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**Cultural Policy in Central Asia: Comparative Analysis of
Legislations and Public Policies**

**PhD Program in Management and Development of
Cultural Heritage
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**by
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Abstract

This thesis provides an innovative and original contribution to the field of cultural policy research, critically assessing the public cultural policies enforced in three Central Asian countries: Kazakhstan, Kyrgyzstan and Uzbekistan. Moving from the conceptual framework of *system* and *lifeworld*, this dissertation studies how the Central Asian governments tend to *colonize* the cultural sphere intervening through legislative, financial and institutional measures.

The first chapter looks at the concept of cultural policy and related to it theories. The cultural policy refers to policies of diverse stakeholders that are directed to regulate or affect production and distribution of cultural goods and services. This chapter considers first, the framework of Deulund P., based on the interplay of Habermasian concepts *system* and *lifeworld* and second, the types of governmental approach toward the cultural sphere proposed by Hillman-Chartrand and McCaughey.

The second chapter introduces the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan in the cultural sphere. Identifying the main similarities and differences this thesis argues that the main reason of similarities are Soviet legislation and regional integration processes. One of the sections argues that the presidents of Kazakhstan and Uzbekistan possess central position in shaping the cultural policy.

The third chapter after assessing the legal terms related to the cultural property, studies the balance of the divergent interests (international, national, private) regarding the cultural property in the legislations of analyzed countries. The study is performed through the analysis of two hypothetical cases (national vs. private) and dualism between cultural nationalism and cultural internationalism.

The fourth chapter investigates the cultural decentralization process, applying two analytical tools: the *Type Function Framework* and the *Administrative Design Framework*. There are two main conclusions emerged after collected data analysis. First, Kazakhstan has embraced the most decentralized system, while the management of the cultural sphere in Uzbekistan is still largely based on a centralized decision-making. Second, all three analyzed countries have adopted a strategy of *Distributed Institutional Monopoly*.

Concluding, this thesis draws up a historical reconstruction of the administrative cultural policy-making in independent Kazakhstan. The goal is to highlight how the structure of the ministry of culture, the public finance in the cultural sector, and the landscape of cultural organizations has changed over the years. In this way, it has been possible to identify the trends of the cultural policy development in Kazakhstan as well as to critically evaluate the practical efficacy of the governmental strategy.

“Whenever the question of culture is in play and whenever it is connected to policy, compellingly vital issues concerning how the relations between different human ways of living will be managed are always at stake” Bennett T.

Introduction

The collapse of the Soviet Union, in 1991, transformed global geopolitics. In Central Asia five new independent *stan*-states appeared: Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan. These new democracies, initially forecasted to be Islamic states found themselves with unexpected independence, but extremely poor economic and political conditions. The end of the Soviet Union posed two main necessities for the political leaders of the Central Asian states. They needed to undertake state building, re-establishing the public structure, to deliver public goods, and most important, establish democracy.¹ At the same time, the end of the socialist rule required them to fill the ideological gap by legitimizing their political power and giving the population a new collective identity.

Numerous states, international financial and security organizations provided Central Asian countries with the assistance in overcoming the economic and political underdevelopment through consultancy, investments, grants, bilateral and regional agreements, and membership in international organizations. The five Central Asian countries became members of United Nations², Organization for Security and Co-operation in Europe³ and Organization of Islamic Conference. Most of the Central Asian countries are members of Shanghai Cooperation Organization⁴ and Collective Security Treaty Organization⁵. The World Bank, Asian Development Bank, European

¹ This notion of state-building, based on ideas of Fukuyama F., is reported in Bogdandy A., Wolfrum R., (eds.), Max Plank Yearbook of United Nations Law, Vol. 9, 2005, p. 583

² Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan became members of United Nations in 1992. See the official website of United Nations, available at: <http://www.un.org/en/members/>, last access: 15/09/2015.

³ See the list of participating states at the official website of OSCE: <http://www.osce.org/who/108218>, last access: 15/09/2015.

⁴ Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan are the members of Shanghai Cooperation Organization. Turkmenistan is only Central Asian state, which is not member of SCO. For the list of member states see the official website of SCO: <http://www.secsco.org/EN123/brief.asp>, last access: 15/09/2015.

⁵ Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan are the members of Collective Security Treaty Organizations. Turkmenistan is the only Central Asian State that is not member of CSTO. For the list of member states to CSTO check the official web site of

Bank for Development and Reconstruction contributed millions of dollars for socio-economical projects in Central Asia. Kazakhstan has bilateral agreements with more than seventy countries⁶, while Uzbekistan has established international cooperation with more than fifty countries⁷ and Kyrgyzstan has established the diplomatic relations with more than hundred of countries⁸. Kazakhstan and Kyrgyzstan have signed more than two hundred international treaties. In this way the Central Asian countries have entered the global community.

The fall of the Iron Curtain was one reason for renewed international interest in Central Asia. The USA, China, Turkey, Iran, EU, NATO, and the UN rushed in turbulent Central Asia, reviving the stereotype of the *new great game* in the region. The 11 September 2001 terrorist attacks, the USA's military intervention in Afghanistan and the anti-terrorist war in Iraq contributed to the *rediscovery* of Central Asia. The strategic position, oil and gas reserves, and rich natural resources of the region have led international agency to support regional stability against the internal collision, terrorism and Islamic fundamentalism.

Despite this common objective the measures used by external actors are often contradictory. Blank reinterpreting Ambrosio, outlined, "...America and Europe sponsor both governmental and non-governmental organizations to help provide the basis for greater liberalization and democratization, Russia and China intervene through the Shanghai Cooperation Organization and through other wide-ranging means to provide support for the undemocratic status quo".⁹ The goal of the international actors in Central Asia is to predict the future intentions of the Central Asian governments.¹⁰

The international actors, in the region, often use cultural diplomacy. "Cultural diplomacy may best be described as a course of

CSTO, available at: http://www.odkb.gov.ru/start/index_aengl.htm, last access: 15/09/2015.

⁶ For the list of bilateral agreements of Republic of Kazakhstan consult the web site of Ministry of Foreign Affairs of Republic of Kazakhstan, available at: <http://mfa.gov.kz/index.php/ru/vneshnyaya-politika/dogovorno-pravovaya-baza/dvustoronnie-mezhdunarodnye-dogovory-respubliki-kazakhstan>, last access: 15/09/2015.

⁷ For the list of countries with which Uzbekistan established international cooperation visit the web site of the Ministry of Foreign Affairs of Republic of Uzbekistan, available at: <http://www.mfa.uz/ru/cooperation/countries/61/>, last access 15/09/2015.

⁸ For the list of the countries with which Kyrgyzstan established diplomatic relations visit the website of Ministry of Foreign Affairs, available at: <http://www.mfa.gov.kg/contents/view/id/98>, last access: 15/09/2015.

⁹ Blank S., "The Influence of External Actors in Central Asia", *The New Central Asia: The Regional Impact of International Actors*, edit. Kavalski E., 2010.

¹⁰ See Kavalski E., "Uncovering the "New" Central Asia: The Dynamics of External Agency in a Turbulent Region", *The New Central Asia: The Regional Impact of International Actors*, 2010, p.8

actions, which is based on and utilize the exchange of ideas, values, traditions and other aspects of culture or identity, whether to strengthen relationships, enhance socio-cultural cooperation or promote national interests..."¹¹ Cultural diplomacy is directed mainly to the population. Cultural diplomacy encompasses broadcasting, educational and exchange programs for students and individual professionals, art exhibitions, organizations of fairs, language courses, fashion shows and film screenings.

The Alliance Francais and the British Council are the bright examples of French and British cultural diplomacy, respectively, in Central Asia. The objective of these organizations is spread of language, culture and values of their countries. "L'Alliance Française diffuse la langue française et les cultures francophones," states the official web site of this organization, while "The British Council creates international opportunities for the people of the UK and other countries, and builds trust between them worldwide. We call this work cultural relations."¹² The arts and education are the main spheres, in which these organizations work. The British Council promotes rule of law, civil society, justice, empowerment of women, art collaborations between UK artists and artists from other countries. Such activities indisputably affect the cultural dimension of the targeted population.

Mutual understanding and acceptance of the identity are springboards for the future economic, political and military agreements. There is an evident link between this political purpose and the constructivist paradigm of international relations. The constructivist paradigm views culture as variable in international relations and emphasizes its importance in explaining, foreign policy choices, such as, alliance partners, definition of threats, use or non-use of weapons, choice of military doctrine and economic behavior. Attempts to influence the cultural dimension of a country seem to be self-explanatory.¹³ International actors seem to have succeeded in their campaign. International involvement, Kavalski argues, shapes the

¹¹ The definition of the cultural diplomacy by the president of the Institute for Cultural Diplomacy Emil Constantinescu, available at: http://www.culturaldiplomacy.org/index.php?en_culturaldiplomacy, last access: 26/08/2014.

¹² See official websites of L'Alliance Francais available at: <http://www.alliancefr.org/sommes-nous>, and British Council available at: <http://www.britishcouncil.org/organisation>, last access: 18/09/2014.

¹³ For the insight on cultural argument in international relations theory and for the bibliography on constructivist paradigm in international relations, see The Limits of Culture: Islam and foreign policy, Shaffer B. (ed.), 2006, pp.8-13, 111-112.

social space and developmental possibilities for the Central Asian states.¹⁴

What Is Cultural Policy and Cultural Policy Research?

The actions that deliberately impact the cultural dimension comprise cultural policy. There is a tendency to broaden the sphere of the cultural policy to a wider understanding of policies on heritage, entertainment, tourism, urban regeneration, broadcasting, education, rights of international equity (restitution), intellectual property, copyright (allocation of intellectual right), language politics, and landscape.

Cultural policy is an ambiguous term and should therefore be qualified. First, cultural policy should not be understood only as public policy. Non-governmental cultural funds and trusts allocating money to the cultural programs and individual artists have their own cultural policies and therefore are examples of non-public policy. Second, cultural policy is driven by values of policy-makers and comprehends the connection among objectives, means and impacts. A policy that is not meant to affect the cultural sphere is not cultural policy. Third, cultural policy should be distinguished from cultural advocacy. Cultural advocacy advocates for the funding in the cultural sphere, explaining it with the beneficial effect of culture. Cultural advocacy uses instrumental arguments such as urban regeneration, economic impact, and cognitive skills. The development of the cultural advocacy partially caused by the new public management strategy that privileged quantifiable outcomes. Recent debate on cultural policy shifted the instrumental ends of cultural policy to the search for other ends (goals), such as, a vibrant cultural community, which is difficult to define, but seems to incorporate access to education, cultural production and participation, arts education and balance of cultural production and consumption. Fourth, cultural policy is realized through the wide range of means or tools: tax incentives, grants, consultations (audience, research), education policy, branding, housing policy, other governmental funding, legislation (primary legislation, delegated legislation like regulations mandatory or guidelines, best practices), direct governmental investments (Pompidou, Bilbao), historic preservation, limitation of property right (prohibition of the artwork or landscape destruction and modification), convening power, censorship, and media control.

¹⁴ Kavalski E., "Uncovering the "New" Central Asia: The Dynamics of External Agency in a Turbulent Region", *The New Central Asia: The Regional Impact of International Actors*, 2010, p.8

Nielsen defines cultural policy as a conflict of different stakeholders' interests.¹⁵ Deulund identifies stakeholders and their interests¹⁶:

- Governments with their direct and indirect tools (legislation, administration, financing) to regulate production, distribution and consumption of art. Within a government there is struggle between its levels state-regions-local authorities;
- Cultural institutions that compete for funding;
- The public with its appetite for inexpensive aesthetics, experiences and knowledge;
- Professional artists interested in generating the best possible conditions for the realization of their artistic potential;
- The social and educational sector interested in the economic and physical frameworks for their activities;
- The private culture industries;
- The international bodies such as EU, UNESCO, WTO.

Cultural policy is about the way in which governments and other stakeholders, e.g. the commercial culture industry, influence people to think the way they want them to. Cultural policy establishes a system that endows society with values and tools upon which a sense of identity is based. Since policy does not just appear out of the blue, cultural policy expresses the value that dominant stakeholders in society want to see accepted, funded and popularized.¹⁷

Many scholars have shown a growing interest in this domain, as shown by the exponential growth in the number of research centers and scientific journals. Among the world's leading research centers on cultural policy are the Center for Arts and Cultural Policy Studies at Princeton University, the Cultural Policy Center at the University of Chicago, the Center for Community Arts and Cultural Policy at the University of Oregon, the Social and Cultural Analysis Department at the New York University, the Centre for Cultural Policy Studies at the

¹⁵ Deulund P., "Cultural Policy: An Overview", The Nordic Cultural Model, Deulund P. (ed.), 2003, p.14.

¹⁶ Deulund P., op. cit., 2003, pp.14-15.

¹⁷ Deulund P., op. cit., 2003, p.13.

University of Warwick, the Center for Cultural Policy Research at the University of Glasgow, the Center for Cultural Policy at the Hertie School of Governance, and the Center for Cultural Policy Research at the Griffith University. *The International Journal of Cultural Policy*, the *Journal of Cultural Management and Policy*, the *Journal of Art's Management, Law and Society*, and the *International Journal of Cultural Studies* are some of the main academic journals in this field.

Sterne suggests that administration of culture is no small matter.¹⁸ The importance of continued research in this sector has been acknowledged at the political level. The recent initiative of the Steering Committee for Culture of the Council of Europe on appraisal of the cultural policies in European Union's states, for instance, is giving a remarkable boost to high quality research.¹⁹ The goal of this transnational project is to improve the European countries' cooperation within the context of European Cultural Convention. What makes this long-term project particularly valuable is the creation of *ad hoc* analytical tools that permit to critically assess and compare the cultural policies implemented in the different European countries. This solution favors the identification of common patterns as well as the valorization of the best practices.

Cultural policy is a cross-disciplinary study, which embraces humanities, political, economic and social sciences. This branch of research provides a comprehensive analysis of the cultural sector. A partial list of the diverse topics explored in this sector would include cultural policy theory (e.g. Bennett, McGuigan, Frenander); audience development and cultural participation (Kawashima, Bjørnsen, Hood, Tepper & Ivey, Wilkening & Chung); cultural planning and urban development (Sacco, Tavano Blessi and Nuccio, Bianchini & Parkinson, Evans, Stern & Seifert); art markets and art investments (Korteweg, Kraussl, Verwijmeren, Frey, Eichenberger, Gérard-Varet); the economic impact of culture (Hansen, Cwi, Heilbrun & Gray, Klammer, Throsby); media and cultural studies (Crawford, Gosling & Light, McKey, Taylor, Willis, Lázaro-Reboll, Rosenholm, Nordenstreng and Trubina); cultural property law (Le Gall, Casini, Merryman, Frigo, Francioni, Galligan, Torsen, Goldsleger); creative industries and urban regeneration (Kong & O'Connor, Galloway & Dunlop, Yue, Hesmondhalgh & Pratt).

Because of its multidisciplinary background, cultural policy research does not have a common definition or scope of analysis. "Cultural policy research today is truly multidisciplinary field and in

¹⁸ Sterne J., "Cultural Policy Studies and the Problem of Political Representation", *The Communication Review*, 5:59-89, 2002, p.63

¹⁹ See the website of COMPENDIUM: Cultural Policies and Trends in Europe, <http://www.culturalpolicies.net/web/index.php>, last access: 25/03/2014.

no way dominated by one disciplinary or theoretical perspective."²⁰ The cultural policy researchers adopt different theoretical models to approach the field. However, the main ongoing theoretical debate in cultural policy studies is whether the research should be *critical* or *practical*. Frenander positions from one side McGuigan J. with *Habermasian Lifeworld and System* and Bennett T. with his *Foucauldian Governmentality* from another side.²¹ At the heart of this dilemma, according to Sterne is "...unconcealed contradiction between a humanist philosophy of political reform and liberation and antihumanist philosophy of power..."²²

However deep the fault lines may run, the field of cultural policy research is still defined by a shared commitment to investigating the conditions under which culture is produced, reproduced and experienced. This is a complex and multifaced task requiring a broad range of intellectual practices, none of which holds a monopoly.²³

The Role of the State in Cultural Policy

McGuigan contends that cultural policy is about clash of ideas, institutional struggles and power relations in production and circulation of symbolic meaning. It is argued here that the state in such struggle occupies the main role.

Duelund argues that different stakeholders struggle not only to determine the framework for potential self-realization in a given historical context, but also to influence the states' apparatuses to promote certain interests and cultural trends.²⁴ In such perspective the state, and its tools (legislation, administration and financing) are at stake. The reason of other stakeholders' willingness to influence the state's instruments is the fundamental role it plays in the cultural policy. It is the state that set the framework within which all others act.

²⁰ Frenander A., What are they doing, the cultural policy researchers? Or The theoretical universe of cultural policy research, p.2

²¹ Frenander A., op.cit., p.

²² Sterne J., "Cultural Policy Studies and the Problem of Political Representation", *The Communication Review*, 5:59-89, 2002, p.64

²³ Bennett O., "Review Essay: The Torn Halves of Cultural Policy Research", *International Journal of Cultural Policy*, Vol.10, No.2, 2004, p.246

²⁴ See Duelund P., "Cultural Policy: An Overview", *The Nordic Cultural Model*, Duelund P. (ed.), 2003, p.15

The legislative power, the economic resources and the authoritarian regime²⁵ allow the states in Central Asia to shape the cultural policy and directly affect the international actors. For example, Uzbekistan closed numerous NGOs after the Andizhan events, claiming that they undermined the Uzbek state.²⁶ Uzbekistan also has a black list of movies that are prohibited for national distribution.

The state shapes the cultural dimension not only due to its power to regulate the activities of the international actors or other stakeholders involved in the cultural policy, but also and mostly due to its power to regulate *the cultural* of its population, comprehension of *us* and *others*, *good* and *bad*, *beautiful* and *ugly*. In Central Asia the state is the most powerful actor affecting the cultural dimension of the population to produce a *developed individual* and a *compliant citizen*. It is the state that decides which values, moral orders and traditions to promote, which form of art to support, which monuments to built or destroy, which symbols and ceremonies to ban and which to create. According to Lewis and Miller, the state *manages the population through suggested behavior and forms public collective subjectivity*.²⁷ Bennett O. strongly criticizes such approach to the operation of cultural policy, blaming it to be perverse within the pluralist, democratic nations of twenty-first century.²⁸ His criticism is acceptable in the contexts of United States and the United Kingdom, which Lewis and Miller studied in their work. However, such approach is justified in Central Asian, since the countries in this region endured decades of Soviet totalitarian regime and regardless ongoing democratization processes are still considered authoritarian.

Why Study Central Asia?

After the fall of the Soviet Union, Central Asian countries chose to become democratic. In Central Asia, democratization, state building and nation-building are happening simultaneously. This region is dynamic and in transition.

²⁵ According to Freedom House, most countries in Eurasia rank at or near the bottom of Freedom House's ratings for political rights and civil liberties. The majority of the Central Asian countries are recognized as not free with the worst ranking of Turkmenistan and Uzbekistan and the best ranking of Kyrgyzstan that is considered partly free. See official web site of Freedom House at: <http://www.freedomhouse.org/report-types/freedom-world#.VB2lWEuSods>, last access:20/09/2014

²⁶ One of the examples of such mass closer in 2005 is the Open Society Institute (Soros Foundation). The students from Uzbekistan willing to obtain the scholarships from Soros Foundation in 2008 had to travel to Almaty (Kazakhstan) to be interviewed.

²⁷ Lewis J. and Miller T., "Critical Cultural Policy Studies: A Reader", 2003, p.2.

²⁸ Bennet O., "Review Essay: The Torn Halves of Cultural Policy Research", *International Journal of Cultural Policy*, Vol.10, No.2, p.238

"The fact of the announcement of democracy," argues Korek, "did not eliminate overnight the effects of the long process of Sovietization in all its aspects from the administrative and political, through the social and economic to those of culture and identity."²⁹ Another reason for the academic appeal of the region is, *post-Sovietism* and *de-Sovietization*. Bessinger argues that the "deconstruction of the former USSR remains an ongoing and potentially endless process..." to which Kuzio adds that the Soviet legacy is "profound for its successor states and determines the trajectory, speed and content of their state and nation building projects."³⁰

The contemporary regimes in Central Asia carry on the Soviet legacy. The majority of the Soviet political leaders carried on their duties after the Soviet Union's collapse. The best examples are Nursultan Nazarbayev of Kazakhstan and Islam Karimov of Uzbekistan. Both were in power before the Soviet Union's collapse and remain in office. The human resources used in the re-construction of the governmental apparatus as well as the political leaders themselves were trained under the Soviet Union. The Central Asian countries did not build the governmental administration from scratch, but modified the one from the Soviet era. Soviet legislation served as a foundation for the new legislations of the Central Asian countries and was used during the first years of their independence. As Luong reconceptualizes independent Central Asia: "...post-Soviet Central Asian leaders have not wholly rejected, but rather strategically incorporated, the Soviet institutional and policy legacies of which they were an integral part."³¹ In addition, the current political leaders abolishing the ideology of communism still use the Soviet nationalities policies as a foundation for their newly independent states.³²

Central Asia is an interesting research topic because in the words of Adams, it highlights the differences between the Central Eurasia's postcoloniality and other postcolonial societies.³³ On the one hand, applying the classic understanding of colonies, Central Asian states and other post Soviet countries (except RSFSR, since it is seen as an empire) do not fit within this term. Classical colonies are far away from the imperializing country. The bloody struggle for independence and

²⁹ Korek J., *Central and Eastern Europe from a Postcolonial Perspective*, 2009, p.1

³⁰ Kuzio T., "History, Memory and Nation Building in the Post-Soviet Colonial Space", *Nationalities Papers*, Vol.30, No.2, 2002, p.248

³¹ Luong P.J., "Politics in the Periphery: Competing Views of Central Asian States and Societies", *The Transformation of Central Asia: states and societies from Soviet rule to independence*, edit. Luong P.J., 2004, p.12

³² During the Soviet period the nationalities of Central Asia, comprehending the dance, costumes, music were invented.

³³ See Adams L., "Can We Apply Postcolonial Theory to Central Eurasia?", *Central Eurasian Studies Review*, Vol.7, No.1, 2008, p.6

anticolonialists movements in postcolonial societies are their hallmarks. In contrast, independence came unexpectedly to Central Asia. In Kazakhstan "...it was not a revolutionary movement driving out a foreign presence, but rather a somewhat, Soviet trained and largely ethnic Kazakh elite who found themselves governing a sovereign nation at short notice."³⁴ Adams admits that Central Eurasian situation may be not yet postcolonial.³⁵

On the other hand seeing Soviet Russia as an empire gives ground to consider the Central Asia as postcolonial. In fact there is a parallel between some characteristics of an empire and the Soviet Russia. It controlled the effective political sovereignty of another political society³⁶; it justified its rule by highlighting the progressive, modernizing role played in the societies it colonized³⁷; the fundamental premise of colonization consisted in the superior stand of the culture and ideology of imperialist (Tsarist and then Soviet Russia) above all other cultures.³⁸ Kuzio argues that the Soviet use of the ideology of Russian imperialism that served to unify the non-Russians around the Russian *elder brother* and *leading nation* proves that the Soviet Russia was an empire.³⁹

The attempt of newly independent states to part from their colonial legacy is another presumption of validity of postcolonial theory in Central Asia. Indeed the Central Asian states do attempt to separate themselves from the colonial heritage by re-claiming their past and national historiography. People who had been considered traitors and enemies of the people were politically rehabilitated; the streets and cities were re-named with historical ones; proclamation of the ethnic languages as national languages and elaboration of new state symbols; the Turkmen and Uzbek languages were transferred back on Latin script. Uzbekistan is an example of search for pre-imperial golden age in to legitimize its newly independent status. Uzbekistan cites the earlier era of Amir Timur, claiming that all Uzbeks are the descendants

³⁴ Beachain D.O., Kevlihan R., "State-building, Identity and Nationalism in Kazakhstan: Some Preliminary Thoughts", Working Papers in International Studies, DCU, No.1, 2011, p.9

³⁵ Adams L., "Can We Apply Postcolonial Theory to Central Eurasia?", Central Eurasian Studies Review, Vol.7, No.1, 2008, p.4

³⁶ Kuzio providing this Doyle's definition of empire, states that Soviet Russia was an empire. Kuzio T., "History, Memory and Nation Building in the Post-Soviet Colonial Space", Nationalities Papers, Vol.30, No.2, 2002, p.242

³⁷ Adams provides this characteristic of an empire outlined by Anderson B. (1991) and Chatterjee P. (1993). See Adams L., "Can We Apply Postcolonial Theory to Central Eurasia?", Central Eurasian Studies Review, Vol.7, No.1, 2008, p.2

³⁸ Korek J., Central and Eastern Europe from a Postcolonial Perspective, 2009, p.3

³⁹ Kuzio T., "History, Memory and Nation Building in the Post-Soviet Colonial Space", Nationalities Papers, Vol.30, No.2, 2002, p.245

of Great Tamerlane.⁴⁰ According to Adams, Uzbekistan did not commemorate its founders, the Shaibani Khan – the first Uzbek dynasty to end the nomadic way of living after the conquest of Samarkand and Bukhara in 16th century – and instead turned to the dynasty of Tamerlane, consists in the worldwide recognition and prestige of the last dynasty and the downplayed role of the first dynasty in cultural development.⁴¹

Nationalism occupies a central role in the cultural policy of Central Asia. The particularity of Central Asia consists in the struggle between “nativists” and “assimilados” and tension between “ethnic” and “civic” elements of nationalism. “The content of the national idea is not always clear in many post-Soviet colonial states and its outcome will decide who will be culturally hegemonic in the state”⁴² Beachain and Kevlihan portray national identity in Kazakhstan as promoted by the state ideology as ambiguous due to its support of ethnic and civic models of nationalism, “...an ambiguous national identity that is neither fish nor fowl, but exhibits aspects of both in an ambiguous fashion”⁴³

Certainly, one could draw a parallel between the regions of Central Asia and East Europe. Both of the regions experienced Communist Party, transitional period and nationalistic movements. However the most important difference between East European and Central Asian post-Soviet countries that provide the Central Asian region with the scholarly appeal is its *permissive environment for the international actors*.⁴⁴ The regional power vacuum and awkwardness of Central Asian states, according to Kavalski, determine the extensive international engagement in the region.⁴⁵ In short, the power vacuum is generated by the decline of Russian regional hegemony. Such decline was a result of the uncertainty of Russia’s Central Asian policy which attenuated Russian’s position in region (preoccupation with Caucasus and attention toward integration with West); the resource-extracting

⁴⁰ Adams L. in her rich ethnographical work on Uzbekistan discovered that “The discourse about Amir Timur became so widespread and ritualized that he was often just referred to as Bobomiz (our grandfather) or Sohıbquron (great leader)”, see Adams L., *The Spectacular State: Culture and National Identity in Uzbekistan*, 2010, p.40

⁴¹ Adams L., *The Spectacular State: Culture and National Identity in Uzbekistan*, 2010, p.39-40

⁴² Kuzio T., p.248

⁴³ Beachain D.O., Kevlihan R., “State-building, Identity and Nationalism in Kazakhstan: Some Preliminary Thoughts”, *Working Papers in International Studies*, DCU, No.1, 2011, p.15

⁴⁴ Kavalski E. denominates Central Asia as permissive environment for the international actors. See Kavalski E., Uncovering the “New” Central Asia: The Dynamics of External Agency in a Turbulent Region”, *The New Central Asia: The Regional Impact of International Actors*, Kavalski E. (ed), 2010, p.9

⁴⁵ Kavalski E., 2010, op. cit., pp. 9-14

nature of Soviet rule and experience of dependency motivated Central Asian state to diversify their strategic partnerships. The failure of the Central Asian states for regional integration is another one reason for the power vacuum. The awkwardness of Central Asian states consists in their volatility, use of governmental practices that contradict accepted norms and rules, unpredictable international behavior, concern with internal security, low institutional capacities and *semi modern demobilized societies*.⁴⁶

“The Central Asian states inherited a legacy of colonialism, secularization, Russification, and artificial borders”⁴⁷ From the cultural policy studies’ point of view the cultural policy in *permissive environment* of Central Asia is unique. It is an atomic shot of all particular historical circumstances that Central Asia has gone through powered by the new age technology communication and uncontrolled flow of cultural representation.

Despite the worldwide-developed cultural policy research and scholarly appeal of the Central Asian region, it is still ignored by cultural policy researchers.⁴⁸ So far the literature on the Central Asian region is focused on politics, economy and security.⁴⁹ Valuable analysis, nevertheless have also been conducted on certain fields of the cultural sphere like, for example, the minorities and ethnic relations (Dave), history (Allworth, Roy, Roudik, Paul, Roudik, Soucek and Sengupta), the role of Islam (Naumkin, Malashenko, Polonskaya, Kangas, Khalid and Louw), the political transformations (Lewis, Anderson, Luong and Cummings), languages (Schlyter, Landau, Kellner-Heinkele, Diener),

⁴⁶ Kavalski E., Uncovering the “New” Central Asia: The Dynamics of External Agency in a Turbulent Region”, *The New Central Asia: The Regional Impact of International Actors*, Kavalski E. (ed), 2010, pp.9-14

⁴⁷ Kuzio T., op.cit., 2002, p.257

⁴⁸ For example, the author, checking all articles published in the International Journal of Cultural Policy between 1999 (issue 1) – 2014 (issue 3), has discovered the complete absence of research on Central Asian countries.

⁴⁹ For example: The Central Asia Program hosted by the Institute for European, Russian and Eurasian Studies (IERES), a leading institution for post-Communist studies at George Washington University focuses on four main research topics: security, development, state-building, and regional environment. See official web page of the program: <http://www.gwu.edu/~ieresgwu/programs/CAP.cfm>, last access 04/02/2014;

A joint Transatlantic Research and Policy Center constituted by The Central Asia-Caucasus Institute and the Silk Road Studies Program is sponsoring research projects related to: political violence, environmental, regional and energy securities, organized crime and narcotics, conflict management, negotiation, state building and political system. See the official page of the center at: http://www.silkroadstudies.org/new/inside/research/narcotics_crime.htm, last access 04/02/2014;

The Cambridge Central Asian Forum Interdisciplinary Research Centre funded projects related to biodiversity, international relations, and cosmopolitanism in Bukhara, numismatics, religion and neighborhood community. See official web page of this Centre at: http://www.cambridge-centralasia.org/?page_id=6, last access 04/02/2014.

and the cultural production in Central Asia (Adams). These studies make an important contribution to the comprehension of the cultural and historical background of Central Asia, and to the assessment of the ongoing nation-building processes in the region. However, numerous topics that are central to cultural policy have not been investigated yet.

Objectives of the Research

Keeping in mind the central role of the state in shaping the cultural policy in Central Asia, the current analysis of cultural policy primary concerns the policies of the states/governments in the cultural sphere or in other words public cultural policies. Since “The cultural policies inevitably promote one way of life over another” (Bennet T. 1998 in Sterne J. 2002 p.64). It would be interesting to analyze and compare which way of life and how the governments of Central Asian countries promote it, at the same time being *post-Soviet*, *transitional* and finding themselves in the middle of diverse interests.

This is not an attempt to undermine the role of other actors and peculiar conditions that are important in shaping the cultural policy in Central Asia. On the contrary, it would be fruitful to map out the interests of international actors, to analyze the cultural policy of non-governmental organizations or of foreign countries and their impact on the cultural dimension of Central Asian countries. However, the governments in Central Asia dominate the cultural policy. This thesis therefore, focuses on their policies.

The author is also aware of the dynamic nature of the culture. Cultural dimension is not only shaped but also responds to and resist policy. However, the scope of this work is to analyze the one side of this reciprocal communication between the state (*System*) and the *cultural* of people (*Lifeworld*) – the *colonization* - the public cultural policy.

This dissertation is a pioneering study in the field of Central Asia and cultural policy studies. It compares the public cultural policies Kazakhstan, Kyrgyzstan and Uzbekistan. Tajikistan was excluded from the scope of this research in light of continued political turmoil after 10 years of civil war. Turkmenistan was omitted because its restrictive governmental policies impede the acquisition of data. In the regional press, Turkmenistan is sometimes called “*terra incognita*”.⁵⁰

⁵⁰ See as example: Turkmenistan: Terra Incognita for West and Russia, available at: <http://www.profi-forex.org/novosti-mira/novosti-azii/entry1008063518.html>, last access 03/03/2014.

The comparison of these three countries will reveal trends in the public cultural policy of Central Asia. This dissertation will answer the question of whether or not the analyzed countries, which had common legal frameworks pertaining to the cultural sphere when they became independent, still continue to have such commonality. If so, this research could contribute to the understanding of the contemporary dynamics in Central Asia and validity of the possible regional integration processes among Central Asian countries. The comparison between Kazakhstan, Kyrgyzstan and Uzbekistan is realized regarding two main domains.

Developing their public cultural policies the Central Asian countries consider several circumstances: first, own objectives and interests in the cultural sphere, second the presence of the international actors and their diverse nature, third current regional integration processes initiated by Russia, forth the nationalistic movements, fifth and not last, the interests of own population. These circumstances affect the cultural policy, since the governments must balance all competing interests. In words of Vestheim "...the political system should secure that all interests are taken care of."⁵¹ Understanding how these states balance those interests, therefore, is central to this analysis.

Since the meaning of culture constitutes the definition of cultural policy, there is a risk of widening the research on cultural policy to the point of meaninglessness. To avoid this risk, this research concentrates on the cultural property, since it is the most apparent example of international and national concern. In this way, one of the two core domains of current analysis is the balance of the interests over the cultural property in public cultural policies of Central Asian countries. The main dichotomies of interests here are international versus national and national versus private.

According to Bennett T. cultural policy is about influencing people's cultural behavior and it aims at influencing citizens, which makes any cultural policy instrumental by definition.⁵² The *instrument* of the government, especially the governmental system of cultural administration, therefore, is another core point of attention in this thesis. The study of the governmental instruments implies the adaption of the narrow meaning of the cultural policy. The governmental system of administration of culture is studied here from two angles.

⁵¹ Vestheim G., "Theoretical Reflections", International Journal of Cultural policy, Vol. 13, No. 2, 2007, p.231

⁵² Bennett T., "Cultural policy: Issues of culture and governance", Culture, Society and Market, ed. Snickars F., 200, pp.17-20, cited by Vestheim G., "Theoretical Reflections", International journal of Cultural Policy, Vol.13, No.2, 2007 p.226

The first angle provides insight into the decentralization of power in the cultural sphere between the central and regional governments. The attention to this topic is explained by the transitional period of Central Asian countries. Since the Central Asian countries choose the democratic direction for their development, the cultural sphere is the one of key sectors for liberalization. The transition period inevitably involves transformation of the centralized administration of the cultural sphere with strict censorship to decentralized administration with liberalization of the cultural sphere. The analysis of decentralization processes, on one hand, manifests how Kazakhstan, Kyrgyzstan and Uzbekistan balance interests between the center and the regions, and on the other hand, indicates the extent of liberalization of the cultural sphere.

The second angle focuses on the changes of three parameters over the last two decades: the structure of the central governmental body responsible for the cultural sphere, the public funding of the cultural sphere and the public cultural infrastructure. The second perspective entails analysis of numerous data that was not available in all analyzed countries, which would permit their comparison. However, the analysis was performed only on Kazakhstan, and the findings presented as a case study.

The object of the research - state's policy in the cultural sphere – requires the study of the instruments that a political system on empirical level has at its disposal to implement the policy. Most of these instruments are laws and regulations. Therefore, the main attention of this research is addressed to the legal systems of analyzed countries.

The goal of this research is to explain, critically evaluate and compare how the governments of Kazakhstan, Kyrgyzstan and Uzbekistan approached the cultural sphere after the fall of the Soviet Union regime. The core questions are as follows: Which interests (international, national, private) are favored in legislations of Kazakhstan, Kyrgyzstan and Uzbekistan? To which extent was the decentralization of the cultural sphere (a sign of liberalization) realized in these countries? What are the core similarities and differences in their approaches to the cultural sphere? Which are the legal and managerial patterns embraced by these states in the cultural policy field? How (and why) has the public management of the cultural sector changed in Kazakhstan since independence?

This research has been structured into five interlinked chapters that respectively introduce: 1) a conceptual framework for understanding the cultural policy; 2) a comprehensive overview of the main laws and approaches adopted by the governments of Kazakhstan,

Kyrgyzstan and Uzbekistan for regulating the cultural sphere; 3) a dichotomy between the international, national and private interests over the cultural property; 4) an in-depth analysis on the division of powers between national and regional authorities in the cultural field; 5) a case study on Kazakhstan, with a focus on the structural development of the Ministry of Culture, the public investment trends in the cultural sector, and the overall management of cultural organizations. In this way, this dissertation provides a path of analysis in which each component actively contribute to the development of a comprehensive interpretation of the public cultural policy adopted in Central Asia.

Methodology

This research uses primary and secondary sources. The legal documents and archival materials constitute the majority of the primary sources used in this research. This study scrutinized national laws, governmental decrees, presidential orders, regulations and rules in original language (Russian) regulating the cultural sphere of analyzed countries. The valuable information was found in the internal documents of the ministry of culture that were archived in National Archive of Republic of Kazakhstan. Particular interest represent the fund 27, register 1, folders 46, 130, 156, 209, 230, 307. The archival documents allowed reconstruction of the situation of 1992 regarding the public cultural infrastructure, which is not presented in any other official or academic sources. The primary sources provided the empirical data and facts, while the secondary sources were used in elaborating of the theoretical framework and analytical tools used in the research and interpretation of the collected data. The study combined qualitative and quantitative methods. It is not strictly deductive or inductive; it combines the two. The theoretical framework of Habermas will not be tested. It is a theoretical framework, according to author, within which the cultural policy functions.

Since the goal of this thesis is to compare the practices of three Central Asian countries, a comparative methodology was selected. The final chapter presents a case study. The combination of both methods allowed proceeding from general phenomena to a specific case. The comparative analysis focused on two core themes. First matter is the balance of the interests (international, national and private) over the cultural property by Kazakhstan, Kyrgyzstan and Uzbekistan. The second topic is the processes of decentralization in their cultural spheres.

The study uses a comparative legal approach to explain the legal systems of Kazakhstan, Kyrgyzstan and Uzbekistan. The legal system in this study is understood as one of the *instruments* of a government in pursuing its cultural goals. The particular attention is paid to the comparative analysis of the legal terms related to the cultural property. Such an approach contributes to a better understanding of the legal meaning of the cultural property in the Central Asian countries examined here and facilitates the comparison in two areas of study.

The comparative analysis of the Central Asian countries' standpoints in dichotomy of international versus national and national versus private interests over the cultural property, required a comparative legal research, since the national legislations of analyzed countries (laws and regulations) reflect such standpoints. The legislations of Central Asian countries are particularly suitable for comparison, since they belong to the same legal family. Before independence these countries belonged to the *Socialist legal system* and after independence, perhaps to the *Romano-Germanic family*.⁵³

In order to identify how the national and private interests are balanced in the legislation, the two hypothetical cases are elaborated. The choice of the hypothetical cases over the real ones is explained by the difficulties in identifying the real legal cases based on similar circumstances and where a final judgment have been passed. Here is a synthetic description of the cases:

Case 1: Mr. X is the owner of a 25-years-old painting. He is willing to sell it to Mr. Y that resides abroad. How the national legislations of Kazakhstan, Kyrgyzstan and Uzbekistan regulate this trade?

Case 2: Mr. X is the owner of a building considered as a monument of history and culture with local significance (enlisted). The intention of Mr. X is to renovate this building. How the national legislations of the analyzed countries regulate the planned actions of Mr. X?

The cases are analyzed through the legal research. In these cases the national interest is focuses on retention of the cultural property on the national territory and preservation of the immovable cultural property in its original aspect, whereas the private interest is concerned with the private right of ownership.

⁵³ The practical classification of legal families adopted from Church J., Edwards A.B., Hosten W.J., Bosman F., Introduction to South African Law and Legal Theory, 1995, reported by Scott T.J., in The Comparative Method of Legal Research.

The second dichotomy between the international and national interests is analyzed through a different pathway. The analysis is built on the backbone of the two different approaches to the cultural property proposed by Merryman, cultural internationalism and cultural nationalism. The notion that everyone has an interest in the protection and enjoyment of cultural property wherever located is commonly accepted. However, as sustained by Merryman, states show diverse levels of support/resistance to the direct implications of this conception.

In order to weight the international and national interests, the categories of Jayme were adopted. The global or international interests comprise immunity from seizure during international loans, cultural cooperation and exchange and international protection of cultural properties during armed conflicts. The national interests include the nationality of artworks, export control, restriction of alienability. The category of Jayme *lex rei sitae* versus *lex originis* (since the first doctrine is supported by market states that pursue the cultural internationalism, while the second doctrine is principally supported by source countries that often pursue cultural nationalism) is analyzed in order to ascertain which interests are favored by the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan.

The decentralization of the cultural sphere is analyzed through the application of two analytical tools designed for the study of the decentralization processes in general: *Type Function Framework* and *Administrative Design Framework*. Five categories were identified through which the comparison of analyzed countries was realized: law making, management of cultural organizations, protection and enhancement of cultural heritage, listing of cultural heritage, cultural program and project implementation. These roles have been selected considering two parameters: their relevance for the achievement of the goals of the related task and their explicit inclusion in the national legislations of all the examined countries. The application of both of analytical tools allows for the study of cultural decentralization from different angles and yields more objective results.

The objective of the first analytical tool is to identify whether a task is decentralized (transferred). If the task is transferred then the Type Function Framework grades the decentralization to identify the extent to which the task is transferred, where deconcentration is less decentralized than delegation and devolution is the highest level of decentralization.

The Administrative Design Framework was used in order to identify the administrative strategy adopted by the Central Asian governments. This analytical tool identifies three strategies:

Institutional Monopoly, Distributed Institutional Monopoly and Institutional Pluralism. The first strategy corresponds to total centralization. The second encompasses decentralization within the governmental structures. The last strategy refers to all grades of decentralization shared among institutions and organizations.

The objective of the case study was to study how the three parameters - the structure of the central governmental body responsible for the cultural sphere, the public funding of the cultural sphere and the public cultural infrastructure have changed since the end of the Soviet era. The administrative structure and financing are the main direct tools of a government to promote certain interests and cultural trends.⁵⁴ The public cultural infrastructure or in another words public cultural institutions and organizations are another parameter selected for examination, since this sector experienced the most drastic changes after the Soviet Union collapsed. These three parameters, therefore are the main sources displaying the public cultural policy trends.

The administrative structure of the central governmental body responsible for the cultural sphere was analyzed through the study of the governmental decrees stipulating the responsibilities and internal structure of the ministry of culture.

The analysis of the public funding of the cultural sphere was performed in relation to the central budget and the cultural sectors that the annular laws on budget indicated as related to culture. In order to trace the changes in public funding of the cultural sphere, the percentages of the central budgets of 1994, 1997, 2000, 2006, 2012 and planned budget of 2015 allocated to the cultural sphere (in terms it was identified by the laws on budget) were calculated and compared. Such calculations displayed the significance of the cultural sector comparing to other sectors supported by the government like transportation, health, education and defense.

The unstable identification of the cultural sphere by the laws on central budget and the joint funding of the cultural sphere together with different funding groups (tourism, sport, youth policy, information, leisure activities) challenged the calculation of the percentage of the central budget intended to support the cultural sphere. Therefore the limited subgroups were selected in order to trace how their sum, as a percentage of central budget has changed since independence. These subgroups are production of movies, maintenance of cultural organizations that includes the reconstruction works and construction of new buildings (museums, theatres, archives,

⁵⁴ See Duelund P., "Cultural Policy: An Overview", The Nordic Cultural Model, Duelund P. (ed.), 2003, p.15

and cinemas), cultural heritage that includes the allocations for archives, administrative expenditures of ministry of culture, rewards, research in the sphere of culture and commemoration of the statesmen.

The more detailed analysis compared the public budget aimed to support different sectors within the cultural sphere. This analysis identified the key cultural domains that have enjoyed the public support since 2000. This year is a starting point for the analysis since before 2000 the public budget was not stable in nominating the funding subgroups related to the cultural sphere. The funding subgroups like preservation of archives, cultural heritage, research, production of national movies, development of cultural organizations, national parks, commemoration of the cultural figures, transfers to the cities of Almaty and Astana for the development of cultural infrastructure were compared. The analysis of the public funding of these subgroups considered every year since 2000.

The study of the public cultural infrastructure was based on the use of archival data and data from statistical agency of Republic of Kazakhstan. The focal point of the study was analysis of the situation of 1992, the first period after the independence. The data collected and reported is indispensable, since it is absent in the official governmental statistical data. It was taken in consideration different cultural organizations: club type institutions, cinemas, theatres, concert organizations, museums, and libraries.

The analysis covers:

1. The distribution of these organizations among the regions of Kazakhstan and between urban and rural areas;
2. Attendance to these organizations and the difference of the attendance between urban and rural population across different regions;
3. The distribution of art associations among the regions;
4. The distribution of cinemas and libraries among different authorities (ministry of culture, trade unions, kolkhozes);
5. The distribution of cinema and theater places among the regions;
6. The number of stage concerts in different regions;
7. Typology and number of the museums and libraries.

After the situation of 1992 is analyzed, it is compared to the trends after 1995. The study is conducted from 1992 to 2010 at three-year intervals (1992, 1995, 1998, 2001, 2004, 2007, 2010) and the year

2011. However, due to the absence of data, the comparison was accomplished in limited areas: number of the organizations and attendance to them.

Particular attention is drawn to the ministry of culture and the composition of its organizations is analyzed through 1995, 1999 and 2012. The categories according to which the cultural organizations were divided are education & heritage (libraries and museums), high culture (theatres, orchestras and ballet), entertainment (circus, dance ensembles, touring-concert associations) production & research & support (film shooting, restoration and research organizations).

Studying the cultural policy of one country in Central Asia, from one hand, is the way to provoke a reflection for other neighboring countries regarding their proper cultural policies and estimate their performances among each other. From another hand, the particular experiences of Kazakhstan could serve as a worrying example to avoid or, on the contrary, as the best practices to implement. The extensive case-specific knowledge of the author determined the choice of Kazakhstan as a case study. The case study attempted to establish the importance of the cultural sphere for the political elite, to demonstrate the meaning behind the actions taken by the government of Kazakhstan and to trace some alarming tendencies in the cultural policy conducted by the government.

Limitations

The use of two hypothetical legal cases for assessing the potential clash between private and public interests without doubt beneficial since it facilitates the comparison among the analyzed countries. Still more constrained and in-depth research could reveal some interesting cases that would constitute the courts' practices.

The use of the Jayme's categories of global and national interests in evaluation whether the analyzed countries favor the cultural internationalism or nationalism has limits, since a state tend to implement policies aimed to enhance both the national and global interests. As a result, assessing the prevalence of an approach of cultural internationalism or cultural nationalism is a thorny issue that may lead to diverse interpretations on certain specific aspects.

The consideration of the limited set of functional roles within the *Type Function Framework* (TFF) and *Administrative Design Framework* (ADF) in assessing the cultural decentralization processes could entail some limits regarding the thoroughness of each single case study: each task could entail more roles than the ones studied. However, in order

to execute the comparison among Kazakhstan, Kyrgyzstan and Uzbekistan the functional roles were limited. In addition, TFF does not contain dimension, indicating the level of the empowered local governments, such as for example, regional, local and sublocal; does not evaluate the amount of the transferred competences; the described task-functions should be divided into the smaller sub task-functions, (or in roles) in order to see more detailed picture of the power division in the cultural sphere. For example, this research divides each task into functions. The main flaw of the ADF is the definition of the task itself. The more a task is specified, the fewer agents are involved in its implementation and vice versa. Moreover, the use of the ADF on the same case can result in different outcomes. For instance, considering that the *principal* is the ministry of culture and other subjects, while the local governments and ministerial territorial departments are *agents*, then the resulting strategy would be Institutional Pluralism. However, I am convinced that the Institutional Pluralism is constructed through the participation of governmental and non-governmental sectors.

Finally, the last chapter limited to Kazakhstan, thereby breaking the pattern of (comparative) analysis adopted in the rest of the thesis. However, I view this choice as a “fair compromise” because it balances time constraints with the objective to explore in detail at least one public cultural policy in Central Asia. There are several methodological limitations to the case study.

The identification of the trend in public finding of the cultural sphere is realized through study of the public budgets. On the one hand budget (planned allocations in the beginning of year) is not the practical expenditures (report on effective expenditures at the end of the year). On the other hand the analysis did not consider the local budgets earmarked to support the cultural sphere and concentrated on the central budget. This limitation is explained by the difficulty of gathering the required information for analysis.

Another limitation to the selected methodology is the calculation of the percentage of the central public budget aimed to support the cultural sphere. After 2009 the allocations for cultural sphere were permanently merged with the allocations for information. This merger spawned several joint-funding subgroups that prevented the identification of the exact proportion earmarked for culture. These merged subgroups are: elaboration and realization of public policy in the sphere of culture and information, applied scientific research in the sphere of culture and information, renovation of the public buildings hosting the organizations of culture and information, construction and reconstruction of such buildings, stimulation of the persons occupied in the spheres of culture and information. The allocations for these

subgroups were summed, where the half of the sum was added to the sum of other cultural subgroups.

The Roadmap of the Thesis

The first chapter presents a set of theoretical considerations for conducting analysis on the cultural policies. The chapter starts by examining the concept of cultural policy. Despite the difficulty of offering a precise definition of this term, an in-depth assessment of this concept is essential to understand the core factors of any cultural policy analysis. Structurally, this section investigates, at first, the conceptual meaning of *culture* and *policy* and, later it explores the concept of *cultural policy*. The final purpose is to ensure the utmost clarity and comprehension of the terminology used in this text. The second section reinterprets the Habermas's *Theory of Communicative Action*, thereby elaborating a theoretical framework capable of explaining the interrelations between state (system) and civil society (lifeworld) within the cultural sphere. This conceptual model brings out the dynamism that characterizes the development and dissemination of cultural policies. One of the goals of this dissertation is to understand what role (or roles) the Central-Asian countries have assumed since independence. As a result, the third part presents the main features of the four most common roles taken on by states when developing their cultural policies: facilitator, patron, architect and engineer. The final section explains the emerging trends in cultural policy management, pointing out the side effects produced by globalization and decentralization. The authors mostly considered in this chapter are Valtysson, Taylor, Bennet, Ting-Toomey, and McGuigan for the definition of cultural policy; Duelund for the reinterpretation of Habermas; Hillman-Chartrand and McCaughey about the four models of cultural policy; Casini for the effects of globalization, and Zan, Baraldi and Gordon for the analysis of decentralization and its typologies (outsourcing, devolution, managerialism and privatization).

Although parting ways with their common Soviet past, Kazakhstan, Kyrgyzstan and Uzbekistan have adopted different views and strategies after gaining independent status. The second chapter examines and compares the main juridical tools enforced in these countries for regulating the cultural sphere. The final goal is to identify and explain the most significant similarities and differences among these legislative systems. The first two sections of this chapter summarize the constitutional and legal provisions on cultural issues (e.g. architecture and urban planning, circulation of cultural property, creativity and intellectual property right, cultural heritage, language, museum, film and religion) adopted in these countries. In addition, the

first section highlights how the points of contact among these three independent legal systems are largely attributable to the significant influence exercised by Soviet legislation and the legal regulations introduced by the Inter - Parliamentary Assembly (IPA) of the Commonwealth of Independent States (CIS). The second section briefly assesses the role presidential decrees within the juridical-cultural sphere.

The third chapter is devoted to the dichotomies between national and private interests, and between international (global) and national interests over the cultural property. Before the analysis of the balancing interests, the chapter compares and clarifies the legal meanings of the terms related to the cultural property: *culture*, *cultural heritage*, and *cultural property*. It also clarifies the interrelations among these concepts providing, for each legal system, a schematic representation of its conceptual structure. The objective of the third chapter is to present the ways in which these legal terms are going to be used. The second section of the third chapter analyzes the balance of the national and private interests over the cultural property through the legal research of two hypothetical cases. The third section evaluates the balance of international and national interests over cultural property through the discourse of cultural internationalism and cultural nationalism.

The fourth chapter analyzes cultural decentralization in Kazakhstan, Kyrgyzstan and Uzbekistan. In this research *cultural decentralization* makes reference to the distribution of powers from the central government to local authorities or private parties.⁵⁵ The first two parts of this chapter are of conceptual nature. Section one introduces the concept of administrative decentralization and concisely explains its methods of enforcement: deconcentration, delegation and devolution. Section two describes the main features of the Type Function Framework and the Administrative Design Framework and explains how these analytical tools may be used for assessing decentralization in Central Asia. In the remaining sections, these theoretical considerations and methods of analysis are effectively applied to the Central Asian context. Section three overviews the territorial division in Kazakhstan, Kyrgyzstan and Uzbekistan. Section four examines which competencies have been relocated from the central to the local government and how this transfer of powers has been achieved. This study is structured around five thematic groups:

⁵⁵ The term cultural decentralization in other research overlaps the term democratization of culture. For example, Kawashima observes that cultural decentralization is vague term that refers to accessibility and "combat inequality in cultural opportunities among people". Kawashima N., "Planning for Equality? Decentralization in the Cultural Policy", in Bennett O. and Ahearne J. (edited by), *CCPS*, University of Warwick, research paper No1, 2004.

law making, management of cultural organizations, protection and use of cultural heritage, listing process, and cultural programs' elaboration and implementation. In the last section, the collected data are depicted within the Type Function and Administrative Design Frameworks. This solution ensures that the readers obtain a clear and detailed picture of the distribution of competences in the cultural sphere. In addition, it allows a close comparison of the cultural decentralization processes undertaken in Kazakhstan, Kyrgyzstan and Uzbekistan.

The fifth chapter considers Kazakhstan as a case study. In the first part, this chapter investigates and situates the evolution of the Kazakh Ministry of Culture within the trends in public funding of the cultural sector. This section highlights the structural changes of the ministry since independence, and it identifies the cultural sectors that have received the most public funds. The final goal is to understand: first, what cultural sectors are mostly sustained by the Kazakh government and why; second, which approach to the cultural sphere (Facilitator, Patron, Architect or Engineer) the Kazakh government adopted after the collapse of Soviet Union. Taking into account the results emerging from the analysis of the public investments (since 2011 high cultural organizations are the most generously funded cultural domain by the state) and considering the recent developments in the sector (e.g. the opera house and the concert hall of Astana) the second part of this chapter focuses the attention on cultural organizations in Kazakhstan. This section begins by defining the types of cultural organizations, their number, attendance and distribution throughout the country in 1992 (one year after independence). Then, it describes how this situation evolved from 1992 to 2011. To be precise, the progressive changes of the composition, number and attendance of the cultural organizations are traced over four time-intervals: starting point (1991-1992), transitional period (1992-1998), stabilization (1998-2001) and development phase (2001-2011). A tentative interpretation of these trends, which correlates the collected data with factors like the decentralization process promoted by the Kazakh government and the growth of the Kazakh population, is proposed at the end of this section.

I would like to conclude my introduction with a short reflection. The gathering of data in the Central Asian states is complicated undertaking. Obtaining access to governmental data is a real but inevitable challenge. If the legal documents (national legislations) are obtainable by searing the Internet and the pertinent literature, other information is available only in the national archives. These archives are not openly accessible and, therefore, a researcher needs a government authorization. The process of gaining official permission is so long and bureaucratized that even the most determined researcher would be discouraged. Moreover, even when a researcher is able to

obtain the required permission, archival research is far from simple. The documents are not organized and, therefore, searches are quite difficult. It is nearly impossible to make photocopies. The lack of published research on the cultural policy in Central Asia is also attributable to these restrictions. Central Asian governments should promptly solve this problem. They should streamline the bureaucratic process for accessing information and possibly begin the digitalization of the documents stored in the national archives. These difficulties notwithstanding, this thesis provides a comprehensive collection of the main laws on the cultural sphere adopted by the governments of Kazakhstan, Kyrgyzstan and Uzbekistan, as well as the analysis of unpublished documents on the management of cultural organizations in Kazakhstan.

This is a pioneering study on the cultural policy in Central Asia. The data collected and the arguments presented in this thesis provide a critical insight into public cultural managed in this region. In addition, this dissertation offers a model for future research, providing a theoretical framework and some methods of analysis that fit the context of cultural policy in Central Asia. Therefore, I hope that, despite its limits, my study will be valuable for all those who intend to conduct research in this sector.

Chapter I: Introduction to cultural policy research

1. Clarifying the conceptual jungle of cultural policy

Cultural policy is an intrinsic aspect of social life. Its effects are easily observable in the everyday life, for example, the governmental financial support to opera houses and theaters, the allocation of grants by different international foundations for students who intend to receive education abroad, the approval of laws on cultural issues by the parliaments and the choice of the language in the family context are all examples of cultural policies.

The academic world has progressively raised its interest toward this topic. As a matter of fact, several conferences and journals have been specifically dedicated to the analysis of cultural policy. The International Conference on Cultural Policy (ICCPR), for example, attracts each two years hundreds of researchers who want to debate about cultural policy⁵⁶; while the International Journal of Cultural Policy, the Journal of Cultural Management and Policy, and the Journal of Art's Management, Law and Society are international scientific reviews focused mainly on cultural policy.

Despite the significant efforts made to investigate cultural policy issues, the elaboration of a shared definition of cultural policy still represent a challenging task. A huge variety of disciplines (like, for example, political science, economic science, cultural studies, sociology, humanities, urban planning studies, and philosophy) have explored this topic adopting each time different methodological approaches and focusing the attention on diverse aspects. As a result, from this multidisciplinary and cross-cultural framework often emerge diverging views about the definition of cultural policy.

So, I propose to start deconstructing the problem in its basic components, individually assessing the conceptual meaning of the terms *culture* and *policy*, and then to elaborate a comprehensive interpretation of “cultural policy” that may result suitable to the scope of this dissertation.

⁵⁶ The Center for the Study of Culture, Politics and Society (CECUPS) of the University of Barcelona (Spain) hosted the ICCPR Conference in 2012. The Department of Cultural Policy at the University of Hildesheim (Germany) will host the next ICCPR Conference in 2014.

1.1. "Culture" and "policy": two complex concepts to be defined

The concept of culture is as difficult to explain as easy to be used in everyday life. In the view of Valtysson "*culture [is] a kind of veil which we know of, but have a hard time detecting, let alone to formulate in concrete words*".⁵⁷ According to Raymond Williams, "*culture is one of the two or three most complicated words in English language*".⁵⁸

The etymological root of the word 'culture' comes from the Latin word *cultura*, which was originally used in the meaning of agriculture and it was related to the cultivation of the soil. Later in time this term has been linked to concepts such as education and good manners in order to highlight its key-role in the intellectual "cultivation" of humans. According to Arnold M. the *human perfection* is constituted by *harmonious perfection*, that is the development of all sides of humanity, and by *general perfection*, that is the development of all parts of society. This human perfection could be reached only through culture: "...culture has but one great passion, the passion for sweetness and light. Yes, it has one yet greater! – the passion for making them prevail. It is not satisfied till we all come to a perfect man; it knows that the sweetness and light of the few must be imperfect until the raw and unkindled masses of humanity are touched with sweetness and light".⁵⁹ This interpretation of "culture" as a set of ideal values that contribute to the intellectual development of a human being expresses the so-called humanistic view of culture.

Meisel J. names such a standpoint *aesthetic culture*. As example he provides the definitions by English Oxford Dictionary and Report of Royal Commission on National Development in the Arts, Letters and Science, which link the term culture to the development of intelligence through the arts, letters and science and general development of mind, tastes and manners.⁶⁰

However, the humanistic perspective is just one of the possible interpretations of this term. As a matter of fact, E. B. Taylor published

⁵⁷ Valtysson B., *Access Culture. The Remixable Culture of Prosumers and the Cultural Policy of the European Union*, Ph.D. Thesis, Roskilde University, Department of Communication, Business and Information Technologies, 2008, p. 14.

⁵⁸ Williams R., *Keywords: A Vocabulary of Culture and Society*, Oxford UP, New York, 1985, p. 87.

⁵⁹ Arnold M., *Culture and Anarchy: An Essay in political and social criticism*, Smith, Elder and Co, London, 1869, p. 47.

⁶⁰ Meisel J., "Political Culture and the Politics of Culture", *Canadian Journal of Political Science / Revue Canadienne de science politique*, Vol. 7, No. 4 (Dec., 1974), pp. 601-615, Canadian Political Science Association and the Société québécoise de science politique, available at <http://www.jstor.org/stable/3230568>, last access: 29/10/2013. Meisel J. distinguishes four groups of meaning of culture: anthropological, aesthetic, political and leisure. In his study he adopts the term leisure culture, which is closer to the aesthetic culture.

his book *Primitive Culture* in 1871, just two years later after the book *Culture and Anarchy* written by M. Arnold. In his book, Taylor understood culture as civilization: "Culture, or civilization, ... is that complex whole which includes knowledge, belief, art, law, morals, custom, and any other capabilities and habits acquired by man as a member of society."⁶¹ Taylor's definition of "culture" had faced a long non-welcoming period before it achieved popularity. "A generation or two later, a hundred speakers of English would still have accepted Arnold's definition to one that even knew of Tylor's, directly or at second-hand. The Oxford Dictionary referred to Arnold in 1893, to Tylor not until the 1933 first though still imperfect penetration of the scientific or Tylorian concept of culture into the world of dictionaries was in the Webster of 1929; and its earliest adequate recognition we have found in any general English dictionary is of 1947".⁶²

Nonetheless, this interpretation of culture as "a way of life" has successively become the main reference point within the anthropological framework of analysis.⁶³

To sum up, a humanistic point of view associates culture with the development of the intellectual human skills through a set of selected values. Differently, according to the anthropological perspective the idea of culture comprehends all those shared aspects on which the human society relies on. However, as highlighted by T. Bennet, "the formulation that cultural studies is concerned with culture in the sense of whole ways of life as well as the officially valorised forms of high culture creates more problems than it solves".⁶⁴

T.S. Eliot, in his book *Notes towards definition of culture*, attempted to solve this challenge linking these different viewpoints. In the view of this author, the concept of culture may assume a different meaning whether referred to the development of an *individual*, a *group-class*, or the *whole society*. Nevertheless, Eliot assumes that there is a linear dependence between these three clusters: the culture of an individual is determined by the culture of a group or class he belongs, as well as the culture of a group or class depend on the culture of the whole society where it operates. Therefore, the culture of the whole society is the

⁶¹ Taylor E. B., *Primitive Culture*, quoted in: A. L. Kroeber, Clyde Kluckhohn, Wayne Untereiner, and Alfred G. Meyer, *Culture: A Critical Review of Concepts and Definitions*, Vintage Books, New York, 1952, p. 81.

⁶² Kroeber A. L., Kluckhohn C., Untereiner W. and Meyer A. G., *last op. cit.*, p. 287.

⁶³ However, according to C. Gray, the anthropology of culture has then moved away from this view. See Gray C., "Analysing cultural policy: incorrigibly plural or ontologically incompatible?" *International Journal of Cultural Policy*, Vol. 16, No. 2, 2010, pp. 215-230.

⁶⁴ Bennet T., *Culture: a Reformer's Science*, Sage Publications Ltd., London, 1998, p. 28.

most important one, because both *individuals* and *groups* rely on it.⁶⁵ On the whole, the humanistic meaning of culture is valid for the individual cluster, whereas the anthropologic one for the group-class cluster. Differently, for what concerns the whole society cluster, Eliot states that a culture could simply be described as what makes life worth living (such as something that one likes to do or something that one used to do in a particular way). However, the over-inclusiveness of this definition significantly constrains the development of any analytical work in the field of cultural policy.

More analytical definitions of culture are those offered by Kroeber et al. and Ting-Toomey. In the book *Culture: A Critical Review of Concept and Definitions* Kroeber et al. assess 164 definitions of the term culture (which are respectively catalogued in seven different groups: descriptive, historical, normative, psychological, structural, genetic, and incomplete definitions) before suggesting their definition of culture. According to these authors, “*culture consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievement of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and especially their attached values; culture systems may, on the one hand, be considered as products of action, on the other as conditioning elements of further action.*”⁶⁶ In other words, according to Kroeber et al. culture consists of two main elements. The first element is represented by the models of behavior, which are learnt-diffused by the members of the society through symbols such as, for example, languages, gestures and images. The second element consists of traditional beliefs (like, for instance, family ethics and moral principles) that are consolidated in the society over time.

On the contrary, in the view of Stella Ting-Toomey only patterns should be single out as the compounds of culture. She defines culture “...as a complex frame of reference that consists of patterns of traditions, beliefs, values, norms, symbols, and meanings that are shared to varying degrees by interacting members of a community”.⁶⁷ In her view culture is like an iceberg: “...the deeper layers (e.g., traditions,

⁶⁵ Although “our notion of ‘perfection’ must take all three senses of ‘culture’ into account at once”. Eliot T.S., *Notes to the Definition of Culture*, Faber and Faber Limited, London, 1962, p. 24.

⁶⁶ Kroeber A. L., Kluckhohn C., Untereiner W. and Meyer A. G., *op. cit.*, p. 357.

⁶⁷ Ting-Toomey S., *Communicating across Cultures*, Guilford Press, New York, 1999, p. 10, *Questia*, Web, last access 05/03/2012.

beliefs, values) are hidden from our view; we only see and hear the uppermost layers of cultural artifacts (e.g., fashion, trends, pop music) and of verbal and nonverbal symbols. However, to understand a culture with any depth, we have to match its underlying values accurately with its respective norms, meanings, and symbols. It is the underlying set of beliefs and values that drives people's thinking, reacting, and behaving".⁶⁸

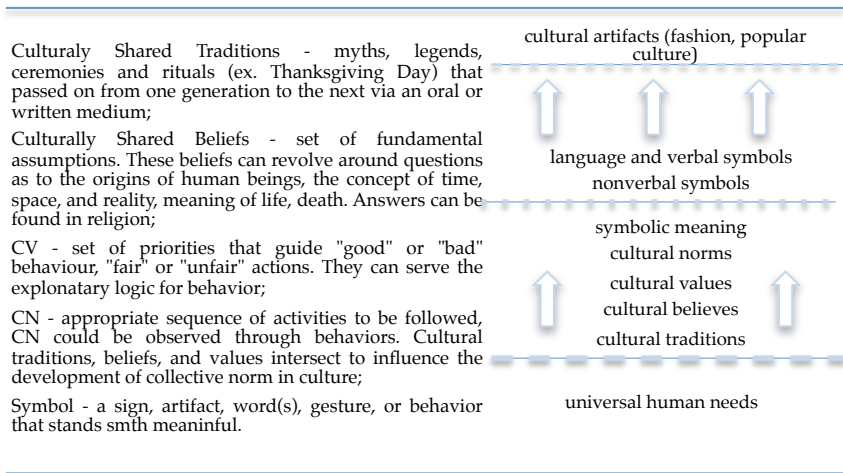


Table 1.1.: Stella Ting-Toomey: the culture-iceberg metaphor⁶⁹

Combining the main aspects of the definitions suggested by Kroeber et al. and Ting-Toomey, culture turns out to be a complex set of entrenched patterns of traditions, values, norms, symbols, beliefs, meanings and behaviors, which are acknowledged and shared, although to a different extent, by the members of the community. On the whole, this definition is less elitist than the humanitarian one and more specific than the anthropological one. Moreover, it seems enough explanative and structured for providing an adequate reference to the cultural policy analysis.

Let's now focus the attention on the concept of policy. Explaining the meaning of the term "policy" seems less problematic, however, also this concept can be interpreted in different ways. Business dictionary provides three different meanings of "policy".⁷⁰ In the first sense the term "policy" refers to the basic principles guiding a government (or a

⁶⁸ Ting-Toomey S., *last op. cit.*, p. 10.

⁶⁹ Ting-Toomey S., *last op. cit.*, p. 10.

⁷⁰ See website: www.businessdictionary.com/definition/policy.html, last access 12/05/2012.

party) and the objectives that it seeks to achieve and preserve in the interest of a national community. In other words, this definition makes reference to the so-called public policy. The second meaning of the term “policy” is a formal contract issued by an insurer that contains terms and conditions of the insurance cover. The last connotation of “policy” is a set of basic principles and associated guidelines, formulated and enforced by a governing body of the organization, to direct and limit its actions in pursuit of the long-term goals. All these three definitions of policy do not provide a proper understanding of the cultural policy concept. The main reason is their focus on a single subject in its particular context (respectively a state or a party, an insurer and an organization).

For analytical purposes, the concept of policy should be defined in a broader way taking in consideration various actors. In other terms, the concept of “policy” may be defined as a complex interplay among the multiple interests that are pursued by the different subjects acting within the same framework of action.

1.2. Building a feasible concept of cultural policy

Having proposed plausible definitions for the terms “culture” and “policy” it is now possible to meaningfully explore the concept of “cultural policy”.

According to the European Council for Cultural Co-operation, a program launched in 1985 for the appraisal of cultural policies for all those countries that have acceded to the European Cultural Convention, the concept of cultural policy embraces the public policy in the area of art and culture. Kevin V. Mulcahy supports an extended version of this definition. In the view of this author, the concept of cultural policy includes that of arts policy. Therefore, if art policy comprehends the public support to visual arts, performing arts and cultural heritage; then, cultural policy “...involve[s] support for all the aforementioned activities, but also other publicly supported institutions such as libraries and archives; battlefield sites, zoos, botanical gardens, arboretums, aquariums, parks; as well community celebrations, fairs, and festivals; folklore activities such as quilting, “country” music, folk dancing, crafts; perhaps certain varieties of circus performances, rodeos, and marching bands.”⁷¹ This is a wide-ranging list of the main issues explored by cultural policy researchers. However, this attempt does not explain the meaning and scope of “cultural policy” in a comprehensive way.

⁷¹ Mulcahy K. “Cultural Policy: Definitions and Theoretical Approaches”, in *Journal Arts, Management, Law and Society*, Vol.35, No.4, winter 2006, p. 321.

Jim McGuigan suggests a more analytical definition. In his words: “*Like a policy in general, cultural policy can be views narrowly and/or broadly: narrowly in the sense of what those in charge of it actually do and the consequences of their actions, and, broadly, in the sense of disputation over cultural issues*”.⁷² In other words, in a narrow sense cultural policy consists in the public administration of ‘arts’; in a broad sense cultural policy is a clash of ideas, institutional struggles and power relations in the production and circulation of symbolic meanings.⁷³

So, overall, the concept of “cultural policy” makes reference to the complex interplay among the multiple-stakeholders operating in the cultural framework (such as, for example, states, market, cultural institutions, research centers and NGOs). Each of them acts on the basis of distinct principles, purposes and strategies, but they share the view to “look after their own interests by shaping the role of art and culture in society”.⁷⁴

Figure 1.2 arranges the concept of cultural policy in a schematic way. The small circles stand for the different groups of interest involved while the arrows represent the links that put them in relation. The perimeter circle symbolizes the contested framework. In the case of “cultural policy”, this circle represents a complex set of entrenched patterns of traditions, values, norms, symbols, beliefs, meanings and behaviors, which are acknowledged and shared, although to a different extent, by the members of the community. Therefore, a complete cultural policy analysis entails three steps: the identification of the multiple-subjects involved in the framework, the analysis of their interests, principles, intentions and strategies, and the evaluation of their interactions.

⁷² McGuigan J., *Rethinking Cultural Policy*, Glasgow, 2004, p. 5.

⁷³ McGuigan J., *Culture and Public Sphere*, Routledge, 1996 London, p. 1.

⁷⁴ Valtysson B. (2008), *op. cit.*, p. 3. As highlighted by this author: “This is a considerable power because it provides a given society and its inhabitants with certain values which greatly affect and up to a certain point control the development of society and the identity formations of its individuals.”

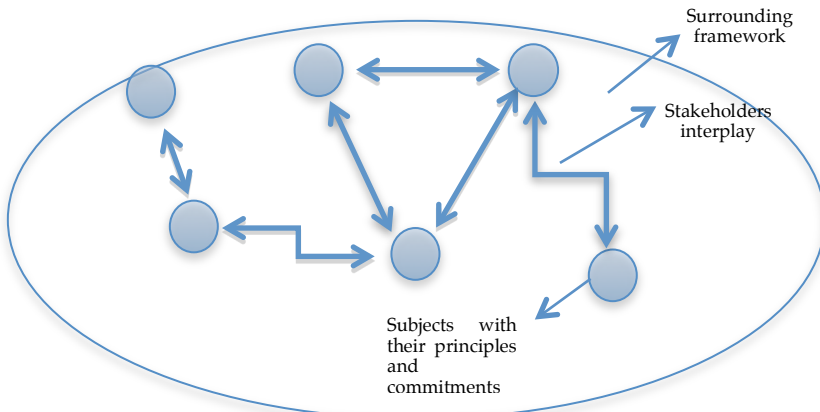


Figure 1.2.. Policy, representation of two levels

2. A theoretical framework for cultural research: the interplay between system and lifeworld

A huge variety of diverse theoretical approaches have been used in the cultural policy research. However, a reinterpretation of Jürgen Habermas's theories on the public sphere seems to provide the best conceptual framework for the scopes of this analysis.⁷⁵

Particularly relevant from a cultural policy viewpoint is his two-level concept of society. There is a power relationship between the strategic approach of the system (which consists of the political power and economic medias⁷⁶) and the communicative action of the lifeworld (grounded on cognitive, aesthetic-expressive, and ethical rationalities) at the base of this concept.

Figure 1.3 schematically displays the interplaying elements at the basis of this structure.

⁷⁵ Numerous authors, like, for example, Peter Dueland (2008) and Bjarki Valtýsson (2008), have made primary reference to Habermas' theories for constructing their approach to the cultural policy issues. Of particular interest from a cultural policy standpoint are his works *The Structural Transformation of the Public Sphere*, *The Theory of Communicative Action*, and *Between Facts and Norms*.

⁷⁶ As highlighted by Habermas "power not only needs to be backed like money... ..it not only needs to be legally normed like money... ..power needs an additional basis of confidence, namely, legitimation. There is no structural analogy to this in the case of money." Habermas J. (translated by T. McCarthy), *The Theory of Communicative Action. Lifeworld and System: a Critique of Functionalist Reason*, Polity Press, UK, 1989, p. 270.

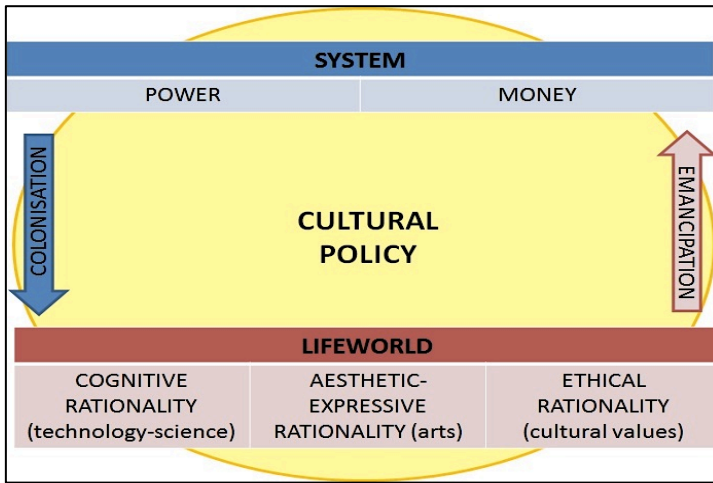


Figure 1.3. System & Lifeworld

According to this model, on one side, the governing powers of the system (state and market) regulate the cultural issues through a process of *colonization* aimed to condition the acquisition of cultural values within a society; on the other side, the different members of a society (integrated, as a whole, in the multidimensional concept of the lifeworld) try to resist and, actually, to have influence over the governing institutions through a process of *emancipation*, which is based on a rational-harmonic assessment of the cultural issues.⁷⁷

Bennet states: “resistance is an essentially defensive relationship to cultural power that is adapted by subordinate social forces in circumstances where the forms of cultural power in questions arise from a source that is clearly experienced as both external and other. As such, it arises in relationships of cultural superordination/subordination which have an impositional logic—that is, where a dominating culture is imposed on a subordinate culture from without and, in extreme case, aims at eradicating the latter and substituting itself in place”.⁷⁸ However, as suggested by Foucault, “A power relationship, on the other hand, can only be articulated on

⁷⁷ In the words of Habermas “the institutions that anchor steering mechanisms such as power and money in the lifeworld could serve as a channel either for the influence of the lifeworld on formally organized domains of action or, conversely, for the influence of the system on communicatively structured contexts of action. In the one case, they function as an institutional framework that subjects system maintenance to the normative restrictions of the lifeworld, in the other, as a base that subordinates the lifeworld to the systemic constraints of material reproduction and thereby ‘mediatizes’ it.” Habermas J. (1989), *op. cit.*, p. 185.

⁷⁸ Bennet T. (1998), *op. cit.*, pp. 170-171.

the basis of two elements that are indispensable if it is really to be a power relationship: that 'the other' (the one over whom power is exercised) is recognized and maintained to the very end as a subject who acts; and that, faced with a relationship of power, a whole field of responses, reactions, and possible inventions may open up."⁷⁹ Therefore, "one of the most important culture-political tasks of the intermediary public sphere is to ensure that a proper balance exists between them [system and lifeworld]. What this balance is made of, is of course dependent upon the culture-political approach a given region, nation-state, or a transnational body wants to promote".⁸⁰

Within this framework of analysis, the evaluation of the legislative acts requires particular attention. As highlighted by Duelund, "Habermas points out that the act of law-making itself results from a procedure of public opinion and will-formation that generates communicative power; under proper political conditions in democratic societies, communicative power may further social and cultural autonomy. Informal public opinion generates "influence", and influence becomes "communicative power" through political elections and via cultural institutions. In fact, communicative power reappears as "administrative power" via legislation".⁸¹ In other terms, the legislative process is the outcome of a strategic process managed by the state, but legitimized by the lifeworld as a mean to meet its needs.

Certainly, this model is not perfect. For example, this schema does not conceive that the "relations of culture and power, that is to say, should not be thought of as necessarily generating resistance or resistance just as it should be allowed that they might generate other forms of critical reaction or interaction that are not intelligibly described as resistive".⁸² Moreover, this model fails to show the multiple diverging perspectives characterizing the system and the lifeworld: "the market driven cultural industries are, for instance, not as one-dimensional as Habermas assumes, even though they are ultimately driven by instrumental rationale."⁸³ Nonetheless, the bipolar opposition between system and lifeworld, although being a schematization and simplification of reality, provides a reliable conceptual snapshot of the dynamic process of creation and dissemination of cultural policies. Therefore, a cultural policy research inevitably relies on the analysis of this complex system of interrelations: "the ambition of cultural studies is to develop ways of theorizing relations of culture and power that will prove capable of being

⁷⁹ Foucault M., "The Subject and Power", p. 540, in Faubion J. D. (edited by), *Power*, The New Press, New York, 2000.

⁸⁰ Valtysson B. (2008), *op. cit.*, p. 100.

⁸¹ Duelund P., "Nordic cultural policies: A critical view", *International Journal of Cultural Policy*, Vol. 14, Issue 1, 2008, p. 20.

⁸² Bennet T. (1998), *op. cit.*, p. 168.

⁸³ Valtysson B. (2008), *op. cit.*, p. 111.

utilized by relevant social agents to bring about changes within the operation of those relations of culture and power".⁸⁴

3. Four approaches of cultural policy

Though often having similar goals (like, for example, strengthening the national identity, spreading the shared values, preservation of the cultural resources, development of the cultural industry, promotion of a sustainable heritage-tourism, organization of a common language policy) states use different approaches for developing their cultural policies. Hillman-Chartrand and McCaughey in the article "The arm's length principle and the arts: an international perspective – past, present and future" identify four alternative modes of public support for the arts: the facilitator, the patron, the architect and the engineer.

These four roles are examined as "pure types" although, in practice, these "roles and models are not mutually exclusive, that is, a single government may play more than one role and may seek to achieve more than one objective".⁸⁵ The goal is to get a simple, clear and comprehensive framework of the main models of cultural policy adopted by states (bearing anyhow in mind that, effectively, there are potential "infinite" sub-approaches to be assessed).

In the states that adopt a *facilitator* approach, arts are mainly financed through tax exceptions (private donations are tax deductible). As a result, private patrons (like, for example, individuals, corporations and foundations) are those who decide which artistic enterprises deserve to be supported. Positively, this approach favors a process of creativity, supporting the development of all those artistic activities that meet the diverse tastes of the various donors. Moreover, creating a diversified set of sources funding the arts, this solution partially relieves the economic pressure on the part of states.⁸⁶ Negatively, in the facilitator system "standards of excellence are not necessarily supported, and the State has no ability to target activities of national importance"⁸⁷. Hillman-

⁸⁴ Bennet T. (1998), *op. cit.*, p. 28.

⁸⁵ Hillman-Chartrand H. and McCaughey C., "The arm's length principle and the arts: an international perspective – past, present and future", in Cummings Jr M. C. and Davidson Schuster J. M. (eds.), *Who's to Pay? For the Arts: The International Search for Models of Support*, American Council for the Arts, NYC, 1989.

⁸⁶ But, as suggested by Valtysson, "even though it looks like private companies and individual donors are contributing greatly to the development of the arts and culture, in most cases the money still comes from the state, only hidden through tax expenditures. Therefore, according to this tradition the state still finances lots of the allocations indirectly". Valtysson B. (2008), *op. cit.*, p. 40.

⁸⁷ Hillman-Chartrand H. and McCaughey C. (1989), *op. cit.*

Chartrand and McCaughey as an example of facilitator state indicate the United States.⁸⁸

The *patron* approach, on the contrary, relies on the efficiency of the arm's length principle.⁸⁹ In the states that adopt this approach, the central government determines the total amount of resources that will be invested for supporting the artistic sector and establishes the overarching goals to be achieved. Differently, the task to determine how much and to whom to distribute these funds is usually the responsibility of the council of experts that are appointed, in virtue of their professionalism and expertise, by the same government. As a result, this approach supports the process of creativity "*but with the objective of promoting standards of professional artistic excellence.*"⁹⁰ Positively, this system tends to assure professionalism and high quality in the arts. Negatively, this highly politicized approach creates elitism in the arts that might not always meet the appreciation of the general public. The United Kingdom is an example of patron state.

In the *architect* approach the central government, through the Ministry of Culture, directly finances the arts as part of its social welfare goals. As a result, the states that adopt this approach tend to "*support art that meets community rather than professional standards of artistic excellence.*"⁹¹ On one side, this approach allows artists to express their creativity more freely, without having to rely excessively on the popular success at the box office. On the other side, the awareness of having guaranteed funds (regardless of the results that will be achieved) may lead to a creative stagnation, which is likely to significantly lower the overall quality of the artistic production. France, Italy and the Netherlands are examples of architect states.

In the states that embrace the *engineer* approach, the artistic production is organized in order to be at the complete disposal of the governing political party. In other terms, the arts have to reflect the ideas promoted by the official party, thereby adapting the process of creativity to the commissioned political goals. As a result, this approach is appealing for the totalitarian regimes, but also for many western governments, which "*find the Engineer role attractive in constructing a commercially viable arts industry in which the profit motive, or "capitalist*

⁸⁸ The reader has not to forget that this article was written in 1989 and, therefore, the approach adopted by the mentioned states could be changed in the last 20 years.

⁸⁹ The arm's length principle entails the separation of powers among different interplaying actors. An example is the separation of the judiciary, executive and legislative powers among the different institutional bodies of the state.

⁹⁰ Hillman-Chartrand H. and McCaughey C. (1989), *op. cit.*

⁹¹ Hillman-Chartrand H. and McCaughey C. (1989), *last op. cit.*

realism", plays an ideological role analogous to 'socialist realism'".⁹² The Soviet Union regime after 1932 is an example of engineer state.⁹³

Craik J. complements the four types of approaches with her *elite nurturer model* practiced in Australia. "In this model, governments select a small number of elite cultural organizations to receive a one-line budget and/or other generous subsidies, thus placing them in a coveted position by guaranteeing recurrent funding that insulates them from having to compete with 'outsider' cultural organizations. On the other hand, as the nurtured organizations swallow up the majority of the cultural budget, there is little opportunity to fund new or experimental cultural forms, thus risking conservatism, or stasis, of cultural development."⁹⁴

4. New trends in the cultural policy management: the effects of globalization and decentralization

The administration of cultural issues has been considerably renewed over the centuries. The Renaissance patronage of kings, aristocrats and clergymen has been gradually replaced, starting from the XVIII century, by a growing role of the states in the management of culture and the arts. It is since World War II that the governments of numerous states have assumed a wide-ranging control over the administration of cultural policies, organizing the first centralized cultural institutions such as, for example, the British Art Council (1946) and the French Ministry of Culture (1959). To date, in most of the countries of the world the central government still plays the principal role in the management of the arts. Nonetheless, some changes have been progressively introduced in the last decades. On one hand, the globalization process has moved some questions of the cultural nature from a national to the supranational level. On the other hand, some governments started a process of decentralization, increasing the responsibility of local actors in the cultural field.

⁹² Hillman-Chartrand H. and McCaughey C. (1989), *last op. cit.*

⁹³ Hillman-Chartand and McCaughey claim that before 1932 the Soviet regime exercised the architect approach toward art and culture, while after 1932, when the Second Five Year Plan was adopted the Soviet Regime embraced the engineer approach.

⁹⁴ Craik J., *Re-Visioning Arts and Cultural Policy: Current Impasses and Future Directions*, ANU E Press, The Australian National University, 2007.

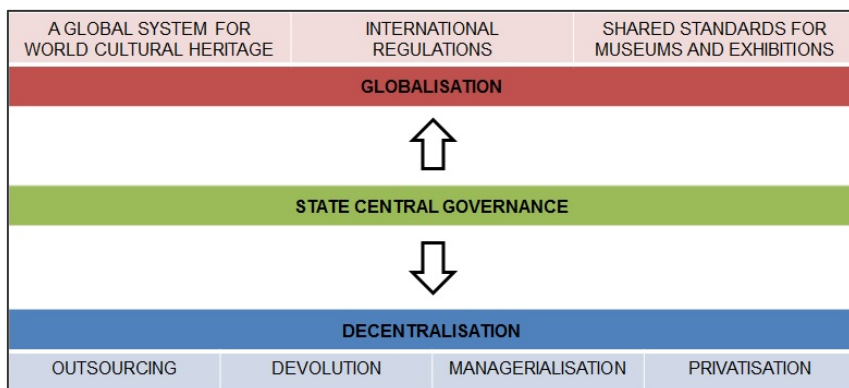


Figure 1.4. The effects of globalization and decentralization in the administration of cultural issues

As suggested by Casini, the globalization of cultural properties has taken three different patterns of development: the creation of a global system for the protection of outstanding universal sites (like, for example, the 1972 World Heritage Convention), the establishment of an international regulatory framework (such as, for instance, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property), and the development of global standards (like, for example, in the case of the ICOM Code of Ethics for Museums).⁹⁵

The system of the World Heritage Convention has at the base a multi-levels cooperation between states and international institutions. Beyond the elaboration of an international legislative framework for the protection of world cultural heritage, this system intervenes at institutional level, organizing a procedure of listing-enforcement that involves different actors. As a matter of fact, the conditions and mechanisms for enrolling a site in the World Heritage List have been established by an international organization like the UNESCO. Moreover, once a site has been listed, *"specific compliance mechanisms can be activated by actors other than governments or domestic administrations, such as non profit organizations or communities. In such cases, the World Heritage Committee can intervene in order to ensure the protection of sites, in this way limiting the sovereignty of the State"*.⁹⁶ Therefore, although the organization of a supranational institution dedicated to the

⁹⁵ See Casini L., "Italian Hours: The Globalization of Cultural Property Law", Jean Monnet Working Paper, No. 11, 2010.

⁹⁶ Casini L. (2010), *last op. cit.*, p. 13. Nonetheless, the same author also highlights: *"all of the procedures begin at national level, and that failed participatory processes at domestic level may undermine international processes."*

management of these sites is currently a scarcely plausible hypothesis, *"States that decided to apply to have sites included in the World Heritage List have had to adapt their administrations"*.⁹⁷

The different pillars compose the framework for regulating the international circulation of cultural properties. Through the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, states have set shared principles and rules for the international trade of cultural properties.⁹⁸ Nevertheless, the mechanisms of enforcement are still directly managed by states and, most of the time, the effective restitutions of artworks is achieved through the negotiation of specific agreements between the involved parties (generally, governments and museums). Therefore, on one hand, the regulation of some issues (like the circulation of cultural properties) requires nowadays-full compliance with international regulatory frameworks; on the other hand, central governments still play a chief role in the administration of similar questions.

The organization of global standards can also be the final outcome of a self-regulation process. The International Council of Museums (ICOM) is an international non-governmental organization representing museums and museum professionals. In 1986, this organization elaborated a "Code of Ethics for Museums", aimed to set minimum standards of professional practice for the international museum community.⁹⁹ Interestingly, many states have fully embraced in their national regulations the principles established in this Code. As a result, *"ICOM could be considered to be a type of 'global administration', because it is a private body that carries out genuine regulatory functions at the global level"*.

The globalization process has, therefore, introduced some significant variations in the management of the cultural field. In particular, *ad hoc* international regulatory regimes have been adopted in order to adequately satisfy the emerging global public interests and the exclusive control of centralized domestic administrations has left room to *"a plethora of institutions acting in concert in order to balance the numerous public interests connected with cultural properties"*.¹⁰⁰

⁹⁷ Casini L. (2010), *last op. cit.*, p. 10.

⁹⁸ The 1970 UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property is binding only for those states that have ratified it (to date, 123 states).

⁹⁹ The Code of Ethics for Museums was revised in 2004. For more information about the ICOM and its Code see the official website: <http://icom.museum/>.

¹⁰⁰ Casini L. (2010), *op. cit.*, p. 22.

Concerning the decentralization process, Zan, Baraldi and Gordon identify four potential attempts of reform: outsourcing, devolution, managerialism and privatization.¹⁰¹

Outsourcing is an emerging practice in the cultural field that entails the externalization of some functions traditionally managed by states (from the management of amenities like, for example, museum shops, coffees-restaurants, and cleaning services, to the administration of core activities such as, for instance, the organization of exhibitions and scientific researches). Overall, the involvement of private actors may improve the quality of services supplied, but “*reducing the direct control and authority of State on the operation of a cultural sector*”. A further challenge is the actual willingness of private institutes to invest resources in this sector: this system seems to effectively work in the United States, but it could result a failure in other countries with a limited number of private philanthropists.¹⁰²

The process of devolution entails the transfer of responsibilities and powers from central government to lower territorial units (local authorities). Through this mechanism, a state mainly aims to redistribute the functions of cultural heritage management in order to better meet the needs of its citizens. However, these changes “*offer no guarantees of improved efficiency*”.¹⁰³

The managerialisation process aims to increase the managerial responsibility of the local branches of the Ministry of Culture. This mechanism should guarantee a greater autonomy to these institutional bodies, thereby improving their capacity to promptly respond when needed. Nonetheless, the success of this system largely relies on the effective “ability to act” of these peripheral units (which, in turn, depends on the resources available, the funds invested, the expertise of the staff).

The privatization process entails the sale of public cultural properties to private institutions. This procedure is primarily aimed at reducing the burdens on the part of the states. But, as highlight by Zan, Baraldi and Grodon, “*the clear danger is possible destruction of the State’s cultural heritage through its piecemeal dispersal*”.¹⁰⁴

To sum up, the decentralization process modifies the state administration of cultural issues, reallocating some powers and

¹⁰¹ Zan L., Baraldi S. B., and Gordon C., “Cultural Heritage Between Centralization and Decentralisation”, *International Journal of Cultural Policy*, Vol. 13, No. 1, 2007.

¹⁰² Zan L., Baraldi S. B., and Gordon C. (2007), *last op. cit.*, p. 56.

¹⁰³ Zan L., Baraldi S. B., and Gordon C. (2007), *last op. cit.*, p. 57.

¹⁰⁴ Zan L., Baraldi S. B., and Gordon C. (2007), *last op. cit.*, p. 60.

responsibilities historically managed by central governments to a diverse set of interest groups.

As a consequence of the foregoing statements, it should be clear that both globalization and decentralization are processes that necessarily must be taken into account in a cultural policy analysis.

Chapter II: Introduction to the cultural legislations of Kazakhstan, Kyrgyzstan and Uzbekistan

1. Constitutional provisions: assessing the core principles in the sphere of culture

Legislation is one of the first mechanisms to be used by states to implement their public policies. It is primarily through the law that governments promote and regulate the cultural dimension in society. Therefore, in the context of public cultural policies, it is appropriate to begin with the analysis of the applicable laws.

In Kazakhstan, Kyrgyzstan and Uzbekistan, the constitution occupies the top of the national legislative hierarchy and it is the legal tool with the highest juridical power.¹⁰⁵ Therefore, all the regulations, laws, decrees adopted in these countries are constructed according to and in pursuance of the related constitutional principles.

The constitutional provisions of Kazakhstan, Kyrgyzstan and Uzbekistan in the sphere of culture establish the fundamental principles concerning language, religion, cultural heritage, information and censorship, creativity and intellectual property.

Language

The state languages of Kazakhstan, Kyrgyzstan and Uzbekistan, are respectively, Kazakh, Kyrgyz and Uzbek. Kazakhstan and Kyrgyzstan, however, devote a special status to the Russian language. According to Kazakh constitution, in the public sphere (state organizations and local governments) both Russian and Kazakh are equally considered as official languages.¹⁰⁶ Similarly, the constitution of Kyrgyzstan states that the Russian language may be used as official language in all territory of the country.¹⁰⁷

This particular attention to the Russian language is probably due to the historical multi-ethnic character of these two countries. In 1959, the Kazakh ethnic group represented only 30% of the total population that was living on the territory of Kazakhstan. In over thirty years this percentage has slightly increased: in 1991, the year of independence of

¹⁰⁵ Paragraph 1, article 4, *Law of the Republic of Kazakhstan on Normative Legal Acts*, N213, 1998; paragraph 1, article 6, *Law of the Republic of Kyrgyzstan on Normative Legal Acts*, N241, 2009; article 7, *Law of the Republic of Uzbekistan on Normative Legal Acts*, N160-II, 2000.

¹⁰⁶ Paragraph 2, article 7, *Constitution of Kazakhstan*, 1995, with amendments and updates for 02.02.2011

¹⁰⁷ Paragraph 2, article 10, *Constitution of the Republic of Kyrgyzstan*, 2010

Kazakhstan, the Kazakh ethnic people (39.7% of the total population) were just few more than the Russians (around 33%).¹⁰⁸ Only since 1999, the Kazakhs have become the “absolute ethnic majority” in Kazakhstan (and, since then, their percentage has constantly grown year by year).¹⁰⁹

A similar situation occurred in Kyrgyzstan. In 1959, only 40.5% of the population living in Kyrgyzstan was of Kyrgyz ethnicity.¹¹⁰ The remaining 59.5% of the population was composed by people of different ethnical origin (with a 30.2% of Russians) that shared as a common feature the ability to speak in Russian. In 1989, the Kyrgyz reached the absolute majority (52.4% of the total population). Nevertheless, in such moment, the political role played by the other ethnicities living in the country was still important (47.6%, of which 21.5% of Russians). Only some years after independence, obtained in 1991, the percentage of the Kyrgyz ethnic group has significantly increased (reaching quote 71% in 2009).

The numerical relevance of the ethnic minorities that, in 1991, were still living in Kyrgyzstan and Kazakhstan has probably been the reason the governments of these countries have conferred to Russian language a special status in their constitutions (as a language of interethnic communication).

On the contrary, the Uzbek ethnic group has always been the “absolute ethnic majority” in Uzbekistan (over 60% of the total population during the Soviet period and significantly higher percentage after independence). Therefore, drafting the national constitution, the Uzbek political elite did not consider necessary to pose particular emphasis on this issue.

¹⁰⁸ See Schatz E., *The Politics of Multiple Identities: Lineage and Ethnicity in Kazakhstan*, *Europe-Asia Studies*, Vol.52, No.3 (May, 2000), pp. 489-506.

¹⁰⁹ An “absolute ethnic majority” is reached when an ethnic group represents over 50% of the total population.

¹¹⁰ Haug V., “Demographic development of ethnic groups, Demographic tendencies, formation of the nation and interethnic relations in Kyrgyzstan”, (*Demograficheskoe razvitie etnicheskikh grup, demograficheskie tendentsii, formirovanie natsii i mezhetnicheskie otnosheniya v Kirgizii*), in Kudabayev Z., Giyo M. and Denisenko N. (editors), *Naselenie Kyrgyzstana*, 2004, p.109-157.

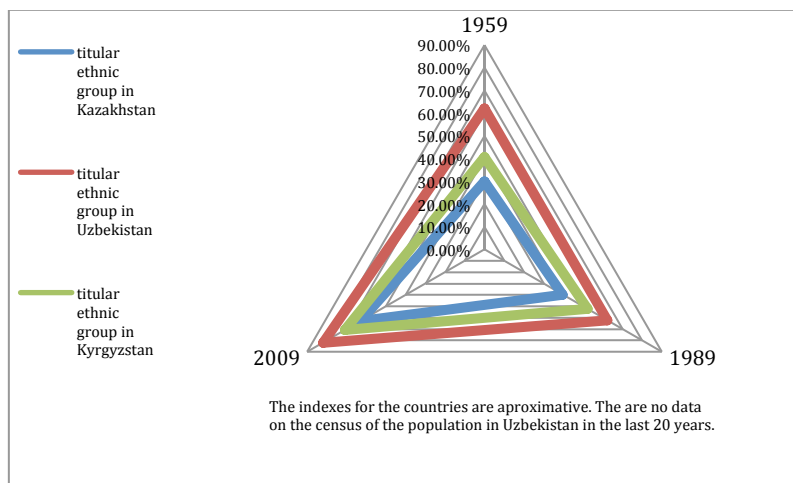


Table 2.1.: *The ethnic composition of the population in Kazakhstan, Kyrgyzstan and Uzbekistan between 1959-2009.*¹¹¹

In any case, all these countries sustain, in their constitutions, the goal to create favorable conditions for the preservation, learning and development of the other languages spoken by the ethnic groups living in their territories.¹¹²

¹¹¹ See for Kazakhstan: Zimovina E.P., "Changes in the number and composition of the population in Kazakhstan in the second half of the XX century", Demoscop Weekly, N103-104, 2003, available at: <http://demoscope.ru/weekly/2003/0103/analit03.php>; Alexeenko A., Aubakirova Z., Sarsenbayeva G., "Demographic success of Kazakhstan", Demoscope Weekly, 2011, available at: <http://demoscope.ru/weekly/2011/0451/demoscope0451.pdf>, last access: 14/08/2013. For Kyrgyzstan: Haug V., "Demographic development of ethnic groups, Demographic tendencies, formation of the nation and interethnic relations in Kyrgyzstan", *Naselenie Kyrgyzstana*, 2004, available at: <http://demoscope.ru/weekly/2005/0197/analit04.php>, and Asheulov D., "On Kyrgyz Population", Demoscop weekly, N463-464, 2011, available at: <http://demoscope.ru/weekly/2005/0197/analit04.php>, last access 14/08/2013. For Uzbekistan: 'Vsesoyuznaya perepis' naseleniya 1959 – Natsional'nyi sostav naseleniya po respublikam SSSR, Uzbekskaia SSR", Demoscop Weekly, N559-560, 2013, available at: http://demoscope.ru/weekly/ssp/sng_nac_59.php?reg=13; "Vsesoyuanaya perepis' naseleniya 1989 – Natsional'nyi sostav naseleniya po respublikam SSSR, Uzbekskaia SSR", Demoscop Weekly, N559-560, 2013, available at: http://demoscope.ru/weekly/ssp/sng_nac_89.php?reg=4, last access: 12/07/2013

¹¹² According to the Kazakhstani constitution, the state ensures the creation of favorable conditions to facilitate the learning and development of the different languages of its citizens. Article 10, paragraph 3 of the Kyrgyz constitution guarantees to the representatives of other ethnic groups living in Kyrgyzstan the right of preserving their mother tongues and it sustains the creation of favorable conditions for the learning and development of these languages. The Uzbek constitution guarantees the creation of favorable conditions for developing the languages of the ethnic minorities, as well as their customs and traditions.

Religion

The constitutional provisions in Central Asian countries regulate different aspects related to the religious sphere.

To begin with, the constitutions of Kazakhstan and Kyrgyzstan specifically state the secularity of these countries, which means that the religious sphere is separate from the governmental one.¹¹³ The Uzbek constitution does not provide an explicit reference to the “secular status”, but at article 61 it affirms, on one side, that religious organizations and associations are detached from the state; and, on the other, that the state do not aim to interfere in the activities of the religious associations.¹¹⁴ Moreover, article 57 adds that the creation of political parties on the base of religious manifestations is forbidden.¹¹⁵

Second, the constitutions of these countries recognize the freedom of beliefs and religion. Article 22 of Kazakh constitution guarantees the freedom of worship, but the exercise of this freedom must not restrict neither acknowledged human rights, nor the civil rights and duties established by law.¹¹⁶ Similarly, article 32 of Kyrgyz constitution affirms the freedom of worship, but it also specifies that nobody can be forced to express his/her religious belief or to reject it. Article 18 of Uzbek constitution states that all citizens of Uzbekistan have equal rights and liberties and they are equal at law regardless their sex, race, ethnicity, language, **religion**, social provenance, ideology, personal and public position.¹¹⁷ Moreover, at article 31, it establishes, first, that everybody enjoy the freedom of worship and the right to profess any religion or to not profess any; second, that the forced instillation of religious opinion is inadmissible.¹¹⁸

Although the constitution of Uzbekistan, expressly affirms that state does not aim to interfere with activities of a religious nature, in practice this provision is passed over. Several organizations and experts of human rights have reported evidences that testify the regular violation of the freedom of religion in Uzbekistan.¹¹⁹ From the survey

See paragraph 3, article 7, *Constitution of Kazakhstan*, 1995; paragraph 3, article 10, *Constitution of Kyrgyzstan*, 2010; article 4, *Constitution of Uzbekistan*, 1992.

¹¹³ See article 1, *Constitution of Kazakhstan*, 1995, and article 1, *Constitution of Kyrgyzstan*, 2010.

¹¹⁴ See article 61, *Constitution of Uzbekistan*, 1992.

¹¹⁵ See article 57, *Constitution of Uzbekistan*, 1992.

¹¹⁶ See article 22, *Constitution of Kazakhstan*, 1995.

¹¹⁷ See article 18, *Constitution of Uzbekistan*, 1992. The word ‘religion’ has been highlighted in bold by the author.

¹¹⁸ See article 31, *Constitution of Uzbekistan*, 1992.

¹¹⁹ See, for example, Sulaimonov A., “Situation of Muslims in Uzbekistan”, Obsherossiiskoe Obshchestvennoe Dvizhenie “Tadzhikskie Trudovye Migranty”, 2010, available at: <http://tajmigrant.com/polozenie-musulman-v-uzbekistane.html>, last access 05/10/2013; *Repression of the Muslims in Uzbekistan набирают обороты*,

conducted by Bayram M. and Kinahan J. emerge information on how the Uzbek government exercise a strict control over the religious sphere.¹²⁰ To begin with, the religious organization that intends to legally operate on the territory of Uzbekistan have to undertake a complex registration procedure that often becomes an insuperable barrier for small religious communities (due, for example, to their limited number of members or the absence of an official building). This process is very important because religious communities have the right to print, import and distribute religious literature, items and other informative materials only once they have completed the registration procedure at the departments of the Ministry of Justice.¹²¹ Moreover, the National Security Service (NSS) and local authorities monitor the people who profess Islam. They film the visitors of the mosques, limit the right of Muslims to gather for evening food intake, *iftar*, during the sacred month Ramadan, and restrain the number of citizens that wish to perform Hajj in Mecca. On the whole, all these measures keep population in constant fear to express their religious beliefs.

Although at lower levels, this trend to control the religious life in the country is partially observed in Kazakhstan and Kyrgyzstan too. For example, Kazakhstan has recently adopted the Presidential Order on Governmental Program to Combat Religious Extremism and Terrorism. This program, in order to prevent, detect and suppress the threat of religious extremism and terrorism in Kazakhstan, calls for a series of measures among which the control over import, print and distribution of religious literature.¹²² In Kyrgyzstan the Commission for Religious Affairs and National Security Committee has proposed the introduction of new punishments in Administrative Code concerning illegal religious activities.¹²³

At the same time, Central Asian governments justify their policies of control over the religious sphere as necessary measures for

uznews.net, 2010, available at: http://www.uznews.net/article_single.php?lng=ru&cid=22&aid=702, last access 05/10/2013; Из-за гонений на мусульман в Узбекистане их жены и матери могут пополнить ряды смертниц, Fergananews, 2004, available at: <http://www.fergananews.com/articles/2760>, last access 05/10/2013;

¹²⁰ See Bayram M. and Kinahan J., "UZBEKISTAN: Religious freedom survey, August 2013", FORUM 18 NEWS SERVICE, Oslo, Norway, 2013, available at: http://www.forum18.org/archive.php?article_id=1862&pdf=Y, last access: 05/10/2013

¹²¹ See article 19, *Law of the Republic of Uzbekistan on Freedom of Conscience and Religious Organizations*, 1991. It should be noticed that governmental Religious Affairs Committee (RAC) analyses all imported materials of registered religious organizations.

¹²² See Chapter 5, *Presidential Order on Governmental Program to Combat Religious Extremism and Terrorism in Republic of Kazakhstan for 2013-2017*, N648, 2013

¹²³ See Corley F., KYRGYZSTAN: NSC secret police behind "needed" new religious freedom punishments, FORUM 18 NEWS SERVICE, Oslo, Norway, 2013, available at: http://www.forum18.org/archive.php?article_id=1788&pdf=Y, last access: 22/10/2013

facing the risk of religious integralism. Lola Karimova, daughter of Uzbek president Islam Karimov, sustains that there is a real danger of regional destabilization due to the proximity of Central Asia to Afghanistan.¹²⁴ This risk of religious extremism has also been documented by international agencies. As A. Elizabeth Jones, Assistant Secretary, Bureau of European and Eurasian Affairs, U.S. Department of State, correctly noticed, “terrorism is serious issue for this region” and “IMU is still active in the region, particularly in Kyrgyzstan, Tajikistan, Uzbekistan and Kazakhstan, and it represents a serious threat to the region.”¹²⁵ The trade-off between security and religious freedom in Central Asia is clearly a thorny issue and should be examined deeply in other separate from this research.

Cultural heritage

In Kazakhstan, the constitutional provisions concerning the cultural heritage are focused only on the duties of the citizens (it does not provide any reference to the state’s duties related to cultural heritage). As a matter of fact, article 37 of the Kazakh constitution states the obligation of the citizens to safeguard the historical and cultural monuments and to take care of the historical and cultural heritage.¹²⁶

On the contrary, the constitutions of Uzbekistan and Kyrgyzstan impose to the related state the specific duty to safeguard the cultural and historical monuments.¹²⁷ Moreover, they grant the right of access to the cultural values (Kyrgyzstan) and the right to enjoy the benefits of culture (Uzbekistan).¹²⁸

Information & Censorship

¹²⁴ See interview of BBC Russian Service with Lola Karimova-Tillyaeva, 2013, available at: http://www.bbc.co.uk/russian/international/2013/09/130926_karimov_sisters_dispute.shtml, last access: 22/10/2013.

¹²⁵ IMU is Islamic Movement of Uzbekistan recognized as a terrorist organization, created after collapse of the Soviet Union, aiming to establish an Islamic state, FANO (Fergana, Andizhan, Namangan and Osh) on the territory of contemporary Central Asian countries. See Committee on International Relations, House of Representatives, *Central Asia: Terrorism, Religious Extremism, and Regional Stability*, N108-71, October 29, 2003, p.8, available at: <http://babel.hathitrust.org/cgi/pt?id=pst.000051634926;view=1up;seq=1>, last access: 22/10/2013

¹²⁶ See article 37, *Constitution of Kazakhstan*, 1995.

¹²⁷ See paragraph 2, article 49, *Constitution of Kyrgyzstan*, 2010; article 49, *Constitution of Uzbekistan*, 1992.

¹²⁸ See paragraph 2, article 49, *Constitution of Kyrgyzstan*, 2010; article 42, *Constitution of Uzbekistan*, 1992.

The constitutions of Kazakhstan, Kyrgyzstan and Uzbekistan, despite some slight differences, include similar provisions in the field of information and censorship. Article 20 of Kazakhstani constitution states that the freedom of speech and creativity is guaranteed to everybody.¹²⁹ The Uzbek constitution grants to everybody the freedom of thoughts, speech and opinion.¹³⁰ The Kyrgyz constitution, in turn, stipulates the freedom of opinion, speech and publishing.¹³¹ In addition, all these countries sustain the right of searching, storing, receiving and distributing information (with some restrictions on confidential information and documents classified as “state secrets”).

Interestingly, Kazakhstan and Uzbekistan directly forbid the censorship in their constitutional texts, while the constitution of Kyrgyzstan does not contain a similar disposition. Nonetheless, in the ranking defined in World Audit, on a survey conducted by Freedom House on the press freedom, Kyrgyzstan is in a better position (115th) than Kazakhstan (128th) and Uzbekistan (145th).¹³²

This parameter has a direct impact on the assessed level of democracy of these states. The democracy index supplied by the Economist Intelligence Unit put Kyrgyzstan on 106th place, among the partially free countries with hybrid regimes. According to the Economist Intelligence Unit in these countries: “elections have substantial irregularities that often prevent them from being both free and fair. Government pressure on opposition parties and candidates may be common. Serious weaknesses are more prevalent than in flawed democracies-in political culture, functioning of government and political participation. Corruption tends to be widespread and the rule of law is weak. Civil society is weak. Typically there is harassment of and pressure on journalists, and the judiciary is not independent”.¹³³

On the contrary, Kazakhstan and Uzbekistan, which are respectively on 132th and 164th position, are considered countries with authoritarian regimes in which: “the elections are not free and fair, there is absence of political pluralism, is little the substance of democratic institutions, the medias are state owned or, in any case, significantly controlled by the government, there are recurrent episodes of abuse and infringements of civil liberties, there is not an independent judiciary, the repression of criticism of the government is practiced and there is a pervasive censorship”.¹³⁴

¹²⁹ See article 20, *Constitution of Kazakhstan*, 1995.

¹³⁰ See article 29, *Constitution of Uzbekistan*, 1992.

¹³¹ See article 31, *Constitution of Kyrgyzstan*, 2010.

¹³² See the website: www.worldaudit.org

¹³³ Economist Intelligence Unit, *Democracy index 2010*, 2010.

¹³⁴ See the definition of authoritarian regimes by Economist Intelligence Unit, *last op. cit.*, 2010.

Therefore, it seems that, in these countries, the effective enforcement of the constitutional principles related to the freedom of speech is still far from being completely realized (at least, according to the ranking above exposed).

Creativity & Intellectual property

Concerning the creativity issue, the constitution of Kazakhstan is quite generic, declaring that the freedom of creativity is guaranteed.¹³⁵ More detailed are the constitutions of Kyrgyzstan and Uzbekistan. The constitution of Kyrgyzstan grants the liberty of creativity in the literary, scientific, artistic and technical field.¹³⁶ The constitution of Uzbekistan recognizes the freedom of scientific and technical creativity, but it does not mention anything about the artistic creativity.¹³⁷ Additionally, the same article affirms that the government takes care of the cultural, scientific and technical development of the society.

Differently, constitutional provisions concerning the intellectual property are envisaged in Kyrgyzstan only (although this issue is regulated by law also in Kazakhstan and Uzbekistan). The last paragraph of article 49 specifies that, in Kyrgyzstan, the law protect the intellectual property.¹³⁸

2. Commonalities and differences of the legal systems of Kazakhstan, Kyrgyzstan and Uzbekistan in the cultural sphere

Beyond constitutional provisions, the cultural sphere in Kazakhstan, Kyrgyzstan and Uzbekistan is further regulated by *ad hoc* laws and regulations. Table 2.2 provides a comprehensive list of these laws, organizing them on the base of their related cultural sector (like architecture & urban planning, circulation of cultural property, copyright, culture, cultural heritage, film, language, libraries, mass media, publishing, and religion).¹³⁹

¹³⁵ See article 20, *Constitution of the Republic of Kazakhstan*, 1995.

¹³⁶ See paragraph 1, article 49, *Constitution of Kyrgyz Republic*, 2010.

¹³⁷ See article 42, *Constitution of the Republic of Uzbekistan*, 1992.

¹³⁸ See paragraph 3, article 49, *Constitution of Kyrgyz Republic*, 2010.

¹³⁹ This table reports only those laws that have been specifically adopted to regulate a particular sector of the cultural sphere. However, the reader should be aware that there are also other laws that, although not specifically devoted to the cultural issues, provide some fundamental provisions for the regulation of this sector. For example, the criminal code includes responsibility for the crimes against the cultural heritage, the tax law regulates the charity and philanthropy, and the civil code regulates legal registration of cultural and religious organizations.

	KAZAKHSTAN	KIRGYZSTAN	UZBEKISTAN	IPA of CIS ¹⁴⁰
Architecture & Urban Planning	Law “on Architectural, Urban and Construction activities”, N242-II, 2001;	Law “on Urban Planning and Architecture”, N1372-XII, 1994;	Urban Planning Code, N353-II, 2002;	
Circulation of Cultural Property	Law “on Culture”, N207-III- 3PK, 2006(article 35);	Governmental Decree “on Export and Import of Cultural Values in Kyrgyz Republic” N36, 2003;	Law “on Export and Import of Cultural Values”, N678-I, 1998; Decree of Ministerial Cabinet of Republic of Uzbekistan “on Issues of Export and Import of Cultural Values”, N131, 1999;	Law on Culture 2004;
Copyright	Civil Code (special part), N409-I, 1999; Law “on Copyright and Neighbouring Rights”, N6-I, 1996;	Civil Code (chapter 54) N1, 1998; Law “on Copyright and Neighbouring Rights”, N6, 1998;	Civil Code (second part), N256-I, 1996; Law “on Copyright and Neighbouring Rights”, N3PY-42, 2006;	Law on Copyright and Neighboring Rights 1996 and 2005;
Culture	Law “on Culture”, N207-III- 3PK, 2006;	Law “on Culture”, 2009;		Law on Culture 2004;
Cultural Heritage	- Law N1488-XII “on Protection and Use of Objects of Historical-Cultural Heritage” 1992; - Governmental Decree “on Conception of Protection and Development of Intangible Cultural Heritage in Republic of Kazakhstan”, N408, 2013;	- Law N91 “on Protection and Use of Historical-Cultural Heritage” 1999; - Law N163 “on Intangible Cultural Heritage” 2012;	- Law N269-II “on Protection and Use of Objects of Cultural Heritage” 2001; - Law N3PY-229 “on Protection and Use of Objects of Archaeological Heritage” 2009;	Law on Object of Cultural Heritage 2000 and 2012;
Film	- Law “on Culture”, N207-III, 2006 (articles: 28-1-2-3-4-5-6)	- Law N86 “on State Support of Cinematography” 2001;	- Governmental Decree (GD) N126 “on Organization of the National Agency Uzbekkino” 2004; - GD N135 “on Approval of the Regulation on Licensing of Activities Related to the Production, Replication, Duplication, Sale and Rental of Films and Videos” 2004; - Governmental Order N391-p “on the Future Development of Cinematography Enhancing the Role of the Spiritual and Educational Life in the Community and Improving the Quality of Film and Video	Law on Public Support of Cinematography 1999;

¹⁴⁰ Inter – Parliamentary Assembly (IPA) of the Commonwealth of Independent States (CIS).

			Services to Population" 2009;	
Language	- Law N151-I "on Languages in Republic of Kazakhstan" 1997;	- Law N54 "on State Language of Kyrgyz Republic" 2004; - Law N52 "on Official Language of Kyrgyz Republic" 2000;	- Law N3561-XI "on State Language" 1989;	Law on languages 2004;
Libraries	Law "on Culture", N207-III-3PK, 2006, (article 24);	Law "on Libraries", N119, 2009;	Presidential Decree "on Information and Library Provision of Population", NIИИ-381, 2006;	Model Library Code 1998;
Mass media	Law "on Mass Media", N451-I, 1999;	Law "on Mass Media", N938-XII, 1992;	Law "on Mass Media", N541-I, 1997;	Law on Telecommunication 2003;
Museums	Law "on Culture", N207-III-3PK, 2006 (article 25); Rules "on Formation and Maintenance of the Museum Fund of Republic of Kazakhstan", N45, 2007;	Law "on Museums and Museum Fund of Kyrgyz Republic", N37, 2000;	Law "on Museums", N3PY-177, 2008; Presidential Decree "on Radical Improvement and Perfection of the Museums' Activity", YII-1913, 1998;	Law on Museum (fund) and Museums 1996;
Publishing	Law "on Mass Media", N451-I, 1999;	Law "on Publishing", N184, 2011;	Law "on Publishing", N274-I, 1996;	
Religion	- Law N483-IV "on Religious Activity and Religious Associations" 2011;	- Law N282 "on Freedom of religion and religious organizations" 2008;	- Law N289-XII "on Freedom of Worship and Religious Organizations" 1991;	

Table 2.2.: "Overview of the main laws regulating the cultural domain in Kazakhstan, Kyrgyzstan and Uzbekistan"

Overall, the cultural legislative framework in Kazakhstan, Kyrgyzstan and Uzbekistan is quite similar. As a matter of fact, all these countries have adopted specific *ad hoc* laws for regulating sectors such as, for instance, architecture and urban planning, cultural heritage, language, mass media, and religion.

This observation is presumably due to the shared borderlines of Kazakhstan, Kyrgyzstan and Uzbekistan and the belonging of their legislation to the civil law legal system. However, there are two other factors to be considered as a reason of this similarity: Soviet legislation and regional integration processes initiated by Russia.

2.1. Soviet legislation and Commonwealth of Independent States as the main factors of commonality between the legal systems of Kazakhstan, Kyrgyzstan and Uzbekistan

One century of common history in Soviet Union transmitted to analyzed countries common traditions of political culture and public

bodies characterized by strict control over the cultural sphere. During a Soviet period, the legal tools were adopted in the center, Moscow. Even though each Soviet Republic had own laws, adopted by own law making bodies, they had to be in accordance with the main laws of the Soviet Union.¹⁴¹

The Soviet legislation in the cultural sphere:

Architecture and urban planning.

During the Soviet Period the legal regulation of architecture and urban planning was characterized by dispersed location of the legal provisions related to this sector. The architectural activity was perceived as a part of construction brining at the end utile material results and regulated by the construction laws.¹⁴² The legislation in the

¹⁴¹ The Soviet Union adopted the main laws, which served as a model for other Soviet Republics.

¹⁴² The Soviet laws related to construction and architecture:

- VIII Congress of Workers, Peasants, Deputies of Red Army and Cossacks, Decree "on Soviet Construction", 1920, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_798.htm, last access: 15/05/2014;
- Central Executive Committee of the USSR N70, People's Commissars of the USSR N1219, Decree "on the Compilation and Approval of Planning and the Socialist Reconstruction of the Cities and other Populated Places of the USSR", 1933, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3904.htm, last access: 15/05/2014;
- USSR Council of Ministries, Instruction "on Compilation of Projects and Estimates of the Industrial and Civil Construction", 1952, N486, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4842.htm, last access: 15/05/2014;
- USSR Council of Ministries, Decree "on Model Projects of the individual Houses for Construction in the Urals, Siberia and Far East", 1946, N2195, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4622.htm, last access: 15/05/2014;
- Central Committee of Communist Party of Soviet Union, Decree "on Elimination of Lavishness in Design and Construction", 1955, N1871, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5043.htm, last access: 15/05/2014;
- Gosstroj, Gosplan and Ministry of Finance of USSR, Regulation "on contracts for Design and Survey Works", 1959, N166, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5409.htm, last access: 15/05/2014;
- USSR Council of Ministries, Decree "on Finance of Design, Project and Survey Works Related to the Construction of Powerhouses, Power grids, Reclamation Systems and Other Facilities, and Finance of Design and Projects of Countryside Construction", available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5493.htm, 1960, N72, last access: 15/05/2014;
- Central Committee of Communist Party of Soviet Union, USSR Council of Ministries, Decree "on Amelioration of Project and Estimate Works", 1969,

construction sector was shaped by the understanding of the architectural activity as purely material production.¹⁴³ The awareness of the low level of architecture appeared to the end of the XX century. As a result, the government adopted regulations regarding further

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- N390, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_7083.htm, last access: 15/05/2014;
- State Committee on Construction of the USSR Council of Ministries, Decree "on Approval of the Regulation concerning the Project Design Organization and Chief Designer", 1969, N151, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_7221.htm, last access: 15/05/2014;
 - State Committee on Science and Technology of the USSR Council of Ministries, Decree "on Approval of Regulation concerning the Research, Design and Manufacturing Organizations", 1970, N427, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_7427.htm, last access: 15/05/2014;
 - State Committee on Construction of the USSR Council of Ministries, Decree "on Approval of the Regulation concerning the Control of the Construction by the Design-Project Organizations", 1973, N228, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_8210.htm, last access: 15/05/2014;
 - Central Committee of Communist Party of the Soviet Union, USSR Council of Ministries, Decree "on Measures for Further Amelioration of the Design, Project and Estimation Works", 1981, N312, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_10707.htm, last access: 15/05/2014;
 - State Committee on Construction of the USSR, Decree "on Approval of the Instruction regarding the Composition, Elaboration, Coordination and Approval of Design and Estimate Documentation for the Construction of the Companies, Buildings and Structures", 1981, N261, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_11020.htm, last access: 15/05/2014;
 - State Committee on Science and Technology of USSR, Decree "on Approval of the Regulation concerning the Experimental Enterprise within the Design, Project and Manufacturing Organizations", 1984, N59, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_11955.htm, last access: 15/05/2014;
 - USSR Council of Ministries, Decree "on Further Development of Design, Project and Estimate Works, and Enhancement the Role of the Expertise and Control over the Construction Works", 1985, N96, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_12540.htm, last access: 15/05/2014;
 - State Committee on Construction, State Committee on Science and Technology of USSR, Decree "on Evaluation of the Design and Estimate Documentation for Construction", 1985, N28-А, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_12751.htm, last access: 15/05/2014.

¹⁴³ Pizuke H.A., "Legal regulation of architectural activity", Introduction to the Thesis for Scientific Degree of Candidate of Juridical Science, Tartu, 1984, available at: <http://www.dissercat.com/content/pravovoe-regulirovanie-arkhitekturnoi-deyatelnosti>, last access: 15/05/2014.

development of architecture and urban planning.¹⁴⁴ Only, after the Soviet Union collapse, Kazakhstan, Kyrgyzstan and Uzbekistan adopted sectorial laws regulating the architectural activity.

Circulation of the cultural properties

The regulation of the circulation of the cultural properties started immediately after the October Revolution. The Soviet government exercised strict control over the circulation of the cultural properties. There were institutes of preemption right to purchase a cultural property, expropriation of a cultural property, control over the organizations and auction houses that trade the cultural properties, prohibition of the cultural properties export from the territory of the Soviet Union, temporary export of the cultural properties for the objectives of cultural exchange.¹⁴⁵

Copyright

The idea of the socialist state, the wide use of creative achievements in public interests, did not meet the protection of the intellectual property and copyright.¹⁴⁶ The term of copyright protection

¹⁴⁴ Central Committee of Communist Party of Soviet Union, Decree “on Further Development of Soviet Architecture and Urban Planning”, 1987, N1058, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_14288.htm, last access: 15/05/2014; State Committee for Architecture and Urban Planning, Order on approval of “the Decree on the Status of a Chief Architect in Regions, Cities and Districts”, 1990, N124, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_16863.htm, last access: 15/05/2014.

¹⁴⁵ The Soviet laws related to circulation of the cultural properties:

- Council of People’s Commissars of Russian Socialist Federative Soviet Republic, Decree “on Registration of the Monuments of Art and Antiquities in the possession of Individuals and Societies and Agencies”, 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_371.htm, last access: 16/05/2014.
- RSFSR People’s Commissariat for Education, Instruction “on the Control of Trade of Antiquities and Art Objects in Auction Houses by the Department of Museums and Protection of Monuments of Art and Antiquities”, 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2008.htm, last access: 16/05/2014.
- USSR Council of Ministries, Decree “on Measures for Amelioration of the Monuments of Culture”, 1948, N3898, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4718.htm, last access: 16/05/2014.
- Law of USSR “on Protection and Use of the Monuments of History and Culture”, 1976, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9021.htm, last access: 16/05/2014.
- USSR Council of Ministries, Decree “on Approval of the Regulation Regarding the Protection and Use of the Monuments of History and Culture”, 1982, N865, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_11276.htm, last access: 16/05/2014.

¹⁴⁶ The Soviet laws related to copyright and intellectual property:

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- Council of People's Commissars, RSFSR, Decree "on Inventions", 1919, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_468.htm, last access: 21/05/2014.
 - Council of People's Commissars, RSFSR, Decree "on Patent Commission under the Supreme Council of National Economy on Protection of Rights of Foreign Inventors in RSFSR and Russian Inventors Abroad", 1921, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_985.htm, last access: 21/05/2014.
 - USSR Central Executive Committee, Council of People's Commissars, Decree "on Patent on Invention", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2162.htm, last access: 21/05/2014.
 - USSR Council of Labor and Defense, Instruction "on Patent and License on Inventions for Public Bodies", 1925, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2566.htm, last access: 21/05/2014.
 - Council of People's Commissars, RSFSR, Decree "on Measures to Develop Creativity (Inventions)", 1928, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3507.htm, last access: 21/05/2014.
 - USSR Central Executive Committee, Council of People's Commissars, Decree "on Inventions and Technical Improvement", 1931, N3, N256, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3711.htm, last access: 21/05/2014.
 - USSR Central Executive Committee, Council of People's Commissars, Regulation "on Inventions and Technical Improvements", 1931, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3712.htm, last access: 21/05/2014.
 - USSR Council of People's Commissars, Regulation "on Inventions and Technical Improvements and on Finance of Inventiveness, Technical Improvements and Suggestions for Improvement", 1941, N448, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4310.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Decree "on Finance of All-Union Association of Inventors and Rationalizers", 1958, N528, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5283.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Decree "on Amendments and Annulment of Governmental Decrees in connection with an Adoption of Decree regarding the Improvement of the Protection of Public Interests in the Sphere of Inventions and Further Amelioration of Organizations-Inventors in USSR", 1962, N1290, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5914.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Regulation "on Creations, Improvements and Innovations", 1973, N584, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8155.htm, last access: 21/05/2014.
 - USSR State Committee of Council of Ministries for Construction, Order "on Patent and Invention Service under the Gosstroiz", 1973, N58, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8222.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Decree "on Legal Protection of Designs during the Economic and Scientific Exchange", 1978, N1078, available at:

(science, literature and art) was 25 years after the death of the author (15 years before 1973).¹⁴⁷ The authors of inventions and design, the performers and other holders of related rights were not protected by the Soviet law. The inventors received a certificate of authorship and not a patent. The government was the only owner of the inventions. During the Soviet period the model authorship contracts were widely practiced. They regulated the relations between authors and users of

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- http://www.ussrdoc.com/ussrdoc_communizm/usr_9851.htm, last access: 21/05/2014.
 - USSR, Plenum of Supreme Court, Decree "on Use of the Legislation in the Court Regarding the Cases on Inventions, Rationalizations, Discoveries", 1984, N22, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_12366.htm, last access: 21/05/2014.
 - USSR State Committee for Science and Technology, State Planning Committee, State Committee for Labor and Social Issues, Ministry of Finance, All-Union Central Council of Trade Unions, Decree "on Establishment of Temporary Creative Employees in order to Implement Perspective Elaborations of Innovators to the National Farms under the Organizations of All-Union Association of Inventors, Rationalizers and Scientific Association", 1987, N440/11-33a, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_14410.htm, last access: 21/05/2014.
 - USSR Ministry of Health Protection, Order "on Screening of the Inventions and Rationalizations for the health Care System with Aim to Use Them in Medical Practice", 1988, N574, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_14900.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Decree "on Legal Protection of Inventions, Designs and Trade Marks Abroad", 1990, N300, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16359.htm, last access: 21/05/2014.
 - USSR Council of Ministries, Decree "on Payment of Royalties for the Use of Inventions", 1990, N913, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_17160.htm, last access: 21/05/2014.
 - USSR Supreme Council, Decree "on Draft Version of the Law on Scientific Intellectual Property and Strengthening its Protection", 1991, N2235-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_18908.htm, last access: 21/05/2014.
 - Council of Ministries, RSFSR, Decree "on Measures for Development of Inventions and Innovative Activities", 1991, N351, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_18992.htm, last access: 21/05/2014.

¹⁴⁷ See Bocharnikov I.V., Vladimirov D.G., Grechihin V.G., Timofeeva L.N., "Actual issues of legal regulation of protection and use of copyright in Russian Federation", *Analytical Bulletin of Federation Council*, 2011, N26 (438), available at: http://www.budgetrf.ru/Publications/Magazines/VestnikSF/2011/VSF_NEW201203301231/VSF_NEW201203301231_p_001.htm, last access: 21/05/2014.

works and products, the rate of remuneration of creators and inventors.¹⁴⁸

Cultural heritage

At the beginning of the Soviet period, the government had an objective to destroy the monuments dedicated to the Tsar and the past public order. Regardless the destruction of the part of cultural heritage, the Soviet Union dedicated a high attention to the cultural heritage. The government practiced the registration, protection and restoration of all cultural heritage within the state. The Soviet legislation regulated wide range of objects, landscape, gardens, natural parks, historic buildings and places, archeological findings and sites, architectural ensembles and historical centers of the cities, artworks, monuments and documents.¹⁴⁹ However, the intangible cultural heritage was neglected.

¹⁴⁸ See Puchkov D.V., "Establishment of the Institute of Intellectual Property", *Russian Juridical Journal*, 2011, available at: <http://puchkovpartners.ru/ru/pub/7>, last access: 21/05/2014.

¹⁴⁹ The Soviet laws related to the cultural heritage:

- Council of People's Commissars of Russian Socialist Federative Soviet Republic, Decree "on Registration of the Monuments of Art and Antiquities in the possession of Individuals and Societies and Agencies", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_371.htm, last access: 16/05/2014.
- Russian Central Executive Committee, RSFSR Council of People's Commissars, Decree "on Registration and Protection of the Monuments of Art, Antiquity and Nature", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1916.htm, last access: 16/05/2014.
- Council of People's Commissars of RSFSR, Decree "on Demolition of the Monuments Dedicated to Tsars and Their Servants, and Elaboration of Projects of Monuments Dedicated to Russian Socialist Revolution", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_270.htm, last access: 16/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Special Measures to Ensure the Public Protection of Cultural Properties", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1624.htm, last access: 16/05/2014.
- People's Commissariat for Education, RSFSR, Instruction "on Registration and Protection of the Monuments of Art, Antiquity, Mode of Life and Nature", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2079.htm, last access: 16/05/2014.
- USSR Council of Ministries, Decree "on Measures for Amelioration of the Monuments of Culture", 1948, N3898, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4718.htm, last access: 16/05/2014.
- Law of USSR "on Protection and Use of the Monuments of History and Culture", 1976, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9021.htm, last access: 16/05/2014.

Film

The legal regulation of the film production and distribution was based on several legal tools. The main principles, around which the regulation was constructed, are the government's monopoly over the film distribution, strict control over the export and import of the movies and the production of the movies, censorship of the movies, development of the filmmaking and distribution. There was a wide network of the public cinemas. The government drew a particular attention to the rural population and children, building number of cinemas dedicated to these auditory groups. The tax reduction and abolition widely practiced in order to create favorable conditions for the film production and distribution.¹⁵⁰

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- USSR Council of Ministries, Decree "on Approval of the Regulation Regarding the Protection and Use of the Monuments of History and Culture", 1982, N865, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_11276.htm, last access: 16/05/2014.
- ¹⁵⁰ The Soviet laws related to the film production and distribution:
- Council of People's Commissars, RSFSR, Decree "on Free Distribution of the Movies to the Public Organizations", 1921, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_957.htm, last access: 17/05/2014.
 - Council of People's Commissars, RSFSR, Decree "on Transformation of the Film Department under the People's Commissariat of Education to the State Film Enterprise (GosKino)", 1922, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1461.htm, last access: 17/05/2014.
 - People's Commissariat of Education, People's Commissariat of External Trade, People's Commissariat of Internal Affairs, RSFSR, Instruction "on Export and Import of the Movies", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1643.htm, last access: 17/05/2014.
 - People's Commissariat of Education, People's Commissariat of Internal Affairs, Revolutionary Military Council of the Republic, RSFSR, Decree "on Filming of the Everyday Life in RSFSR", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1658.htm, last access: 17/05/2014.
 - People's Commissariat of Education, People's Commissariat of External Trade, People's Commissariat of Internal Affairs, RSFSR, Decree "on Import and Export of Movies", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1749.htm, last access: 17/05/2014.
 - USSR Council of Labor and Defense, Decree "on Filming of the Military Buildings", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1895.htm, last access: 17/05/2014.
 - USSR Central Executive Committee, Council of People's Commissars, Decree "on Abolition of the Trade Tax for the Cinemas and Film Production", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2253.htm, last access: 17/05/2014.
 - People's Commissariat of Labor, RSFSR, Decree "on Working Conditions of Minors and Adolescents Engaged in Film Production", 1933, available at:

Language

The Soviet Union was a multiethnic state with more than 120 different languages. The Russian revolution promoted the principle of equality of all people and languages. There was no one state language according to the legislation. The constitution claimed that widely used languages were Russian, Ukrainian, Belorussian, Armenian, Turkic-

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- http://www.ussrdoc.com/ussrdoc_communizm/ussr_3910.htm, last access: 17/05/2014.
- USSR Council of People's Commissars, Decree "on Abolition of the Sales Tax for the Children's Cinemas", 1933, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3940.htm, last access: 17/05/2014.
 - USSR Presidium of Supreme Council, Decree "on Tax from the Film Projectors", 1943, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4458.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on the Model of Employees' Structure in the Cinemas of the Ministry of Culture of USSR", 1954, N170, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4927.htm, last access: 17/05/2014.
 - Council of Ministries, RSFSR, Decree "on the Status and Prospects of the Development of the Public Service in the Cinema Sphere", 1972, N320, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_7799.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on State Committee of USSR on Film Production", 1973, N944, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8226.htm, last access: 17/05/2014.
 - USSR Presidium of Supreme Council, Order "on Abolition of the Income Tax for the Demonstration of the Movies", 1975, N1295-IX, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8595.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on Dissemination of the Regulation regarding the Socialist State Production Enterprise on the Public Film Studios within the System of GosKino", 1976, N913, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9028.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on Dissemination of Regulation regarding the Enterprise Fund on Cinemas within the System of State Committee on Film Production", 1981, N1093, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_10971.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on Establishment of National Center for Cinema and Television for Children and Youth", 1989, N419, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_15608.htm, last access: 17/05/2014.
 - USSR Council of Ministries, Decree "on Establishment of Film Concern MosFilm", 1990, N1064, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17421.htm, last access: 17/05/2014.

Tatar.¹⁵¹ However, on practice the Russian language was the main language and language of interethnic communication. In 1990, the Russian language acquired the status of official language, which it still maintains in some Central Asian countries.¹⁵²

Libraries

The Soviet legislation in the sphere of libraries was comprehensive. The reason for the detailed regulation of this sector, lies in believe of the Soviet government that the libraries are the most popular and accessible centers for spreading knowledge and education.¹⁵³ Immediately after the Russian Revolution the government proclaimed the libraries in the state ownership and publicly accessible. The governmental management of the libraries was highly centralized. All libraries composed one library network under the People's Commissariat of Education before 1960 and then under the Ministry of Culture. The legislation made provisions for the additional opening of the libraries in enterprises, factories, residential buildings, and rural areas. The libraries were ideological institutions.¹⁵⁴

¹⁵¹ Article 34, the Main Law (Constitution) of USSR, 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1717.htm, last access: 18/05/2014.

¹⁵² The Soviet laws related to the languages:

- USSR Central Executive Committee, Council of People's Commissars, Decree "on the Issuance of Banknotes (sample of 1923) with an Inscription in the Languages Specified in the Article 34 of the Constitution of USSR", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1869.htm, last access: 19/05/2014.
- All-Russian Central Executive Committee, Decree "on Measures to Transfer the Paperwork in the Public Bodies of the National Regions and Republics on the Local Languages", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1995.htm, last access: 18/05/2014.
- USSR Presidium of Central Executive Committee, Decree "on Publication of Literature on the Languages of the Ethnic Minorities", 1931, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3787.htm, last access: 18/05/2014.
- USSR Ministry of Higher and Specialized Secondary Education, Order "on Measures to Ensure the Learning of the Russian Language by Foreign Students During the Whole Period of Education in USSR", 1975, N78, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8493.htm, last access: 18/05/2014.
- Law of USSR "on Languages", 1990, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_16479.htm, last access: 18/05/2014.

¹⁵³ See Boikova O.F., Klyuev V.K., *Legal Environment of Russian Library/ Pravovaya Sreda Rossiiskoi Biblioteki: Uchebnoe Posobie*, Liberia-Bibinform, Moscow, 2011, p.21

¹⁵⁴ The Soviet laws related to the libraries:

- Council of People's Commissars, RSFSR, Decree "on Protection of the Libraries and Book Depositories", 1918, available at:

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- http://www.ussrdoc.com/ussrdoc_communizm/ussr_317.htm, last access: 18/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Requisition of the Libraries, Book Depositories and Books", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_399.htm, last access: 18/05/2014.
 - Council of People's Commissars, RSFSR, Decree "on Abolition of the Private Ownership Regarding the Archives of the Russian Writers, Composers, Painters and Scientists in the Libraries and Museums", 1919, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_473.htm, last access: 18/05/2014.
 - Council of People's Commissars, RSFSR, Decree "on Centralization of the Libraries", 1920, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_763.htm, last access: 18/05/2014.
 - People's Commissariat of Justice, RSFSR, Circular Letter "on Prosecution according to the Article 185 of Criminal Code, of Those That Do Not Return the Books They Received from the Public Libraries", 1923, N2, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1475.htm, last access: 18/05/2014.
 - Central Committee of All-Union Communist Party of Bolsheviks, Circular Letter "on Strengthening of the Party's Influence on the Work of the Libraries", 1923.
 - USSR Central Executive Committee, Decree "on the Libraries in USSR", 1934, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3974.htm, last access: 18/05/2014.
 - USSR Council of the Ministries, Decree "on Use of the Book Funds of the Libraries", 1959, N11, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5368.htm, last access: 18/05/2014.
 - Ministry of Culture, Ministry of Justice, RSFSR, Letter, 1971, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_7563.htm, last access: 18/05/2014.
 - USSR Ministry of Culture, Regulation "on Centralization of the Public Mass Libraries", 1975, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8496.htm, last access: 18/05/2014.
 - Central Committee of the Communist Party of the Soviet Union, Decree "on Enhancement of the Libraries' Role in the Communist Education of Workers and Scientific-Technological Progress", 1974.
 - USSR Ministry of Education, Letter "on Model Regulation of the School Library", 1975, N28-M, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8634.htm, last access: 18/05/2014.
 - USSR Council of Ministries, Regulation "on State Interagency Committee on Library under the Ministry of Culture of USSR", 1975, N847, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8735.htm, last access: 18/05/2014.
 - USSR Vice-Minister of Culture, Vice-Minister of Finance, Instruction "on Keeping of the Library Fund in the Public Mass Libraries, United in the Centralized Library Network of the Ministry of Culture", 1977, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9402.htm, last access: 18/05/2014.

Mass Media (Publishing and Television)

Publishing was the most important sector of the Soviet cultural policy.¹⁵⁵ Even though, after the Russian Revolution the publishing organizations were not proclaimed under the state ownership, like the libraries, the Soviet government gradually established the monopoly in the publishing sphere through licensing of this activity. The government also practiced censorship of all publishing materials. The bodies of censorship were State Publishing Office, then after 1922, the Main Office for Literature and Publishing (Glavlit), and after 1973, the State Committee for Publishing, Polygraphy and Bookselling. The Soviet government attempted to develop publishing by tax deduction.¹⁵⁶

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- USSR Secretary of All-Union Central Council of Trade Unions, Collegium of the Ministry of Culture, Decree "on Model Regulation of Organizations within the Network of Mass Libraries", 1977, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9512.htm, last access: 18/05/2014.
 - USSR Ministry of Culture, "Model Regulation of Library's Use in USSR", 1986, N01, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_13113.htm, last access: 18/05/2014.
 - USSR Ministry of Culture, Regulation "on Use of Centralized Library System of the Ministry of Culture", 1986, N502, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_13668.htm, last access: 18/05/2014.
 - USSR Ministry of Culture, Order "on Paid Services in the Libraries", 1987, N11, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_13749.htm, last access: 18/05/2014.
 - USSR President, Order "on Urgent Measures to Develop the Largest Libraries in the State", 1991, NYTI-1808, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_18583.htm, last access: 18/05/2014.

¹⁵⁵ See Publichuk E. (interview to Goryaeva T.), *How the culture was managed in Soviet Union*, 2009, available at: <http://bigbook.ru/articles/detail.php?ID=7401>, last access: 19/05/2014.

¹⁵⁶ The Soviet laws related to publishing:

- All-Russian Executive Committee, Decree "on Public Publishing", 1917, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_134.htm, last access: 18/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Private Publishing Organizations", 1921, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1263.htm, last access: 18/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Main Office for Literature and Publishing", 1922, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1340.htm, last access: 18/05/2014.
- Council of People's Commissars, RSFSR, Decree "on State Publishing Office", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1706.htm, last access: 18/05/2014.

The television in the Soviet Union was publicly owned. The State Committee on Television and Broadcasting hold monopoly over the television and broadcasting in the country. It was responsible for the ideological, political and artistic level of the TV and radio programs. The government used television in communist education and mobilization of workers.¹⁵⁷ In 1990 the television was democratized and the control of political over the television party was abolished.

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- USSR Central Executive Committee, Council of People's Commissars, Decree "on Tax Deduction for the Publishing and Bookselling", 1924, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2055.htm, last access: 18/05/2014.
 - USSR Council of Ministries, Decree "on Measures for Amelioration of Publishing and Rectification of Deficiencies in Bookselling", 1964, N604, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_6104.htm, last access: 18/05/2014.
 - USSR Council of Ministries, Decree "on Transfer of the Public Publishing Organizations to the New System of Planning and Economic Stimulation", 1968, N473, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_6830.htm, last access: 18/05/2014.
 - USSR Council of Ministries, Decree "on State Committee for Publishing, Polygraphy and Bookselling", 1972, N895, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_7959.htm, last access: 18/05/2014.
 - USSR Council of Ministries, Regulation "on State Committee for Publishing, Polygraphy and Bookselling", 1973, N776, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8188.htm, last access: 18/05/2014.

¹⁵⁷ The Soviet laws related to television:

- USSR Council of Ministries, Decree "Measures for Further Development of Television in USSR", 1955, N1689, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5033.htm, last access: 19/05/2014.
- Council of Ministries, RSFSR, Decree "on Establishment of Committees and Editorial Offices in Autonomous Republics and Regions of RSFSR", 1957, N1299, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5250.htm, last access: 19/05/2014.
- USSR Ministry of Communication, Order "on Introduction of the Project Norms Regarding the TV and Radio Stations", 1960, N669, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5600.htm, last access: 19/05/2014.
- Council of Ministries, RSFSR, Decree "on Montage and Technical Service of TV Antenna of Collective Use", 1961, N1251, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_5728.htm, last access: 19/05/2014.
- USSR Ministry of Communication, State Committee on Television and Radio, Order "on Reservation of the Channels for the Transmission of Particularly Important Emissions", 1970, N618, N310, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_7385.htm, last access: 19/05/2014.

The first law on mass media was adopted only in 1990. It proclaimed the freedom of mass media and abolishment of the censorship.¹⁵⁸

Museums

The museums during Soviet period were state owned. The Soviet government recognized the important role of the museums in the

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- USSR Council of Ministries, Decree "on State Committee on Television and Radio", 1971, N151, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_7491.htm, last access: 19/05/2014.
 - Council of Ministries, RSFSR, Decree "on Situation and Perspectives of Television Development in RSFSR", 1972, N177, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_7785.htm, last access: 19/05/2014.
 - Presidium of Supreme Council, RSFSR, Decree "on All-Union State TV and Radio Company", 1990, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16836.htm, last access: 19/05/2014.
 - President of USSR, Order "on Democratization and Development of TV and Radio in USSR", 1990, N357, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16841.htm, last access: 19/05/2014.
 - USSR Council of Ministries, Decree "on Organizational Streamlining of TV and Radio in USSR", 1990, N718, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16875.htm, last access: 19/05/2014.

¹⁵⁸ The Soviet laws related to mass media:

- USSR Council of Ministries, Regulation "on Professional Activity of Foreign Journalists on the Territory of USSR", 1989, N304, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_15559.htm, last access: 18/05/2014.
- The Law of USSR "on Publishing and other Mass Media", 1990, N1552-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16715.htm, last access: 18/05/2014.
- USSR Council of Ministries, Decree "on Registration, Charging and Amount of the Fee for Registration of Mass Media Aimed to Reach All-Union Auditory", 1990, N770, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_16950.htm, last access: 18/05/2014.
- USSR Council of Ministries, Temporary Regulation "on Main Department for the Protection of the State Secrets in Publishing and Other Mass Media", 1990, N843, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_17098.htm, last access: 18/05/2014.
- USSR Council of Ministries, Decree "on Repeal of Certain Decisions of USSR Government due to the Adoption of Law on Publishing and Other Mass Media", 1990, N1067, available at: http://www.ussrdoc.com/ussrdoc_communizm/usr_17429.htm, last access: 18/05/2014.

Cultural Revolution and the socialist building. The activities of the museum were directed to educate workers. The particular target group was youth. The education of youth was realized through provision of the examples from the life of Lenin V.I., history of Communist Party, revolutionary, combat and labor traditions of the people within the spirit of Soviet patriotism and Socialist internationalism. The museum exhibitions were aimed to reflect the achievements of the socialist society, the activities of Communist Party and Soviet State, the objectives for the further development industry and agricultural production.¹⁵⁹

Religion

¹⁵⁹ The Soviet laws related to museums:

- All-Russian Executive Committee, Council of People's Commissars, RSFSR, Decree "on Transfer of the Museum and Art Organizations of Local Significance to the Jurisdiction of Local Executive Committees", 1925, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_2646.htm, last access: 21/05/2014.
- All-Russian Central Executive Committee, Council of People's Commissars, RSFSR, Decree "on Museum Building in RSFSR", 1928, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3437.htm, last access: 21/05/2014.
- USSR Council of Ministries, Direction, 1953, N8125-p, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_4897.htm, last access: 21/05/2014.
- USSR Council of Ministries, Decree "on Museum Fund of USSR", 1965, N428, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_6252.htm, last access: 21/05/2014.
- Ministry of Culture, RSFSR, Order "on Improvements of Scientific Work Regarding the Art and Activity of Art Museums in RSFSR", 1974, N178, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_8270.htm, last access: 21/05/2014.
- USSR Ministry of Culture, Order "on Implementation of Instruction Regarding the Receiving of the Medals for Exposition Purposes", 1977, N838, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_9469.htm, last access: 21/05/2014.
- Council of Ministries RSFSR, Decree "on Measures for Further Development of Museum Activity in RSFSR", 1983, N77, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_11459.htm, last access: 21/05/2014.
- Ministry of Culture RSFSR, Order "on Enforcement of the Instruction regarding the Registration and Storage of the Museum Values", 1985, N406, last access: 21/05/2014.
- Ministry of Culture RSFSR, Order "on Transfer of Number of Functions from the Ministry to Local Departments of Culture and Museums", 1988, N13, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_14533.htm, last access: 21/05/2014.
- Annex to the Order of the Ministry of Culture of USSR, 1988, N483, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_15346.htm, last access: 21/05/2014.

The Soviet legislation in the religious sphere was based on different legal tools. In the beginning of the Soviet period, the government attempted to weaken the power of Orthodox Church, nationalizing the property of the church and registering local religious associations.¹⁶⁰ Regardless the measures undertaken to destroy the unified structure of the church, the Soviet legislation proclaimed the freedom of religion, granting the right to profess any religion, the right to change religion, the right not to profess any religion, the right to atheistic propaganda. The All-Union main law regarding the religion was adopted only in 1990.¹⁶¹

¹⁶⁰ Polozova K.A., "Reflection of Soviet Law on Activities of Orthodox Religious Associations in the period of 1929-1990", Dissertation for the degree of candidate of historical science, Ivanovskii State University, 2014, p.27, available at: http://ivanovo.ac.ru/jdownloads/dissov/%20212.062.02/text_diss_02/polozova.pdf, last access: 20/05/2014.

¹⁶¹ The Soviet laws related to religious sphere:

- Council of People's Commissars, RSFSR, Decree "on Freedom of Religion, Church and Religious Associations", 1918, available at: <http://www.sovross.ru/modules.php?name=News&file=print&sid=2496>, last access: 20/05/2014.
- People's Commissariat of State Charities, RSFSR, Order "on Discontinuation of Church Financing", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_175.htm, last access: 20/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Separation of Church from the State and School from the Church", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_181.htm, last access: 20/05/2014.
- People's Commissariat of Justice, RSFSR, Decree "on Realization of the Decree Regarding the Separation of the Church from the State and School from the Church", 1918, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_347.htm, last access: 20/05/2014.
- Council of People's Commissars, RSFSR, Decree "on Exemption from military Service Because of Religious Beliefs", 1919, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_434.htm, last access: 20/05/2014.
- People's Commissariat of Justice, RSFSR, Circular Letter «on Non Proceeding with the Requests of Divorce regarding the Religious Marriages after September 20 1917», 1922, N11, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1294.htm, last access: 20/05/2014.
- People's Commissariat of Justice, RSFSR, People's Commissariat of Internal Affairs, RSFSR, Instruction "on Realization of Decree regarding the Separation of the Church from the State", 1923, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_1687.htm, last access: 20/05/2014.
- All-Russian Central Executive Committee, Decree "on Termination of the Work in Enterprises not Specified by the Labor Code Day of Religious Holidays", 1925, available at:

Another factor that played important role in the legal similarity between analyzed countries is the integration process on the Post-Soviet territory pursued by the Inter - Parliamentary Assembly (IPA) of the Commonwealth of Independent States (CIS).

The IPA of CIS is an advisory body that was created in order to discuss and review the draft documents of common interests for the Post-Soviet Union countries.¹⁶² In other words, the IPA of CIS aims to harmonize the legislative framework of its member states, thereby

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- http://www.ussrdoc.com/ussrdoc_communizm/ussr_2329.htm, last access: 20/05/2014.
- All-Russian Central Executive Committee, Council of People's Commissars, RSFSR, Decree "on Religious Associations", 1929, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_3566.htm, last access: 20/05/2014.
 - Council of Ministries, RSFSR, Order, 1989, N376-p, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_15591.htm, last access: 20/05/2014.
 - USSR Law "on Freedom of Religion and Religious Organizations", 1990, N1689-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17302.htm, last access: 20/05/2014.
 - USSR Supreme Council, Decree "on Enforcement of the Law on Freedom of Religion and Religious Organizations", 1990, N1690-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17303.htm, last access: 20/05/2014.
 - USSR Council of Ministries, Decree "on Donation of the Worship Objects to Religious Organizations", 1990, N1324, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17834.htm, last access: 20/05/2014.
 - USSR Council of Ministries, Decree "on Donation of the State-Owned Religious Buildings and Other Property of Religious Purpose to Religious Organizations", 1990, N1372, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17938.htm, last access: 20/05/2014.
 - USSR Council of Ministries, Decree "on Annulation of the USSR Governmental Decisions in Connection with the Adoption of the Law on Freedom of Religion and Religious Organizations", 1991, N10, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_17961.htm, last access: 20/05/2014.
 - USSR Law "on Amendments to Legal Acts of USSR in Connection with the Adoption of Law on Freedom of Religion and Religious Organizations", 1991, N2121-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_18605.htm, last access: 20/05/2014.
 - USSR Law "on Amendments to the Law on Freedom of Religion and Religious Organizations", 1991, N2225-1, available at: http://www.ussrdoc.com/ussrdoc_communizm/ussr_18886.htm, last access: 20/05/2014.

¹⁶² See article 1, "Agreement on Inter-Parliamentary Assembly of Party-States to Commonwealth of Independent States", 1992, available at: www.iaicis.ru/upload/iblock/20a/sogl_ipa.pdf, last access: 17.08.2013

creating on the Post-Soviet territory a common legal field.¹⁶³ Though the model laws adopted by the IPA are of a consultative nature (thus, not binding for its member states), they are very often taken into account by CIS member states while developing their national legislation. Along with security, economy and political issues the IPA actively works on the regulation of the cultural sphere, elaborating model laws for different cultural sectors. Starting from 1996, IPA has adopted model laws: on Protection of Archeological Heritage (1996), on Museum Collection and Museums (1996), on Artists and Artistic Associations (1997), on Public Support of Cinematography (1999), on Protected Areas (1999), on Archives and Archival Collections (1999), on Natural Reserves (2001), on Theatre and Theatrical Activity (2001), on International Information Exchange (2002), on Telecommunications (2003), on Languages (2004), on Culture (2004), on Right of Access to Information (2004), on Tourism (2006). In some cases, these laws have been revised and updated in successive years. The model law on Copyright and Neighboring Rights, for example, was first adopted in 1996 and readopted in 2005. The same fate happened with the model laws on Philanthropy, which has two editions, the first one in 1997, and the second in 2008; and on Objects of Cultural Heritage, adopted in 2000 and readopted in 2012.

Although without being a member, Uzbekistan (as Kazakhstan and Kyrgyzstan) has structured various national laws according to the models developed by the IPA.¹⁶⁴ For instance, the Uzbek law “on Museums” has clearly been adopted on the base of the IPA’s model law “on Museum Collection (fund) and Museums”. Comparing these two legal tools comes out a shared conceptual apparatus (particularly for what concerns the definitions of museum object, museum collection, museum collection (fund), museum, storage and publication) and analogous provisions for the regulation of several issues like, for example, the inclusion and exclusion of cultural artifacts in the museum collection (fund), their passage of ownership, the rules for the exportation of museum collections, the responsibilities of the public museum with regard to the museum objects, the public control over the public and private parts of the museum collection (fund), the goals of the museums as cultural institutions, the access to museum collections, and the exhibition (and publication of informative materials) of museum objects.

¹⁶³ See the official web page of Inter-Parliamentary Assembly of Party-States to Commonwealth of Independent States, the objectives of IPA CIS, available at: www.iacis.ru/about/index.php, last access: 17.08.2013

¹⁶⁴ Though Uzbekistan is a party to Commonwealth of Independent States (CIS).

2.2. Film, intangible heritage and mass media – different legal regulations

Despite the points of contact highlighted above, there are also some significant differences to consider. To begin with, both Kazakhstan and Kyrgyzstan have adopted the Law on Culture that sets the main objectives (in Kazakhstan) and duties (in Kyrgyzstan) of the government toward the cultural domain, and establishes the guiding principles of national cultural policy. Despite these common features, these two laws have different functions. In Kazakhstan the Law on Culture is a comprehensive legal tool that provides specific provisions for the regulation of different sectors of culture and arts: cinemas, circulation of cultural property, the listing process of national cultural patrimony, and the activities of cultural organizations. This law also divides powers and competencies between the public bodies of the central and local governments. In Kyrgyzstan, on the contrary, the Law on Culture only provides the legal terms and basis for the public relationships in the cultural sphere.

At present, in the Republic of Uzbekistan there is not a Law on Culture. However, it seems that the Uzbek government is planning to adopt soon a law of such kind. On 11th August 2012 the minister (Ministry of Culture and Sport Affairs) Kuziev T. organized a meeting with the main cultural elites (like. For example, composers, producers, directors of orchestras) aimed to familiarize this group of interests with the governmental first draft Law on Culture. Unfortunately, this draft version of the law has not published anywhere and its content is publically unknown.

Second, the body of legal regulation in the film sector in Uzbekistan is noticeably larger than in Kazakhstan and Kyrgyzstan. This result seems related to the strong development of the film industry in Uzbekistan after independence. The dissolution of the Soviet Union has caused the collapse of the film industry in all Post-Soviet territories, with the exception of Uzbekistan where the government invested a high amount of money in this sector. Thanks to this financial support, the film industry in Uzbekistan has been able to produce and distribute a considerable number of movies in the last 20 years: around 90% of all movies distributed in Uzbekistan through the cinema network are made in this same country.¹⁶⁵ As a result of this outstanding outcome, Uzbekistan has gained the label of “Central Asian Bollywood”.¹⁶⁶

¹⁶⁵ See interview with Sherbakova E., by TajiTa, 2012, available at: <http://tajikta.tj/?q=ru/news/47>, last access: 26/08/2013.

¹⁶⁶ See Abikeeva G., “Film and Cultural Influences in Central Asia”, pub. In magazine *Neprikosnovennyi Zapas*, 2009, N4(66), available at: <http://magazines.russ.ru/nz/2009/4/ab17.html>, last access: 27/08/2013; Baigozhina A., “Uzbekistan: Bollywood of Asian Spill?”, *Tochka-Treff*, 2010, available at:

Differently, in Kazakhstan and Kyrgyzstan the cinematographic sector faced a long phase of decline after Soviet Union breakdown. In Kazakhstan, for example, the Kazakh movies constitute only 3-7% of all movies distributed in the country through cinema network.¹⁶⁷ Moreover, according to the data provided in 2012 by Amanshaev E. (director of Kazakh public film-making company “Kazakhfilm”), the attendance to the movies of domestic production is extremely low (around 8%). According to the data provided by the director of Kazakh public film-making company “Kazakhfilm”, Amanshaev E. in 2012 there were distributed to cinemas only 14 Kazakh movies from total number of 281 movies.¹⁶⁸ In Kyrgyzstan, the situation is even poorer. In 2011 there were only 38-32 projecting machines for all country.¹⁶⁹ This means that each projecting machine covered more than 150.000 people.¹⁷⁰ Moreover, starting from the year 2000, the annual attendance to cinema per person drop from 14 visits to 0.3.¹⁷¹ Famous Kyrgyz film directors and producers, Dzhumayev E., Alykulov M. and Vyboychenko O. commented this awful scenario stating that “the Kyrgyz

www.goethe.de/ins/ru/lp/prj/drj/top/wtt/010/kik/ru5754792.htm, last access: 27/08/2013.

¹⁶⁷ See interview with Sherbakova E., by TajiTa, 2012, available at: <http://tajikta.tj/?q=ru/news/47>, last access: 26/08/2013. To be more precise, the Kazakh movies distributed in Kazakhstan, in 2009 and 2010 were respectively 5.2% and 6.5% of the whole. Data source: Strategic Plan of the Ministry of Culture and Information of the Republic of Kazakhstan for 2011-2015, Governmental Decree of the Republic of Kazakhstan, N96, 2011.

¹⁶⁸ Amanshaev E. also highlights that, in 2012, 281 films were distributed to cinemas in Kazakhstan, but only 14 of them were of Kazakh production. See interview with Amanshaev E., “Чтoby sderzhat’ natisk zarubezhnyh filmov nam neobhodimo uvelichivat’ dolyu kazahstanskogo kino”, News Paper Express-K, 2013, available at: www.interfax.kz/?lang=rus&int_id=quotings_of_the_day&news_id=6149, last access: 26/08/2013

¹⁶⁹ For data of 38 projecting machines see “Strategy development of cinematography: Cinema in Kyrgyzstan – 2020”, Department of Cinematography, Ministry of Culture, Information and Tourism of Kyrgyz Republic DRAFT, available at: <http://minculture.gov.kg/кинематография-өнүктүрүү-стратегияс?lang=ru>, last access: 04/09/2013; For data 32 projecting machines see “Kazakhstan and the countries of CIS”, *Quarterly Journal 1/2013*, Agency of Kazakhstan on Statistic, Astana 2013, available at:

<http://www.stat.kz/publishing/DocLib2/2013/Казахстан%20и%20страны%20СНГ/Казakhstan%20и%20страны%20СНГ%20№1%202013%20int.pdf>, last access: 04/09/2013

¹⁷⁰ See “Kazakhstan and the countries of CIS”, *Quarterly Journal 1/2013*, Agency of Kazakhstan on Statistic, Astana 2013, available at: <http://www.stat.kz/publishing/DocLib2/2013/Казахстан%20и%20страны%20СНГ/Казakhstan%20и%20страны%20СНГ%20№1%202013%20int.pdf>, last access: 04/09/2013

¹⁷¹ This is an enormous pressure for one projecting machine. Take into consideration, for example, that, in Kazakhstan the number of people served in 2011 by one projecting machine was three times less (46.709 people). See “Strategy development of cinematography: Cinema in Kyrgyzstan – 2020”, Department of Cinematography, Ministry of Culture, Information and Tourism of Kyrgyz Republic DRAFT, available at: <http://minculture.gov.kg/кинематография-өнүктүрүү-стратегияс?lang=ru>, last access: 04/09/2013

to the intangible cultural heritage seems also a consequence of the “Epos Manas” case.¹⁷⁶ In 2009, China, acting on the behalf of the Kyrgyz minority living in Xinjiang, inscribed the “Epos Manas” within the UNESCO Representative List of Intangible Cultural Heritage of Humanity. However, the Kyrgyz government vigorously protested, perceiving such action as an illegitimate tentative of the Chinese government aimed to deprive Kyrgyzstan of one of its main symbols of national identity.¹⁷⁷ This incident contributed to the rise of the awareness toward the intangible cultural heritage, pushing the Kyrgyz government to adopt a comprehensive law for the protection of this heritage (adopted in 2012) and other special measures aimed to justify the belonging of the “Epos Manas” to the Kyrgyz Republic. In particular, in 2011 Kyrgyzstan adopted the law “on Epos Manas”, establishing governmental responsibilities to safeguard, protect, develop and popularize the epic trilogy “Manas”.¹⁷⁸ Then, the government elaborated a national program, for the period 2012-2017, specifically aimed to safeguard, study and popularize the epos “Manas”. Around 20 million of sums (almost 409000 dollars, which means 0.0063% of 2012 GDP)¹⁷⁹ were invested for the development of

[25B5%25D0%25BA%25D1%2582-%25D0%25A1%25D1%2582%25D1%2580%25D0%25B0%25D1%2582%25D0%25B5%25D0%25B3%25D0%25B8%25D0%25B8-%25D0%25BA%25D1%2583%25D0%25BB%25D1%258C%25D1%2582-%25D0%25B4%25D0%25BE-2020-%25D0%25B3%25D0%25BE%25D0%25B4%25D0%25B0.doc&ei=eJ0pUtqzC-fm4QS7j4CIDA&usg=AFQjCNHu0obbRPV6wfFJxWqxHvPfb-MGEw&bvm=bv.51773540,d.bGE](#), last access: 06/09/2013

¹⁷⁶ The “Epos Manas” is a traditional Kyrgyz epic poem.

¹⁷⁷ See Bekesheva M, “Kyrgyzstan protests UNESCO’s listing of Epic of Manas as Chinese: Beijing claims it applied on behalf of its ethnic Kyrgyz citizens”, *Central Asia Online*, 2010, available at: http://centralasiaonline.com/en_GB/articles/caii/features/entertainment/2010/02/20/feature-02, last access: 06/09/2013

¹⁷⁸ See article 4, *Law of Kyrgyz Republic on Epos Manas*, N59, 2011

¹⁷⁹ This index is fairly high, particularly comparing it to the Kazakh one. Kazakhstan in 2004 invested around 1933.6 million of tenge (12 890 666 \$) for a two years wide range program on “Cultural Heritage”. This program continued in 2007 for other two years and again in 2009 for further two years (till 2011). During the second (2007-2009) and third (2009-2011) waves of this program the Kazakh government invested 4004.9 (26 699 33 \$) and 4926 (32 840 000 \$) million of tenge respectively. It was during the second wave of the program that the Kazakh government invested the huger amount of funds to intangible cultural heritage: 137.3 million of tenge (915 333 \$), which is around 0.00087% of the 2007 GDP. Therefore, in 2011 Kyrgyzstan invested 0.0063% of GDP for the protection and promotion of its intangible cultural heritage, while Kazakhstan (in the two-year period 2007-2009) invested only 0.00087% of GDP for this heritage.

Kyrgyz GDPs source: http://data.worldbank.org/indicator/NY.GDP.MKTP.CD/countries/1W?page=1&order=wbapi_data_value_2012%20wbapi_data_value%20wbapi_data_value-last&sort=asc&display=default, last access: 10/09/2013.

For the “Cultural Heritage” program in Kazakhstan see: Passport of “the Governmental Program – Cultural Heritage 2004-2006”, enforced by Presidential Order N1277 of the

this program, which entailed the opening of art schools of *manaschi*¹⁸⁰, the elaboration and implementation of curriculum “Manas studies” in schools and universities, the publication of different materials related to “Epos Manas”, the production of special programs dedicated to Kyrgyz intangible cultural heritage and “Epos Manas”, the establishment of a Presidential Award for storytellers, and the planning of national and international festivals dedicated to folk art and “Epos Manas”.¹⁸¹ Furthermore, the Kyrgyz government filmed a short movie about “Epos Manas” and started the procedure to enlist, as a Kyrgyz intangible asset, the trilogy of “Epos Manas” in the UNESCO Representative List of Intangible Cultural Heritage of Humanity.¹⁸² As a result, it seems evident that the “Epos Manas” episode played a core role in the successive development of the Kyrgyz legislation on the intangible cultural heritage.

Finally, table 2.2. evidences the absence of a law on publishing in Kazakhstan, contrary to Kyrgyzstan and Uzbekistan.¹⁸³ In 2006, the Ministry of Culture and Information of Kazakhstan elaborated a draft law on publishing that, however, has never been approved by the Parliament. The Kazakh journalistic community has strongly criticized this “sleepiness”, perceiving it as an endless attempt to limit the freedom of speech.¹⁸⁴ Moreover, the journalists accuse the Ministry of Culture and Information to be only interested at introducing a restrictive system of licenses in this sector. Those who sustain this position remind that few months before the reading of the law “on publishing” in the Parliament, the Ministry of Culture and Information presented some amendments to the law “on mass media”. One of the key provisions lobbied by the ministry was the introduction of the institute of licensing for the printing companies, but this amendment

Republic of Kazakhstan, 2004, available at: <http://adilet.zan.kz/rus/docs/U040001277>, last access: 10/09/2013; “Program Cultural Heritage 2007-2009”, enforced by the Governmental Decree of the Republic of Kazakhstan N1203, 2007, available at: <http://adilet.zan.kz/rus/docs/P070001203>, last access: 10/09/2013; and Action Plan of the National Project “Cultural Heritage 2009-2011”, enforced by Governmental Decree of the Republic of Kazakhstan N158, 2009, available at: http://adilet.zan.kz/rus/docs/P090000158_#z7, last access: 10/09/2013.

¹⁸⁰ Manaschi – storyteller and performer of the epos Manas.

¹⁸¹ See National program of safeguarding, study and popularization of epos “Manas” in a period from 2012-2017, enforced by Governmental Directive of Kyrgyz Republic N67, 2012.

¹⁸² This process should be completed during the next session of Intergovernmental Committee for Safeguarding of the Intangible Cultural Heritage, which will take place in Baku, in 2013.

¹⁸³ In Kazakhstan the Law on Mass Media (N451-I, 1999) regulates the sector of publishing.

¹⁸⁴ See the “Petition of Journalistic Non-Governmental Organizations of Kazakhstan on Another Attempt of the Ministry to Limit the Freedom of Speech” addressed to the Parliament of the Republic of Kazakhstan, 2006, available at: http://online.zakon.kz/Document/?doc_id=30080078, last access: 11/09/2013

did not gain the approval of the Parliament. Few months later the Ministry of Culture and Information represented the same provision, but this time it was included in the draft version of the new law “on publishing”. Although this provision was successively withdrawn due to the pressure of OSCE, this topic is still subject of lively debate in Kazakhstan.¹⁸⁵ According to the minister Ertyshaev E., the introduction of a system of licensing (technical certifications) for the publishing companies is a requirement of WTO (and he gives the example of Austria where the production and sale of the printed products require a trade license).¹⁸⁶ Differently, the organization Article19 – Global Campaign for Free Expression does not support the arguments of the minister, perceiving this measure as an illegitimate attempt of censorship.¹⁸⁷ Therefore, this clash between the parties involved is presumably one of the main reasons why in Kazakhstan there is not yet a law on publishing.

3. Are the presidents driving force of governmental cultural policy?

Apart from the sectorial laws, there are other legal tools that complete the cultural legislations in Kazakhstan, Kyrgyzstan and Uzbekistan.¹⁸⁸

In Kazakhstan, the presidential memorandums have a significant impact on the cultural sphere. In particular, through these documents

¹⁸⁵ See “ the Minister of Culture is meeting the wishes of the OSCE and has rejected the idea of licensing of the publishing activities (summary)”, Kazakhstan Today, 2007, available at: http://www.kt.kz/rus/society/ministr_kuljuri_idja_navstrechu_pozhelanijam_obse_ot_kazalsja_ot_idei_o_licenzirovanii_izdateljskoj_dejateljnosti_obobshtenie_1153414167.html, last access: 11/09/2013. Overall, in Central Asia there is not a shared way to approach this issue. For example, while Kyrgyz law on publishing does not include the institute of licensing for the publishers, Uzbek law on publishing does. According to the Uzbek law: legal and natural persons may engage in publishing activities after obtaining a license. See article 6, Law of the Republic of Uzbekistan on Publishing, N274-I, 1996.

¹⁸⁶ See the interview of Kvyatkovskii O. with the Minister of Culture and Information, “Ernuhamet Ertyshaev: Tell Truth – Nice and Easy...”, *Kazhastanskaya Pravda - National Daily Newspaper*, № 232 (27506) 13.07.2013, available at: <http://kazpravda.softdeco.net/c/1175285506>, last access: 11/09/2013.

¹⁸⁷ See Article19 – Global Campaign for Free Expression, “Memorandum on the draft Law of the Republic of Kazakhstan on Publishing”, 2007, available at: <http://www.article19.org/data/files/pdfs/analysis/kazakhstan-publishing-06.pdf>, last access: 13/09/2013

¹⁸⁸ Be aware that in Kazakhstan and Uzbekistan, the president of the republic has right of legislative initiative and that his orders occupy high level within the hierarchy of the normative legal acts. Concerning the right of the legislative initiative see article 61, *Constitution of the Republic of Kazakhstan*, 1995 and article 83, *Constitution of the Republic of Uzbekistan*, 1992; concerning the hierarchy of the normative legal acts see article 3, *Law of the Republic of Kazakhstan on Normative Legal Acts*, 1998, N.213-I and article 5, *Law of the Republic of Uzbekistan on Normative Legal Acts*, 2000, N.160-II.

the President may determine a set of long-term goals and general strategies for the Ministry of Culture (who has, nonetheless, the freedom to choose the practical measures to be implemented for successfully achieving these objectives).¹⁸⁹ To give an example, on 14 December 2012 President of the Republic Nazarbayev N. introduced, through the presidential memorandum denominated “Strategy – 2050”, the *New Kazakhstani Patriotism*, a strategic document (“direction”) aimed to preserve and strengthen the social cohesion of the multi-ethnic Kazakh population on the base of principles like equality of rights, nondiscrimination, national pride, confidence in the future, trinity of languages (Kazakh, Russian, English), respect of religion, culture and traditions.¹⁹⁰ The related National Action Plan (developed by the president for the implementation of these goals), assigned to the Ministry of Culture the responsibility to: enhance the role of the intellectuals in strengthening national values and Kazakhstani identity, popularize Kazakh language, convert Kazakh alphabet into Latin, make a list of top books to be translated in Kazakh language, encourage the introduction of trinity of languages, elaborate governmental programs and legal measures for preventing the diffusion of religious extremism and terrorism, develop measures aimed to overcome social, ethnic and religious tensions.¹⁹¹ Furthermore, the presidential documents can:

- Restructure the central governmental body responsible for the cultural sphere;
- Establish state scholarship in the cultural sectors;
- Give to cultural organizations the status of “national institutions”.

Overall, in Kyrgyzstan the presidential orders have a minor role compared to Kazakhstan and Uzbekistan. Nevertheless, some of the most relevant cultural organizations have arisen through presidential

¹⁸⁹ The strategic plans of the Ministry of Culture have to comply with presidential memorandums and documents. For example, among the documents quoted within the 2011-2015 Ministry of Culture Strategic Plan, there are: the 2006, 2008 and 2010 presidential memorandums, the presidential orders on “Strategic Plan for Development of Kazakhstan till 2020”, “Governmental Program for Development and Functioning of the Languages in Republic of Kazakhstan 2011-2020”, “Governmental Program concerning Accelerated Industrial and Innovative Development of Kazakhstan 2010-2014”, and the “Doctrine of National Unity” elaborated by the President of the Republic. See Strategic Plan of the Ministry of Culture and Information 2011-2015, available at: www.mk.gov.kz/rus/o_ministerstve/strategicheskii_plan/, last access: 21/08/2013.

¹⁹⁰ See Presidential Memorandum to the people of Kazakhstan, “Strategy – 2050”, New Political Course of Established State, 2012, available at: www.akorda.kz/ru/allNews?category_id=26, last access 21/08/2013.

¹⁹¹ See National Action Plan to implement the Presidential Memorandum from 14th of December, “Strategy – 2050”, New Political Course of Established State, 2012, available at: www.mk.gov.kz/rus/kazakhstan2050/?cid=0&rid=906, last access: 21/10/2013

orders. For example, in 1996 the Presidential Order N272 established the creation of the “Kyrgyz Fund of International Assembly of Central Asian Peoples’ Culture”, while in 2004 the Presidential Order N418 decreed the opening of the National Cultural Center.¹⁹² In addition, in Kyrgyzstan, like in Kazakhstan, the presidential orders can give to cultural organizations the status of “national institutions”.

In Uzbekistan, the presidential documents have been used to directly regulate some cultural sectors such as, for example, dance and choreography, theaters, music, cinematography, applied arts, folk arts and crafts, library, art education, museums, modern monuments.¹⁹³ For example, in 1998, the “Presidential Order on Theatre Development” in Uzbekistan introduced significant changes in this sector. To begin with, this document created the “Uzbekteatr”, a creative and production association (under the jurisdiction of the Ministry of Culture) whose main objectives are:

- To favor the creation of stage works that glorify the rich spiritual world of Uzbek people, their cultural heritage, the respect for national and universal values, and the independence of Uzbek people; as well as to encourage initiatives and aspirations aimed at promoting patriotism and national aesthetic principles;
- To conduct research on folk performing arts;
- To manage the social security of artists and to improve the material and technical assets used in theatrical performances;
- To commission artistic performances on current issues to theatre directors, playwrights, composers and choreographers; to organize festivals, competitions,

¹⁹² See Kyrgyzstan, Presidential Order N272 “on Kyrgyz Fund of International Assembly of Central Asian Peoples’ Culture”, 1996 and Presidential Order N418 “on Establishment of National Cultural Center”, 2004.

¹⁹³ See Uzbekistan, Presidential Orders “on Development of the National Dance and Choreography in Uzbekistan”, 1997, N.YII – 1695; “on Theatre Development in Uzbekistan”, 1998, N. YII – 1980; “on Improvement of Music and Cultural Education”, 1996, N. YII – 1696; “on Improvement of the Management on the Cinematography Sphere”, 2004, N.YII – 3407; “on Measures for Further Development of Applied Arts, Folk Arts and Crafts”, 2005, N.YII – 3588; “on Measures Aimed to Organize the Activities of the National Library of Uzbekistan Named after Alisher Navoi – Information Resource Center”, 2012, N. IIII – 1727; “on Measures Aimed to Establish the Library of Scientific and Technical Literature with the Assistance of the Governmental Grant from Korean Republic”, 2008, N.IIII – 952; “on Further Improvement of the Museum Dedicated to the Victims of Repression”, 2008, N.IIII – 861; “on Additional Measures to Encourage the Development of Applied Arts, Folk Arts and Crafts”, 2008, N.YII – 3983; “on Organization of Culture and Art Exhibitions in the City of Tashkent”, 2006, N.IIII – 467; “on Monument of Independency and Humanism”, 2006, N.IIII – 275.

conferences, workshops and tours; and to establish prizes and awards;

- To identify young talented artists.

Moreover, this presidential document assigned to the Ministry of Culture and Sport, the Council of Ministers, the Presidents of the Regions, and Mayors the responsibility to develop the theater sector. Furthermore, basing on this document the Uzbek president assigned list of particular tasks to different public bodies. For example, the task of the Ministry of Finance was to transfer 50 millions of sum to the "Fund of Uzbekteatr". The task of the Ministry of Justice was to register the funding documents of "Uzbekteatr". The Mayor of Tashkent city was ordered to reconstruct within two months the buildings N49 and N51 and to provide these spaces to the association "Uzbekteatr". The Ministry of Macro Economy and Statistics has to plan the construction of new buildings and the reconstruction of old theatres for the benefit of "Uzbekteatr"¹⁹⁴, as well as, to release "Uzbekteatr" and the organizations under its jurisdiction from all tax and custom payments for a period of 5 year.

Concluding, it is possible to affirm that this brief presentation clearly shows that, although with different functions and roles, the Presidents of the Republics in Central Asia can significantly affect (and influence) the cultural sphere, setting long-term goals (Kazakhstan), opening up new cultural centers (Kyrgyzstan), or directly intervening in the regulation of certain cultural sectors (Uzbekistan).

¹⁹⁴ "Uzbekteatr" is represented all over the country through regional departments.

Chapter III: Whose is the cultural property? Balancing the international, national and private interests.

1. Assessing the legal definitions of cultural property related terms and their classifications adopted in Central Asia

1.1. Definitions and classifications in Kazakhstan

Article 1, paragraph 4, of the Kazakh Law on Culture (2006) defines culture as a set of tangible and intangible values created by the mankind with the aim to harmoniously develop an individual, promote patriotism and satisfy aesthetic needs and interests.¹⁹⁵ Several interesting aspects may be highlighted about this definition. First, this is clearly a humanistic interpretation of the concept of culture. In other words, culture is perceived as a medium toward human perfection.¹⁹⁶ Second, culture may be expressed through both tangible and intangible forms. Third, the idea of culture is associated to the concept of patriotism. Therefore, culture is viewed as a tool for strengthening the sense of national identity. The connection between culture and patriotism in the law is a particular relevant aspect considering the relatively recent formation of Kazakhstan as an independent state. Finally, culture is perceived as an aesthetic expression and, as such, it is presumably aimed to produce emotions.

The same article 1, paragraph 12, explains the term “cultural values” as artifacts of cultural heritage (both of religious and secular nature) and other values (objects) that possess historic, artistic, scientific and/or other cultural significance.¹⁹⁷ Interestingly, this article does not make any reference to the intangible heritage, thus associating the cultural values to the sole tangible goods.

Some interpretative problems emerge considering the definition of cultural heritage provide by article 1, paragraph 3. This article states that cultural heritage is a set of cultural values (objects) with national significance.¹⁹⁸ Therefore, it seems that these definitions contain a logical fallacy (*circulus in definiendo*): the concept of “cultural values” is

¹⁹⁵ Paragraph 4, article 1, *Law of Republic of Kazakhstan on Culture*, 2006. A further aspect must be mentioned. In several laws adopted by the Central Asian countries, the term “value” is used with different and multiple meanings. The word “value” is used as a synonym of “significance”, but also of “object” and “expression”. This may create confusion and misunderstandings. For example, in this case the sentence “tangible and intangible values” should be presumably interpreted as “tangible objects and intangible expressions”.

¹⁹⁶ See M. Arnold (1869), *op. cit.*, p.47

¹⁹⁷ Paragraph 12, article 1, *Law of the Republic of Kazakhstan on Culture*, 2006.

¹⁹⁸ Paragraph 3, article 1, *Law of the Republic of Kazakhstan on Culture*, 2006.

used to explain the concept “cultural heritage” and, in turn, the concept of “cultural heritage” is used to explain the concept of “cultural values”. Fortunately, article 32 dissipates some doubts providing a list of objects considered as cultural values. Among them there are:

- Archaeological monuments, findings and discoveries;
- Rare collections and exemplars of flora and fauna, minerals, anatomic components and objects that have a particular interest for the paleontologists;
- Values (objects) related to history, including the history of science and technique, history of war and societies, history of national culture, history related to the life of national relevant scientists, writers, poets, philosophers, artists, and history related to national historical events;
- Rare manuscripts, ancient books, documents and publications that represent particular historical, artistic, scientific and literary interests, separately or in collection;
- Stamp marks, tax marks, separately or in collection, issued 50 or more years ago;
- Coins, medals and stamps that have been released at least more than 100 years ago;
- Ancient and unique musical instruments;
- Archives and collections including photos, videos, audios and scientific documents;
- Works of arts that has historical cultural importance;
- Ethnographical, anthropological, ethnological and paleontological materials;
- Ancient objects created more than 100 years ago and that have particular historical-cultural value;
- Objects, related to historical events of Kazakhstani people, to the development of society and state, to the history of science and technique, to the life of relevant public figures, and to museum objects or collections;
- Artistic values in the form of paintings and sketches, developed on different bases and using different materials (with the exception of schemes of industrial products, ornaments and decorations);
- Original sculptures from different materials;
- Original engravings, prints and lithographs;
- Elements of artistic historical monuments and archaeological sites that have been dismembered.¹⁹⁹

¹⁹⁹ Article 32, *Law of the Republic of Kazakhstan on Culture*, 2006.

Therefore, on one hand this list confirms that with the notion “cultural values” the Kazakh legislation makes reference to movable goods, but also to archaeological monuments (that are immovable objects).

Article 1, paragraph 14 introduces the concept of national cultural patrimony, defining it as a set of cultural values with a particular significance for the history and culture of Kazakhstan, that are included in the list of the national cultural patrimony.²⁰⁰ In other terms, the national cultural patrimony embraces a restricted list of cultural objects that have an exceptional national significance. The listing process assigns a special status to these objects.

A further concept that must be considered is that of historical-cultural heritage. The Kazak Law on Protection and Use of Objects of Historical-Cultural Heritage defines “objects of historical-cultural heritage” as immovable properties (including paintings, sculptures, works of applied arts, science and technology, and any other tangible cultural artifacts to them associated) with historical, archaeological, architectural, scientific, technological, aesthetic, ethnological, anthropological, social, cultural and urban values.²⁰¹ Then, article 5 states that the “objects of historical-cultural heritage” become “monuments of history and culture” after their inclusion inside the national list of monuments of history and culture.²⁰² According to article 3, paragraph 6, “monuments of history and culture” are separate buildings, constructions and ensembles, historical cultural landscapes and other remarkable places, created by mankind or that are the result of the combined works of nature and men, related to historical past of the people, to the development of society and states, included in the national list of monuments of history and culture.²⁰³ Article 4 adds that within the monuments of history and culture there are three types of monuments: architectural monuments, archaeological monuments and ensembles.²⁰⁴ Therefore, archaeological monuments are considered both as “cultural values” and as “objects of historical-cultural heritage”.

Finally, in 2013 the Kazakh government adopted a governmental decree, called “Conception of Protection and Development of Intangible Cultural Heritage in the Republic of Kazakhstan” where it

²⁰⁰ Paragraph 14, article 1, *Law of the Republic of Kazakhstan on Culture*, 2006. About the listing process see chapter 6 of the law.

²⁰¹ Paragraph 11, article 3, *Law of the Republic of Kazakhstan on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁰² Article 5, *Law of the Republic of Kazakhstan on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁰³ Paragraph 6, article 3, *Law of the Republic of Kazakhstan on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁰⁴ Article 4, *Law of the Republic of Kazakhstan on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

defines the intangible cultural heritage as: “customs and rituals, representations, expressions, knowledge and skills (as well as the related tools, objects, artifacts and cultural spaces) that are recognized by communities, groups and in some cases by individuals as part of their cultural heritage. The intangible cultural heritage is transmitted from generation to generation and is constantly recreated by communities and groups in response to their environment, their interaction with nature, and their history. It provides people with a sense of identity and continuity, and promotes respect for cultural diversity and human creativity”.²⁰⁵

Culture				
Cultural Values		Objects of Historical-Cultural Heritage		Intangible Cultural Heritage (list)
Objects listed in art. 32 of the Law on Culture	Archaeological monuments	Architectural monuments and ensembles		
Cultural Heritage		Monuments of History and Culture (list)		
National Cultural Patrimony (list)				

Table 3.1.: the conceptual “cultural structure” in Kazakhstan

1.2 Definitions and classifications in Kyrgyzstan

The Kyrgyz Law on Culture (2009) deals with the cultural issue recurring to the same humanistic approach adopted in Kazakhstan. According to article 1, in Kyrgyzstan “culture” is a set of tangible and intangible values, created by mankind, that together points out a certain level of development within a society.²⁰⁶

The same article 1 provides also a definition of cultural values and cultural heritage. Cultural values are: moral and aesthetic ideals, norms and patterns of behavior, languages and dialects, national traditions and customs, historical place names (toponyms), folklore,

²⁰⁵ See Kazakhstan, *Governmental Decree on Conception of Protection and Development of Intangible Cultural Heritage in the Republic of Kazakhstan*, N408, 2013. Notice that this definition perfectly corresponds to the one provided in the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage (Convention ratified by Kazakhstan in 2011).

²⁰⁶ Article 1, *Law of the Republic of Kyrgyzstan on Culture*, 2009.

arts and crafts, works of literature, art and folk art, buildings and structures with historical or cultural values, unique historical-cultural territories, results of scientific research and technology.²⁰⁷ Therefore, differently from Kazakhstan, the Kyrgyz Law on Culture adopts an anthropological definition of cultural values, including elements related of both tangible (movable and immovable) and intangible nature.

Concerning the definition of cultural heritage, article 1 states that cultural heritage are both tangible and intangible values considered significant for the safeguard and development of national cultural identity of Kyrgyzstani people and their contribution to the world civilization.²⁰⁸ The Kyrgyz law, like the Kazakh one associates the cultural heritage with the concept of cultural identity, thus underlying its primary role in the creation of a national community. On the contrary, the conclusive part of this definition, which devotes to the Kyrgyzstani a direct role in the development of world civilization, is an uncommon statement in the international legal framework.

According to the Law on Protection and Use of Historical Cultural Heritage, the “historical-cultural heritage” includes, from one side, historical and cultural monuments related to historical events and \ or to the historical development of the state and its society; on the other side, tangible artworks of civil or spiritual creativity with historical, scientific, artistic or other values.²⁰⁹ So, within the historical-cultural heritage there are both immovable and movable goods.

The same law defines:

- “immovable objects” as monuments of history, monuments of archaeology and monuments of architecture and urban development;²¹⁰
- “movable objects” as “individual transferable objects”, such as, for instance, archaeological findings, antiquities, dismembered elements of immovable monuments, anthropological and ethnological materials, historical relics, works of art (paintings, graphics, applied arts, art of cinema, photography), documents within the National Archival Collection (manuscripts typed documents, graphics, photographs, film, video and sounds recording, and rare printed publications); but also as “complex

²⁰⁷ Article 1, *Law of the Republic of Kyrgyzstan on Culture*, 2009.

²⁰⁸ Article 1, *Law of the Republic of Kyrgyzstan on Culture*, 2009.

²⁰⁹ Article 3, *Law of the Republic of Kyrgyzstan on Protection and Use of Historical-Cultural Heritage*, 1999.

²¹⁰ Within the immovable historical-cultural heritage there are the “monuments of history and culture”, which are enrolled in different lists considering their local, national and international significance.

transferable objects” like, for example, collections of individual objects taken as a whole.

The Governmental Decree of the Republic of Kyrgyzstan on Procedure of Import and Export of Objects of Cultural Values provides a more precise classification. According to article two, “cultural values” are values (objects) of religious and secular nature that have significance for archaeology, pre-historical period, history, literature, art and science of the state.²¹¹ Moreover, this law divides the movable cultural properties in three categories: the properties that cannot be exported outside the country (Annex 1), the objects that can be exported only with a governmental authorization (Annex 2), and those that can be freely exported without the need to get any authorization (this category includes all other cultural properties that are not included in the previous lists).²¹² The table below schematically demonstrates the types of objects included in these categories.

No-Export
Cultural properties (C.P.), regardless of the time of their creation, protected by state and included in the lists
C.P., regardless of the time of their creation and ownership, which possess historic, artistic or other cultural value and that are considered as “objects of cultural heritage with particular significance”
C.P. within the public and municipal museums, archives, libraries, and other public storehouse of cultural values
C.P. associated with historical events and development of society and state, as well as the life and work of eminent personalities
Components and fragments of architectural, historic, artistic, and monumental art
Components and fragments found during the archaeological excavations (authorized or non-authorized), and archaeological discoveries and findings
Icons and objects of worship with particular historical and artistic value, which were created before the middle of XIX century
Unique items made of gold, platinum, or natural precious stones, which were created more than 50 years ago
Export with License
Sculptures, paintings, graphics created more than 50 years ago
Miniature on wood, metal, bone, paper, and on other materials if they are over 50 years

²¹¹ See article 2, *Governmental Decree of the Republic of Kyrgyzstan on Procedure of Import and Export of Objects of Cultural Values*, N36, 2003.

²¹² See article 3, *last op. cit.* (2003), Annex 1 and Annex 2.

ago
Works of applied arts, including traditional folk arts and crafts, which are older than 50 years
Unique articles made of natural stones: malachite, aquamarine, amethyst, topaz, turquoise, coral, high quality amber and pearl, which are older than 50 years
Unique and rare stamp marks and blocks
Domestic and foreign coins and coin collections (the jubilee coins issued in a limited edition) of precious or non-precious metals, paper money until 1960, with collection value
Domestic and foreign badges, awards, and commemorative medals
All kinds of weapons older than 50 years of domestic or foreign production
Household and scientific instruments of domestic and foreign production older than 50 years
Musical instruments older than 50 years
Art furniture of foreign and domestic production older than 50 years
Domestic and foreign art clothing and shoes, including scarves, shawls, and unique items made of tissue older than 50 years
Ethnographic collections and objects
Collections and individual specimens of zoological, botanical, mineralogical and paleontological collections
Archival documents on any media
Books on Kyrgyz language, maps, fine arts publications realized 50 years ago
Foreign books, including books on Cyrillic and Glagolitic, printing, maps, music, fine arts publication, which are more than 50 years old
Books on Kyrgyz language, written using Arab or Latin script
Printed works, which are considered as example of decoration, illustration and printing
Printed works of biographical rarity, individual copies of the publications with autographs, bookplates, different handwritten notes of prominent public figures, representatives of science and culture
The first and the best lifetime publications of outstanding public leaders, representatives of science and culture
Free Export
All other cultural properties that are not listed above

Table 3.2.: categories of the cultural properties according to Kyrgyz legislation

Finally, the Kyrgyz Law on Intangible Cultural Heritage (2012) defines “intangible cultural heritage” as practices, representations, expressions, knowledge and skills (as well as the related instruments, objects, artifacts, and cultural spaces) recognized by people, communities, groups, and, in some cases, by individuals as parts of their intangible cultural heritage.²¹³

Culture		
Cultural Values		
Cultural Heritage		
Historical-cultural Heritage		Intangible Cultural Heritage
Immovable	Movable	
Monuments of History and Culture (lists)		

Table 3.3: the conceptual “cultural structure” in Kyrgyzstan

1.3 Definitions and classifications in Uzbekistan

Contrary to Kazakhstan and Kyrgyzstan, the Republic of Uzbekistan does not have a Law on Culture and neither a definition of “culture” in the currently enforced national legislation.²¹⁴ Nevertheless, there are different sectorial laws related to the cultural issues. Two laws are particularly relevant: the Law on Protection and Use of Cultural Heritage (2001) that aims to regulate the cultural heritage; and the Law on Protection and Use of Archaeological Heritage (2009) that has been recently introduced considering the scarce attention paid by the former (2001) law to the archaeological heritage²¹⁵.

²¹³ Article 2, *Law of the Republic of Kyrgyzstan on Intangible Cultural Heritage*, 2012. Be aware that, in 2006, Kyrgyzstan became a party of the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage in 2006.

²¹⁴ However, it seems that Uzbekistan is planning to adopt a law of such kind. As already stated, on 11th August 2012 the minister Kuziev T. organized a meeting with the main cultural elites (composers, producers, and directors of orchestras) aimed to familiarize this group of interests with the first governmental draft of Law on Culture.

²¹⁵ As stated by senator Salihov S., the Law on Protection and Use of Cultural Heritage regulates the archeological heritage only in general and vague terms (proof is that the text of this law does not include key words such as, for example, archeological monument, archeologist, archeological objects). See the website:

The Law on Protection and Use of Cultural Heritage establishes that cultural heritage is founded on cultural assets of both tangible and intangible nature.²¹⁶

The objects of tangible cultural heritage are monuments, ensembles and sites with historical, scientific, artistic, or other cultural values. The same article specifies that:

- Monuments are, for example, buildings with their paintings, sculptures, decorative arts and their historically established territories; memorial houses, apartments, cemeteries, mausoleums and individual graves; monumental works of art; objects of science and technology; materials of anthropology, ethnography, numismatics, epigraphy, mapping, photos, movies, audio-video; works of literature and art; archives, manuscripts, antique and rare books. (Therefore, in the definition of monuments there are both movable cultural objects and immovable cultural structures).
- Ensembles are localized group of buildings (included the works of art associated with these buildings) with social, administrative, religious, scientific, educational, fortification, residential, commercial or industrial purposes that, in association with their surrounding landscape, express historical, archaeological, architectural, aesthetical or other social-cultural values; the fragments of historical constructions and urban planning; works of landscape architecture and garden art.
- Sites are joined creations of nature and man; territories with historical, archeological, urban, aesthetic, ethnological or anthropological value; locations of folk crafts, centers of ancient settlements, memorial sites.

The objects of intangible cultural heritage are traditions, folk art (the art of speech, dance, music, performance) with historical, scientific, artistic, or other cultural values. Moreover, within the definition of intangible cultural heritage are included craft knowledge, skills, tools, artifacts and cultural spaces related to customs, folk art and traditional artisanal works.

http://www.dp.ru/a/2009/08/29/V_Uzbekistane_pravo_sobst/ Moreover, while the Law on Protection and Use of Cultural Heritage did not state anything about the ownership of by chance discovered cultural goods (thus, legitimizing a sort of finder-keeper approach), article 4 of the Law on Protection and Use of Archaeological Heritage clearly affirms that the state has title over all objects of archeological heritage found in its territory.

²¹⁶ Article 3, *Law of the Republic of Uzbekistan on Protection and Use of Cultural Heritage*, 2001.

Differently, the Law on Protection and Use of Archaeological Heritage defines archaeological heritage as a set of archeological sites and items.²¹⁷ The archeological sites are places, constructions, structures, and ensembles (including their surrounding contexts) with archeological, anthropological, ethnographic or other scientific, artistic, cultural values. Archeological items are tangible remains identified during archeological surveys, excavations and supervisions or discovered by chance in the course of indoor and outdoor domestic activities. The definition of archaeological items seems to be excessively over inclusive. Without any further distinctive parameters (like, for example, the associated values) any objects casually “discovered” may be considered as an archaeological item.

Concluding, article 3 of the Law of Republic of Uzbekistan on Import and Export of Cultural Values defines “cultural values” as movable tangible properties with national, historic, artistic, scientific, spiritual and other cultural significance.²¹⁸ Paragraph 2 of the Decree of the Ministerial Cabinet, N131, on Regulation of Issues related to the Export and Import of Cultural Values in the Republic of Uzbekistan, Annex 1 – Directive on Procedure of Export and Import of Cultural Values, (1999) lists as movable cultural values:

- items related to: historical events, the development of society and state, the history of science and technology, the life and work of outstanding individuals;
- various weapons of historical, artistic, scientific and other cultural value;
- artistic assets with precious metals and stones;
- objects and fragments coming from archaeological excavations, discoveries and findings, sample of soils, other archaeological or geological samples;
- hand-made paintings and drawings produced on any canvas and using any material;
- original sculptures (included reliefs) made of any materials;
- original art compositions and montages of any materials;
- artistically designed objects for religious services;
- ethnographic objects;
- engravings, prints, lithographs, woodcuts, and other types of graphic arts, and their original printed forms;

²¹⁷ Article 3, *Law of the Republic of Uzbekistan on Protection and Use of Archaeological Heritage*, 2009.

²¹⁸ Article 3, *Law of the Republic of Uzbekistan on Import and Export of Cultural Values*, N678-I, 1998.

- works of applied arts;
- products of traditional folk arts and crafts;
- parts and fragments of architectural, historical, artistic monuments and objects of monumental art;
- old books (as single elements or parts of a collection) and printed works of historical, scientific, artistic, literary interest;
- rare manuscripts, documentary monuments and archives;
- photographs, sounds, films and videos;
- musical instruments;
- philatelic, numismatic, faleristic, notaphilic, and other collections;
- coins, orders, medals, stamps, postcards (and envelopes), and other objects of collection interest;
- rare collection and specimen of flora and fauna as well as objects of interest in the field of science like mineralogy, paleontology, and anatomy;
- household and scientific instruments, instruments with domestic and cultural significance (clocks, barometers, binoculars);
- other movable objects including, copies of cultural assets with historical, scientific, artistic, or other cultural significance, protected by state as monuments of history and culture.²¹⁹

However, this list is so over-comprehensive that, on one side, it seems to include almost all objects created by humankind without any distinction; on the other side, it makes challenging to collocate the concept of “cultural values” within the Uzbek cultural sphere.

Cultural Heritage			
Tangible (list)			Intangible (list)
Monuments	Sites	Ensembles	
Archaeological heritage			
Items	Sites		

²¹⁹ Decree of the Ministerial Cabinet of the Republic of Uzbekistan, N131, on Regulation of Issues related to the Export and Import of Cultural Values in the Republic of Uzbekistan, Annex 1 – Directive on Procedure of Export and Import of Cultural Values, 1999, par. 2.

Table 3.4: the conceptual “cultural hierarchy” in Uzbekistan

1.4 Comparing the definitions and classifications adopted in Kazakhstan, Kyrgyzstan and Uzbekistan

Table 3.5. sums up and compares the main concepts of *culture*, *cultural values*, *cultural heritage*, (objects of) *historical-cultural heritage*, *tangible cultural heritage*, and *intangible cultural heritage* adopted in Kazakhstan, Kyrgyzstan and Uzbekistan.

Kazakhstan	Culture	A set of tangible and intangible values, created by a mankind with an aim to harmoniously develop an individual, to promote patriotism and to satisfy aesthetic needs and interests. [LC, 2006, art.1, par.12]
	Cultural values	Artifacts of cultural heritage (both of religious and secular nature) and other values that possess historic, artistic, scientific and/or other cultural significance (listed by art. 32, tangible objects + archaeological monuments). [LC, 2006, art.1, par.12 and art.32]
	Cultural heritage	A set of cultural values with national significance. [LC, 2006, art.1, par.3]
	Objects of historic-cultural heritage	The immovable properties (included their associated tangible cultural artifacts) with historical, archaeological, architectural, scientific, technological, aesthetic, ethnological, anthropological, social, cultural and urban value. [LHCH, 1992, art.3, par.11]
	Intangib. Cultural Heritage	Customs and rituals, representations, expressions, knowledge and skills that are recognized by communities, groups and in some cases by individuals as a part of their cultural heritage [GDCPDICH, 2013]
Kyrgyzstan	Culture	Set of tangible and intangible values, created by mankind, that points out a certain level of development of the related society. [LC, 2009, art.1]
	Cultural values	<p>Moral and aesthetic ideals, norms and patterns of behavior, languages and dialect, national traditions and customs, historical place names, folklore, arts and crafts, literature, folk art, buildings and structures with historical or cultural values, unique historical-cultural territories, results of scientific research and technology.[LC, 2009, art.1]</p> <p>Values of religious and secular nature that have significance for archaeology, pre-historical period, history, literature, art and science of the state. [GDIECV, 2003, art.2]</p>

Uzbekistan	Cultural heritage	Both tangible and intangible values considered significant for the safeguard and development of national cultural identity of Kyrgyzstani people and their contribution to the world civilization. [LC, 2009, art.1]
	Historic.-cultural heritage	Historical and cultural monuments related to historical events and\or to the historical development of the state and its society; tangible art works of civil or spiritual creativity with historical, scientific, artistic or other values. [LHCH, 1999, art.3]
	Intangib. cultural heritage	Practices, representations, expressions, knowledge and skills recognized by people, communities, groups and, in some cases, by individuals as a part of their intangible cultural heritage. [LICH, 2012, art.2]
	Cultural heritage	Cultural objects of both tangible and intangible nature. [LCH, 2001, art.3]
	Cultural values	Movable tangible properties with national, historic, artistic, scientific, spiritual and other cultural significance (listed by par. 2, Annex I). [LIECV, 1998, art.3]
	Tangible cultural heritage	Monuments, ensembles and sites with historical, scientific, artistic, or other cultural values. [LCH, 2001, art.3]
	Intangib. Cultural heritage	Traditions, folk art with historical, scientific, artistic, or other cultural values; craft knowledge, skills, tools, artifacts and cultural spaces related to customs, folk art and traditional artisanal works. [LCH, 2001, art.3]

Table 3.5.: comparing the cultural definitions

Observing this table it is clear that Kazakhstan, Kyrgyzstan and Uzbekistan provide different interpretations and classifications of the cultural terms. The Laws on Culture of Kazakhstan and Kyrgyzstan define the concept of culture. Differently the legislation in Uzbekistan does not examine such concept (lacking in this country a Law on Culture). Both Kazakhstan and Kyrgyzstan defines the concept of “culture” adopting a humanistic approach. However, in Kazakhstan the concept of culture is associated to the idea of “individual development”, while in Kyrgyzstan culture is considered as an index that shows the level of development of an entire society. A further common aspect is the assessment of culture as a tool for promoting patriotism (definition of culture in Kazakhstan) and national identity (definition of cultural heritage in Kyrgyzstan). This perspective is also shared by Uzbekistan (see section 4, chapter 3 the goals of the ministry of culture), and, presumably, all other Central Asian countries.

There are, on the contrary, remarkable differences concerning the interpretation of “cultural value”. First of all, in Kazakhstan and

Uzbekistan the term “value” is primarily viewed as a synonym of “object”, while in the anthropological definition offered by the Kyrgyz Law on Culture this term is also associated to immaterial principles and intangible expressions.²²⁰ Second, the Uzbek legislation, contrary to the Kazakh and Kyrgyz legislation, does not introduce any time frame for assessing the cultural values. This data seems to suggest that, in Uzbekistan, there are numerically more objects recognized as cultural values compared to Kazakhstan and Kyrgyzstan.

Overall, the definitions and categories of movable cultural properties adopted in these countries mostly reflect those provided by the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property.²²¹ However, there are some differences that must be taken into consideration.

On one hand, there are some categories that, although without being mentioned in the UNESCO Convention, are included in the national legislations of Kyrgyzstan and Uzbekistan. Among them, there are various weapons, objects made of precious metals and stones, objects for religious services, products of traditional arts and crafts, household and scientific instruments. On the other hand, there are some categories that are included in the 1970 UNESCO Convention, but they are excluded in Kazakhstan, Kyrgyzstan and Uzbekistan. Precisely, Kazakhstan excludes from the categories of cultural properties: original artistic assemblages and montages, articles of furniture, and inscriptions; Kyrgyzstan excludes: engraving and lithographs, original artistic assemblages and montages, inscriptions, seals, collections and specimen of anatomy; while Uzbekistan simply excludes the articles of furniture.²²² The presence or the absence of a specific category should not be undervalued because, first, it is often the result of a precise cause and, second, it may produce significant legal consequences in the management of the included/excluded categories. For example, the controversial collection of plastinated bodies (known as Body Worlds) managed by Dr. Gunther von Hagens

²²⁰ In all these countries this term, value is sometimes used for assessing the significance of an asset too. However, the “multiple-use” of this concept may create confusion and misunderstandings.

²²¹ All these countries have ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property: Kazakhstan in 2012, Kyrgyzstan in 1995, and Uzbekistan in 1996.

²²² See:

for Kazakhstan - *Law on Culture*, 2006, art. 32;

for Kyrgyzstan – (a) *Law on Protection and Use of Historical-Cultural Heritage*, 1999, article 3, (b) *Governmental Decree on Procedure of Import and Export of Objects of Cultural Values*, N36, 2003 art. 3, and Annex 1 and 2;

for Uzbekistan, *Governmental Decree on Export and Import of Cultural Values*, Annex I, 1999 article 2.

would be probably considered as cultural property (with the related legal consequences) in Kazakhstan and Uzbekistan. On the contrary in Kyrgyzstan, the same collection would not be considered as cultural property (as already stated above, the collections and specimens of anatomy are not included in the Kyrgyz definition of cultural property). Interestingly, Dr. Gunther von Hagens had one of his “plastinating factories” in Bishkek, the capital of Kyrgyzstan.²²³ For his activities, he was accused by a member of Kyrgyz parliament in abduction of bodies from prisons, hospitals and psychiatric asylums.²²⁴ This fact may be an indirect explanation of the anatomical collections and specimens’ absence in the definition of cultural property provided by Kyrgyz law.

Furthermore, in Kazakhstan, the intangible cultural heritage is included within the definition of culture but is excluded from the definition of cultural heritage. Differently in Kyrgyzstan, but also in Uzbekistan, the intangible cultural heritage is expressly considered as one of the main components of cultural heritage. Moreover, while Kazakhstan and Kyrgyzstan have adopted at national level the 2003 UNESCO definition on Intangible Cultural Heritage, Uzbekistan has elaborated its own definition (although, from a practical perspective, there are substantially no differences).²²⁵

At present, Kyrgyzstan has probably the clearest and most developed organization of cultural concepts, differentiating movable and immovable cultural heritage, as well as tangible and intangible cultural heritage. Moreover, the Kyrgyz system of laws primarily managing the cultural issues (2009 Law on Culture, 1999 Law on Protection and Use of Historical-Cultural Heritage and 2012 Law on Intangible Cultural Heritage) provide, in general, clear and distinctive definitions. The main weakness is probably the “double” definition of cultural value that could create confusion. However, the definition of cultural value provided by the Law on Culture is clearly a comprehensive-anthropological definition, which aims to highlight all the elements (tangible and intangible, movable and immovable) and principles included within this notion. On the contrary, the definition of cultural value provided by the Governmental Decree on Procedure of Import and Export of Objects of Cultural Values is a narrow

²²³ See article, Preston J., “Gunther von Hagens: a man of many parts”, *The Telegraph*, available at <http://www.telegraph.co.uk/culture/art/3562062/Gunther-von-Hagens-a-man-of-many-parts.html>, last access: 27/05/2013

²²⁴ See article, Truffs A., “Von Hagens faces investigation over use of bodies without consent”, *BMJ: British Medical Journal*, vol.327 (7423); 2003, available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1126850/>, last access 27/05/2013

²²⁵ Notice that all these countries ratified the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage: Kazakhstan in 2011, Kyrgyzstan in 2006, and Uzbekistan in 2008.

definition, specifically elaborate to explain which categories of movable objects are viewed as cultural objects and to define which rules govern their importation and exportation.

The system adopted in Kazakhstan has both pros and cons. Overall, it is quite comprehensive (though, as already stated, the definition of intangible cultural heritage has been introduced only in 2013) and innovative. Nevertheless, it also presents several inaccuracies. In particular, the definitions of “cultural values” and “cultural heritage” are quite ambiguous and their interrelation is logically weak. Moreover, to date it seems that both the 2006 Law on Culture and the 1992 Law on Protection and Use of Objects of Historical-Cultural Heritage include regulations regarding the archaeological monuments. As a result, this system is excessively articulated. Assigning to the Law on Culture the exclusive regulation of the movable cultural heritage and to the Law on Protection and Use of Objects of Historical-Cultural Heritage the exclusive regulation of the immovable cultural heritage could be a simple way to optimize this organizational structure.

The legal system in Uzbekistan does not provide a definition of “culture” (probably due to the absence of a national Law on Culture). Nonetheless, the definitions adopted by the Law on Protection and Use of Cultural Heritage (2001) and the Law on Protection and Use of Archaeological Heritage (2009) are concise, but quite precise. Most likely, there are two negative notes to consider. The first is the definition of monuments, which includes, without making any distinction, both movable and immovable cultural objects. The second is the categories associated to the cultural values that, without any time frame, seem to be excessively over-inclusive.

2. Cultural property between public and private interests

One of the main challenges that governments have to face dealing with cultural property is the regulation of the different interests at stake. As in a multicolored ball of yarn several interlinked interests are associated with cultural property. According to Jayme, for example, the unraveling of this ball reveals five main groups of interests: global interests, public interests, private interests, the interests of art market and the interests related to the artwork itself.²²⁶ Each of these groups includes, in turn, different sub-categories of interests. Casini, for instance, identifies five different sets of sub-interests (physical preservation, control over the circulation and trade, preservation in the

²²⁶ See Jayme E., “Globalization in Art Law: Clash of Interests and International Tendencies”, *Vanderbilt Journal of Transnational Tendencies*, Vol.38:927, 2005.

original context, accessibility and promotion, use and re-use of cultural property) in the sole group of public interests.²²⁷ Therefore, governments operate within a tangle of interests when planning the management and regulation of cultural property.

A further challenge consists of conflictual nature between some of these interests. An extreme protection of cultural property, for example, could require the adoption of measures that deny public accessibility due to its potential detrimental effects; on the contrary an extreme accessibility could entail a high risk of damaging of the exhibited cultural property, thereby threatening their long-term preservation. At the origin of this “clash of interests” there is the acknowledgement that numerous values (like, for example, aesthetic, archaeological, artistic, economic, historical, religious and symbolic value) are associated with cultural property and, as a result, there are several actors (such as, for instance, governments, museums, private collectors, NGO, local entities and international organizations) who have an interest or concern towards cultural property.

In this framework, governments have the complex task to check and balance these multiple sets of interests. The final goal is the identification of the solution that best meet their national needs and wishes. This condition entails that policy makers may differently assess the relevance of the various interests at stake: the litigation over cultural property “under the various legal systems will therefore result in varying decisions depending on which of the interests are given preference”.²²⁸

The present paragraph analyzes how the national legislations of Kazakhstan, Kyrgyzstan and Uzbekistan regulate the clash between public and private interests. The decision to exclusively focus on this specific clash is justified by the historical path – from communism to liberalism - of Central Asian states.

Although the clash between private and public properties can take different forms, certainly the most common one is the following: on one side governments, acting on the behalf of the public interests, promote the protection of cultural property and their preservation within the national borders; on the other side, privates claim the realization of their property rights, which include the legitimate possession, benefit and control of a property.

²²⁷ See Casini L., “Italian Hours: The Law of Cultural Properties in a Globalized World”, Draft Paper for the IRPA and NYU Jean Monnet Center Seminar, New York University, 2010.

²²⁸ Jayme E., last op. cit., 2005, p.941

Having difficulties in identifying legal cases based on similar circumstances and where a final judgment was already passed, the author decided to propose as expedient the resolution of two imaginary cases for assessing how the clash between private and public interests over cultural property is regulated by law.

The first case is related to movable cultural property, while the second case is centered on immovable cultural property. Here a synthetic description of the cases.

Case 1: Mister X is the owner of a 25 years old painting. He is willing to sell it to Mister Y that resides abroad. How the national legislations of Kazakhstan, Kyrgyzstan and Uzbekistan regulate this trade?

Case 2: Mister X is the owner of a building considered as a monument of history and culture with local significance (enlisted). The intention of Mister X is to renovate this building. How the national legislations of the analyzed countries regulate the planned actions of Mister X?

Before proceeding with the analysis of these cases a premise is required. The previous paragraph overviewed the legal terms related to cultural property in Kazakhstan, Kyrgyzstan and Uzbekistan. The culture related laws in these countries do not mention the term *cultural property*. The term with the closest meaning, used in the legislation of analyzed countries, is *cultural value*. Therefore, here and on the term cultural property will be used as synonym of cultural value.²²⁹

2.1. Hypothetical case number one

Kazakhstan:

First of all, it is important to define whether the painting of mister X is a cultural property (value) according to the national legislation of Kazakhstan. The Law on Culture clearly states that any artistic property, such as for example a painting, has to be considered as a cultural property (value).²³⁰ In addition, those cultural properties

²²⁹ The reader has, nonetheless, to keep in mind that the national laws of analyzed countries provide different definitions of cultural value. In short, according to Kazakh legislation an object is considered as a cultural value if it has importance for history, art and science, Kyrgyz law adds to this list the importance for archaeology and literature, while Uzbek law states that only movable objects that are of importance for nation, history, art, science and culture are considered as cultural value.

²³⁰ See paragraph 13, article 32, *Law N207-III of Republic of Kazakhstan on culture*, 2006.

that possess “particular value” are inscribed in the list of objects of national cultural patrimony.²³¹

According to the Kazakh Law on Culture both the exportation of cultural properties and the exportation of objects of national cultural patrimony outside the territory of Kazakhstan is forbidden. Interestingly, the Kazakh law does not provide a time limit for a painting to be considered as a cultural property. Therefore, at least from a theoretical viewpoint, no painting can permanently leave Kazakhstan (regardless the period in which it has been produced).

Coming back to the imaginary case, the painting of Mister X is a cultural property according to the Kazakh legislation. Therefore Mister X cannot sell his painting to Mister Y for the reason that this trade would cause the transfer of the painting to another state (practice that, as mentioned above, is forbidden by law).

However, in spite of this strict export regulation, paintings and other cultural property sometimes effectively leave the territory of Kazakhstan. According to the information provided by the custom control department, if the concerned object is an antiquity or an ancient painting the owner of a cultural property need simply to receive a certificate from the Kasteev Public Museum stating that the concerned cultural property has not historical value.²³² If the concerned object is a contemporary painting, as in the case of Mister X, is the Museum of the Almaty City’s History the organization appointed to make the required assessment.

From a legislative viewpoint the key provision is the governmental decree N440 of 2007. Actually, this decree deals with the temporary exportation of cultural property. However, it seems that this decree is, by custom, normally applied for the permanent exportation of cultural property too.

In short, according to this decree, the owner of cultural property should apply to a local government for receiving a certificate issue that would permit him to temporary export the concerned cultural value. The local government establishes an expert committee whose task is to provide an opinion on the value of such property.²³³ On the base of this opinion the local government decides whether to issue the certificate-permission to Mister X or not. There are three possible results.

²³¹ See article 33, *Law N207-III of Republic of Kazakhstan on culture*, 2006. The Law on Cultural does not provide further details about the notion of “particular value”.

²³² This information has been gained calling the main custom checkpoint of Almaty “Zhetysu”, which is located in the international airport of Almaty.

²³³ The main objective of such expert committees is the control of the cultural properties before their leave and after their arrival back from abroad. The expert committee is composed by specialists working at the main public museum.

In case the painting of Mister X is not of particular value the local government may consent to the permanent exportation, thereby giving to Mister X the possibility of selling his painting to Mister Y.

Whereas the commission identifies a particular value the local government will not permit a permanent exportation, but it could allow a temporary exportation of the painting.

In case the painting of Mister X is part of the national cultural patrimony (listed), its value is already proven and, as a result, it cannot permanently leave the territory of Kazakhstan (while it can temporally leave the country gaining the mentioned above certificate from the local government).

Therefore, in the last two cases Mister X has the right to sell his painting only if this transaction will not cause the exportation abroad of the painting.²³⁴

There is one exception to this path. If Mister X would be the author of the painting he intended to sell, than he would not have any restriction to permanently export it (and the Kazakh government would not have a preemption right to buy it). As a matter of fact, the Law on Culture proclaims that an author, whether he decides to leave permanently or temporary the country, has the right to export his artworks and the special regime of the cultural property is not extended to the objects of copyright.²³⁵ Nonetheless, the law is so ambiguous that it may produce misinterpretations. In 2000 the famous painter of *ex libris* Serik Kulmeshkenov decided to permanently transfer his residence from Kazakhstan to the United States. When he claimed his intention to bring his works with him the custom control department and the Directorate of Art Exhibitions rejected such hypothesis stating that he would first have to comply with the export process (which meant to wait for the expert's evaluation of his collection). As sign of protest against what he perceived as a violation of his rights, Serik Kulmeshkenov burned his artworks.²³⁶ To date the interpretation of the law remains ambiguous: from one side the law declares that authors have right to export their artworks, but, on the other, the law does not states that authors have not to comply with all procedures pertaining to the export of cultural property.

Analyzing the history of the Kazakh legislation it is possible to trace the reasons behind the Kazakh strict export regulations for

²³⁴ In any case, however, the government of Kazakhstan possesses a preemption right to buy the painting from Mister X. Moreover, in case the painting is part of a listed collection, the painting cannot be sold separately.

²³⁵ Paragraph 3, article 34 and paragraph 3, article 35, *Law N207-III of Republic of Kazakhstan on culture*, 2006

²³⁶ Gubenko A., "Zheleznyi zhanaves" (Iron curtain), *Novoe Pokolenie*, No.42 (282), 2003.

cultural property. From December 1991 (Soviet Union collapse) till 1996 Kazakhstan had no law regulating the import and export of cultural property. Gallery holders and painters called this period the golden decade because a huge quantity of cultural property was purchased and exported abroad by foreign buyers. However, the Kazakh government became aware that this lack of control over the exportation of cultural property was provoking a sort of “licensed looting” of Kazakh cultural property. As a result, in 1996 the Kazakh government introduced a regulation on the export and import of cultural property. Although this regulation introduced a system of control over the import-export of cultural property, it was not able to solve the most serious problem. This regulation declared that the cultural properties older than 100 years could not leave the country, except in the case in which they were travelling for temporary exhibitions abroad. The most precious paintings in Kazakhstan, however, were of modern Soviet artists, such as for example, Kalmykov S., Aitbaev S., Shardenov Zh. The paintings of these authors, being “younger” than 100 years, were outside the scope of this regulation. The Kazakh government feared that, in the case of foreign sales of these paintings, it would have to repurchase them from abroad at a price far higher than their current value. As a result, the Kazakh government emended the law substantially forbidding any permanent exportation of cultural property. These arguments explain why, according to the new regulation, the time limit parameter used in most of the Western countries (e.g. Italy, France, etc.) has been marginalized in favor of a qualitative, but less objective parameter (the commission’s judgment over the value of the artwork).

Concluding, though remaining some doubts on the interpretation of current legislation and its practical application, what is clear is that the Kazakh legislation regulating the assessed case seems to clearly favor the public interest compared to the private one.

Kyrgyzstan

Like in Kazakhstan, the first fact to be determined in this case study is whether the painting of Mister X is a cultural property. According to the Kyrgyz Law on Culture artworks are considered as cultural property (cultural values in the text of the law).²³⁷ The Kyrgyz law, contrary to Kazakh one that requests the cultural property enlistment in order to be considered as cultural patrimony,

²³⁷ Article 1, *Law of Republic of Kyrgyzstan N119 on Culture*, 2009.

automatically acknowledges to all tangible cultural property the status of Kyrgyz national cultural patrimony.²³⁸

In this imaginary case the painting of Mister X, according to the Kyrgyz law is considered as a cultural property. Therefore, its circulation is regulated by the governmental decree N36. This decree distinguishes three different categories of cultural property: the export of cultural property belonging to the first category is forbidden, the export of those of the second category is allowed only gaining a permission issued by an art expert appointed by the ministry of culture, the export of the cultural property of the third category is allowed even without the attainment of a permission. The painting of Mister X has less than 50 years, and therefore, it belongs by law to the third category. Mister X, therefore, can freely export and sell his painting to Mister Y abroad without running any necessary procedures.

As exception Mister X will not be allowed to export and sell his painting abroad in case the concerned artwork is officially registered (in other terms, it is included in the museum fund). The Kyrgyz legislation attributes the registered cultural property the rank of first category, thus forbidding their export.²³⁹ Still Mister X has right to sell his painting, though it should stay within the territory of Kyrgyz state and the government has the preemption right to buy the painting.²⁴⁰

As well as in the legislation of Kazakhstan, the Kyrgyz legislation clearly states that authors have right to export their artworks regardless their value and status. Moreover, contrary to the Kazakh case, the procedure in this specific case is very simple and clear. The only condition that must be verified before allowing the export of the artwork is the authorship, but normally the signature of the author on his painting is considered as a sufficient evidence.

Overall, the Kyrgyz legislation safeguards the public interest over cultural property through a system of exportation based on three categories. At the same time, the legislation is so precise, clear and balanced that private interests seem to be well protected too.

Uzbekistan

According to the legislation of Uzbekistan the painting of Mister X is considered as a cultural property and is legitimately regulated by the Uzbek Law on export and import of cultural values, since it has

²³⁸ Article 20, *Law of Republic of Kyrgyzstan N119 on Culture*, 2009.

²³⁹ See Annex I to the *Law of Republic of Kyrgyzstan N119 on Culture*, 2009.

²⁴⁰ Article 24, *Law of Kyrgyz Republic N37 on Museums and Museum Fund of Kyrgyz Republic*, 2000.

been produced on the territory of Uzbekistan.²⁴¹ The export prohibition applies to cultural property at least 50 years old and those cultural property that are included in governmental lists.²⁴² Therefore, according to law, Mister X has the right to export his painting and sell it to Mister Y (since his painting is less than 50 years old), unless his painting is enlisted or included within the museum fund.

The Uzbek legislation sets also out the procedures that Mister X should run in case he would like to export and sell his painting abroad (assuming that the painting is not listed and not included in museum fund).²⁴³ Mister X should request a certificate issuance from the Ministry of Culture and Sport Affairs providing: the concerned painting, some photos of the painting and the application form. Then the authorized art expert has ten days to examine the painting of Mister X and produce a final report. Basing on the information of this report the Ministry of Culture and Sport Affairs issues the certificate that allows Mister X to export his painting. If the painting of Mister X is an oil reproduction he does not need to receive the certificate-permission from the Ministry.²⁴⁴

The legislation of Uzbekistan provides authors the right to export their artworks.²⁴⁵ This legal provision, as the one in Kazakhstan, is not precise regarding the obligation of the author to process through the proper channels before exporting his artworks. Therefore, in Uzbekistan as well as in Kazakhstan it is still unclear whether an author needs to receive the certificate-permission for exporting his/her artworks.

In general, the Uzbek's export control law is similar to Kyrgyz one in regulatory terms (e.g. assessment of the time limit parameter and inclusion in the governmental lists), while it reminds more the Kazakh legislation from a procedural viewpoint (bureaucratic and technical process).

²⁴¹ See paragraph 2, Annex 1, *Decree of the Ministerial Cabinet of Republic of Uzbekistan N131, On Export and Import of Cultural Values*, 1999 and article 4, *Law of Republic of Uzbekistan N678-I on Export and Import of Cultural Values*, 1998.

²⁴² See article 8, *Law of Republic of Uzbekistan N678-I on Export and Import of Cultural Values*, 1998.

²⁴³ See paragraphs 9-24, Annex 1, *Decree of the Ministerial Cabinet of Republic of Uzbekistan N131, On Export and Import of Cultural Values*, 1999.

²⁴⁴ See paragraph 23, Annex 1, *Decree of the Ministerial Cabinet of Republic of Uzbekistan N131, On Export and Import of Cultural Values*, 1999.

²⁴⁵ Article 7, *Law of Republic of Uzbekistan N678-I on Export and Import of Cultural Values*, 1998.

2.2. Hypothetical case number two

Kazakhstan

The legislation of Kazakhstan recognizes to the owners of monuments the right to own, use, benefit and control them. However, the law also limits the private property rights, stating that the owners have no right to destroy the monuments and they are actually obliged to take care of, properly conserve and provide access to them.²⁴⁶

Since the building of Mister X is listed as a monument of history and culture with the local significance, first of all Mister X possesses the special documents that recognize the building as a monument, define the related protection zones (passport) and establishes the terms of maintenance (ohrannye obyazatelstva). These documents are important because they set the conditions for the maintenance of the listed monument. In addition, the person who owns a building listed as a monument of history and culture has the duty to address local government whenever he intends to perform reconstruction works on his building.²⁴⁷

Therefore, if Mister X intends to renovate his building he has first to present his plans to and gain the authorization of the local government.²⁴⁸ This conditions entails some restriction: for example, the execution of reconstruction works is allowed only to companies holding special licenses provided by the ministry of culture.²⁴⁹ Moreover, the owner has a legal duty to look after the long-term preservation of the enlisted building. As a result, the local government may undertake controls (but not more often than once a year) over the conditions of the monument owned by Mister X.²⁵⁰

In case Mister X does not properly maintain his monument, as in accordance with the documents mentioned above, he risks the loss of property rights on the concerned monument.²⁵¹ In short, the procedure is the following. To begin with, the local government may issue a

²⁴⁶ See Article 12 and paragraphs 1 and 6 of article 13, *Law of the Republic of Kazakhstan N1488-XII on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁴⁷ See paragraph 5, article 13, *Law of the Republic of Kazakhstan N1488-XII on Protection and Use of the Objects of Historical-cultural Heritage*, 1992.

²⁴⁸ Section 3, paragraph 2, Governmental Decree of the Republic of Kazakhstan N1044 *Rules on Protection and Maintenance of the Monuments of History and Culture*, 2007; Paragraph 2, article 34, *Law of the Republic of Kazakhstan N1488-XII on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁴⁹ Paragraph 4, article 34, and paragraph 4, article 19, *Law of the Republic of Kazakhstan N1488-XII on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

²⁵⁰ Paragraph 1, article 13, *Law of the Republic of Kazakhstan N377-IV on State Control and Supervision*, 2011.

²⁵¹ Article 14, *Law of the Republic of Kazakhstan N1488-XII on Protection and Use of the Objects of Historical-Cultural Heritage*, 1992.

prescription regarding the inappropriate preservation of the monument and it may officially require to the owner the resolution of the problems encountered within a certain period of time.²⁵² In the case that Mister X does not remedy to his infringements, the local government may apply to the court asking for withdrawal of the monument from the private property of Mister X.²⁵³ In such case the legal parts may come to an agreement, thereby executing a transition of property, or the court may agree to the expropriation of the building, setting the amount for the compensation of the previous owner.²⁵⁴ A similar circumstance (expropriation of a monument of history and culture previously owned by a private) occurred in 2007 at Karaganda city and in 2011 at Oskemen city. In both cases the government justified the act of expropriation due to the negligent attitude of the related former owner to adequately maintain the concerned monuments of history and culture (which were palaces of culture).

On the base of these considerations it seems possible to state that the public interest prevails over the private one in relations to those buildings considered by local governments as monuments of history and culture.

Kyrgyzstan

The Kyrgyz law regulating this issue is quite strict. It prohibits the destruction as well as the modification of monuments of history and culture.²⁵⁵ As in Kazakhstan, the owners of the monuments are obliged by the law to ensure the preservation of the monuments and the access to it.²⁵⁶ In addition, every restoration work, regardless the significance of the monument (national or local), should be approved by the Ministry of Culture.²⁵⁷

The status of a building as a monument of history and culture is established by the enlistment of the building and the issuance of the protective documents. Since Mister X is an owner of the building he possesses all the related documents concerning the building (passport

²⁵² Paragraph 5, article 33, *Law of the Republic of Kazakhstan N413-IV on Public Property*, 2011.

²⁵³ Paragraph 7, article 33, *Law of the Republic of Kazakhstan N413-IV on Public Property*, 2011.

²⁵⁴ Paragraph 2, article 33, *Law of the Republic of Kazakhstan N413-IV on Public Property*, 2011.

²⁵⁵ Article 15, *Law of the Kyrgyz Republic N91 on Protection and Use of the Historical-Cultural Heritage*, 1999.

²⁵⁶ Article 16, *Law of the Kyrgyz Republic N91 on Protection and Use of the Historical-Cultural Heritage*, 1999.

²⁵⁷ Article 34, *Law of the Kyrgyz Republic N91 on Protection and Use of the Historical-Cultural Heritage*, 1999.

and ohrannnye obyazatel'stva). This last document establishes a set of procedure and terms related, for example, to the works of restoration, preservation and renovation of the monument itself or in relation to other buildings and cultural property.²⁵⁸

Mister X, in order to perform renovation works, should first address to an organization that possesses the required license for such types of works. This organization will prepare a project plan and an estimative documentation. With such documents Mister X can apply for an approval document to the Ministry of Culture, which will evaluate the terms of the project. If the conditions are deemed satisfactory the Ministry will issue a permit for carrying out the planned works.²⁵⁹

As in Kazakhstan, the legislation of Kyrgyzstan provides the state with the right to withdraw the monument from the private property in case the owner carelessly treats the monument.²⁶⁰

Overall, the Kyrgyz legislation is quite similar to the Kazakh one, although in this case the Ministry of Culture certainly play a more significant role.

Uzbekistan

The legislation of Uzbekistan, contrary to the ones of Kazakhstan and Kyrgyzstan, establishes the obligations of the owners, but not their rights regarding the private owned monuments. In other terms, the Uzbek law does not state the right of the owners to own, use, benefit and control of monuments of history and culture. On the contrary, according to law, the owner should preserve the monument and undertake the following measures:

- preserve the external and internal appearance of an object of cultural heritage in compliance with its passport;
- obtain the permission of the Ministry of Culture in case of excavations, land survey, construction, reconstruction and other works within the boundaries of the monument;

²⁵⁸ Paragraph 4.4., Governmental Decree N568 on Registration, Protection, Restoration and Use of Objects of Historical-Cultural Heritage, 2002.

²⁵⁹ Paragraph 5.3., Governmental Decree N568 on Registration, Protection, Restoration and Use of Objects of Historical-Cultural Heritage, 2002.

²⁶⁰ See article 19, *Law of the Kyrgyz Republic N91 on Protection and Use of the Historical-Cultural Heritage*, 1999.

- ensure the preservation of the regime regarding the specially protected historical-cultural territories;
- provide the access to the monument on the conditions established by the owner of the monument.²⁶¹

According to the Uzbek legislation, as well as to Kyrgyz one, the Ministry of Culture has the task to concede the permit for renovation works regarding the monuments with both national and local significance. Therefore, if Mister X intends to perform renovation at his building he must first receive the permit of the Ministry of Culture.²⁶² However, the legislation neither clarifies the procedure for gaining the permit, nor it makes reference to other legal tools where such information could be available. So, *de facto* it is unclear how Mister X should proceed for gaining the required permission.

As well as in Kazakhstan and Kyrgyzstan the cultural property of Mister X can be expropriated by the state, if Mister X carelessly handles his enlisted building or he does not take care of its security.²⁶³

From a normative viewpoint the Uzbek legislation seems less developed on this specific issue than the laws of Kazakhstan and Kyrgyz. In particular, the absence of a clear bureaucratic procedure risks creating a stalemate. In this framework, the public interests are somehow preserved, while the private ones are scarcely considered.

Conclusion

This paragraph looked at the clash between the public and private interests over cultural property and it tried to assess how these interests are balanced in the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan. The analysis of the two imaginary cases depicts a clear situation: Kazakhstan, Kyrgyzstan and Uzbekistan prioritize the public interest over the private, since all these countries execute strict control over the private ownership of cultural property. The registered or listed private cultural property is not allowed to leave the state's territory and every renovation work related to the immovable cultural property need to be approved either by the local governments (like in Kazakhstan) or by the Ministry of Culture (like in Kyrgyzstan and Uzbekistan).

²⁶¹ Article 24, Law of the Republic of Uzbekistan N269-II on Protection and Use of Objects of Cultural Heritage, 2001.

²⁶² Article 20, Law of the Republic of Uzbekistan N269-II on Protection and Use of Objects of Cultural Heritage, 2001.

²⁶³ Article 26, Law of the Republic of Uzbekistan N269-II on Protection and Use of Objects of Cultural Heritage, 2001.

Posner E.A. criticizes the politics of the cultural property retention based on a moral claim of particular people (government) to possess their cultural property.²⁶⁴ He sees little link between contemporary societies and the ones lived thousands of years ago. "Iraqis today have little in common with the people who lived in Mesopotamia thousands of years ago. Much the same can be said about the people living in Greece, Italy, and India. Massive migrations have ensured that ancestral lines have been broken..."²⁶⁵ In Central Asian framework, however, the countries even though heavily use the cultural heritage in their possession for identity building, the major part of the cultural heritage that experiences restriction in circulation is happened to be the relatively new objects, which dates much less than thousands of years.

In the light of the state's objectives to keep the cultural property within the national borders at whatever price (compromising the private interests), the clash between public and private interests gradually shifts toward the clash between national and international interests. From one hand the state conducts politics of strict export control in order to preserve the cultural properties within its territories as part of the national cultural patrimony. From another hand there is the interests of all humanity to better preserve, study and provide wider access to cultural property regardless their origin. The subsequent paragraph examines the counterbalance of these interests according to the legislation of Kazakhstan, Kyrgyzstan and Uzbekistan.

3. Cultural policy toward cultural property in Central Asian countries: cultural internationalism or nationalism?

According to Merryman J.H. cultural property is a subject of public interest for the reason that it contains truth, represents morality, remains a foundation for cultural memory, possesses survival quality and ability to evoke emotions, gives identity, promotes a sense of community.²⁶⁶ This author in his famous article "Two ways of thinking about cultural properties" also sustains that states tend to approach the management of cultural property adopting two different perspectives: the first one, called "cultural internationalism", understands cultural property as a heritage of all mankind and, consequently, it highlights

²⁶⁴ Posner E.A., *The International Protection of Cultural Property: Some Skeptical Observations*, Public Law and Legal Theory Working Paper N.141, 2006, available at: http://www.law.uchicago.edu/files/files/141.pdf?origin=publication_detail, last access: 25/05/2014.

²⁶⁵ Posner E.A., last op. cit., 2006, p.9

²⁶⁶ See Merryman J.H., "The Public Interest in Cultural Property", *California Law Review*, vol.77, issue 2, 1989, pp. 345-349

the need to diffuse the universal values associated to these assets; the second one, denominated “cultural nationalism”, perceives the cultural properties from a nationalist viewpoint, thereby highlighting their relation with the territories where they have been produced or with which they have the closer cultural link.²⁶⁷

The co-existence of these two different approaches is reflected in the world distinction between *Market States* and *Source States*. *Market States* are those states (like, for example, Japan, United States and the Scandinavian countries) in which the demand of cultural property exceeds the supply. On the contrary *Source States* are those states (such as, for instance, Mexico, Egypt, Greece and India) where the opposite tendency is observed.²⁶⁸ Overall, the *Market States* prevalently support the *cultural internationalism*, being interested in the acquisition of foreign cultural properties in order to enrich their cultural supply. Differently, the *Source States* mainly sustain the *cultural nationalism*, being interested in the preservation, within the national borders, of their cultural properties.

Most of the times, states try to somehow satisfy both these divergent perspectives, thereby acting in a “grey area” between these two extremes. Nevertheless, one approach usually prevails over the other. The objective of this section is to identify which of these two viewpoints (*cultural internationalism* or *cultural nationalism*) is dominant in Kazakhstan, Kyrgyzstan and Uzbekistan. To this end, it is proposed to examine in-depth the most relevant interests identified by Jayme.

In his article “Globalization in Art Law: Clash of Interests and International Tendencies” Jayme E. identifies five groups of interests associated with the international art law: national interests, global interests, interests of private parties, interests of the artwork, interest of the art market.²⁶⁹ This analysis will focus the attention on national and global interests. Each of the interest has sub categories, according to which Kazakhstan, Kyrgyzstan and Uzbekistan will be analyzed. The national interests include following sub categories: Art and National

²⁶⁷ See Merryman J.H., “Two Ways of Thinking about Cultural Property”, *The American Journal of International Law*, Vol.80, No.4, 1986, pp.831-853. Available at: <http://links.jstor.org/sici?sici=0002-9300%28198610%2980%3A4%3C831%3ATWOTAC%3E2.0.CO%3B2-H>, last access: 10/07/2013

²⁶⁸ Merryman J.H. (1986), *last op. cit.*, p.832. See also Casini L., “Italian Hours: The Law of Cultural Properties in Globalized World”, Jean Monnet Working Paper, N11, 2010, p.14. According to Braman S., there is a third category, the “Transit” or Entrepôt States, that hold a crucial position in global art market, cleaning and transferring the illegally excavated/exported cultural objects from ‘Source’ to ‘Market’ countries. See Braman S., “International Treaties and Art”, *International Journal of Cultural Policy*, 14:3, p.317

²⁶⁹ Jayme E., “Globalization in Art Law: Clash of Interests and International Tendencies”, *Vanderbilt Journal of Transnational Law*, vol. 38:927, 2005

Identity, Export Control, The Nationality of Artwork, Nations and Minorities. The global interests, in turn, have sub-categories like Public Access to Artwork, Anti-Seizure Statutes, Protection of Human Rights, Peace and Time Limitations. In addition, although Jayme includes the conflict *lex loci rei sitae* vs. *lex originis* within the category related to the “interests of private parties”, assessing which of these two principles is adopted in the Central Asian countries could contribute to identify the nature of their approaches toward the cultural properties (in general, the *lex situs* is mostly supported by market states, while the *lex originis* is principally adopted by source countries).²⁷⁰ Therefore, the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan will be examined according to the table below.

National Interests	Interests of Private Parties	International Interests
Nationality of artworks	<i>Lex rei sitae</i> vs. <i>Lex originis</i>	Immunity from seizure during international loans
Export controls		Cultural cooperation and exchange
Restrictions of alienability		International protection of cultural heritage (universal cultural heritage, protection of cultural properties during armed conflicts, intangible heritage)

Table 3.6.: national and international interests (and their related sub-categories)²⁷¹

3.1 The Nationality of Artworks

According to article 4 of the 1970 UNESCO convention: “The States Parties to this convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

(a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;

²⁷⁰ Jayme E. (2005), *last op. cit.*, p.937. The *Lex loci rei sitae* principle entails the application of “the law where the property is situated”; while the *Lex originis* principle determines the enforcement of the “law of the country of origin of a work”.

²⁷¹ “Export control”, “Nationality of artwork”, and “Anti-seizure statutes” are all interests directly adopted from Jayme, while the others are personal reinterpretation of Jayme’s sub-categories.

(b) cultural property found within the national territory;

(c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;

(d) cultural property which has been the subject of a freely agreed exchange;

(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.”²⁷²

The first three categories identified in this article have been also embraced by the Uzbek Law on Export and Import of Cultural Values. According to the article four of this law, the cultural properties belonging to one of these three categories are subject to the Uzbek Law on Export and Import of Cultural Values. On one side, this statement does not directly imply that such properties belong to the Republic of Uzbekistan; on the other side, the introduction of a legal provision aimed to regulate the export and import of such properties suggests the existence of a formal link between these properties and the Uzbek state.²⁷³ A question of competencies come out assessing, in particular, the first category of the UNESCO convention, which assigns the nationality of an artwork according to the nationality of the artist who produced it.²⁷⁴ This provision assigns to the Uzbek Law the regulation of the import and export of artworks created by Uzbek citizens on the territory of other states.

Such approach of Uzbek law may generate regional clashes regarding both, the works of the artists created during the Soviet time and the period of independence. First, just twenty years ago, all Central Asian countries were under soviet rule. Painters all over the Soviet Union were educated in different from their hometown cities and send in different places to work. One of the results of such diffusion in Kazakhstan is a number of artworks created by Kyrgyz, Tajik, Uzbek,

²⁷² Article 4, *Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property*, UNESCO, 1970

²⁷³ Notice that it is unclear on what this link is based on. Perhaps, this provision was introduced by the Uzbek government as an attempt to claim ownership over such properties, but there are no data to unequivocally confirm this interpretation. At the same time, this article seems more than a simple “declaration of interest” toward those cultural properties included in these categories, produced by Uzbek artists, but currently located in foreign states.

²⁷⁴ According to Jayme, this method for assessing the nationality of an artwork is inappropriate. This author arguments his position providing the example of Venetian painter Giovanni Battista Tiepolo who, from 1762 until his death, worked in the Royal Court of Madrid for King Charles III of Spain. Therefore, as appropriately questioned by Jayme, the paintings executed by Tiepolo should belong to Italy or Spain?

Armenian and Russian artists stored in the museums and private collections. In this situation, the very same question is valid, to which state the artworks created by artist born in Uzbek Soviet Republic and worked in Kazakh Soviet Republic do belong, to the contemporary Uzbekistan or Kazakhstan?

Second group of artworks are related to the period of independence. After the collapse of the Soviet Union, the ex. Soviet countries created the Commonwealth of Independent States, which sustained the principle of free movement within the CIS. There is a number of artists having Uzbek citizenship work and live in different countries of CIS, Europe and US. According to Uzbek legislation, their artworks are subject to the Law on Export and Import of Cultural Values of Uzbek Republic. Most probably the countries of an artist's residence will not accept such provision.

Kazakhstan and Kyrgyzstan, contrary to Uzbekistan, do not embrace any of the categories mentioned in 1970 UNESCO convention. The national laws of these countries do not directly make reference to the categories of artworks that are subjected to their legislation or ownership, as Uzbek Law on Export and Import of Cultural Values does. However, following the logic of Kazakh and Kyrgyz laws, it is noticeable that the nationality of artworks is more related to the territory of the country than to its citizens.

The existence in Uzbek law of the provisions from the article four of the 1972 UNESCO convention and their absence in legislations of Kazakhstan and Kyrgyzstan distinctly shows that Uzbekistan adopted more nationalistic approach in defining the nationality of cultural objects than Kazakhstan and Kyrgyzstan.

3.2 Export Controls

The active integration process in Europe brought to the creation of European Union and establishment of the principle of a free market. However, there are some goods that are excluded from this principle like, for instance, the cultural goods.²⁷⁵ Jayme E. demonstrates that the national interest of export control regarding the cultural property produces obstructions in the circulation of cultural objects regardless the principle of free market embraced in the European Union.²⁷⁶

In the last years the post-Soviet territories have experienced a similar integration process, which led to the creation of a free trade zone. The presidents of Kazakhstan and Kyrgyzstan signed the free

²⁷⁵ See Jayme E. (2005), *last op. cit.*, p.934

²⁷⁶ See Jayme E. (2005), *last op. cit.*, p.934

trade agreement in 2011, alongside with other post-communist countries; while Uzbekistan did so in 2013.²⁷⁷ The new regional agreement promotes free trade for the state parties, but Kazakhstan, Kyrgyzstan and Uzbekistan still maintain strict export barriers for the circulation of their national cultural objects.

The Kazakh Law on Culture clearly states that the export of both the cultural values (listed by art. 32) and the objects of national treasure (“cultural objects with particular national value and included in the list of national treasure”) is prohibited.²⁷⁸

In Kyrgyzstan, as already shown in table 3.7., the Governmental Decree N36 of Kyrgyz Republic identifies a first category of cultural values that cannot be exported from the country (objects that are included in the national lists, objects of cultural heritage with particular value²⁷⁹, objects that are preserved in public museums, archives, libraries and other storehouses, objects of archeological interest, objects related to the historical events and the life of eminent persons, objects of worship with particular historical or artistic value created before XIX century, objects made of precious metals and stones created 50 and more years ago)²⁸⁰ and a second category that includes those cultural values that can be exported only obtaining a special authorization (this category includes a wide range of objects, like sculptures, paintings, graphics, folk art and crafts, coins, medals, weapons, musical instruments, furniture, postcards, books, ethnographic, zoological, botanical collections dating 50 or more years old).²⁸¹

The Uzbek Law on Export and Import of Cultural Values, as well classifies the cultural values, stating that, objects enlisted in the national catalogues, objects kept in the public museums, archives and libraries,

²⁷⁷ See article “Uzbekistan prisoedinilsya k zone svobodnoi trgovli SNG”, <http://www.gazeta.uz>, last access 31/05/2013

²⁷⁸ See paragraph 1, article 35, *Law of the Republic of Kazakhstan on Culture*, 2006. However, the same paragraph states that these properties can be provisionally exported for temporary exhibitions, tour activities, activities of restoration and research, presentations and exhibitions in international cultural events. Moreover, art. 36, par. 5, states that cultural properties cannot be exported for a period longer than 6 months. Concerning the definition of national treasure see Kazakhstan, *Law on Culture*, 2006, paragraph 14, article 1.

²⁷⁹ According to the article 1, *Law of Kyrgyz Republic on Culture*, 2009, the objects of cultural heritage with a particular value are historical, cultural and natural complexes, architectural ensembles, cultural organizations, and other objects with material, intellectual and artistic value of unique character from the point of view of history, culture, architecture, science and art.

²⁸⁰ See annex 1, *Governmental Decree N36, Directive on Import and Export in/from the territory of the Kyrgyz Republic of Cultural Values*, 2003.

²⁸¹ See annex 2, *Governmental Decree N36, Directive on Import and Export in/from the territory of the Kyrgyz Republic of Cultural Values*, 2003.

objects that are dated 50 years and more cannot be exported from the country.²⁸²

	Kazakhstan	Kyrgyzstan	Uzbekistan
Cultural values (C.V.), regardless of the time of their creation, with particular national significance or included in national lists	No-export	No-export	No-export
C.V. within the public and municipal museums, archives, libraries, and other public storehouse of cultural values	No-export	No-export	No-export
C.V. with historical importance, related to the development of society and state, or associated with the life and work of eminent personalities	No-export	No-export or Export restrictions	No-export (for those created more than 50 years ago)
Components and fragments of architectural, historic, artistic, and monumental art	No-export	No-export	No-export (for those created more than 50 years ago)
Archaeological findings and discoveries	No-export	No-export	No-export (for those created more than 50 years ago)
Icons and objects of worship with particular historical and artistic value	No-export or No-export (for those created more than 100 years ago)	No-export (for those created before the middle of XIX century)	No-export (for those created more than 50 years ago)
Items made of gold, platinum, or natural precious stones	/	No-export (for those viewed as unique and created more than 50 years ago)	No-export (for those created more than 50 years ago)

²⁸² See article 8, *Law of the Republic of Uzbekistan on Export and Import of Cultural Values*, 1998.

Sculptures, paintings, drawings	No-export	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago)
Miniature (on various materials) and items made of natural stones	/	Export restrict. (for those created more than 50 years ago)	/
Works of applied arts, including traditional folk arts and crafts	/	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago)
Stamp marks and blocks	No-export (for those created more than 50 years ago)	Export restriction (for those considered unique or rare)	No-export (for those created more than 50 years ago)
Domestic and foreign coins collections, and commemorative medals	No-export (for those released more than 50 years ago)	Export restrictions	No-export (for those released more than 50 years ago)
Notaphilic collections (paper money)	/	Export restrictions (for those released until 1960)	No-export (for those released more than 50 years ago)
Weapons of domestic and foreign production	/	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago and with historical, artistic, scientific or cultural value)
Household and scientific instruments of domestic and foreign production	No-export (for those related to the history of science and technique)	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago)
Musical instruments	No-export (for those unique or ancient)	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago)
Collections and individual specimens of zoological, botanical, mineralogical, anatomic, paleontological, ethnographic nature	No-export	Export restrictions (excluded anatomic components)	No-export (for those created more than 50 years ago)
Archival documents on any media	No-export	Export restrictions	No-export (for those created more than 50 years ago)

			years ago)
Manuscripts, books and publications	No-export (for those considered rare or ancient)	Export restrictions (for those created more than 50 years ago)	No-export (for those created more than 50 years ago and that are rare, ancient or of historical, scientific, artistic, literary interest)
Engravings, prints, lithographs	No-export	Export restrictions (for printed works considered as examples of decoration, illustration and printing)	No-export (for those created more than 50 years ago)

Table 3.7.: export restrictions in Kazakhstan, Kyrgyzstan and Uzbekistan²⁸³

Comparing Kazakhstan, Kyrgyzstan and Uzbekistan, it clearly comes out that, despite some minor differences, all these state adopted strict rules concerning the export of cultural property from their territories. As a result, it is possible to affirm that, in this field, these states have certainly embraced a severe nationalistic approach.

3.3 Restrictions of Alienability

Jayme E. includes the restraint on alienation within the interest of the nations to control the export of cultural property.²⁸⁴ However, this interest deserves to be viewed as an independent factor because, first, it is widely practiced by majority of the states and, second, it is technically different from the interest of the state to control the export of cultural goods. As a matter of fact, the aim of the export control is to prevent that the most precious cultural objects regardless the ownership will leave the country. Whereas, the original idea behind the regime of inalienability is to prevent that the publicly owned cultural objects would become private, even without leaving the territory of the country. In this way, the inalienability principle creates a special type of public cultural property which is *res extra commercium*.

²⁸³ Notice that in Kazakhstan there are different categories that only apparently are not regulated with export restriction. This result is due to the fact that the Law on Culture in Kazakhstan includes in the definition of cultural value undefined wide ranging categories such as, for example, ancient objects created more than 100 years ago and that have particular historical-cultural value, or works of art that has historical cultural importance.

²⁸⁴ Jayme E. (2005), *op. cit.*, p.934.

This national interest, which found its ground on art. 14, par. d of the 1970 UNESCO convention, has been embraced by all Central Asian countries.²⁸⁵ The three main domains regulated by the principle of inalienability are museums, archives and archaeological findings.

Kazakhstan, Kyrgyzstan and Uzbekistan enforce the principle of inalienability regarding the public part of museum fund.²⁸⁶ The Kazakh Law on Culture forbids the transfer of museum exhibits from the public museums into the private ownership, while the sectorial laws regulating museums activities and collections in Kyrgyzstan and Uzbekistan explicitly state that the publicly owned cultural properties are inalienable.²⁸⁷

Another important category of cultural property governed by the *res extra commercium* principle is that of the public archives. In Kazakhstan, Kyrgyzstan and Uzbekistan the laws regulating the archives specifically mention the inalienability of the public archival fund.²⁸⁸

Furthermore, the Kazakh Law on Culture proclaims that the national treasure is inalienable, the Kyrgyz law regulating the historical-cultural heritage states that property rights do not extend to the objects of archeology, while the Uzbek Law on protection and Use of Archeological Heritage clearly declares that the all archeological artifacts belong to the state and are inalienable.²⁸⁹ In addition, all these countries enjoy the preemption right, which assign to the state the right to purchase cultural properties sold by privates before that they can sell them to any other legal persons.²⁹⁰

²⁸⁵ See paragraph (d), article 14, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970.

²⁸⁶ Museum Fund in this case means a set of all objects and collections kept in all museums of the country. Museum fund comprises two parts, public and private.

²⁸⁷ See paragraph 3, article 25, *Law of the Republic of Kazakhstan on Culture*, 2006; article 14, *Law of the Kyrgyz Republic on Museums and Museum Funds*, 2000; article 15, *Law of the Republic of Uzbekistan on Museums*, 2008.

²⁸⁸ The archival fund should be understood in the same way as museum fund, a set of all documents and materials kept in all archives of the state. Regarding the inalienability principle see paragraph 1, article 2, *Law of the Republic of Kazakhstan on National Archival Fund*, 1998; article 12, *Law of the Kyrgyz Republic on National Archival Fund*, 1999; article 15, *Law of the Republic of Uzbekistan on Archival Science*, 2010.

²⁸⁹ See paragraph 6, article 34, *Law of the Republic of Kazakhstan on Culture*, 2006; article 15, *Law of the Kyrgyz Republic on Protection and Use of Historical-Cultural Heritage*, 1999; and article 15, *Law of the Republic of Uzbekistan on Protection and Use of Archeological Heritage*, 2009.

²⁹⁰ Some examples of the preemption right in the legislations of analyzed countries: see paragraph 5, article 34, *Law of the Republic of Kazakhstan on Culture*, 2006; article 18, *Law of the Kyrgyz Republic on Protection and Use of Historical-Cultural Heritage*, 1999; article 23, *Law of the Republic of Uzbekistan on Museums*, 2008.

Therefore, on the whole, Kazakhstan, Kyrgyzstan and Uzbekistan seem to adopt comparable measures to ensure the inalienability of public cultural property.

3.4 *Lex Loci Rei Sitae vs. Lex Originis*

Overall, Jayme E. and Fincham D. agrees that, in most of the states, the *lex rei sitae* prevails over the *lex originis* in the evaluation of legal cases related to the international transaction of cultural property.²⁹¹ However, Fincham criticizes this trend, arguing that the application of the *lex situs* leads to a sort of “legal justification” of illegally obtained cultural properties.²⁹² On the contrary, according to the same author, the application of the *lex originis* can significantly contribute to preventing and fighting the illicit circulation of cultural properties in the world. The core point is that, in the judicial cases related to the restitution of cultural properties, the *lex originis* favors the state of origin, recognizing the principle of inalienability, the preemption right, and the right of ownership of the state over the objects found in its subsoil (whereas these principles are effectively expressed in its national legislation). Contrarily, the application of the *lex rei sitae* can produce opposite outcomes, in particular in those states where the applicable law tends to protect good faith purchasers (in this case, the right of the *bona fide* purchaser may prevail over the right of the state of origin).

At international level, the 1995 UNIDROIT Convention regulates the restitution of stolen or illegally exported cultural objects. However, none of the analyzed Central Asian countries is a state party to this Convention.²⁹³

Central Asian countries signed series of regional agreements that favors restitution of illegally exported cultural properties to the state of origin. The “Agreement on restitution of cultural and historical values to the states of their origin” and the “Agreement on cooperation in the area of culture”, both adopted in 1992, provide evidences about the CIS countries’ willingness to cooperate in the restitution of cultural objects

²⁹¹ This circumstance is also due to the fact that sometimes it is impossible to identify the country of origin for those archaeological objects that have been illegally excavated. However, the *lex originis* is generally adopted by states judging the restitution of cultural properties that were illegally exported during an armed conflict.

²⁹² Fincham D., “How Adopting Lex Originis Rule Can Impede the Flow of Illicit Cultural Property”, *Colombian Journal of Law and the Arts*, vol.32, p.111, 2008, p.3

²⁹³ According to the International Institute for Unification of Private Law. The list of contracting and signatory states available at <http://www.unidroit.info/program.cfm?menu=contractingstates&file=instrument&pid=13&lang=en&do=states>, last access: 13/06/2013

to the country of their origin.²⁹⁴ In addition, these agreements have also provided the basis for the adoption of other important regional agreements like, for instance, the 1994 “Agreement on Cooperation of Custom Bodies for the Detention and Return of Illegally Exported and Imported Cultural Values”, the 2001 “Agreement on Export and Import of Cultural Values”, the 2007 “Agreement on Cooperation of CIS Countries in Combating the Theft of Cultural Values and Ensuring their Return”. The main mechanism of enforcement of these agreements is the system of custom controls, aimed to check the possession of valid documents for the exportation of cultural objects.

Regardless these shared regional agreements the national legislations of Central Asian countries concerning the restitution of cultural properties are quite diversified. The Republic of Uzbekistan is the sole, among the analyzed Central Asian countries, to clearly favor the *lex originis* regarding the cultural properties. The Uzbek “Law on Export and Import of Cultural Property” states that even a *bona fide* purchaser has to return to its original owner a cultural property illegally removed from other countries (although, taken into account his good faith, a compensation is granted).²⁹⁵

The Kazakh legislation states that illegally imported cultural property are subjected to return.²⁹⁶ However, this provision seems to exclude those cultural objects whose importation conform to the applicable national legislation, but that have been illegally exported from their country of origin. Moreover, the Kazakh “Law on Culture” does not make reference to any particular regional or international agreement and it neither makes reference to the rights of a former owner or an innocent buyer of a cultural property. The Republic of Kyrgyzstan follows the same logic, where the national legislation does not have any provision on the issue of a former owner or good faith purchaser of a cultural property.

When a collision of the laws occurs the national legislation determines the principle it favors. The civil codes of Kazakhstan, Kyrgyzstan and Uzbekistan clearly state that the ownership and other real rights are determined by the law of the country where the property is located.²⁹⁷ Taking in consideration this rule, it possible to say that, due to the absence of a legal provision favoring the original owner of a

²⁹⁴ See Agreement on restitution of cultural and historical values to the states of their origin, Minsk, 1992; Agreement on cooperation in the area of culture, Tashkent, 1992, available at www.online.zakon.kz.

²⁹⁵ See article 19, *Law of the Republic of Uzbekistan on Export and Import of Cultural Property*, 1998.

²⁹⁶ See paragraph 2, article 35, *Law of the Republic of Kazakhstan on Culture*, 2006.

²⁹⁷ See article 1107, *Civil Code of the Republic of Kazakhstan*, 1999; article 1193, *Civil Code of the Republic of Kyrgyzstan*, 1998; article 1184, *Civil Code of the Republic of Uzbekistan*, 1996.

cultural property, in Kazakhstan and Kyrgyzstan the *lex rei sitae* is applied. Differently, the Republic of Uzbekistan has taken a clear standpoint in favor of the *lex originis* regarding the cultural property issues, thereby supporting cultural nationalism.

3.5 Immunity from Seizure during International Loans

The Action Plan for the EU promotion of Museum Collections' Mobility and Loan Standards defines the immunity from seizure as a legal provision, which guarantees that cultural objects on temporary loan from another country will be protected against any form of seizure during the loan period.²⁹⁸

The adoption of anti-seizure regulations is strongly discussed issue. For instance, the discussion paper initiated by the Ministry for Culture and Heritage in New Zealand reveals pros and cons related to the enactment of a law concerning the immunity from seizure of cultural objects. Among the arguments supporting this legislation there are: first, that without anti-seizure regulations New Zealand institutions may meet difficulties in obtaining foreign cultural objects ("*...major international exhibitions may bypass New Zealand*"); second, the exhibitions of foreign cultural objects, favored by the introduction of anti-seizure measures, may produce a positive cultural, social and economic impact; third, without such kind of legislation "*...New Zealand's reputation as a borrowing country could be seriously harmed*".²⁹⁹ Within the list of potential negative outcomes associated with the introduction of a law on the immunity from seizure for cultural objects there are: the risk to undermine the right of the people to access the court and the potential conflict between the immunity from seizure legislation and international conventions.³⁰⁰

Recently, numerous states in the world have adopted anti-seizure statutes in order to stimulate exchange and study of foreign cultural objects. In the European Union, for example, there are 17

²⁹⁸ See "Action Plan for the EU promotion of Museum Collections' Mobility and Loan Standards", available at: http://www.ne-mo.org/fileadmin/Dateien/public/topics/s_Mobility/Members/Action_Plan_for_the_EU_Promotion.pdf, last access 03/07/2013

²⁹⁹ See Manatu Taonga, Ministry for Culture and Heritage, Discussion Paper "Immunity from Seizure for Cultural Objects on Loan", 2012.

³⁰⁰ According to New Zealand law the citizens have right of access to the courts and the adoption of empowerment of immunity from seizure could prevent this right. New Zealand is a party to the international conventions that could require it to return an object to the country of its origin. This condition can go against the immunity from seizure legislation that could require an object to be returned to the country of its last owner.

member states that have already approved (or are planning to adopt in a close future) anti-seizure laws and regulations.³⁰¹

Regardless this international trend, there are still states that do not have adopted any anti-seizure regulation. Kazakhstan, Kyrgyzstan and Uzbekistan fall in this second category of states. The national legislations of Kazakhstan and Kyrgyzstan do not contain any provision regarding the immunity of cultural objects in loan, whereas Uzbek law even though does not directly provides the immunity for the temporary imported cultural objects, declares that the government guarantees the protection of cultural objects temporary residing within the country.³⁰² In addition, Uzbek governmental directive contains a procedure to be followed by subjects who intend to temporary import cultural objects. However, in case of violation of these procedures the law states that Uzbekistan has right to impede the return of the related cultural objects.³⁰³

Overall, the adoption of anti-seizure regulations may contribute to increasing the level of cultural cooperation and exchange of cultural properties. Therefore, the adoption of these measures can be theoretically viewed as an aspect of cultural internationalism. However, at present, the Central Asian countries have not adopted yet substantial legal measures for regulating this aspect.

3.6 Cultural Cooperation and Exchange of Cultural Properties

The ratification of international, regional and *ad hoc* bilateral agreements is the main legal procedure used by states for instituting regimes of cultural cooperation and organizing temporary exchanges of cultural properties.

³⁰¹ See European Union expert group "Mobility of Collections", subgroup "Immunity from seizure", "Conclusions and Recommendations", available at: http://ec.europa.eu/culture/documents/immunity_seizure.pdf, last access 03/07/2013. Be aware that there is not a unique procedure for establishing the immunity from seizure to cultural objects. Knerly S. J. *et al.*, for instance differentiates several types of immunity: automatic immunity; immunity after application; immunity after application and publication; immunity after application, publication and period of non-objection; immunity after application, publication and judicial determination. See Stephen J. Knerly, Jr. Kristen L. Gest Hahn Loeser & Parks LLP, "International Loans: State Immunity and Anti-Seizure Laws", 2009, available at: http://www.lending-for-europe.eu/fileadmin/CM/public/training/Antwerp/ALI-ABA_2009_Summary_of_Seizure_Laws.pdf, last access 03/07/2013.

³⁰² See article 14, *Law of the Republic of Uzbekistan on Export and Import of Cultural Values*, 1998.

³⁰³ See *Directive of the Ministerial Cabinet of the Republic of Uzbekistan on Issues of Export and Import of Cultural Values in the Republic of Uzbekistan*, N131, 1999.

For example, on international level the 2001 UNESCO Convention on Protection of Underwater Cultural Heritage encourages the cooperation between states to protect and manage the underwater cultural heritage, while the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property explicitly states that the interchange of cultural property “increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations”.³⁰⁴

At regional level, for instance, the European Cultural Convention, declares the responsibility of the “Contracting Party... [to] facilitate the movement and exchange... of objects of cultural value”.³⁰⁵

The Central Asian countries, owing to the geopolitical interests of larger world powers are parties to different international organizations that within their framework promote cultural cooperation and signature of agreements in the cultural sphere. Some of these organizations, like Intergovernmental Foundation for Educational, Scientific and Cultural Cooperation (IFESCO), functioning under the Commonwealth of Independent States, Islamic Educational, Scientific and Cultural Organization (ISESCO) functioning under the Organization of Islamic Cooperation and International Organization on Turkic Culture (TURKSOY) are particularly designed for the cooperation in the cultural sphere, while others, for instance Shanghai Cooperation Organization primary aimed to function in the economic, politic and military spheres, though still produce cultural outcomes.

IFESCO and TURKSOY are particularly active in the cultural sphere. For instance, the activities of IFESCO directed to different cultural sectors, cultural heritage, cinematography, music and theatre.³⁰⁶ While TURKSOY focuses on organization of joint festivals,

³⁰⁴ See UNESCO, *Convention on the Protection of the Underwater Cultural Heritage*, 2001, arts. 2, 6, 19, and 21; and UNESCO, *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 1970, preamble.

³⁰⁵ See article 4, European Cultural Convention, 1954, available at <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=018&CL=ENG>, last access 05/07/2013.

Interestingly, Kazakhstan is the first and up to date the sole country in Central Asia to become a state party to the European Cultural Convention. Regardless the ratification of this convention by Kazakhstan in 2010, yet within its framework there are no evident results in the cultural sphere. See the chart of signatures and ratifications at: <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=018&CM=&DF=&CL=ENG>, last access 06/07/2013

³⁰⁶ According to the official web page of IFESCO, within the framework of cultural heritage it organizes summer school for archeologists and restorers, conference on cultural tourism and professional trainings on management of museums; in the cinema sector IFESCO established two film festivals “Victory - one for all” and “Kinoshok” and

concerts, workshops and meetings in the sphere of visual art, photography and classical music.³⁰⁷

IFESCO, TURKSOY and ISESCO³⁰⁸ use a similar measure for the cultural cooperation, the organization of cultural capitals. For example, in 2012 Astana, the capital of Kazakhstan was nominated as the cultural capital of CIS countries within the framework of IFESCO and of Turkic World within the framework of TURKSOY.³⁰⁹ As a result, the Kazakh government makes available substantial investments in order to organize around 100 large-scale cultural events such year.³¹⁰

Apart of the cultural activities organized within the framework of diverse international organizations, Kazakhstan, Kyrgyzstan and Uzbekistan develop number of bilateral agreements in the cultural and educational spheres.³¹¹

international school for young movie directors from the Commonwealth of Independent States and Baltic countries; in the sphere of music it initiated music festival “the melody of friends”, music competition dedicated to Hachaturyan A. and international music academy of Commonwealth of Independent States and within the theatre framework IFESCO founded competition “Maska plus” and lab for young theatre directors. Available at: http://www.mfgs-sng.org/projects/mass_art/, last access: 01/02/2014

³⁰⁷ See official web page of TURKSOY

³⁰⁸ The list of cultural capitals within the activities of ISESCO is available at: http://www.isesco.org.ma/index.php?option=com_k2&view=item&layout=item&id=51&Itemid=84, last access: 01/02/2014.

³⁰⁹ The nomination of Astana as CIS cultural capitol 2012 has been decided within the framework of IFESCO (Intergovernmental Foundation for Educational, Scientific and Cultural Cooperation) an organization aimed to promote the development of common humanitarian space, sustainable development and intercultural dialogue in the CIS territories, through education, science, culture, communication, information, sport and tourism. See the official website of IFESCO: <http://www.mfgs-sng.org>, last access” 06/07/2013.

³¹⁰ According to the summary of the Ministerial activities in 2012, the Ministry of Culture and Information of Kazakhstan organized 50 large scale cultural events, like International Forum “Eurasian culture in a new world”, International Festival of ethnographic movies “Samruk-Ethno-Fest”, International TV Festival “Tefi-Comonwealth”, Forum of CIS Librarians and so on. The summary is available at: http://mki.gov.kz/rus/analiticheskie_doklady_i_obzor/, last access: 06/07/2013. See also the Message from the President of the Republic of Kazakhstan Nursultan Nazarbayev to the people of Kazakhstan, available at: http://www.akorda.kz/ru/page/poslanie-prezidenta-respubliki-kazakhstan-n-a-nazarbaeva-narodu-kazakhstana_1339760819, last access: 06/07/2013.

Regarding the cultural events within the framework “Astana - the cultural capital of Turkic World” see: <http://dmastana.kz/dm-news/astana-v-epitsentre-kulturnyih-sobyitiy/>, last access: 01/02/2014 and <http://newskaz.ru/culture/20110920/1912265.html>, last access: 01/02/2014.

³¹¹ For example, Kazakhstan has following bilateral agreements in the sphere of culture:

- Memorandum on mutual understanding between the Ministry of Culture and Information of the Republic of Kazakhstan and ministry of Culture of Slovak Republic on Cultural Cooperation, 21/11/2007;

At national level, the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan express the will of these countries to be involved in the exchange of cultural properties and contain provisions to regulate such activity.³¹² However, the processes for the temporary exportation of cultural properties are so highly bureaucratized, requiring the approval of several authorities, that the level of international exchanges of cultural properties in these countries is noticeably underdeveloped.

Therefore, regardless functioning of different international organization that promotes cultural cooperation, their activities have an impact on music, dance, cinema and when does relate to the circulation of cultural property, the exchanges have one-time character. The Central Asian countries have not yet adopted significant steps to effectively enforce the will to facilitate the exchange of cultural properties, thereby retaining their cultural objects within the national borders.

3.7 International Protection of Cultural Heritage

Protection of universal cultural heritage

The World Heritage Convention recognizes that the cultural heritage with universal value has to be preserved and protected for the benefit of all mankind as a whole.³¹³ Therefore, this Convention manifests the view of cultural internationalism toward those outstanding cultural and natural sites included in the World Heritage List.

Kazakhstan, Kyrgyzstan and Uzbekistan became states parties to the World Heritage convention in 1994, 1995 and 1993 respectively: Kazakhstan and Kyrgyzstan accepted the World Heritage convention,

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- Agreement between the government of the Republic of Kazakhstan and the government of the Republic of Tajikistan on Cooperation in the Spheres of Culture and Arts, 21/08/2007;
 - Memorandum on mutual understanding between the government of the Republic of Kazakhstan and the government of the Arab Republic of Egypt on Cooperation in the Sphere of Culture, 02/05/2006;
 - Agreement between the government of the Republic of Kazakhstan and the government of the Republic of Estonia on Development of Cooperation in the Cultural-Humanitarian Sphere, 01/06/2004;
 - Agreement between the Republic of Kazakhstan and Turkmenistan on Cooperation in the Spheres of Trade-Economy, Science and Culture, 28/05/2007.

³¹² See article 37, *Law of the Republic of Kazakhstan on Culture*, 2006; article 44, *Law of Kyrgyz Republic on Culture*, 2009.

³¹³ See preamble of the World Heritage Convention 1972

while Uzbekistan only signed it.³¹⁴ Signing (or ratifying) the World Heritage Convention, inscribing their properties in the World Heritage List, and proposing a number of other sites in their Tentative Lists, all these countries have implicitly accepted to embrace cultural internationalism (although only in relation to a specific and limited number of cultural and natural sites).

At present, Kazakhstan is the sole state, among the analyzed Central Asian countries, which has inscribed in the related UNESCO list both cultural and natural sites: the Mausoleum of Khoja Ahmed Yasawi (listed in 2003) and Petroglyphs within the Archeological Landscape of Tamgaly (2004) are cultural sites, while Saryarka–Steppe and Lakes of Northern Kazakhstan (2008) is a natural site. In 2009 Kyrgyzstan inscribed in the UNESCO list the cultural site of Sulaiman-Too Sacred Mountain, while Uzbekistan inscribed the cultural site of Itchan Kala in 1990, the Historic Centre of Bukhara in 1993, the Historic Centre of Shakhrisayabz in 2000, and the city of Samarkand in 2001.

Protection of cultural heritage during armed conflict

The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict was the first international legal instrument specifically dealing with the protection of cultural property.³¹⁵ The 1954 Hague Convention is an example of cultural internationalism in the approach toward the cultural property: in its preamble this Convention refers to the cultural property as to the cultural heritage of all mankind (heritage with great importance for all peoples of the world).³¹⁶ Regardless the great intention of this

³¹⁴ Acceptance of the World Heritage convention has the same legal consequences as its ratification. Kazakhstan and Kyrgyzstan, accepting the World Heritage convention are, therefore, bounded by its provisions. Signing of the World Heritage convention, as in the case of Uzbekistan, shows the willingness of the state to continue the treaty-making process, however, does not bound the state by the signed convention. See http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml#a_cceptance; types of instruments chosen by states parties were found at <http://whc.unesco.org/en/statesparties/>, last access 23/06/2013

³¹⁵ See Armbruster C., et al, *Study on preventing and fighting illicit trafficking in cultural goods in the European Union*, by the CECOJI-CNRS – UMR 6224, Final Report, 2011, p.30, available at: http://ec.europa.eu/home-affairs/doc_centre/crime/docs/Report%20Trafficking%20in%20cultural%20goods%20EN.pdf, last access 24/06/2013

³¹⁶ Preamble of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict: “...Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of **all mankind**, since each people makes its contribution to the culture of the world; Considering that the preservation of the cultural heritage is of great importance for **all peoples of the world** and that it is important that this heritage should receive international protection...”, available at: <http://www.unesco.org/new/en/culture/themes/armed-conflict-and-heritage/the->

convention and its first Protocol, their ratification and implementation processes were complex. This situation brought to the failure of the 1954 Convention during the conflicts in ex-Yugoslavia, Cyprus and Middle-East.³¹⁷ The Second Protocol to the 1954 Hague Convention was therefore designed to cover the lacunas of the Convention, adopting more restrictive provisions and a more cultural-value oriented approach.³¹⁸

Kazakhstan, Kyrgyzstan and Uzbekistan have ratified the 1954 Hague Convention, but none of these states has ratified the Second Protocol to the 1954 Convention (while the first Protocol has been ratified exclusively by Kazakhstan). Therefore, it seems possible to affirm that the international interest to protect cultural property during armed conflict is only partially supported by Central Asian countries.

Safeguarding of Intangible Cultural Heritage

This international interest to safeguard the intangible cultural heritage found its embodiment in the 2003 UNESCO Convention for the Safeguarding of Intangible Cultural Heritage. The preamble of this Convention states that the general conference of UNESCO adopted this Convention "*being aware of the universal will and the common concern to safeguard the intangible cultural heritage of humanity*".³¹⁹ Since 2003, 154 countries have ratified this Convention and around 300 elements have been inscribed in the Lists of Intangible Cultural Heritage.³²⁰

Kazakhstan, Kyrgyzstan and Uzbekistan have ratified the 2003 UNESCO convention in 2011, 2006 and 2008 respectively. So far the Republic of Kazakhstan has not inscribed any elements in the Lists of Intangible Cultural Heritage, whereas Kyrgyzstan and Uzbekistan enlisted 3 (Art of Akyns, Novruz, and Ala-kiyiz and Shyrdak) and 4 elements (Shasmaqom, Cultural space of Boysun District, Novruz,

hague-convention/text-of-the-convention-and-its-1st-protocol/#hague, last access: 26/06/2013. See also Merryman J. H. (1986), *op. cit.*, pp. 831-853.

³¹⁷ See Boylan J.P., "Implementing the 1954 Hague Convention and its Protocols: Legal and Practical Implications", p.3, 2006, available at: <http://culturalpolicy.uchicago.edu/papers/2006-protecting-heritage/Boylan.paper.pdf>, last access 02/07/2013.

³¹⁸ Frulli M., "The Criminalization of Offences against Cultural Heritage in times of Armed Conflict: The Quest for Consistency", *European Journal of International Law*, vol. 22, issue 1, pp. 203-217, available at <http://ejil.oxfordjournals.org/content/22/1/203.full>, last access: 02/07/2013.

³¹⁹ See preamble of the 2003 UNESCO Convention for the Safeguard of Intangible Cultural Heritage, available at: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00022>, last access: 09/07/2013.

³²⁰ According to the UNESCO website, available at: <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00011&multinational=3&display=inscriptionID>, last access: 09/07/2013.

Katta Ashula) respectively. Therefore, on the whole, it seems that these states have embraced the spirit of cultural internationalism for the preservation of the intangible cultural heritage.

3.8 Final remarks on the national and international interests

As expected, the legislations of Kazakhstan, Kyrgyzstan and Uzbekistan reflect both the international and national interests. However, it seems that the national interests are privileged compared to the international one. As a matter of fact, all these states adopt strict rules for controlling the export of cultural properties, proclaim the inalienability of the publicly owned cultural objects, and claim the preemption right over the archaeological properties discovered in their territories. Moreover, all these countries seem to mainly support the *lex originis* principle in the framework of the restitution of illicitly removed/exported cultural properties. On the contrary, none of the analyzed countries has adopted anti-seizure laws or it has significantly developed the cultural cooperation and the temporary exchanges of cultural properties with other foreign countries (although they officially claim an interest toward these matters).

This intense prioritization of the national interest is a common strategy of the “Source States”: the goal is to protect and enhance the national heritage within their territorial borders. However, Kazakhstan, Kyrgyzstan and Uzbekistan have presumably adopted this strategy as a way to consolidate their status of new independent countries, thereby creating a sense of identity and strengthening their national values. In this specific framework, the international interests are, at the moment, significant, but nonetheless of secondary importance compared to the national ones.

Conclusion

"On the surface, an intelligible lie; underneath, the unintelligible truth"

(M. Kundera, The Unbearable Lightness of Being)

This study aimed to explain, critically evaluate and compare the public cultural policies enforced in three Central Asian countries, Kazakhstan, Kyrgyzstan and Uzbekistan after the fall of the Soviet regime. In order to achieve this aim the following questions were critically assessed: Which interests (international, national, private) are favored in legislations of analyzed countries? To which extent was the decentralization of the cultural sphere (a sing of liberalization) realized in these countries? What are the core similarities and differences in their approaches to the cultural sphere? Which are the legal and managerial patterns embraced by these states in the cultural policy field? How (and why) has the public management of the cultural sector changed in Kazakhstan since independence?

On the base of the collected data and exposed arguments, the author arranged the conclusion in three sections: cultural legislation, governmental administration and case study on Kazakhstan. Each of these sections has been organized according to the following structure: empirical findings, theoretical implication, and suggested recommendations. As final remarks, it is proposed a reasoned list of topics that could be further investigated.

Cultural legislations of Kazakhstan, Kyrgyzstan and Uzbekistan.

Empirical findings

The main empirical findings related to Chapter II were summarized at the end of each section. This part will provide a synthesis of these findings, identifying the similarities and differences between Kazakhstan, Kyrgyzstan and Uzbekistan.

Similarities:

1) Legislative system structure

The structure of the legal systems regulating the cultural sphere in Kazakhstan, Kyrgyzstan and Uzbekistan is quite similar. All these countries further develop the fundamental principles established in

their constitutional provisions through the adoption of *ad hoc* laws aimed to regulate the different aspects of the cultural sphere, such as, for example, cultural heritage, circulation of cultural property, cinema, languages and religion. This shared structure is presumably the result of two interlinked factors: the common tradition of Soviet legislation, and the current ongoing process of regional integration and legislative harmonization within the Commonwealth of Independent States.

2) National legislation as a mirror of society

The constitutional and national provisions of Kazakhstan, Kyrgyzstan and Uzbekistan somehow shape and, at the same time, reflect some of the main features of their societies. For instance, the effort of the constitutions of Kazakhstan and Kyrgyzstan to devote to the Russian language a special status within these countries reveals the attempt to calm down the potential social tension between Kazakh/Kyrgyz nationalists and Russian ethnic minority. The more detailed legislation of Kyrgyzstan regarding the intangible cultural heritage, compared to the legislations of Kazakhstan and Uzbekistan, is partially explicable considering the litigation between Kyrgyzstan and UNESCO related to the inscription, as a Chinese element of intangible heritage, of “Epos Manas” within the List of Intangible Cultural Heritage. The exhaustive and detailed legislation of Uzbekistan in the sphere of cinema reflects the higher relevance and development of this sector in Uzbek compared to Kazakhstan and Kyrgyzstan.

3) Cultural nationalism approach

The Kazakh, Kyrgyz and Uzbek cultural policies regarding the cultural property clearly express the prevalence of approaches based on cultural nationalism rather than on cultural internationalism. As a matter of fact, these countries: impose strict regimes of export of cultural property, exercise the preemption right, recur to the inalienability principle over cultural property, and embrace the *lex originis* principle. The policies of these countries tend to create wide circle of the *res extra commercium* cultural property. On the contrary, in these states the international cooperation, anti-seizure statutes and exchange of cultural property are still quite underdeveloped aspects.

4) Priority interests are those of public

Kazakhstan, Kyrgyzstan and Uzbekistan prioritize the public interest over the private, since all these countries execute strict control over the private ownership of cultural property. The registered or listed private cultural property is not allowed to leave the state’s territory and every renovation work related to the immovable cultural property need to be approved either by the local governments (like in Kazakhstan) or by the Ministry of Culture (like in Kyrgyzstan and Uzbekistan).

5) Toward unification of the cultural legislation

The Kazakh Law on Culture, incorporating all main cultural sectors and separating jurisdiction between the state authorities, substantially acts as a sort of “cultural constitution”. The Kyrgyz state has also a Law on Culture, although its provisions are undeniably less comprehensive than the Kazakh one. At the moment, Uzbekistan has not adopted yet a Law on Culture, but it seems that the Uzbek government is planning to adopt such law in the short term. Therefore, despite the current legislative divergences, in all these countries there is a clear tendency of unification of the laws in the cultural sphere.

6) “Culture” as an indicator of social “Development”

The notion of “culture” plays an important role since it is the pillar on which rest other culture related legal provisions. Kazakhstan and Kyrgyzstan legally define “culture” using a humanistic approach. Accordingly, the concept of “culture” is associated to the development of an individual (Kazakhstan) or of the whole society (Kyrgyzstan). As a result, such definitions seem to suggest the perception of “culture” as an indicator of the overall “development” of these states.

Differences

1) The role of the president in the cultural law making process

The president in Kyrgyzstan does not play a key role in the cultural law making process, though he may create cultural organization and he may provide them a “national” status. Differently, the presidents of Kazakhstan and Uzbekistan are more active in this sphere although adopting diverse strategies. The president of Kazakhstan tends to set the general framework and main objectives in the cultural sphere, but then, the Ministry of Culture has great decisional autonomy about how effectively achieve these goals. On the contrary, the Uzbek president directly interferes in the cultural sphere, undertaking in first person adoption of important legal regulations, such as, for example, presidential orders “on Development of the National Dance and Choreography in Uzbekistan”, “on Theatre Development in Uzbekistan”, “on Improvement of the Management on the Cinematography Sphere”.

The cultural sectors where the Uzbek president interferes are divided into two groups. First group is a cultural production: theatre, dance, cinema, applied arts, and music; while the second group is cultural heritage: monuments, museums, folk arts and crafts. In this way the political power, first, secures the production of “right” symbols that support current ideology via direct interference in the

cultural production. Second, it influences a social memory, keeping only useful to the current ideology artifacts through interference in cultural heritage sector.

2) Same term, but different meanings

The analysis of the national legislation highlights that Kazakhstan, Kyrgyzstan and Uzbekistan, in several cases, associate different meanings to the same term. This situation occurs, for example, in relation to the concepts of cultural property, cultural heritage and historical cultural heritage. This circumstance inevitably produces an impact on listing process and types of property that can be inscribed. In other words, a certain object that is valued by the Kazakh legislation as a cultural asset may not be considered as such by the laws of Kyrgyzstan and Uzbekistan.

Theoretical implications

1) Cultural nationalism

According to Merryman, cultural nationalism is more widespread than cultural internationalism. The nation-oriented policies emphasize cultural nationalism. According to this approach, cultural objects belong to the nation within whose boundaries they are found or to the state with which they are historically associated. On the contrary, the object-oriented policies (which stands for the cultural internationalism) sustain the need to consider three interdependent aspects (preservation, truth and access) in order to define where a cultural property should be managed (everyone has an interest in the preservation of and access to cultural property, which is the cultural heritage of all mankind).⁵⁰² Commonly the source countries advocate nation-oriented cultural property policies in order to promote the retention of the cultural property (even undermining the right of private ownership).

The retention politics adopted by the Central Asian states could be interpreted on the base of two considerations: on one hand, it could be related to the “young age” and their still ongoing nation building processes; on the other hand, such policy could be seen as a reaction to the removal of cultural properties experienced during the Soviet period.

2) Role of the presidents

⁵⁰² See Merryman J. H., “The Nation and the Object”, in *Thinking About the Elgin Marbles: Critical Essays on Cultural Property, Art and Law*, 2nd ed. Alphen aan den Rijn, Netherlands, 2009.

The significant, but still diverse role played by the Kazakh and Uzbek presidents in the cultural law making process seem to confirm the theory of Adams and Rustemova (2009) about the cultural production in Kazakhstan and Uzbekistan. According to these authors, Kazakhstan has adopted a managerial style of governability, while Uzbekistan a paternalistic one. The managerial style comprehends indirect incentives aimed to create a favorable environment for cultural development, while the paternalistic style is realized through direct interference aimed to penetrate all social realms.

In both countries, the presidents play a key role in the ideology building. The link between the law making power in the cultural sphere and the ideology building comes out not only from the Kazakhstan and Uzbekistan cases, but also from the case of Kyrgyzstan. The power of the Kyrgyz president in cultural law-making process is feeble and hence the president does not play a key role in the ideology building. The confirmation of this hypothesis is found in the work of Schoeberlein and Murzakulova. They argue that in Central Asian countries the ideology building tends to be a prerogative of the presidents of the republics, while in Kyrgyzstan this is not an exclusive domain of the President.⁵⁰³

Policy implications and recommendations

1) The Republic of Kazakhstan recently adopted a governmental decree regarding the intangible cultural heritage. However, the fact that, according to the Kazakh Law on Culture, cultural heritage comprehends only tangible property testifies a sort of underestimation toward this heritage. Therefore, the recommendation is to amend the Law on Culture in order to introduce some provisions related to the intangible cultural heritage.

2) The state with the most complex conceptual apparatus is certainly Kazakhstan. Its intricate system of connection between the various legal conceptions make sometimes unclear the overall legal structure and quite chaotic the related listing processes. For example, the archeological monuments are at the same time considered as objects of historical-cultural heritage as well as cultural property. This situation may entail the inclusion of a same archeological monument in both the National Cultural Patrimony List and List of the Monuments of History and Culture, thereby making uncertain which protective regime should be primarily considered. There are no doubts that a

⁵⁰³ Murzakulova A., Schoeberlein J., "The Invention of Legitimacy: Struggles in Kyrgyzstan to Craft an Effective Nation-State Ideology", *Europe-Asia Studies*, 61:7, 1229-1248, available at: <http://dx.doi.org/10.1080/09668130903068756>, last access: 04/10/2011

simplification of the conceptual apparatus may improve the efficiency of the listing process and management of cultural assets.

3) In Kazakhstan, Kyrgyzstan and Uzbekistan the national legislation on artwork's nationality contain provisions that may be the cause of potential regional conflict. Taking in consideration the passion of Central Asian countries toward their cultural heritage and the readiness to defend their national interests (e.g. Kyrgyzstan vs. UNESCO, listing of the Epos Manas), the author firmly believes that the harmonization of the legislation related to this issue is an important (feasible) step to further secure regional stability (thereby avoiding that a dispute over cultural property may degenerate a conflict).

4) The term "archeological item" adopted in the legislation of Uzbekistan is over comprehensive because it includes all items found under the ground, without making any reference to their values. Similarly, the absence of a time frame in defining the cultural values (properties) generates over inclusive term of cultural values. As a matter of fact, almost all objects found on the territory of Uzbekistan might be considered as cultural values.

Cultural Decentralization in Kazakhstan, Kyrgyzstan and Uzbekistan

Empirical findings

The main empirical findings related to Chapter III are chapter specific and are summarized in the last section of Chapter III. Here in conclusion the author provides their synthesis and presents it following the logic of two analytical tools used in Chapter III.

Type Function Framework

1) Uzbekistan's centralized approach in the administration of the cultural sphere

Within the three states examined, Uzbekistan is the one that adopt the most centralized approach in the administration of the cultural sphere. Operating locally through its structural branches, the Ministry of Culture deprives the local governments of the possibility to autonomously develop their cultural policies. In fact, the local governments do not have jurisdiction to adopt legal regulations related to the cultural sphere and, in addition, they are excluded from the management of the local cultural assets. The solely decentralized process managed entirely by the local governments is the finance of cultural organizations.

2) The political decentralization in Kyrgyzstan do not secure cultural decentralization

Regardless its highly decentralized political system, the cultural decentralization in Kyrgyzstan is limited to few (but important) activities. As in Uzbekistan, the ministry of culture in Kyrgyzstan operates through its local institutional branches. The core difference between the administrative models of Kyrgyzstan and Uzbekistan is that Kyrgyzstan decentralized not only the finance, but also the administration and decision-making to the local authorities regarding the local leisure organizations. The Kyrgyz Ministry of Culture, in this way, is responsible for the development and accessibility of the high culture, while the local authorities for the leisure culture.

3) Kazakhstan's decentralized approach in administration of the cultural sphere.

Contrary to Kyrgyzstan and Uzbekistan, Kazakh Ministry of Culture does not operate through its institutional branches. The Ministry of Culture exercises power over a restricted group of national cultural organizations, while the local authorities may autonomously manage and take decisions concerning the local cultural organizations. Such autonomy from the center increases the accountability of the local authorities, although the Ministry of Culture still sets the legal framework for the cultural organizations and monitors their actives (mainly for the statistical reasons). Therefore, the situation regarding the cultural decentralization in Kazakhstan may be viewed as a sharing of responsibilities between the central and local governments.

Administrative Design Framework

1) Monopolization of the cultural service.

Kazakhstan, Kyrgyzstan and Uzbekistan exercise a monopoly over the provision of public cultural service. The tasks regarding the cultural sphere are performed within one institution (the Ministry of Culture and theirs local departments are responsible regarding the majority of the analyzed competences). Therefore, the strategy chosen by analyzed countries is Distributed Institutional Monopoly.

Theoretical implications

1) Uzbekistan and Soviet-style

The Ministry of Culture in Uzbekistan is carrying on the same role of its Soviet predecessor, being primarily responsible for the patriotic and

high moral education of the Uzbek population. This task is accomplished through the direct control of cultural organizations and cultural heritage. All decision making power is concentrated within the Ministry of Culture, which can: decide on the opening, closing or relocation of cultural organizations; control the activities of all cultural organizations and their compliance with the moral and ideological standards imposed by the government; and exercise a veiled censorship, thereby allowing only the cultural creativity that fits with the national standards. Such administrative approach toward the cultural sphere strongly reminds the Soviet Union centralized approach in the administration of the cultural sphere. Adams argues, “the culture in Uzbekistan was characterized by national content, modern forms and Soviet-style production”.⁵⁰⁴ Uzbekistan not only characterized by Soviet-style production, but also by Soviet-style centralized administration of the cultural sphere.

2) Uzbek attempt to aggressively colonize the lifeworld

In Uzbekistan, the strict governmental control over the cultural sphere is a manifested attempt to aggressively colonize the lifeworld. However, as argued by Habermas, the lifeworld possess the ability to resist, and actually react, to the colonization. According to Hillman-Chartrand and McCaughey the “repressed artistic ambition results in an “underground” subversive of party aesthetics or capitalist values, for example, the phenomenon of the “counterculture”.⁵⁰⁵ Uzbekistan in the past already had the underground movement, called “Buharskii Andegraund”. That time the underground art was expressed through paintings, nowadays, the resistance of the lifeworld to the system primarily occurs through the video art. Speaking about the Uzbek governmental influence over culture, the video artist Karpov stated: “It’s like the Soviet Union in the ’50s, but with some of our own added elements of feudalism”.⁵⁰⁶ In response of such context, he and other artists annually organized a festival of video art (VideoART.Uz) labelled as “underground” art.⁵⁰⁷ Therefore, this is an interesting example that proofs the validity of the System&Lifeworld model proposed in this research.

⁵⁰⁴ Adams L., *The Spectacular State: Culture and National Identity in Uzbekistan*, Duke University Press, Durham and London, 2010, p.9

⁵⁰⁵ Harry Hillman Chartrand and Claire McCaugheyin (1989), *op. cit.*

⁵⁰⁶ See the web-site: http://www.themoscowtimes.com/arts_n_ideas/article/uzbek-art-jihad-criticizes-state-breaks-taboos/492741.html, last access 24/03/2013.

⁵⁰⁷ For more information on this festival see: <http://www.fergananews.com/articles/6705> and <http://www.fergananews.com/articles/6486>, last access: 23/03/2014

3) Transitional countries and the Distributed Institutional Monopoly

The findings from the Administrative Design Framework confirm the theory of Cohen and Peterson that the developing and transitional countries traditionally build Distributed Institutional Monopolies. Kazakhstan, Kyrgyzstan and Uzbekistan have all clearly embraced this strategy. However, the Distributed Institutional Monopoly has serious limitations: "A Distributed Institutional Monopoly is at once both a dependent and a pariah institution, which limits its ability to mobilize resources from either the center or the locale."⁵⁰⁸ Nevertheless, the question that should be clarified is if these states are ready to implement another strategy or, considering their current features, the Distributed Institutional Monopoly is still at present (and despite its structural limits) the most convincing option.

Policy implications and recommendations

1) As already stated, the high control of artistic and cultural sphere practiced by the government may develop the phenomena of "counterculture". However, this is not necessarily a "negative" consequence. In the past, "counterculture" provided the possibility to break the inhibition toward some taboo topics like, for example, sex, use of drugs, and domestic violence. The point is to understand whether/how this alternative form of art could be integrated and assimilated within the current Central Asian societies. Although the analysis of this problem goes beyond the scope of this dissertation, it is certainly an interesting issue that must be considered in future analysis.

2) Despite Cohen and Peterson's critics of the Distributed Institutional Monopoly strategy, the author suggests to the governments of the Central Asian countries to reach, as the first goal, the highest level of decentralization in terms of Type Function Framework. Only once a sustainable level of decentralization has been achieved the Central Asian countries should try to break the monopoly of institution adopting an Institutional Pluralism strategy. In this way, the transfers of powers will be gradual and the delivery of public cultural services will be efficient and effective. Therefore, in the author's viewpoint, Uzbekistan and Kyrgyzstan should firstly enhance the power of the local governments in the sphere of culture and transfer to them the management of the local cultural assets. This would be increase the accountability of the local authorities in the cultural sphere which, as sustained by Cohen and Petersen, is the most

⁵⁰⁸ Cohen and Peterson (1997), *op. cit.*, p.8

important goal to achieve for the transitional and developing countries.⁵⁰⁹

3) In Uzbekistan the local governments' jurisdiction in the cultural sphere is regulated by a multitude of legal provisions. As a result, assessing precisely which are the tasks of local governments is a very hard task. Uzbekistan should simplify this intricate tangle of laws, listing in a single legal tool the various cultural issues over which the local governments have jurisdiction. The author thinks that the best option, which avoids the need to put into force a new law, is to include into the Law on Local Governments all the provisions related to the jurisdictions of local governments in the cultural sphere.

Case Study Kazakhstan: Ministry of Culture and Cultural Organizations

Empirical findings

The empirical findings related to Chapter IV are summarized at the end of each section. This section will provide a synthesis of these empirical findings presenting the trends of the public cultural policy in Kazakhstan.

1) Failed attempt of the ministry to democratize culture.

The sum of the identified facts related to cultural policy in Kazakhstan reveals the attempt of the Ministry of Culture to democratize culture. This process is, in particular, put in act investing considerable resources in the ballet and opera as well as maintaining fairly low costs for accessing high cultural organizations and museums. However, there are considerable flaws in the methods the Ministry uses to realize this objective.

First, the policy of the ministry entails twofold territorial inequality. The ministry, investing in the cultural infrastructure of the capital, is developing a powerful and glorious cultural center. The fact that, in Kazakhstan, the high cultural organizations are concentrated in Almaty (ex capital) and Astana (current capital) gives support to this argument. This development of the "center" is nonetheless taking place to the detriment of other regions. The sharp differences between the amounts of public cultural services provided in the capital and other regions lead to the inequality between the population of the capital and other regions. The devastating outcome of the ministerial policy that

⁵⁰⁹ Cohen and Peterson (1997), *op. cit.*, p.3

led to the second inequality is a demolition of the extensive network of cultural organizations targeted mainly to serve the rural population. As a result, nowadays the number of club type institutions, libraries and cinemas located on the territory of Kazakhstan is minor (around two times less) than in 1992. From one hand the ministry discriminates the region comparing to the capital, from another hand it discriminates the rural population.

The second flaw of the current policies is the promotion of the cultural sectors that are not particularly popular. The ministry invests resources in the high arts and museums. However, these cultural sectors are appreciated only by the minority (elite of the population). According to the results of the survey on the cultural and leisure activities, Kazakh population evaluates the ballet and opera as the last cultural sector that should be supported by the government.⁵¹⁰ This survey also indicates that only 2% of the respondents regularly go to the theatres and, when this occurs, it is mainly for enjoying comedies and dramas (and not ballets and operas). Moreover, the museums in Kazakhstan share the low popularity of opera and ballet: the survey indicates that only 1% of the respondent habitually visit museums. As a result, the support of low cost tickets for accessing theatres and museums as well as the considerable investments for the development of ballet and opera are certainly positive measures, but they do not really meet the priority needs and requests of the Kazakh population. So, the risk is that only a restricted circle of Kazakh society might appreciate these measures.

A further mistake is the Ministry's perception that the digitalization of culture may act as a "panacea" for the cultural access. The Kazakh Ministry of Culture, acknowledging the problem of accessibility to the public cultural service in the more remote regions, proposed to face such challenge through the publication on the web of a governmental project related to cultural heritage (named "Cultural Patrimony") and the creation of an on-line electronic library.⁵¹¹ The idea behind this initiative seems interesting and potentially useful, but there are three main limits (undervalued by the Ministry) that seriously constrain this strategy: first, publishing on-line the data of a sole project can hardly solve the problem of public accessibility and certainly it is far from being an act of "cultural digitalization"; second, the digitalized information cannot, in any case, replace the direct experience of

⁵¹⁰ Report of the Center for Social and Political Research "Strategy", "on Cultural and Leisure Preferences of Kazakhstan Population", 2009, available at: http://www.ofstrategy.kz/uploads/ОТЧЕТ_культура_июль_2009.pdf. AlreadyExists, last access 13/03/2014

⁵¹¹ See Governmental Decree of the Republic of Kazakhstan "on Strategic Plan of the Ministry of Culture and Information for the period 2011-2015", N96, 08/02/2011,

cultural activities; and third, without a comprehensive plan aimed to promote public awareness toward cultural matters this initiative runs the risk of not achieving its goals.

2) Stagnation of the cultural sphere.

The stagnation of the cultural sphere in Kazakhstan is associated with the monotony of the cultural policy adopted by the Ministry. Over the last twenty years, the Kazakh Ministry of Culture has always supported the same cultural sectors (mainly high art and cultural heritage) without promoting and/or sustaining any innovative projects. The contemporary art is substantially ignored and the popular culture is viewed with suspicion. In other terms, the narrow circle of the bureaucrats that draw the cultural policy of the country does not seriously take into consideration the opinion of cultural elite and *vox populi*. On the whole, this circumstance has contributed to the creation of (lasting) period of creative stagnation in Kazakhstan.

3) The structural weaknesses of the Ministry of Culture

The frequent structural re-organization of the Ministry of Culture has presumably hindered the development of successful policies. Since independence, the ministry's internal structure has changed almost every year. As a result, a lot of time and resources have been wasted to develop every year new regulations, transfer or dismiss part of the staff, reorganize the work plans and the system of responsibilities. Moreover, it is doubtful whether or not these changes have improved the structural organization of the Ministry. Nowadays, the Ministry has less cultural specialists and culture oriented departments than in 1992.

4) The governmental support to culture

The approach of the political elite to the cultural sphere is open for two criticisms. First, although the Ministry of Culture is struggling every year for gaining an increase of its budget, the resources allocated to the cultural sector (considered in percentage of the total budget) are decreasing year by year. In 1994, they were 0.7%, while, for the year 2015, they are planned to be 0.17%.

Second, the government seems to mainly support culture and art for a question of "image". For instance, the motivation that drives Kazakhstan to construct the expensive new Astana Opera seems the same that drove France in 1989 to construct Bastille Opera: "The reason,

no doubt, is that opera remains one of the most visible and glorious symbols of the cultural level of the day.”⁵¹²

Theoretical implications

1) Democratization of culture

The democratization of culture was widely practiced in European cultural policy up to 1960. The main motivation behind the democratization of culture was a “longstanding belief in the civilizing value of the arts and a consequence desire to democratize access to it”.⁵¹³ This policy that Europe was experiencing fifty years ago is nowadays an ongoing practice in Kazakhstan. However, in Europe, the democratization of culture was then blamed to be not democratic: many argued that the promotion of an established elitist set of cultural values and forms through a top-down approach dismissed other cultural expressions and identities. As a result, European governments decided to promote cultural democracy, “increasing access to the means of cultural production, distribution and analysis alongside those of consumption”.⁵¹⁴

2) Creative stagnation

Chartrand and McCaughey described four types of governmental support to culture: *Facilitator*, *Patron*, *Architect* and *Engineer*.⁵¹⁵ They argue that the main weakness of *Architect* state (this research studying the Kazakh case study identified that Kazakhstan is Architect state) is a stagnation of contemporary creativity.

3) Kazakhstan “Titanic” approach to decentralization

Katunaric, analyzing the decentralization in South East Europe, defines three types of decentralization: *Titanic*, *Fair-Chair*, and *The New Public Culture*. The first type of decentralization could be applied in description of the Kazakh case: “The objective of this policy may be called “Titanic”, i.e., only an exclusive set of privileged national institutions enjoy security and permanency of protection of the state, while other institutions, associations or groups are left to their own.”⁵¹⁶

4) Instrumental or ritual logic of cultural policy?

⁵¹² Council of Europe, European Programme for the Appraisal of Cultural Policies, “Cultural Policy in France”, Strasbourg 1991.

⁵¹³ Matarosso F. and Landry C., *Balancing act: twenty-one strategic dilemmas in cultural policy*, Strasbourg, 1999, p. 13.

⁵¹⁴ Matarosso F. and Landry C. (1999), *last op. cit.*, p. 14.

⁵¹⁵ Harry Hillman Chartrand and Claire McCaughey (1989), *op.cit.*

⁵¹⁶ Katunaric V. (2003), *op. cit.*, p.4

The Kazakh public cultural policy, on one hand, seems based on an instrumental logic: “the art and culture are treated as instruments in public policy rather than ends in themselves”.⁵¹⁷ In other words, the culture and art receive funds and are developed for second aims (e.g. image building, economic impact, urban development). On the other hand, the Kazakh cultural policy also reflects what Royseng called “*ritual cultural policy*”, which has place when “the art and culture is connected to many other policy goals in society”.⁵¹⁸ The impetus of this political reasoning is the belief in the transformative power and the potential of change inherent in art and culture. The ritual cultural policy within the Kazakhstani context comes out, first of all, in the legal definition of culture, which states that culture aims to develop an individual; and, second, in the presidential perception of the minister’s functions, which is to promote tolerance and interethnic harmony.⁵¹⁹

5) Is the Ministry of Culture running out of ideas to justify funds allocation?

Verdery theorizes socialist culture by devoting particular place to *political status*.⁵²⁰ Participants struggling to justify their claims for the public funds seek to exchange their *cultural authority* with the political status in order to have access to economic resources. Reaching a certain level of political status gives the entrance to a privileged “elite”, whose demands are always satisfied.

Such logic is still valid in the post-Soviet Kazakhstan, where power and political status are the most important indicators of success. Within this context of *bureaucratic allocation*, the Ministry of Culture strives continually to justify claims to resources. The tendency of public funds’ decrease to the cultural sphere may signify that the Ministry of Culture is becoming less capable of justifying its claims to resources.

Policy implications and recommendations

Despite the good aims, the democratization of culture has for the moment achieved only limited results. In order to succeed in this process the Ministry of Culture should approach it from an educational perspective. At least three suggestions can be here recommended. First of all, the high art should be promoted through education and

⁵¹⁷ Royseng S., *The Ritual Logic of Cultural Policy*, 2008, p.1

⁵¹⁸ Royseng S., *The Ritual Logic of Cultural Policy*, 2008, p.10

⁵¹⁹ See the official website of the Ministry of Culture and Information, http://www.mki.gov.kz/rus/press-sluzhba/novosti_ministerstva/?cid=0&rid=2141, last access 20/03/2014

⁵²⁰ See Verdery K., *National Ideology under Socialism: Identity and Cultural Politics in Ceausescu’s Romania*, the University of California Press, 1991.

broadcasting. Second, the territorial discrimination in the access to high art could be reduced through the organization of touring artistic companies that may move in the various regional centers in the country. Third, schools of ballet and opera should be available in each region.

Final remarks: recommendations for future research in this field

Although the cultural policy analysis is progressively becoming a key research topic in the academic world, at the moment, there is hardly any critical study on the cultural policy in Central Asia. Through this dissertation the author tried to partially bridge this gap, setting a theoretical framework that can meet the special features of the Central Asian geopolitical context, introducing innovative methods of analysis that might be used for further research in this field, and providing a first overview on the main legal measures and political strategies enforced in Kazakhstan, Kyrgyzstan and Uzbekistan for the purpose of regulating and managing the cultural sphere.

However, despite the multitude of data reported and the numerous arguments here exposed, several questions call for further studies on this fascinating topic. For example:

1) A comparative analysis of the changes in the organizational structure of the Ministry of Culture, the public funding of the cultural sphere, and the management of cultural organizations in the Central Asian countries (on the base of the research here conducted on the sole Kazakhstan case) could probably reveal interesting regional trends as well as offer different thought-provoking considerations;

2) A more in-depth research on cultural audience, cultural activities, and customs and habits of the Central Asian population would significantly contribute to understand the meaning and to assess the quality of certain cultural policies adopted in Central Asia;

3) Assessing the impact of cultural activities promoted in Central Asia by international organizations (like, for example, UNESCO, ISESCO, IPA of CIS) and institutes operating within the sphere of foreign embassies (e.g. Aliance Francais and British Council) could be an interesting for at least two reasons: it would permit to understand the degree of success of these initiatives and to compare them with the programs promoted by the public governments;

4) An in-depth research on “counterculture” and “underground” culture may show how and why the mainstream cultural ideology supported by the Central Asian governments is bypassed;

5) Through a testing project on the “museum digitalization” in Central Asia it could be possible to get enough data for assessing the effects of such strategy on the cultural accessibility of people living in rural areas.

These are just few of the topics that require further analysis. In the meantime, the author hopes that her reflections may stimulate other scholars to conduct the analysis in this field and her arguments may be helpful to improve the efficiency and efficacy of future cultural policies in Central Asia.

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