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THE EUROPEAN UNION PERSPECTIVE ON CULTURAL HERITAGE AND CLIMATE CHANGE ISSUES

Maria M. Kenig-Witkowska*

ABSTRACT

The paper examines the European Union perspective on the cultural heritage and climate change issues. It starts with drawing up the international law approach to the subject. Whereas the studies on impact of climate change on human environment have become fundamental research in various fields of science, the international community has not yet carried on any serious discussion on the issue of the protection of the cultural heritage in this context. In the first part of this paper the cultural heritage and climate change issues will be discussed from two perspectives - the 1972 World Heritage Convention, and the 1992 United Nations Framework Convention on Climate Change. The second part of the paper presents a systemic approach to the European Union policy and law on cultural heritage and climate change issues. The paper is concluded with some remarks *de lege lata* and *de lege ferenda*.

KEY WORDS:

cultural heritage; climate change; European Union policy and law on climate change and cultural heritage; 1972 World Heritage Convention; 1992 United Nations Framework Convention on Climate Change

I. INTRODUCTION

1. DRAWING UP THE INTERNATIONAL LAW APPROACH TO THE SUBJECT OF CULTURAL HERITAGE IN THE CLIMATE CHANGE CONTEXT

The issues related to the protection of cultural heritage are subject to regulations set forth primarily in the conventions of the United Nations Educational, Scientific and Cultural Organisation (later - UNESCO), including the flagship convention in this field, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (later - World Heritage Convention)¹. The preamble to the Convention states, *inter alia*, that cultural heritage and natural heritage are increasingly threatened with destruction not only by losses caused by traditional factors, but also as a result of changing social and economic conditions which aggravate the situation with even more formidable phenomena of damage or destruction. Moreover, the preamble also refers to the irreversible impoverishment of cultural and natural

¹ Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force since 17 December 1975, 1037 United Nations Treaty Series, p. 151 et seq. The reflections presented in this article address primarily the cultural heritage, i.e. a part of the regulation laid down in the Convention the subject matter of which also includes the natural heritage. In principle, the reflections on this subject cover the part with definitions.

heritage in case of its deterioration or disappearance. Looking at the content of the preamble from the perspective of the turn of the 20th and 21st centuries, it is impossible not to associate it with the conclusions of the reports of the Intergovernmental Panel on Climate Change on the threats posed by climate change to the cultural heritage of mankind.²

A cursory catalogue of the threats posed by climate change to the protection of cultural heritage also includes such phenomena as inundations, extreme weather events, desertification, glacier melting and destruction of landscapes. In this context, the protection of cultural heritage is a very complex process since, in addition to the devastating impact of greenhouse gas emissions on the environment, there is also the unsustainable effect of other factors on climate change.³ Moreover, climate change involves not only physical phenomena manifested in landscape or biodiversity changes but also the impact on the social behaviour of humans.

The issues related to the protection of cultural heritage in the context of the global phenomenon of climate change⁴ became a relatively late part of the agenda of the UNESCO bodies. As to the legal system's bodies of the United Nations Framework Convention on Climate Change (later – UNFCCC), it also leaves the particular cultural heritage aspects of climate change on the margin of its principal debate on how to cope with climate change. Indeed, it still remains one of the issues seldom addressed by the international community and perceived as a by-product of the discussion held in the context of both the protection of cultural objects and climate protection.

To identify and describe a link between combating climate change and protecting cultural and natural heritage presents a complex task, especially given that the adverse effect of climate change on cultural and natural heritage should be considered in connection with tangible and intangible cultural properties. It should be stressed that both kinds of cultural heritage are equally

² The IPCC is an international advisory body with a scientific character, established in 1988 by the World Meteorological Organisation (WMO) and the United Nations Environment Programme (UNEP). The objective of the IPCC is to provide scientific information on climate change. The ICPP has its seat in Geneva (www.ipcc.ch).

³ Cf. the periodical reports prepared by the Intergovernmental Panel on Climate Change.

⁴ From the point of view of the international law system, the concept of climate change has been defined by Article 1 of the United Nations Framework Convention on Climate Change (UNFCCC) as “a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.” The United Nations Framework Convention on Climate Change, New York, 9 May 1992, in force since 21 March 1994, 1771 United Nations Treaty Series, p. 107 et seq.

important and that the climate change regime recognizes the importance of traditional knowledge in the process of climate change adaptation.⁵

Whereas studies on the impact of climate change on man and the human environment have almost become fundamental research in different fields of science, the international community to date has not launched any serious international discussion on the issues of protection of cultural heritage in this context. And yet, given the fact that the cultural heritage is an element of the human environment which often cannot be reconstructed or repaired once it is destroyed, as the preamble to the 1972 Convention so explicitly states, intensive consideration should be given to the issues related to protection of cultural heritage in the context of climate change.

2. CULTURAL HERITAGE AND CLIMATE CHANGE (FROM THE PERSPECTIVE OF THE WORLD HERITAGE CONVENTION)

The phenomenon of climate change and its impact on the sites and elements of cultural heritage has not been an unknown in the history of human civilization. However, given the dramatic global climate change caused by human activity over the last decades and the threats posed to the ecosystem and man, questions need to be asked about the effective protection against its impacts.⁶ The tasks within the law relate to the assistance that legal norms can provide in the context of the protection against the expected effects of global warming and the minimisation of threats. In the context of the protection of cultural and natural heritage, it is of key importance for legal regulations to be based on the understanding of the different routes by which climate change affects the diverse forms of this heritage. Therefore, it is important to launch multidisciplinary research on this subject.

The Convention Concerning the Protection of the World Cultural and Natural Heritage does not address the issues related to climate change since at the time of adoption, the impact of climate change was not the subject of discourse at the academic or political levels; the impact on cultural goods was also not mentioned. It is important to recall that it was only in June 1972, after the Stockholm Declaration had been adopted, that the international community launched its discussion on the human environment; it was many years later that the scientific evidence collected on the impact of climate change with an anthropogenic character on the human environment caused the bodies of the Convention Concerning the Protection of the World Cultural and Natural Heritage to become interested in this problem. Their interest resulted in the adoption of a number of decisions that put the impact of climate change on cultural heritage sites on the agenda of the Convention bodies. In

⁵ Huee-Eun Kim, *Changing Climate, Changing Culture: Adding the Climate Change Dimension to the Protection of Intangible Cultural Heritage*, *International Journal of Cultural Property* 2011, p. 259 et seq.

⁶ J. Cowie, *Climate Change: Biological and Human Aspects*, Cambridge 2007, p. 193 et seq.

consequence, in 2008, the impacts of climate change were added to the list of potential dangers for cultural and natural properties.⁷

The concept of cultural heritage that had appeared in different international documents long before the adoption of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage⁸ applies to many categories of objects of both tangible and intangible culture. This Convention creates a sui generis source of an infrastructure of legal acts that shape the policy and law in this matter.⁹ It should be emphasised that the provisions of the Convention laid down the first normative definition of cultural and natural heritage since its provisions concerned both categories of heritage.¹⁰ It should also be noted that the provisions in the preamble to the

⁷ The subject was formally brought to the attention of the World Heritage Committee in 2005 which, following its adopted Decision 29 COM 7B.a, started a series of meetings of the Experts Group reviewing the potential impacts of climate change on World Heritage. It resulted inter alia in the Report on the impacts of climate change on World Heritage properties (WHC-06/30.COM/7.1). In the Report, a number of direct physical impacts of climate change on the world cultural heritage was listed. See also: the Policy Document on the Impacts of Climate Change on World Heritage Properties, UNESCO 2007. In 2008, the impacts of climate change were added to the list of potential dangers for cultural and natural properties (WHC-08/32.COM/24, Rev. (March 31, 2009).

⁸ The Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972, in force since 17 December 1975, 1037 United Nations Treaty Series, p. 151 et seq.

⁹ In addition to the 1972 Convention, see also: the Framework Convention on the Value of Cultural Heritage for Society, Faro 27 October 2005, Council of Europe Treaty Series – CETS No. 199; the Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (Convention of San Salvador), 16 June 1976, International Legal Materials 1976, Vol. 15 No. 6, pp. 1350-1355; the European Convention on the Protection of the Archaeological Heritage, 6 May 1969, ETS No. 066 with further amendments on the website www.icomos/docs/euroch_e.html; the European Convention for the Protection of the Audiovisual Heritage, 8 November 2001, ETS No. 183; the Convention on the Protection of the Underwater Cultural Heritage, Paris, 2 November 2001, International Legal Materials 2002, Vol. 41, No. 1, pp. 40-56; the Convention for the Protection of the Archaeological Heritage of Europe, Granada, 3 October 1985, ETS No. 1; the Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, 17 October 2003, the proceedings of the General Conference 32th Session, Paris 29 September-17 October 2003, Vol. 1, Resolutions, UNESCO, Paris 2004.

¹⁰ Ibidem, Article 1. According to Article 1 of the Convention, the following shall be considered as “cultural heritage”: **monuments**: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combination of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; **sites**: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Convention are of key importance for the concept of cultural and natural heritage. It is from these provisions that the concept of cultural and natural heritage applies to sites and places that constitute the heritage of all nations of the world, providing outstanding value and deserving to be preserved as part of the heritage of the world and mankind as a whole.

The implementation of the provisions of the conventions on the protection of the cultural and natural heritage, both tangible and intangible, falls within the competence of the national authorities that establish the law in both the field of tangible cultural heritage and environment and spatial planning.¹¹ In this context, it should be emphasised that the protection and preservation of cultural heritage are of crucial importance for building and maintaining social ties. Cultural heritage plays an essential role in building and preserving cultural identity and, thus as a result, identity based on the continuity of history. Therefore, cultural heritage is an element of the human environment that plays a significant role in the building of human history and the understanding of its diversity. In the literature on the subject, it is stressed that threats posed by climate change to cultural heritage sites mostly originate from changes in the natural environment, such as e.g. droughts, torrential rains and strong winds, the raising water levels in seas and oceans, increased humidity, deforestation, desertification and different forms of soil degradation. It is no wonder then that cultural heritage sites are particularly endangered in those areas where people face environmental conditions hardly favourable for their existence.

Since the 1972 Convention concerns both cultural and natural heritage, in certain factual and legal circumstances, it is difficult to distinguish precisely between the concepts of cultural heritage and natural heritage as they are characterised by common conceptual elements. In addition, the problems with definitions are aggravated by the division of heritage into tangible and intangible. The concept of tangible heritage covers both cultural and natural heritage. As demonstrated by the practice pursued by states, at the national level laws relating to the tangible natural heritage often overlap with laws related to protected natural areas. The concept of intangible heritage covers a broad range of categories of tangible and intangible heritage of significance on both the international, national or local levels. They include “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage” (Article 2 of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage)¹².

¹¹ A list of national laws on the protection of heritage from around the world is maintained by the UNESCO, see the UNESCO Database of National Heritage Laws at <http://www.unesco.org>

¹² See: <http://www.unesco.org>

In this context, it is important to note that the conceptual scope of the term “cultural heritage” is not only a simple generalisation of the concepts used earlier in this field, such as cultural goods or monuments of culture, but also an effect of the expansion of the scope of the protection of these legal categories and states’ commitments in this matter, since many cultural heritage sites are inspired in a natural manner by nature. Over last twenty years, both the law literature and legal acts have demonstrated a clear convergence in defining and interpreting these terms. It is also important to note that the UNESCO Operational Guidelines for the Implementation of the Convention also include the term “mixed cultural and natural heritage,” referring to properties that satisfy a part or the whole of the definitions of both cultural and natural heritage laid out in Articles 1 and 2 of the Convention. The Guidelines also include the concept of “cultural landscapes”, sort of an abbreviation based on the interpretation of Articles 1 and 2. Cultural landscapes are cultural properties and represent the “combined works of nature and of men” designated in Article 1 of the Convention.¹³ It should be emphasised that the evolution of the conceptual scope of these terms not only provides evidence to the evolution of the approach of society to the issues related to cultural goods but is also an effect of the axiological approach to international law based on the principle of sustainable development providing, inter alia, that the present generation should respect the right of future generations to the heritage.¹⁴

3. CLIMATE CHANGE AND CULTURAL HERITAGE (FROM THE UNFCCC PERSPECTIVE)

The fundamental act of international law on climate change is the United Nations Framework Convention on Climate Change adopted in 1992. Since then climate change become part of the discussion about the protection of different elements of the human environment, including cultural heritage. The bodies of the United Nations Framework Convention on Climate Change have repeatedly indicated the need to cooperate in this matter with the bodies of the 1972 World Heritage Convention, inter alia, in regards to the use by the States Parties to the 1972 Convention of the UNFCCC compendium of methods and tools to evaluate impacts of climate change on cultural and natural heritage sites.¹⁵ It was also pointed out that the Intergovernmental Committee for the Protection of the Cultural and Natural Heritage of

¹³ The UNESCO Operational Guidelines for the Implementation of the World Heritage Convention, Doc. WHC.12/01, July 2012, available on: <http://www.unesco.org>

¹⁴ For more on the subject see: M. Frigo, Cultural property v. cultural heritage: A “battle of concepts” in international law?, *International Review of the Red Cross* 2004, Vol. 86, No. 854, p. 369 et seq.

¹⁵ See the Policy Document...op.cit, pp. 4 and 5.

Outstanding Universal Value¹⁶ should cooperate with the UNFCCC Secretariat through activities such as: presenting information at the climate change meetings, being involved in the Nairobi Work Programme,¹⁷ encouraging experts to exchange views using the guidelines that have been used in the UNFCCC activities, and calling on respective national focal points to cooperate on climate change issues. The UNFCCC system contains a number of provisions that are relevant for addressing the concerns of the World Heritage Convention, e.g. how to ensure adaptation to the adverse impact of climate change on the World Heritage sites. According to the wording of the note of the UNFCCC Secretariat, the World Heritage Committee may take advantage of the information and instruments that have been developed by the UNFCCC system.¹⁸

In its Decision 39 COM 7, taken at its 39th session in 2015 in Bonn, the World Heritage Committee acknowledged that world heritage properties are increasingly affected by climate change, and encouraged States Parties to participate in the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change held in 2015 in Paris with a view to achieving a universal climate agreement and mobilizing climate action on the ground.¹⁹ So far, there has not been visible progress as far as the cooperation between both systems on the matter of cultural heritage protection in the time of climate change is concerned.

The current state of international discussion of both academicians and politicians indicates the need to recognise cultural and natural heritage concerns in times of climate change, as with current international relations one can easily indentify a number of common concerns in the climate change and cultural heritage regimes.²⁰ In the legal context, progress in undertaking

¹⁶ The Committee was established pursuant to Article 8 of the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (in the further provisions of the Convention it is called the World Heritage Committee). Its members are elected by States Parties to the Convention in accordance with principle of an equitable representation of the regions and cultures of the world. The main functions of the Committee focus on the issues related to the World Heritage List, the List of World Heritage in Danger, the World Heritage Fund and the international assistance for the protection of the heritage.

¹⁷ Cf. the Nairobi work programme on impacts, vulnerability, and adaptation to climate change, adopted by COP12 (2006) in Nairobi, available on: <http://unfccc.int/documentation/documents>

¹⁸ Provisions and initiatives of the process of the United Nations Framework Convention on Climate Change relevant to the World Heritage Convention, Message from the UNFCCC Secretariat; Similar possibilities are created by 2015 Paris Agreement on climate change.

¹⁹ During COP21 the Paris Agreement on climate change was adopted.

²⁰ For further reading on the subject of “commons”, see *inter alia*: J. Brunnee, Common Areas, Common Heritage, and Common Concern, in: D. Bodansky, J. Brunnee and E. Hey (Eds.), *International Environmental Law*, Oxford 2007, p. 550 et seq.; F. Biermann, “Common Concerns of Humankind” and “National Sovereignty”, in: *Globalism: People, Profits, and*

common actions can be achieved if the parties to both regimes agree as an issue of common concern to accomplish their agenda of sustainable development and introduce a proper regulation protecting the human environment considered. The Bruntland Commission Report defined sustainable development as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.²¹ Thus, the protection of the human environment and cultural heritage is in everyone's interest. Therefore, State sovereignty should be considered a vehicle for ensuring the protection and conservation of global public goods, which corresponds to the concept of common concern. The recent practice of international relations supports the emergence of the concept of "common concern" as reflected in the UNFCCC and the 2015 Paris Agreement²² (not to mention the soft law principles of the Rio Declaration and the New Delhi Declaration²³) as well as in the 1972 World Heritage Convention.

II. THE PERSPECTIVE OF EUROPEAN UNION POLICY AND LAW ON CULTURAL HERITAGE AND CLIMATE CHANGE. A SYSTEMIC APPROACH.

1. INTRODUCTORY REMARKS

A systemic approach from the perspective of the primary law establishing the EU system provides an answer to the question about the position of a given legal institution in the system when there are different levels of regulation, at both the international law and EU law levels. To start with, it should be pointed out that the legal measures adopted in the areas of culture and the environment are different in terms of both their legal character and procedures. The EU competence in the scope of the protection of cultural heritage is supplementary, coordinating and supportive (Article 6 TFEU), which means that in the space of cultural policy, no legal acts are established in an attempt to harmonise the law of the Member States. In contrast, climate policy falls within the framework of environmental policy, which is one of the competence areas shared between the EU and Member States and within the framework of which harmonising measures may be adopted. Moreover, the legal measures adopted to implement EU policies in the areas of culture and the environment are different in terms of their adoption procedures. In light of

Progress: Proceedings of the Thirtieth Annual Conference of the Canadian Council on International Law (Canadian Council Law, 2002), p. 158 et seq.

²¹ The World Commission on Environment and Development, "Our Common Future", 1987, Doc. A/42/427/Annex.

²² The Paris Agreement, doc. NFCCC/CP/2015/L.9.

²³ See also the International Law Association (ILA), "New Delhi Declaration of Principles of International Law Relating to Sustainable Development", in: the ILA Report of the Seventieth Conference, 2002. In its para. 3.1 the Report concludes that the protection, preservation and enhancement of the natural environment are common concerns of humankind. Similarly, the IUCN - World Conservation Union Draft International Covenant on Environment and Development, 3rd edition.

this finding, it should be assumed that the elements of the legal institution of the protection of cultural heritage in the context of climate change were adopted comprehensively in the Lisbon Treaty (Title XIII TFEU concerning EU cultural policy and Title XX TFEU concerning EU environmental policy), along with the issue that establishes the international context (the signing of international agreements).

The functioning of these two policies should be considered in the broader context of the whole of the provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union. In regards to cultural policy, it was already in the preamble to the Treaty on European Union that an axiological reference to respect for European history, culture and traditions can be found. In turn, Article 3(3) TEU reads that the Parties to the Treaty shall respect, safeguard and enhance Europe's cultural heritage, whereas in its Article 167 the Treaty on the Functioning of the European Union implicitly addresses the issue of the protection of cultural heritage. Article 3 TEU also provides that the catalogue of EU objectives includes a high level of protection and improvement of the quality of the environment as well as contributing to the sustainable development of the Earth, while in Title XX TFUE, Article 191(1), fourth indent includes a provision on climate change.

The provisions of the Lisbon Treaty make it possible to address pragmatically, from the perspective of the protection of cultural heritage in the context of climate change, the issue of decision-making in matters that are complex from the point of view of EU law. Indeed, they concern not only the different types of competence but also the effectiveness of the Member States' fulfilment of their international commitments, which is very clearly demonstrated by the EU policy in the field of the protection of cultural heritage in the context of climate change. However, it is important to note that the issue of the protection of cultural heritage falls within the competence of the Member States and, therefore, the character and effectiveness of the measures undertaken by the EU to protect cultural heritage in times of climate change essentially remains an open issue.

2. EU POLICY AND LAW ON CLIMATE CHANGE

The provision of Article 191 TFEU mentions the concept of climate change in the context of the environmental policy of the European Union, of which an element is climate change. The EU Treaties do not include a definition of climate change; in this matter, the EU, which is a Party to the UNFCCC, refers to the definitions and concepts set forth in the Convention and its documents. The generally used concept of EU climate policy has not been defined in the EU Treaties, either. From the perspective of the Treaties, the concept of climate policy is not a systemic one, as it is a legal concept that refers to those elements of other policies of the European Union that aim at

achieving a particular EU objective in the field of the environment, which is combating climate change.

The issues related to climate change were addressed for the first time in the EU primary law in the Lisbon Treaty in the provision of Article 191 TFEU, which provides that the EU shall promote measures at the international level to deal with regional or worldwide environmental problems, and in particular to combat climate change. It should be noted that the wording of the provision of Article 191 TFEU relating to combating climate change only slightly takes into account the fact that the EU climate policy has a horizontal character and requires measures for its implementation to be provided at the level of many other EU policies. Referring to the legal basis of EU climate policy, it should be noted that the legal measures adopted to implement this policy are primarily based on the provisions of Title XX TFEU concerning the EU policy in the field of the environment. The European Union has the legislative initiative in this matter and, in principle, legal acts are adopted with the ordinary legislative procedure (Article 192 TFEU).²⁴

It follows from a review of EU legal acts that EU climate policy, which has been shaped in the EU since the mid-1980s, essentially applies to three fields of action in which common mechanisms and legal measures were implemented, i.e. greenhouse emission reductions, renewable energy sources, and energy efficiency. It should be emphasised that the introduction of Title XXI – Energy into the Treaty on the Functioning of the European Union also strengthened the Treaty basis for the launch of measures in the scope of climate policy.

Over the last thirty years the European Commission has played a crucial role in the shaping and development of EU climate policy. As an extremely important step towards shaping EU climate policy, in 2000, the European Commission launched the European Climate Change Programme (ECCP).²⁵ The importance of the work of the ECCP is indicated by the fact that over the first six years of its operation, the EU adopted more than thirty legal acts related to horizontal actions in the EU in the field of climate change mitigation.²⁶ The 2014 Communication from the Commission on a policy framework for climate and energy in the period from 2020 to 2030 was a very

²⁴ By way of derogation from this procedure provided for decisions referred to in Article 192(2) TFEU and without prejudice to Article 114 TFEU, legal measures are adopted by the Council acting unanimously and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, with a special legislative procedure (Article 192(2) TFEU).

²⁵ The Communication from the Commission to the Council and the European Parliament on EU policies and measures to reduce greenhouse gas emissions: towards a European Climate Change Programme (ECCP), COM (2000) 88 final, 8.3.2000.

²⁶ C. Damro, I. Hardie & D. MacKenzie, *The EU and Climate Change Policy: Law, Politics and Prominence at Different Levels*, *JCER*, Vol. 4, Issue 3, pp. 179-180.

important document shaping the EU climate policy on greenhouse gas emissions.²⁷ In the document, the Commission proposed establishing a 40% greenhouse gas reduction target for 2030 in the EU relative to 1990. It should be noted that in the opinion of the Commission, the policies and measures that the Member States implement and intend to implement will still bring effects after 2020.

In accordance with the provisions of Article 191 TFEU, EU climate policy is expected to contribute to achieving one of the objectives of the EU policy in the field of the environment, which is combating climate change. The wording of Article 191(1) TFEU indicates its dynamic character with many possible variables relating to its *finalite*. Therefore, the legal measures adopted for its implementation, which due to their nature, respond more dynamically to scientific and technological data than other measures adopted under Title XX of the Lisbon Treaty, depend on the positions taken by the Member States that are evaluated from the perspective of the provisions of Article 191(3) TFEU.

The implementation of the climate policy of the European Union designed to mitigate climate change is primarily perceived in relation to the legal instruments set forth in the so-called EU climate and energy package UE.²⁸ In 2007, the European Union adopted the concept of an integrated approach to climate and energy policy, with a view toward transforming the area of EU legal transactions to a highly efficient economy with low greenhouse gas emissions. The assumptions adopted by the EU provided for the achievement of the following targets by 2020 (the so-called 3 x 20 policy): (1) at least a 20% reduction of emissions from 1990 levels; (2) increasing the consumption of energy from renewable sources to 20%, and (3) a 20% reduction of energy consumption due to improved efficiency of its use.

These assumptions are implemented under the EU legal acts on the so-called climate and energy package which, inter alia, regulate the European emissions trading scheme, promote renewable energy sources and provide for monitoring of the emission levels of pollutants related to the production and use of fuels. They also lay down the commitments to promote the development and safe use of carbon dioxide capture and storage and provide for carbon dioxide emission reductions in motor transport.

²⁷ The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. A policy framework for climate and energy in the period from 2020 to 2030, COM(2014) 15 final.

²⁸ The package is based on: Directive 2009/28/EC on the promotion of the use of energy from renewable sources (OJ L 140, 5.6.2009); Decision No 406/2009/EC on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009); Directive 2009/29/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009); Directive 2009/31/EC on the geological storage of carbon dioxide (OJ L 140, 5.6.2009).

Climate policy is one of the many policies of the European Union which envisage EU actions that would ultimately contribute to the protection of cultural heritage, too. In this scope, the document of the European Commission “Mapping of Cultural Heritage actions in European Union policies, programmes and activities”²⁹ laid down the assumptions for a strategic approach to the preservation and valorisation of European cultural heritage from the perspective of policies on education, cohesion, culture, research and innovation, science, internal market, competition policy, common agricultural policy, maritime policy, external relations, citizenship, Eastern and Southern Neighbourhood as well as the relations with the rest of the world. In comments on this document, most consideration was usually given to the EU policy in the field of the environment, especially from the perspective of reviewing this policy and legislation involving cultural policy. Analyses of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment,³⁰ Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment³¹ and Directive 2003/4/EC on public access to environmental information³² should be considered most productive in this respect. Both Directives 85/337/EEC and 2001/42/EC specifically address cultural heritage and facilitate its protection at the Member State level. With Directive 2003/4/EC on the access to environmental information, they are a useful means to foster conservation strategies, creating an opportunity for better consideration of the effects of development projects and land-use plans upon cultural heritage.³³

3. THE EU POLICY AND LEGAL PERSPECTIVE ON CULTURAL HERITAGE

The documents and legal acts of the European Union do not include a normative definition of cultural heritage. The provisions of both the Treaty on European Union (Article 3) and the Treaty on the Functioning of the European Union (Articles 167 and 107) use this concept without defining it. In light of this, in the doctrine of EU law, consideration should be given to references to the concept of cultural goods that can be found in two acts of secondary legislation, i.e. Council Regulation (EC) No 116/2009 of 18 December 2008

²⁹ See Mapping of Cultural Heritage actions in European Union policies, programmes and activities, last updated: April 2017, available on the website of the European Commission: <http://ec.europa.eu>

³⁰ OJ L 175, 5.7.1985, p. 40.

³¹ OJ L 197, 21.7.2001, p. 30.

³² OJ L 41, 14.2.2003, p. 26.

³³ On the subject cf.: J. Teller, A. Bond, Review of present European environmental policies and legislation involving cultural heritage, *Environmental Impact Assessment Review*, 22(2002) 611-622.

on the export of cultural goods.³⁴ Article 1 of the regulation stipulates that the term “cultural goods” shall refer, for the purposes of the regulation, to the items listed in Annex 1. In turn, the Directive on the return of cultural objects uses the term “cultural object,” which applies to objects classified by a Member State as national treasures having artistic, historic or archaeological value.³⁵ However, the aforementioned acts of secondary legislation do not contribute a good deal to efforts to build a definition of cultural objects in EU law since the references to the concept of cultural objects made in them are, as a matter of fact, an enumerative indication of classified objects subject to the scope of the regulation laid down in both legal acts.

To a certain extent, the conceptual scope of the term “cultural heritage” is a generalisation of concepts used in this field, such as e.g. cultural goods and monuments of culture, in relation to the expansion of the scope of the protection of these legal categories and states’ commitments in this respect, and it is within this meaning that it functions in the legal transactions under the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage. Since the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage only allows States to be its Parties, only States are Parties to the 1972 Convention. As far as the fulfilment of the commitments under the provisions of the Convention is concerned, the European Union has only the competence to support, supplement or coordinate the efforts of its Member State in this respect. Therefore, in documents concerning cultural heritage, the EU refers to the concepts contained in the UNESCO conventions and documents relating to this issue.

As previously mentioned, the issues related to culture, among which the Treaties mentioning the protection of cultural heritage, fall within the supportive, supplementary or coordinating competence of the EU (Article 6 TFEU). In the case of concepts related to policies that do not fall within the exclusive competence of the EU or the shared competences, their normative definition is not of such essential importance. In these cases, what is important is the general meaning of these concepts in terms of the common legal traditions. This approach was expressed in the European Parliament Resolution on the application of the Convention Concerning the Protection of the World Cultural and Natural Heritage in the Member States of the European Union, in the suggestion referring to the Roman legal tradition that “whereas heritage is a key element in our societies’ identity and historical development [...] from the Latin *patrimonium*, meaning a joint asset comprising land and

³⁴ OJ L 39, 10.2. 2009, p.1.

³⁵ OJ L 159, 28.5.2014, p. 1

house, whose owner takes over on the understanding that he will maintain it and pass it on undivided to his descendants.”³⁶

Article 167 TFEU provides that action by the Union aims at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the area of conservation and safeguarding of cultural heritage of European significance, thus building one of the elements of the concept of the European cultural heritage. In this context, it is important to refer to the aspirations expressed in the public debate to strengthen the concept of the European cultural heritage as an element of European integration. In this context, reference is made to Article 167(4) TFEU, which provides that the EU takes cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and promote the diversity of its culture. In the literature on the subject, this provision is called the Culture-Related Impact Assessment and its importance is analysed e.g. in light of the theory of broadly conceived European integration.³⁷ The importance of this issue, which seemingly has the undertone of a political slogan, is demonstrated by the provision of Article 107 TFEU on the prohibition of the grant of State aid, which considers aid to promote culture and heritage conservation to be allowed and compatible with the internal market provided that such aid does not affect trading conditions and competition in the European Union to an extent that is contrary to the common interest.

Generally speaking, the EU Member States are solely responsible for their cultural and natural heritage. Therefore, in its report “Towards an integrated approach to cultural heritage for Europe,” the European Parliament has drawn attention of the Member States to the environmental threats affecting an important number of heritage sites within the EU. The European Parliament recommends that the EU and its Member States should promote research to a greater extent in this area inter alia in order to investigate the multiple effects of climate change on cultural heritage in greater detail and to develop counter-measures.³⁸

As part of its competence in the area of protection of cultural heritage, the European Union launched a pioneering study on the impact of climate change on cultural and natural heritage. The scientists carrying out the Climate for Culture project (damage risk assessment, economic impact and mitigation strategies for sustainable preservation of cultural heritage in the times of

³⁶ The European Parliament Resolution on the application of the Convention Concerning the Protection of the World Natural Heritage in the Member States of the European Union (2000/2036(INI). OJ edition A5-0382/2000.

³⁷ For more on this subject, see J.M. Schindler, Culture, Politics and Europe: *en route to Culture-Related Impact Assessment*, available at: www.culturalpolicies.net/web/Culture,_Politics_and_Europe-1.pdf

³⁸ Doc. PE546.783v02-00 of 24.6.2014.

climate change³⁹) analysed the effects of climate change on the protection of monuments of culture and developed mitigation strategies. They also identified the most serious threats posed by climate change to historic sites in Europe and the Mediterranean. These objectives were achieved with a combination of the modelling of the regional climate and the use of tools for simulating the future of historic buildings. In order to achieve the best results, they used the laser interferometry technique and carried out assessments of corrosive environments with highly sensitive glass sensor dosimeters. An algorithm enabling digitisation of analog data on temperature and relative humidity was developed. The DigiChart software can be downloaded from the website of the project. Moreover, data was collected on more than 100 historic buildings, placed in a database, and used to develop the concept of generic buildings. Using this concept, it is easy to obtain information on the indoor conditions arising as a result of climate change. This enables the use of precise climate projections from Europe and the Mediterranean to assess the impact of climate change in the various regions. These projections were presented in 55,650 climate and risk maps showing the future risks for historic buildings and their interiors.

Despite the Treaty constraints, in its actions the European Union appreciates the value and role played in the integration processes. Inter alia, the report “Getting cultural heritage to work for Europe”⁴⁰ indicated three basic elements of the influence exerted by cultural heritage on the development of European integration, i.e. the elements related to economy, society and environment. In turn, the study called “Cultural heritage counts for Europe”⁴¹ lists in detail the beneficial effects of cultural heritage which: raises the attractiveness of both urban and rural areas and contributes to their development; contributes to the quality of life of the inhabitants; enhances the uniqueness of such places and provides narratives for cultural tourism; contributes to job creation; boosts creativity and innovation; generates revenues from ticket sales and tourist activities; is a key element in the sustainable regeneration of historic areas; stimulates education and learning; helps building social capital and contributes to social cohesion; and preserves the environment by helping combat climate change.

In this context, it should be mentioned that various EU funds are available for cultural heritage preservation such as, for example, the EU Solidarity Fund that provides funding to protect cultural heritage in the event of natural disasters, or the Cohesion Fund. It can be read in the research document of the European Parliament “Cultural heritage in EU policies” issued in 2018 that this is marginal compared with the structural funds: 1.2

³⁹ See: <http://cordis.europa.eu/project/rcn/92906/reporting/en>

⁴⁰ See: ec.europa.eu/pro.../getting-cultural-heritage-work-europe

⁴¹ issuu.com/europeanostr/docs/chcfe_full-report

billion Euro for rural heritage, including landscapes, from the European Agricultural Fund for Rural Development and 3.2 billion Euro from the Regional Development Fund over the 2007-2013 period.⁴²

In 2017, the European Commission issued a paper on “Mapping of Cultural Heritage actions in European Union policies, programmes and activities” in which the Commission introduced, *inter alia*, a strategic approach to the preservation of European cultural heritage.⁴³ This document confirms the fact that the European Union policy on cultural heritage is an element of the EU policy on the broadly understood concept of culture.

In general, the EU documents on this subject expressly refer to the concept of cultural heritage, addressing natural heritage in the context of environmental policy and, more broadly, the concept of sustainable development.⁴⁴ It is difficult to assess whether such an approach only results from the general shortcut use of the term “cultural heritage” to denote natural heritage, too, since certain so-called action programmes of the EU, such as e.g. the Fifth,⁴⁵ Sixth⁴⁶ and Seventh Environmental Action Programmes⁴⁷ concern the environmental aspects of cultural heritage, also in light of the consequences of climate change for objects and sites that are part of the category of natural heritage.⁴⁸ Although natural heritage as a separate category is absent from EU documents, still there is no doubt that the legal regulations on the objectives of the EU policy in the area of the environment, including combating climate change, or the regulations on Natura 2000 sites,⁴⁹ constitute a response by the EU to the needs arising from the obligation to protect natural heritage within the meaning of Article 2 of the 1972 Convention. As set out in the Charter of Rome, there is increasing evidence of the close interrelationship between Europe’s natural and cultural capital.⁵⁰ In this context, biodiversity and ecosystems, in particular Natura 2000 sites, provide significant cultural and recreation assets and associated socio-economic benefits. A series of case

⁴² EPRS/ European Parliamentary Research Service, PE621.876 – June 2018.

⁴³ Available on the website of the Commission: <http://ec.europa.eu>

⁴⁴ E.g. in 2017 the European Commission issued a paper on “Mapping of Cultural Heritage actions in European Union policies, programmes and activities”. Available on the website of the Commission: <http://ec.europa.eu>

⁴⁵ The Fifth Environmental Action Programme, OJ C138, 17.5.91.

⁴⁶ The Sixth Environmental Action Programme, OJ L 242, 10.9.2002.

⁴⁷ The Seventh Environmental Action Programme, OJ L 354, 28.12.2013.

⁴⁸ OJ C138, 17.5.91; OJ L 242, 10.9.2002; OJ L 354, 28.12.2013.

⁴⁹ On the subject cf. Kenig-Witkowska, Maria (2017) “NATURA 2000 – The European Union Mechanism for Nature Conservation. Some legal Issues”, *Journal of Comparative Urban Law and Policy*: Vol. 2: Iss.1, Article 10. Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/10>

⁵⁰ <http://register.consilium.europa.eu/doc/srv?I=EN&f=ST%2016540%202014%20INIT>

studies initiated by EU have been carried out in order to explore those links.⁵¹ It is also worth mentioning that the initiative “Strategy to develop a Green Infrastructure in Europe” offers opportunities for enhancing the integration of natural and cultural heritage.⁵²

Given the possible doubts about this approach to the problem in light of EU law, one has to look at the concept of the environment which functions in the EU legal system. Thus, e.g. as a result of the integration of spatial planning and combating climate change into the elements of environmental policy, the term “environment” within the meaning of EU law also includes man-made elements of the environment. Elements for defining the concept of the environment in EU law are provided by certain acts of secondary legislation, in particular, Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment which lists material assets and cultural heritage among elements of the environment (Article 3). It is also important to mention the Declaration by the European Council “The Environmental Imperative” adopted in the Presidency Conclusions (Annex II, p. 30) in Dublin on 25-26 June 1990, which listed such elements of the concept of the environment as the quality of amenities in residential areas. Thus, the concept of the environment, as it is expressed by EU primary legislation, includes both the natural environment and the man-made environment, and elements of the broadly conceived cultural heritage.

III. FINAL REMARKS

- The international agreements on climate change do not take into account the particular problem of the impacts of climate change on cultural and natural heritage;
- The evolution towards recognition of cultural and natural heritage concerns by climate change law seems to be necessary;
- The synergies between these two regimes operate at a rudimentary level;
- EU policies and laws help the Member States meet the obligations imposed by the Convention Concerning the World Cultural and Natural Heritage;
- EU actions to protect heritage have a horizontal character and address measures adopted for many EU policies;
- A broad scope of the concept of the environment and its protection, which is applied in climate policy and law, enables the adoption of measures that substantially contribute to protecting cultural heritage;

⁵¹<http://ec.europa.eu/environment/nature/natura2000/financing/docs/Scoping%20study%20N2000%20and%20culture>

⁵² http://ec.europa.eu/enviromemnt/nature/ecosystems/index_en.htm

- As part of proposals *de lege ferenda*, legal measures should be adopted to ensure that the provision of Article 167(4) TFEU is taken into consideration at an early stage in the EU political planning process.