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Protection of cultural heritage in Azerbaijan

1. Introduction

Azerbaijan is home to three World Heritage Sites, namely – Walled City of Baku with the Shirvanshah's Palace and Maiden Tower,¹ Gobustan Rock Art Cultural Landscape, and Historic Center of Sheki with the Khan's Palace.² Besides, Azerbaijan has a universally valuable intangible cultural heritage – Mugham, one of the Masterpieces of Oral and Intangible Heritage of Humanity, not to forget Ashug Art and Novruz holiday in the Representative List of Intangible Cultural Heritage of Humanity.³ Even though concerns about commodification of cultural property in tourism⁴ or culinary⁵ after the nomination to world heritage lists, Azerbaijan seemingly favours cooperation with United

¹ N. Abbasov, *Mədəniyyət Siyasəti və Mənəvi Dəyərlər* [Cultural Policy and Moral Values], Baku 2009, p. 116.

² More information on Azerbaijan, United Nations Educational, Scientific and Cultural Organization, Key Facts and Figures on Azerbaijan, last updated in November 2019, available at <https://bit.ly/3saXPea> (accessed: 12.10.2020).

³ United Nations Educational, Scientific and Cultural Organization, UNESCO Country Programming Document for the Republic of Azerbaijan, 2011–2013, pp. 9–10, <https://bit.ly/2PVB8NV> (accessed: 12.10.2020).

⁴ J. Caust, M. Vecco, "Is UNESCO World Heritage Recognition a Blessing or Burden? Evidence from Developing Asian Countries", *Journal of Cultural Heritage* 2017, no. 27, p. 8; F. Lenzerini, "Illicit Trafficking in Cultural Objects and the Protection of the World Cultural Heritage" [in:] *The Illicit Traffic of Cultural Objects in the Mediterranean*, eds. A.F. Vrdoljak, F. Francioni, Fiesole 2009, p. 111 (illustrating the positive impact of the List of World Heritage in Danger on the rehabilitation of the archaeological site of Angkor in Cambodia which was subject to looting and bad conservation until 1992).

⁵ C. Bortolotto, B. Ubertaini, "Editorial: Foodways as Intangible Cultural Heritage", *International Journal of Cultural Property* 2018, vol. 25, p. 412.

Nations Educational, Scientific and Cultural Organization (UNESCO) to increase the number of the listed world heritage sites.

Cultural-historical heritage has always been on the agenda of governments, inso-much that the National Security Conception of the Republic of Azerbaijan specifies it as a national interest. Cultural-historical heritage is understood as “historical and cul-tural objects that reflect the stages of development of the society and are perceived as national-moral heritage by the society”.⁶ Not all objects are cultural heritage; the nature and significance of an object are decisive to define cultural heritage.⁷ Cultural heritage is the sum of traditional cultural expressions and traditional knowledge in Azerbaijan.⁸

Several problems of cultural heritage protection still exist at the national level that literature hardly discussed, except specific studies on a particular group of cultural heri-tage.⁹ This article, however, does not aim to address them. Instead, as one of the pioneer studies on Azerbaijan, it tries to situate cultural heritage protection in the domestic laws of Azerbaijan, spot terminological discrepancies with international agreements and find out the recent approach to cultural heritage and the current cultural policy. It argues that even the perfect compliance with international agreements does not sufficiently safeguard cultural heritage in reality unless alternative dispute resolution mechanisms are employed.

Part 1 describes the sources of cultural heritage law in Azerbaijan and explores the rationale of protection. This part aims to discover the current cultural policy that draws the borders of cultural heritage protection.

Part 2 describes objects of protection and discusses discrepancies between cultural treasure, cultural property, and cultural heritage in a historical overview.

Part 3 divides the protection mechanisms into legal, technical, social, and financial, but focuses on legal (consensual) and technical ones. This part highlights the state dom-inance in the ownership, use, or further control of the cultural property in Azerbaijan.

Conclusion pronounces critique of *de lege lata* and proposes changes for better pro-tection of cultural heritage.

⁶ Ş. Nuruzade, “Arxeoloji İrs Milli-mənəvi Dəyərlər Sistemində” [Archaeological Heritage in the System of National-Moral Values], *Azərbaycan Arxeologiyası* 2018, vol. 21, no. 2, p. 117.

⁷ L.V. Prott, P.J. O’Keefe, “‘Cultural Heritage’ or ‘Cultural Property’”, *International Journal of Cultural Property* 1992, vol. 1, p. 309.

⁸ K. Imanov, *Mədəni Müxtəlifliyin Qorunması və Təşviqinin Aktual Problemləri* [Actual Pro-blems of the Protection and Promotion of Cultural Diversity], Baku 2018, p. 7.

⁹ See, e.g., A. Cəfərova, “Səsli Mədəni İrsimiz” [Our Vocal Cultural Heritage], *Scientific Work* 2020, no. 12/61, p. 146.

2. Rationale and Sources of Cultural Heritage Law

2.1. Utilitarian and Non-utilitarian Grounds for Protection

It is necessary to protect cultural heritage for utilitarian and non-utilitarian grounds.¹⁰ While utilitarian grounds focus on the market¹¹ and information value of cultural objects, non-utilitarian grounds emphasise the spiritual feelings created by cultural heritage¹² to justify the protection. The information value is about the potential of cultural heritage to pass through generations and contribute to development, to the studies on the history of culture, art, and museums.¹³ Thus, ideally, every individual should have an interest in the protection of cultural heritage.

Compared to individuals, states' interests are generally utilitarian, such as the promotion of cultural property as touristic sites. However, excessive utilitarianism may commercialise cultural heritage without any public-interest restrictions and eventually impede access to cultural heritage.¹⁴ On the other hand, if cultural heritage remains unused, it may gradually erode, or restricted access can delay scientific progress. In this ongoing debate, science has traditionally justified the appropriation of cultural or natural objects with their benefits to human knowledge.¹⁵ In response, some countries, including Azerbaijan, have preferred to keep their cultural treasures within the borders by all means and introduced strict measures like consent, reporting, and registration for acquisition for research purposes. In fact, some Western museums still restrict a large part of collections for scientific studies as well.¹⁶

Naturally, states devise protection mechanisms based on their interests partly influenced by the leading political ideology. Research shows that some countries, such as Laos, protect cultural heritage to restore self-knowledge while others, like Vietnam, care

¹⁰ N. Abbasov, *Mədəniyyət Siyasəti...*

¹¹ See also: C. Chippindale, "Cultural Property", *The Classical Review* 2011, vol. 61, no. 1, p. 258.

¹² L. Guruswamy, J.C. Roberts, C. Drywater, "Protecting the Cultural and Natural Heritage: Finding Common Ground", *Tulsa Law Journal* 1999, vol. 34, no. 4, pp. 715, 717.

¹³ E. Məmmədzadə, "Mədəni İrsin İtirilməsi Səbəbləri" [Reasons for the Loss of Cultural Heritage], *Mədəniyyət.AZ* 2017, no. 2, p. 69.

¹⁴ See, e.g., B. Ivey, *Arts, Inc.: How Greed and Neglect Have Destroyed Our Cultural Rights*, Los Angeles 2008, pp. 224–225 (discussing the case of the United States of America and criticizing the failure of the government to stand behind the public interests in intellectual property, trade of commercial goods, and access to heritage).

¹⁵ G. Scarre, "The Repatriation of Human Remains" [in:] *The Ethics of Cultural Appropriation*, eds. J.O. Young, C.G. Brunk, Oxford 2009, p. 73.

¹⁶ R. Peters, "Beyond Restitution: An Interest-oriented Approach to International Cultural Heritage Law" [in:] *The Illicit Traffic...*, p. 174.

about their cultural heritage to promote tourism.¹⁷ Similarly, Azerbaijan's current policy heavily depends on the government's attempts to diversify the oil-dependent industry to tourism and agriculture. In that regard, regulations to utilise cultural property are not surprising. However, such utilisation must accompany rules to preserve the integrity of cultural heritage where the law takes action.

2.2. Sources of Cultural Heritage Protection in Azerbaijan

The legal basis of cultural heritage protection is comprehensive, especially regarding compliance with international agreements.¹⁸ Article 40 of the Constitution¹⁹ recognises everyone's right to participate in cultural life (albeit in the narrow sense) and obliges everyone to show respect and care for historical, cultural, and moral²⁰ heritage and preserve historical and cultural monuments. However, the state is also under the duty to protect historical, tangible, and intangible heritage under Article 16.

Azerbaijan is a party to several international agreements on cultural heritage, including the Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention, signed in Hague on 15 May 1954 (hereinafter: the 1954 Hague Convention), the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, signed in Paris on 14 November 1970 (hereinafter: the 1970 UNESCO Convention), the Convention concerning the Protection of the World Cultural and Natural Heritage, adopted in Paris on 16 November 1972 (hereinafter: the 1972 UNESCO Convention), and the Convention for the Safeguarding of the Intangible Cultural Heritage, signed in Paris on 17 October 2003 (hereinafter: the 2003 UNESCO Convention). Other sources include the Law on Culture (2012),²¹ the Law

¹⁷ L. Lixinski, *Intangible Cultural Heritage in International Law*, Oxford 2013, p. 141.

¹⁸ N. Abbasov, *Müasir Şəraitdə Azərbaycan Dövlətinin Mədəniyyət Siyasəti və Mənəvi Dəyərlərin İnkişaf Amilləri* [Cultural Policy of the State of Azerbaijan and Development Factors of Moral Values in Modern Conditions], Baku 2008, p. 54; E. Məmmədşadə, "Mədəni İrsin İtirilməsi...", p. 70.

¹⁹ The Constitution of the Republic of Azerbaijan (1995), as amended on 24 August 2002, 18 March 2009, and 26 September 2016, available at <https://bit.ly/3mfK3FJ> (accessed: 2.04.2020); see the unofficial translation of the Constitution of the Republic of Azerbaijan, available at <https://bit.ly/3sLgyOw> (accessed: 2.04.2020).

²⁰ Despite this article refers to the literal translation of '*mənəvi irs*' into English as 'moral heritage', the legislator presumably aimed to refer to 'intangible heritage' mentioned in Article 40. The wording of Article 77 where the same term is used but after 'tangible heritage' supports this translation. In Azerbaijani Turkish, '*mənəvi*' means both 'moral' and 'intangible' (or non-material). Article 40 of the Constitution may need revision to avoid this translation discrepancy.

²¹ Law of the Republic of Azerbaijan on Culture, 506-IVQ, Gazette of Azerbaijan (2012).

on the Protection of Historical and Cultural Monuments (1998),²² the Law on Library Work (1998),²³ and the Law on Museums (2000).²⁴ Among these laws, the Law on Culture is the most comprehensive legislation incorporating the 1970 and 1972 UNESCO Conventions.

3. Objects of cultural heritage protection

3.1. Terminological discrepancies: Cultural sample and cultural treasure?

The Law on Culture classifies cultural heritage based on tangibility (tangible and intangible), mobility (moveable and immovable), nationality (national cultural heritage), or location (underwater and natural). It is no coincidence that Law on Culture defines “cultural heritage” as an umbrella term. Legal scholars have also avoided introducing constituents of cultural heritage but only referred to its sub-categories, namely, world heritage, cultural diversity, intangible, underwater, and indigenous cultural heritage.²⁵

According to Article 1 of the Law on Culture, “national cultural heritage” is “cultural samples belonging to the Azerbaijani nation and having a universal value”, including the cultural heritage of national minorities. The same article defines intangible cultural heritage as “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 recognise as part of their cultural heritage”. Further, under Article 36 of the Law on Culture, intangible cultural heritage comprises ethnography (custom and traditions, holiday and rituals, historical symbols), folklore (performance, music, and dance, plays, and games), and art (applied art, traditional decorative art) and national cuisine under Article 37.

Legal terminology however does not always follow international agreements. Occasionally, the Law on Culture uses cultural treasures and cultural samples to refer to cultural objects. Article 30 defines cultural treasure as “manuscripts, ancient, rare collections, folklore, and the things with a museum value before 1960, movies and highly important television and radio materials, and natural objects and parks”. Legal scholars

²² Law of the Republic of Azerbaijan on the Protection of Historical and Cultural Moments, 407-IQ, Gazette of Azerbaijan (1998).

²³ Law of the Republic of Azerbaijan on Library Work, 611-IQ, Gazette of Azerbaijan (1998).

²⁴ Law of the Republic of Azerbaijan on Museums, 839-IQ, Gazette of Azerbaijan (2000).

²⁵ V. Vadi, *Cultural Heritage in International Investment Law and Arbitration*, Cambridge 2014, p. 18.

have explained cultural treasure as an equivalent of cultural property,²⁶ and this article uses both interchangeably. Although cultural property as a concept, similarly to cultural heritage, is vague and hard to define,²⁷ the definition of cultural treasure in Article 30 is detailed, if not exhaustive.

One can infer from Article 30 that cultural treasure is tangible, except folklore. The language of the Regulations by the Cabinet of Ministers on the Protection, Restoration and Use of Cultural Heritage Samples (Regulations) supports this inference; in Article 4 and 6 of the Regulations, intangible goods are accompanied by cultural heritage, whereas in Article 5, tangible things are followed by cultural property. Other definitions of cultural property have divided it into moveable and immovable property.²⁸ Nonetheless, the phrase “intangible cultural property” is not unfamiliar to legal scholars²⁹ as it is associated with intellectual property.³⁰ Unlike cultural property, cultural heritage usually refers to tangible and intangible heritage as a whole.³¹ This article discusses the issues only within meaning laid down in domestic law, leaving definitions set in international agreements out as the latter are shaped by their scope.³² Of note, the term “cultural sample” is used to illustrate the things not approved as a cultural treasure by an expert. Even if a cultural sample looks unique, old, and culturally significant, protection is subject to recognition as cultural property by the state body.³³ Put simply, although a cultural sample is a legal term in the Law on Culture, in practice experts classify objects as cultural property.³⁴

²⁶ S. Süleymanlı, *Mədəni İrsin Qorunmasının Beynəlxalq-Hüquqi Tənzimlənməsi Problemləri və Azərbaycan Respublikasının Qanunvericiliyi* [International and Legal Regulation Problems of Cultural Heritage Protection and the Laws of the Republic of Azerbaijan], Baku 2018, pp. 28–29.

²⁷ K. Zeidler, *Restitution of Cultural Property. A Hard Case – Theory of Argumentation – Philosophy of Law*, Gdańsk – Warsaw 2016, p. 63.

²⁸ S.A.H. Rashid, A.B. Omer, A.K. Ali, “Protection of Cultural Property in the Light of International Humanitarian Law”, *Journal of Critical Reviews* 2020, vol. 7, no. 6, p. 1022.

²⁹ E. Kakiuchi, “Cultural Heritage Protection System in Japan: Current Issues and Prospects for the Future”, *GRIPS Discussion Paper* 2014, no. 14-10, p. 4; A.N. Walsh, D.M. Lopes, “Objects of Appropriation” [in:] *The Ethics of Cultural Appropriation*, eds. J.O. Young, C.G. Brunk, Oxford 2009, p. 225.

³⁰ V. Vadi, *Cultural Heritage...*, p. 25.

³¹ See e.g., P.G. Stone, “A Four-tier Approach to the Protection of Cultural Property in the Event of Armed Conflict”, *Antiquity* 2013, no. 87, p. 167.

³² E. Cunliffe, N. Muhesen, M. Lostal, “The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations”, *International Journal of Cultural Property* 2016, vol. 23, p. 4.

³³ S. Süleymanlı, *Mədəni İrsin Qorunmasının...*, p. 51.

³⁴ L.V. Prott, P.J. O’Keefe, “‘Cultural Heritage’...”, p. 309.

3.2. Cultural property versus cultural heritage: Historical development

To ensure clarity in legal terminology, it is worth visiting the history of cultural property and cultural heritage in international law. The protection of cultural property came after the attempts to enforce international humanitarian law after the Second World War³⁵ to shield cultural property against further destruction.³⁶ Back then, defining the object of protection as cultural property was a conscious decision to invoke absolute property rights to impede destruction. The 1954 Hague Convention served this purpose. However, in time, the right to culture started to clash with and gradually prevail over the concept of property assigned to cultural objects because absolute property rights were enforceable against everyone, be it perpetrators of cultural barbarism or someone else.³⁷ Moreover, property rights recognised ownership rights of *bona fide* purchasers of cultural property and caused trouble in restitution cases³⁸ because a third-party *bona fide* owner of the cultural property could benefit from the property right and impede restitution. Finally, the commodification of cultural objects and exploitation in commerce served as a defence against the property concept.³⁹

That is where “cultural heritage” was born to give cultural objects back to society. The shift from “cultural property” to “cultural heritage” elevated cultural objects from an individual to a societal level, and even further – to the universal level, as it is the case for some parts of cultural heritage in the 1972 UNESCO Convention making up the world heritage.⁴⁰ Arguably, a piece of cultural heritage became a cultural object that deserves protection when society is informed about its significance.⁴¹ However, cultural heritage was not immune from commodification concerns either.⁴² Interestingly, both proponents and opponents of the inscription of cultural heritage to world heritage lists highlight increased visibility of endangered heritage,⁴³ the detailed analysis of which is outside of the scope of this article.

³⁵ L. Lixinski, *Intangible Cultural Heritage...*, p. 5.

³⁶ A.F. Vrdoljak, F. Francioni, “Legal Protection of Cultural Objects in the Mediterranean Region: An Overview” [in:] *The Illicit Traffic...*, p. 4.

³⁷ L.V. Prott, P.J. O’Keefe, “‘Cultural Heritage’...”, p. 309.

³⁸ K. Siehr, “The Protection of Cultural Heritage and International Commerce”, *International Journal of Cultural Property* 1997, vol. 6, no. 2, p. 304; see generally: K. Zeidler, *Restitution of Cultural Property...*, pp. 136–202 (introducing a non-exhaustive list of the arguments often raised in restitution cases of cultural property).

³⁹ L. Lixinski, *Intangible Cultural Heritage...*, p. 6.

⁴⁰ F. Lenzerini, “Illicit Trafficking...”, p. 106.

⁴¹ L.V. Prott, P.J. O’Keefe, “‘Cultural Heritage’...”, p. 311.

⁴² *Ibid.*, pp. 14–15.

⁴³ See e.g. J. Reguant-Aleix, M.R. Arbore, A. Bach-Faig, L. Serra-Majem, “Mediterranean Heritage: An Intangible Cultural Heritage”, *Public Health Nutrition* 2009, vol. 12, no. 9A, p. 1592.

An alternative concept to “cultural heritage” is “community property”, where society as a whole is recognised as an owner. Since culture has an element of collectiveness and the property is often an individual right concept,⁴⁴ the term “community property” fits its subject matter, albeit the idea not widely recognised.⁴⁵

Apparently, the Law on Culture corresponds to the rise of the right to culture under Article 27 of the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948,⁴⁶ by using the term “cultural heritage” more often than “cultural treasure”. However, it is not a result of debates but the incorporation of international agreements. Still, the strong position of executive bodies, especially the leading role of the Ministry of Culture⁴⁷ in ownership, use, or further control of cultural treasure – an organising principle of society inherited from Soviet Azerbaijan – has not been undermined. Although it may sound proper to call something a “cultural treasure”, it is just words on paper. State dominance in cultural heritage protection causes the risk of appropriation, just as it did in the other communist regimes of that time, particularly in Poland.⁴⁸ Thus, the state control with little or no accountability was and is not entirely safe. Admittedly, cultural property can still be owned and used by individuals with certain restrictions on the exercise of rights. In reality, however, the state is usually in charge of cultural property, either *de jure* as state property or *de facto* by strict requirements for consent.

4. Protection mechanisms of cultural heritage

Law is the most significant tool to protect cultural heritage, but it is not the only tool. Technical, financial, and social mechanisms (operating, of course, within legal boundaries) are equally useful. A legal rule can be prohibitive or consensual. This article describes the latter only, leaving criminal laws out of its scope. Technical mechanisms include registries, protection ranks, consent, and reporting. Of course, in practice, these mechanisms are applied cumulatively.

⁴⁴ V. Vadi, *Cultural Heritage...*, p. 26.

⁴⁵ A.N. Walsh, D.M. Lopes, “Objects of Appropriation...”, p. 225.

⁴⁶ K.L. Alderman, “The Human Right to Cultural Property”, *Michigan State University Law Review* 2011, vol. 20, no. 1, p. 73.

⁴⁷ See also: *Twinning Layihəsi: Mədəniyyət Sektorunun Siyasəti və İdarə Olunması Sistemində İslahatlar* [Twinning Project: The Reforms in the Policy and Management of the Cultural Sector; hereinafter: Twinning Project], p. 9, <https://bit.ly/3u3xQXO> (accessed: 29.11.2020).

⁴⁸ J. Stepnowska, K. Zeidler, “The Case of Polish Museums Holding Cultural Objects “In Trust” after WWII” [in:] *Treuhänderische Übernahme und Verwahrung: International und Interdisziplinär Betrachtet* [Fiduciary Takeover and Custody: International and Interdisciplinary View], eds. O. Kaiser, C. Köstner-Pemsel, M. Stumpf, Vienna 2018, p. 298.

4.1. Legal mechanisms

The Law on Culture harmonises imperative and dispositive approaches to cultural property and assigns duties to the owner or user. Under Article 39, the relationship between the executive body and an owner or user of cultural property with a protection rank is subject to a compulsory preservation contract. Contractual obligations complement legal duties; even without a preservation contract, the owner must manage the cultural property properly under Article 203 of the Civil Code. Mismanagement of cultural property results in the confiscation via compulsory purchase under Article 203(3) of the Civil Code. Still, this mechanism applies only to the especially valuable cultural property listed by the state and occurs only when there is a threat of devaluation of the cultural property due to the mismanagement.

4.2. Technical mechanisms

4.2.1. Registration

Under Article 26 of the Law on Culture, the state maintains registries, catalogues, accounting systems, lists, and databases of cultural property. Two registries identified in the Law on Culture are the Public List of National Cultural Property and the Preservation List of Cultural Property. The lists are published on the website and renewed regularly. The registry classifies cultural property based on its world, national and local significance. The key subject in charge of the content of the lists is the Cabinet of Ministers, not the Ministry of Culture.⁴⁹ Under Article 36 of the Law on Culture, the registry aims to restore intangible cultural heritage via identification, systemisation, maintenance, preservation, improvement, and transfer through generations.

Inscription in the world heritage or public lists has legal effects on the legal regime of cultural property. Article 6(2) of the Law on Privatisation of State Property prohibits the privatisation of the state property included in the world natural and cultural heritage list. Also, under the same article, the state property that belongs to national cultural and natural heritage, including historical and cultural monuments of the Azerbaijani nation (except the historical and cultural monuments with local significance), cannot be privatised. However, it is unclear whether the state property that belongs to national cultural and natural heritage is limited to those included in the public lists or covers all.

⁴⁹ Twinning Project, p. 26.

4.2.2. Ranking

The Law on Culture introduces several protection ranks – preventive, conservation, restoration, and special protection. Protection ranks determine the legal regime of cultural property, and they are given for the status of cultural property and its historical or cultural value. The cultural property with a preventive rank cannot be destructed, destroyed, dismantled, restructured, moved, or aesthetically changed without the consent of the executive body. In other words, the law does not prohibit the ownership or use of the cultural property with a preventive rank, unless it is destroyed or otherwise changed without the consent of the Ministry of Culture. The cultural property with a conservation rank is not used at all or used under the control of the executive body. The cultural property with a restoration rank needs work to restore its primary cultural function so that the restoration of such property is prioritised. Finally, the cultural property included in the Public List of the National Cultural Property receives a special protection rank.

4.3. Critique of protection mechanisms

The existing protection mechanisms amount to cultural nationalism.⁵⁰ The circulation of cultural property is restricted; any cultural property of Azerbaijan shall be returned to Azerbaijan regardless of their location or time, or conditions of the export. Article 35 of the Law on Culture strictly prohibits the appropriation of national cultural heritage objects by other states. Although the extraterritorial application to the illicit appropriation of cultural property abroad is disputed,⁵¹ it probably reflects Azerbaijan's firm response to the loss of cultural property in the past and continuing threats to cultural heritage. Colonialism has been one of the reasons for the loss of cultural property⁵² and Azerbaijan experienced partial or total invasion by neighbouring countries throughout its history, most recently, the invasion of 20% of its internationally recognised territories in 1992 and 1993 by Armenia. In the rise of nationalist movements and ongoing threats by neighbouring countries against Azerbaijan's cultural heritage, it is likely to remain as part of national identity and pride for a long time. There is no plurality of cultural nationalism and internationalism in Azerbaijan;⁵³ however, the use of cultural property to promote diversified industries is not only an option but a reality.

⁵⁰ S. Süleymanlı, *Mədəni İrsin Qorunmasının...*, p. 62.

⁵¹ See also: A. Chechi, "Facilitating the Restitution of Cultural Objects through Cooperation: The Case of the 2001 US-Italy Agreement" [in:] *The Illicit Traffic...*, p. 151.

⁵² E. Məmmədzadə, "Mədəni İrsin...", p. 71.

⁵³ See: *Enforcing International Cultural Heritage Law*, eds. F. Francioni, J. Gordley, Oxford 2013, p. 11.

Relying heavily on international agreements, restitution is a part of Azerbaijan's cultural policy. It is followed by preservation of restituted objects. Among international agreements, the 1994 Convention of Commonwealth of Independent States (CIS) on the Cooperation Between Customs Service for the Preservation and Restitution of Illicitly Exported and Imported Cultural Property, and 2001 Agreement of the CIS on Export and Import of Cultural Values could be the effective tools that Azerbaijan uses in diplomatic cooperation for restitution of illicitly exported cultural property.

One might argue about the adequacy of the existing mechanisms in restitution cases. Admittedly, it is hard to impose international law on cultural heritage protection against property rights.⁵⁴ Besides, the rules of the private international law to return illicitly exported cultural objects can be complex.⁵⁵ However, international cooperation must not exclude other mechanisms.⁵⁶ The operation of international agreements, in reality, is not always advantageous. One example can be the applicability of the 1954 Hague Convention to the Nagorno-Karabagh armed conflict. With the exception of minimum requirements outlined in Article 19, Article 18 of the 1954 Hague Convention limits the scope to the event of a declared war or to any other armed conflict which may arise between two or more of the High Contracting Parties. In consequence, the applicability of the 1954 Hague Convention to internal conflicts is not clear.⁵⁷ The Nagorno-Karabagh armed conflict has an inter-state character but it has occurred in the internationally recognised territories of Azerbaijan. Such factors may complicate the issue and question the applicability of the 1954 Hague Convention. This article does not seek to solve this issue here, though. Instead, without prejudice to the importance of cooperation in cultural heritage protection,⁵⁸ it raises this issue as an example of how international agreements may be limited in scope in certain cases which necessitate devising alternative mechanisms. The effectiveness of any mechanism to protect cultural heritage, however, will depend on the institutional accountability and independence of the judiciary that urgently need thorough reforms.

⁵⁴ R. Peters, "Beyond Restitution...", p. 175.

⁵⁵ A. Jakubowski, "Return of Illicitly Trafficked Cultural Objects Pursuant to Private International Law: Current Developments" [in:] *The Illicit Traffic...*, p. 138.

⁵⁶ See e.g. L. Khalidi, "The Destruction of Yemen and Its Cultural Heritage", *International Journal of Middle East Studies* 2017, no. 49, p. 738. Highlighting the need for international advocacy by archaeologists and world community, as well as media to stop the destruction of cultural heritage sites in Yemen.

⁵⁷ A.F. Vrdoljak, F. Francioni, "Legal Protection...", p. 7.

⁵⁸ F. Lenzerini, "Illicit Trafficking...", p. 112.

5. Conclusions

Cultural heritage protection in Azerbaijan can be characterised by strong position of state entities. Cultural heritage protection does not pursue utilitarian interests only; however, there are legal and consensual mechanisms allowing the use of cultural property. The state control over the ownership and use of cultural property may prevent excessive commercial exploitation of cultural property only if state agencies are more accountable. Further, the Law on Culture needs revision to omit terminological discrepancies, such as “cultural sample” and “cultural treasure”, in order to comply with the 1970 and 1972 UNESCO Conventions.

As an exemplary Contracting State of the UNESCO Conventions, Azerbaijan still needs to strengthen the protection of cultural property at the national level. This reform may include specific provisions to ensure greater access to cultural property owned by private parties and claims against the destructed or lost cultural property since the Nagorno-Karabakh armed conflict, especially beyond the 1954 Hague Convention. Further research is needed to discuss the applicability issues in the example of Nagorno-Karabakh armed conflict. There is also need to develop possible alternative dispute-resolution mechanisms,⁵⁹ not necessarily by way of revision of the existing rules.⁶⁰

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- Chippindale C., “Cultural Property”, *The Classical Review* 2011, vol. 61, no. 1.

⁵⁹ See also: M. Shehade, K. Fouseki, K.W. Tubb, “Editorial: Alternative Dispute Resolution in Cultural Property Disputes: Merging Theory and Practice”, *International Journal of Cultural Property* 2016, vol. 23, p. 352.

⁶⁰ M. Lostal, *International Cultural Heritage Law in Armed Conflict*, Cambridge 2017, p. 19.

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Summary

Protection of cultural heritage in Azerbaijan

This article discusses the protection of cultural heritage in Azerbaijan. After defining cultural heritage, analysing the concept of cultural treasure and sample, and describing the protection mechanisms, such as registration, ranking, and contracts, it aims to situate cultural heritage protection in the domestic laws and find out the latest approach to cultural heritage as an identifier of the government's policy. It argues that even the perfect compliance with international agreements does not sufficiently safeguard cultural heritage in Azerbaijan unless alternative dispute resolution mechanisms are employed. To support this argument, it studies the recent research on the rationale of cultural heritage protection in Azerbaijan and abroad to compare the findings with international agreements in a historical overview.

Keywords: Azerbaijan, cultural heritage, cultural property

Streszczenie

Ochrona dziedzictwa kultury w Azerbejdżanie

W artykule omówiono stan ochrony dziedzictwa kultury w Azerbejdżanie. Autor, analizując pojęcia skarbu kultury (*cultural treasure*) oraz warunkowego dobra kultury (*cultural sample*), poprzez przybliżenie mechanizmów ochrony, takich jak rejestr, system klasyfikacji oraz umowa o opiekę nad dobrem kultury, opisuje miejsce, jakie zajmuje ochrona dziedzictwa w prawie i polityce Azerbejdżanu. Stawia tezę, że nawet najściślejsze przestrzeganie umów międzynarodowych nie gwarantuje właściwego poziomu ochrony, jeżeli nie towarzyszą mu wypracowane i wdrożone alternatywne metody rozwiązywania sporów. Teza ta wsparta jest analizą aktualnego stanu dyskursu naukowego na temat racji ochrony dziedzictwa w Azerbejdżanie i na świecie, z uwzględnieniem kontekstu historycznego.

Słowa kluczowe: Azerbejdżan, dziedzictwo kultury, dobro kultury