



HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.
BALANCE BETWEEN LAWS AND VALUES





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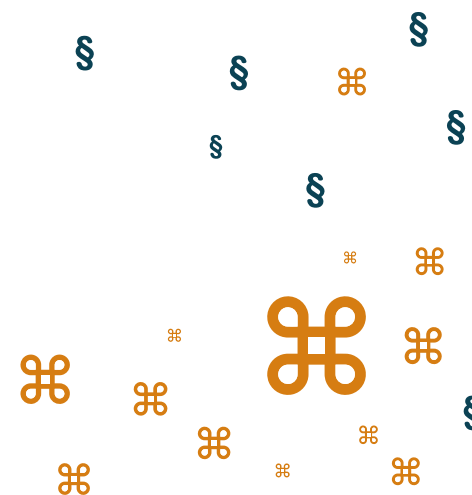
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DEVELOPMENT OF HERITAGE LEGISLATION AND INSTITUTIONS IN ESTONIA

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The article gives an overview on the development of heritage legislation and administrative system in Estonia. The article is in large extent based on Riin Alatalu's PhD dissertation *Heritage Protection in Transitional Society 1986-2002: From Nation's Conscience in the Estonian SSR into the Harasser of Private Owner in the Republic of Estonia*. Estonian Academy of Arts 2012.

The preamble of the Constitution of the Republic of Estonia declares that the role of the state is to preserve the Estonian nation, language and culture through the times. Such a preamble signals that heritage and culture are important for the state and its citizens even if the administrative and financial measures in place don't make it look so self-evident.

Heritage protection until 1940

The history of heritage protection in Estonia dates back to 1666 when the Swedish King Charles XI signed the order to protect old monuments and items because "the spirit of the time ruined them". However, there is not much evidence on the actual influence of this act. The territory of Estonia was conquered by Russia soon after and as heritage protection remained an unregulated area in the Russian Empire there were no significant legal activities in Estonia. The ideas and ideology of heritage evaluation developed in the scientific and historical societies. One of the first steps was the formation of the Commission for Protection of Architectural Monuments by Tallinn City Council in 1895, mainly to control the ongoing demolition of Tallinn medieval town wall.

Modern heritage legislation in Estonia dates back to the 1925 and 1936 Antiquities Acts that were based on the ideology of national self-determination. Typically for the time and European tradition, main attention was given to the archaeological heritage from the Iron and Viking Age and built heritage from the Middle Ages. At least from the 1930s serious debates were held on the Baltic German heritage and the first representative manor houses of the recently overthrown nobility were listed. Majority of the listed monuments were according to the rhetoric of the law "old, former, prehistoric or out of use". Especially the latter quality diminished the direct danger and need for

strict rules. Regulations were quite formal and the situation in the whole country was controlled by only one inspector working in the system of the Ministry of Education. Majority of the work was done on more or less voluntary basis by the Heritage Advisory Panel consisting mainly of Tartu University professors. Despite the decades of nationwide effort of collecting historical items and artefacts for the Estonian National Museum, the overall knowledge and respect for heritage was still evolving. The act from 1936 introduced the avocation of voluntary heritage confidants who were asked to safeguard local monuments and organise awareness raising events. The vocation was very popular among rural teachers and the number of confidants exceeded 300 by 1940.

Soviet period 1940-1991

Legislation

In 1947 the first Soviet decrees to protect heritage were put into force. Few heritage professionals took the initiative to protect as many ruins as possible to prevent them from demolition and to avoid the planned extensive reconstruction of demolished city centers. Although the decrees were enacted by Council of Ministers the declared principles were ignored and dozens of protected buildings brutally demolished. In retrospect these decrees still have historical significance as efforts to regulate heritage protection in an occupied territory.

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In 1961 the Estonian “Act on protection of historic and cultural monuments” was the first heritage act in the whole USSR. It was compiled by local officials and reflected local problems in the temporary period of liberalism. Several parallels with the pre-war legislation can be seen, including heritage confidants and expert-based Heritage Advisory Panel.

The protection of monuments had positive reputation with the Soviet government and at the same time was nationally significant. Heritage was one of the fields where Estonia could boast with special status and advanced ideology. Beside the first law of its kind in the USSR, also the first conservation zone was created in Tallinn in 1966. In fact the first conservation areas for Tallinn Toompea and Narva were created already in 1947, but this fact was later ignored. Estonia together with Latvia and Lithuania differed from the rest of the USSR as regards architectural and protection traditions and attitude.

The first “Act on protection of historic and cultural monuments” of the USSR was legislated in 1977, and a year later the same law with minor modifications was legislated in all Soviet republics. The new law regulated the main goals of protection and reflected the Soviet rhetoric. According to the law the responsibility for heritage was divided between a wide range of institutions including communities, kolkhozes, factories, schools, etc. The law demanded also that the responsibility for legacy should be shared with unions of protection of historic and cultural heritage. In the Soviet system these unions on different fields of activities were civil societies only by name, as they were controlled and censored by the Communist Party. The Estonian SSR was the only Soviet republic where a union for heritage protection was not formed. This fact became profitable in 1987 when the new born citizens’ movement, the Estonian Heritage Society, had to be registered. The Society played the leading role in the independence movement in the end of 1980s.

Administration

After WWII the responsibility for the monuments was divided between the Ministry of Culture (historical, archaeological and movable monuments) and the Committee of Construction (architectural monuments). Although the administrative regulations and methods were different, the list of monuments was common since 1964.

⌘ Architectural Monuments

The forerunner of the later State Inspection of Architectural Monuments was established as a small department already in 1944. In 1950 Scientific Conservation Workshop was formed as a base of future National Cultural Monument Design Institute (KRPI). By the end of the 1980s nearly 300 people worked in the biggest research institute of historical architecture and archaeology. In 1978 a special or-

ganisation Inrestauraator was created to coordinate the work of restorers from Poland who became the leading conservators in many places in the USSR.

⌘ Historical and Archaeological Monuments

The first department to administer archaeological and historical monuments was formed in 1949 in the forerunner of the Ministry of Culture. Four years later a State Cultural Monuments Protection Institute with two officials was formed. The Inspection underwent several changes. In 1976 a subordinating Scientific-Methodological Council of Museums and Cultural Heritage was formed. The Council was responsible for organizing archaeological excavations, consents on activities and research of the objects.

⌘ Movable Monuments

The protection of movable objects was organized since 1953 under the supervision of the Ministry of Culture. Some inspectors were working also in the municipalities. The 1977 USSR “Act on protection of historic and cultural monuments” and its republican analogues stated that it was forbidden to export from the USSR movable heritage and objects of artistic and historical value. In the 1970s there was a significant theft wave from Estonian churches and manors. As many stolen items were later found in several museums in St Petersburg, Estonian officials proposed to state in the Estonian law that export was even forbidden out of the Estonian SSR. Of course such a separatist amendment was not approved.

To maintain ideological control over people, a new type of monuments – documentary monuments – was defined. The aim of this new type was to register all privately owned rare books, documents, pieces of art, cult objects, tablatures, coins, jewellery, etc. The collection of rare objects now required a special permission. The idea of the law was to keep an eye on antiquaries and of course to control the artefacts of history. The new law was enacted when the whole Soviet Union was preparing for the Moscow Olympic Games in 1980. The games were spread between numerous cities and regions in the USSR, including the regatta held in Tallinn. Thousands of foreigners were expected into the closed country and to control the inflow of hard currency and possible export of treasures, a special Expert Group of Export of Cultural Objects was formed in Tallinn to control possible export items. This group was incorporated into the National Heritage Board in 1994.

The control over the restoration works was relatively easy as the state or municipalities had the control over the majority of historical premises and the conservation works were mostly carried out on public buildings. The main problems were caused by lack of coordination and cooperation between different institutions. In retrospect,

it can be claimed that during Soviet years the systematic protection of heritage developed. The biggest problem was the dividing of responsibility which weakened the social responsibility.

Heritage protection since 1991

Legislation

Preparations for the new law for now again independent Estonia started already in December 1990 but it was enacted only in 1994. The changing society, preferred international and local examples, but also the internal competition is reflected in the preparation process of the law. Unlike in many other fields, the legacy legislation had to be modified not only according to the changing social and economic relations but also according to the administrative reform in heritage protection.

The new law followed mostly the tradition of the 1925, 1936 and 1961 laws and restored the institution of confidants and the expert-based and independent Heritage Committee with its sub-committees. There were very few completely new norms in the law. One of them was the temporary listing of objects following the example of Latvia. Temporary listing allowed implementing immediate protection for up to six months in the threat of violence. The Conservation Act was compiled mostly by experts of the field and not by lawyers, which was the case with many other laws at that time. Only minor amendments were made to the law till 2002. One of the main problematic issues is that the Conservation Act was not linked with other important laws. Several mismatches with the Planning Act and the Building Act have been later improved, but there are still gaps to work on.

In 2002 a new Conservation Act was enacted as a part of systematization of national legislation. The motivation behind the revision of the law was also the protest against the licensing system and against the demand for often expensive but mostly time-costly studies of object's values. Mainly architects demanded the right to work on national monuments without having a specific education. However, the principles for studies and licences were not changed but underwent some cosmetic amendments.

The significant political change in the new law was the transforming of the Heritage Advisory Panel from the advisory body of National Heritage Board to the advisor of the Minister of Culture. The justification was an upgrade in hierarchy but in reality its influence was lessened. Till 2002 Advisory Panel had the authority to decide whether an object fulfils the criteria to be listed as a monument, in 2002 its opinion became merely a recommendation. The political ministers have misused this amendment on several occasions, ignoring the decisions of specialists. Neither the law of 1994 nor 2002 provided any measures for forcing malevolent owners to maintain their property. Ridiculously small fines for illegal repairs and demolishing were considered natural and corrupt free. The first enforcing regulations were enacted only in 2004.

Majority of the amendments to the law were still quite insignificant and heritage administration kept a strong line of licensed professionals, consent and supervision.

A suggestion to establish the gradation of monuments was made. The gradation seemed to be a solution both for the owners of the monuments that wanted to escape the regulations and for those who expected to get rid of competitors for state conservation funding. The Estonian Union of Architects had also proposed that buildings with high historical but modest architectural value could be replaced, commemorating the originals only with a sign or a model. The answer of the Minister of Culture was straightforward, accusing architects of corruption. This amendment was not approved.

In 2013 another initiative to word new Conservation Act was launched. The leading idea is to rearrange different obligations in heritage conservation system to justify the need for additional funding from state budget. To ease the burden of the owners a new system for carrying out studies and the supervision of conservation works is been worked out. So far it has been the obligation of the owner, with the potential amendment it will be partly transferred to National Heritage Board. The main risk of this process is that the obligations taken will probably exceed the NHB's capacity as the raise in funding agreed for 2019 is only 1,5 mln Euros but the number of monuments in maintenance is constantly growing. So are the prices for work and materials as the huge difference between the salaries in European Union in general and Estonia is constantly diminishing. The other potential risk is that the research and reporting will fall into the "grey zone" and may affect the quality of this highly important work.

Administration

Changes in the heritage system started already at the end of the 1980s. As a part of Mikhail Gorbachov's perestroika politics, private initiative and small enterprises were allowed. Already in 1988 the first entrepreneurial architects started to establish their own companies. On the basis of the National Restoration Unit and its 22 local branch offices several new conservation companies were founded. Among humanitarians, the archaeologists were the first to take the initiative to form private companies. After the restitution of the Republic the number of excavations started to decrease, as the funding became the obligation of the landowner and state funding for scientific excavations and also research on prehistoric and medieval fortifications stopped nearly completely.

Majority of the architects and conservators found a new challenge in private companies. As they left, the majority of the employees remaining in National Heritage Board were historians, art historians and archaeologists who transformed from researchers to supervising inspectors.

Formation of the National Heritage Board (NHB)

The initiative for a joint administration for all monument types dates back to at least 1988. The restitution of the state gave the idea a new perspective. Besides good coop-

eration there had always been many serious problems with coordination. Untypically for the Soviet mentality, the initiative was bottom up and strongly supported by the newly founded Heritage Society. The NHB was formed on 11 October 1993 after several years of preparations. The main disputes were about jurisdiction, structure and subordination. According to the Soviet tradition the suitable form would have been a state inspection. In many matters Estonia followed keenly the example of Sweden and Finland and thus not state inspection but Board was formed. Still, the Nordic example of cooperation with local museums was not followed and thus in comparison to neighbours NHB overloaded itself with work.

The formation of NHB had started at the peak of social and cultural responsibility, local and generous foreign donations that illustrated the period of restoration of the independent state. Simultaneously it was the period of quick solutions and profit. No major attention was paid to the fact that culture had nearly everywhere remained an underfinanced subject.

During Soviet times heritage administration was mainly centralized in Tallinn and Tartu. In counties there were conservation units for architectural monuments. The historical and archaeological monuments had often been partly supervised by the local museums. The first county inspectors for architecture were employed only in 1989. With NHB a decision was made to employ an inspector in every county. Proposed optimal structure foresaw 74 employees of which 38 in 15 counties. In addition to them a 10-member research group was planned. The formation of NHB fell to the time of saving budget and all state institutions were forced to penny-pinching to stabilise the state and the new currency, Estonian kroon. In the worst position were the still-to-be-founded boards. From the proposed structure the research centre was cut off and so was 1/6 of the planned staff. Research and conservation remained completely a private business. With the next budget cut in 1997 NHB was lessened to an inspection for five years and another 10 positions were lost. In the new century only a few positions have been restored. For example, in Lithuania the cutback was not so dramatic.

NHB had in the mid-1990s serious problems with capability. The new administrative system had to be built up with a relatively small number of people and serious financial problems. For example, in 1999 NHB still had only 5 cars to cover all of Estonia. A major problem was updating the list of monuments. To improve the work administrative agreements were signed with Tallinn City Government and a few other municipalities to delegate several obligations of NHB.

The number of monuments has constantly grown and so has the conservators' workload and responsibility. Not only the restitution of private property, but most of all the concept of vernacular history has expanded the activities of heritage administration to the monuments in daily use. The number of people who have to follow the Conservation Act daily has grown significantly. In the totalitarian society, the control and

maintenance of heritage was the task of state authorities. However, legal problems are not only based on matters of ownership.

The restoration and promotion budget of heritage was largest in the Soviet period. The protection of costly architectural monuments was the task of the well-financed Committee of Construction where there was money both for research and restoration. The centralization of the whole field under the subordination of the Ministry of Culture remarkably diminished the budget and conservation has remained one of the under-financed fields in Estonia for decades. The shortage of money was magnified by the property reform. Until then the priorities and order of works were set by a State Inspection, after the reform a large number of the new owners started to maintain their property simultaneously. Majority of the restituted property was in very bad condition. Half a century earlier this property had been confiscated from the current owners or their ancestors and its condition was morally the matter of the whole society. With the habit of rebellious attitude towards the state the fresh owners blamed the state over the poor maintenance of their heritage and turned minor attention to the fact that the regime that had caused the injustice had been replaced by an independent state. NHB was at least partly morally responsible for the heritage that was listed recently or whose maintenance depended on municipalities or third persons. The Conservation Act was definitely not owner-friendly, setting strict restrictions but not compensating them.

In the Soviet society the heritage administration had monopolised not only the maintenance of heritage but also the responsibility for its preservation. The minimal cooperation with local municipalities and people as well as the totalitarian restrictions-based protection resulted in the low awareness and mainly in lack of personal responsibility for common heritage. NHB confirmed also in the independent state its dictate by wording the obligations but not the rights and personal mission. The cooperation with local municipalities depended mostly on the person of the local inspector and not the overall policy of NHB. However, the establishment of the profession of the county inspector was an important prerequisite to reach every municipality and owner. The prestige of this occupation has been violated by penny-pinching. In majority of the counties a single inspector has been responsible for nearly 20 years for thousands of monuments, turning the task into mission impossible.