

LEGAL SYSTEM FOR THE PROTECTION OF THE ENVIRONMENT OF MONUMENTS AND SITES IN CHINA

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Tightly related to the natural and cultural environment, monuments and Sites were generated in a certain period and space as the consequence of the continuous development and advancement of politics, economy, military, technologies and culture in a society. The conservation of monuments and sites is inseparable from their environment. Any change or damage occurred to the environment may result in depreciation of the monuments and sites due to the loss of historic information they have ever carried.

Legal system acts as an important approach to guarantee the preservation and conservation of monuments and sites.

Fundamental System for the Protection of the Environment of Monuments and Sites

Immovable cultural heritage in China are classified into units under the protection of governmental agencies of different levels. According to their historic, artistic and scientific values, 70,000 out of the existing 400,000 cultural heritage sites to be protected at the level of counties, cities, provinces and the nation were approved and announced by the people's government at the same levels, including more than 60,000 sites at the level of counties and cities, more than 7,000 sites at the level of provinces and 1,271 sites at the level of the nation. For these announced cultural heritage sites, protective zone and buffer zones for construction control have been delimited with signs and notices put up; record archives have been established and managed by specific organs or assigned fulltime personnel. Thus the fundamental system for the protection of monuments and sites and their environment were formed. The delimitation of necessary protective zones and buffer zones for construction control is the basis and precondition for the protection of monuments and sites as well as their environment and historic features.

Laws and Regulations for the Protection of the Environment of Monuments and Sites

The founding of the legal system for the protection of the environment of monuments and sites in China has undergone a long process of development and enhancement. In 1961, it was provided in the "Temporary Regulations for

the Administration of Cultural Relics" that protective zone should be delimited for protected cultural heritage sites; in 1963, it was provided in the "Temporary Measures for the Administration of the Protection of Cultural Heritage Sites under Protection" that the circumstance within the certain scope around the cultural heritage sites should be put under protection. In the "Law of the People's Republic of China on Cultural Heritage" issued in 1982, it was provided to delimit protective zone for protected cultural heritage site and buffer zone for construction control according to actual need; and construction projects that deform the environmental features of protected cultural heritage sites are impermissible. Besides, in the revised "Law on Cultural heritage" of 2002, specific items were put up for the protection of the environment of protected cultural heritage sites.

In Chinese legal system, laws, administrative regulations, local regulations and general regulations on the protection of the environment of protected cultural heritage sites deal with various aspects including surroundings on the ground and underground, atmosphere, water and cultural circumstance, etc. The founding of the initiatory legal system on the protection of the environment of protected cultural heritage sites provided solid legal support to safeguard the environment and historic features of the sites.

1 Laws on Cultural Heritage

It was provided in the "Law on the Conservation of Cultural Heritage" issued in 1982 that no additional construction project may be undertaken within the protective zone of a protected cultural heritage site, and for the first time that a certain area should be delimited around the site as buffer zone for construction control on the basis of the actual needs for conservation practices. Construction of new buildings or other structures shall not deform the environmental features of the site. This has formed the legal basis for the protection of the environment of monuments and sites.

More items were added to the revised "Law on the Conservation of Cultural Heritage" issued in 2002, such as "such activities as explosion, prospecting or excavation are forbidden in the vicinity of a protected cultural heritage site and its protective zone or buffer zone for construction control; in case of special need, consent must be obtained legally." and "in the protective zone or buffer zone for

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construction control of a cultural heritage site, no device that causes pollution to the site or its environment shall be installed, and no activities that potentially threaten the safety or the site or its environment shall be carried out; existing devices that harms the site or its environment must be removed or treated within a given time limit. These items closely joined with laws on environment protection have provided important legal measures for the protection of environment of monuments and sites.

2 Laws on Environmental Protection and Related Measures

The conservation of “cultural heritage site” is a major component of Chinese laws on environment protection. Moreover, environment of monuments and sites is defined as including extensive environmental elements, such as atmosphere, water, soil, mineral recourses, forest, grasslands, wildings, cities, countryside and etc.

It was provided in the “Law on Environment Protection” issued in 1989 that “it is the responsibilities of people’s government of all levels to take appropriate measures to protect representative ‘cultural heritage sites’”. Meanwhile, “no industrial facilities that pollute the environment shall be installed in scenery and interesting areas or other regions in need of particular care; for construction of other facilities, the pollutant emission shall not exceed provided basic permissible discharge; those existing facilities with pollutant emission beyond the basic permissible discharge must be removed or treated within a give time limit.”

In the revised “Law on Air Pollution Prevention” of 2000, it was provided that “no industrial facilities that pollute the environment shall be constructed nearby cultural heritage sites; those existing facilities with pollutant emission exceeding the basic permissible discharge must be removed or treated within a given time limit”

In the “Law on the Prevention of Environment Pollution by Solid Exhaust” issued in 1995 it was provided that “no facilities shall be constructed for intensive collection or disposal of industrial solid exhaust and daily garbage in scenery and interesting areas and regions in need of particular care. It was provided in the “Law on the Prevention and Control on Water Pollution” that “no devices of additional sewage draining exits shall be installed in the water of scenery and interesting areas and protective zones of protected cultural heritage, as well as water carrying special economic or cultural values”.

In the “Law on Mineral Recourse” amended in 1996 it

was provided that “no mineral recourse should be exploited in the scope delimited by the government where immovable cultural relics or monuments under protection of national level are located”, which effectively safeguarded the cultural heritage sites threatened by stratum sinking caused by mining exploitation

What’s more, “Law on Advertising” also included such provision that “no outdoor advertising shall be put up within the buffer zone for construction control of protected cultural heritage site or scenery and interesting areas”.

3 Administrative Regulations

In the “Rules for the Implementation of the Law on Cultural Heritage” issued by the State Council in 2003, concepts, content, purpose of delimitation, and procedures for approval for delimitation of protective zone and buffer zone for construction control of a protected cultural heritage site was specified. At the same time, it was provided that the people’s government is to take the responsibility to investigate and handle cases of construction of buildings or other structures that endanger the safety or deform the historic features of protected cultural heritage sites.

4 Local Regulations

There are two types of local regulations on cultural heritage sites passed or approved by provincial people’s congress and its standing committee, comprehensive regulations that specify the protective zones and buffer zones for construction control as well as protective measures for protected cultural heritage sites in the light of the actual situation of the province, and separate regulations where detailed and concrete guidelines and measures are provided for the delimitation of protective zones and buffer zones for construction control and conduction of conservation work for protected cultural heritage sites. The latter type, such as the “Rules on the Conservation of Dunhuang Mogao Caves in Gansu Province”, is more practical for operation and implementation.

5 General Regulations

Protection and conservation of cultural heritage sites and their environment are partially involved in some general regulations by national administrative institutes for cultural heritage and provincial people’s governments. It was provided that “in the buffer zone for construction control, the installation of any device which endanger the safety of cultural heritage or the construction of any building or structure of while the style, height, size and color are out of harmony with the environmental features of historical and cultural sites shall be impermissible”.

Achievements and Problems in the Environment Protection of Protected Cultural Heritage Sites in China

Abstract

Significant achievements has been made in the protection of protected cultural heritage sites along with their environment, as shown in the following aspects:

1. Protected Cultural heritage sites and the environment within a certain scope around them are well maintained;
2. Destructive behaviors conducted to the environment of protected cultural heritage sites are contained;
3. Some long-lasting problems that harm the protected cultural heritage sites and their environment were solved properly;
4. Environment of protected cultural heritage sites were improved and put under control under the framework of legal system;

One of main problems is that new architecture surrounding the protected cultural heritage sites built for the promotion of urbanization or the development of tourism has damaged the environment and historic features of the sites.

Improvement of Legal System and Strengthening the Enforcement of Laws and Regulations

Two points shall be highlighted. One is to step up the formulation of laws and norms with specific focus, and the other is to reinforce the supervision of the enforcement of laws and regulations.

Proposal on an International Charter on the Protection of Environment of Monuments and Sites by ICOMOS

An international charter focused on the protection of environment of monuments and sites by ICOMOS is suggested to make provision on the principles and policies, categorized conservation measures, supervision and international cooperation, and etc.

The protection of the setting of monuments and sites requires legal measures. Ever since 1963, it has been set out in the relevant legislations in China that a buffer zone has to be designated for each protected monument or site in order to preserve its setting. In the legal framework of protection in China, the national law, the administrative rules and regulations and the local legislations provide protection for cultural heritage both above and under the ground as well as their surrounding atmosphere, water, social setting and humanity environment. In accordance with the law, buffer zones have been designated for more than 70,000 monuments and sites protected at different levels based on their respective requirements for the protection of their settings, and the controllable areas have been defined in order to protect not only the monuments and sites but also their settings. As a result, great achievements have been made, but many problems have also remained to be solved at the same time. Therefore, the legislations need to be further improved, relevant criteria need to be worked out, and the law-enforcement and implementation of protection rules and regulations need to be strengthened. It is recommended that a charter concerning the protection of the setting of monuments and sites be developed by ICOMOS.