



ICOMOS Slovenija

Monographic Publications of ICOMOS Slovenia | **01**

**International Legal Standards
for Heritage Protection in a Period of Economic Recession and
Tools for Safeguarding Protection Standards**



Publisher: ICOMOS/SI International Council on Monuments and Sites,
Združenje za ohranjanje spomenikov in spomeniških območij, Ljubljana

Editors: Marko Stokin, Sonja Ifko

Design: Sonja Ifko

Layout and preprint: Januš Jerončič

English translations: Amidas, d.o.o. (page 3 to page 5), Luka Kocbek (page 23 to page 37),
Arienne Free (page 39 to page 47) and Mojca Vilfan (page 49 to page 65)

Print: Camera d.o.o.

Circulation: 200

Ljubljana 2014



The publication appears in partnership with the Council of Europe as the follow-up of the co-operation between ICOMOS/SI and the Directorate General II - Democracy/ Directorate of Democratic Governance, Culture and Diversity of the Council of Europe.



Publication International Legal Standards for Heritage Protection in a Period of Economic Recession and Tools for Safeguarding Protection Standards is co-founded by Slovenian National Commission for UNESCO.



Photos on pages 2, 4, 22, 32, 38, 48 and 76, INDOK Centre, Ministry of Culture, Republic of Slovenia. The opinions expressed in this book are the responsibility of the authors.

CIP - Kataložni zapis o publikaciji
Narodna in univerzitetna knjižnica, Ljubljana

72.025.3/.4:006(082)

INTERNATIONAL legal standards for heritage protection in a period of economic recession and tools for safeguarding protection standards / [editors Marko Stokin, Sonja Ifko ; English translation Amidas ... et al.]. - Ljubljana : ICOMOS/SI International Council on Monuments and Sites, Združenje za ohranjanje spomenikov in spomeniških območij, 2014. - (Monographic publications of ICOMOS Slovenia ; 01)

ISBN 978-961-281-627-8

1. Stokin, Marko
276573184

Contents

Editorial of ICOMOS Slovenia.....	3
Reviews.....	5
Robert Pickard Funding, Skills, Integrated Conservation and Enforcement for Heritage Protection in a Period of Economic Recession	7
Jelka Pirkovič, Vlasta Vodeb Heritage Management through Planning and Information Tools	23
Daniela Tomšič The Conservation Scheme as a Legislative Guarantee for Equal Treatment of the Cultural Heritage Protection in Spatial Interventions	33
Mitja Guštin, Savin Jogan The Fate of Cultural Monuments. The Gap Between what is Decreed and what is Put into Effect	39
Sonja Ifko Heritage of Socialist Industrialisation in the Time of Crisis – Torn between Development and Preservation	49
Ilka Čerpes Vision and Reality: Evolution of the Winning Competition Entry for the New Town Hall Complex in Ljubljana	59
Mojca Marjana Kovač Deficiencies in Legislation on Cultural Heritage Protection in Local Communities	67
Mikhael de Thyse International Symposium On Cultural Heritage And Legal Issues Bled (Slovenia), 2-4 May 2013: Conclusions.....	74
Index.....	77

Deficiencies in Legislation on Cultural Heritage Protection in Local Communities

Abstract

The Cultural Heritage protection Act¹, passed in 2008, was meant to modernize the sphere of cultural heritage preservation. Regretfully, the new regulations – which should enable better preservation of cultural heritage in practice – have not been implemented on the level of local communities. The law entails a new and different organization of the public service in the field of immovable cultural heritage preservation; division of work is conceived in such a way that expertise has lost its basic significance. Since regional variety is of essential importance for Slovenia, negative consequences of such a decision are perfectly clear. The service is certainly bound to carry out priority bureaucratic tasks (entering items in the Register of Cultural Heritage; giving the status of cultural monuments; issuing preservation conditions and approvals), but the issue remains unclear of how the expertise by different disciplines, participating in the service, is integrated in these tasks; in addition, the disciplines are not treated equally. Experts from different fields are employed, since the work to be done on the monuments of cultural heritage is interdisciplinary as a rule. Such a division of expert work unavoidably leads to the impossibility of successful research work in individual disciplines. Namely, priority is given to investigations of underground immovable heritage, while completely neglected is the research into above-the-ground built constructions and other units of cultural heritage.

The new law, introducing division of work in public service's regional offices, gave rise to poorer protection of local monuments, regarding the implementation of expert work, such as documenting, investigating, and preparing the necessary expert reports (conservation plans). Because local communities do not employ experts, they cannot carry out this expert work efficiently in their areas. As a rule, interventions into local monuments and heritage are planned by municipal officials who have no adequate professional qualifications. Local communities do earmark funds in their budgets for the protection of immovable cultural heritage, but, regrettably, the money is not used in accordance with the interventions planned so as to guarantee adequate protection of monuments and heritage. Following the possibilities of the law, a local community could establish a service on a local level, assigning it certain tasks which are basic for the protection and preservation of cultural heritage; the practice is widespread in the EU. Unfortunately, this is an acute problem which has become more clearly expressed in recent years, when a general crisis has arisen, and funds for the protection and maintenance of immovable cultural heritage have been lesser and lesser. Exceptionally, the municipalities publish tenders for co-funding the maintenance of cultural heritage, so that the owners get financial help. The state, however, does not offer financial help to owners, which is certainly a unique case in the EU. Elsewhere, the owners are encouraged to invest their own means, since this means a tax relief for them.

Protection of cultural heritage is an important economic branch in the EU countries. It entails appropriate training programs for vocations at all levels, from traditional craftsmen's skills to highly educated experts. Protection of cultural heritage is a value which helps to save the identity of a nation for future generations.

I Introduction

My paper is meant to present the functioning of the organized public service in the field of heritage protection in Slovenia on the local level, more precisely in the region of three littoral municipalities: Koper/Capodistria, Piran/Pirano and Izola/Isola. This year, the service is celebrating the hundredth anniversary of its activity on the Slovenian territory². Initially

¹ Zakon o varstvu kulturne dediščine (ZVKD-1), Uradni list RS, št. 16/2008.

² Baš, Franjo, (1955). Organizacija spomeniškega varstva v slovenski preteklosti. Varstvo spomenikov, V. 1953-54, Ljubljana: Zavod za spomeniško varstvo LRS, 13-37.

organized centrally, it was later gradually established also in individual regions and served its purpose all right for a long time, until the new law and the resulting internal organization of the service completely altered its effects on the local level. Namely, the new law offers the possibility of organizing public expert service for immovable cultural heritage protection within the system of local authorities³. Expert tasks are clearly defined in terms of their content, and they are expressly oriented towards the functioning of the service on the local level. Such a solution could certainly contribute to better knowledge of immovable cultural heritage and hence to its protection, provided that the service is professional. The law also enables the draft of a regional network of public service for the immovable cultural heritage protection, based on regions which have not yet been clearly outlined, so that such a possibility lingers in the remote future. Slovenia is typical for the diversity of its cultural heritage, which is conditioned by its geographic areas with varied historical traditions. The possibility offered by the new law – namely, that expert work of protection and preservation of immovable cultural heritage, including the basic conservation tasks of documenting and evaluating as well as managing, could be transferred to expert institutions of local communities as a permanent task – has not yet been realized in practice during the span of five years since the law was passed, and there is still no promise of change in this sphere. It would undoubtedly be possible for municipalities to secure a better and more distinct system of cultural heritage protection in this way, but only under condition that the protection job is carried out by experts and not merely by municipal officials who have no proper qualifications, yet they do take decisions about the destiny of cultural heritage within the scope of their municipality.

In our practical work, and particularly in fieldwork, we, the conservators, realize that the changes introduced by the new system of public service organization require a different distribution of duties particularly in regional offices, where administrative-bureaucratic tasks imposed on the conservators have taken priority, transforming the conservators into mere officials, since their expert job only takes second place. Negative results of the new system can already be observed in the fact that the conservators have no possibility to substantially improve their professional knowledge, because their research work is dramatically limited. The new system does not regulate research work suitably, because the Conservation Centre as a unit which operates as the implementation section of the public service does not include all disciplines to enable dealing with immovable cultural heritage in an overall expert manner. If the system of cultural heritage protection on the level of local communities was formed so as to give emphasis to expert job, it would be possible to develop research work in harmony with the rest of the tasks, which would be the only chance to secure a modern and genuine progress of this discipline.

I 2

The basic task of the Cultural Heritage Service as stipulated by the legislation is to evaluate immovable cultural heritage with the objectives: (a) to enter the units in the Register of Cultural Heritage, and (b) to give individual units cultural monument status of national or local interest. The two stated tasks establish the system of legal protection of cultural heritage, which, in turn, is integrated in different spatial documents of strategic and implementation spheres. The new law precisely specifies the procedure for giving a building or other object the status of cultural monument as well as the content in which the protection regime has to be clearly defined. The basis for this procedure is represented by expert proposition which is prepared by the public service, and this job is exclusively within the competence of the public service. Irrespective of the body that puts forward the proposition, the owner of the unit in question has to be informed about this and has to express their will to give or refuse consent. Declaring the status of cultural monument is an act which in certain cases requires public discussion. The procedure of declaring the status of cultural monument of local interest is conducted and the decision is taken by a body of the local community, whereas the status of cultural monument of national interest is given by the state government act. The new law upholds the validity of monuments declared according to previous laws, but it indicates that those titles should be brought into line with the contents requirements of the new law. Because many earlier acts on the status of

3 paragraph 100, ZVKD-1

cultural monuments are imperfect exactly in their regulations of protection regimes, it is possible in such cases to observe the protection regime stipulated by the new law⁴.

Local buildings and other objects on the territories of the municipalities of Izola and Piran were given the status of cultural monuments thirty years ago according to the law which did not precisely regulate protection regime for individual monuments. Therefore it is obscure and hence fairly inapplicable in the process of decision making, since it allows different interpretations. Even though the new law has been in force for five years, protection regimes in the acts declaring the status of cultural monuments of local interest remain deficient, since they have not yet been adjusted to the new law. In the legal practice of the past year, another deficiency of the old acts on the status of cultural monuments has come to the fore, since the appertaining expert bases which have not been publicly published cannot figure as the substantive law basis for taking decisions. In practice, chapters on immovable cultural heritage protection in numerous spatial acts of certain concrete areas prove to be likewise deficient. Because there is no proper legal ground for cultural heritage protection, it is urgent that the status of cultural monuments of local interest should be brought into line with the provisions of the law right away. This proves to be of vital importance for guaranteeing an efficient public service. Proper collaboration between local authorities and the public service in the field of immovable cultural heritage protection should be secured. To provide effective maintenance of the units of immovable cultural heritage on the part of their owners, the public service should prepare propositions for the updating of the status of cultural monuments of local interest. To succeed in this, cooperation should be established with the bodies of local administration which are in charge of conducting the procedure for giving this status. Regretfully, cooperation between the two above-mentioned municipalities, Izola and Piran, and the public service has waned. The unsettled situation in the sphere of immovable cultural heritage protection is the main culprit for the non-efficient actual protection of the monuments. Inadequate contents of the legal grounds for decision-making can by no means be the pride of the public service or do credit to it.

Listing and evaluating immovable cultural heritage is an expert process which requires constant verification and can never be fully complete, therefore legal provisions should envisage supplements to the already given statuses of cultural monuments. Most of the statuses were given three decades ago, when the ownership of buildings or other objects of immovable cultural heritage was not such an important issue, since the majority of units were social property. In the circumstances of that time, the acts declaring the status took account of general social benefit and were related to social funds which secured renovation and maintenance of the monuments. The status which might be given in the future to units of cultural heritage on the territories of the two municipalities in question will open a new problem concerning the sphere of the owners' rights, which cannot be ignored.

The beginnings of modern cultural heritage protection and preservation go back to the time some more than half a century ago, that is immediately after the Second World War, when the advent of socialism brought about radical social changes. These effectuated the system of social property as a category of 'general public possessions' which included almost the entire housing stock, from single-family houses to houses in multiple occupancy. Private ownership of previously built heritage almost ceased to exist; the majority of the already built housing, except for a small number of single-family houses, was transformed into social property. When the new state of socialist Yugoslavia was established, numerous inhabitants of littoral towns who owned immovables left the towns and their immovable property and emigrated. The logical result was that newcomers from elsewhere settled in the deserted residential houses; they mainly became tenants, not owners. The consequences can still be observed today, namely in the relation of the present owners to their denationalized immovables, because they have no feeling of tradition and find interest in them only in the case of financial profit. This is therefore the key problem on which everything depends, from giving a unit of heritage the status of cultural monument to investing funds for its protection and maintenance. It is possible to conclude that the owners are motivated to obtain the status of monuments for their immovables only if this

⁴ paragraph 134, ZVKD-1

status brings them financial benefit. In the financial sphere that concerns the protection of immovable cultural heritage and the monuments, either state authorities or local communities have done nothing at all, as if the state does not realize that protection and preservation of cultural heritage is the protection of inherited national wealth which plays an important role in the national identity of contemporary societies in the developed EU. Thus the owners of immovable cultural heritage monuments are left to their own resourcefulness, since no efficient doctrine exists to help the state to support through its mechanisms the protection of cultural heritage. Ironically, the state itself strongly promotes the development of widespread tourist potentials which greatly depend on cultural monuments, well maintained and professionally renovated according to up-to-date methods. When the new law was passed, no satisfactory explanation was given as to why the mechanisms of financing were not brought into force, since they are vital to successful renovations and reconstructions of cultural heritage monuments.

I 3

Proceeding from the above-stated findings, it is clear that the present situation should be further examined and an in-depth analysis made, in order to improve and update legal grounds and to regulate the system of funding renovation interventions, thus securing efficient protection of immovable cultural heritage. The onset of a general social as well as economic crisis a few years ago has also resulted in the setback in the field of cultural heritage protection. Like in all other spheres, costs of operation must be reduced in this field too, which means that maintenance, and hence preservation, of immovable cultural heritage has considerably changed for the worse. The crisis has even more clearly revealed the deficiencies of the system, which is a serious warning that changes should urgently be prepared.

The system of funding renovation and maintenance of immovable cultural heritage was not properly settled even prior to the crisis, since the owners of cultural heritage were not financially stimulated to invest their own funds into the monuments. It was very difficult for physical entities to get subsidy from state budget; if they did, the funds were not sufficient to renovate their unit of cultural heritage in compliance with the regulations. For this reason they had no interest that their immovables might be classified as cultural monuments, since that would rather involve complications than benefits. Before the crisis, every two or three years the owners, whether physical or legal entities, could apply to the Ministry of Culture's tender for the co-financing of certain interventions; in reality, however, the possibility to receive these funds proved to be extremely faint. The purpose of my paper is not focused on finding out the (in)efficiency of this system, whose provisions contain several weaknesses, due to which the most endangered monuments unfortunately did not receive the necessary care in practice.

The state budget has so radically reduced the funds earmarked for the renovation of monuments that tenders for co-financing are not published any longer. Local communities, with their system of financing, can probably still provide funds earmarked solely for the maintenance of cultural heritage. Unfortunately, such funds, delivered on the basis of public tenders – following the example of the Ministry of Culture –, are an exception rather than a rule in Slovenia. None of the three littoral municipalities provide the owners with subsidies for the renovation of cultural heritage on the basis of public tenders. The inadequately organized system of financing cultural heritage protection most seriously affects the owners of this heritage, who have to take care of it, protect it and preserve it with their own means. Therefore, it is easy to understand their dislike of the service's system which provides no proper basis for the owners to benefit from their cultural heritage in proportion to the means they have invested in it. A very great deficiency in the legislation system is the fact that none of those who invest their own money in the renovation and maintenance of cultural heritage have any financial privileges. There certainly must be ways to stimulate financially the owners of cultural heritage. It is urgent to make comparisons with the developed countries of the EU and study efficient mechanisms, which, in the developed and modern market-oriented societies, logically result in an efficient system of preservation of cultural heritage as a value and public good for all citizens.

I 4

It is possible to conclude from the above-said that, due to the presented deficiencies, the system of public service for the protection of immovable cultural heritage and the system of its funding are unsuitable for the tasks they have to perform. However, chances do exist that the present situation in the sphere of immovable cultural heritage protection could be improved. They exist mainly on the local level, where the possibilities for enhanced expertise as well as for financial efficiency still remain unexploited, chiefly in the sense of a more rational expenditure of otherwise meagre funds earmarked for the field in question. Hitherto findings indicate that possibilities have been opened up in local communities – municipalities in particular – to make better use of the funds available in their budget for cultural heritage protection and to perform the tasks more efficiently, provided that they are entrusted to competent experts. Municipal officials with their bureaucratic training are not qualified to take decisions on professional matters of cultural heritage protection, since expert knowledge is the only sound ground for efficient protection. Expert tasks in the field of immovable cultural heritage protection as stipulated by the law could be performed by local service within the framework of organizations which, according to the law, the municipalities can found, or later, when regions will have been formed, by a public service on the territories of individual regions. The tasks to be performed by these professional institutions are as follows: documentation; preliminary research; individual conservation-restoration works; co-operation with the owners of cultural heritage; management of local monuments; implementation of programs for enhancing the consciousness of the heritage; and implementation of cultural heritage protection in the case of various catastrophes or armed conflicts. All of these tasks would provide essentially better functioning of the service on the local level, particularly thanks to better knowledge about the state of preservation of the monuments of immovable cultural heritage, which is the basis for any further planning of their maintenance or other, possibly radical, interventions. If a cultural heritage monument is in the possession of a local community, it would be possible to take into account also the usage or purpose of a certain monument, which is an important aspect of providing a successful long-term protection of any cultural heritage monument. Unfortunately, we can see that our society does not really care for the protection and preservation of cultural heritage, not only on the national but, mainly, also on the local level. In addition to the already mentioned reasons for such a situation, attention should also be called to the problematic disinterest on the part of state authorities which should encourage national identity also through the preservation of immovable cultural heritage. Last but not least, this is also the responsibility of all citizens and not only of the owners of cultural heritage who are disproportionately heavily burdened in this “story about cultural heritage protection” in our country. The maintenance of national identity, the passed-down heritage inclusive, must be secured by a proper and efficient legislation system which is, due to numerous factors, subject to supplements and changes in compliance with contemporary standards. In view of the fact that the space of the EU is culturally and nationally essentially varied, comparison with the regulations and practice in other countries is absolutely necessary, particularly with those EU countries in which the sphere of immovable cultural heritage protection is regulated in terms of expertise, funding and bureaucracy at all levels.

I Conclusion

On the basis of the law which was passed five years ago, the public service was reorganized a good year ago. The reorganization brought about the division of conservators' work into its bureaucratic and professional parts. With this, expert tasks were radically reduced exactly in regional offices, mostly because of administrative procedures and tasks. The possibility to establish local public service for cultural heritage protection, as provided by the new law, would enable the service to perform expert tasks as stipulated by the law. This is of essential importance in asserting the significance of cultural heritage and its protection for the cultural, economic, tourist-related and educational spheres in a certain local community. By establishing such a service and by showing regard for its expertise, local communities would manifest interest in their own cultural heritage which would not be considered a burden, since the communities would be involved in all decisions relevant for

the preservation and protection of cultural heritage.

An efficiently established system of immovable cultural heritage protection is based on the axiom that it is an important economic branch in which different spheres participate, from culture and tourism to educational programs for experts of different professional levels and orientations, by which traditional craftsmen's skills are preserved and the best-educated experts are qualified. Parallel to the reformation of the system of immovable cultural heritage protection, also a financial framework for its operation should be envisaged, particularly by way of including the owners of cultural heritage who would recognize local interest as the care for it. Regretfully, in the five years after passing the law, no step has yet been taken to put into effect the legal possibility of establishing local public service. To be sure, possibilities for the development and modernization of the system do exist, but the question is whether they are a true chance or just a possibility offered by the law to appear more up-to-date, but in fact not wanted by anyone.