

# THE PROTECTION OF CULTURAL HERITAGE IN BRAZIL AND SPAIN: THE CASE OF VAQUEJADA AND BULLFIGHTING

## *A PROTEÇÃO DO PATRIMÔNIO CULTURAL NO BRASIL E NA ESPANHA: O CASO DA VAQUEJADA E DAS TOURADAS*

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### **Abstract**

Cultural heritage in Brazil and Spain has constitutional protection. It is stated that the environment, in its different meanings, is treated as a fundamental right in both countries and, therefore, arguments of lesser legal strength, including infra-constitutional norms, for possible disrespect toward environmental goods, including animal life, are ruled out. Thus, the aim of this article is to demonstrate that animal life has greater legal value than norms established under the argument of cultural heritage. The article was based on the hypothetical deductive methodology with a comparative legislative research technique, as well as bibliographical research and references in national and international journals. The results show that in Brazil and Spain animal life should have greater legal protection than arguments based on cultural heritage,

### **Resumo**

*O patrimônio cultural no Brasil e na Espanha encontra tutela constitucional. Afirma-se que o meio ambiente, nas suas diferentes acepções, é tratado como direito fundamental em ambos os países e, portanto, afasta-se argumentos de menor robustez jurídica, inclusive normas infraconstitucionais, para eventual desrespeito aos bens ambientais, dentre os quais a vida animal. O objetivo deste artigo é demonstrar, portanto, que a vida animal possui maior valoração jurídica que normas positivadas sob o argumento de patrimônio cultural. O artigo se pautou pela metodologia hipotética dedutiva com técnica de pesquisa legislativa comparada, assim como bibliográfica e referências em revistas nacionais e internacionais. Os resultados apontados demonstram que no Brasil e Espanha a vida animal deve ter maior tutela jurídica que argumentos fundados no patrimônio cultural, concluindo-se*



concluding that, in honor of the theory of fundamental rights and modern constitutionalism, rules that allow animal suffering are unconstitutional and should therefore be removed from the legal system in Brazil and Spain.

**Keywords:** Brazilian vaquejada; fundamental rights; intangible cultural heritage; Spanish bullfighting.

*que, em homenagem à teoria dos direitos fundamentais e ao constitucionalismo moderno, normas que permitem o sofrimento animal padecem de inconstitucionalidade devendo, pois, serem afastadas do ordenamento no Brasil e na Espanha.*

**Palavras-chave:** direitos fundamentais; patrimônio cultural imaterial; tourada espanhola; vaquejada brasileira.

## Introduction

The intrinsic relationships between the environment and Cultural Heritage in Brazil and Spain have been constitutionally established in both countries. In Brazil, it occurred by means of the 1988 Federal Constitution, and in Spain, in its 1978 Constitution. In general, Art. 225 of the Brazilian Constitution provides for an ecologically balanced environment aimed at everyone's health. In order for the human beings to achieve psychological health as well, they have to live in an environment where there is freedom to create, do, and live, thus also protecting the cultural environment directly.

In Spain, environmental protection is established in the Chapter “*Dos Principios Retores da Política Social y Económica*” [The Governing Principles of Social and Economic Policy], which can be found in Arts. 45.1, 45.2, and 45.3, which also establish the right to an environment suitable for development.

Specifically, regarding the cultural environment in Brazil, the Brazilian Constitution deals with it in Arts. 215, 216, and 2016-A. These assets are composed of goods of a material and immaterial nature that bear reference to the Brazilian society's identity, action, and memory. Therefore, they can be composed of objects, documents, and buildings, in addition to artistic, historical, tourist, landscape, archaeological, speleological, and ecological heritage.

It is important to understand the complexity of the relationships that are established between all environmental aspects, that is, the natural environment, the artificial environment, and the cultural environment. Human beings can transform the natural environment into an artificial one. This artificial environment, or even the natural environment, will be used by humans as forms of expression to forge identities, which can be transformed into collective identities.

In Spain, initially, the protection of Cultural Heritage was approached with greater emphasis in the 1931 Constitution and several more articles addressing the theme, demonstrating a determination to protect the heritage and the future

of the Spanish people's memory. This work aims to determine whether there are differences in decisions between the Brazilian and Spanish Courts regarding animal protection. For this purpose, the article was based on a hypothetical deductive methodology with a comparative legislative research technique, as well as on bibliographic research and references from national and international journals.

The problem of this study is to resolve the legal paradox established in the dichotomous relationship between cultural heritage and animal life. If, on the one hand, forgetting the history of civilization and culture of a people is unacceptable, on the other, justifying the suffering of a living being under an argument based on culture is inadmissible as well. After all, which has higher legal value: animal life or cultural heritage?

The central theme is an axiological analysis of the cultural heritage as a legal basis for holding events such as *vaquejada* and bullfighting, in Brazil and Spain, respectively; thus, the intention is to demonstrate that the cultural argument cannot, without further reflection, override society evolution, especially with regard to animal life.

The objective is to encourage the reader to reflect on the importance of a population's cultural heritage, as well as whether such an inexorable asset has the capacity to justify entertainment events in which there is animal suffering, such as *vaquejada* and bullfighting, so that the history of a culture—of undoubted importance—can be repeated and perpetuated.

The importance of this text is justified because both Brazil and Spain, still in the second decade of the 21<sup>st</sup> century, are trying, by making use of norms and local laws, to allow humans to be entertained by animal suffering, under the argument of cultural heritage preservation. Therefore, the problem already presented is renewed, namely: should animal suffering be admitted for the sake of human enjoyment and the cultural heritage preservation?

The hypothesis is that the answer to such question is negative. Thus, what is being researched is that at the current stage of humanity's evolution, cultural heritage is not enough to justify animal suffering.

## 1 Environment: a fundamental right

The right to the environment, considered a third dimension, was not included in constitutions prior to the 1988 Brazilian Constitution. The 1988 Constitution was the first to be concerned with environmental protection. This rise was due to a global order in which several countries constitutionalized this right. Countries like Greece (1975), Portugal (1976), and Spain (1978) were pioneers in this matter.

The fact that the environment theme is found in the Brazilian Constitution in Title VIII, “The Social Order”, and not in Title II, “Fundamental Rights and Guarantees”, does not remove the status of a fundamental right, as it highlights the intrinsic connection of this right to the right to life. The right to life is one of the primary rights of human beings and conditions all other rights for this reason (Costa, 2021). The Constitution of the Brazilian Republic explains in its art. 5: “All people are equal before the law, without any distinction whatsoever. Brazilians and foreigners residing in the country are ensured the inviolability of their right to life, liberty, equality, security, and property, under the following terms [...]” (Brasil, 1988). Following the same path, Manuel Gonçalves Ferreira Filho (1988, p. 276; our translation) states:

Right to the environment. This is a right of solidarity – the third ‘generation’ of fundamental rights (the first, freedom; the second, social rights). In fact, you can easily retrace your genealogy. It comes from the right to life (first generation), through the right to health (second generation).

The author refers to the right to life, which is a new paradigm to be considered in relation to the right to a healthy environment. This leads to a new vision of law, that is, the right to life must always come first, and without an adequate and balanced environment, the right to a dignified life will not be preserved.

In Brazil, there is no doubt that the environment is considered a fundamental right since any contrary interpretation will not find support. The Federal Constitution, in its Art. 225, provides that “everyone has the right to an ecologically balanced environment” (Brasil, 1988). Therefore, it speaks of ‘all’ and of each ‘one’. The individual thus has the fundamental and subjective right to an ecologically balanced environment (Costa, 2009).

It is unquestionable that every individual fundamental right gives the person the right to petition public bodies, as the Federal Constitution provides that, in its Art. 5, item XXXIV, and gives the person four constitutional procedural instruments for the enjoyment of this fundamental right, namely: environmental popular action<sup>1</sup>; environmental public civil suit<sup>2</sup>; the collective environmental writ of

1 Art. 5 All people are equal before the law, without any distinction whatsoever. Brazilians and foreigners residing in the country are ensured the inviolability of their right to life, liberty, equality, security, and property, under the following terms: [...] LXXIII – any citizen has standing to file a popular action to annul an act injurious to the public property or to the property of an entity in which the State participates, to administrative morality, to the environment and to the historic and cultural heritage; except in the case of proven bad faith, the plaintiff is exempt from court costs and from the burden of paying the prevailing party’s attorneys’ fees and costs [...] (Brasil, 1988).

2 Art. 129. The following are institutional functions of the Prosecution Office: [...] III – to institute civil investigation and public civil suit to protect public and social property, the environment and other diffuse and collective interests [...] (Brasil, 1988).

mandamus;<sup>3</sup> and the environmental writ of injunction.<sup>4</sup>

When one affirms the fundamental nature of Art. 225 in the Constitution of the Republic, it is necessary to distinguish the environment to which it refers and also the legal nature of this considered asset, a right to life in Brazil.

For this purpose, it is imperative to know the entire content of Art. 225, while not forgetting to point out that this article was tainted with the inclusion, by Constitutional Amendment No. 96/2017, of the paragraph 7, which establishes sporting practices with the use of animals, claiming to be an intangible cultural achievement. However, this topic will be further discussed in an appropriate moment.<sup>5</sup>

3 Art. 5 [...], item LXIX – a writ of mandamus shall be issued to protect a clear and certain right, when such right is not protected by habeas corpus or habeas data, whenever the party responsible for the illegal action or abuse of power is a public authority or an agent of a legal entity performing governmental duties;; item LXX – a collective writ of mandamus may be filed by: a) a political party represented in the National Congress; b) a union, a professional association or an association legally established and in operation for at least one year, to defend the interests of its members or associates [...] (Brasil, 1988).

4 Art. 5 [...], item LXXI – a writ of injunction shall be granted whenever the lack of regulatory provisions hinders the exercise of constitutional rights and liberties in addition to the prerogatives inherent in nationality, sovereignty and citizenship [...] (Brasil, 1988).

5 Art. 225. Everyone has the right to an ecologically balanced environment, which is an asset of common use and essential to a healthy quality of life, and both government and community shall have the duty to defend and preserve it for present and future generations.

Paragraph 1. To ensure the effectiveness of this right, the government has the responsibility to:

I – preserve and restore the essential ecological processes and provide for the ecological treatment of species and ecosystems;

II – preserve the diversity and integrity of the genetic patrimony of the country and control entities engaged in research and manipulation of genetic material;

III – define, in all federal entities, territorial spaces and their components which are to receive special protection, any alterations and suppressions being allowed only by means of law, and any use which may harm the integrity of the attributes which justify their protection being forbidden;

IV – demand, in the manner prescribed by law, a prior environment impact study, which shall be made public, for the installation of works and activities which may potentially cause significant degradation of the environment;

V – control the production, sale and use of techniques, methods or substances which represent a risk to life, the quality of life and the environment;

VI – promote environmental education in all school levels and public awareness of the need to preserve the environment;

VII – protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty.

Paragraph 2. Those who exploit mineral resources shall be required to restore the degraded environment, in accordance with the technical solutions demanded by the competent government body, as provided by law.

Paragraph 3. Procedures and activities considered as harmful to the environment shall subject the offenders, be they individuals or legal entities, to penal and administrative sanctions, without prejudice to the obligation to repair the damage caused.

Paragraph 4. The Brazilian Amazonian Forest, the Atlantic Forest, the Serra do Mar, the Pantanal

It is important to highlight that the environmental protection in the 1988 Constitution establishes the formative principles of Brazilian Environmental Law and that such protection is directly linked to the fundamental principles of the Constitution, that is, Art. 1 and its initial items.<sup>6</sup> If there was time in this study, it would also be interesting to discuss whether animals are subjects of rights, that is, subjects endowed with personality. However, this will be addressed in another opportunity (Fiuza; Gontijo, 2014).

The criteria established in Art. 225 also refer to the human person's dignity, as expressed in Art. 1, because if everyone has the right to an ecologically balanced environment, which is essential to a healthy quality of life, all people's lives will be dignified and preserved. It is clear that Art. 225 also has to be interpreted in relation to the articles related to culture, demonstrating how broad this new right is.

To maintain a healthy quality of life, Brazilians need their cultural environment—where they create, work, and live—to be preserved in a way that supports their personal and collective development. It seems to be a logical idea, but this often doesn't happen and turns this psychological and material life into true chaos. A classic example of such a thing is the construction of hydroelectric plants, which cause entire city to change and entire life histories to be abandoned. The church where people got married, the cemetery where loved ones were buried, the square that was the stage for parties and other valuable memories are lost, and there is no way to recover them.

These are difficult decisions that the Public Power and society have to make, that is, the population involved must be heard before the destruction, as the change has to be favorable to them, given that the identity that took years to be forged

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Mato-Grossense and the coastal zone are part of the national patrimony, and they shall be used, as provided by law, under conditions which ensure the preservation of the environment, therein included the use of mineral resources.

Paragraph 5. The unoccupied lands or lands seized by the states through legal proceedings that are necessary to protect the natural ecosystems are inalienable.

Paragraph 6. Power plants operated by nuclear reactor shall have their location defined in federal law and may not otherwise be installed.

Paragraph 7. For the purposes of the provision under the final part of item VII of paragraph 1 of this article, sporting practices with animals shall not be considered cruel so long as they are cultural manifestations, in compliance with paragraph 1 of art. 215 of this Federal Constitution. These activities must be registered as goods of immaterial nature that integrate the Brazilian cultural asset, which ought to be regulated under specific law that ensures the well-being of the animals involved (Brasil, 1988).

6 Art. 1 The Federative Republic of Brazil, formed by the permanent union of the states, the municipalities, and the Federal District, is a democratic State ruled by the law and founded on: I – sovereignty; II – citizenship; III – human dignity; IV – social values of labor and free enterprise; V – political pluralism.

will be erased. But parents of future generations will build another city, and not everything will be lost, as the intangible heritage continues with human people. Some assets often have to be sacrificed for the greater good. This set of assets, currently designed *cultural heritage*, have to be respected and understood.

## 2 Concepts related to the idea of cultural heritage

Before identifying and conceptualizing what cultural heritage is, it is essential to understand what culture is. Laraia has developed his research on the subject by compiling authors who have defined, in their time, the concept of culture. Thus, Laraia describes that John Locke,<sup>7</sup> in his “An Essay Concerning Human Understanding”, dated 1690 (which predates Edward Tylor [1832-1917] by centuries)<sup>8</sup>, understands that “the human head is an empty box at birth with unlimited capacity to obtain knowledge” (Laraia, 2009, p. 26; our translation).

Laraia also informs that Jacques Turgot<sup>9</sup> (1727-1781), in his “Plan of two discourses on universal history”, argues that the human beings are “holder of a treasure of signs that has the ability to multiply them infinitely” (2009, p.27; our translation). In the words of Laraia (2009, p. 27), Turgot assures that “man is capable of ensuring the retention of his erudite ideas, communicating them to other men and transmitting them to his descendants as an ever-growing inheritance” (our translation)

Laraia (2009) surrenders to Turgot’s concept and explains that if the word “erudite” were removed from the concept it would be perfect even for today, considering that both erudite ideas and simple ideas have their value in humans’ identity.

But, according to Laraia, the concept of culture was framed for the first time by Englishman Edward Tylor (1832-1917), when he explained that culture is “every complex that includes knowledge, beliefs, art, morals, laws, customs, or any other capacity or habits acquired by man as a member of society” (Laraia, 2009, p. 25). The author explains that after Tylor’s concept, a number of others were created. As an example, according to Laraia, we can mention the concept of Franz Boas<sup>10</sup> (1858-1949): “Man’s genetic inheritance has nothing to do with his

7 John Locke was born in 1632, in Wrington, England (Edward Burnett Tylor, 2018).

8 Edward Burnett Tylor was born on October 2, 1832, in Camberwell, England (Edward Burnett Tylor, 2018).

9 Jacques Turgot was born May 10, 1727, in Paris (Edward Burnett Tylor, 2018).

10 Franz Boas was an American anthropologist, born in 1858 in Mindem, Westphalia, Germany (Edward Burnett Tylor, 2018).

actions and thoughts, as all his actions and thoughts depend entirely on a learning process” (Laraia, 2009, p. 38; our translation). This concept came to refute other positions that considered culture as genetic inheritance, but studies show that the environment in which human beings develop is fundamental to their formation as a person.

Laraia (2009, p. 54) states that “Man is the result of the cultural environment in which he was socialized”. In this way, he is an “heir to a long cumulative process, which reflects the knowledge and experience acquired by the numerous generations that preceded him”. The author also quotes French anthropologist Claude Lévi-Strauss.<sup>11</sup> Regarding culture, Lévi-Strauss states that it emerged when human beings agreed on the first rule, the first norm (Laraia, 2009).

Notably, the concepts created by these researchers all have in common the concept of learning: experiences in their environment that will irremediably be transferred to future generations in some way. And, logically, it will be modified somehow. The reality is that human beings are the only beings capable of creating, experiencing, and transmitting culture. Their ability to communicate orally and create and manufacture instruments for their use is extraordinary. There is no other being on earth with this ability. It can be questioned that other animals have developed skills in using some instruments for their survival, but they definitely do not have the sophistication developed by humans.

This item can be summarized in the thinking of Clifford Geertz (2017, p. 35), that is, “there is no such thing as a human nature independent of culture”. Moreover, this thought is even deeper when the author shows that culture is much more important than genetics: “What happened to us in the Ice Age is that we were obliged to abandon the regularity and precision of detailed genetic control over our conduct for the flexibility and adaptability of a more generalized, though of course no less real, genetic control over it” (Geertz, 2017, p. 35). In this way, human beings had to go far beyond their genetic condition to survive as cultural men.

Geertz (2017, p. 35) adds: “To supply the additional information necessary to be able to act, we were forced, in turn, to rely more and more heavily on cultural sources – the accumulated fund of significant symbols”. Therefore, cultural assets have to be protected by all legislation, and countries should make it effective and efficient, because it will protect human beings and humanity. This is the real wealth which cannot be measured and which cannot be lost.

To conclude with Geertz (2017, p. 36; our translation), it is possible

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<sup>11</sup> Claude Lévi-Strauss, structuralist theorist (Edward Burnett Tylor, 2018).



to mention what he says about symbols: “Such symbols are thus not mere expressions, instrumentalities, or correlates of our biological, psychological, and social existence; they are prerequisites of it. There would be no culture without humans, certainly; but equally, and more significantly, there would be no humans without culture”. For all these reasons, culture is a human heritage.

But what does the term heritage mean? Where does it come from? In this context, Françoise Choay (2006, p.11; our translation) reveals that the term, in its origins, related to “family, economic and legal structures of a stable society, rooted in space and time”. And as for historical heritage, the author explains,

Historical heritage. The expression designates an asset intended for the enjoyment of a community that has expanded to planetary dimensions, constituted by the continuous accumulation of a diversity of objects that come together through their common past: works and masterpieces of fine arts and applied arts, works and products of all knowledge and *savoir-faire* of human beings (Choay, 2006, p. 11; our translation).

Choay goes to the heart of the matter, back when concern about European historical heritage began. Nowadays, heritage has started to be studied not only in its material aspect—that is, with concern about monuments, art objects—but the vision of protection and preservation has become broader. This breadth of cultural heritage subdivided it into material and intangible heritage.

Cultural heritage reveals an immeasurable value of material and immaterial assets. Conceptualizing these assets is not a simple task, but Paulo Affonso Leme Machado did so,

[...] Cultural heritage represents the work, creativity, spirituality, and beliefs, the extraordinary daily life of previous generations, before which present generations will have to admit a value judgment, saying what they want to preserve, modify, and even demolish. This heritage is received without merit from the generation that preceded it. But it will not continue to exist without its support. Cultural heritage has to be enjoyed by the present generation without harming the possibility of future generation enjoyment (Machado, 2022, p. 956; our translation).

In order to characterize cultural heritage as a material or immaterial asset it is necessary to look for the core of this right. In fact, Decree-Law No. 25/37, in Brazil, as will be seen later, introduced the concept of movable and immovable assets as cultural heritage, but did not cover intangible assets.

This insight came from the 1988 Constitution, but it is necessary to establish how this development occurred in Brazilian constitutionalism, which will be addressed below. At this point, however, it is important to understand that the

designations *cultural heritage* and *cultural assets* are equivalent.

This concept appears in the 1954 Hague Convention,<sup>12</sup> when it deals with the cultural property protection in the event of armed conflict, and later in other UNESCO Conventions relating to cultural protection. According to Nabais (2010, p. 20), the expressions should be considered synonymous, because “the expression cultural assets is, in effect, nothing more than another way of representing cultural heritage” (our translation). Therefore, from two perspectives, the expressions can be understood as “two ways of looking at the same reality: the first, in its entirety; the second, in its constituent elements or components” (Nabais, 2010, p. 20; our translation).

Having therefore defined, in this work, that cultural heritage and cultural assets have the same meaning, allows us to understand which human values were protected by the Brazilian Constitution.

### 3 The cultural heritage protection in Brazilian constitutionalism

To understand the evolution and transformation of these values in Brazilian society, it is important to have a general overview of Brazilian constitutionalism, in terms of the cultural heritage protection. For example, the 1824 Constitution did not provide any article regarding cultural heritage protection. Likewise, the democratic 1891 Constitution was not concerned with the matter. It was only in 1923 that Luiz Cedro, state of Pernambuco Congressman, suggested, by means of a bill, the creation of an Historical Monuments Inspectorate Office, but he was unsuccessful at the time. However, in 1928, State Law No. 1.998 created the Monuments Inspectorate Office, and in 1927, the State National Monuments Inspectorate Office was created in Bahia.

After the creation of these bodies, there was some concern about Brazilian cultural heritage and, in 1930, the municipality of Ouro Preto, the first capital of Minas Gerais, was considered a National Monument.

The 1934 Constitution, in turn, specifically addressed the topic in its art. 10, item III: “[...] Art. 10. It is concurrently the responsibility of the Union and the States: [...] III – to protect natural beauty and monuments of historical or artistic value, and it is able to prevent the evasion of works of art” (Campanhole; Campanhole, 2000, p. 665; our translation).

The 1937 Constitution had a greater concern in approaching the theme and

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12 Convention for the Protection of Cultural Property in the Event of Armed Conflict (Unesco, 1954).

established in its art. 134 that: “Historical artistic and natural monuments, as well as landscapes or places particularly endowed by nature, enjoy the protection and special care of the Nation, States and Municipalities. The attacks committed against them will be equated to those committed against national heritage” (Campanhole; Campanhole, 2000, p. 601; our translation).

That same year, Decree-Law No. 25 was published, regulating cultural heritage. This Decree-Law establishes issues mainly relating to cultural heritage protection, but without any form of democratic participation due to the military government regime at the time. It should be noted that this Decree is still in force in Brazil, even though it is considered undemocratic by several scholars, but this subject will not be addressed in this work.

The 1946 Constitution, in turn, brought in its framework, completely without effectiveness, the Arts. 174 and 175, which established: “174. Protection of culture is the duty of the State”, and 175: “Works, monuments and documents of historical and artistic value, as well as natural monuments, landscapes and places endowed with particular beauty, are under the protection of the Public Authorities”. Nevertheless, Art. 175 includes the protection of documents of historical value that were not part of the protection in previous constitutions, and it was considered an advance for the time (Campanhole; Campanhole, 2000, p. 496).

The 1967 Constitution also repeated the rule of the 1937 Constitution, which remained inapplicable in its Art. 172, in which it established: “Protection of culture is the duty of the State. Sole paragraph: Documents, works and places of historical or artistic value, monuments, and notable landscapes, as well as archaeological sites are under the special protection of the Public Power” (Campanhole; Campanhole, 2000, p. 417; our translation).

Notably, this is the first time that the Fundamental Law addresses the topic of archaeological protection, but it continues to specify monuments and landscapes that are notable; this was the military regime’s contribution. Nonetheless, there is no explanation of what is “notable” and this classification disregards other landscapes that are not classified in this way, but that could be important for society. This characterization of “notable” was for a long time included throughout Brazilian constitutionalism, until “simplicity” was also appreciated with the value of identity.

Constitutional Amendment No. 01/69, which modified the 1967 Constitution, maintained the same wording. It appears, therefore, that Brazilian constitutionalism slowly developed concern about the protection of cultural heritage, and maintained for a long time the concept of heritage provided for in art. 1 of

Decree-Law No. 25 of 1937, that is:

Art. 1. National historical and artistic heritage constitutes the set of movable and immovable assets existing in the country and whose conservation is of public interest, whether due to their connection to memorable facts in the history of Brazil, or due to their “exceptional” archaeological or ethnographic, bibliographic or artistic value (Brazil, 1937).

One verifies that the aforementioned article uses the denomination established by the constitutions of 1934, 1937, 1946, and 1967, that is, “national historical and artistic heritage”. However, the 1988 Federal Constitution replaced this nomenclature with “Brazilian cultural heritage”, which has a much more comprehensive meaning in terms of protecting Brazilian culture. Consequently, the expression “exceptional” has also lost its validity because there are expressions and forms of life that must be protected without being considered “extraordinary”.

From this perspective, “simplicity” is what must be protected and rescued when carrying references to the identity, action, and memory of the different groups that form society. Therefore, it is essential to highlight what was established in the 1988 Constitution of the Republic.

### 3.1 Cultural heritage in the 1988 Constitution

Finding the root of the protection of cultural heritage in Brazil is not difficult. The environment can be divided, didactically, into natural, artificial, and cultural environment. This means that the heritage is protected, mediately by Art. 225 and immediately by Arts. 215 and 216<sup>13</sup> of the 1988 Constitution.

<sup>13</sup> Art. 215. The State shall ensure to everyone the full exercise of cultural rights and access to sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions. Paragraph 1. The State shall protect the expressions of popular, Indian and AfroBrazilian cultures, as well as those of other groups participating in the national civilization process. Paragraph 2. The law shall provide for the establishment of commemorative dates of high significance for the various national ethnic segments. Paragraph 3. The law shall establish the national culture plan, of multi-year duration aimed at the cultural development of the country and the integration of government initiatives to attain the following: (CA 48, 2005) I – defense and valorization of Brazilian cultural patrimony; II – the production, promotion, and diffusion of cultural goods; III – training of qualified personnel to manage culture in its multiple dimensions; IV – democratization of access to cultural goods; V – valorization of ethnic and regional diversity.

Art. 216. Brazilian cultural heritage consists of assets of material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form Brazilian society, therein included: I – forms of expression; II – ways of creating, making and living; III – scientific, artistic and technological creations; IV – works, objects, documents, buildings and other spaces intended for artistic and cultural expressions; V – urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value. Paragraph 1. The government shall, with the cooperation of the community, promote and protect Brazilian

For the first time the Constitution conceptualizes cultural heritage in a broader manner, that is, when speaking of “historical value”, which can be taken individually or as a whole, as long as they bear reference or identity. The Brazilian Constitution demonstrates the real appreciation of what is most significant for all its citizens, that is, cultural identity. This identity is that value that makes us feel unique in the world, the feeling of belonging.

To understand Art. 216, and therefore what cultural heritage is, one must first understand the legal relationship that exists between the human needs and what is “asset”. This asset is divided into two forms: a material condition and an immaterial condition.

These assets are grounded on three bases: 1. their legal nature, representing a common good for the people, that is, diffuse asset, Art. 225, head provision, Federal Constitution (FC); 2. the economic order of capitalism, Art. 170, head provision, FC, which is inevitably linked to sustainable development and, finally, 3. the cultural heritage that involves the participation of the Democratic Rule of Law, Art. 1, item III, FC, that is, the human being’s dignity.

In this fundamental tripod, from which cultural heritage is conceptualized, there is no way to understand it as protected by Decree-Law No. 25/37, as Art. 216, FC, legally defines what this heritage is, the rights, duties, and responsibilities concerning it. Therefore, at this point it is important to understand and differentiate what is meant by material and intangible cultural heritage.

### 3.2 Material cultural heritage

The category of material cultural heritage can be understood as those tangible assets. The artificial environment, built by humans, is an example. It is the most substantial interpretation for this asset. Therefore, they are those imagined assets, designed by human beings such as public equipment, documents, monuments,

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cultural heritage by inventories, registers, surveillance, monument protection decrees, expropriation and other forms of precaution and preservation. Paragraph 2. The administration is responsible for managing governmental documents and providing measures to ensure they are available for consultation to whomever may need access to them. Paragraph 3. The law shall establish incentives for the production and knowledge of cultural assets and values. Paragraph 4. Damage and threats to the cultural heritage shall be punished in accordance with the law. Paragraph 5. All documents and sites bearing historical reminiscence to the ancient communities of runaway slaves are protected as national heritage. Paragraph 6. The states and the Federal District may assign up to five tenths percent of their net tax revenues to a state fund for the promotion of culture, for funding cultural programs and projects; the use of such funds are forbidden to pay the following: I – personnel expenses and social security contributions; II – debt servicing; III – any other current expense not directly related to the investments or actions supported by the programs referred to.

and also those made by human beings combined with nature.

Back in 1972, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage defined what this material cultural heritage is:

I. Definition of the Cultural and Natural Heritage

Art. 1: –For the purpose of this Convention, the following shall be considered as “cultural heritage”:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view (Unesco, 1972).

It is clear that at that time the protection of intangible cultural heritage did not yet exist and it was only recently that a convention that privileged this significant asset was included in the UNESCO work. And it will be in this context that Spanish legislation will be compared with Brazilian legislation, in which the former only brought to light the concern about this asset, in general, in 2015, along with many criticisms for its summarized content.

### 3.3 Intangible cultural heritage in Brazilian legislation

Contrary to the understanding of material heritage, intangible cultural heritage is that which refers to the identity, action, and memory of the different groups that form Brazilian society, as established in Art. 216, F.C. These assets can be exemplified with regional music, the country’s diverse forms of religion, regional foods, among many ways of creating, doing, and living in a Nation. These are living, intangible assets that shape human life and continue to be updated by future generations. Therefore, it is something alive, dynamic, and subject to constant evolution. This change can reach the point of removing it from society. An extreme example was the gladiator fights in ancient times.

This was a completely different context from today, but it still has its remnants nowadays. For example, Rome city hall was forced, in 2016, to veto any activity

that foresees the portrayal of a gladiator, in historical clothing in photographs or videos in exchange for money (Prefeitura de Roma..., 2016). The objective was to preserve the safety and decorum of the city's artistic, historical, and monumental heritage, recognized by UNESCO. Obviously, changes to a society's habits and celebrations have to be consensual for those who live them. However, the change is very welcome when violence is present in sports or at parties.

In this sense, in 2003 UNESCO prepared the Convention for the Safeguarding of the Intangible Cultural Heritage, in which it defines:

Art. 2: Definitions

For the purposes of this Convention

1. 1. The "intangible cultural heritage" means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development (Unesco, 2003).

UNESCO, recognizing that globalization has a very large insertion in social parameters and often causes transformations in the community's ways of creating, doing, and living, establishes means to prevent the deterioration, disappearance, and destruction of these values, and also that it is possible for them to undergo transformations. This transformation occurs naturally considering that these are living values, such as popular demonstrations and other forms of expression.

Within the same aspect, in Brazil, Decree No. 3.551 was published in 2000, creating the Registry of Intangible Cultural Assets. However, this Decree basically served to establish the forms of registration of assets considered intangible in Brazil. Even a general concept of these assets has not been developed.

Therefore, the Decree establishes the following record books for designated protection: 1 – Record Book of Knowledge; 2 – Celebrations Record Book of Celebrations; 3 – Record Book of Forms of Expression, and 4 – Record Book of Places. Certainly, historical continuity, which has national relevance for memory, identity, and the formation of society has to be taken into consideration for assets to be included in any of these books. The proposal for registration, as well as the

instruction about the registration processes, will be the responsibility of the Institute of National Historical and Artistic Heritage (IPHAN).

It is also necessary to consider the difficulty of a radical separation between what is material and what is immaterial or intangible. This is because there is no way to separate them completely. According to Miranda (2006, p. 57), these assets, despite being in a traditional division, at least didactically, “in their formation, the tangible and intangible aspects are normally always combined, that is, such elements are not fully watertight things” (our translation).

When dealing objectively with intangible cultural heritage, it is worth explaining, at this point, the modification that occurred in Art. 225 of the 1988 Federal Constitution. The Constitution was modified through Constitutional Amendment No. 96 of 2017, which included paragraph 7 in Art. 225.<sup>14</sup>

This paragraph establishes that sporting practices that use animals are not considered cruel, and also classifies this practice as an intangible cultural asset, as provided for in Articles 215 and 216, FC. However, the confusion regarding this paragraph should be explained, and it will be done in a very summarized manner.

It happened that the government of the State of Ceará issued Law No. 15.299 in 2013, which considered *vaquejada* a sporting and cultural activity. There would be no problem with this characterization if the 1988 Federal Constitution did not contain Art. 225, item VII, which establishes to: “[...] protect the fauna and the flora, with prohibition, in the manner prescribed by law, of all practices which represent a risk to their ecological function, cause the extinction of species or subject animals to cruelty” (Brasil, 1988).

Therefore, there is a constitutional provision for protection against cruelty to animals, and Law No. 15.299/13 was considered unconstitutional by the Federal Supreme Court<sup>15</sup> in 2016. Nonetheless, to make *vaquejada* a legal practice,

14 [...]Paragraph 7 For the purposes of the provision under the final part of item VII of paragraph 1 of this Article, sporting practices with animals shall not be considered cruel so long as they are cultural manifestations, in compliance with paragraph 1 of Article 215 of this Federal Constitution. These activities must be registered as goods of immaterial nature that integrate the Brazilian cultural asset, which ought to be regulated under specific law that ensures the well-being of the animals involved (Brasil, 1988).

15 The Plenary of the Federal Supreme Court (STF) voted in favor of Direct Action for the Declaration of Unconstitutionality (*Ação direta de Inconstitucionalidade – ADI* 4983, proposed by the Attorney General of the Republic against Law No. 15.299/2013, of the state of Ceará, which regulates *vaquejada* as a sporting and cultural state practice. The majority of ministers followed the vote of the rapporteur, Minister Marco Aurélio, who considered that in *vaquejada* there was “intrinsic cruelty” applied to animals. The trial of the matter began in August 2015, when the claim was held valid and the rapporteur stated that the duty to protect the environment (art. 225, F.C.) overrides the cultural values of sporting activity. In his vote, Minister Marco Aurélio stated that the technical reports contained in the files demonstrate harmful consequences for the health of animals: fractures of the legs



through political lobbying by the ruralist caucus, which is composed of most of Congressmen of the National Congress, Constitutional Amendment No. 96/2017 was approved, including paragraph 7 to art. 225 of the 1988 Federal Constitution.

It turns out that in Brazil there are other laws that support the protection of animals, such as Law No. 9.605/98.<sup>16</sup> However, the pressure was very strong and the Law that was considered unconstitutional, as it did not correspond to the Brazilian people's will, is now perfectly legal.

Nevertheless, Constitutional Amendment No. 96/2017 highlights a norm of limited effectiveness, and prohibits explicitly its immediate application until a specific law makes its full effectiveness possible. Therefore, the law that will regulate paragraph 7 must protect animal safety and welfare, and this will not be an easy task, as technical reports have already demonstrated to all STF Ministers that sporting activities incite violence against animals.

This is the key problem that will be further discussed when intangible cultural heritage is also developed in Spain, which, conversely, protects bullfighting

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and tail, rupture of ligaments and blood vessels, eventual tearing of the tail and involvement of the bone marrow. Horses, depending on the prizes, also suffer injuries. For the rapporteur, the meaning of the expression "cruelty", contained in item VII of art. 225, FC covers torture and mistreatment of cattle during the practice of *vaquejada*. Thus, for him, the human conduct authorized by the attacked state norm proves to be "intolerable". On the same occasion, Minister Edson Fachin disagreed with the rapporteur and voted for the claim to be denied. For him, *vaquejada* is a cultural manifestation, which was recognized by the Attorney General's Office itself in the initial petition. This understanding was followed, also in that session, by minister Gilmar Mendes. At the session on June 2 this year, Ministers Luís Roberto Barroso, Rosa Weber, and Celso de Mello accompanied the rapporteur. Ministers Teori Zavascki and Luiz Fux followed the divergence, affirming the validity of the state law. The trial was resumed in this Thursday's session with the presentation of Minister Dias Toffoli's opinion, in favor of the constitutionality of the law of the state of Ceará. He understood that the rule does not violate any provision of the Federal Constitution. "I clearly see that this is a sporting and festive activity, which belongs to the culture of the people, which is why it must be preserved", he said. According to the minister, in *vaquejada* there is a different technique, rule and training, which makes the performance exclusive to professional cowboys. In today's session, ministers Ricardo Lewandowski and the president of the Court, minister Cármen Lúcia, also voted for the claim to be held valid. The rapporteur was followed by ministers Luís Roberto Barroso, Rosa Weber, Ricardo Lewandowski, Celso de Mello, and the president of the Court, minister Cármen Lúcia. Ministers Edson Fachin, Teori Zavascki, Luiz Fux, Dias Toffoli and Gilmar Mendes were defeated (Brasil, 2016).

Carrying out acts of abuse, mistreatment, harming or mutilating wild, domestic or domesticated, native or exotic animals: Penalty – detention, from three months to one year, and fine. Paragraph 1. Anyone who performs a painful or cruel experience on a live animal is subject to the same penalties, even for teaching or scientific purposes, when alternative resources exist. Paragraph 2. The penalty is increased by one-sixth to one-third if the animal dies (Brasil, 2016).

16 Art. 32. Carrying out acts of abuse, mistreatment, harming or mutilating wild, domestic or domesticated, native or exotic animals: Penalty – detention, from three months to one year, and fine. Paragraph 1. Anyone who performs a painful or cruel experience on a live animal is subject to the same penalties, even for teaching or scientific purposes, when alternative resources exist. Paragraph 2. The penalty is increased by one-sixth to one-third if the animal dies (Brasil, 1988).

as an intangible asset. For now, it is also important to understand what Natural Cultural Heritage is.

### 3.4 Natural cultural heritage

It is worth highlighting the constitutionalization of natural cultural heritage, also conceptualizing it, considering that both culture and nature are heritage that must be preserved. And, at this point, the 1946 and 1967 Constitutions established respectively: “places endowed with particular beauty, are under the protection of the State”; and: “Documents, [...] monuments and notable landscapes are under the special protection of the Public Power”, and the 1969 Constitutional Amendment repeated what was established in the 1967 Constitution.

In turn, the 1988 Constitution, observing Brazilian constitutionalism, updates Art. 216:

Brazilian cultural heritage consists of assets of material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form Brazilian society, therein included: [...] V – urban complexes and sites of historical, natural, artistic, archaeological, paleontological, ecological and scientific value (Brasil, 1988).

The 1988 Constitution explains a broad and current vision of what natural heritage is and removed the adjectives “notable” and “particular beauty”, as they bring an abstract interpretation regarding the qualification of what is notable and particular. Therefore, heritage must have an “ecological value” that is a reference to identity, action, and memory for the different groups that form Brazilian society.

It cannot be forgotten that Art. 216, FC, also refers to landscape, archaeological, and paleontological values, which have specific legal protection, that is, archaeological heritage: Law 3.924/61, which deals with archaeological and prehistoric monuments; also corroborating Law 7.542/86, which establishes the research, exploration, removal, and demolition of things or goods sunk, submerged, stranded and lost in waters under national jurisdiction, on marine land and its additions and on marginal land, resulting from an accident, jettison or fate at sea, and provides other measures. Regarding paleontological heritage, Decree-Law No. 4.146/42, deals with protection of fossil deposits.

In 1972, at the Convention Concerning the Protection of the World Cultural and Natural Heritage, UNESCO also defined what it understands as natural cultural heritage:

For the purposes of this Convention, the following shall be considered as “natural heritage”: natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;

natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty (Unesco, 1972).

This convention was held in Paris and addressed the need to protect material and natural cultural assets, as there was already intense environmental degradation generated by social and economic transformations.

The connection between the environment and cultural heritage becomes more obvious when one realizes that human beings transform the environment according to their vision of life, that is, the way in which each community develops.

In this aspect, it can be stated that there is no unquestionable separation between material, tangible assets and immaterial or intangible ones. Souza Filho (2011, p. 48) explains that “cultural assets only exist because they hold an evocation, representation, memory, that is, no matter how material they are, there is an immaterial greatness in them that is precisely what makes them cultural [...]”. A very clear example of what the author explains are the *Ocas* [indigenous lodges] built by the Amazon Indigenous people. These *Ocas* are built and created with traditional knowledge that is passed on from ancestors to the future generation. In this way we have that material construction, which was designed by immaterial human knowledge.

Souza Filho (2011, p. 49) also points out that “There are cultural assets, however, that do not have this materiality, because their raw material or support is not important, but only the evocation or representation they suggest [...]” (our translation). Some examples of this evocation include forms of traditional knowledge, human habits, dances, and ways of making and processing food. For example, in the city of São João Del Rey, state of Minas Gerais, the sound of the bells was protected as intangible cultural heritage.

From this same perspective, the 1978 Spanish Constitution establishes articles that contain the protection of the environment and cultural heritage, and it is more detailed when referring to cultural protection.

#### 4 The cultural heritage protection in Spain

According to López Ramón (2017), the Spanish cultural protection regime had the Italian model as a parameter. In a historical synthesis, the author describes that in the Reign of Charles III, the theme of cultural protection was introduced and taken forward by Charles IV in 1802 and 1803, and the archipelagos were regulated and prohibited from being destroyed.

The author informs that in 1837 the exports of old books, paintings, and manuscripts was prohibited, and in 1844 the Central Commission and the Provincial Monuments Commissions were created. He also reports that in 1844 the Central Commission was replaced by the *Real Academia de Bellas Artes de San Fernando* (López Ramón, 2017).

López Ramón (2017) describes that in 1911 there was the law on Excavations and Antiquities, which was replaced by the 1985 Spanish Historical Heritage Law (SHHL), which will still be the subject of comments. Also in 1915, the Monuments Law was created, which initiated the procedures for declaring architectural and artistic monuments, establishing a ban on exports, and requiring administrative authorization for their demolition.

The author continues by stating that during the first Spanish dictatorship, the 1926 Royal Decree Law on the protection and conservation of artistic wealth and also the first normative body, which systematically regulated the matter, were created (López Ramón, 2017).

In the second Republic, the 1931 Spanish Constitution, approved on December 9, was in force until the end of the Civil War, in 1939. Its Art. 45, from Chapter II, which dealt with “Family, economy, and culture”, exposed the following: “*Toda la riqueza artística e histórica del país, sea quien fuere su dueño, constituye tesoro cultural de la Nación y estará bajo la salvaguardia del Estado, que podrá prohibir su exportación y decretar las expropiaciones legales [...]*” (España, 1931). Therefore, the Spanish government was already taking care of Spanish material cultural heritage, as can also be seen in other articles, such as Articles 48 and 50,<sup>17</sup> in which the government stipulated the autonomous regions’ freedom to establish the teaching of their own languages, but they must also obligatorily teach Spanish.

17 [...] Artículo 48. *El servicio de la cultura es atribución esencial del Estado, y lo prestará mediante instituciones educativas enlazadas po el sistema de la escuela unificada [...].*

Artículo 50. *Las regiones autónomas podrán organizar la enseñanza en sus lenguas respectivas, de acuerdo con las facultades que se concedan en los Estatutos. Es obligatorio el estudio de la lengua castellana, y ésta se usará también como instrumento de enseñanza en todos los Centros de instrucción primaria y secundaria de las regiones autónomas [...]* (España, 1931).

It should be noted that the language is not established here as an intangible heritage, but as a form of communication between all autonomous regions.

Thus, it is clear that the 1931 Spanish Constitution does not define what the country's cultural heritage is, but it already makes some observations that will be matured by the so-called cultural 1978 Constitution (Guerrero Manso, 2017).

#### 4.1 1978 Cultural Spanish Constitution

As noted by Guerrero Manso (2017), the Spanish Constitution was designated “cultural” by some authors such as Ruiz Robledo (1998) and Castro López. The designation is true, considering that the Spanish Constitution expresses the matter in its preamble:

*Preámbulo*

*La Nación española, deseando establecer la justicia, la libertad y la seguridad y promover el bien de cuantos la integran, en uso de su soberanía, proclama su voluntad de: Garantizar la convivencia democrática dentro de la Constitución y de las leyes conforme a un orden económica y social justo. Consolidar en Estado de Derecho que asegure el imperio de la ley como expresión de la voluntad popular. Proteger a todos los españoles y pueblos de España en el ejercicio de los derechos humanos, sus culturas y tradiciones, lenguas e instituciones. Promover el progreso de la cultura y de la economía para asegurar a todos una digna calidad de vida [...] (España, 1978).*

The guarantee of the exercise of their cultures, traditions, languages, and institutions are also the guarantee of intangible heritage, even if it is not expressly established as an intangible asset, but there is no denying that the legislator's will is already exposed. And, as explained previously, there is no way to make an exact division of what constitutes cultural material and intangible heritage. Therefore, even if the 1978 Constitution, revised in 2011, does not establish what intangible cultural heritage is, it is already being protected.

But the protection of the Spanish language is clear at various times in the Spanish Constitution, especially in its preamble. It is detailed in the preliminary title, in art. 3.3: “*La riqueza de las distintas modalidades lingüísticas de España es un patrimonio cultural que será objeto de especial respecto y protección*” (España, 1978). Thus, there is the desire to protect the various forms of communication in Spain, already characterized as a wealth, and therefore immeasurable.

In turn, Art. 9.2, still in the preliminary title of the Spanish Constitution, deals with cultural protection when determining that Public Authorities must enable that all conditions for freedom and equality of all be effective, and highlights: “[...] *remover los obstáculos que impidan o dificulten su plenitud y facilitar la*

*participación de todos los ciudadanos en la vida política, económica, cultural e social*" (España, 1978). Therefore, the Spanish government must create public policies so that individuals and groups have access to culture in all possible ways.

The Spanish Constitution establishes, in Chapter III, "*De Los Principios Rectores de la Política Social Y Económico*", Art. 44.1: "*Los poderes públicos promoverán y tutelarán el acceso a la cultura, a la que todos tienen derecho*" (España, 1978). Here the legislator repeats and reinforces what was already provided in art. 9.2, but the innovation is that such right is guaranteed, demonstrating the seriousness of culture for these people. As in the 1988 Brazilian Constitution, the Spanish Constitution establishes the right to an adequate environment in its Articles 45.1, 45.2, and 45.3.<sup>18</sup> One believes that it was no coincidence that these articles are among two other articles that deals with Spanish cultural protection, that is, art. 44.1 and art. 46, the latter stating:

*Los poderes públicos garantizarán la conservación y promoverán el enriquecimiento del patrimonio histórico, cultural y artístico de los pueblos de España y de los bienes que lo integran, cualquiera que sea su régimen jurídico y su titularidad. La ley penal sancionará los atentados contra este patrimonio* (España, 1978).

The Fundamental Law, without using the term material and intangible heritage, makes its protection clear when it mentions historical, cultural, and artistic heritage. Guerrero Manso (2017) expresses the same opinion when understanding that the aforementioned article expands the concept of Spanish historical heritage and includes a wide variety of knowledge and activities without protection.

It cannot be forgotten that Art. 45.1 establishes that the development of the person must be in an adequate environment. And this adequacy also refers to the cultural environment in which the Spanish Constitution is concerned about security, conservation, participation, and protection.

On the other hand, the Spanish Constitution establishes a complex form of competence for its Autonomous Communities relating to the intangible cultural heritage (PCI), but it does not renounce its exclusive competence over the defense of cultural, artistic, and monumental heritage against exports and spoliation (Art. 149.1.28),<sup>19</sup> and the general protection of these assets.

18 Art.45.1 *Todos tienen el derecho a disfrutar de un medio ambiente adecuado para el desarrollo de la persona, así como el deber de conservarlo.* 45.2. *Los poderes públicos velarán por la utilización racional de todos los recursos naturales con el fin de proteger y mejorar la calidad de la vida y defender y restaurar el medio ambiente, apoyándose en la indispensable solidaridad colectiva.* 45.3. *Para quienes violen lo dispuesto en el apartado anterior, en los términos que la ley fije, se establecerán sanciones penales o, en su caso, administrativas, así como la obligación de reparar el daño causado* (España, 1978).

19 Art. 149.1.28 *El Estado tiene competencia exclusiva sobre las siguientes materias [...] 28ª Defensa del patrimonio cultural, artístico y monumental español contra la exportación y la expropiación; museos, bibliotecas y archivos de titularidad estatal, sin perjuicio de su gestión por parte de las Comunidades*

There will not be time in this work to explain the division between these competencies in general, and the Autonomous Communities' competencies. However, the Communities have the competence to establish the promotion of culture, as stated in art. 148.1.17.<sup>20</sup>

The designation of *Cultural Constitution* is due to a growing protection of values that must be taken care of since there is no citizenship without the recognition of a common cultural heritage; especially when considering that it is through this heritage that citizens have access to their origin and history.

History that links them in a chain of acts, of ways of creating, doing, and living that create memory, identity, and belonging. Consequently, it is understood that one took a long time to issue a law to protect the Spanish memory, traditions, and material and immaterial heritage.

#### 4.2 The Spanish Historical Heritage Law – LPHE 16/1985

The Spanish Historical Heritage Law, 16/1985, was enacted seven years after the promulgation of the 1978 Constitution. Its objectives were all found in the preamble<sup>21</sup> of the Constitution and in several of its articles, as explained previously, that is, Arts 3.3; 9.2; 44.1; 46, and 149.1.28, among others. The Constitution just did not visibly specify the recognition of ethnographic heritage—as the 1988 Brazilian Constitution did in its Art. 216—but leaves the path safe for the SHHL.

The SHHL, in its preamble, presents its protection arguments and demonstrates that it emanates from the 1978 Constitution and also from the country's Statutes of Autonomy. Therefore, the SHHL expands and defines what is meant by Spanish Historical Heritage. It expresses which assets will be consigned, that is, the immovable and movable assets that are Archaeological Heritage—ethnographic assets, museums, archives, and libraries owned by the state— and also the

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##### *Autónomas.*

20 Art. 148.1 *Las Comunidades Autónomas podrán asumir competencia en las siguientes materias: [...] 17<sup>a</sup> El fomento de la cultura, de la investigación y, en su caso, de la enseñanza de la lengua de la Comunidad Autónoma* (España, 1978).

21 *Preámbulo. La Nación española, deseando establecer la justicia, la libertad y la seguridad y promover el bien de cuantos la integran, en uso de su soberanía, proclama su voluntad de: Garantizar la convivencia democrática dentro de la Constitución y de las leyes conforme a un orden económico y social justo. Consolidar un Estado de Derecho que asegure el imperio de la ley como expresión de la voluntad popular. Proteger a todos los españoles y pueblos de España en el ejercicio de los derechos humanos, sus culturas y tradiciones, lenguas e instituciones. Promover el progreso de la cultura y de la economía para asegurar a todos una digna calidad de vida. Establecer una sociedad democrática avanzada, y Colaborar en el fortalecimiento de unas relaciones pacíficas y de eficaz cooperación entre todos los pueblos de la Tierra. En consecuencia, las Cortes aprueban y el pueblo español ratifica la siguiente: [...] (España, 1978, emphasis added).*

Documentary and Bibliographical Heritage. Ultimately, its objective is to ensure the protection and promotion of culture in the country.

The SHHL is an extensive law and has been updated on several occasions in Spanish history. The last update, so far, was in February 2018,<sup>22</sup> to include the European Union Directive. It is an important law that has been subject to modifications with a certain frequency.

Although the SHHL is made up of 79 articles, not counting the Additional, Transitional, and Final provisions, it suffers criticism regarding the inclusion of immaterial or intangible protection in its text, which is considered too weak. Authors such as Guerrero Manso and Martínez demonstrate their dissatisfaction in plausible arguments.

Martínez (2011, p. 125) claims that the SHHL establishes the protection of intangible property in Article 1.2<sup>23</sup> when it mentions ethnographic property and anthropological value “*pero que restringe su aplicación a los de orden tangible, muebles, en coherencia con la tradición jurídica española y los motivos expuestos en el Preámbulo*”. In this way, the institution of intangible assets was harmed because it was linked to tangible and movable assets. The author argues that the ethnographic heritage of Art. 46<sup>24</sup> of the LPHE prefigured in advance the category of intangible heritage, but the forms explained in Articles 47.1<sup>25</sup>; 47.2,<sup>26</sup> and 47.3<sup>27</sup>

22 Real Decreto-ley 2/2018, de 13 de abril, por el que se modifica el texto refundido de la Ley de Propiedad Intelectual, aprobado por el Real Decreto Legislativo 1/1996, de 12 de abril, y por el que se incorporan al ordenamiento jurídico español la Directiva 2014/26/UE del Parlamento Europeo y del Consejo, de 26 de febrero de 2014, y la Directiva (UE) 2017/1564 del Parlamento europeo y del Consejo, de 13 de septiembre de 2017.

Available at: <https://www.boe.es/buscar/doc.php?id=BOE-A-2018-5059>. Access on: September 2 2023.

23 2. *Integran el Patrimonio Histórico Español los inmuebles y objetos muebles de interés artístico, histórico, paleontológico, arqueológico, etnográfico, científico o técnico. También forman parte del mismo el patrimonio documental y bibliográfico, los yacimientos y zonas arqueológicas, así como los sitios naturales, jardines y parques, que tengan valor artístico, histórico o antropológico* (España, 1985).

24 Art. 46. *Forman parte del Patrimonio Histórico Español los bienes muebles e inmuebles y los conocimientos y actividades que son o han sido expresión relevante de la cultura tradicional del pueblo español en sus aspectos materiales, sociales o espirituales* (España, 1985).

25 Art. 47.1. *Son bienes inmuebles de carácter etnográfico, y se regirán por lo dispuesto en los títulos II y IV de la presente Ley, aquellas edificaciones e instalaciones cuyo modelo constitutivo sea expresión de conocimientos adquiridos, arraigados y transmitidos consuetudinariamente y cuya factura se acomode, en su conjunto o parcialmente, a una clase, tipo o forma arquitectónicos utilizados tradicionalmente por las comunidades o grupos humanos* (España, 1985).

26 Art.47. 2. *Son bienes muebles de carácter etnográfico, y se regirán por lo dispuesto en los títulos III y IV de la presente Ley, todos aquellos objetos que constituyen la manifestación o el producto de actividades laborales, estéticas y lúdicas propias de cualquier grupo humano, arraigadas y transmitidas consuetudinariamente.*

27 Art.47.3. *Se considera que tienen valor etnográfico y gozarán de protección administrativa aquellos con-*



expose a “folklorist, archaic, non-historical, and essentialist” notion (Martínez, 2011, p.125; our translation).

Martínez (2011) also concludes that the notion of ethnographic heritage that the SHHL establishes is very far from that proposed by the 2003 UNESCO Convention. But the author does not take away the merit of the law, as the Spanish legislator, even before UNESCO, moved forward in time when establishing the SHHL in 1985 to protect historical heritage, knowledge, and activities that are a relevant expression of traditional Spanish culture. But the specific regime and the direct protection measures that the law provides in favor of the intangible knowledge and activities of ethnographic heritage are not effective.

At his time, Guerrero Manso (2017) also criticizes the SHHL for establishing intangible protection in only three articles; however, he believes that it corrects the vacuum that existed, but it requires specific regulation. The author draws attention to the legal protection of Art. 47.3 and explains:

*El régimen de cada una de estas modalidades del patrimonio etnográfico es distinto. En los bienes inmuebles y en los bienes muebles el artículo 47 remite a los Títulos II, III y IV, que regulan respectivamente ambos tipos de bienes con carácter general y su régimen de protección. Sin embargo, en el caso del patrimonio inmaterial no existe ningún Título que determine las normas aplicables para conseguir su salvaguardia, sino que se establece exclusivamente que «gozarán de protección administrativa» y que, como ha quedado dicho, en el caso de que los conocimientos o actividades estén en peligro de desaparecer, se procederá a su estudio y documentación científico. Tal previsión puede resultar coherente con la determinación vista en el artículo 46, según la cual pueden formar parte del patrimonio etnográfico y, por lo tanto, del patrimonio histórico español, actividades y conocimientos independientemente de que en la actualidad sean parte integrante de la cultura española: basta con que lo hayan sido en el pasado. Así, si lo que se pretende es mantener esa tradición como vestigio o manifestación cultural ya extinta pero dotada de relevancia, su documentación y registro será una medida adecuada y suficiente. Sin embargo, si el objetivo es que las actividades o manifestaciones culturales no caigan en desuso, sino que permanezcan vivas, será necesario realizar una política de fomento y difusión de las mismas, resultando claramente ineficaz para este propósito dejar simple constancia documental de su existencia y del modo en el que se llevaba a cabo»<sup>28</sup> (Guerrero Manso, 2017, p. 62).*

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*ocimientos o actividades que procedan de modelos o técnicas tradicionales utilizados por una determinada comunidad. Cuando se trate de conocimientos o actividades que se hallen en previsible peligro de desaparecer, la Administración competente adoptará las medidas oportunas conducentes al estudio y documentación científicos de estos bienes (España, 1985).*

28 The regime for each of these types of ethnographic heritage is different. In real estate and movable assets, Art. 47 refers to Titles II, III and IV, which regulate, respectively, both types of assets with a general nature and their protection regime. Nevertheless, in the case of intangible heritage, there is no title that determines the applicable standards for its preservation, but it is only established that they “enjoy administrative protection” and that, as has already been said, study and scientific documentation will occur if this knowledge or activities are at risk of disappearing. Such a provision may be consistent with the determination in Art. 46, according to which activities and knowledge can be part of the ethnographic heritage and, consequently, of the Spanish historical heritage, regardless of what is currently an integral part of Spanish culture: it is enough that they have been present in the past. Thus, if the intention is to maintain this tradition as a vestige or cultural manifestation that is now extinct, but still relevant, its documentation and registration will be an appropriate and sufficient

Guerrero Manso interprets that Art. 47.3 of the SHHL is not sufficient to guarantee the existence of intangible cultural assets, which have a living existence. This because, according to the article above, the Administration will only take strong measures when this asset is at risk of disappearing.

Guerrero Manso's and Martínez's concern makes sense; Spain, according to UNESCO, is the fourth country in the world with the most intangible elements recognized as World Heritage Sites (Guerrero Manso, 2017). Thus, it was with great enthusiasm that the news of the publication of the Law that specifically regulates these assets was received, that is, the Spanish Intangible Cultural Heritage Law – SICHL.

### 4.3 Spanish Intangible Cultural Heritage Law – SICHL 10/2015

There is general recognition that the approval of the SICHL was an advance in the regulation and protection of intangible assets, considering that the SHHL was insufficient to protect assets considered alive. The purpose of this law was to regulate and protect movable and immovable physical assets.

The Spanish Intangible Cultural Heritage Law is a standard with 14 articles, but with a long preamble, such as the SHHL. According to Guerrero Manso, “*El preámbulo, como hemos dicho, es extenso [...] Se articula en torno a cinco apartados dedicados a la delimitación del concepto de los bienes culturales inmateriales, la evolución de la normativa nacional y los compromisos internacionales [...]*” (Guerrero Manso, 2017, p. 72).

The SICHL structure has 14 articles structured into four titles, a transitional provision, and 18 final provisions. A comparison can be made here with the Brazilian Decree that established the Registry of Intangible Cultural Assets. The document has only nine articles and is basically intended to regulate the way in which assets will be registered. However, the Decree was issued 18 years before the Spanish law.

The SICHL, in its Title I, establishes general provisions and stipulates, in its art. 2, the concept of intangible cultural heritage: “*Tendrán la consideración de bienes del patrimonio cultural inmaterial los usos, representaciones, expresiones, conocimientos y técnicas que las comunidades, los grupos y en algunos casos los individuos,*

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measure. On the other hand, if the objective is that cultural activities or manifestations do not fall into disuse, but remain alive, it will be necessary to implement a policy to promote and disseminate them, and it is clearly ineffective for this purpose to leave simple documentary evidence of their existence and the manner in which it was carried out (our translation).

*reconozcan como parte integrante de su patrimonio cultural, [...]»<sup>29</sup> (España, 2015). The law is careful not to limit this concept only in its head provision.*

In Title II, the law establishes the general regime of Intangible Cultural Heritage, as well as the general principles for safeguarding those assets. Perhaps the most complex part of the SICHL is found in its Title III, which establishes the competencies in the matter.<sup>30</sup> Guerrero Manso explains that the possibility of the General Administration taking over this competence and generating conflicts with the Autonomous Communities is really great, and actually this problem is already occurring, as will be seen later.

Finally, the SICHL is also composed of Title IV, which demonstrates the Cooperation Instruments, establishing the National Plan for the Safeguarding of Intangible Cultural Heritage. Thus, the SICHL is a very recent law to deal with old and new assets, as some intangible assets are renewed over time with transfer to future generations. Compared to Brazilian legislation, it is understood that the SICHL is much more detailed in protecting an asset that has an important impact on human being development.

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29 Artículo 2

*Tendrán la consideración de bienes del patrimonio cultural inmaterial los usos, representaciones, expresiones, conocimientos y técnicas que las comunidades, los grupos y en algunos casos los individuos, reconozcan como parte integrante de su patrimonio cultural, y en particular: a) Tradiciones y expresiones orales, incluidas las modalidades y particularidades lingüísticas como vehículo del patrimonio cultural inmaterial; así como la toponimia tradicional como instrumento para la concreción de la denominación geográfica de los territorios; b) artes del espectáculo; c) usos sociales, rituales y actos festivos; d) conocimientos y usos relacionados con la naturaleza y el universo; e) técnicas artesanales tradicionales; f) gastronomía, elaboraciones culinarias y alimentación; g) aprovechamientos específicos de los paisajes naturales; h) formas de socialización colectiva y organizaciones; i) manifestaciones sonoras, música y danza tradicional.*

30 Artículo 11. Competencias.

1. *Corresponde a la Administración General del Estado, de conformidad con lo establecido en los artículos 44, 46, 149.1, reglas 1.a y 28.a, y 149.2 de la Constitución Española, garantizar la conservación del patrimonio inmaterial español, así como promover el enriquecimiento del mismo y fomentar y tutelar el acceso de todos los ciudadanos a sus diferentes manifestaciones. A tal fin, se adoptarán las medidas necesarias para facilitar su colaboración con los restantes poderes públicos y la de éstos entre sí, así como para recabar y proporcionar cuanta información fuera precisa a los fines de esta ley.*

2. *Corresponden a la Administración General del Estado, a través del Ministerio de Educación, Cultura y Deporte, en colaboración con las Comunidades Autónomas, las siguientes funciones:*

a) *La propuesta, elaboración, seguimiento y revisión del Plan Nacional de Salvaguardia del Patrimonio Cultural Inmaterial.*

b) *La gestión del Inventario General de Patrimonio Cultural Inmaterial.*

c) *La salvaguardia del patrimonio cultural inmaterial mediante la Declaración de Manifestación Representativa del Patrimonio Cultural Inmaterial, en los términos previstos en esta ley (España, 2015).*

#### 4.3.1 *The Intangible Cultural Heritage Law in Spain and the Spanish Constitutional Court's ban on prohibition*

At this moment, it is necessary to recall the Brazilian case regarding the modification of the 1988 Federal Constitution, Art. 225, in which paragraph 7 was included to make *vaquejada* constitutional. Animals are used at these parties, as in rodeos with some Brazilian particularities.

It is interesting to realize that distant countries like Brazil and Spain can have similar problems, but with opposite decisions. We recognize that the Spanish government has made a great effort to protect the most important assets for the identity of its people, and even so they are often not enough.

The case, which is contrary to that of Brazil, concerns the protection of Intangible Cultural Heritage, with the approval of Law No. 18 of 2013, which regulates bullfighting, among other occurrences that will be highlighted.

The Bullfighting Law is composed of 12 articles and a preamble that is worth more than the articles for its eloquence in defending this practice. The law preamble emphasizes that the bull festival is something alive and dynamic and subject to evolution,<sup>31</sup> that is, it has all the characteristics to be considered an Intangible Cultural Heritage. Therefore, it literally guarantees this quality when exposing: *“Ahora bien, lo que sí podemos afirmar es que la Tauromaquia conforma un incuestionable patrimonio cultural inmaterial español, que no ostentamos en exclusiva, sino que compartimos con otros lugares como Portugal, Iberoamérica y el sur de Francia”* (España, 2013).

Nevertheless, the Spanish case is as controversial as the Brazilian case because it is a sum of facts. One of these facts was that the Community of Catalonia, in view of the increasing protection of animals, included Art. 6 in its legislation (Legislative Decree No. 2/2008), which established a ban on the use of animals and even bullfighting. The article was the subject of an unconstitutionality appeal by a group of 50 Popular Parliamentary Group Senators (España, 2016).

The Court's response, in sentence 177/2016, was to consider the article, included in Catalonia's Decree No. 2/2008, unconstitutional, because its Statute of Autonomy did not allow it to legislate on matters of exclusive national

31 [...] *La fiesta de los toros y los espectáculos taurinos populares son algo vivo y dinámico, sujetos a constante evolución, sin que se puedan hacer conjeturas sobre de qué manera se adaptarán a las sensibilidades cambiantes de nuestros tiempos u otros venideros. Esto dependerá de que se mantenga la afición popular y de que la misma sea capaz de renovarse en las nuevas generaciones de aficionados que son los que, en su caso, deberán mantener, actualizar y conservar la fiesta de los toros. Pero en todo caso, será desde la libertad de la sociedad a optar y desde la propia libertad que significa la cultura, no cercenando el acceso a ésta* (España, 2013).

competence.<sup>32</sup> There is no time, in this work, to discuss the Autonomous Communities' competences and delve deeper into this intriguing topic about animal rights and what can be considered Intangible Cultural Heritage such as bullfighting.

In view of the above, one notes that the Brazilian Federal Supreme Court decided differently from the Spanish Constitutional Court when it considered unconstitutional a state law that legalized *vaquejada*. On the other hand, the Spanish Constitutional Court considered a law of the Autonomous Community of Catalonia—on the defense of bulls in festivals of this kind—unconstitutional. Such decision is considered, in this work, correct.

Faced with this dilemma, one should logically study in depth the arguments of both countries' courts and what is really important and forms a collective identity, bearing in mind that these cultural assets are alive and can be modified. Another factor that should be identified is whether other interests have greater weight in these decisions. This is because the Bullfighting Law observes: “*Pero, además del aspecto cultural, la Tauromaquia tiene una indudable trascendencia como actividad económica y empresarial, de dación de bienes y servicios al mercado, produce un flujo económico que se traduce en miles de puestos de trabajo* (España, 2013).

However, there is no way to refute the decision of the Spanish Constitutional Court because the decision, at that time, was whether or not Catalonia had the competence to include, in its legislation, the prohibition of the bullfighting festival in its community. Certainly, after studying all Spanish national legislation, it can be seen that the decision of the Constitutional Court in this context and regarding jurisdiction was correct. The same can be said with regard to the Brazilian Federal Supreme Court's decision in the case of *vaquejada*, in view of the protection established in the 1988 Constitution and the Ceará law unconstitutionality.

Since the beginning of this work, there was mention of several UNESCO documents on Cultural Heritage adopted by both countries. Interestingly, none of the decisions mention the Universal Declaration of Animal Rights to define how they can be used, and this use is portrayed as an intangible cultural asset.

It is not necessary to read the entire 1978 UNESCO document to understand that something is dissonant about what Intangible Cultural Heritage is, in the issues addressed in Brazil and Spain,

32 [...] *El mencionado Real Decreto de transferencias estableció que la fiesta de los toros “se regirá por sus reglamentos específicos de ámbito nacional, sin perjuicio de las facultades de la Generalidad de Cataluña de acuerdo con el presente traspaso”. En definitiva, subraya la Letrada, lo que se transfiere a la Generalitat de Cataluña es única y exclusivamente lo que se conoce policía de espectáculos, correspondiendo al Estado las competencias normativas sobre la fiesta de los toros.*

[...] Art. 2. 1. All animals are entitled to respect. 2. Man as an animal species shall not arrogate to himself the right to exterminate or inhumanely exploit other animals. It is his duty to use his knowledge for the welfare of animals. 3. All animals have the right to the attention, care and protection of man. [...]

Art. 3. 1. No animal shall be ill-treated or shall be subject to cruel acts. 2. If an animal has to be killed, this must be instantaneous and without distress.

In this entire framework of defense of what Intangible Cultural Heritage is in Brazil and Spain, it is clear that there are dissonant voices and controversies regarding the interpretation of the existing legal framework. Therefore, in Brazil one awaits the publication of a law that will regulate the use of animals in sporting events, as established by the 1988 Constitution in its Art. 225, paragraph 7.

### Final considerations

There is no doubt that the Brazilian legislation linked the values of a healthy, ecologically balanced environment with the preservation of material and immaterial cultural heritage. Even if they are not included in the list of Art. 5, such values are classified in the form of fundamental rights. See Art. 5, paragraph 2, of the 1988 Constitution, which recognizes the existence of fundamental rights affirmed in other parts of the constitutional text, as well as in international treaties, in addition to the possible recognition of unwritten fundamental rights and those arising from the regime and principles of the Constitution.

But how important is the constitutionalization of the right to culture? Choay draws attention to the threats that loom over heritage, and despite all the problems for cultural heritage to survive, they do not prevent a broad consensus in favor of its conservation and protection, which are officially defended in the name of scientific, aesthetic, memorial, social, and urban values, represented by this heritage in advanced industrial societies. Therefore, this right must be protected in the most cultural Charter that exists in any country, that is, their Constitutions. Thus, the ways of creating, doing, and living of a people are preserved.

To understand the importance of culture for humanity, several anthropologists such as Edward Tylor, Francis Boas, Jacques Turgot, Clifford Geertz, and Claude Lévi-Strauss proved, in empirical research, that human beings would not exist without culture. Human beings would be just another animal in the world struggling to survive, but due to the culture in which one learns, transforms, and transfers ways of creating, doing, and living, humans, with its complexity and simplicity, has transformed everything around them.

Returning to the 1988 Brazilian Constitution, and the constitutional articles that established the protection of national cultural heritage, we can see that it was guided by previous constitutions—thus allowing for improvement—as well as by UNESCO conventions on the matter. On the other hand, it cannot be denied that there was a setback in the protection of Intangible Cultural Heritage due to the approval in the National Congress of Constitutional Amendment No. 96/2017. This amendment happened because Ceará Law No. 15.299/13, which legalized *vaquejada*, was considered unconstitutional by the STF in 2017. The Court's arguments were anchored in technical reports that showed the suffering caused to both bulls and horses in the development of such sporting practice.

There is no doubt that this festival has a considerable economic impact and creates jobs, as was also argued by the Spanish people. But, on the other hand, the Court also considered, in its decision, the country's Constitution and infra-constitutional laws that protect animals.

Contrary to the Brazilian decision, the Spanish Court, based on both national legislative competences and Catalan Autonomous Community's competences, considers the 2008 Decree, which included an article prohibiting bullfighting, to be unconstitutional. For different reasons, the Spanish decision is full of constitutionality, that is, there is the SHHL, which does not stipulate the prohibition of the festival, and the SICHL, which does not make this prohibition explicit either, and yet it is criticized by Spanish scholars for being weak and archaic. Another important factor is the enactment of the Bullfighting Law by the State, clearly establishing that the festival is an important Intangible Cultural Heritage for Spain, but it is questionable because there are already dissident thoughts in the country. To conclude, the Court, in its decision, cites the constitutional articles that specify the State's competence in matters of cultural heritage, which will certainly be questioned in the near future.

At first, one might think that within each country there is no antagonism of decisions, as each of them considered the existing legislation, whether constitutional or infra-constitutional. However, it is interesting to understand each country's values and what is considered cultural value rooted in society. But we also cannot forget that these ethnographic values are alive and can be transformed by future generations, and with this view it is inferred that nothing is defined and finished when it comes to the Protection of Intangible Cultural Heritage. Besides, the law that will regulate the use of animals in sporting practices in Brazil has yet to be enacted, and a Direct Action for the Declaration of Unconstitutionality was also filed with the STF against the inclusion of paragraph 7 in Art. 225. Therefore, the

topic will still be a subject of relevance to be discussed in Brazil.

However, according to the problem presented, that is, the legal paradox established between the two countries' legislation on cultural heritage where—on the one hand, the Federal Supreme Court in Brazil decides that an infra-constitutional law is unconstitutional for being contrary to the constitution, and on the other, the Spanish Court decides for the unconstitutionality of an autonomous city's “infra-constitutional” law in defense of bulls because the community does not have the competence to draft such a law—one encounters conflicting decisions between the countries researched, in a broad way, but which already marks the change in society's values.

The expectation is that both countries will be guided by 1978 UNESCO international legislation, which clearly states the duty of human beings to protect animals, not subject them to ill-treatment, or exploit and exterminate them in entertainment games. This because, in this sense, society returns to the stage of barbarism, which was criticized by the city of Rome.

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