cultural policy, with a specific focus on the rationale for public intervention in the sector, private provision of public goods, the organisation of the institutions responsible for culture, and the tools used and the evolution that has characterised international cultural policies. She has edited the *Handbook on the economics of cultural heritage* with Ilde Rizzo. She has been a member of the Board of the Association of Cultural Economics International (ACEI) from 2010 to 2016, and is a Canon Foundation fellow for the year 2007. She is one of the founders of *Officine Culturali* a cultural association active in the enhancement of culture and cultural heritage, and of CREARE a Dutch foundation active in education and research projects in cultural economics.

9. *Digitisation. Towards a Common European Cultural Heritage?* (Ewa Manikowska and Piotr Jamski, Polish Academy of Sciences in Warsaw)

Abstract:

Digitization has profoundly influenced the definitions of European cultural heritage. A foreground element of the European Commission's policy, defined in recommendations of 31 August 2006 and 27 October 2011, successfully implemented in all Member States, has standardised the European museums, libraries and archives and reduced the 'civilisational gaps' between the institutions in the old and in the new Member States. Nowadays even the smallest museum and archive is involved in a digitization project, employs digitization experts, and has a more or less equipped digitization lab. Moreover, each institution - regardless of its collection size and profile, the different national digitization policies and the various founding sources - uses the same tools and strives for the same goals. Digitization has transformed cultural heritage into a profitable, fully accessible and countable matter. First, digitization of cultural heritage creates new jobs and new creative industries and is part of the wider EU's digitization policy, which considers the merging of industrial production with information technologies as a key factor in the EU's economy, its commercial development and its global competitiveness. Secondly, digitization is considered as the best means of making cultural heritage accessible to all for free and wherever at whatever time. Thirdly, cultural heritage is defined as a total number of objects in the different kinds of EU institutions. The ambitious EU plans are to have the entirety of this heritage digitized and fully accessible online. Moreover, one of the main aims of digitization is to ensure that Europe maintains its place as the leading international player in the field of culture and creative content, and uses its wealth of cultural material in the best possible way. In this paper we will ask if the new definitions of, and approach to, cultural heritage is the result of European cultural traditions and EU policy or rather of wider social, cultural and economic

trends: globalization, the rise of information society, and democratization. On the one hand we will juxtapose it with other EU initiatives seeking to determine a European cultural heritage (i.e. the House of Europe project, the European Heritage Label) as well as with non-EU digitization policies and programs (i.e. India's Cultural Heritage Programme or the Canadian National Heritage Digital Strategy).

Bio notes:

Ewa Manikowska serves as an Associate Professor at the Institute of Art of the Polish Academy of Sciences in Warsaw. She holds a European Doctorate in Social History and Mediterranean (University of Warsaw/Ca' Foscari University of Venice). Her research interests focus on the history of collecting, survey photography, cultural heritage and art restitution at the time of the First World War. Together with Prof. Elizabeth Edwards (De Montfort University, Leicester) she has organized the international research workshop 'Survey Photography and Cultural Heritage in Europe. Expanding the Field' (April 2015). Her new book entitled *Photography and Cultural Heritage in the Age of Nationalisms: Europe's Eastern Borderlands (1867-1945)* will be published by Bloomsbury in October 2017 (<http://www.bloomsbury.com/author/ewa-manikowska#sthash.lm0PqySa.dpuf>).

Piotr Jamski works in the Institute of Art of the Polish Academy of Sciences in Warsaw, where he deals with photographic collections. He holds a M.A. in the history of art from the University of Warsaw. As an art historian he is interested in seventeenth century European art, especially the architecture and sculpture of Rome and Poland. He investigates Polish cultural heritage in the former Soviet Union (Belarus, Lithuania and Ukraine). His second field of interest is documentation photography of heritage and the history of historical monuments protection in Polish lands. For 25 years, he has also been a photographer of works of art.

10. Exploring the Links between Culture and Development: New Challenges for Cultural Indicators (Paola Monaco, University of Trieste)

Abstract:

The relationship between culture and development is often described and perceived as a conflict between rival systems, a clash of cultures, a marriage of opposites. In recent years, however, many scientific and institutional initiatives at the national and international level have put an increasing emphasis on the coupling of the two concepts, and on the need to further examine the role that culture might play in development processes. The results achieved so far seem to demonstrate that cultural factors might have a relevant, and positive, social and economic impact on development, especially by fostering one of development's privileged engines, that is, tourism. Against this context, the paper aims to explore the link between culture and tourism, and to analyse how that link can be strengthened to support sustainable development. Nowadays, there is little doubt that exploitation of cultural heritage can boost tourism as a powerful economic force. Yet it is equally clear that tourism poses a challenge to the protection of cultural heritage, and requires the articulation of strategies for ensuring its sustainability in the long period. This is why a variety of international law initiatives and legal instruments, first of all the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, pursue the aims of integrating the protection of cultural heritage with sustainable development goals. The limited effectiveness and enforceability of traditional international hard-law instruments, however, are well-known. To be properly put at work, these instruments should be coupled with other soft law and meta-legal tools, assisting and supporting the implementation of black-letter laws in the various legal systems of the world. Among these tools, soft-law instruments, such as indicators, play a crucial role. In recent times, many international organizations, states and academics have indeed been working to develop indicators able to measure and foster the sustainable management of tourism. One

of the most successful examples of these initiatives is represented by the development of the so-called sustainable tourism indicators.

The paper will therefore analyse the many types of indicators that have been built for this purpose at the national and international levels, and will compare these tools with another form of indicators, that is, the cultural indicators elaborated by UNESCO. On the basis of such comparison it will be possible to understand the role that a coordinated use of both types of indicators actually play, and might play in improving the understanding and the management of the contribution of culture to sustainable tourism, and vice versa. Drawing examples from current initiatives in the Western Balkans, the paper will also sketch out some possible development outcomes that the uses of tourism and cultural indicators are likely to produce in both the short and long run

Bio note:

Paola Monaco is a Post-Doctoral Fellow at the University of Trieste, Department of Law. She graduated from the University of Trieste in 2007, and got her Ph.D. in Comparative Law at the University of Palermo in 2012. She was admitted to the Italian bar in 2011. Her principal publications include papers on scientific evidence and gender equality, as well as a monograph on toxic tort litigation in the United States legal system.

11. Cultural Heritage in European Union Law and Policies (Evangelia Psychogiopoulou, Hellenic Foundation for European and Foreign Policy)

Abstract:

Pursuant to Article 3(3) of the Treaty on European Union, the EU 'shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.' In particular, according to Article 167(1) of the Treaty on the Functioning of the European Union (TFEU), the EU is to '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.' EU action shall be aimed at encouraging cooperation between the Member States and if necessary, support and supplement national action in a set of specified areas, covering the conservation and safeguarding of cultural heritage of European significance. Moreover, in accordance with Article 167(4) TFEU, the EU is to take cultural aspects into account in its action under other provisions of the Treaties, in order to respect and to promote the diversity of its cultures. Article 22 of the Charter of Fundamental Rights of the European Union further proclaims that the EU 'shall respect cultural, religious and linguistic diversity'. The purpose of this paper is to explore the competences and means of action the EU enjoys in the field of cultural heritage and to examine the ways in which these have been put to use. What powers have been attributed to the European institutions in the field of cultural heritage and how these powers have been exercised? To respond to these questions, the analysis shall proceed as follows. The first part shall examine the place cultural heritage holds in the EU constitutional texts, with an in-depth study of the relevant Treaty provisions. The second part shall investigate how EU competences in the field of cultural heritage have been used. As will be shown, EU activity in the field rests on the EU's cultural policy, namely, the actions and programmes founded on Article 167 TFEU and the legal basis it contains, as well as a broader set of indirect cultural policies. These indirect or ancillary cultural policies, developed for the most part by means of Article 167(4) TFEU, constitute an important strand of EU heritage-related action. The analysis shall seek to disentangle the role of EU law and policy in the area of cultural heritage by looking first at the EU's cultural policy in the strict sense and secondly, at the broader heritage policy practice of the EU, addressing both market integration (also known as 'negative integration') and selected facets of policy integration (or 'positive integration'), namely internal market legislation, state aids, regional development policy, external relations and so on.

Bio note:

Evangelia Psychogiopoulou is a research fellow at the Hellenic Foundation for European and Foreign Policy and a legal officer at the Hellenic Ministry of Culture and Sports. She holds a degree in Law from the Kapodistrian University of Athens, a DEA in EU Law from Paris 1 University, a Master of Research in Law from the European University Institute and a Ph.D. in Law from the European University Institute. She has worked at the Academy of European Law (Florence, Italy) and the Directorate General Education and Culture of the European Commission (Brussels, Belgium). She has also conducted research for EU institutions and UNESCO by coordinating and participating in several collaborative research projects. In 2014-2016, she was a Marie Curie Fellow at the Faculty of Law of Maastricht University. Her research interests lie in the fields of (EU) cultural and media policies, and human rights protection. Her articles have appeared, among others, in *European Law Journal*, *European Law Review*, *Legal Issues of Economic Integration*, *European Foreign Affairs Review* and *International Journal of Media and Cultural Politics*. Her publications include: *The Integration of Cultural Considerations in EU Law and Policies* (2008), *The European Court of Human Rights and the Rights of Marginalised Individuals and Minorities in National Context* (co-edited, 2010), *Understanding Media Policies: A European Perspective* (ed., 2012), *Media Policies Revisited: The Challenge for Media Freedom and Independence* (ed., 2014), and *Cultural Governance and the European Union. Protecting and Promoting Cultural Diversity in Europe* (ed., 2015).

**12. Intangible Cultural Heritage (ICH), Europe and the European Union
(Hanna Schreiber, University of Warsaw)**

Abstract:

Intangible cultural heritage as a legal and political concept, born to life thanks to the 2003 UNESCO Convention, has led to the creation of diverse, new, not only cultural, policies and discourses on national, regional and international levels in the field of culture and cultural heritage. The aim of this paper is to analyse how the European Union, as an organization gradually expanding in the culture field and continuously developing its cultural policy, reacted to this new and very successful – in terms of the countries engagement – Intangible Cultural Heritage (ICH) project. In addition, what are the main obstacles to sensibly ‘unlock’ ICH for the EU, as well as what are the possible challenges for the future of the ICH in Europe as a region and in the EU as an organization. It is evident, that EU policy in the field of intangible cultural heritage has been, until now, insignificant in comparison to other areas of its activities in the field of international cultural heritage, such as the 1972 UNESCO Convention or especially the 2005 UNESCO Convention on Cultural Diversity, where the EU played a decisive role. In the light of the research based on the official EU and UNESCO documents, but also interviews with stakeholders, this is mainly because of the EU’s: (i) lack of understanding on what intangible cultural heritage is and how it differs from tangible heritage; (ii) lack of funding to support the safeguarding of intangible cultural heritage; and (iii) lack of concrete policy to address the issue of intangible cultural heritage. Instead, one can observe a simple addition of the wording ‘intangible cultural heritage’ to different EU policy and legal documents (e.g. EU Commission’s Communication ‘Towards an integrated approach to cultural heritage for Europe’ or the EU’s 2016 Joint Communication on ‘Towards an EU strategy for international cultural relations’). Important shortcomings characterising the topic of intangible cultural heritage in the EU, that will be addressed in the paper, are the existing confusion between the concepts of ‘common European heritage’ (belonging to a political domain) and ‘common European cultural heritage’ (belonging to an ethnosymbolic domain). This problem of searching for a European ‘commonality’ might, on the one hand, collide with the 2003 Convention’s main goal - which is to empower communities, groups and individuals as bearers of their diverse cultural identities. Thus, this paper will show how the meaning and notion is developed by the ICH bearers, against the ‘universal’, ‘common’ or ‘shared’ institutional considerations and programmes. On the other hand, taking into

account the official EU motto, 'Unity in diversity', the ICH project's 'polyphony of diversity', might offer refreshing ideas on approaching and acting in the field of cultural heritage, which are especially relevant in times of EU identity, political and security crises fuelled by the recent migrant crisis, Brexit and financial problems. This challenge will be addressed as well on the examples of EU Member States' nomination files to the Representative List of the Intangible Cultural Heritage of Humanity, their periodic reports and the findings by the questionnaire on ICH in Europe distributed among the European National Commissions for UNESCO.

Bio note:

Hanna Schreiber is an Assistant Professor at the Institute of International Relations, University of Warsaw. She is a Vice-President of the Intangible Cultural Heritage Board in Poland and head of the Working Group on Legal and Strategic Aspects of Intangible Heritage Safeguarding. She is a member of the Council of Cultural Observatory Foundation, Scientific Council of Folk Artists' Association and Polish Association of International Studies. Her teaching and research interest are in international cultural relations, international cultural heritage law, anthropology and sociology of international relations. Hanna serves as an independent expert cooperating with the Ministry of Culture and National Heritage of the Republic of Poland, Polish National Committee for UNESCO, National Heritage Board, National Defence Academy, NATO Military Police Centre of Excellence, UNESCO Communication and Information Sector and UNESCO Secretariat of Intangible Heritage Convention 2003 (one of 12 experts to consult Ethical Principles for the Safeguarding of Intangible Cultural Heritage, member of Polish official delegations to statutory ICH meetings). She is co-author of the *Commentary to UNESCO Conventions in the Field of Culture*, (Wolters Kluwer Publishing 2014) (Hague Convention 1954 and Intangible Cultural Heritage Convention 2003; in Polish), author of the monograph *The Concept of 'Primitive Art'. Discovery, Acquaintance and Domestication of the Other in the Western World*, Warsaw 2012 (in Polish), as well as numerous articles on intangible cultural heritage.

13. Conceptions of a Shared, Common or European Heritage in the European Union: From Unity to Diversity? (Cynthia Scott, Claremont Graduate University (CA))

Abstract:

Scholarly observers have long noted the challenging necessity for the European Union to forge 'a popular sense of belonging and loyalty to EU institutions and ideals' for achieving the goal enshrined in the 1957 Treaty of Rome and echoed in successive treaties of 'ever-closer Union among the peoples of Europe' (Shore 2000, 21, citing García and Wallace 1993). The acquisition of democratic legitimacy and authority—keys to its ultimate success—depends on the EU's ability to instill a European collective identity that can withstand loyalties of its members to their respective national identities. Observers have noted that despite having established the economic and legal underpinnings of a future 'trans-national state' (Goldstein 1993, 122-3) through the Single European Act of 1987 and the Maastricht Treaty of 1992, 'the EU conspicuously lacks . . . a common culture around which Europeans can unite' (Shore 2000, 18). Nevertheless, ever since EU policy makers and social scientists turned to the question of how to forge a European identity that would support the integration process, they have invoked conceptions of a shared, common or European heritage. Scholars have followed, by tracing the deployments of such concepts in EU policy initiatives and often critiquing the political and ethical issues they raised. However, recent scholarship has also noted a shift in the trajectory of such ideas, from an emphasis on 'a common European heritage', to *cultural heritage as a strategic resource for a sustainable Europe* (2014) stressing 'participation and plurality' (Niklasson 2016, 118). This paper will address how notions of shared, common, or European cultural heritage have been integral to EU Culture

Programs for the past two decades, while also considering the significance of a more recent shift in emphasis—‘from unity to diversity’—to EU culture-building and unification goals.

Sources:

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Niklasson, Elisabeth (2016). *Funding Matters: Archaeology and the Political Economy of the Past in the EU*. Stockholm Studies in Archaeology 66. Doctoral Thesis in Archaeology, Stockholm University, Sweden.

Shore, Cris (2000). *Building Europe: The Cultural Politics of European Integration*. London and New York: Routledge.

Bio note:

Cynthia Scott is a historian of modern European cultural history, cultural heritage, and the study of social memory. Through archival research in the Netherlands, Belgium, France, the United Kingdom and the United States, Cynthia studies how political leaders and cultural officials create a sense of the shared past, how they navigate national and institutional identities through historical changes, and how they negotiate cooperation after conflict and political upheaval. Her first book manuscript, *Post-Colonial Returns: Negotiating Cultural Diplomacy and the Heritage of Empire, The Netherlands and Indonesia, 1945-1979* (in review), traces how a decolonizing Netherlands defined the renewal of cultural relations with Indonesia in ways that helped shape new understandings of its history of colonialism in the East Indies. Cynthia holds a Ph.D. in History and an M.A. in Cultural Studies from Claremont Graduate University. Her career began at the Getty Information Institute, where she helped establish Object ID—the international documentation standard for identifying works of art in the event of theft. Her current research focuses on the history of conceptions of shared or mutual cultural heritage in the European Union, and through the independent platform, *Studia Ethica*, on processes for extending ethical tourism among visitors to historical and cultural destinations. She serves as a reviewer for the *International Journal of Cultural Heritage* and the *Santander Art & Culture Law Review*.

14. Cultural Landscape Protection in the European Union (Amy Strecker, University of Leiden)

Abstract:

Although the EU has no explicit policy concerning cultural landscapes, many areas of EU law have a major impact upon the landscape. From the Common Agricultural Policy to the Natura 2000 Network; to Environmental Impact Assessment requirements and structural funding programmes, the question of cultural landscape protection is at the very heart of EU policy, albeit in an indirect way. Critics often point to a lack in explicit provisions for the cultural heritage dimension to the European landscape and advocate a specific directive on the subject. Yet cultural heritage is already part of environmental impact assessment legislation; the Natura 2000 Network (based on the Habitats and Birds Directives) protects over 18% of landmass in the EU and thus indirectly protects many culturally significant landscapes. Furthermore, programmes such as Life+, LEADER fund cultural landscape initiatives at community level and the participation of the public in the planning process is also something envisaged by Environmental Impact Assessment (EIA) legislation. While the Council of Europe is more prolific in the field of cultural landscape protection, my research shows that it is still EU law that affects more landscape change on the ground. This paper will assess the role of EU policy in cultural landscape protection, discuss the relationship between EU law and the European Landscape Convention, and finally assess the extent to which an explicit EU policy on the subject might affect cultural landscape protection on the ground. In addition, it will analyse the human rights dimension to cultural landscapes by discussing the various avenues for accessing justice in landscape matters within the EU.

Bio note:

Amy Strecker is Assistant Professor at the Department of Archaeological Heritage and Society at the University of Leiden and post-doctoral researcher within the ERC-Synergy Project NEXUS1492. Her research focuses on the interplay between landscape, heritage and human rights, particularly the notion of landscape as public space. Amy Strecker obtained her Ph.D. in international law from the European University Institute, Florence, in 2012. Currently she teaches on the subjects of heritage and governance, landscape and law, and heritage and human rights to M.A. and B.A. students. Within the Nexus1492 project, her research focuses on the role of law in confronting the colonial past in the Caribbean, specifically in relation to land rights, cultural heritage and restitution. She has been actively involved with the European Landscape Network since 2008 and is the scientific editor of UNISCAPE – the Network of Universities for the Implementation of the European Landscape Convention.

**15. Mobility of Cultural Professionals: Self-evident?
(Andreas Wiesand, European Institute for Comparative Cultural Research
(ERICarts) and Publisher, ARcult Media (Cologne))**

Abstract:

In June 2014, six independent cultural mobility funds from different parts of the world met in Santa Cruz de Tenerife. Their '*Canary Islands Declaration on Artistic and Cultural Mobility*' claims, *inter alia*, that 'mobility is an integral part of cultural rights as stated in international treaties of human rights and should be considered a public responsibility' since it contributes to artists' and cultural operators' freedom and 'diversity of cultural and artistic expression'. In addition, it affirmed that face to face encounters are 'necessary to set up long term partnerships or alliances based on trust, reciprocity and fair exchange', provide 'creative learning opportunities' and 'contribute to enhancing a shared sense of humanity.' This in mind, 'imbalances and obstacles to mobility' should jointly be addressed. While the idea that cultural mobility relates to human rights merits further examination, other elements of this Declaration are of common usage in culture-related policies of the last decade, particularly at the EU level. For example, the mobility of cultural professionals figured as a strategic objective of the European Agenda for Culture (2007) and a subsequent Work Plan. In the former, the European Commission underlined that intercultural competences should be seen as 'essential in the context of a global economy with regard to enhancing the employability, adaptability and mobility of artists and workers in the cultural sector as well as the mobility of works of art.' Diverse studies explored current practices and tools (e.g. ERICarts, 2008), but addressed also obstacles to movements across borders such as contractual differences, insufficient health protection, national taxation systems, and difficult or expensive visa requirements and work permits. Expert groups tried to develop mobility information standards (e.g. European Commission, 2011) without, however, solving the problem of insufficient data regarding existing movements of cultural professionals in Europe and beyond.

On its current Internet portal, the EU Commission still considers the mobility of artists and other culture professionals to be 'essential for a variety of reasons, including

- Improving their career opportunities;
- Accessing new markets;
- Creating new jobs in the culture and creative sectors;
- Promoting cultural diversity and intercultural dialogue;
- Increasing and broadening their audience;
- Building partnerships and contacts; and
- Creating networks.

(http://ec.europa.eu/culture/policy/cultural-creative-industries/mobility_en, 2017).

Consequently, the current 'Creative Europe' Programme of the EU supports mobility initiatives in order to create 'the best possible conditions for artists, culture professionals and cultural organisations to work across borders' (ibid.).

However, this optimism surprises a bit, since it is based less on empirical evidence and more on well-meaning expectations (some of which originate from macro-economic doctrines). In particular, the focus on trans-national mobility raises doubts. First of all, it addresses only one of the many forms of 'mobility', which could, in a cultural context, also refer to inter-professional, intermedia and professional status mobility, to geographical mobility within a country or region as well as to 'mobile mind-sets' that do not require physical movements. In addition, previous studies revealed that for some cultural professionals geographical mobility is almost a 'must' (because of their dependence on foreign markets), while others could find the best work conditions right at their home place or in specific institutions. More issues to be discussed are 'brain-drain' concerns, especially in Central-Eastern Europe, 'forced mobility' (due to insufficient policies or infrastructures) or the reluctance of national administrations to remove mobility obstacles.

The latter observation points to an issue that could soon become most relevant: trans-national 'mobility' and 'migration' share some bare facts. Can we exclude that the growing reservations against migrants among many citizens and politicians – cf. Theresa May's verdict about 'citizens of nowhere' (2016) – will spoil all dreams of an emerging European cultural space?

Bio note:

Andreas Wiesand is Executive Director of the European Institute for Comparative Cultural Research (ERICarts). He is also Professor (emeritus) for arts management and cultural policy in Hamburg, but still lecturing at other universities or academies (e.g. Dresden, Tallinn). He also serves as Editor of the Council of Europe / ERICarts Compendium of Cultural Policies & Trends in Europe (www.culturalpolicies.net); Director of ARcult Media (publishing house and consultancy). Andreas Wiesand worked first in broadcasting (SWF), in book publishing (Rowohlt), at *Der Spiegel* and as Director of *Zentrum für Kulturforschung* (until 2008). Expert for the European Commission & Parliament (e.g. Selection and Monitoring Panel of the European Capital of Culture programme, 2009-11; Team Leader 'Sharing Diversity' 2007-8, 'Mobility Matters' 2008 and 'Voices of Culture' 2014-16); the Council of Europe; UNESCO (e.g. member of the Expert Facility for the 2005 UNESCO Diversity Convention); UN Alliance of Civilisations; European Cultural Foundation; etc. Missions around the world for development agencies; international foundations; governments; the Goethe Institute; IFACCA; universities; etc. Author, co-author or responsible editor of over 50 publications, including e.g. *Culture and Human Rights: The Wrocław Commentaries* (2016). Numerous honorary positions, including e.g. Secretary General, European Association of Cultural Researchers (ECURES).

16. Cultural Heritage of Minorities and Indigenous Peoples in the EU: Weaknesses or Opportunities? (Alexandra Xanthaki, Brunel School of Law in London)

Abstract:

This paper will explore the European standards on minority cultural heritage. The paper will first look at the obligations of the EU member states deriving from the international standards on human rights. On 30 September 2016, the UN Human Rights Council adopted Resolution A/HRC/33/L.21 on 'Cultural rights and the protection of cultural heritage'. This development highlights the attention that cultural heritage is currently attracting at the international level. The resolution notes the detrimental impact that the loss of cultural heritage has for the enjoyment of cultural rights and calls for action. The resolution does not once refer to sub-national groups. Yet, in calling for international co-operation in restoring 'the stolen, looted or trafficked cultural property to its countries of origin' (para. 4), it puts

the issue of cultural heritage firmly within the human rights agenda internationally. More emphasis will be given to the European human rights instruments on minority rights. The Framework Convention on National Minorities and the recent Faro Convention include specific obligations towards states to protect the cultures and cultural heritage of members of minorities and indigenous peoples. Also, the Charter on Fundamental Rights also binds states to protect the rights of members belonging to minorities and indigenous peoples. All these instruments have to be respected by both the European Union and its Member states. But are they? The answer to such question will form the second part of the paper. The paper will look at the European Union instruments on cultural heritage with the view to assess whether they pay adequate protection to minorities and whether they incorporate the international standards on the protection of indigenous cultural heritage. The EU promises to safeguard the cultural heritage (Art. 3 EU) but does this include minority cultural heritage as well? And does it also include the rights of minorities to their cultural heritage? Even though the EU has no competence over cultural legislation (Art. 167 TFEU), its policies and legislation have seemingly ignored the rights of minorities. Article 167 TFEU declares 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'. But what about the sub-national cultures? Will they be stumped or undermined by recognising only 'national cultural heritage' or including them in the national culture with no protection of the interested communities? Also, the EU's engagement to the 'conservation and safeguarding of cultural heritage of European significance' and 'artistic and literary creation continues a binary plasmatic understanding of culture as belonging either to the state or to the individual. Council Regulation (EU) n. 1215/2012 and Council Directive 2014/60 on the return of national treasures exported illegally from one Member State to another Member State do little to revert this. In general, one can see a rather dated understanding of cultural heritage as first, mainly promoting elements of outstanding beauty rather than elements important for individuals and communities; and second, mainly focussing on national heritage. This is very detrimental to indigenous peoples and reinforces arguments on the fragmentation of the different regimes on the protection of cultural heritage (Xanthaki, 2017). The paper will discuss such arguments relevant to the EU approach to cultural heritage in depth.

Bio note:

Alexandra Xanthaki is a minority and indigenous rights expert. Alexandra's 2007 monograph *Indigenous Rights and United Nations Standards: Self-determination, Culture and Land* (Cambridge University Press) is considered a reference book on indigenous rights and international law. In addition to indigenous rights, Alexandra also publishes on multiculturalism and cultural rights in international law. Among her numerous publications, the 2011 co-edited collection on *Reflections on the Declaration on the Rights of Indigenous Peoples* and her article on *Multiculturalism and International Law Standards* (HRQ, 2010) are widely used. Her work has been cited repeatedly in United Nations documents. She has given keynote speeches around the world, including recently in the Arctic Centre, Rovaniemi and the KL Bar, Malaysia. She has worked closely with the UN Expert Mechanism on the Rights of Indigenous Peoples, the UN Special Rapporteur on Indigenous Issues, the ILO and several international NGOs, including Minority Rights Group International. She has taught in Keele, Liverpool and Oxford universities. In 2014, she was nominated for the European position of the UN Expert Mechanism on the Rights of Indigenous Peoples. Alexandra has been as the Deputy Head of Brunel Law School (2008-2011) and is now the Director of Research at Brunel Law School (2012-). She teaches human rights and has been awarded a Brunel STAR award for her teaching and student support.

ORGANIZERS:



HEURIGHT

The Right to Cultural Heritage

Its Protection and Enforcement through Cooperation in the European Union

The Project HEURIGHT – *The Right to Cultural Heritage: Its Protection and Enforcement through Cooperation in the European Union* investigates how human rights guarantees in relation to cultural heritage are being understood and implemented in the European Union (EU) and in its neighbouring countries. It focuses on Poland, the United Kingdom and Italy - countries representing different cultural, political and legal traditions - and their relations with other states and non-state cultural communities. Acknowledging the changing nature of the right to cultural heritage, the project will map how this right's evolving content affects the forms of protection, access to and governance of cultural heritage. The added value of the project consists in combining an analysis of the relevant laws, their implementation and enforcement. First, it will provide a theoretical re-conceptualization of the right to cultural heritage, focusing not only on positive law and jurisprudence, but also on soft-law rules, diplomacy and cultural cooperation as possible alternative devices for fostering inter-cultural dialogue and understanding. Secondly, in its practical perspective, the project analyses how the technical tools used to manage and protect cultural heritage, in particular digitization processes with the development of databases, virtual museums, etc., are currently considered and how they could be further developed to strengthen the enforcement of the right to cultural heritage throughout the EU, including its external action. Thus, the project will contribute to the development of sustainable strategies for protecting and managing cultural heritage as a means to foster international and inter-cultural dialogue within the European region. Its outcomes will be twofold: i) a path breaking contribution to an interdisciplinary scholarship in this area, disseminated through various publications (articles, reports, workshops and a monograph); ii) the elaboration of recommendations and guidelines –openly accessible via a new online platform – concerning best practices on the use of cultural heritage for the benefit of states and communities which all have an intrinsic interest in its protection and enjoyment.

This three-year project (August 2015 - May 2018) is co-financed by the European Union within the programme JPI Heritage Plus – HORIZON2020.

The HEURIGHT Research Team is composed of three groups:

1. The first research group (Poland) chaired by Dr. Andrzej Jakubowski as the Principal Investigator (PI) and the HEURIGHT Project Leader (PL), an Assistant Professor at the Institute of Law of the Polish Academy of Sciences, involves the participation of three different institutions forming a consortium. These comprise the University of Fine Arts in Poznan (an institutional leader of the consortium) and two research centres of the Polish Academy of Sciences in Warsaw: the Institute of Law Studies and the Institute of Art.



Ministry of
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Heritage.



2. The second research team (UK) is chaired by Kristin Hausler as Principal Investigator (PI), Dorset Senior Research Fellow in Public International Law at the British Institute of International and Comparative Law (BIICL) in London, United Kingdom.

<http://www.biicl.org/culturalheritage>



Arts & Humanities
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3. The third research team (Italy) is chaired by Prof. Dr. Francesca Fiorentini as Principal Investigator (PI) working at the Department of Legal Science, Language, Interpreting and Translation Studies of the University of Trieste.



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The ***Santander Art and Culture Law Review*** (SAACL) is a bi-annual journal, published since 2015 as a part of the project: *Creating and Managing an Interdisciplinary Legal Journal Dealing with Culture-Related Issues*, an individual grant of the Santander Group awarded to the Kazimierz Wielki University in Bydgoszcz within the Programme Santander Universidades. The main objective of this project is to disseminate innovative research relating to current problems arising from the intersection of law, culture and cultural heritage. The SAACL is addressed to scholars, practitioners, non-governmental organizations, public authorities and policy makers dealing with legislative approaches to the protection and management of cultural heritage. The journal is also aimed at students within a broad range of disciplines which encompass or touch upon the vast number of issues referring to art, cultural heritage and law. Each odd-numbered issue of SAACL is published in Polish and each even-numbered issue is issued in English. The contributions published in the Polish issues also include the summary and keywords in English. Each issue is divided into eight sections: interviews, research articles, commentaries, varia, debuts, cultural heritage law and policy, events and conferences, and book reviews.

The first English issue of the SAACL (2015(2)) was dedicated to the leading theme: the role of international law in the protection of cultural heritage in the event of armed conflicts and terrorism.

Instead, the second English issue (2016(2)) was entirely devoted to the topic of the implementation and operationalisation of the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 and the movement of cultural objects in the European Union. It has been prepared in cooperation with the research consortium of the Project HEURIGHT.

The publication of the forthcoming English issue of the SAACL (2017(2)) has been scheduled for Autumn 2017. Its leading theme would be 'Intangible Cultural Heritage – Successes, Problems and Challenges Ten Years After the Entry into Force of the UNESCO 2003 Convention'. See the call for papers: http://www.artandculturelaw.ukw.edu.pl/jednostka/art_and_culture/call_for_papers. Also this issue will be prepared in prepared in cooperation with the research consortium of the Project HEURIGHT.

http://www.artandculturelaw.ukw.edu.pl//jednostka/art_and_culture