

POLICIES TO ENCOURAGE THE PRESERVATION OF CULTURAL HERITAGE: THE MINEIRO EXAMPLE

POLÍTICAS PÚBLICAS DE INCENTIVO À PRESERVAÇÃO DO PATRIMÔNIO CULTURAL: O EXEMPLO MINEIRO

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ABSTRACT

Culture, an important driver of the human, economic and sustainable development of any region, is linked to the Constitutional Economic Order that imposes development and dignified existence – article 170 of the Federal Constitution of 1988. This article analyzes, through literature review, the appreciation of the cultural heritage of our Nation and specifically examines the paradigm of the State of Minas Gerais in the municipalization of protective policies of its cultural heritage. Minas Gerais has excelled in its successful experience of creating revenue of financial and fiscal incentives to safeguard cultural heritage through a program that enables the participation of private and public entities, including citizens aware of the need to preserve and revitalize Minas Gerais cultural heritage.

Keywords: Cultural heritage; Public policies; Municipalization; Minas Gerais.

RESUMO

A cultura, importante condutora do desenvolvimento humano, econômico e sustentável de qualquer região, está vinculada à Ordem Econômica Constitucional que impõe o desenvolvimento e a existência digna – art. 170 da Constituição da República de 1988. O presente artigo analisa, através da revisão bibliográfica, a valorização do patrimônio cultural de

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nossa nação e especificamente examina o paradigma do Estado de Minas Gerais na municipalização de políticas protetivas de seu acervo cultural. O Estado tem sobressaído em sua bem-sucedida experiência de criação de incentivos financeiros e fiscais revertidos à salvaguarda do patrimônio cultural via programa que possibilita a participação das entidades privadas e públicas, inclusive dos munícipes conscientes da necessidade de preservar e revitalizar o patrimônio cultural mineiro.

Palavras-chave: Patrimônio cultural; Políticas públicas; Municipalização; Minas Gerais.

INTRODUCTION

The gregarious nature recognized in human beings has produced behavioral patterns that imposed, without much chance of choice, the creation of norms, written or customary rules, and the rise of a common sense, that have installed a *logos* over time. It is noted that this new “state of knowledge” has sought to produce power, duty and rights, in line with the need for maintenance of social life. In the role of socialization¹, the need to socialize arises from the reality of memory, the connection to the values of a concrete past. A reality from which one cannot escape its vestiges. Then comes the need to create effective instruments for safeguarding the cultural heritage of a given people.

Some rules of Law are emerging as a viable and promising alternative to preservationist means, towards the urgency of regulating some relations and protecting others, a sign of alterity from the system that seeks coherence within the Brazilian legal system. The implementation of factors that establish economic rights and duties also demands respect for cultural heritage.

Therefore, an economic policy oriented to state intervention and participation in the economic domain makes the composition of the basic premises of the democratic regime possible. This also occurs in the protection of diffuse interests (such as cultural heritage) and the rights of minorities, seeking to protect the common good of the people and dignity.

In the same way and with the same intention, public policies that encourage the preservation and identification of cultural heritage emerge. Policies that must have their effectiveness and efficacy constantly analyzed in the face of the creation of a collective awareness that the cultural heritage has a fundamental nature to the functioning of the State and society itself – a fundamental right needed to enjoy human dignity. Such material and immaterial goods are becoming

¹ T.N.: The Portuguese version of the present work makes reference to the Brazilian word “conviver”, “live-with”, in free translation, which does not have an English equivalent, but would come close to the idea of socialization expressed above.

indispensable instruments for social ordering, political and cultural manifestation, and the philosophical rise of certain groups of people.

An auspicious instrument to the protection of cultural heritage has been the policy of redistributing part of the revenue from the State Tax on Circulation of Goods and Services (ICMS, the acronym in Portuguese) collection to the municipalities, a policy created in the State of Minas Gerais by Law n. 12.040/95, currently amended by Law n. 18.030/2009, called ICMS Cultural Heritage. The initiative to provide municipalities with resources to promote public policies for cultural preservation is supported by the constitutional provisions of Law of Title VIII, named "The Social Order", on its article 216, paragraph 3, which states that "the law shall establish incentives for the production and knowledge of cultural assets and values" (BRASIL, 1988).

The main objective is to analyze the establishment and redistribution of the ICMS Cultural Heritage in Minas Gerais as a form of planning of public policy to encourage the protection of a community's cultural heritage and its connection with the local government, including encouraging tourism (article 180 of the Federal Constitution of 1988). The present study has bibliographical review as methodological option, with an emphasis on the study carried out by Professor Washington Peluso Albino de Souza on public planning.

Initially, a brief analysis will be made about the need to encourage cultural preservation through financial transfers to Brazilian municipalities. For a comparative view of precautionary actions, a brief description of some instruments of incentive for cultural preservation in other Nations will be reviewed. Under the bias of the Economic Constitution, the distribution of the ICMS Cultural Heritage quota will be examined as a possible instrument in the implementation of public policies to safeguard cultural heritage in Brazil. At the end, the role of the State of Minas Gerais in the adoption of such preservationist public policy will be addressed and discussed.

STATE OF THE ART: THE CHALLENGES OF VALUING CULTURAL HERITAGE AND THE INCENTIVES TO OWNERS OF PRIVATE GOODS

The economic order must aim at ensuring a dignified existence for all (article 170 of the Federal Constitution), while the social order aims at the realization of social justice (article 193 of the Federal Constitution), as well as the creation of an educational system aiming the personal development and the preparation to the exercise of citizenship (article 205 of the Federal Constitution), among many other rights (BRASIL, 1988).

From the economic point of view, the factors of sociocultural interest of a municipality such as tourism, ecological and cultural values are characteristics that outline the political, economic, and space sustainability, etc. Therefore, they

are components that require a perspective of State action regarding the effectiveness of public policies for the protection of cultural heritage.

The production of public policies can be considered as resulting from a form of indirect State intervention – a mean of public action within the economic life of the municipality (though indirectly) – articles 174 and 173, paragraph 4, of the Federal Constitution, which state that the municipality can renounce to part of the revenue of the Tax on Urban Land and Property (IPTU) aiming at the preservation of property listed as protected private property (article 156, I, of the Federal Constitution).

For Nunes, in contemporary times we experience a “neoliberalism of regulation” and now “of austerity”² commanded by what money dictates. However, the Federal Constitution calls for the rationalization of resources, actions and measures that are fundamental to the effectiveness of the Constitutional text, translated through public planning, considered by Souza³ as a “political act of intervention”, as shown in the following lines:

(...) it is clear that in the rationalization of material resources to pursue health, education and any other objectives, we already have an undeniable economic commitment that allows them to be included in the Economic Plans. Moreover, they are made up of the very objectives implicit in the “ideology” adopted in the Constitution, as well as the use of the expression “Economic and Social Plan”, which is so common, and which gives it economic emphasis, from its scope. In the “ideology” of “national development” and “social justice” defined in the Brazilian Constitutions, there is no way to exclude this economic connotation from the broader aspects of national life. As a result, there is no way to stop taking these aspects into the National Development Plans, if not into the Sectoral Government Plans.

It cannot be denied that there are many difficulties in implementing policies for the protection of cultural heritage in Brazil, and we are currently experiencing a situation of inaction in the practical evolution of the proper rules for valuing cultural heritage.

On the other hand, at the end of the last century, questions based on the ideal of solidarity began to gain voice. Bonavides⁴ underscores the emergence of so-called third-dimensional rights, which, filled with a good deal of “humanism and universality”, favors intergenerational dialogue.

² NUNES, Antônio José Avelãs. *A crise atual do capitalismo: capital financeiro, neoliberalismo, globalização*. São Paulo: Revista dos Tribunais, 2012. p. 126.

³ SOUZA, Washington Peluso Albino de. *Primeiras linhas de direito econômico*. 6. ed. São Paulo: LTr, 2017. p. 379.

⁴ BONAVIDES, Paulo. *Curso de direito constitucional*. 8. ed. São Paulo: Malheiros, 1999. p. 518.

However, as the concept of cultural heritage brought about by the current Federal Constitution has been broadened, not only considering material goods and those of “exceptional” artistic, historical or architectural value, there is a new way of considering the cultural good⁵. This reveals an advance in its conception, as it reflects a significance of the appreciation of the living, transcendental and humanized culture.

The article 216 of the Federal Constitution states that the identity of a community or Nation emerges as a good to be worked on, studied, understood and protected in its fundamental conception. Also, the actions, the way of acting, the cultural traditions that mark this way of being, of doing, of existing of a determined people are connected to the concept of cultural heritage that those who have written the Constitution have made a point of pointing out.

The Federal Constitution also indicates the practical basis of the said established fundamental right. The forms of expression, special ways of creating, doing and living, which make a concrete identity, punctuate the facts to be explored here. Identity here understood, in Haal’s⁶ words, as “what stabilizes both the subjects and the cultural worlds they inhabit, making them both more unified and predictable”.

The constitutional legislator therefore indicated the need for selection and protection of a full range of fundamental rights and institutional duties closely linked to the cultural environment.

For another quadrant of analysis, in the same article 216 of the Federal Constitution, are present the nature of cultural heritage of scientific, artistic and technological creations, as well as works, objects, documents, buildings and other spaces intended for artistic and cultural manifestations. Urban heritage and sites of historical, landscape, artistic, archaeological, paleontological, ecological and scientific value were also foreseen as cultural heritage.

Häberle⁷ understands that “a Constitution is not just a grouping of precepts, it is directed at the citizen”. Thus, it is clear that the constitutional commandment considered here as the “costume of a people” reveals to be a definition that does not exhaust the exhaustive content of what should be regarded as cultural heritage, only indicates a priority central line for the State’s action in relation to their obligations of cultural promotion and protection via public policy.

⁵ MILARÉ, Édís. *Direito do ambiente*. 10. ed. rev. atual. e ampl. São Paulo: Revista dos Tribunais, 2015. p. 4.

⁶ HALL, Stuart. [1932-2014]. *A identidade cultural na pós-modernidade*. Tradução de Tomaz Tadeu da Silva e Guacira Lopes Louro. 12. ed. Rio de Janeiro: Lamparina, 2015. p. 11.

⁷ HÄBERLE, Peter. [1996] *Hermenêutica constitucional: a sociedade aberta dos intérpretes da Constituição: contribuição para a interpretação pluralista e “procedimental” da Constituição*. Tradução de Gilmar Ferreira Mendes. Porto Alegre: Sérgio Antônio Fabris editor. p. 104-105.

State action is guided by article 170 of the 1988 Constitution, holder of the commands of the Brazilian Economic Order. The principles embodied in this article, such as national sovereignty, the right to private property, the social function of property, the right to free competition, are articulated with the principles of environmental protection, including cultural heritage (article 225 of the Federal Constitution).

Intervention in the economic domain is the function of the state to achieve what the Constitution commands. Among these is the need to “internalize the identifying signs of a common culture for the recognition of each of us in our history”, fulfilling one of the foundations of democracy, says Gomes⁸. In this way, it is up to the State to create instruments to promote the fulfilment of the objectives and principles related to cultural preservation.

The practical challenges of valuing cultural heritage – and the consequent lack of incentive for the owner of private or public good – are based on the lack of planned policies and efficient instruments that see cultural heritage as a good to be valued and that, in a way, can transversally generate socioeconomic impacts, such as via tourism profiteering.

Moreover, the Federal Constitution admits productive pluralism, as it fixes mitigations and impositions on the capitalist economic model. Clark, Corrêa and Nascimento⁹ note that the implementation of productive pluralism must occur in a planned manner, being encouraged and protected by the Union, the states and Municipalities.

The Federal Constitution itself establishes mechanisms to make claims to “social justice” effective by restricting the production process. These mechanisms are, for example, consumer protection, the reduction of regional and personal inequalities, the pursuit of full employment and the protection of the environment. The latter comprises, according to the prevailing doctrine, four aspects, according to Fiorillo¹⁰: “the natural environment, the artificial environment, the labor environment and the cultural environment”.

The cultural environment, though being the result of man’s interference in nature, the result of human construction and creation, is considered one of the axes that condition human life (article 225 of the Federal Constitution). It has the power to reflect the history and identity of human beings, “remaining what

⁸ GOMES, Carla Amado. *Textos dispersos de direito do patrimônio cultural e de direito do urbanismo*. Lisboa: AAFDL. p. 16.

⁹ CLARK, Giovani; CORRÊA, Leonardo Alves; NASCIMENTO, Samuel Pontes do. Ideologia constitucional e pluralismo produtivo. *Revista da Faculdade de Direito UFMG*, número especial em memória do Prof. Washington Peluso, p. 265-300, 2013. p. 293.

¹⁰ FIORILLO, Celso Antônio Pacheco. *Curso de direito ambiental brasileiro*. 16. ed. São Paulo: Saraiva, 2009. p. 20.

matters most”, for Bosi¹¹. The cultural value of a good may be materialized in the heritage itself, but what most importantly reflects its importance are the evoked symbolic values. Values in constant transformation.

The intrinsic dynamism of cultural values demands a great effort of social tuning and planning of a Nation. Therefore, it must adapt to the political regime as well as to the stage of the local economy¹². Thus, within a spectrum of difficulties in the implementation of lasting policies, the study of Economic Law appears for the realization of social, economic and cultural rights in the democratic rule of law. According to Clark’s¹³ lessons there is the possibility of endogenous economic policy-making by States, distinct from those engendered by international economic powers, including for the sovereignty and cultural heritage of peoples.

The political-administrative decentralization established by the 1988 Constitution recognized that the municipality also holds responsibilities for public policies for the preservation of local cultural heritage. Municipalization must be considered essential due to the wide variety of cultures, climate, purchasing power and social power, existing in Brazil. Through this municipalization there is the possibility of local authorities to embrace the management of cultural heritage according to their own demands and characteristics.

On the other hand, it must be considered that only the transfer of public policy responsibilities to the municipalities does not solve conflicts and mishaps. The municipalities face difficulties with the collection of taxes, the lack of trained and qualified staff to meet all cultural demands. Hence the importance of effective popular participation in the management councils for the defense of cultural heritage in order to adapt the local reality to social concerns.

The Union, with the intention of alleviating these difficulties and fostering the capacity of cultural heritage to generate local social and economic development, as well as giving effect to the Constitution of the Republic, has “invested” in this area for a decade, via the National Bank for Economic and Social Development, the Brazilian Development Bank, BNDES¹⁴.

¹¹ BOSI, Ecléa. *Memória e sociedade: memórias de velhos*. 3. ed. São Paulo: Companhia das Letras, 1994.

¹² SOUZA, Washington Peluso Albino de. *Primeiras linhas de direito econômico*. 6. ed. São Paulo: LTr, 2017.

¹³ CLARK, Giovanni. Política econômica e Estado. *Estudos Avançados*, n. 22, Belo Horizonte: UFMG, p. 207-217, 2008.

¹⁴ BRASIL. *Banco Nacional de Desenvolvimento Econômico e Social (BNDES)*. Disponível em: <https://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/bndes-fundo-cultural>. Acesso em: 18 out. 2018.

The National Bank for Economic and Social Development – BNDES created a program in 1997 to support projects for the preservation and revitalization of the Brazilian cultural heritage (material and intangible heritage, memorial collections and cultural institutions recognized as bearers of Brazilian cultural identity)¹⁵ that establishes the general guidelines, in the sense that:

It is necessary to strengthen the productive chains of the Economy of Culture in the country; decentralize and increase the supply of cultural goods and services in the country; promote the articulation between cultural institutions, government, companies and civil society, aiming to boost economic activity and promote social inclusion through art and culture, heritage education and training of the workforce¹⁶.

BNDES also established the need to preserve the material and immaterial national cultural memory; expand the use and enjoyment of Brazilian cultural heritage, especially its access by society. Another important guideline is also “to promote the sustainability of the Brazilian cultural heritage; strengthen the management of a cultural or historical institution responsible for preserving the Brazilian cultural heritage; and to promote cultural diversity” (BRASIL, 2017).

Actions as mentioned above becomes of great relevance in the conduct of public policies aimed at the protection and promotion of cultural heritage. BNDES evaluates the granting of financial support with a focus on the social, environmental, cultural and economic impact in Brazil, thus distancing itself from the mere objectification of profit. For the institution’s priority functions are incentive, innovation, regional development and social and environmental development (BRASIL, 2017).

PERSPECTIVES FROM OTHER NATIONS ON CULTURAL HERITAGE PROTECTION

Before making any consideration about the title above, it is appropriate to bring to the text the basic clarification that State economic policy is considered a kind of public policy. Economic policy can be defined, according to Clark, as a set of public decisions that are designed to meet socioeconomic and individual needs and shortages with less effort. They usually materialize through planning¹⁷.

¹⁵ In total numbers, there are more than 180 monuments of multiple nature, including archaeological sites, colonial architectural heritage, libraries, theaters and technological museums, located in all Brazilian regions. Until 2016, it allocated R\$ 565 million to preservation projects.

¹⁶ BRASIL. *Banco Nacional de Desenvolvimento Econômico e Social (BNDES)*. Disponível em: <http://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/bndes-fundo-cultural>. Acesso em: 18 out. 2018.

¹⁷ CLARK, Giovani. Política econômica e Estado. *Estudos Avançados*, n. 22, Belo Horizonte: UFMG, p. 207-217, 2008., p. 207.

On the other hand, one cannot neglect, in the contemporary world, the analysis of the State economic policy in the international scenario. Especially because of the enormous influence that transnational economic powers have on the national economy, as the author cited in the article *Economic Policy and State*:

Logically, State economic policies cannot be analyzed in isolation, outside of an international context, because they are subject to the influences of transnational economic powers, from developed and notably communitarian states, international entities (such as the World Trade Organization, International Monetary Fund, World Bank), without excluding, however, their interdependence with the economic policies of national private capital. In fact, contemporary democracies have been shaken by the distortions of State economic actions, given the power of the private sector¹⁸.

Benhamou¹⁹ points out that the cultural heritage is alive, in constant development and is “the object of collective interests that can be expressed, depending on the circumstances and events, at the local, national and even world levels”.

At the international level, we highlight the activities of the United Nations Educational, Scientific and Cultural Organization (Unesco), which involves governments, global civil society organizations and transnational organizations with the objective of promoting the application of normative instruments in the cultural field. Brazil is one of the participants that has a prominent role among developing countries in the development of cultural public policies. Benhamou²⁰ provides a brief overview of protective actions worldwide:

The United Kingdom, France, Italy and Europe in general adopted their policies earlier. The first major law in France is from 1913. It supports two types of preservation: the labeling as heritage of buildings whose preservation is of national and historical interest and the recording in an additional public inventory of historical monuments, both public and private, who do not demand immediate labeling as heritage, but which contain historical or artistic interest that makes preservation necessary. In the United Kingdom, citizens are involved in preservation. Many people feel responsible for taking care of cultural heritage. In Asia, there are interesting experiences of joint preservation of cultural and natural heritage.

¹⁸ CLARK, Giovanni. Política econômica e Estado. *Estudos Avançados*, n. 22, Belo Horizonte: UFMG, p. 207-217, 2008. p. 208.

¹⁹ BENHAMOU, Françoise. *Economia do patrimônio cultural*. São Paulo: Edições Sesc, 2016. p. 12.

²⁰ BENHAMOU, Françoise. Há uma forte propensão a se considerar tudo como patrimônio cultural. 20.03.2017. *Revista Época*. Entrevista acessível em: <http://epocanegocios.globo.com/Vida/noticia/2017/03/ha-uma-forte-propensao-se-considerar-tudo-como-patrimonio-cultural.html>. Acesso em: 20 jul. 2018.

In 2006, in Latin America, the Regional Center for the Safeguarding of the Intangible Cultural Heritage in Latin America, CRESPIAL, was created, following the signing in Paris of the agreement between Unesco (United Nations Educational, Scientific and Cultural Organization) and the Peruvian Government, with the objective of promoting and supporting actions to safeguard and protect the vast cultural heritage of the peoples of Latin America.

This integration between nations regarding cultural heritage protection has yielded important results in the face of the exchange of legislation, the creation of legal instruments and the overcoming of the difficulties encountered.

TAX INCENTIVE IN MINAS GERAIS: THE ROBIN HOOD ACT

It is currently possible to see a slight increase in the forms of fiscal and financial incentives for the preservation of cultural heritage. The Constitution of 1988 itself stipulated in article 216, paragraph 3, that “The law shall establish incentives for the production and knowledge of cultural assets and values”. The tax incentives may be local, regional or national, and may act in urban or rural areas, encouraging the participation of civil society in the preservation of cultural heritage.

In Brazil, the municipalities have constitutional autonomy to manage their own assets and create their own laws (article 18 of the Federal Constitution). This decentralization conditions the municipality to “increase” its interest in taking better care of its local heritage. In particular, the cultural heritage, represented by cultural goods, which can even generate profit, through tourism. But it also establishes the need for strategic management from the urban perspective.

The municipal government can and should use its administrative powers to protect, if there is interest or need, the local cultural heritage, thus respecting our Major Law, preserving its own history and the rights of its citizens, by Le Goff’s²¹ perspective, seeking to save the past to serve the present and the future.

In Minas Gerais, for example, for such cultural purpose, there is Law n. 22.627 of 07/31/2017 (Law establishing the State Plan for Culture of Minas Gerais). Its format was constituted after public consultations and dialogues with cultural sectors were delivered. Over time, anchored in the economic reality of our Nation, public announcements and calls were issued, reducing the counterpart percentage for encouraging companies in order to increase the number of sponsorships for cultural projects.

²¹ LE GOFF, Jacques [1924]. *História e memória*. Tradução de Bernardo Leitão [et al.]. 5. ed. Campinas: Editora da Unicamp, 2003. p. 471.

In this context, the 2018 Resolution²² that regulates the policy of cultural incentives is also based on democratization and internalization, that is, it aims to prioritize the decentralization of resources, opening greater possibilities for attracting projects from proponents from the interior of the state, where the range of companies encouraging such activities is scarce.

Another option for the promotion of cultural preservation is the exemption from IPTU (Tax on Urban Land and Property) – article 156 of the Federal Constitution –, designed to make it easier for owners of properties listed as cultural heritage to care about their maintenance.

Thus, for example, when there is legal designation in the municipality, the owner of a property inscribed as protected in the Book of Heritage, that means, the owner of a listed property, may be exempt up to ninety percent (90%) in payment of the corresponding property tax to this said property. In addition, it was a means found to encourage the owner to conserve his property and to be compensated by the administrative limitations caused by the act of listing the property as heritage.

The municipality of São Paulo, for example, even allows full exemption of the property tax to the owner of a property that keeps it well preserved. It is worth mentioning that the exemption is not automatic, it is necessary to prove the good conditions of the property to achieve such benefit. There are indirect forms of economic intervention in the public domain²³, provided for by law, to encourage preservation actions such as sponsorship of renovations or restorations through private initiative²⁴, as already mentioned.

The Brazilian federative order allows the coexistence of a multiplicity of power centers in harmony – called cooperative federalism – between a “central government” and subnational units (the states and municipalities). It is worth remembering that the 1988 Constitution “implemented” and improved mechanisms for the generation and distribution of resources among these federative entities. These include transfers of portion of the funds raised by the State through the ICMS (the State Tax on Circulation of Goods and Services) to its municipalities, called the ICMS share. Each Member State creates or defines its own criteria to fulfil the constitutional determination. The state of Minas Gerais, however, has created a complex system that has generated promising results in safeguarding cultural heritage.

²² Resolução SEC n. 136, de 4 de julho de 2018. Secretaria de Estado de Cultura de Minas Gerais. Disponível em: <http://www.cultura.mg.gov.br/images/documentos>. Acesso em: 2 out. 2018.

²³ SOUZA, Washington Peluso Albino de. *Primeiras linhas de direito econômico*. 6. ed. São Paulo: LTr, 2017.

²⁴ Lei Rouanet – Lei n. 8.313, de 23 de dezembro de 1991; em São Paulo, a Lei Mendonça – Lei municipal n. 10.923, de 30 de dezembro de 1990.

Thus, at the state level, in a special way, the State of Minas Gerais promotes the redistribution of the State Tax on Operations Regarding the Circulation of Goods and Services and the Provision of Interstate and Intermunicipal Transport Services and Communication – ICMS – prioritizing some criteria (population, geographic positioning, health, education, tourism, etc.). One of them is called ICMS Cultural Heritage and was set to direct larger quotas to cities that present actions to preserve memory and protect their cultural heritage, according to State Law n. 18.030, of January 12, 2009 (Article 1, item II).

Despite numerous forms of intergovernmental transfer of resources, the latter is the main focus of this study, as it is the collection of taxes by the member states and the consequent distribution to municipalities, in order to promote and articulate municipal public policies for the preservation of cultural heritage.

In 1995, in a pioneering experiment, in Minas Gerais, Law n. 12,040 approved the transfer of ICMS to the municipalities when a series of requirements and criteria elaborated by the Institute of National Historic Artistic Heritage (IEPHA-MG) were met, especially with regard to concerns about the protection of cultural heritage. Such a law had to undergo several adjustments over the years.

However, the establishment of criteria and mechanisms for the apportionment of public resources became essential. The supervision and setting of the criteria fell under two public institutions, in partnership: the João Pinheiro Foundation and the Institute of National Historic Artistic Heritage of Minas Gerais – IEPHA-MG.

There are criteria with annual, semi-annual, quarterly and monthly apportionment ratios. The beneficiaries are, in general, the most populous municipalities, the mining companies, the holders of imprisonment facilities, those who fight tax evasion and investors in the areas of: education, health, environmental preservation, conservation of historical and cultural heritage, production of food, sports and tourism.

Known state-wide as the Robin Hood Act, for its redistributive potential in relation to tax revenue, Law n. 12,040/95 was later amended by Law n. 12,734/1997 and amended again, in 2000, by Law n. 13,803. Finally, after lengthy discussions, Law n. 18,030 was approved in 2009, which added six criteria to the current distribution methodology, namely: tourism, sports, municipalities that hold imprisonment facilities, water resources, shared ICMS, cultural heritage and a minimum *per capita*, as well as an ecological ICMS sub criterion (on regional dry forest).

All changes and developments in legislation have converged not only on an effort to adjust to the enforceability of the law itself, but also in response to its main focus: reducing socioeconomic inequalities between municipalities and encouraging the promotion and allocation of resources in social areas with use

of its own resources, aiming at improving the quality of life of the population of Minas. Hence the nickname of Robin Hood Act.

The State of Minas Gerais, by enacting the Robin Hood Act, regulated the commandment of the 1988 Constitution (Constitutional Amendment 17/80), namely: “Article 158, item IV – The following shall be assigned to the municipalities: IV – twenty-five per cent of the proceeds from the collection of the state tax on transactions regarding the circulation of goods and on rendering of interstate and intermunicipal transportation services and services of communication” (BRASIL, 1988).

It is also stated in its sole paragraph that:

(...) The revenue portions assigned to the municipalities, as mentioned in item IV, shall be credited in accordance with the following criteria: at least three-fourths, in proportion to the value added in the transactions regarding the circulation of goods and the rendering of services carried out in the territory of the municipalities; up to one-quarter, in accordance with the provisions of a state law or, in the case of the territories, of a federal law²⁵.

Resources are distributed through the Cultural Heritage Index (PPC), which corresponds to the ratio between the score of each municipality and the sum of the score of all municipalities in Minas. All calculated in accordance with Annex III of Law n. 13.803/2000 and in accordance with the guidelines of IEPHA-MG. It is also up to IEPHA-MG to define the control of public cultural heritage management actions and the municipalities’ scoring methodology for the calculation of ICMS apportionment indexes, which are reviewed every year.

Not all municipalities are indiscriminately expected to count on the transfer. To apply for the ratio, municipalities must prove the existence of municipal legislation for the protection of cultural heritage and of a Municipal Council for the Protection and Defense of Cultural Heritage, of a local technical staff to act in the area and of heritage education projects, among other requirements. The score reverts to the transfer of resources to the municipality, hence the interest in meeting the goals each year established by IEPHA-MG. The higher the score, the greater the returning of financial resources to municipalities, through monthly transfers.

It is important to note that the actions required by IEPHA-MG directing the transfer of the so-called ICMS Cultural Heritage have provided, as a consequence, an updated knowledge of the cultural collections in the state and of

²⁵ BRASIL. *Banco Nacional de Desenvolvimento Econômico e Social (BNDES)*. Disponível em: <http://www.bndes.gov.br/wps/portal/site/home/financiamento/produto/bndes-fundo-cultural>. Acesso em: 18 jul. 2018.

cultural power of each municipality. Actions such as records, inventories, listing and making of dossiers, for example, enable the most effective action of the municipality in the protection of its cultural heritage. The constant vigilance and observation of the state of conservation of local cultural assets encourage the municipality to invest in the restoration of cultural assets to increase the value of the score and, consequently, the transfer of values.

With the aim of greater involvement of municipal public managers in local preservation and guidance to municipalities on preservation policies, IEPHA-MG offers Regional Rounds²⁶ from March to July of each year. These are meetings that enable the exchange of experiences and debate of topics related to the performance of managers with the purpose of building collective and coordinated actions to preserve the heritage of Minas²⁷.

The participation of each municipality in the ICMS Cultural Heritage can be found and read by any citizen, which favors transparency in protective actions enabling the citizens to integrate with their local roots and references and actively participate in preservation actions. The Score Table, the Analysis Sheet and listing of Protected Cultural Goods for each municipality are available for consultation²⁸. Thus, the Robin Hood Act stipulates for the protection of cultural heritage exercised by municipalities.

The ICMS apportionment under the cultural heritage criterion has been steadily increasing. From 1996 to 1999, the adhesion of the qualified municipalities grew from 106 to 233 municipalities, in 2004 there were 457²⁹, and in 2017 it reached a total of 582 municipalities³⁰. It is important to clarify that one of the requirements for qualification in the apportionment is the creation of patrimony

²⁶ The 8th Regional Round of Cultural Heritage, held by IEPHA-MG, in partnership with the Minas Gerais municipalities, took place from March to July 2018. The meetings were held in 11 of the 17 regional territories of the state. Disponível em: <http://www.iepha.mg.gov.br/index.php/noticias/323-municipios-mineiros-recebem-a-8-rodada-regional-do-patrimonio-cultural>.

²⁷ MINAS GERAIS. *Secretaria de Estado de Cultura de Minas Gerais*. 29.09.2017. Disponível em: <http://www.cultura.mg.gov.br/documentos/story/4468-secretaria-de-estado-de-cultura>. Acesso em: 15 ago. 2018.

²⁸ The João Pinheiro Foundation publishes monthly the sum received by the municipalities through ICMS Cultural Heritage on the website www.fjp.mg.gov.br.

²⁹ BIONDINI, Isabella Virginia Freire; STARLING, Mônica Barros de Lima; CARSALADE, Flávio Lemos. A política do ICMS Patrimônio Cultural em Minas Gerais como instrumento de indução à descentralização de ações de política pública no campo do patrimônio: potencialidades e limites. *Cadernos da Escola do Legislativo*, v. 16, n. 25, jan.-jul. 2014. Disponível em: https://www.almg.gov.br/export/sites/default/consulte/publicacoes_assembleia/periodicas/cadernos/arquivos/pdfs/25/11-Capitulo5-Cadernos-25.pdf. Acesso em: 4 out. 2018.

³⁰ MINAS GERAIS, *Instituto Estadual do Patrimônio Histórico e Artístico de Minas Gerais – Iepha/MG*. Disponível em: <http://www.iepha.mg.gov.br/index.php/noticias/231-iepha-mg-divulga-pontuacao-provisoria-do-icms-patrimonio-cultural>. Acesso em: 4 out. 2018.

councils. The existence and functioning of these councils and the increase in the number of inventoried goods (one of the requirements for scoring) greatly enhances the protection of cultural heritage. The Legislative Assembly of Minas Gerais makes this information available on its website³¹.

Pontes and Faria³² point out that, in 2016, more than 1/3 (one third) of Minas Gerais municipalities were included in this apportionment, many of them received significant amounts to be applied to the benefit of local cultural goods generating tourism, leisure and education.

The favorable data presented on the website of the Minas Gerais State Secretariat of Culture and IEPHA-MG itself are more prominent regarding the creation of councils. Since 1996, 727 Municipal Councils of Cultural Heritage have been installed in the state. Also the result of the program of induction to the municipalization of preservationist policies was the approval of legislation to protect the cultural heritage and the creation of the Cultural Heritage Preservation Fund by 665 municipalities of Minas Gerais, and important step in directing financial resources solely for heritage preservation purposes. In total, 4,200 assets have been protected by the municipalities, as counted on the year of 2017, and almost six hundred Minas Gerais cities have had effective actions of heritage education³³.

From one year to another there may be a significant change in the number of municipalities receiving transfers. This is what can be observed, for example, recently: from 2017 to 2018 the number of municipalities that submitted documentation within the deadline for analysis and consequent score increased from 582 to 675 municipalities, according to data extracted from the IEPHA-MG website³⁴.

Even though the state law does not explicitly state that the resources from the ICMS Cultural Heritage should be invested directly in the area of cultural heritage, the administrative reasonability itself points to such destination when protective intervention is necessary. The justification is that if the assets that generate their income are not preserved, they will be doomed to disappear and,

³¹ MINAS GERAIS. *Revista ICMS solidário 2016*. Disponível em: https://www.almg.gov.br/export/.../publicacoes_assembleia. Acesso em: 15 ago. 2018.

³² PONTES, Ana Cristina de Carvalho; FARIA, Gustavo Rafael da Silva. Critério Patrimônio Cultural, cap. 8. *ICMS Solidário 2016*. Disponível em: https://www.almg.gov.br/export/sites/default/...icms_solidario/capitulo8.pdf. Acesso em: 13 set. 2018.

³³ MINAS GERAIS. *Instituto Estadual do Patrimônio Histórico e Artístico de Minas Gerais – Iepha/MG*. Disponível em: <http://www.iepha.mg.gov.br/index.php/noticias/231-iepha-mg-divulga-pontuacao-provisoria-do-icms-patrimonio-cultural>. Acesso em: 8 out. 2018.

³⁴ MINAS GERAIS. *Instituto Estadual do Patrimônio Histórico e Artístico de Minas Gerais – Iepha/MG*. Disponível em: http://www.iepha.mg.gov.br/images/Documentos/Pontuacao_Definitiva_Exerc_2019-Publicacao.pdf. Acesso em: 5 out. 2018.

if this happens, the source of funds will disappear as well, causing a decrease in municipal financial revenues, as well as irreversible damage to the Nation's cultural heritage.

Also the Ministry of Cities and the Ministry of Tourism have programs directed to the maintenance and conservation of listed property. Also from this perspective, the National Program of Support to Culture (PRONAC), the National Culture Fund (FEC) and the Diffuse Rights Defense Fund (FUNDIF) offer real possibilities for the acquisition of funds for the purpose of preserving and defending the cultural heritage³⁵.

Finally, the actions mentioned above give rise to the exercise of citizenship, which inevitably results from the affirmation of the identity of a people, the construction of a collective memory, and the safeguarding of values and cultural goods.

FINAL CONSIDERATIONS

The current state of the art in the critical analysis of the protection of cultural heritage in the State of Minas Gerais brings the conclusion that the challenges to the effective evaluation of cultural heritage persist, even with concrete incentives to the owners of private property.

Regarding the barriers to the valuing of cultural heritage, one can glimpse the very difficult related to the conceptualization of cultural heritage and the precarious understanding of the guarantees of patrimonial protection in favour of communities where engaged social actors, public managers, professionals of the area and residents appear.

The scarce resources directed to the cultural sector and the existence of strong bureaucracy create obstacles related to the raising of financial resources for financing cultural projects. In addition, public assets management agencies such as IEPHA-MG and IPHAN do not have real state and national coverage and effective functioning within our federative pact system.

By analyzing the tax incentives in the state of Minas Gerais it is possible to identify an emergency of greater state concern with financial incentives for the preservation of cultural heritage, especially in a state of the federation that has rich and abundant historical-cultural material to be taken care of and, as a consequence, tourism.

The State of Minas Gerais provides, in legislative terms, for the redistribution of ICMS (State Tax on Circulation of Goods and Services), allocating larger

³⁵ MIRANDA, Marcos Paulo de Souza; ARAÚJO, Guilherme Maciel; ASKAR, Jorge Abdo (org.). *Mestres e conselheiros: manual de atuação dos agentes do patrimônio cultural*. Belo Horizonte: Ieds, 2009. p. 114.

quotas to cities that present actions for the preservation of memory and protection of their heritage through the share of ICMS Cultural Heritage.

This incentive in the form of transfer of resources to the municipalities became known as the Robin Hood Act, because its objective is linked to a more balanced ideology of distribution of values among the municipalities. The Robin Hood Act brought the municipalities' protection of cultural heritage in a compensatory way. The existence of the law also brought a necessary reflection on the capacity of the state to stimulate the municipalities that can receive this contribution of financial resources as being conditioned to the execution of public policies.

There was progress in the sense that the Robin Hood Act brought innovations in the scenario of heritage preservation regarding the transfer of ICMS Cultural Heritage. But, on the other hand, it is also imperative to conclude that given the socioeconomic heterogeneity and the excessive number of municipalities that make up the state of Minas Gerais, a multiplicity of demands has been generated, causing great difficulty in coordinating socio-cultural public policies. Challenges that state institutions have been trying to remedy over time.

There is no single recipe for dealing with barriers to cultural preservation and not even for finding short-term solutions. But nowadays several public or private entities are understanding the need to enhance the preservation and revitalization of the Brazilian cultural heritage.

Moreover, research shows us that the Constitutional Economic Order itself imposes development. As culture is an important driver of human, economic and sustainable development in any region, it must be admitted that cultural preservation will, to a large extent, enable national development.

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