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THE LAW AND PROFESSIONAL ETHICS IN THE REALIZATION OF THE PROTECTION OF MUSEUM GOODS IN THE REPUBLIC OF MACEDONIA¹

Abstract: This article presents the relationship between law and professional ethics in achieving the protection of museum goods in the Republic of Macedonia, with special emphasis on the problematic legal norms and deviant ethical behavior in the museum work.

Keywords: professional ethics, law, museum goods, protection.

The criticism of the unfavorable conditions and the weaknesses in the museum work, has usually been directed outside the professional community, most of the time towards the state and its institutions. This occasion gives us the opportunity to draw the attention in another direction, and to abandon the still prevailing professional attitude, so called *self-amnesty*. It doesn't mean that the influence of external factors should be neglected or to minimized, nor the existing level of professional ethics in the museum sphere should be without any reason problematized. On the contrary. In the name of professional integrity of this area, the institutions and its profession should speak openly and with arguments about the anomalies in the ethical dimension of the museum work. Of course, to the extent of the preparedness to do so. The museum professionals could in any case deny, tolerate, or consciously ignore the existence of such anomalies. However, even in such cases, the existence of behavior which is in opposition of the professional ethics could not be denied.

The professional ethics in any field, by definition, represents a set of ethical principles for professional behavior and work. In the theoretical sense it

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represents an **autonomous** area, and as such it should be subject to **self-regulation**, regardless of **legal regulations**. However, in practice, not only in our country, but also in other contemporary societies, the law penetrates to certain extent in the segment of professional ethics, expressed by normative regulation of the relationship of public interest. On one side we're speaking about societal justification, and on the other – about the level or scope of the legal regulation of relations i.e. the extent to which the law can, should or must enter the segment of professional ethics in the field of museums.

When it comes to the relationship between law and professional ethics in the museum sphere, in fact, as in any other social sphere, one should not lose sight of the fact that it is about social relations based on social rules, that is, social norms of different kind, which science recognizes and classifies as customary, moral and legal norms, while not excluding their mutual connection nor their mutual contradiction. In this sense, in the museum sphere, there are not many contradictory but more compatible social rules that complement each other, and even those that grow from one kind to another, as is the case with many moral norms for museum operations absorbed by law and styled in the form of legal norms. Hence, the line of distinction between the social norms in the museum sphere is not easily recognizable, and the profiling of the autonomous area of professional ethics, where only the moral rules and professional knowledge would apply, without the force or obligation of the legal norms, is rather complex and sensitive issue.

If we analyze the history of our museums, from the aspect of the rules for their work, it can be noted that this is an evolutionary process that has taken place and is taking place in the direction of a phased expansion of the legal regulation in the field of museums, and its periodization can be reduced to 4 distinct phases.

Thus, in the first phase, which covers the period until the adoption of the first Macedonian Law on Museums of 1948, the operation of the museums was not regulated by special museum regulations, and it was conducted according to customary and moral rules, accompanied and enriched with knowledge and experience acquired on various grounds. In the second phase, until 1960, only the general issues of statutory and technical nature were subject to legal regulation, while the professional operation of the museums was still left to the conscience and the ethics of the museum workers. In that sense, one can speak of a period when the state had full, unlimited or unreserved confidence in the professional ethics of the museum professionals. At the same time, UNESCO publishes the recommendations of 1956 and 1960, as the first written *moral rules* for professional work of the museums. The third phase, which lasts until 2004, is the period when a solid framework of international legal and moral rules for protection of museum goods is created and framed into *conventions*,

recommendations, declarations, charters and codes, especially by UNESCO and ICOM. On the national level however, the state had inconsistent attitude and reluctance regarding the regulation of the relations in the area of museums, because of which the respective national regulation remained predominantly static. The comparison of the content of the special laws of 1965, 1973 and 1979 and the bylaws of 1961 and 1980, to the UNESCO commitments, that the Member States should apply the ethical principles of its *conventions and recommendations* by adopting appropriate laws and other regulations, only supports the above statement.

A key feature of the current fourth phase, which covers the period after 2004, is the significant increase in legal norms, related to the professional operation of museums, codified in the *related law*, contained in the *special law* and elaborated in more than 30 *bylaws*, including the 8 *rulebooks* in the field of *museum activity*. In general, taking in account the number of bylaws and their scope, there is an impression that there is an overproduction of legal norms, the quantity of which will increase with the adoption of the envisaged 10 bylaws. However, such a perception is completely wrong, given that for a longer time the state avoided or was not prepared to accept and articulate the international principles and standards for the protection of museum cultural goods through legal norms. Today, unlike the previous development phases, acting according to the guidelines of international organizations and bodies, by absorbing ethical principles and their transformation from moral to legal norms, the state preventively strengthens the level of professional behavior in the museum field. This can also be interpreted as tightening of the rules of conduct in the public interest, bearing in mind that the museum activity is not immune to deviant phenomena that jeopardize the public interest. In addition, regardless of the possible qualifications for the existing legal regulation, it is indisputable that it does not limit the freedom of creativity nor hinders the creative and conscientious performance of professional duties in the museum field. Thus, the law does not interfere with the dating and interpretation of museum goods, nor in the quantification and the formation of museum collections, and even less in the aesthetics of their presentation or in the culture of behavior towards the public.

On this occasion, it should be emphasized that with the existing legislation *deregulates* one sensitive issue for the museum workers, namely abolishing of the existing legal ban on private collection of cultural goods by employees of the public museum institutions.

On the other hand, in the previous few years, with the amendments and supplements to the current laws, as a reaction to the events in the museum field, the state hastily adopted legal norms expressing a high degree of suspicion, that is, mistrust in the professional ethics of the responsible and expert workers. One

specific example are the provisions of Article 29-a of the Law on Museums, according to which, expert assessment of the originality of artistic and other objects can be performed only by some, not all national and other public museums, whereby the composition of the commission for assessment is determined with the consent of the Minister of Culture. Similarly, according to Article 95-a of the law, the removal of museum objects outside the museum is placed under the excessive control regime, since it requires authorization from the Directorate for Protection of Cultural Heritage and prior opinion from the Ministry of Culture. According to the same article, in case of exercising the right to scientific property outside the museum's headquarters, it is required to conclude an agreement with another museum, upon prior consent from the Directorate. Additionally, according to Article 95-b, to produce a copy of a museum object, an approval from the Directorate should be obtained, which can be issued upon prior opinion from the Ministry of Culture. Similarly, according to the newly introduced provision of article 63, paragraph 2 of the Law on Protection of Cultural Heritage (LPCH), the authorization for use of archaeological research detection equipment can be issued by the Directorate, only upon prior consent of the Minister of Culture. Controversial ethical basis can be noted in the new legal provisions, which give the archaeologists a privileged position vis-à-vis other professions in the *cultural heritage protection system*, and with regards to the *right to manage and perform archaeological research*, museum archaeologists are placed in a disadvantaged position opposite their colleagues outside the museums (Article 56 paragraph 4 of the LPCH).

According to the existing regulations, museums are legally obliged to adopt appropriate *security protection plans* (Article 104 of the LPCH); in contrary, the fines are pretty strict, and the height of the fine is subject to frequent fluctuations. In the case, the absurdity is that such types of plans can not be developed or adopted, until the Directorate has the necessary *elaborates for a security assessment* prepared, approved by the Minister of Culture and submitted to the museums. In that sense, it is utterly hypocritical to carry out the *inspection supervision* through *the inspectors for cultural heritage*, and they find existence of a *misdemeanor* by the museum, in a situation where the inspected museum can not act professionally as a result of the failure of the performance by the competent state authorities. The situation is similar in regard to the *basic and native records* as types of *protection records* for movable goods under the jurisdiction of the museums, which have not been established so far due to the irresponsible attitude of the Directorate to its legal obligations in that segment. The scope of non-execution and misapplication of legal competencies by the competent bodies, which shows the double morality of the government, is quite large; however, it should not distract our attention from the topic we explore.

In the museum activity and in the protection of movable goods under the jurisdiction of museums, there are numerous examples of unethical and unlawful behavior, which should be subject of attention. Thus, when it comes to specific behavior of individuals, we can point out few examples:

- performing archaeological research without permission or not consistent with the issued permission, especially when “recognition” is performed, as a type or method of research;
- attempts to legally redefine the “recognition” by adding the excavations within its framework, motivated by personal interests, to avoid the obligations regarding the authorization of archaeological excavations;
- failure to report, submit final documentation and publish results from archaeological research;
- unauthorized purchase of archaeological objects, or occasional discoveries and awarding a reward for occasional discovery contrary to the regulations and professional ethics;
- prevention of the availability of museum goods and related documentation, especially when exercising the right to scientific property;
- avoiding to hand over the movable archaeological findings to temporary accommodation and protection at the local museum, in the cases stipulated by law and lack of cooperation with the institutions responsible for protection of the sites where the research is conducted;
- unauthorized collection of items, including unauthorized transfer of sacred and other objects from one place to another;
- infringement of copyrights in the use of bibliographic units, etc.

With regards to the museums themselves, we can note several practical examples:

- creating or completing public museum collections by purchasing objects of unverified or dubious origin;
- questionable typological, chronological, spatial and other identification of objects during creation of collections, inadequate delineation of types of collections as object of protection, inclusion of property by purpose in certain museum collections and their treatment as movable cultural heritage;
- entering foreign, deposited objects into the museum inventory books;
- neglecting the functions of a competent museum for the area of municipalities where there are no museums and failure to perform the functions of the designated authorized museums;

- inappropriate treatment of certain museum functions and professions, especially related to the museum systematizations and related grading, as well as professional promotions;
- incompetent management of work processes in the museums, accompanied by frivolous conduct of managers, etc.

The given examples, as are many other cases, the problem lies in the ethical and moral conduct, standards, conscience or knowledge, which in many cases can not be compensated with regulations. The idea behind the legislation lies in the attempt to direct and anticipate the proper behavior; the deviations can involve a repressive reaction, in case the authorities determine to do so.

Respect of the regulations is not only legal, but also a basic ethical principle, which is also relevant for the museum work. This indicates a healthy society, where proper values are in place. In this context, in order to make things better, each individual should question its own current and future behavior.

Bibliography:

1. *Code de déontologie professionnelle de l'ICOM*, Paris: ICOM, 1996.
2. *Кодекс на етика на музеите на Меѓународниот совет на музеи*, Скопје, МНК ИКОМ, 2002.
3. *Conventions et recommandations de l'UNESCO relatives à la protection du patrimoine culturel*, Paris: UNESCO, 1990.
4. Ристов, Јован, *Правен режим на археолошките истражувања и случајните откритија*, Битола: Завод за заштита на спомениците на културата и Музеј - Битола, 2006.
5. Ристов Јован, Топузовска Лидија, *Темелни акти на УНЕСКО за заштита на културното наследство*, Скопје: МНК ИКОМОС, 2006.
6. Ристов, Јован, *Инструменти за заштита на културното наследство*, Скопје, 2008.
7. Ристов, Јован, *Извори на споменичкото право во Македонија: Том II - Акти за спомениците на културата и другите културни добра од периодот на ДФЈ/ФНРЈ и ДФМ/НРМ во нејзин состав (1944-1963)*, Скопје: НУ Конзерваторски центар - Скопје, 2013.
8. Ристов, Јован, *Приватно колекционирање на културни добра: Правни аспекти*, Скопје: МНК ИКОМ, 2015.
9. Ристов, Јован, *Извори на споменичкото право во Македонија: Том III - Акти за спомениците на културата и другите културни добра од периодот на СФРЈ и СРМ во нејзин состав (1963-1991)*, Скопје: НУ Конзерваторски центар - Скопје, 2016.

Regulations:

1. Law on protection of cultural heritage ("Official gazette of RM " 6p. 20/04, 115/07, 18/11, 148/11, 23/13, 137/13, 164/13, 38/14, 44/14, 199/14, 104/15, 154/15, 192/15, 39/16).
2. Law on museums ("Official gazette of RM" No. 66/04, 89/08, 116/10, 51/11, 88/15, 151/15, 39/16).

Abbreviations:

LPCH - Law on protection of cultural heritage

ICOM - International Council of Museums – ICOM

UNESCO - United Nations Educational, Scientific and Cultural Organization