

ICOMOS – CROATIA

INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

## *PROTECTION OF CULTURAL GOODS – QUESTIONNAIRE*

- Belgia, Flemish Region, Anne Mie
- Belgia, Region of Brussels, Arlette Verkruyssen
- Bulgaria, Hristina Staneva and Risitza Staneva
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## PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE

1. Is there a law that explicitly relates to the protection and preservation of cultural goods? (full title and year when it came into force)
2. Does this law encompass all problems related with protection and preservation?
3. What areas of protection and preservation of heritage are regulated by this law?
4. Does this law encompass problems concerning financing, and stimulating measures for financing, related to the protection and preservation of heritage?
5. If not, which law(s) or act(s) regulate the mentioned problems? (what financial regulations relate to the protection and preservation of heritage and how do they relate in terms of the useful benefit of the heritage as well as in terms of stimulative measures and financial exemptions for actual participants in the protection and preservation of heritage - name the ordinance and the area that it regulates)
6. Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budgets in relation to other resources, etc.)
7. Forms of stimulative measures (if they differ according to categories of users, owners, constructors, restorers, and state who it relates to) and what ordinances regulate the following:
  - subvention
  - tax exemptions
  - customs exemptions
  - loans with lowered interest rates
  - other stimulative measures
8. In what way, and on the basis of which ordinances, is compensation for different forms of use of heritage regulated?
  - form of use
  - method of payment, type of compensation
  - to whom does the income belong
  - how is it allocated
9. Is there a penalty for negligent relations, or disregard, towards heritage? (not intentional devastation)
  - to whom does the income belong
  - how is it allocated
10. Thoughts concerning the mentioned legal acts and ordinances:
  - are the areas of protection and preservation of heritage properly protected in a legal sense
  - if not, why
  - is there proper implementation of what is prescribed
  - other comments and recommendations

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Belgia, Flemish Region  
Anne Mie

Belgia, Region of Brusseles  
Arlette Verkruyssen

## PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE.

**Preliminary remarks.**

This questionnaire was filled in by Arlette Verkruyssen and Anne Mie Draye.

Since Belgium is a regionalised country, they divided up the work into two parts.

Anne Mie described the situation in the Flemish Region and dealt with the matters that still belong to the federal competences. Arlette described the situation in the Region of Brussels Capital; for the federal matters, she referred to Anne Mie's text.

A text concerning the Walloon Region is following by seperate fax.

## I. FLEMISH REGION.

1. \* Decree of March 3, 1976 on the protection of monuments and rural or urban sites, amended by decree of February 22, 1995 and by decree of December 8, 1998 (Belgian State Gazette, 22.04.76, 05.04.95, 26.01.99).

\* Decree of June 30, 1993 on the protection of archaeological heritage (B.S.G., 15.09.93).

\*( Decree of November 17, 1982 on the protection of movable cultural heritage) <sup>1</sup>

The decrees and their amendmends entered into force ten days after publication in the Belgian State Gazette.

2. Those two decrees and the important implementing orders completing them, allow an effective protection of valuable goods. According to the decree of march 1976, not only monuments but also larger built areas can be protected as a so called urban or rual site. The decree on the protection of archaeological heritage offers the possibility to protect (immovable) archeological goods and areas.

Those decrees contain definitions, protection procedures, legal consequences for owners, notary publics and authorities involved in the granting of urbanistic permits, the principles concerning maintenance and restoration premiums, sanctions...

3. Those decrees deal with built heritage; for landscapes, another decree was adapted on April 16, 1996 (B.S.G. 21.05.96). The decree of March 1976 is were possible also used for the protection of fixtures and fittings being part of a monument; this is quite important since the decree on the protection of movable cultural goods doesn't work.

4. As mentionned above, the principle of granting subsidies for maintenace and restorati-on works is inscribed in each of the decrees.

A detailed procedure, conditions, amounts, means of payment... is inscribed in implemen-

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<sup>1</sup> This decree isn't realy operational, still nowadays implementing orders are missing. A new decree on this subject is being prepared. For the further answering of this question-naire, this decree is not any longer taken into account.

ting orders.

For the decree of March 1976 on the protection of monuments, urban and rural sites:

\* Governmental decree of September 29, 1994 (B.S.G., 25.01.1995); maintenance premium.

\* Governmental decree of April 5, 1995, amended by governmental decree of October 15, 1996 (B.S.G., 30.06.95 and 12.12.96); restoration premium.

Important remark: premiums are only granted for works on protected monuments, not for works on goods located in urban or rural sites.

For the decree of June 1993 on the protection of the archaeological heritage:

\* Governmental decree of April 26, 1995 (B.S.G., 30.08.95); premiums for maintenance and restoration works can be granted, only until now no budget was fixed, so the system isn't operational.

For tax aid given to physical persons, see number 5.

5. A tax aid is given to physical persons carrying out maintenance or restoration works on their definitively protected monument or good located in an urban or rural site.

Is deductible from the annual taxable income 50% of the cost of this works, with an absolute maximum of one million of Belgian francs. Two conditions are imposed: the protected good must be opened for the public several times a year; the good is not rented.

For works carried out on protected goods, there is a lower VAT-rate of 6% instead of 21%; only this tax incentive is valid for all works carried out on buildings that were erected more than 15 years ago. So this measure is not specific for protected goods.

6. The level of the budget spent by the Flemish Region for maintenance and restoration of protected monuments is about 1,8 billion of Belgian francs.

Only the restoration premiums of the Region are completed by provincial and/ or local premiums. When the Region is *f.i.* giving a premium of 25% of the cost of a work to a physical or a legal person, this premium is completed with a provincial and local premium of 7,5% each. Those amounts can be doubled when the premium is asked for by an heritage association or be an owner of a monument without any economical use or value.

Local authorities can get a regional premium of 60% of the cost for the restoration of protected monuments they own. In that case, a provincial premium of 20% is added. No statistic information on the global amount of money spent by provinces and local authorities is available.

7. Maintenance and restoration premiums can be asked by owners, tenants or usufructors. For the rules concerning the granting of restoration premiums, see number 6.

For maintenance premiums, a uniform granting system was elaborated for all owners, tenants or usufructors. For works until 600.000 Belgian francs, a premium of 40% is given, for works until 1,2 million Belgian francs, a additional premium of 25 % is given. For works that costs more than 1,2 million, no premium is granted. So the maximum premium is of 390.000 B.fr. Maintenance premiums can be asked for every year.

For tax measures, see number 5.

No other stimulative measures, such as low interest grants, do exist.

8. The use as such of heritage is not regulated by public authorities. So every owner, private or public owner can decide to charge for the use of his monument.

9. Several sanctions are inscribed in both of the decrees described above.

They consist in fines, and in the obligation to restore the good into its former condition when works were carried out without the necessary previous permit. Works that are carried out illegally, can also be stopped by the competent authorities.

Also neglection of a protected good can be punished; fines can be imposed, and the obligation to carry out maintenance works.

Unfortunately, no special affection is given to the "income" out of fines; this money is allocated to the state budget.

10. The legal framework to protect built heritage in the Flemish Region is correct and sufficient. Just like in many other countries, we notice however that the concrete application of the legal rules is not always satisfactory, nor the integration of this "monument legislation" in other legislations concerning the use of soil.



LE MINISTRE-PRESIDENT

## PROTECTION OF CULTURAL GOODS REGION BRUXELLES-CAPITALE

### I. REGION BRUXELLES-CAPITALE

1. Ordonnance du 4 mars 1993 relative à la conservation du patrimoine immobilier (Moniteur Belge du 7 avril 1993).  
Cette législation a été complétée par une série d'arrêtés d'exécution relatifs à :
  - l'organisation et au fonctionnement de la Commission Royale des Monuments et des Sites (arrêté du 9/11/93)
  - l'exécution de travaux au patrimoine classé ou inscrit sur la liste de sauvegarde (arrêté du 9/11/93 mod. Par l'arr. du 2/6/94),
  - la demande d'inscription d'un bien sur une liste de sauvegarde ou de classement (arrêté du 9/11/93),
  - la désignation des fonctionnaires et agents chargés de la surveillance et du respect des dispositions de l'ordonnance du 4 mars 1993 (9/12/93),
  - l'organisation de la procédure relative à l'avis de la Commission Royale des Monuments et des Sites avant la délivrance des autorisations dont un bien relevant du patrimoine immobilier inscrit sur la liste de sauvegarde ou classé doit faire l'objet (3/2/94)
  - l'application d'un signe distinctif sur des monuments et des sites protégés (16/3/95)
  - la subvention pour travaux à des biens classés appartenant au secteur privé (30/5/96)
2. Cette ordonnance avec les arrêtés d'exécutions couvre toute la législation de protection du patrimoine en Région de Bruxelles-Capitale.
3. L'ordonnance du 4 mars 1993 prévoit la protection de l'ensemble des biens immeubles qui présentent un intérêt historique, archéologique, artistique, esthétique, scientifique, social, technique ou folklorique. Il s'agit donc aussi bien d'un monument, d'un ensemble que d'un site (archéologique).



4. L'ordonnance prévoit des dispositions fiscales propres en faveur du patrimoine de la Région de Bruxelles-Capitale, à savoir une exonération du précompte immobilier pour le patrimoine immobilier classé et une exemption des droits de succession et de mutation par décès qui sont légués à la Région ou aux fondations ayant le statut d'établissement d'utilité publique à condition qu'ils soient localisés dans la Région (loi spéciale du 16 janvier 1989 sur le financement des Communautés et des Régions).
5. En ce qui concerne les autres avantages fiscaux les propriétaires peuvent se prévaloir de la législation fédérale (déductibilité de certains frais d'entretien et de restauration de leurs revenus nets imposables).
6. Malheureusement je ne possède pas de chiffre exact concernant ce point (à vérifier).
7. Dans l'ordonnance il est spécifié que lorsque des travaux de conservation sont nécessaires, la Région et la commune concernées peuvent intervenir dans les frais de ces travaux, suivant des conditions à fixer par le Gouvernement.

Cet article constitue la base légale pour la subvention des travaux.

Pour le secteur privé (arrêté du 30/5/96) les taux de la subvention sont fixés comme suit.

- pour travaux d'entretien la Région intervient pour 40% des dépenses admissibles,
- pour de travaux de restauration la Région intervient pour 40% des dépenses admissibles mais sous condition que :
  - le bénéficiaire soit une personne physique dont les revenus sont inférieurs à 1.200.000 BEF (augmenté de 100.000 BEF par personne à charge) ;
  - le bénéficiaire soit une A.S.B.L. ou un établissement d'utilité publique, dont l'objet social est la conservation du patrimoine et dont les statuts sont publiés au Moniteur Belge depuis au moins 3 ans ;
  - le bien classé soit inoccupé ;
  - le bien classé soit accessible au public.

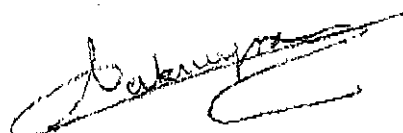
Dans tous les autres cas, la subvention régionale est de 25% seulement.

- pour les études, le taux de subventionnement est également de 25%.
- dans l'arrêté du 30/5/96 il est précisé que lorsque les communes interviennent dans le coût des travaux de conservation, leur intervention ne peut dépasser 15% des dépenses admissibles.

Pour le secteur public l'attribution de subsides a encore lieu selon les règles anciennes instaurées en exécution de la loi d'août 1931 (fédéral).

Pour les travaux exécutés par les administrations publiques on fait appel (momentanément) à un arrêté royal du 24 février 1974 relatif à l'intervention de l'Etat en matière de subsides pour effectuer des travaux d'infrastructure culturelle et sportive par les provinces, communes, agglomérations, fédérations et associations de communes et les Commissions pour la culture de l'Agglomération de Bruxelles (un nouvel arrêté est attendu dans un proche avenir).

8. Aucune mesure concernant cette matière n'a été prise jusqu'à présent.
9. Les travaux exécutés sans ou en méconnaissance d'une autorisation peuvent être interrompus. A côté de cette sanction administrative l'ordonnance punit un grand nombre d'infraction d'un emprisonnement de huit jours à trois mois et/ou une amende de 100 à 300.000 BFF.  
Des mesures de rétablissement sont liées à toute condamnation. Elles peuvent prendre la forme soit d'un rétablissement du bien dans son état antérieur, soit de travaux de modification. Dans les deux cas, un délai d'exécution des travaux sera fixé par le juge de condamnation.
10. Comme en Région flamande, la protection du patrimoine est efficace. Ce qui n'empêche pas que parfois l'application n'est pas toujours satisfaisante. Des améliorations pourraient être apportées, notamment sur le plan fiscal. Une ordonnance concernant « le Patrimoine Archéologique » s'impose.



Arlette Verkruyssen  
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Brijuni, May 3 – 6, 2000

Bulgaria  
Hristina Staneva and  
Risitza Staneva

## ANSWERS TO THE QUESTIONARY ABOUT PROTECTION OF CULTURAL GOODS

*1. Is there a law that explicitly relates to the protection and preservation of cultural goods? (full title and year it came into force)*

- The Law for Protection and Development of Culture / Official Journal, No 50/99
- The Law for the Monuments of Culture and Museums (Official Journal, No 29/69, alteration and additions No 29/73, 36/79, 87/80, 102/81, 45/84, 10/90, 14/90, 112/95, 44/96, 117/97, 153/98, 50/90.

There are 8 normative acts specifying, explain in details and create procedure for those texts from the law, which sound commonly.

*2. Does this law encompass all problems related with protection and preservation?*

- Yes. Some attempts have been done to enclose the specific side of the various cultural activities.

*3. What areas of protection and preservation of heritage are regulated by this law?*

- There is a legal regulation of all areas of protection and preservation of the cultural heritage

*4. Does this law encompass problems concerning financing and stimulating measures for financing, related to the protection and preservation of heritage?*

- Yes. The first part of the report reveals its answer.

*6. Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budget in relation to other resources, etc.)*

- The principles according to which funds are collected and allocated are purposeful. The State subsidiary released from the Budget is pre-determined, only for purposes that are pre-approved.
- Exception is the accumulation of funds for the Fund "Culture". As it was stated above in the first section of the report, the funds are collected from 14 sources, like fines, penalties, etc. The allocation of the funds is purposefully.
- The Law for the State Budget (published in Official Journal, No 1 of 2000, apl.#7) states that the national and the municipal Funds "Culture" are transformed into secondary stewards, which means that the sums collected for the Fund are combined with the sums of the Ministry of the Culture. Therefore a measure of the percentage distribution of the allocated funds could not be provided.

*7. Forms of stimulative measures (if they differ according to categories of users, owners, constructors, and state who it relates to.) and what ordinances regulate the*

*following – subdivision, tax exemptions, custom exemptions, loans with low interest rate, other stimulative measures)*

- The answer can be found in the second part of the report.

*8. In what way and on the basis of which ordinances is compensation for different forms of use of heritage regulated?*

*- form of use*

- They could be rented, however the time period for the contract could not be longer than 3 years, they could be used by concessionaire, according to the Law of Concessions (Official Journal, No 92/95, 44/96, 62/97, 123/97, 93/98, 23/99, 56/99, 64/99, 67/99)

According to article 4, section 10 and 12 from the above mentioned law State properties could be rented when the properties are forests and parks with national importance, and natural and archeological reservations. The Minister of the Culture, is obligated to create the necessary organization, to secure the necessary resources, and to submit offers concerning the concession of State-owned archeological reservations and the parks with national importance and with cultural and historical value.

*- methods of payment, type of compensation*

- The methods for payment and compensation are to be agreed upon concretely for each site and for each contract.

*-To whom does the income belong*

- According to the Article 25 from the Concession Law the income is to be divided: 85% for the State Budget, and 15% for replenishing the Fund for reimbursing for the expenditures.

*9. Is there a penalty for negligent relations, or disregard towards heritage (non-intentional devastation) – to whom the income belong, how it is located?*

- In the Law for Protection and Development of the Culture and the Museums and Bill for the Museums there are chapters, called “Administrative and Punitive Decree”. These chapters contain text specifying the sanctions for violating these laws, as well as increased sanctions for repeated violating of the laws.

The income for these sanctions is added to the State Budget, and distributed respectively to the body issuing the particular punitive decree (the Minister of the Culture or the Mayor of the municipality). For each type of violation it specified who is authorized to execute the punitive decree. The procedure involving the executing of the decree, locating the violators, and the appeal process is established with the Law for Administrative Violations.

*10. Thoughts, concerning the mentioned legal acts and ordinances*

- In the case that the State would have sufficient resources, the intelligentsia of Bulgaria will find a way to update our legislation in order to reflect this condition with additional preferences for the Protection of our cultural heritage.

Hristina Staneva  
Rositza Staneva

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
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Brijuni, May 3 – 6, 2000

Croatia  
Jadran Antolović and  
Ivančica Markovčić

## PROTECTION OF CULTURAL GOODS IN THE REPUBLIC OF CROATIA - ANSWERS TO THE QUESTIONNAIRE

1. In the Republic of Croatia, the protection and preservation of cultural goods are regulated by the following ordinances:

- The Law on the Protection and Preservation of Cultural Goods passed in 1999
- The Law on the Endangered Monumental Site of Dubrovnik passed in 1986 and renewed in 1989, 1993, and 1999 respectively. This last instance has concerned its co-ordination with the Law on the Protection and Preservation of Cultural Goods

2. The said laws establish the system of protection and preservation of cultural goods, and their provisions prescribe the responsibility to pass sub legal acts, as follows:

- The Book of Rules on the Conditions for Physical and Legal Persons for the Obtaining of Permits for Performing Works on the Protection and Preservation of Cultural Goods (passed in 1999)
- The Book of Rules on the Identity Card of the Inspector of the Protection of Cultural Goods, as well as on the Pattern and Manner of Keeping Records of Supervision Performed (passed in 1999)
- The Book of Rules on the Register of Cultural Goods of the Republic of Croatia (currently under passing)
- The Book of Rules on the Conditions and Manner of Implementing Measures of Protection and Preservation of Cultural Goods (currently under passing)
- The Book of Rules on the Expert Calling of a Conservator-Restorer and the Manner of its Achievement (currently under passing)

We may establish that all the significant issues related with protection and preservation of cultural goods have been regulated either by the law or by sublegal acts.

3. The Law on the Protection and Preservation regulates the following issues:

- Types of cultural goods,
- The manner and procedure of establishing protection over cultural goods,
- Responsibilities and rights of the owner of a cultural good,
- Measures for the protection and preservation of a cultural good,
- Performing duties connected with the protection and preservation of cultural goods,
- The composition and authorities of the Croatian Council of Cultural Goods,
- The manner of financing the protection and preservation of cultural goods,
- Identifies violations and prescribes fines for their perpetrators

4. The Law on the Protection and Preservation encompasses provisions prescribing the manner of financing protection and preservation, as well as provisions on the collection of a monument annuity from the economic use of cultural goods. Stimulative measures, such as tax and



customs exemptions for the investments made into the preservation of cultural heritage, are not prescribed by this law. According to the so far legislative practice, they may be prescribed only within tax and customs regulations. The new Customs Act, in force since the beginning of 2000, has thus provided for customs exemption when importing goods for the protection and preservation of cultural goods.

The existing tax regulations do not encompass tax exemptions for the time being. However, the new Croatian Government has mentioned the possibility of their introduction with the tax system reform.

5. The answer has been given under Item 4.

6. In order to be able to present the policy of financing the protection and preservation of cultural goods from the state budget, we shall provide data on the resources from the state budget for culture, as well as for the protection and preservation of cultural goods in the 1994-1998 period.

YEAR	Amount for culture in budget			Amount for cultural heritage		
	HRK	DEM	% <sup>1</sup>	HRK	DEM	% <sup>2</sup>
1994	110,715,851	29,988,042	0,45	32,057,162	8,682,872	29,0
1995	183,051,503	51,610,778	0,59	42,870,000	12,076,057	23,4
1996	235,342,473	66,406,639	0,66	43,491,000	12,136,902	18,3
1997	319,448,305	89,985,436	0,80	86,585,175	24,349,722	27,1
1998	395,322,080	109,204,990	0,96	103,030,940	28,461,585	26,1

The above data show that the share of resources allocated for culture was gradually increasing with regard to the total state budget. However, at the same time, the amount for the protection and preservation of cultural goods was constantly decreasing since 1994, with the exception of 1997, when a minor increase of the funds was recorded with regard to the funds allocated for culture.

The Table below shows the ratio between the funds spent for the functioning of the state administration and of the institutions for the protection and preservation of cultural goods, and the funds spent for the program's for the protection and preservation of cultural goods.

YEAR	Financing of institutions <sup>3</sup>		Financing of the programme <sup>4</sup>	
	HRK	DEM	HRK	DEM
1994	14,644,162	3,966,458	17,413,000	4,716,414
1995	24,583,000	6,924,789	18,287,000	5,151,268
1996	25,450,000	7,054,930	18,041,000	5,081,972
1997	9,367,175	2,634,263	77,218,000	21,715,459
1998	11,520,766	3,182,532	91,510,174	25,279,053

<sup>1</sup> Per cent of the State budget

<sup>2</sup> Per cent of the amount for culture in State budget

<sup>3</sup> Salaries, current expenditures institutions for cultural heritage protection and preservation

<sup>4</sup> The program for cultural heritage protection and preservation

7. The existing legal regulations do not prescribe any special stimulative measures for the protection and preservation of cultural goods. The existing (modest) stimulative measures refer to culture in general, thus including also the protection and preservation of cultural goods.

It would be hard to say that there exists a classical system of **subventions**. The financing refers mostly to concrete renewal and protection undertakings. The Ministry of Culture of the Republic of Croatia, using state budget resources, finances program's for the protection and renewal of monuments and monumental holdings of national interest. The funds intended for the preventative protection of cultural monuments damaged in war destruction's come from the same source.

The local community has complete autonomy in the allocation of its own budget funds. It allocates funds according to its own program's, encompassing also facility renewal and restoration program's, according to decisions made by the local administration. In some cases the interests of the state and those of the local community overlap, so that the works are undertaken with joint funds i.e. with state subvention.

Article 24 of The Law on the Protection and Preservation of Cultural Goods, regulating rights of the owner of a cultural good points out also the "**right to tax and customs privileges according to special laws**". In compliance with the currently valid tax laws, there are no tax relaxation's associated with the protection and preservation of cultural goods.

**Tax exemptions** associated with cultural activities are prescribed only by the Law on the Rights of Self-employed Artists and the Encouragement of Cultural and Artistic Creation, and refer to the reduction of the tax basis of artists and sponsors of cultural program's of a creative auctorial and artistic character. Since the renewal, maintenance, and restoration of cultural heritage only exceptionally and to a very small extent have auctorial, artistic and creative character, we may safely say that there are no tax stimulating measures in the renewal, maintenance, and restoration of cultural heritage.

The Customs Act that entered into force on January 1, 2000 prescribes customs exemption for the import of goods (materials, machinery, devices, and the like) used for the renewal, maintenance, and restoration of cultural heritage (on condition that they are not manufactured locally). **Customs exemptions** refer to all those who, with the approval of the Ministry of Culture, take part in the renewal, maintenance, and restoration of cultural heritage.

There are no **special loans with lowered interest rates** for cultural heritage restoration. Since a large part of our heritage was damaged in the war, the owners of facilities in war-torn areas may benefit from favorable reconstruction loans, which are not directly associated with the reconstruction of cultural goods, though.

8. Provisions of the Law on the Protection and Preservation of Cultural Goods sets a compensation for the use of cultural heritage.

#### Form of Use

- Use of a recognizable cultural good on a product

- Use of a recognizable cultural good for one's own promotion
- Performance of an economic activity in immovable cultural goods or in the region of a cultural-historical site

#### Method of Payment, Type of Compensation, to Whom Does the Income Belong

The income from the use of a recognizable cultural good is paid into the state budget, as follows:

- For the use of a recognizable cultural good on a product (photographs, stickers, badges, souvenirs, publications, clothing, and the like), the user is required to pay 10% of the retail price of the product into the national budget.
- Legal entities or individuals that use a recognizable cultural good in their own promotions (film, commercials, billboards, and the like) are required to pay into the national budget the amount of 1,000.00 Croatian Kuna before the first proclamation of every type of promotional material.

Forty per cent of the income of the monument annuity is paid into the national budget, while 60% is paid into the budget of the city or municipality on whose territory the annuity is collected, as follows:

- All legal entities and individuals who perform economic activities in immovable cultural goods or in the region of a cultural-historical site must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit.
- Legal entities and individuals who perform the activities in catering, hotel accommodation, passenger transport, as well as nautical tourism harbor activities must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit.

#### How it is Allocated

Budget revenues (local and state budget) raised through the collection of monument annuity are used solely for the protection and preservation of cultural goods.

9. Violation provisions of the Law on the Protection and Preservation of Cultural Goods prescribe violations for negligent relations towards cultural goods, especially when this results in damage or loss of monumental properties. Such violations as a rule entail high fines, as well as the obligation of restoration in the previous state (if possible). The fines range from HRK 1,000.00 (DM 250) to HRK 500,000.00 (DM 130,000).

The money raised from the fines constitutes the state budget income which may be used solely for the protection and preservation of cultural goods. The money is paid to the Ministry of Finance account, while the Ministry of Culture has an insight into the payments made to this account.

10. Since The Law on the Protection and Preservation of Cultural Goods has been under implementation for only a year now, it is somewhat difficult to evaluate its quality. Not even all the sublegal acts have been passed yet, so that we cannot talk about the Law's full implementation. That is why a special system of monitoring the implementation of each individual provision of the Law has been established. In this way, after two years of its passing, it shall be possible to perform an analysis and introduce corrections necessary for the legal system to achieve the desired effects.

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Brijuni, May 3 – 6, 2000

Georgia  
Merab Bochoidze

Merab Bochoidze  
ICOMOS/Georgia

Protection of Cultural Goods  
Questionnaire

1. Law of Georgia "On Protection of Cultural Heritage",  
25 June 1999;
2. No
3. Following areas of protection are covered by the above  
quoted Law:
  - General Provisions;
  - System of Cultural Heritage Protection and Its  
Management;
  - Protection of Immovable Monuments;
  - Protection of Movable Monuments;
  - Economic and Financial Basis of Cultural Heritage  
Protection;
  - International Relations in the Cultural Heritage  
Protection;
  - Concluding Provisions;
4. The Law specifies sources of financing protection of  
cultural heritage - state and local budgets, special  
foundations, donations, grants, etc. No stimulating  
measures are foreseen.
5. No law or act regulates stimulating measures - even no  
charity registration form does exist in Georgia at  
present.
6. Approximate % relationship can be estimated as follows:
  - state financing - 68%  
(state budget + WB credit)
  - local budget - 7.5%
  - public donations - 1.5%
  - international grants - 20%
  - other sources - 3%
7. - subvention (in form of international grants);  
- tax exemption (grants are exempted from VAT);

8. Rights and obligations of the owner of property (both immovable and movable) are specified in chapter IV, article 25-26 (immovable property) and chapter VIII, article 53-54 (movable property) of the Law on Protection of Cultural Heritage.
9. Penalty for negligent relation is specified in the chapter IV, article 29 (immovable property) and chapter VIII, article 57 (movable property) of the Law on Protection of Cultural Heritage.
10. General law on the protection of cultural heritage is newly adopted; it is not supported by new specific acts and ordinances; besides, in the majority of cases there is no proper implementation of what is prescribed.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Japan  
Toshiyuki Kono

## ANSWERS TO THE QUESTIONNAIRE

Yes, the Law for the Protection of Cultural Properties

Not all, but most important problems.

Tangible Cultural Properties, Intangible Cultural Properties, Folk-cultural Properties, Buried Cultural Properties, Historic Sites, Places of Scenic Beauty, Natural Monuments, Preservation Districts for Groups of Historic Buildings, and Protection of Traditional Techniques for the Conservation of Cultural Properties.

Partly, yes (several subventions)

Tax Laws (tax exemptions), administrative guidance for subventions by other ministries than the Agency for Cultural Affairs, local ordinances for subventions by prefectural or municipal government.

Cultural Properties Protection Department budget in fiscal year 1999: 53.2 billion Yen (aprox. 500 million dollars) - ca. 66% of the entire budget of the Agency for Cultural Affairs in the same year: 80.5 billion Yen, which is ca. 0.1 % of the National General Accounts budget in the same year: 81,860 billion Yen

Subventions, tax exemptions, special low interest rate loans

Through designation as important cultural properties, the value usually increases. Therefore only in limited cases will the state subsidize the costs of repair. However the situation of the lands designated as historic sites, places of scenic beauty or natural monuments is different, since the value may decrease due to the restrictions on the use or disposition of the land. Therefore the regular loss brought to the lands can be compensated and paid to the owner. When especially strict restrictions are imposed, the lands are purchased and the state subsidizes the large part (aprox. 80%).

Any person who has damaged or discarded any important cultural property and any person who has altered the existing state of a historic site, place of scenic beauty and/or natural monuments, or by practicing any act affecting its preservation, destroyed it,



damaged it or brought it to decay shall be liable to imprisonment, with or without hard labor, for a term not exceeding five years or to a fine not exceeding 300,000 Yen (Art. 107).

Not completely. The following remain problems to be solved:

Preservation of scenic beauty and the buffer zone; harmonization between town planning and preservation districts for groups of historic buildings; and, the legal basis of excavation and its costs.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Macedonia  
Kira Petkovska and  
Ljubica Risteska

FOR J. ANTOLOVIC

**Answer of the questions from Protection of cultural  
goods-questionnaire**

by MRS. K. PETKOVSKA  
MRS. L. RISTESKA  
MACEDONIA

- 1) The law explicitly relates to the protection and preservation of cultural goods. It has a title " Law for protection of cultural goods" and it came into force in 1973.
- 2) Great part of this law is already old with a lot of law gaps and as that one it doesn't fit into the modern social conditions, i.e. it doesn't contain problems concerning protection and preservation.
- 3) The rights and duties of the cultural monuments owners, registration and public marking of cultural monuments and other administrative measures, organization and protection of cultural monuments and penal regulation have been regulated with this Law.
- 4) This law partly solves financing of cultural monuments, while other stimulating measures for financing, related to the protection and preservation of heritage haven't been planned yet.
- 5) Additional financing related to the protection and preservation of heritage hasn't been regulated with any other law.
- 6) The protection of cultural monuments has been financed by the state budget from the Ministry of culture and it gets 2,34% from the total budget resources. 12,3% in (1999) have been received by the spending level of the Ministry of culture of protection and preservation with the help of the law of local self- management there is a chance for financing a development of culture in common frames, but there is no obligation for financing protection and preservation of cultural monuments.
- 7) This Law hasn't planned any forms of stimulative measures.
- 8) With this Law, Compensation for different forms of use of heritage hasn't. But there is an act according to which the incomes from the use of cultural monuments, obligatory have to be used for their restauration and conservation i.e. their protection.
- 9) The law includes a penalty for negligent relations or disregard, towards heritage. The income from these penalties belongs to the state budget and it has been allocated as this one again by the state budget.
- 10) With the law of protection of cultural monuments, the cultural heritage hasn't been completely protected in a legal sense, because it enters into a zone of terminological formalism. Actually, only the definition - cultural monument has been protected i. e. the goods with status of cultural monuments. Concerning the legal property there is no difference among the terms: a user, an owner and a possessor of cultural monuments. According to the conception for protection which is part of this law the same one is not accordance with regulations of the statute of R. Macedonia (1991)  
The expiration of this law and its legal gaps do not allow protection also be worked out in the laws of other fields which have points of contact with cultural goods.  
The need of passing a new law is ne necessary.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Mexico  
Roberto Nuñez Arratia

**NUÑEZ ARRATIA Y ASOCIADOS, S.C.**  
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**ICOMOS- CROATIAN NATIONAL COMMITTEE**

**PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE**

**MEXICO**

1. IS THERE A LAW THAT EXPLICITLY RELATES TO THE PROTECTION AND PRESERVATION OF CULTURAL GOODS? (FULL TITLE AND YEAR WHEN IT CAME INTO FORCE)
  - **FEDERAL LAW OF ARCHAEOLOGICAL, ARTISTIC AND HISTORICAL MONUMENTS AND ZONES.- APRIL 28-1972. - PUBLISHED MAY 06 1972.**
2. DOES THIS LAW ENCOMPASS ALL PROBLEMS RELATED WITH PROTECTION AND PRESERVATION?
  - **NO.- THIS LAW IS NOW INSUFFICIENT DUE TO THE CULTURAL, SOCIAL, ECONOMIC AND POLITICAL DEVELOPMENT IN MEXICO.**
3. WHAT AREAS OF PROTECTION AND PRESERVATION OF HERITAGE ARE REGULATED BY THIS LAW?
  - **THE RESEARCH, PROTECTION, CONSERVATION, RESTORATION AND RECOVER OF ARCHAEOLOGICAL, ARTISTIC AND HISTORICAL MONUMENTS AND ZONES OF MONUMENTS.**
4. DOES THIS LAW ENCOMPASS PROBLEMS CONCERNING FINANCING, AND STIMULATING MEASURES FOR FINANCING, RELATED TO THE PROTECTION AND PRESERVATION OF HERITAGE?
  - **NO.- THE FEDERAL LAW DOESN'T ENCOMPASS PROBLEMS CONCERNING FINANCING AND STIMULATING MEASURES FOR FINANCING; IT ONLY ESTABLISHES A REAL ESTATE TAX EXEMPTION TO OWNERS OF HISTORIC OR ARTISTIC MONUMENTS THAT HAVE BEEN EITHER CONSERVED OR RESTAURED. (ART. 11)**

**SOCIO**



**A.M.P.I.**

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5. IF NOT, WHICH LAW(S) OR ACT(S) REGULATE THE MENTIONED PROBLEMS? (WHAT FINANCIAL REGULATIONS RELATE TO THE PROTECTION AND PRESERVATION OF HERITAGE AND HOW DO THEY RELATE IN TERMS OF THE USEFUL BENEFIT OF THE HERITAGE AS WELL AS IN TERMS OF STIMULATIVE MEASURES AND FINANCIAL EXEMPTIONS FOR ACTUAL PARTICIPANTS IN THE PROTECTION AND PRESERVATION OF HERITAGE - NAME THE ORDINANCE AND THE AREA THAT IT REGULATES)

• **LOCAL LAWS AND ACTS:**

**MEXICO CITY.-**

*FINANCIAL CODE. - DECEMBER 31, 1999.*

**CHAPTER XI.-ART. 265. - REDUCTIONS:**

**A.- THE OWNERS AND PURCHASERS OF HISTORICAL AND ARTISTIC MONUMENTS THAT HAVE BEEN CATALOGUED OR DECLARED AND HAVE BEEN RESTORED, WILL HAVE A REDUCTIONS EQUIVALENT TO 100% OF THE FOLLOWING CONTRIBUTIONS:**

**REAL - ESTATE TAX (DURING THE RESTORATION, THE REDUCTION WILL NOT EXCEED 33% OF THE INVESTMENT, WHO'S COST WILL BE MORE THAN \$ 30,000 DLLS.)**

**SALES TAX**

**BUILDING PERMIT RIGHTS**

**HIDRAULIC INSTALATION RIGHTS**

**B.- THE OWNERS AND PURCHASERS WHO LIVE IN A CATALOGUED OR DECLARED MONUMENT, WILL HAVE A REDUCTION EQUIVALENT TO 50% OF THE REAL ESTATE TAX.**

**C.- THE PERSONS WHO INVEST IN NEW REAL ESTATE PROJECTS IN THE HISTORICAL CENTER WILL HAVE A REDUCTION OF 80% OF THE REAL ESTATE TAX AND RIGHTS CONCERNING NEW CONSTRUCTIONS AND RESTORATIONS.**



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*DECREE THAT ESTABLISHES THE SISTEM OF TRANSFERENCE OF DEVELOPMENT POTENTIALITY (AIR RIGHTS TRANSFER SYSTEM).- D.O. 19 JULIO, 88.*

THIS SYSTEM CONSISTS IN RECOGNIZING THE INTENSITY OF CONSTRUCTION RESULTING IN EXCESS IN BUILDINGS LOCATED IN THE HISTORIC CENTER, PARTING FROM ITS CONSTRUCTED AREA UNTIL AQUIRING SIX TIMES THE SIZE OF THE LAND AND AUTHHORIZE ITS TRANSFERENCE TOWARD OTHER ZONES AND REAL PROPERTY ON WHICH THE SAME CAN BE CONSTRUCTED IN ADDITION TO THAT AUTHORIZED IN THE URBAN DEVELOPMENT PROGRAM IN ORDER TO DESTIN THE VALUE OF THE TRANSFERENCE IN ECONOMIC RESOURCES TO RESCUE, CONSERVATION AND RESTORATION OF SAID HISTORIC BUILDINGS.

**GUADALAJARA.-**  
*REGULATIONS OF THE HISTORICAL CENTER AND TRADITIONAL DISTRICTS.*  
JANUARY 8 - 1997. -

THIS REGULATIONS ESTABLISHES THE PROMOTION BEFORE THE LOCAL AUTHORITIES THE APLICACION OF FINANCIAL INCENTIVES TO THE HISTORICAL MONUMENTS AND IT'S ENVIRONS, URBAN IMPROVEMENT IN ZONES OF MONUMENTS AND THE PROCESS OF TRANSFERENCE OF DEVELOPMENT RIGHTS.

- **ESTATE LAWS**

THE LAWS OF CULTURAL HERITAGE OF THE STATES OF JALISCO (DECEMBER 18 - 1997) AND BAJA CALIFORNIA (AUGUST 3 - 1995) ESTABLISH THAT THE STATE AUTHORITIES WILL TAKE CARE OF THE PROTECTION OF CULTURAL GOODS TROUGH THE INSTITUTION OF SIMULATIVE MEASURES IN BEHALF OF THE OWNERS OR POSSESSORS IN ORDER TO PRESERVE, RESTORE AND CONSERVE SAID GOODS.

6. NAME THE PRIMARY POLICIES OF FINANCING FROM PUBLIC BUDGETS (THE LEVEL OF THE STATE BUDGET, THE LOCAL BUDGET, % RELATIONSHIP, ESTIMATE OF THE LEVEL OF RESOURCES FROM PUBLIC BUDGETS IN RELATION TO OTIHER RESOURCES, ETC.)
- ACCORDING TO THE NATIONAL DEVELOPMENT PLAN THAT THE PRESIDENT ISSUES AT THE BEGINNING OF HIS PERIOD, THE FEDERAL GOVERNMENT ASSIGNS A BUDGET FOR THE PROTECTION AND PRESERVATION OF HERITAGE THROUGH THE NATIONAL COUNCIL FOR CULTURE AND ARTS, THE NATIONAL FINE ARTS INSTITUTE AND THE NATIONAL ANTHROPOLOGY AND HISTORY INSTITUTE. A BUDGET OF \$ 1,086,000.00 MILLON PESOS WAS



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ASSIGNED TO THIS LAST INSTITUTE IN 1999 (\$ 115,000,000.00 DLLS.) OF THESE, \$ 30,000,000.00 DLLS. WERE ASSIGNED TO THE CONSERVATION OF ARCHEOLOGICAL ZONES AND MONUMENTS. THE LOCAL AND STATE GOVERNMENTS ALSO ASSIGN BUDGETS IN THEIR RESPECTIVE JURISDICTIONS FOR THE PROTECTION AND CONSERVATION OF HISTORICAL AND ARTISTIC MONUMENTS AND ZONES.

BESIDES PUBLIC BUDGETS, OTHER RESOURCES ARISE FROM PRIVATE NATIONAL OR INTERNATIONAL INSTITUTIONS; INCOMES COMING FROM SELLING PUBLICATIONS, FILMS, PICTURES, RECORDINGS, REPRODUCTIONS; POSTERS AND FUNDS AND ROYALTIES.

7. FORMS OF STIMULATIVE MEASURES (IF THEY DIFFER ACCORDING TO CATEGORIES OF USERS, OWNERS, CONTRACTORS, RESTORERS, AND STATE WHO IT RELATES TO) AND WHAT ORDINANCES REGULATE THE FOLLOWING:

- SUBVENTION
- TAX EXEMPTIONS
- CUSTOMS EXEMPTIONS
- LOANS WITH LOWERED INTEREST RATES
- OTHER STIMULATIVE MEASURES

• THE STIMULATIVE MEASURES DIFFER ACCORDING TO THE FOLLOWING CATEGORIES:

OWNERS.-	TAX DEDUCTIONS.- AIR RIGHTS TRANSFER SYSTEM.-	LOCAL LAWS AND ACTS
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CONSTRUCTORS AND INVESTORS.-	TAX DEDUCTIONS.-	LOCAL LAWS AND ACTS
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STATE.- ACCORDING TO THE FEDERAL BUDGETS LAW THE SUBSIDY ARE THE RESOURCES ASSIGNED TO PROMOTE THE DEVELOPMENT OF ACTIVITIES OF THE HIGHEST PRIORITY AT PRESENT THE NEW PROJECTS AND SPECIFIC PROGRAMS OF RESTORATION AND REVITALIZATION OF ARCHAEOLOGICAL MONUMENTS AND ZONES AND HISTORICAL AND ARTISTIC MONUMENTS ARE EXECUTED WITH THE JOINT PARTICIPATION OF:

- FEDERAL GOVERNMENT RESOURCES.
- STATE AND LOCAL GOVERNMENT RESOURCES
- CONTRIBUTION OF PRIVATE, NATIONAL AND INTERNATIONAL INSTITUTIONS AND ENTERPRISES. THESE CONTRIBUTIONS GRANTED TO THE CULTURAL INSTITUTIONS ARE 100% TAX DEDUCTIBLE IN SEVERAL CASES THE NATIONAL FUND FOR THE CULTURE AND ARTS INTERVENES LIKE A PROMOTOR



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8. IN WHAT WAY, AND ON THE BASIS OF WHICH ORDINANCES, IS COMPENSATION FOR DIFFERENT FORMS OF USE OF HERITAGE REGULATED?

- FORM OF USE
- METHOD OF PAYMENT,TYPE OF COMPENSATION
- TO WHOM DOES THE INCOME BELONG
- HOW IS IT ALLOCATED

- THE USE OF HERITAGE REGULATED IS RESTRICTED ACCORDING TO THE LAW (AGREEMENT OCT 15, 1977). THE NATIONAL AND STATE MUSEUMS AND ARCHAEOLOGICAL AND HISTORICAL MONUMENTS DEPENDING TO THE NATIONAL ANTHROPOLOGY AND HISTORY INSTITUTE (I.N.A.H.) CANNOT BE USED WITH ENDS OTHER THAN ITS NATURE AND OBJECT EXCEPT FOR RELEVANT CULTURAL AND CIVIC ACTS.

THE COMPENSATION FOR THE USE OF THE DECLARED HERITAGE DEPENDS ON THE NATURE OF THE MONUMENT, TO WHAT IT IS DESTINED AND WHETHER IT BELONG TO THE FEDERATION OR IS PRIVATE.

IN PREVIOUS YEARS (1960-1980) THE NORM WAS TO USE THE RESTORED MONUMENTS INTO MUSEUMS AND CULTURAL CENTERS, OF THE 60 MUSEUMS IN THE CITY OF MEXICO 27 ARE INSTALED IN HISTORICAL MONUMENTS AND 8 IN ARTISTIC MONUMENTS.

AT PRESENT THE USE GIVEN THEM IS VARIED: OFFICES, HOTELS, COMMERCE, CLUBS OR CENTERS FOR SOCIAL, ACADEMIC, CULTURAL AND BUSINESS ACTIVITIES OR RECREATIONAL.

THE ARE FINANCIAL INSTITUTIONS THAT HAVE ACQUIRED HISTORICAL AND ARTISTIC MONUMENTS FOR THEIR OFFICES, RESTORING AND CONSERVING THEM LIKE BANAMEX AND BANK OF MEXICO.

THERE ARE HISTORICAL MONUMENTS THAT HAVE BEEN CONVERTED TO HOTELS LIKE THE EXCONVENT OF SAINT CATHERINE IN OAXACA AND THE CONVENT OF THE CONCEPTION IN PUEBLA; OTHERS HAVE BEEN USED FOR DIFFERENT ENDS LIKE THE GIRLS COLLEGE OF OUR LADY OF CHARITY, RESTORED AND ADAPTED FOR THE BANKER'S CLUB.

9. IS THERE A PENALTY FOR NEGLIGENT RELATIONS, OR DISREGARD, TOWARDS HERITAGE? (NOT INTENTIONAL DEVASTATION)

- TO WHOM DOES THE INCOME BELONG
- HOW IS IT ALLOCATED

- THERE IS NO PENALTY FOR NEGLIGENT RELATIONS OR DESREGARD TOWARDS HERITAGE.

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**10. THOUGHTS CONCERNING THE MENTIONED LEGAL ACTS AND ORDINANCES:**

ARE THE AREAS OF PROTECTION AND PRESERVATION OF HERITAGE PROPERLY PROTECTED IN A LEGAL SENSE

IF NOT, WHY

IS THERE PROPER IMPLEMENTATION OF WHAT IS PRESCRIBED  
OTHER COMMENTS AND RECOMMENDATIONS

- NO, THE CULTURAL HERITAGE IS NOT PROPERLY PROTECTED IN A LEGAL SENSE IN MEXICO, IT IS NECESSARY YO HAVE A NEW LAW OF NATIONAL CULTURAL HERITAGE, IN WHICH THE OBJECTIVE OF THE LAW WOULD BE CONSIDERED AND REVISED, THE CONCEPT OF HERITAGE, THE DEFINITION OF MONUMENTS, SITES AND ZONES, THE CONSERVATION AND PROTECTION OF THE ENVIRONMENT AND OF THE INTANGIBLE HERITAGE, THE COORDINATION AND PARTICIPATION OF THE THREE LEVELS OF GOVERNMENT ESTABLISHING THEREBY APPROPRIATE INSTITUTIONS AND LEGAL INSTRUMENTS; MORE AMPLE PARTICIPATION OF THE CIVIL SOCIETY SUCH AS PERSONS AND CIVIL ORGANIZATIONS, PRIVATE ENTERPRISE, RELIGIOUS ASSOCIATIONS AND CULTURAL, ACADEMIC AND RESEARCH INSTITUTIONS THAT ESTABLISH THE COORDINATION WITH OTHER LAWS AND REGULATIONS RELATED TO ECOLOGY, URBAN DEVELOPMENT, FINANCING, TAXES, GOVERNMENT BUDGETS, PLANNING.

THE PRIVATE PARTICIPATIONS IS NECESSARY DUE TO THE VASTNESS AND PLURALITY OF THE MEXICAN CULTURAL HERITAGE THAT SURPASSES THE MATERIAL POSSIBILITIES AND ECONOMIC RESOURCES OF THE PUBLIC ADMINISTRATION AND IT MAKES IT DIFFICULT FOR THE PROPER IMPLEMENTATION OF THAT WHICH IS PRESCRIBED IN THE FEDERAL LAW OF MONUMENTS AND ZONES IN FORCE.

**COMMENTS AND RECCOMENDATIONS:**

THE FOLLOWING IS NECESSARY TO CONSERVE AND PROTECT THE HISTORICAL CENTERS AND DISTRICTS, SITES AND ZONES:

-NOT ONLY THE PROTECTION LAWS BUT ALSO THE IMPROVEMENT OF PLANNING IN ORDER TO SAFEGUARD AND INCREASE IT VALUES

-CONSOLIDATE THE POSITIVE IMAGE OF THE SOCIAL PARTICIPATION AND THE COLLECTIVE EFFORT TO STIMULATE THE COMPANIES FOR THEM TO BE ATTRACTED TO SPONSOR CONSERVATION.



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**-PROMOTE THE COLABORATION OF THE PUBLIC AND PRIVATE SECTORS THROUGH CAMPAIGNS, PROGRAMS, ATTRACTIVE AND SPECIAL ORIGINAL SYSTEMS.**

**-STIMULATE THE SOCIAL PARTICIPATION WITH SUBVENTIONS THAT FUNCTION WITH TRANSPARENCE, TAX EXEMPTIONS ATTRACTIVE AND CERTAIN, SIMPLIFICATION AND AGILITY IN PROCEDURES.**

**-SENSIBILITY OF THE AUTHORITIES IN ORDER TO OBTAIN A BALANCE BETWEEN THE CONSERVATION OF THE MONUMENTAL HERITAGE AND THE INTEGRAL, SOCIAL AND ECONOMIC DEVELOPMENT OF THE HISTORICAL CENTERS AND DISTRICTS.**

**FEBRUARY 18, 2000.**

**ROBERTO NUÑEZ ARRATIA**



**A.M.P.I.**

**Asociación Mexicana de Profesionales Inmobiliarios, A.C.**

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ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Romania  
Sergiu Nistor

To: Jadran ANTOLOVIC  
Vice-President of the ICOMOS Croatian Committee

Dr. Sergiu NISTOR  
Vice President of the Romanian ICOMOS Committee  
Piata Presei Libere 1, tel/fax: 401.223.2847, 401.224.2889  
Bucharest, ROMANIA

Ref: MEETING OF THE INTERNATIONAL COMMITTEE ON LEGAL, ADMINISTRATIVE  
AND FINANCIAL ISSUES, CROATIA, MAY 2000

### PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE

#### Answers:

1. Yes, the Governmental Ordinance 68/1994 for the protection of the national cultural heritage, sanctioned by the Parliament as Law 41/1995, modified by the Governmental Ordinance 24/1997 sanctioned through Law 56/1998.

2. No, several problems are not properly tackled. I quote from the paper presented at Toledo Meeting: "In an analysis performed late 1996, out of the 8 major fields of regulation a law on historic monuments has to cover, not a single one was properly covered by the national regulations. According to the emphasis of the provisions of the UNESCO and the Council of Europe Conventions and Recommendations, we considered these 8 fields of regulation to be the following:

- Identification and inventorying of cultural property;
- Prevention of illegal transfer of cultural property;
- Instatement of the legal protection of historic buildings and archaeological sites;
- Instatement of the legal protection of historic ensembles, historic districts and sites;
- Historic monuments intervention control, approval and monitoring;
- Historic monuments enhancement, interpretation and rehabilitation;
- State financial and fiscal support for conservation and enhancement;
- Scientific research, international co-operation and public awareness campaigning.

As for the first 2 fields, their topics (definition of the protected cultural property, definition of the protective inventory of the cultural heritage, for the first, the existence of a national inventory for the items prohibited to transfer, the effective control of the archaeological excavations or the severe punishment for breaking the regulation in this respect, for the second) were partially covered by national legal regulation. The capacity of instatement of the legal protection to buildings worth listing irrespective of their ownership status was not properly regulated, as spot, emergency listing was not provided, as well as the capacity of the relevant authority to proceed the listing process without the consent of the private owner. There were no provisions related to

compelling the owner to perform conservation work, or, in cases of the owner's unwillingness or incapacity to do so, the capacity of the state to perform works on his behalf. But the most deficient sector of the national regulations concerning the preservation of the historic monuments was the one of the financial and fiscal support for carrying conservation work, both for individuals or for private non-governmental bodies. As a matter of fact, no relationship of any kind, no strategy or structures related to the co-operation with the public or educational provisions in this respect were provided.

- 3 The protection and preservation of movable and immovable items (historic buildings)
- 4 The 1997 Ordinance more than the 1994 one stipulates that state budget can finance all kind of preservation activities, starting from studies and inventories up to restoration and site enhancement (provision of acces, parkings or public facilities, lighting, etc. On the other hand, the latest ordinance allows state budgeting for private monument conservation. This latest provision is not yet into force because of the lack of methodology and criteria for the public expenditures. This soon will be settled.
- 5 Financial provisions for historic building restoration are provided in: The State Budget Annual Law (through the budget of the Ministry of Culture), The Local Tax Law (provisions concerning exemption for land use tax and building tax to historic monument's owners), The Sponsorship Law (deductibility of sponsoring from the profit tax up to 10% from its level).
- 6 The State Budget Annual Law comprises a chapter for the preservation of the architectural heritage (some 0,03% of the GNP, at an average of 15 Mil. USD/year), local budgets allocate each year less than 25% of the state budget expenditures on restoration, with an extra of some 10% added to restoration by the Department for Religious Cults and bishopries. Private sources are less relevant at national scale, being more important in the Capital, Bucharest, where they compete the local budget for restoration.
- 7 The forms of stimulative measures are exclusively the the tax exemptions mentioned above. The situation will change according to the provisions of the new legislation now being debated in the Parliament.
- 8 No compensation is available except of the tax relief for non-commercial use of monuments.
- 9 Penalties for disregard for proper maintenance are provided (fines). The State is the beneficiary of the fines.

I will shortly send a fax and e-mail with the text of my presentation:  
**INCENTIVES FOR HISTORIC BUILDINGS CONSERVATION IN ROMANIA.**

Sincerely yours and looking forward to meet you,

Sergiu Nistor

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Spain  
Maria Rosa Suárez-Inclan Ducassi

## PROTECCION OF CULTURAL GOODS. QUESTIONNAIRE

### María Rosa Suárez-Inclán Ducassi. Spain

1. - *Question.* - *Is there any law that explicitly relates to the protection and preservation of cultural goods? (Full title and year when it came into force)*

**Answer.** - 1. - Law of the Spanish Historical Heritage (LPHE) 16/1985 of June 25<sup>th</sup> (Official State Gazette of June 29<sup>th</sup>, 1985)

And also the following provisions:

2. - The Spanish Constitution of 27 December 1978 (Arts. 9, 44, 46, 48, 50, 148 and 149)

3. - Law 7/1985 of 2 April, regulating the Legal System for Local Entities Law 7/1985 of 2 April, regulating the Legal System for Local Entities (articles 2 and 25)

4. - Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said LPHE, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>)

5. - Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

6. - Royal Decree 1/1992 of 26 June approved the Revised Text of the Law on Land Regulations and Urban Planning.

7. - Several Laws on the protection and conservation of cultural goods, as well as on foundations and on land regulations and urban planning, have come into force in different Autonomous Communities of Spain since the above-mentioned Laws were promulgated.

2. - *Question.* - *Does this law encompass all problems related with protection and preservation?*

**Answer.** - Yes, in general terms the Law of the Spanish Historical Heritage (LPHE) of 1985 encompass all problems related with protection and preservation. With respect to historic towns article 20 of puts the protection of historic cities under the control of urban measures based on the Laws on Land Regulations and Urban Planning. In article 21 it states that urban planning will include the classification of all buildings, interior and exterior areas, other significant structures and natural components, as well as the definition of the types of intervention possible. Full protection will be provided for those items classified as having outstanding value, while planning instruments will set the level of protection for the rest. Remodeling is allowed on an exceptional basis provided that it represents "an



improvement in the relations with the urban environment of the area” and “avoids degrading uses”. In any case, the existing land divisions must be maintained. Replacements are allowed exceptionally if they contribute to “conservation of the character” of the complex as a whole.

**3. - Question.** - *What areas of protection and preservation of heritage are regulated by this law?*

**Answer.** - The Law on Spanish Historic Heritage of 1985 (LPHE), along with the Portuguese Law of the same year, constitute a notable advance in terms of comparative law, especially because of the breadth of their definition of the concept of heritage (based on the Italian concept of “cultural properties”), and because of their systematic approach to its treatment in a single text versus the dispersion of regulations that continues to exist in other European countries, many of which continue to be governed by laws from the 1920s and 1930s and numerous regulations supplementing them.

**4. - Question.** - *Does this law encompass problems concerning financing, and stimulating measures for financing, related to the protection and preservation of heritage?*

**Answer.** - “Steps for Development” are contemplated in Section VIII of the above-mentioned Law on Spanish Historical Heritage of 1985.

**5. - Question.** - *If not, which laws, or acts regulate the mentioned problems? (what financial regulations relate to the protection and preservation of heritage and how do they relate in terms of the useful benefit of the heritage as well as in terms of stimulating measures and financial exemptions for actual participants in the protection and preservation of heritage – name the ordinance and the area that it regulates)*

**Answer.** - The foreseen “Steps for Development” contemplated in Section VIII of the above-mentioned Law on Spanish Historical Heritage of 1985 are developed in the following provisions:

Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>). They are even more developed and updated in the Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

Also, Income Tax and Corporation Tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax reductions foreseen by the former. For instance, Income Tax Law 18/1991 of June 6<sup>th</sup>, which in Art. 78.4 (c) and (d) reduced deductions on investments made in the acquisition, conservation, etc., of assets declared to be of cultural interest by five percentage points.

Likewise, the General Budgetary Law of the State for each year may establish a list of preferential Patronage activities or programs, for which there may be a five-percentage increase in deduction percentages and in the percentage amount of the maximum levels of

deduction. Regarding Corporation Tax, this may alter the levy rate on the tax base (fixed at 10% by the Law of Foundations and Tax Incentives), as well as altering the amount foreseen in order to reduce the liquid quota if a Foundation or Association of public utility were to exclusively carry out free services (Art. 55 and Fourth Final Provision of the said Law).

Apart from the above-mentioned Law 30/1994 of November 24<sup>th</sup> of Foundations and Tax Incentives to Private Contributions in Activities of General Interest, there are other provisions in Spain, which complement and develop it, like the following:

Royal Decree 765/1995, of May 5<sup>th</sup>, which regulates certain matters relating to the System of Tax incentives for private participation in activities of general interest in accordance with the Final Provision 5<sup>th</sup> of the said Law of Foundations.

Royal Decree 3167/1995, of February 23<sup>rd</sup>, which regulates the State Sphere's Foundations.

Royal Decree 589/1984, of February 8<sup>th</sup>, regarding Religious Foundations of the Catholic Church.

The provisions of the Law of Foundations apply notwithstanding whatever may be established by Agreements with the Catholic Church, Cooperation Agreements and Conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to Foundations created or developed by the same.

**6. - Question.** - *Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budgets in relation to other resources, etc.)*

**Answer.** - The total amount of public spending specifically for the protection, conservation, study and rehabilitation of historic heritage both by the State and Autonomous Communities as well as Local Corporations accounts for 15 to 16% of public spending on culture, amounting to approximately 0.2% of total public spending.

Of this total amount, approximately 31.35% is provided by the State; 44.56% by Autonomous Communities; 6.13% by Province and Island Councils; 6.54% by City Councils of more than 50,000 inhabitants; and 11.42% by City Councils of less than 50,000 inhabitants.

Aside from these public funds, the Church contributes from its own resources a slightly lower amount than Autonomous Communities. To this amount, the investments made by entities such as Banks, Savings Banks and Foundations should be added. Adding together these and the previous contributions, the approximate percentages of each of the above mentioned investment sources are as follows: State, 22.30%; Autonomous Communities, 31.70%; Regional and Island Councils, 4.36%; City Councils of more than

50,000 inhabitants, 4.65%; City Councils of less than 50,000 inhabitants, 8.13%; Church, 26.78%; Banks, Saving Banks and Foundations, 2.8%.

Financial contributions by private individuals must also be taken into account, these being particularly difficult to assess because their primary purpose is for ordinary maintenance. Many restoration, conservation or rehabilitation works of cultural properties are taken on by private individuals who obtain government subsidies covering a varying percentage of the total cost of the required investment (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

**7. - Question.** – *Forms of stimulating measures (if they differ according to category of users, owners, constructors, restorers, and state who it relates to) and what ordinances regulate the following: subvention, tax exceptions, customs exceptions, loans with low interest rates, other stimulating measures*

**Answer.** – The following are the most important stimulating measures included in the legal provisions referred in answers to questions 1 and 5:

- 1) Relating constructors and firms involved in public works, as well as restorers, owners and holders, the Law establishes preferential access to official credit for funding, public works, conservation, upkeep and rehabilitation, as well as archaeological prospectuses and excavations carried out in areas declared to be of cultural interest. In order to do this, the Public Administrations may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
- 2) As regards public works built and development by private persons by virtue of State dispensation without financial contribution from the State, 1 per cent of the overall budget shall be applied to funding conservation or enrichment works for the Spanish Historical Heritage, preference being given to the works themselves or they immediate surroundings. An exception is made in the case of public works with and overall budget under 100 millions pesetas, with affects State Security and the security of public services. The Ministry of Education and Culture drafts a yearly Plan for Conservation and Enrichment debited to the said funds. In order to execute the projects and programs one must request cooperation from the Administration.
- 3) Debt payment in different taxes: Succession and Gift Tax, Capital Gains Tax, Income Tax and Corporation Tax may be paid by handing over assets belonging to the Spanish Historical Heritage which are registered at the General Registry of Assets of Cultural Interest or included in the General Inventory. In such case, the said assets shall be appraised, for this purpose, by the Board of Classification, Appraisal and Export of Assets belonging to the Spanish Historical Heritage.
- 4) Exemptions and other benefits: Assets belonging to the Spanish Historical Heritage registered in the above Registry and Inventory are exempt from Income

Tax. These assets may be reappraised for tax purposes up to their market value, being exempted from increased capital tax, unless they are part of the holder's floating assets. Likewise, the following are exempt from Local Real State Tax:

- Monuments and gardens each declared to be assets belonging to the Spanish Historical Heritage;
- Those classified as "specially protected" by the urban development plan for archaeological areas;
- When included in classified Historical Sites, those at least 50 years old which receive complete urban protection;

There is an exemption from other local taxes on property or its use and conveyancing when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation works on Real State declared to be of cultural interest.

These exemptions shall be applied in the terms established by respective municipal regulations.

5) Tax deductions for natural persons concern the amount of Income Tax: 20% of investments carried out in the acquisition of assets registered at the General Registry of Assets of Cultural Interest, if the asset remains available, to the purchaser for at least three years and notice of the conveyance is given to the said Registry.

In any case, this deduction shall not exceed 30% of the tax base.

- 6) Tax deductions for legal persons concern the deduction in the liquid quota of the corporation tax:
- 15% of amounts assigned to the acquisition of assets registered at the General Registry of Assets of Cultural Interest, with the requirement established for natural persons.
  - 15% of amounts used for conserving, repairing, restoring, promoting and exhibiting assets registered at the above Registry with the same requirements as for natural persons.

7) Tax incentives for private contribution in activities of general interest:

The Spanish legal system regulates private financial contribution for the conservation and restoration of Monuments through the State, other public entities, establishments, institutions, foundations or associations, including temporary "de facto" associations for the administration of funds classified as or declared to be charitable or of public utility by the relevant administrative authority. Contributions

of this matter may be made directly by natural or legal persons which in most cases do not bear the importance of foundation, both in the quantitative and qualitative terms, and are currently governed by the same legal text regulating foundations as a legal figure.

Further more, large financial companies, to name an example, do not assign assets directly for these purposes but instead, in the case of an activity which is beneficial, both in social and tax terms, with a more or less continuous nature, set up a Cultural Foundation to adequately invest the said capital, e.g. BBV Argentaria Foundation and Banesto Foundation, as well as Saving Bank Foundation, etc. As may be seen, in nearly every case, behind a large Bank there exists a Foundation with the same name.

The tax system for foundations registered at the Foundation Registry and associations declared to be of public utility has two important aspects:

- 1) Corporation tax: The above-mentioned entities shall be exempted regarding the results obtained in activities which represent their company purpose or specific aim, as well as capital increases derived both from acquisition including those from non-gratuitous transfer, as long as either are obtained or carried out when fulfilling their purpose or specific aim. They are also exempt from tax on issues such as membership fees, grants, subsidies and cooperation agreements. Furthermore, Art. 50 of the Law on Foundations points out how the tax base is adjusted according to certain items stated therein, since they may carry out other economical activities not related with their specific aim.
- 2) Local taxes: These entities are exempted from Real Estate Tax regarding the state they hold. They are also exempt from Tax on Commercial and Professional Activities regarding the activities representing their company purpose or specific aim.

Concerning the tax system for contributions made to non-profit entities, we have to distinguish the donators between natural and legal persons:

If *natural persons* make the contribution, a deduction in the amount of Income Tax corresponds to the following:

- 20% in pure and simple gifts of assets belonging to the Spanish Historical Heritage (registered at the General Registry of Assets of Cultural Interest, or included in the General Inventory) or gifts of works of art with quality guaranteed in favor of entities with the aim, amongst other ends, of developing and promoting artistic heritage and which apply the said works to public exhibition. The amount of 20% shall be applied to the value of the assets bestowed according to official appraisal carried out by the Board of Classification, Appraisal and Export.
- 20% in pure and simple gifts of assets which must be part of the bestowing entity's material assets and which contribute to fulfilling activities according to

their purposes. Any increase or decrease in capital, which may arise in the event of gifts of Assets belonging to the Spanish Historical Heritage and Works of Art, shall not be taxable.

- 20% in amounts bestowed for fulfilling activities or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage which are registered at the Registry of Assets of Cultural Interest or are included in the General Inventory. Membership dues are included under this heading as long as they do not involve services offered to members.

In all cases, the above deductions shall not exceed 30% of the tax base.

If contributions to non-profit entities are made by *legal persons*, deductions in the Tax bases of Companies Tax are the following:

- Up to 30% of the taxes, or 3 per 1,000 of the annual volume of sales in the case of gifts of assets belonging to the Spanish Historical Heritage and Works of Art, with the same conditions and requirements as for natural persons.
- Up to 10% of the tax base, or 1 per 1,000 of the annual volume of sales in gifts to material assets of the bestowing entity, the fulfillment of activities according to its purposes, or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage with the same requirements as for natural persons.

The treatment given to increases or decreases in capital ensuing for a gift of assets belonging to the Spanish Historical Heritage, Works of Art and assets of material capital for the bestowing entity, is similar to that stated above regarding natural persons. In some cases as in others, the deduction may be increased by 5% (both regarding deduction percentages and the deductible limit of the tax base) if the gift is made for any of the preferential Patronage activities or programs pointed out by the General Budgetary Law of the State of that year.

The tax system for other business cooperation activities is as follows:

Acquisition of works of Art to be bestowed on the State and other Public Entities, as well as foundations and associations of public utility may give rise to deductions, both on Corporation and Income Tax (the latter in the case of entrepreneurs and professionals subject to direct tax evaluation) as long as a series of requirements are fulfilled, such as:

An undertaking to convey the asset in 5 years; once the offer is accepted it becomes irrevocable; the offer must be made the following month after purchasing the asset; until it is conveyed it may be publicly exhibited and investigated; the Administration shall decide of the value of appraisal which shall prevail over the value of acquisition if the latter is higher; the deduction shall be carried out yearly by equal amounts during the period between the undertaking of the offer and the actual conveyance, with a maximum limit per operation. In the case of entrepreneurs and professionals, the said limit shall refer to the share of the tax base regarding net income derived from the relevant business or professional activity.

**8. - Question.** – *In what way, and on the basis of which ordinances, is compensation for different forms of use of heritage regulated?*

- form of use
- method of payment, type of compensation
- to whom does the income belong
- how is it allocated

**Answer.** – The owners of properties declared of cultural interest who obtain income from their utilization are not required to pay more taxes or make other payments to the Administration than those that would ordinarily be paid as income tax, corporate tax or those corresponding to any other business activity.

As it has been said, subsidies may be obtained from the Public Administrations covering a varying percentage of the total cost of the required investment for conservation and rehabilitation of cultural properties (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

As it has also been stated, the Law establishes preferential access to official credit for funding, conservation, upkeep and rehabilitation, carried out in areas declared to be of cultural interest. In order to do this, the Public Administration (at national, regional and local level) may establish, by means of agreements with public and private entities, the conditions of using credit benefits. Credit allocation for the areas of integrated rehabilitation are specified under article 2 of the Royal Decree of 14 May 1993. Also Regional and Local Administration develop different plans in this field.

Other compensations have been sufficiently described in the answer to question number 7.

**9. - Question.** – *Is there a penalty for negligent relations, or disregard, towards heritage? (Not intentional devastation)*

- to whom does the income belong
- how is it allocated

**Answer.** – Article 36 of the LPHE establishes that:

1. - Properties belonging to Spanish Historic Heritage must be preserved, maintained and safeguarded by their owners or by persons vested with specific rights ("*derechos reales*") towards the properties or the holders of such properties.
2. - The use of properties declared of cultural interest as well as the moveable properties included in the General Catalog will be subject to it not endangering the values advising their preservation. The competent authorities responsible for the application of this Law must duly authorize any change in use.
3. - When the owners or persons vested with specific rights ("*derechos reales*") towards the properties declared of cultural interest or properties included in the General Catalog fail to execute the required actions in compliance with the obligation envisaged in Section 1 of this Article, the competent Administration, following a warning to the interested parties

requiring said actions, shall be empowered to order its subsidiary execution. In addition, it may grant financial aid in the form of a returnable advance, which in the case of immovable properties shall be listed in the Land Register. The competent Administration may also execute any necessary works directly if so required for the most effective preservation of the properties. In exceptional cases, the competent Administration may order moveable properties to be deposited in public centers until such time as the causes giving rise to such a need are no longer present.

4. - Non compliance with the obligations laid out in the present article will be cause on the grounds of social interest for compulsory expropriation of the properties declared of cultural interest by the competent Administration.

Article 37.3 states in turn that:

“The risk of destruction or deterioration or use inconsistent with the values represented by a property shall be justifiable cause on the grounds of social interest for expropriation by the competent Administration of any properties affected by a declaration of cultural interest.”

**10. - Question.** – *Thoughts concerning the mentioned legal acts and ordinances:*

- *are the areas of protection and preservation of heritage properly protected in a legal sense*
- *if not, why*
- *is there proper implementation of what is prescribed*
- *other comments and recommendations*

**Answer.** – In general terms it may be considered that the areas of protection and preservation of heritage are properly protected in a legal sense. But in spite of the existence of a legal framework-regulating heritage that is comparatively very advanced, it can be observed that:

It is obvious that Heritage cannot be contemplated as an isolated item but inside the global scope of sustainable development as a nonrenewable resource of transcendent importance in many areas, including the economic. Therefore, it is not only necessary to consider heritage in both its material and spiritual dimensions, covering simultaneously cultural and natural values. It is also required to deal with worldwide long-term management by coordinating all the resources and converging needs, in a context of national and international ecological management serving quality of life. Thus, the different legal provisions and policies dealing with cultural and natural heritage, tourism, public works, industry, social welfare, etc should be combined so that they may be applied in a coordinated way.

Private heritage must be mainly supported by private funds, but it is also convenient to continue to strengthen cooperation between public and private organizations. Within this scope the contribution of public resources becomes necessary, especially within the framework of housing rehabilitation as it is specified under article 2 of the Royal Decree of 14 May 1993. The measures concerning deductions in the amount of both Income and



Companies Tax contemplated in the Law on Foundations and Tax Incentives of 1994 (even though it may be considered an advanced an positive instrument) do not seem to be sufficiently attractive in practice to encourage enough participation. It is so indicated by the fact that many owners of cultural properties are continually urging the authorities to extend benefits beyond the usual limits (both regarding deduction percentages and the deductible limit on the tax base).

It would also be necessary for owners to comply more widely with the social function intrinsic to cultural properties. It should also be emphasized that town or city councils often do not take subsidiary action allowing them to execute the required works and pass on the cost to the property, and very rarely do they resort to compulsory expropriation. This fact, together with the possibility of technical ruin introduced by the Law on Historic Heritage of 1985 (in accordance with the Granada Convention of the same year) and article 21 of this law results in some buildings being declared ruins even in protected cities and neighborhoods, with their consequent demolition.

Under the LPHE, protection of the heritage of historic centers is implemented through what are termed the Special Plan for Protection, the General Plan, and the Subsidiary Regulations, which are based in the Laws on Land Regulations and Urban Planning. Despite the provisions of the LPHE, quite often these plans fail to guarantee in practice an equitable distribution of obligations and benefits. Sometimes they also fail to take into account the financial measures necessary for future administration of the plans or not enough consideration is given for future difficulties in obtaining new public resources for the maintenance of the protected properties. According to the LPHE each declaration of a historic city as a historic complex implies the inclusion of a large number of protected buildings. But another problem is that, as it has been said, the Law on Historic Heritage places protection of these buildings under the control of urban regulations that do not correspond to a conservationist philosophy of consolidated urban planning. Thus, in practice the urban inventories of protected items tend to include an insufficient number of buildings belonging to cultural heritage. So, despite the Law of 1985, in certain cases the permissiveness regarding the replacement of characteristic elements by modern buildings intended to be emblematic, as in the case of many museums and other large public buildings, lays the foundation for the destruction of characteristic parts of the historic cities. Town council members responsible for urban planning, speculation, the interests of building firms, and quite a considerable number of architects foster this practice, which results in an irreparable loss of unique and characteristic heritage.

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ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Sweden  
Thomas Adlercreutz

ADLERCREUTZ THOMAS - SWEDEN

**Answers to protection of cultural goods questionnaire**

1. Yes, the *Cultural Monuments (etc) Act*, which came into force 1 January 1989
2. No
3. Monuments of archaeological and architectural nature, incl. special provisions for property of the Church of Sweden. Also provisions regarding export and return of cultural movable property.
4. It encompasses provisions for economic compensation in certain cases of infringement on private property rights, but no provisions for stimulating measures.
5. A regulation issued by Government in 1993 under the title (in translation) *Regulation concerning grants for management of cultural property*.
6. Within a total sum of ca. SEK 230 million, state grants can be issued to cover 90 % of works to listed historic buildings and 50 % of other cultural property.
7. The state grants are the chief means of stimulating the upkeep of cultural property. Grants from the European Union can be co-ordinated with Swedish public funds for the running of certain projects. There are a few tax rules, which can be construed as favourable to possessors of cultural property, but no system of general tax subvention.
8. The question is not quite clear to me. As mentioned under 4 infringement on property rights, e.g. restrictions to the current or permitted use of property, could make the State bound to compensate the injured party. The compensation would be monetary and would be paid to the party or creditors with a lien on the property. It could be paid either as a flat sum or through annual reimbursements.
9. Yes, violations to the *Cultural Monuments (etc.) Act* may lead to imprisonment or penalties. Penalties fall to the State.

Stockholm, 29 December 1999

Thomas Adlercreutz