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# Right to (Cultural) Heritage: A human rights approach

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## Three questions:

1. What is the normative content of right to cultural heritage?
2. What is its nature and scope of protection of cultural rights under human rights law?
3. Who are duty-holders of right to cultural heritage?





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## Fundamental values:

- Human dignity;
- Equality;
- Freedom;
- Solidarity;
- Pluralism.





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## Components:

- Freedom of assembly;
- Freedom of expression;
- Linguistic rights;
- Right to enjoy and access culture;
- Right to cultural identity;
- Right to education;
- Right to private and family life.





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## Right to cultural heritage:

- Objectives?
- Legal nature and value?
- Human rights dimension of Cultural Heritage?
- Enforcement mechanisms?





## International Covenant on Economic, Social and Cultural Rights (ICESCR)

- Article 15 (1): “The States Parties to the present Covenant recognize the right of everyone: (a) To take part in cultural life;”
- Article 15 (2): “2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for **the conservation, the development and the diffusion of science and culture.**”





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**Committee on Economic, Social and Cultural Rights,  
General comment No. 21, Right of everyone to take  
part in cultural life (art. 15, para. 1 (a)), U.N. Doc.  
E/C.12/GC/21 (2009).**

“Cultural heritage must be preserved, developed, enriched and transmitted to future generations as a record of human experience and aspirations, in order to encourage creativity in all its diversity and to inspire a genuine dialogue between cultures. Such obligations include the care, preservation and restoration of historical sites, monuments, works of art and literary works, among others”, para. 50.





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## UNHRC Res. 37/17, Preamble, 9 April 2018

- “... that the violation or abuse of the right of everyone to take part in cultural life, including the ability to access and enjoy cultural heritage, may threaten stability, social cohesion and cultural identity, and constitutes an aggravating factor in conflict and a major obstacle to dialogue, peace and reconciliation.”







## **The nature of right to cultural heritage I**

- The protection of cultural heritage protects both the physical and spiritual integrity of human dignity, thus realizing the right to life and protection of individual and collective identity.
- The protection of cultural heritage spiritually empowers the individual to realize be aware of the roots, traditions, culture, customs and history of the respective culture.





## **ECtHR (GC), Kozacioğlu v. Turkey, no. 2334/03, 19 February 2009**

- “The Court also considers that the protection of a country’s cultural heritage is a legitimate aim capable of justifying the expropriation by the State of a building listed as “cultural property”. It reiterates that the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues”, para. 53 of the judgement.





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## **ECtHR (GC), Kozacioğlu v. Turkey, no. 2334/03, 19 February 2009**

“The Court points out in this respect that the conservation of the cultural heritage and, where appropriate, its sustainable use, have as their aim, in addition to the maintenance of a certain quality of life, the preservation of the historical, cultural and artistic roots of a region and its inhabitants. As such, they are an essential value, the protection and promotion of which are incumbent on the public authorities”, para. 54 of the judgement





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## Akdaş v. Turkey, no. 41056/04, 16 February 2010.

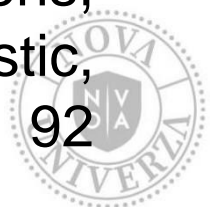
“It considers that the scope of this margin of appreciation, in other words, **the recognition accorded to the cultural, historical and religious singularities of the member countries of the Council of Europe, cannot go so far as to prevent public access. from a given language,** in this case Turkish, to a work included in the European literary heritage”, para. 30 of the judgement.





## **Gorzelik and Others v. Poland [GC], no. 44158/98, 20 December 2001.**

“While in the context of Article 11 the Court has often referred to the **essential role played by political parties in ensuring pluralism and democracy, associations formed for other purposes, including those protecting cultural or spiritual heritage**, pursuing various socio-economic aims, proclaiming or teaching religion, seeking an ethnic identity or asserting a minority consciousness, are also important to the proper functioning of democracy. For pluralism is also built on the genuine recognition of, and respect for, diversity and the dynamics of cultural traditions, ethnic and cultural identities, religious beliefs, artistic, literary and socio-economic ideas and concepts”, para. 92 of the judgement.





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## **Sargsyan v. Azerbaijan, [GC], no. 40167/06, 16 June 2015.**

“the impossibility for the applicant to have access to his home and to his relatives’ graves in Gulistan without the Government taking any measures in order to address his rights or to provide him at least with compensation for the loss of their enjoyment, placed and continues to place a disproportionate burden on him”, para. 260 of the judgement.





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## Nature of state obligations to protect cultural heritage:

- Negative v. positive state obligation?
- Obligations of result or obligation of conduct?
- Procedural obligations?;
- Legal standard of due diligence?





## The nature of protections of cultural heritage:

- States have positive obligations to protect cultural heritage through various active measures.
- State obligations arise from several human rights provision in international human rights treaties.
- Individuals can there enforce violations of protection of cultural heritage through one or more individual human rights.







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## Duty-holders of right to cultural heritage

- States?
- Non-state actors?
- Rebel groups?
- Civil society organisations?
- Corporations?
- Individuals?





## Conclusions:

- Human rights approach of holistic nature to protect cultural heritage;
- Interconnection and interdependence of human rights protecting cultural heritage;
- Holistic enforcement of violations of protections of cultural rights;
- Plurality of duty-holders to protect cultural rights.

