

HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.
BALANCE BETWEEN LAWS AND VALUES



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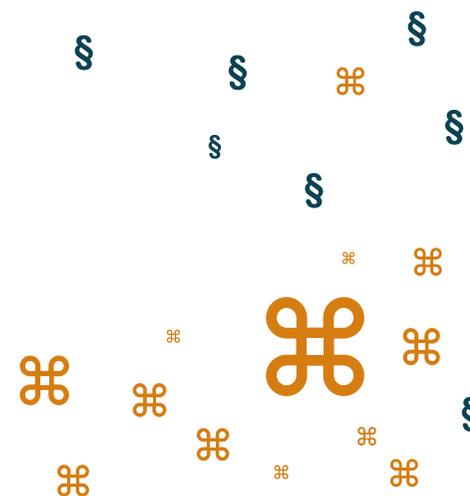
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CONSERVATION OF CULTURAL HERITAGE IN TURKEY: DEVELOPMENT OF LEGAL RULES AND INSTITUTIONS

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The aim of this article is to give an overview of the chronological development of the legal rules and regulations concerning the protection of cultural heritage in Turkey; to give a brief description of their concepts; overview of the organizations and institutions related to the preservation of cultural heritage, together with their functions and responsibilities.

The article discusses on the important issues of the management and maintenance of cultural heritage in Turkey as well as tackles on the problems of financing the conservation efforts.

Chronological development of heritage legislation

⌘ Ottoman Period. The concept of conservation of cultural heritage started together with the modernization movements in the Ottoman Empire in 1840s.

1869 *Ancient Monuments Decree*. The decree was amended in 1874, 1884 and 1906.

1912 *Conservation of Monuments Decree*. By this decree the decentralization of preservation activities was introduced.

1917 *Ancient Monuments Conservation Council* was established.

⌘ Early Period of Turkish Republic. Several new institutions were founded and legal acts enforced in parallel with the secularization process of the State.

1933 *Directorate of Museums and Commission for Conservation of Monuments* were established.

1951 *The High Council for the Ancient (Real Estate) Artefacts and Monuments* was established. The council took the lead in working out the principals and concepts of the contemporary concept of "conservation of cultural heritage".

1973 *Law of Ancient Monuments* was enacted.

1974 *Establishment of ICOMOS Turkey National Committee* by an ordinance of the Ministry of Culture.

⌘ Recent Developments. The notion of cultural heritage and the concept of "site" rather than single artefact or monument is widely accepted and adopted.

1983-2011 *Conservation of Cultural and Natural Heritage Act* came into effect with major amendments made in the years 1987 and 2004. In 2011 conservation of "natural heritage" was separated and the authority and responsibility for those transferred to the Ministry of Environment and Urbanism. Regional Boards for the conservation have been established.

Local governments are empowered both administratively and financially, being more active in conservation and restoration activities.

Definitions

A *Cultural Property* should have the following characteristics according to the National Law:

- ⌘ Authenticity, cultural and scientific value.
- ⌘ Origin from "historic" or "pre-historic" times.
- ⌘ Represent social and cultural life, arts, folklore, etc., of a specific period.
- ⌘ Situated on ground, underground or underwater.
- ⌘ Tangible, immovable (generally) or movable physical assets.

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Architectural heritage:

Buildings

- ⌘ *Monuments*: temples, churches, mosques, palaces, amphitheatres and related public buildings.
- ⌘ *Traditional houses*: residential units and houses of old times that have architectural and cultural attributes.

Architectural heritage is grouped in two grades:

- ⌘ *1st grade*: the monuments and similar public buildings, where the holistic character, authenticity and the identity has to be preserved. No major interventions or alterations are permitted. A new function can be assigned to the building; however, the originality of the cultural asset should not be disturbed.
- ⌘ *2nd grade*: simple buildings and residential units may be re-functioned and alterations of the interiors are allowed. The exteriors and the facades of the buildings must be preserved.

Sites

Sites are conservation areas and are divided into four categories:

- ⌘ *Archaeological Sites*. These sites are the remains of various civilizations both from pre-historic and historic (antique) times, dating in general from the times before the creation of the Ottoman Empire that is the end of 13th century.
- ⌘ *Historic Sites*. There are places and locations where a historic event has happened and the site is a carrier of memory of the society or group of people. There usually stands a physical element or an architectural object that reminds the historic event.
- ⌘ *Urban Sites*. These are the parts of cities or settlements that have an authentic/historical nature, represent the traditional fabric of a way of living and/or culture. These clusters of dwellings and buildings of a certain historical period have significant cultural value.
- ⌘ *Urban-Archaeological Sites*. Such places are locations of both urban and archaeological categories, overlapping and sort of mixed with each other.

Archaeological Sites

The Ministry of Culture is entitled to categorize the archaeological sites:

- ⌘ *1st Grade Archaeological Site*: ruins and remains of cultural heritage are clearly observed and preserved. Only scientific excavation and restoration performed by the museums or archaeological excavation teams is permitted.

- ⌘ *2nd Grade Archaeological Site*: the precious archaeological sites that are *de facto* living urban areas or parts of a human settlement.
- ⌘ *3rd Grade Archaeological Site*: potential archaeological sites with a strong evidence that remains could be discovered if any excavation is conducted. Urban development in such areas is not permitted unless a proper examination or preliminary excavation is carried out by the museum archaeologists.

Buffer Zones (protection zones)

A protection zone is provided around the listed entity (monument, traditional house, or similar architectural object). Buffer zones cannot be created around archaeological sites due to the provision of the law, but there is a need for this and the law has to be amended to enable such protection.

Heritage institutions

The Ministry of Culture and Tourism and its local branches:

The main public institution in Turkey responsible for the preservation and conservation of cultural heritage is the Ministry of Culture and Tourism and under its authority General Directorate of Cultural Heritage and Museum.

Besides the General Directorate located in the capital, there are regional offices that are in charge of conservation issues in the districts. Every regional office has also a decision making body Regional Board for the Conservation of Cultural Heritage that is composed of architects, urban planners, archaeologists, art historians and lawyers.

Municipalities, the local public authorities of big cities and districts are authorized and responsible for the implementation and realisation of conservation decisions of the Regional Board. For this purpose, there are KUDEB Units (Conservation, Implementation and Supervision Office) established at almost every municipality.

Management and maintenance issues

- ⌘ **Owners**: the preservation of a listed cultural property is the responsibility of its owner or holder. He/she is obliged to preserve the authenticity of the property and to keep it in good condition. If these obligations are not fulfilled, a legal action may be started against him/her by the public prosecutor.
- ⌘ **Municipalities**: the local administration has also a responsibility to provide all necessary measures for the safeguarding of the cultural heritage. Among these are the physical delimitation, consolidation and reinforcing required for the proper preservation of the asset. It is the duty of the municipalities to prepare urban conservation and gentrification plans, and to implement them for the future liveability of the area.

- ⌘ Ministry of Culture and Tourism: The Ministry is the national organisation for the overall administration and supervision of all types of cultural heritage. By law, the state is the sole owner of any archaeological remains and elements within the boundaries of the country regardless of being underground, over ground or in water. In Turkey the state as the representative of “humanity” is the ultimate owner of the cultural heritage. Private persons or organizations may be the possessors of the heritage with the permission of the state and under its surveillance. Any intervention to the protected monument or site, whatever the nature and type, has to be in accordance with a conservation design or plan consented by the responsible bodies of the Ministry. The Ministry may give financial aid or loan to those individuals who intend to restore their protected buildings.
- ⌘ Archaeological areas: as stated above the excavation, conservation and restoration of archaeological sites are controlled and regulated by the Ministry. The artefacts found can either be removed to a museum or kept in-situ depending on the conditions of the site and according to the decision of the Regional Board for the Conservation of Cultural Heritage.
- ⌘ Monuments: monuments are the buildings that have been built mainly for public use and are of outstanding architectural value and represent their era, for example temples, amphitheatres, public baths, palaces, churches, mosques, etc. Such cultural heritage properties are grouped as 1st grade buildings, meaning that they require utmost attention and no alteration is allowed during the restoration process. Drawings of the existing situation, conservation and restoration plans have to be examined and ratified by the Regional Boards for the Conservation of Cultural Heritage. If a new function is assigned to such a monument, it should never disturb or alter the monumental character of the property. For such monumental buildings detailed designs and often technical reports are required as most of them are centuries and even millenniums old artefacts. Careful handling is compulsory and UNESCO, ICOMOS and other international conservation principles have to be followed.
- ⌘ Traditional houses: traditional houses or such dwellings are advised to be preserved as part of the clusters to preserve their historical context. The historic urban fabric reflects the life and culture of old civilizations. The protected vernacular buildings may be given new functions and uses when necessary, since the viability of them depends upon proper management and good maintenance. They are usually grouped as 2nd grade buildings, i.e. changes in the interiors and layout are tolerated, as long as the authentic exteriors as well as the stability of the structure is maintained. When only minor repairs are targeted, the written permit of the local museum and the municipality is sufficient, no extra efforts like designs or plans are asked. Otherwise drawings of the present situation, restoration designs are compulsory. In general,

the designs are a remarkable financial burden to the owner and skipping this obligation often leads to unwanted and also illegal physical modification of the cultural property.

- ⌘ Disappearance of listed properties: It might look strange but this has been a big issue in the field of the cultural heritage in Turkey. The Directorate and the Regional Boards for Conservation of Cultural Heritage have been several times notified that certain monument or traditional house has disappeared from existence. In such cases the owner or the holder demands the removal of that specific cultural property from the register of monuments, consequently this removal will enable the holder of the property to develop freely without any limiting criteria.
The reasons usually given for the unintended disappearance are: *demolished by natural causes like excess rain, storm, earthquake, or being burnt or knocked down by vagrant, illegal stray people*. If the delinquent is not defined, the owner or the holder would not be held responsible for the irresponsible attitude towards the listed property. Unfortunately, this is a designed scenario. Normally the case is taken to the court by the public prosecutor, but such a consequence has not been a discouraging factor for the people who intend to destroy their property.

Banning and prohibiting have not proved to be effective policies in conservation process. One potential solution is to reduce the burden of the maintenance of cultural properties and to inform the owners of the opportunities how to take advantage of the historical and cultural values. One effective way has been the rehabilitation plans and gentrification efforts of the whole neighbourhoods by the municipalities, thus increasing the cultural and real estate value of the property. Such investments and implementations could be done by the local administration.

Financial resources

Conservation of a cultural property is a difficult and costly process. The expenses of maintenance and repair have either to be generated by the property itself (rent, revenue, similar income, etc.) or there should be an outside resource to back-up or supply the amount needed. The first way is unfortunately very seldom an option and outsourcing is unescapable.

Outsourcing for conservation of cultural heritage has of course a conceptual and legitimate base, which is that we, the inheritors of old civilizations, are responsible and even obliged to keep them in good condition and to transfer the heritage to the future generations. What I mean by “we” is the general public, central and local governments, NGOs, citizens, and all others.

For this purpose, Turkish government has enacted a law which allocates a certain percentage of the annual real estate tax to be spent on the preservation of cultural heritage by the local administration. This has been a good start of financial aid to the conservation process, but still other resources have to be found.

The Ministry of Culture and Tourism is trying to give some financial help to the citizens for their preservation efforts but that is very limited. Some quasi-public organizations like the “Mass Housing Authority” are involved in urban renewal and gentrification projects. The implementation of their projects has still aroused concerns and serious debates as the preservation of authenticity and paying respect to cultural heritage principles has remained in the background in several cases.

In the rural areas many of the archaeological sites are on privately owned estates, and it is very costly to expropriate those lands. Another measure to acquire the sites is the “barter” instrument – an equivalent piece of land is given to the owner in exchange for the archaeological parcel in question. The difficulty in this mechanism is of course the limited availability of plots of similar value in the ownership of the public authorities.

Concluding remarks

Turkey is a country where numerous cultures and civilizations have trodden on, left remains and traces of valuable historic and architectural elements. In fact, it is one of the rare countries which exhibits and reflects such a great variety of diverse cultures over a long time span. The heritage inherited is an invaluable national richness, but at the same time a responsibility as well as a burden to preserve it in good way.

Looking at the history of the preservation and conservation processes in Turkey, one can see that there has been a gradual but continuous development throughout a period of approximately fifteen decades. There is no need to criticize the overall performance of heritage protection in the country, but I want to point out some of the important problems or failures in this context.

The administrators both at the national and local levels have not paid enough attention and importance to the conservation activities of cultural heritage. This has led to inadequate resource allocation for this field, and this is still causing the problems.

The people and the citizens of this land have not had the necessary respect and willingness to care, wider unconsciousness of the inherited cultural properties has led to savage destruction and sometimes plundering of the valuable artefacts and treasures. The leaders and politicians of the country have not introduced timely measures and mechanisms to prevent this destruction.

Laws and regulations are quite adequate, and the technical expertise level of the country is well developed. What is urgently needed is a campaign of “awareness raising” and “consciousness creating” among citizens, so that everyone believes in the value of the heritage of our predecessors and supports actively this goal.



Hagia Sophia in Istanbul. Patriarchal Basilica (537-1453), Imperial Mosque (1453-1935), Museum (1935- present). A good example of a well preserved monument.

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