

6th Congress of the World Conference on Constitutional Justice

Session B - “Preservation of Humankind’s Cultural Heritage”

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The Honourable President of the Constitutional Court of Spain, Mr. Cándido Conde-Pumpido Tourón,

**The Honourable President of the Venice Commission, Ms. Claire Bazy Malaurie,
Esteemed Presidents/Chief Justices and Members of Constitutional and Supreme
Courts,**

Distinguished Participants,

Ladies and Gentlemen,

It is a great honour for me to address you today at the 6th Congress of the World Conference on Constitutional Justice, under the theme “Preservation of Humankind’s Cultural Heritage”. I sincerely believe that this Congress will be just as successful and productive as the previous ones. On this occasion, I would like to extend my congratulations to Mr. Cándido Conde-Pumpido Tourón, President of the Constitutional Court of Spain, for hosting this Congress, as well as the members of the Spanish Constitutional Court, the Venice Commission Secretariat, and all those who contributed to the organisation of this Congress. I am also grateful for the warm and gracious hospitality shown to us in the charming city of Madrid.

I consider it very significant that one of the sessions at this Congress is devoted to the preservation of cultural heritage. While culture is an indispensable element of humanity, factors such as technology, digitalisation, and globalisation may pose challenges to its growth and preservation.

Cultural heritage is not merely a memory of the past but serves as a bridge of communication spanning centuries between generations and societies. It is the foundation of our identity, the bearer of our collective memory, and a universal value illuminating the path toward our future. Civilisations throughout history have passed

down their virtues, faiths, artistic expressions, and lifestyles to future generations through cultural heritage. Thus, cultural heritage –both in its tangible forms like inscriptions and monuments, and its intangible forms such as narratives and representations– is a powerful manifestation of the existence of humanity and collective identity. Therefore, it becomes necessary to address and assess cultural heritage in the context of the rights of future generations.

Although culture has long been regarded as worthy of preservation, it was not until the 19th century that the protection of cultural property became widely recognised as a public responsibility. The preservation of cultural heritage became an issue addressed by international law in the aftermath of the world wars. Although there is a growing tendency nowadays to recognise cultural heritage as a human right, more concrete steps need to be taken within national and international law in this regard, and flesh must be put on the bones of the legal framework.

During my speech, I will explore the topic within the framework of international literature and law, and also briefly address the relevant jurisprudence of the Turkish Constitutional Court. Before moving on, I would like to also touch upon Anatolian culture, which contains some of the oldest and most impressive examples of humanity's heritage. Göbeklitepe, discovered only recently, offers invaluable insights into the origins of civilisation as the earliest settlement and religious site. Nowruz, observed as the arrival of spring as the beginning of the new year in Anatolia and other regions worldwide, is included in UNESCO's Representative List of the Intangible Cultural Heritage of Humanity. Istanbul, having served as the capital for three empires, is the most splendid example of multicultural heritage. However, Anatolia is not just a history carved in stone; it is also the source of a universal spiritual heritage.

Rumî and Yunus Emre, who are among the prominent figures of Anatolia and regarded as symbols of the culture of tolerance, are cherished and recognised worldwide. Rumî inspired the universal language of peace with his famous phrase, "*Come, come, whoever you are!*", and left a unique literary work, the *Masnavi*. Yunus Emre, on the other hand, appealed to collective conscience of humanity with his words: "*Let us love and be loved;*

no one is eternal on this world.” The works of Rumî and Yunus Emre, cherished in the hearts of many through numerous sayings, stand as some of the most remarkable examples of humanity’s cultural heritage. The voices rising from the lands of Anatolia reflect the essence of cultural heritage and universal values that unite people and transcend borders.

Distinguished Participants,

UNESCO, established under the United Nations (UN) in 1945, has been a driving force behind international dialogue and efforts for the preservation of cultural heritage, pioneering several international treaties and agreements. Before cultural heritage was institutionally recognised, international instruments already included provisions on the right to culture. The right to freely participate in cultural life is enshrined in Article 27 of the *Universal Declaration of Human Rights*, and Article 22 mandates national and international efforts to ensure the fulfilment of cultural rights. Likewise, Article 15 of the *International Covenant on Economic, Social and Cultural Rights* declares that state parties shall grant everyone *the right to take part in cultural life*.

It was in the 1954 *Hague Convention for the Protection of Cultural Property in the event of Armed Conflict* that the preservation of cultural property was first recognised as an issue under the law of armed conflict. In its preamble, the Convention emphasises that each people makes its contribution to the culture of the world; thus, damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind. Nevertheless, Article 1 of the Convention provides a narrow definition of cultural property, based primarily on tangible elements. The provision refers to architectural and artistic monuments, archaeological sites, historical buildings, books and manuscripts, along with the museums and archives where such items are preserved. However, cultural heritage is not only confined to physical objects, but also encompasses intangible aspects such as traditions, belief systems, language, narratives, and rituals. Within this broader framework, culture is regarded as a living phenomenon composed of both tangible and intangible elements.

Accordingly, the 1966 *Declaration of the Principles of International Cultural Cooperation*, adopted by the UNESCO General Conference, acknowledges that “*all cultures are part of the common heritage of humanity.*” Likewise, the *Convention concerning the Protection of the World Cultural and Natural Heritage* was adopted in 1972 by UNESCO. This Convention explicitly reflects the increasing global awareness and commitment to the protection of cultural heritage. The preamble of the Convention states that cultural and natural heritage is under increasing threat, not merely due to traditional factors but also by social and economic transformations, and face an increasing risk of destruction.

In the same vein, the *Convention for the Safeguarding of the Intangible Cultural Heritage*, adopted in 2003 by UNESCO, is the first multilateral treaty focused on the intangible aspects of culture. The 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* also marked a significant step in the safeguarding of intangible cultural heritage. Beyond these, the UN has also facilitated the adoption of a range of specific conventions, protocols, and resolutions, as well as regional treaties aimed at safeguarding cultural heritage.

Meanwhile, in parallel with normative progress in international law, the protection of cultural heritage has increasingly been considered in closer relation to human rights in the jurisprudence of certain international and regional courts.

As for the European Court of Human Rights (ECtHR), it has held that the European Convention on Human Rights (ECHR) contains no provision regarding the “preservation of cultural heritage”, and that such a right cannot be derived by implication. However, in some of its judgments, the ECtHR has addressed the right to cultural heritage in connection with certain rights, such as the right to respect for private life, freedom of association, and freedom of expression. Thus, it can be said that the right to cultural heritage is protected under the ECHR, albeit indirectly rather than explicitly. Besides, according to the ECtHR’s case-law, the protection of cultural heritage constitutes a legitimate aim in the public interest that can justify restrictions on other rights, such as the right to property. Accordingly, the ECtHR has acknowledged

that when the protection of cultural heritage is at stake, the State enjoys a wide margin of appreciation with regard to the assessment of the public interest. The jurisprudence of the Turkish Constitutional Court also appears to be evolving in support of cultural heritage protection in the same fashion.

The right to cultural heritage is not explicitly enshrined in the Constitution of the Republic of Türkiye; however, the protection of cultural heritage is imposed on the State as an obligation. It is also explicitly stated that the right to property may be subject to limitations for the purpose of protecting cultural heritage. Therefore, the protection of cultural heritage is recognised as a legitimate aim in the public interest under the Constitution. The Turkish Constitutional Court has held that the public authorities enjoy a wide margin of appreciation in assessing the public interest regarding cultural heritage in cases involving alleged interference with the right to property (*Ahmet Bölge*, no. 2014/13133, 28 September 2016; and *Arif Güven*, no. 2014/13966, 15 February 2017).

The Turkish Constitutional Court's judgments concerning religious minorities may also be considered within the context of the protection of cultural heritage. As reflected in the case-law of the ECtHR and other regional courts, the ability of minorities and indigenous peoples to freely live and preserve their own cultures is of vital importance for the protection of cultural heritage. As an example in this regard, we can refer to the case of *Corc Kasapoğlu and Niko Mavrakis* (no. 2019/35842, 2 May 2023) before the Turkish Constitutional Court. In this case, the applicants, who were members of a minority community, had been elected to the board of trustees of a church foundation. However, they were removed from the board due to their status as clergy, in accordance with the legislation in force. In light of the following considerations, the Court found a violation of the freedom of organisation in the applicants' case. The court's reasoning can be outlined as follows:

"... It should be recalled that the applicants belong to a religious minority. While ensuring that every citizen can effectively exercise the right to freedom of organisation is undoubtedly essential in a democratic society, this right assumes particular importance and sensitivity in the context of minority groups. As a matter of fact, these

individuals come together to preserve their identities within the majority and to express, more effectively, the historical, religious, social, economic, and cultural conditions and rights specific to those identities. Owing to their minority status, they require greater protection. Accordingly, in order to ensure social cohesion, the State must protect minority rights and guarantee their effective exercise, which can only be ensured through the swift conclusion of judicial processes.”

Similarly, in the case of *Levon Berç Kuzukoğlu and Ohannes Garbis Balmumciyan* ([Plenary], no. 2014/17354, 22 May 2019), the Court found a violation of freedom of religion due to the refusal by public authorities to allow the election of a new Patriarch of the Armenian Community of Türkiye, following the incumbent Patriarch’s inability to perform his duties owing to health issues. In the case of *the Monastery and Archbishopric of Sinai (Tur-U Sinai Monastery)* (no. 2019/31594, 20 July 2023), the Court found a violation of the right to property due to the church and its garden being reclassified as a foundation, resulting in the transfer of their management to the public administration.

Accordingly, it can be thus said that the Turkish Constitutional Court has developed a noteworthy body of case-law aimed at ensuring minorities’ right to autonomous administration and their ability to freely practice and preserve their faith and culture. At this point, it should be noted that the Turkish State also shows particular diligence in preserving the cultural heritage of minorities living within its borders. The recently constructed Mor Ephrem Syriac Ancient Orthodox Church serves as a notable example of this commitment. Upon the request of the Syriac Community, the Turkish State allocated land for the church. The foundation was laid in 2019 with the participation of the President of Türkiye, and the opening ceremony took place in 2023, also in the presence of the President. This facility, which meets the worship needs of the Syriac Ancient Orthodox Community, holds great significance in promoting the visibility of a minority group and conserving cultural heritage. As is well established, cultural heritage comprises not only tangible assets, but also the languages, beliefs, and traditions practiced by diverse communities.

The Turkish Constitutional Court has rendered several decisions in favour of the protection of cultural heritage through its constitutionality review mechanism as well. For instance, the Court has found a contested provision, which prohibits acquisition of first-degree archaeological sites through possession, to be compatible with the requirements of a democratic society and the principle of proportionality, as it pursues the protection of cultural heritage (the Court's decision, no. E.2016/49, K.2016/200, 28 December 2016).

In another decision regarding the Bosphorus, the Turkish Constitutional Court has emphasised that the protection of cultural and historical assets is a constitutional duty, and that archaeological sites and historical structures cannot be compromised for economic interests (the Court's decision, no. E.2019/21, K.2020/51, 24 September 2020). In reviewing the constitutionality of the respective norm, the Court considered the potential impacts of a regulation concerning the Bosphorus on cultural and environmental values. It affirmed the importance of the constitutional framework for the protection of cultural and natural heritage. In the decision, the contested provisions were annulled on the ground that a reasonable balance was not struck between the aims pursued by these provisions and the public interest in preserving and enhancing the natural beauty, historical, and cultural values of the Bosphorus area.

Distinguished Participants,

The protection of cultural heritage is undoubtedly significant for individuals, groups, communities, and for all humanity. As noted earlier, the protection of cultural heritage acquired an institutional aspect at both national and international levels over the past century. The protection of cultural heritage is closely linked to numerous fundamental rights and freedoms, especially human dignity and identity. However, there is still no binding international treaty that explicitly recognises cultural heritage as an *individual right*.

Regulations regarding the protection of cultural heritage differ at the national level. While there is a general consensus that the preservation of cultural heritage serves a public interest, it is evident that this mere acknowledgement is far from ensuring adequate protection. Besides, due to its close association with the concepts of sovereignty and political authority, cultural heritage may be subject to selective protection, at both national and even international levels. Therefore, while cultural heritage should be preserved as a collective value of humanity, it can become an instrument for political objectives. This approach contradicts the idea that cultural heritage goes beyond belonging to any one state or community and is instead the shared legacy of humanity.

In conclusion, the protection of cultural heritage is a human right not only for the present generation, but also for future generations. Therefore, its preservation is a responsibility that today's generations have towards future generations. It is imperative to emphasise the need to approach cultural heritage not through a selective or exclusionary lens, but with a universal awareness aimed at preserving and sustaining the tangible and intangible values that belong to all humanity.

Before ending my speech, I would like to also underscore that unlawful acts, persecutions, armed conflicts, and wars perpetrated against humanity across different regions of the world have inflicted immense and irreparable damage on cultural heritage. In particular, the recent conflicts in Palestine and Gaza constitute one of the gravest examples in this regard. I sincerely hope that such conflicts will come to an end promptly and will never be repeated. It should be borne in mind that the shared future of humanity, as well as the prospect of a just and lasting peace, can be achieved only through upholding moral values and justice, and ensuring that these ideals prevail.

Thank you for your kind attention.

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Republic of Türkiye