

## ***A Brief Survey on Some Essentials of Portuguese Museum Law***

Uma breve análise de alguns aspetos essenciais do Direito Português dos Museus

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**Abstract:** The legal discipline of Portuguese museums is contained, as to its fundamental aspects, in a framework-act that establishes, explicitly, a comprehensive list of general principles governing this area. The Portuguese legal order uses a concept of "museum", which reflects its adherence to new paths trodden by Museology, namely the openness of museums to Society and the imperative of the museums' dynamism. In addition, and representing other key aspects, the framework-act establishes the freedom of creating museums, as well as a wide range of museological functions. This study refers, furthermore, to the topics of human and financial resources of museums, of museums' facilities, as well as of the creation, ownership and public access to museums.

Key-words: Museum Law. Portugal. Museums.

**Resumo:** A disciplina legal dos museus portugueses está contida, pelo que toca aos seus aspetos fundamentais, numa lei-quadro que estabelece, de forma explícita, uma lista abrangente de princípios gerais disciplinadores desta área. A Ordem Jurídica Portuguesa usa um conceito de "museu", que traduz a sua adesão a novos caminhos trilhados pela Museologia, nomeadamente a abertura dos museus à Sociedade e o imperativo de dinamismo dos museus. Além disso, e representando outros aspetos-chave, a lei-quadro estabelece a liberdade de criação de museus, bem como uma vasta gama de funções museológicas. Este estudo refere-se, além disso, às temáticas dos recursos humanos e financeiros dos museus, das instalações dos museus, bem como da criação, propriedade e acesso público aos museus.

Palavras-Chave: Direito dos Museus. Portugal. Museus.

### **1 Introduction**

The evolution of developed Societies led, as an ingredient of their profile, to an increased importance of the cultural dimension, in response to needs or expectations conveyed by people and "appropriated" or even "driven and amplified" by governments. The cultural dimension has come to crystallize, from the social point of view, in the emergence of the "cultural assets" category, as part of a socio-legal institution (the "cultural heritage"), originating a considerable normative "web", which is known in Portugal under the name of Cultural Heritage Law<sup>1</sup>. One of the great social

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<sup>1</sup> In the Portuguese jurisprudence, see NABAIS (2010).

"tools" at the "service" of cultural assets (as part of their universe) are the museums, which are also institutions and object of specific legal provisions, that may be grouped under the banner of Museum Law<sup>2</sup>.

In Portugal, there is a Museums Act (MA)<sup>3</sup>, whose scope is bound to frame the basic legal regulation of the Portuguese museums, despite the considerable and important subsidiary rules, some of which are expressly referred to, in several passages of that Act. It should be noted that this initiative represents an innovation, as expressly recognized by the Government in its Bill, when consigned to be worth highlighting "the fact of being the first legislation devoted exclusively to museums, although still with a partial effect from both the disciplinary and patrimonial points of view", as stated in the Motivations Statement, n. 1 (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 1). This innovation is easily understandable, if we take into account the fact that museums are realities reasonably well defined in social terms, which is to say there is an undeniable convenience of having a set of rules specifically ranged in a separate Act.

## 2 General principles of the Museums Act

We will focus our subsequent analysis in presenting the general principles expressed in the Portuguese Museums Act. This task is eased by the fact that Portuguese Law enshrined, in express terms, the list of general principles underpinning this legal field.

So, and according to the *principle of person's primacy* (a) of paragraph 1 of Article 2 of MA), museums are seen as essential institutions to the full development of the human person (DELICADO, 2009): man is seen as being essentially cultural, so that his access to cultural assets is a *conditio sine qua non* of his fulfilment as a "complete" juridical person; the importance given to museums, reflected in the legal consecration of its indispensability as a means of obtaining self-fulfilment, is explained by the fact that museums constitute privileged vehicles of contact with cultural assets<sup>4</sup>. Law reinforces that dimension, by an express and direct connection of museums to the fundamental rights of citizens: since museums deal with the field of culture, it is easy to

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<sup>2</sup> Or Museal Law, in another terminology, as in Varricchio (2008).

<sup>3</sup> Whose official name is Portuguese Museums Framework-Act (Lei-Quadro dos Museus Portugueses) (PORTUGAL, 2004).

<sup>4</sup> This focus should never be forgotten; so, it has been rightly criticized an exaggeration consisting in a feeling that museums are not about objects at all (KEENE, 2005).

see that the existence of a fundamental right to culture can be inferred from it<sup>5</sup>; and the prescription of the final segment of *a)* of paragraph 1 of Article 2, together with *b)* of paragraph 1 of Article 3 (both of MA), allow us to see a bit further: the aforementioned right to culture represents a right to cultural enjoyment, since, under the latter rule, the ability "to provide regular access to the public and promote the democratization of culture" is part of the museum concept<sup>6</sup>; one can even discover, beyond the consecration of a right to cultural enjoyment, and as flows from the above combination of rules, a duty (in charge of museums) to promote culture. This guideline profiles itself as a true hub, in the shaping of museums' legal system as the Government underlined: so, it can be read that the "overall design of the Portuguese museums legal system is based on the idea that human dignity implies the full development of personality, served by freedom of cultural enjoyment and creativity", and that museums are "a key instrument for the protection and enhancement of the cultural heritage of the Portuguese people, which this Bill clearly assumes as a major task of the State in accordance with the principles of the Constitution", according to the Motivations Statement, n. 11 (PORTUGAL, 2004).

There is a clear connection between the *principle of promoting responsible citizenship* (*b*) of paragraph 1 of Article 2 of MA) and the principle of person's primacy (*a*) of paragraph 1 of Article 2 of MA); the actual text of this Act explicitly draws such connection, by placing the appreciation of the person at the core of the principle of promoting responsible citizenship, and by establishing that museums are indispensable tools in the domain of cultural enjoyment and creation. But the principle of promoting responsible citizenship should not be confused with the other one; its normative differential area focuses, as its name hints at ("promotion"), on encouraging the engagement of all citizens in the safeguard, enrichment and promotion of museums, as keepers of cultural property: that is to say, after all, that the State takes upon itself the burden of "calling" all citizens to take a kind of legal-political co-responsibility for the "management" (in a broad sense)<sup>7</sup> of cultural assets<sup>8</sup>; so, in accordance with the requirements of the principle of promoting responsible citizenship, museums are designed as vehicles of cultural activity, as institutions that contribute to the full

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<sup>5</sup> About the setting and framing of the fundamental right to culture, see the brief but recent notes of Novais (2010), in particular pages 41 (note 18), 54 and 344. About the right to culture, particularly in its dimension of fundamental social right, see Cunha (2010), page 182.

<sup>6</sup> In neighbouring Spain, see Gómez Martínez (2006).

<sup>7</sup> This "management" rests upon the idea, even larger and classic, that participation is a form of exercise of freedom and liberty is a fundamental principle of the establishment of genuine democracy (MACHADO, J. Baptista, apud MARTINS, 2001, p. 498).

<sup>8</sup> This is not an exclusive option; take, by way of example, the so-called Latin-American New Museology, which seeks to integrate communities as participants in the life of museums (YÚDICE, 2010, p. 22).

development of the human person, providing tools which, through the promotion of responsible citizenship, contribute to the fundamental right to cultural enjoyment and creation established under paragraph 1 of Article 78 of the Constitution ("Constitution of the Portuguese Republic", CPR). The position taken by the Government in the Museums Bill was also enlightening, because it states that the Bill "envisages the appreciation of cultural heritage as an element of enriching people, unifying common cultural identity, and a factor for social cohesion, creating a legal framework for responsibility and cooperation, with all cultural agents, in implementing the cultural policy outlined in the Government Programme" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 15).

The statement that museums are "institutions open to Society", through which the Act determines the content of the *principle of public service (c)* of paragraph 1 of Article 2 of MA)<sup>9</sup>, is a formulation of the idea of a strong legal-social value of cultural assets. This approach on museums is, in some way, opposed to an idea centred on the ownership or possession of cultural assets; their owner or holder (typically, the museum) cannot use them for selfish purposes: the museum exists rather to serve the community, whose interests should be taken care of (SEMEDO, 2010)<sup>10</sup>; and if this idea is not highly innovative when it comes to public museums, it gains a most notorious meaning and reach in what concerns private museums, which are also covered by this principle. In short, their isolation is forbidden and they cannot be static or immobile "ivory towers"<sup>11</sup>, only accessible to a privileged few; the museum has to be a living force, active and dynamic, in a true "system of communicating vessels" with the social environment that encompasses it<sup>12</sup>. Such profile imposed on museums represents the downside of the enjoyment, by Society, of the cultural assets housed in the museums: these ones must be available to enable such enjoyment<sup>13</sup>, that is, they have to bear a "sense of mission" shaped in favour of the Society<sup>14</sup>; being holders of

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<sup>9</sup> On the importance of a parallel rule in the neighbouring Spanish Legal System, see Villarroja Planas and Escardíbul Ferrá (2010, p. 74).

<sup>10</sup> Connected with this idea is the one that "[m]useum collections reflect the cultural and natural heritage of the communities from which they have been derived", so that "they have a character beyond that of ordinary property, which may include strong affinities with national, regional, local, ethnic, religious or political identity" (ICOM, 2013, p. 9).

<sup>11</sup> Museums no longer correspond to the formerly harmonious hierarchy in which everything was in place, removed from history and questioning (LOPES, 2005).

<sup>12</sup> See also Arrieta Urtizberea (2008).

<sup>13</sup> In the language of the Museums Bill, they "no longer have as sole objective the preservation and exhibition of works of art and began to preserve the collective memory in broader ways, preserving and showcasing the history of communities, the evolution of sciences and techniques, the traditional arts and crafts, people's ways of living, especially of those living in the surrounding territories" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 2). This is on the same line as the INTERNATIONAL COUNCIL OF MUSEUMS, according to which the museums "have particular responsibilities to all for the care, accessibility and interpretation of primary evidence collected and held in their collections" (ICOM, 2013, p. 6).

<sup>14</sup> The principle of public service reflects the wider idea that cultural heritage is a subject involving all members of the community (NABAIS, 2010).

cultural assets, the museums integrate a current role of cultural heritage, which, as recognized in the developed world, generates resources, development, tourism, economic activity, and more (HERNÁNDEZ RAMÍREZ, 2008)<sup>15</sup>.

Another general principle of Museum Law is the *principle of coordination*, which requires the articulation of the guidelines for structuring the world of museums and the guidelines of distinct domains — the Act chooses, among the latter, other cultural niches, education (ABREU, 2010), science<sup>16</sup>, territorial planning, environment and tourism (d) of paragraph 1 of Article 2 of MA). The rationale of this principle is related to the convenience (or even the need) of maximizing compatibilities and decrease lags, or even the imperative of achieving compatibilities and prevent contradictions; from a substantial point of view, the choice of issues of this general principle is obviously not arbitrary; these are domains with deeper connections to cultural property (which are easily glimpsed): education is, partly, the guided introduction to cultural knowledge; science consists, in considerable measure, in the very systematic and methodologically validated knowledge of cultural assets; territorial planning influences, and is influenced, by the geographical distribution of cultural assets; environment has an interaction with the location and characteristics of museums (and may even interact with the contents of these ones, namely conditioning them); and tourism holds nowadays (as widely recognized) a non-negligible cultural dose (or shed), to the point that one can even talk of a "cultural tourism".

The so-called *principle of transversality* appeals to the aggregation of cultural assets in the same universe of legal treatment, regardless of their institutional ownership, geographical origin or thematic nature, in order to engender and give an appropriate regulatory framework to this multifaceted reality; such choice is formally stated in item e) of paragraph 1 of Article 2 of MA. On the issue of institutional ownership there is no ambiguity in the Museums Bill, where it stands recorded that the concept of museum "is presented in this text with a prospective sense of innovation, anchored in the international perspectives in this field and in the knowledge of Portuguese reality, and is an instrument of application of the legal regime, which rests upon the substantial consideration of the museum functions, regardless of public or

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<sup>15</sup> As for tourism, see, in particular, Marandino, Almeida and Valente (2009).

<sup>16</sup> In the context of the Museums Bill, the Government has devoted an important place to education and science, by noting that the "binding core between the museological domain and research and education implies that schooling be given special attention, both in what refers to universities and with regard to institutions located in other levels of education, therefore bound to different training levels and different age groups"; adding, with regard to education, a special and simultaneous concern of the debugging of excess, considering important to "prevent the process of massification detectable in the conduct of the relationship between museums and schools, which needs correction, otherwise it would end up subverting the desired connection, precisely in ages where it could prove to be more promising" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 8).

private property" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 11); moreover, the Government outlined "the clearly stated concern of ensuring a common destination for cultural assets which justify the creation of new museums or the restructuring of others" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 15). Transversality, in this point of view, is no more than the recognition (and its consequences) of the profound unity of cultural assets (in spite of the different specific settings), claiming for a complex and unified legal attention as the only means to reflect and normatively regulate that profound unity.

The Portuguese Legal Order also includes, as a general principle of Museum Law, the *principle of information*, namely the "systematic collection and dissemination of data on museums and cultural heritage", having, as indicated rationale, "the objective of timely allowing the widest possible dissemination and exchange of knowledge, nationally and internationally" (f) of paragraph 1 of Article 2 of MA).

The *principle of supervision* is also incorporated in the lot of general principles expressly posted in the Framework-Act of Portuguese museums; under it, the State has the duties "of identification and incentive of procedures that constitute good museum practices, of initiatives promoting qualification and good functioning of museums and of measures preventing the destruction, loss or damage of cultural assets embedded in them" (g) of paragraph 1 of Article 2 of MA). Reading these obligations carefully, one discovers that they aim, in short, at the improvement of the treatment of cultural assets; museums are seen as institutions specifically targeted to enable that *desideratum*: after all, the "good museum practices", the "good functioning of museums", will come (or endorse), in its essential, to ensure the maximization of social utility of cultural assets; in other words: museums are seen as a means, as an instrument (although markedly fit) at the service of cultural assets, which are the sole or essential reason for the existence of museums.

In the list of general principles of Museum Law is included as well the *principle of decentralization*, whose formulation, in the Framework-Act of museums, is confined (literally) to the "valorisation of municipal museums and their role in the access to culture" (h) of paragraph 1 of Article 2 of MA). This cultural decentralization, with the emphasis centred on municipalities (ie, reported to the municipal level)<sup>17</sup>, corresponds to a legal option whose rightfulness cannot be discussed on this essay, for understandable reasons; it has emerged, according to the Government, in response to

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<sup>17</sup> About "municipalities", see Amaral (2010).

the "growing development of municipal museums, which exceeds by far that of the establishments under central authorities", so that "we are witnessing a shift to the municipal context of a substantial part of the problems that must be faced in this area", leading to the "renewal of the framework of the relationship between central and local authorities" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 3).

In the Framework-Act of Portuguese museums there is also a reference to the *principle of international cooperation* (i) of paragraph 1 of Article 2 of MA); one easily discovers, in this legal command, a clear interest in an international exchange of efforts and experiences, justified by the Government with the circumstance that "since the nineteenth century, the evolution of Portuguese museological reality bears important features in common with the international one, so that collaboration is favourable" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 7).

### 3 The legal concept of "museum"

Man is, by essence, a cultural being. The Culture, as far as we know, represents even a distinctive hallmark of the human being. At least according to existing knowledge, it can be said that man is an eminently cultural being. Only man has History, which is a scientific discourse built on specific traces of his existential *modus vivendi*. The awareness of this fact has led to the issue (or problem) of the proper *maintenance* of those traces, which has assaulted the human mind already in ancient times. The idea of "museum", as a means of contributing to the viability of History, can thus, by its turn, be the object of a History, whose beginnings are datable, although these dates are disputed among experts<sup>18</sup>.

The so-called post-industrial Societies, or Societies of plenty, came to be characterized, in one of its core areas, as mass producers of a wide variety of goods, either of material nature or of intangible nature. Some of these testimonies of human activity, which will become part of History according to its criteria, should be submitted to a proper preservation, dissemination and study, compatible with the diversity of such testimonies, considering their quantity and their distinct varieties, importance, origins and meanings. We are naturally centred, when advancing these considerations, in the so-called *cultural assets*<sup>19</sup>. And the aforesaid task represents a great challenge, which requires, from the museological activity, conceptual, technological, financial and

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<sup>18</sup> In fact, museums are not inventions of the contemporary Society, although this one has given them specific moulds; on the History of museums, traced to Classical Antiquity, see Abt (2006).

<sup>19</sup> On the importance of cultural assets and causes of that importance, in the postmodern societies, see Anico (2009).



organizational tools of appropriate dignity and magnitude, duly framed by a proper legal tissue. But also the cultural legacy of previous generations calls for fully attention, accordingly to the type of moulds above referred. In fact, Museum Law constitutes a part of Cultural Heritage Law<sup>20</sup>, since, in substance, the legal institution "museum" is ancillary to the legal category of "cultural assets", this one providing the museum with a purpose and determining its basic contours.

According to Portuguese Law, the museum is, more precisely, "an institution of permanent character, with or without legal personality, non-profit, endowed with an organizational structure that allows it to: a) Ensure a unitary destination to a set of cultural assets and value them through research, incorporation, inventory, documentation, conservation, interpretation, exhibition and publicizing, with scientific, educational and recreational aims; b) Provide regular access to the public and foster the democratization of culture, the promotion of person and the development of Society" (PORTUGAL, 2004, ARTICLE 3, PARAGRAPH 1). The Portuguese legal museum's concept is not a peculiarity; it seems to have been inspired by the Code of Ethics for Museums, from the INTERNATIONAL COUNCIL OF MUSEUMS (ICOM), which defines the museum as a "non-profit making permanent institution in the service of society and of its development, open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, the tangible and intangible evidence of people and their environment" (ICOM, 2013, p. 14).

In two slight comments, we start by underlining that, in the wording of the Portuguese Museums Act (namely), the museum is a "permanent" institution, a qualifier which is somewhat redundant, since the very idea of "institution" implies a certain degree of stability. On the other hand, the whole of the Museums Act revolves around the museum institution.

In addition to the above, the option of the Portuguese law for the model of the *non-profit museum* corresponds to a choice made in the context of a problem which is not of easy solution. When prescribing that the museum is an "non-profit" institution, the Portuguese legislator opted decisively for the non-commercialization of culture, with the denial of the "museum-company" or "museum-shop"; it should though be noted that it is not prohibited, to museums, to raise revenues (charging costs of entry, for

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<sup>20</sup> Note that, in the Motivations Statement of the Museums Bill, the Government expressly says that the Bill "fits in the legal regime approved by Act 107/2001 of September 8, laying the foundation of politics and the system of protection and enhancement of cultural heritage, and forms, transversely, the legislative development of structural principles of cultural heritage politics" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 9).



example); it is only forbidden, that they develop a speculative activity, *ie*, that they pursue their activities in order to achieve systematic or habitual profitable results (LAUREANO; RENTO, 2011)<sup>21</sup>.

#### 4 The functions of museums

The Portuguese Legal Order assigns to museums the following *functions*: "a) Study and research; b) Merger; c) Inventory and documentation; d) Conservation; e) Safety; f) Interpretation and exposure; g) Education" (Article 7 of MA)<sup>22</sup>. As first and fundamental generic note, we point out that the size of the present study is not compatible with an analysis of the various tasks committed to museums; we restrict ourselves, therefore, to some *general considerations* that, in this context, we believe to be relevant. We consign yet that it has been officially assumed that the museum's functions should be articulated in a sense that it might be able to "meet the demands from the searching of the memory of the past and the understanding of the social, economic, cultural and environmental changes that have been taking place along the times" (PORTUGAL, 2004, MOTIVATIONS STATEMENT, n. 2).

From the moment that museums began to be open up to the surrounding Society, a whole host of new challenges came up to them; depending on the very terms of that openness (openness grade, openness type, etc.), such challenges obviously vary in their size and requirements, but always remove, from the museums, that "quietness" that would result from a restricted accessibility. Understanding the very museum as a "social good", naturally vary the opinions about the best way to extract the benefits of such asset, even according to broad parameters concerning the general political organization of Human Societies and the allocation of wealth among their members. But, whenever the chosen model is compatible with an *openness of museums*, the effectiveness of this posture will imply a dynamic whose "waves" cannot but seriously affect the museums<sup>23</sup>. It is no longer possible, in such conditions, any situation of "immunity" of a museum to the bubbling of the surrounding reality: for better and for worse, the museum becomes directly subject to the turbulences coming from the outside, ceasing the possibility of being an impregnable "ivory tower" or a qualified and static "warehouse"<sup>24</sup>. Any eventual *embedding* or *immobility* disappears. The museum will definitely enter the day-to-day livelihood of the "live" social beings, with

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<sup>21</sup> On some outlines of this problem, see also Garcia (2004), particularly pages 107-118.

<sup>22</sup> For an analysis of some functions of museums, see Magalhães (2005).

<sup>23</sup> Thus stands, for example, the changing of an "aesthetic" archetype to a "representation" archetype, as underlined by Semedo (2010, p. 67).

<sup>24</sup> Thus, criticizing the hegemony of a "preservationist *ethos*", Duarte (2010, p. 58-59).

the dynamism inherent to a sort of everyday "struggle" for survival. It is not exaggerated, therefore, to stress the importance of the openness of museums to Society as a way to prevent its stagnation, due to the challenges that such openness entails<sup>25</sup>.

It will never be too often repeated that museums exist to serve Society, and more specifically people who, in different qualities and with different traits, seek them (visitors or users); all museums' functions should therefore be designed, taking into account this basic fact; the study and determination of the *profile of the museum users* are no more, therefore, than a search for the fitting keys, of museums, to the groups or social communities that turn out to be the main publics of the respective museums<sup>26</sup>. The denial of a social "monolithic", with the consequent recognition and identification of "small Societies" within others of larger dimension (in the limit, for example, the State or the International Society), naturally leads to the search of the cultural needs emerging from these social units; the correct mapping of the aforementioned needs allows a glimpse of which cultural assets are fit (or fitter) to satisfy them; the detection of such adequacy contributes, in turn, to an harmonious and fruitful development of the *acquis* and the "style" of any given museum, thus rendered a useful contributor to the cultural enrichment of the social community it aims to serve.

In a system in which museums can select restricted or specific audiences, it is clearly understandable that the management of a museum which does such selection, has to be guided by the desire to meet as best as possible the needs of these audiences; to put it in other way, there arises then the need to individualize, in what regards some variables, so as to achieve a most fruitful functioning of these museums; in such cases, standardization should give way to *differentiation*, in order to adequately serve such characterized fringes of public<sup>27</sup>. Considering, in particular, that one of the signs of contemporary times is a marked trend towards the specialization of social activities (objective side of labour super-division) and the specialization of knowledge, with the benefits (and sometimes harms) that such specialization entails, it seems also recommendable to accept, in conformity (or parallel terms) cases of *specialization* of the very museums (taken as a whole); the well-known advantages of the development of knowledge will thus be safeguarded, allowing museums not to "take off", for delay, from the strongly specialized contemporary Society.

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<sup>25</sup> On the topic of the openness of the museums, see also O'Neill (2001).

<sup>26</sup> On the importance of the characterization of the museums' users, see O'Neill (2011).

<sup>27</sup> Referring, as an example, the case of museums that create "family galleries", aimed at new users of all ages, see Soren (2001).

As a last issue, we underline that museums provide naturally, to their common users, a kind of *ad hoc education*, which consists of a "light", "loose" and/or "spare" acquisition of knowledge. This educational dimension contrasts with the formal and rigid official transmission of knowledge that is typically designated as "Education"; to the latter is traditionally bound the idea of something that is imposed, standardized, pre-set, parameterized and evaluated. The culture transmitted or conveyed by the museum presents itself with other characteristics: it tends to be free, varied, "wrapped in an attractive wrapper" and not subjecting its recipient to an evaluation of the so acquired knowledge. There is thus, in the mode of the culture transmission peculiar to museums, a sort of mixture or combination of a playful (or entertainment) dimension, and of an educational (or formative) dimension standardized and socially "validated" as "official": hence, a possible reference to the exotic neologism "edutainment" (education + entertainment), to label such a hybrid character (HEIN, 2000, p. 126).

What then to say about the role of *museums* in relation to the "official" *Education system*? Since both the "official" Education system, and the museums, share the task of imparting knowledge, it comes to be inevitable the issue of delimitation of the respective areas of action: complementary or exclusive? Compatible or incompatible? Overlapping or independent (wholly or partly)? Collaborators or rivals (perhaps disguised)?... It seems more appropriate, at least in the current state of things, not to confuse the roles of both realities, trying instead to achieve *synergies* between them; *complementation* will be therefore, whenever feasible, the preferred way (HEIN, 2000). Furthermore, there are those who notice, about the current museums' task as centres of education and scientific innovation, that museums have been involved in growing legal problems related to collections' management, including civil quarrels, tax questions and even serious criminal matters (GERSTENBLITH, 2006, p. 442, 454).

## **5 Human resources, financial resources and facilities of museums**

Beginning this point with *human resources*, we note that, according to the Portuguese Law, every museum "should have a director, who is its technical representative, without prejudice to the powers of the public or private entity from which the museum depends upon"; and "it's especially up to the director of the museum to conduct the activities, to ensure compliance with the museological functions, to propose and to coordinate the implementation of the annual activities plan" (Article 44, 1 and 2 of MA). The *museum's director* is the technical face of the museum, that means, the person who is superiorly in charge of the daily operations of the museum; it

is essentially an executive, although having some role in the shaping of the strategic guidelines of the museum, through a right of initiative in relation to the annual working plan of the museum (LAUREANO; RENTO, 2011).

On the other hand, every museum should "have appropriately qualified personnel, accordingly to the terms of a specific regulation" (PORTUGAL, 2004, ARTICLE 45). Dealing with a delicate matter such as cultural assets, it becomes readily apparent that the *museums' employees* must hold enough expertise to succeed in their daily work. The improvement occurred in museological functions demands a range of knowledge only held by personnel with relevant expertise; the proper functioning of a museum requires, so, among other things, an adequate staff team and a proper management of its human resources. Here, as in other fields, it is natural that sophistication is paid for: the high qualifications required for certain categories of museums' employees, must match the assignment of a compatible salary, which careful management is also required, in order to achieve the desired motivation, commitment and evolution of the personnel involved<sup>28</sup>. Recognizing that the short dimension of certain museums may prove to be an obstacle, Portuguese law provides that "small museums should establish agreements with other museums or public or private institutions to strengthen the support to the performing of the museological functions, according to their specific needs" (PORTUGAL, 2004, ARTICLE 45, 2); the law does not establish a quantitative parameter of what should be understood by "small museums", for the purposes of this rule; but it seems reasonable to conclude, *inter alia*, that the agreements set forth herein are imposed, whenever the museum's staff is insufficient for assuring, with a reasonable level of quality, the museological functions (LAUREANO; RENTO, 2011).

In what relates to *financial matters*, each museum "should have financial resources especially allocated, appropriate to its vocation, type and size, sufficient to ensure their sustainability and compliance with the museological functions" (PORTUGAL, 2004, ARTICLE 48, 1); in fact, the conjunction of financial resources is one way to ensure a reasonably stable and proper management of the museum. On the other hand, the task of "ensuring of the financial resources referred to in the preceding paragraph, as well as its allocation, both remain with the entity which the museum depends upon" (PORTUGAL, 2004, ARTICLE 48, 2).

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<sup>28</sup> This without prejudice of considering admissible HEIN's opinion, that museums' employees are so dedicated, that they esteem museum work as a social benefit and include themselves among its beneficiaries (HEIN, 2000).

The almost ubiquitous and relentless financial constraints have undeniable relevance in the experience of museums: from the very existence and survival of the museum, to its own aggrandizement and development; from the human resources it requires, to all the logistics involved in the very heart of its activities; in short, as a complex unit of people and goods that have to ensure their day-to-day existence, the museum must be able to receive and mobilize the funds appropriate to cover all expenses related to its "being" and "becoming"<sup>29</sup>. But here, as in many other fields, proclamations or mere programmatic intentions, no matter how good, do little if they strike against the impossibility of obtaining the necessary financial conditions. To paraphrase a Portuguese old saying, "Hell is filled of good intentions"...

As for *facilities*, a Portuguese Law command determines that every museum "should have adequate facilities to comply with the museological functions, including conservation, safety and exposure, the reception and circulation of visitors, as well as the work conditions of its staff" (Article 50 of MA). One aspect that demands particular care, in the logistics of museums, concerns their facilities: in fact, if these are not properly designed and materialized, they may, ultimately, derail the very museum's activity. The museums' facilities should have the ability to fully discharge museological functions; the listing of the cited command is merely illustrative or indicative, being understood that no museological function can be impaired due to inadequate facilities of a museum (LAUREANO, RENTO, 2011). It is perhaps a commonplace to say that *comfort* and *functionality* are required; perhaps it's not so common a concern about the adequacy of the various spaces to the imperatives arising from the actual operations and purposes of each museum.

Detailing further, museum facilities "necessarily contain spaces for hosting, exposure, reserves and technical and administrative services"; and each museum "should have adequate space to comply with the other museological functions, including a library or documentation centre, areas for educational activities and for conservation workshop" (Article 51, 1 and 2 of MA). But the point is not simple, because there are a number of variables to meet. One has to think about the users and the museum employees; one has to consider the distinction between accessible and reserved places; one has to consider the problems of size of the different areas of the museum; one must count on the possibility of certain areas require coatings or specific humidity and temperature conditions etc.<sup>30</sup>

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<sup>29</sup> On the specific vectors that justify or condition, in general, the financial needs of museums, see Silberg (2001).

<sup>30</sup> On the facilities of museums, especially their zoning, see Lord and Lord (2001).

## 6 Creation, ownership and public access to museums

The freedom of creation of museums is one of the elements of the overall freedom of citizens' initiative, which is the hallmark of a democratic and free Society; it is, more precisely, a projection of freedom in the field of cultural creation and enjoyment. In terms of the Portuguese Law, "any public or private entity is free to create museums" (Article 5 of MA). The law establishes the freedom of creation of museums, regardless of the name presented by the various realities; it submits them, however, to the condition of verification, by the State or the local authorities involved, of certain quality requirements (LAUREANO; RENTO, 2011).

The essence of the museum does not change depending on it being of public or private property, since the philosophy behind this Act invariably puts the museum at the service of the community; that explains why the basic features of its legal statute can (and even should, for reasons of legislative economy) be contained in a single legal instrument (LAUREANO; RENTO, 2011). This is what results of the Portuguese legal system, since the Museums Act "applies to museums regardless of their public or private ownership" (PORTUGAL, 2004, ARTICLE 6).

Considering now the last subject of this essay, an understandable emphasis is put on the *public access to museums*. Each museum "must ensure public access and visit regularly" (PORTUGAL, 2004, ARTICLE 54, 1); ensuring the regularity of public access is one aspect of the idea of *openness* of the museum to the community (the museum at the service of the Society, as in Laureano and Rento, 2011). Furthermore, the visiting timetable "should be regular, sufficient and consistent with the vocation and location of each museum, as well as the needs of the various categories of visitors" (PORTUGAL, 2004, ARTICLE 54, 2); the *timetable* (opening hours) of the museum should be set taking into account several factors, which can, in short, be divided into two vectors: adaptation to the different characteristics of the museums and to their publics; it will naturally be hard, sometimes, to achieve the desirable compatibilities, having to seek the preferable solutions, since the law does not rank the two indicated vectors (LAUREANO; RENTO, 2011). The visiting timetable "is provided for in the regulation of each museum, according to the criteria above referred and should be widely publicized" (PORTUGAL, 2004, ARTICLE 54, 3); the *publicizing of the opening hours* of the museum is not limited to its display, since the law imposes, additionally, that the publicizing be "broad"; one will have to make use of the rule of reason to define such extent, as it constitutes an indeterminate concept (LAUREANO; RENTO, 2011). Finally, the visiting timetable must be "affixed in the outside of each museum" (PORTUGAL, 2004, ARTICLE 54, 4).

The very today's lifestyle is in line with the motto of the *museum's interaction with its users*. In fact, the communication or "bridge" that can be set up between the museological structures and their recipients seems, *coëteribus paribus*, an asset to the "passage" or "diffusion" of the cultural "message" inherent to the very nature of the assets existing in museums. After all, the point is seeking to maximize the transmission or influx of the "culturality" of the museum's "core", *maxime* the impact of the content and meaning of the cultural assets of the *acquis*<sup>31</sup>.

However, and strictly speaking, there is not exactly a "public" but "publics", as museums' visitors. This heterogeneity of the potential of museums' visitors leads to the problem of taking into account, or not, that "human polychrome" in the ideation, development and operation of museums. There will certainly be benefits in considering such "publics", in terms of the conception and management of museums (BAL, 2006)<sup>32</sup>. But in addressing this issue many factors converge, which combination is not always easy, being even possible that one of them assumes such a relative preponderance, that indicates by itself a path as the only (or at least the preferable) in those particular circumstances. In the context of this issue, there are factors as the nature of cultural assets involved, the available funding for the various activities implicated in the foundation and operation of a museum, the very museum's geographic location, etc.

On the other hand, the allusion to the "massification" of Culture, as one of the characteristic features of the current developed Societies, has become a commonplace. Such "massification" implies (like almost everything, if not everything, in life...) advantages and difficulties. There is one, among the latter, which is inherent to the operation of museums: should these be preferably aimed at a "mass" population of users, or target specific niche users? There have been arguments wielded in either direction, any of them weighty, and it will be perhaps impossible to find a categorical and irrefutable answer<sup>33</sup>.

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<sup>31</sup> On the idea of interaction with museums' users, see Witcomb (2006).

<sup>32</sup> See Bal (2006).

<sup>33</sup> On this issue, see Falk, Dierking and Adams (2006).



## 7 Conclusions

There is, in Portugal, a specific Museums Act (Portuguese Museums Framework-Act), which scope, despite the existence of some subsidiary and significant loose rules, is bound to frame the basic legal regulation of the Portuguese museums.

The Museums Act establishes some general principles ruling the museums' world, namely the person's primacy, the promoting of responsible citizenship, the public service, the coordination, the transversality, the information, the supervision, the decentralization and the international cooperation.

The Act concerned itself, in particular, in providing a legal concept of museum, which emphasizes, as basic elements, the ideas of the museum as a permanent organization, non-profit, provider of the safeguard, appreciation and disclosure of cultural assets, and dedicated to the cultural enrichment of the individuals and of the very Human Societies.

Based on these parameters, the Portuguese law commits to museums a number of specific functions, which imply a permanent openness to the Society in which they are inserted, the taking into account of the needs of their users, an interaction with the "official" Education system and the availability to increase the scientific knowledge of their collections.

In order to achieve the pointed *desiderata*, the Act also provides for special characteristics of the human resources allocated to museums, which are required to be suitable for an adequate performance of the museological functions. About financial allocations, the Act prescribes they must be tailored to the specific needs of museums and indicates the permissible ways of their obtainment. A particular attention is also given to the thematic of the museums' facilities, which should be able to ensure compliance with the museological functions, being emphasised the guidelines of securing the comfort and functionality of those facilities.

Beyond the important establishment of freedom of creation of museums, whether public or private, it is also noteworthy, as one of the pillars of the basic legal discipline of Portuguese museums, the imposition of ensuring public access to them (as a concrete expression of the idea of the openness of museums to the surrounding Society).

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