

# CRITERIA FOR THE CONSERVATION OF BUILT HERITAGE

Annual Meeting of ICLAFI, Helsinki 2008



INTERNATIONAL COUNCIL OF MONUMENTS AND SIGHTS

CRITERIA FOR THE CONSERVATION  
OF BUILT HERITAGE

ANNUAL MEETING OF ICLAFI

Helsinki, Finland 15-17 May 2008







International Council on  
Monuments and Sites  
Conseil International  
des Monuments et des Sites



YMPÄRISTÖMINISTERIÖ  
MILJÖMINISTERIET  
MINISTRY OF THE ENVIRONMENT

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## CONTENTS

<b>Introduction</b>	7
<b>Program of the Conference</b>	8
<b>Questionnaire 2008: Criteria for the Conservation of Built Heritage</b>	11
<b>AUSTRALIA</b>	12
Graeme Wiffen	
<b>BELGIUM AND THE FLEMISH REGION</b>	15
Anne Mie Draye	
<b>BULGARIA</b>	18
Hristina Staneva and Svetoslav Georgiev	
<b>CROATIA</b>	23
Jadran Antolović	
<b>FINLAND</b>	25
Satu-Kaarina Virtala	
<b>ISRAEL</b>	27
Gideon Koren	
<b>MEXICO</b>	30
Roberto Núñez Arratia and José Ernesto Becerril Miró	
<b>NETHERLANDS</b>	34
Leonard de Wit	
<b>PERU</b>	38
Alberto Martorell Carreño	
<b>ROMANIA</b>	43
Adrian Crăciunescu	
<b>SPAIN</b>	49
Luis Anguita Villanueva	
<b>SWEDEN</b>	53
Thomas Adlercreutz	
<b>UNITED STATES</b>	57
James Reap	

The International Scientific Committee on Legal, Administrative and Financial Issues (ICLAFI) is one of the international working groups of the International Council on Monuments and Sites. Its objective is to promote international cooperation in the identification, study and solution of legal, administrative and financial issues in connection with the protection, maintenance and conservation of monuments, groups of buildings and sites.

From 15 to 17 May 2008, the Annual Meeting of ICLAFI took place in Helsinki, Finland in the venue of Suomenlinna. The theme of the meeting was the criteria for the conservation of built heritage. This theme had not been under consideration during the previous meetings of ICLAFI. Furthermore, the Finnish conservation statutes were under amendment at that time.

This booklet contains a summary of the questionnaires relating to the criteria for the conservation of built heritage, filled by the members of the committee. At the meeting the participating members gave a short presentation of the current situation in their country.

I would like to thank the members of the Committee who contributed to a very interesting meeting and/ or the realisation of this booklet. I would also like to thank the Finnish Ministry of the Environment, Ministry of Education and National Board of Antiquities, whose contributions made the meeting and this booklet possible.

Satu-Kaarina Virtala  
Finnish Representative ICLAFI



# PROGRAM OF THE CONFERENCE

## Helsinki 15-17 May 2008

### THURSDAY 15<sup>th</sup> May 2008

Meeting at the hotel lobby at 7:40. Ferry to Suomenlinna at 8:20.

Chair: James Reap

9:00 Opening of the symposium  
*Kirsti Kovanen, President of ICOMOS Finland*

9:10 Criteria for the conservation of built heritage in Belgium  
*Anne Marie Driye*

9:30 Criteria for the conservation of built heritage in Bulgaria  
*Hristina Staneva*

9:50 Criteria for the conservation of built heritage in Croatia  
*Jadran Antolović*

10:10-10:20 Short pause

10:20 Criteria for the conservation of built heritage in Finland  
*Satu-Kaarina Virtala*

10:40 Criteria for the conservation of built heritage in Germany  
*Werner von Truetzschler*

11:00 Criteria for the conservation of built heritage in Israel  
*Gideon Koren*

11:20 Criteria for the conservation of built heritage in Mexico  
*Roberto Nuñez Arriaga*

11:40-11:50 Discussion

12:00-13:30 Lunch

13:30 Criteria for the conservation of built heritage in the Netherlands  
*Leonard de Wit*

13:50 Criteria for the conservation of built heritage in Peru  
*Alberto Martorell Carreño*

14:10 Criteria for the conservation of built heritage in Poland  
*Wojciech Kowalski*

14:30-14:45 Discussion and conclusions of the 1<sup>st</sup> day

15:00 Ferry to Helsinki

18:00 Guided tour in the Helsinki City centre

19:30 Dinner buffet and possibility for a sauna  
Unioninkadun Kellariholvi

### FRIDAY 16<sup>th</sup> May 2008

Pirunkirkon Pajasali, Suomenlinna

9:45 Opening of the second day  
*James Reap*

9:50 Criteria for the conservation of built heritage in Romania  
*Adrian Craciunescu*

10:10 Criteria for the conservation of built heritage in Spain  
*Luis Anguita Villanueva*

10:30 Criteria for the conservation of built heritage in Sweden  
*Thomas Adlercreutz*

10:50 Criteria for the conservation of built heritage in the United Kingdom  
*Christopher Young*

11:10 Criteria for the conservation of built heritage in the United States

11:30-11:45 Discussion and conclusions of the second day

11:45 Guided tour in Suomenlinna

12:30-14:00 Lunch

14:00-17:00 ICLAFI Meeting

17:00 Ferry to Helsinki

19:00-21:30 Dinner cruise to the archipelago of Helsinki

### SATURDAY 17<sup>th</sup> May 2008

Excursion Helsinki-Verla-Porvoo-Helsinki

9:00 Departure from the hotel

11:30 Lunch in Verla, Kuusankoski

12:30 Presentation of the Verla Mill Museum and Village, UNESCO World Heritage site

13:30 Guided tour at Verla

14:30-17:00 Departure for Porvoo  
Visit of the Elimäki Church and coffee

17:00-18:30 Guided tour at the Old Porvoo City center

18:30-20:30 Dinner at Restaurant Wanha Laamanni, Porvoo

21:00 Arrival to Helsinki

### SUNDAY 18<sup>th</sup> May 2008

Departure of the participants





Photos:  
Elina Penttinen

## CRITERIA FOR THE CONSERVATION OF BUILT HERITAGE

### I CRITERIA FOR BUILT HERITAGE

1. What are the criteria leading to the conservation of built heritage?
2. Where are these criteria defined (acts, regulations, conventions)?
3. Are there different levels of criteria, e.g. national, regional and local or other levels?
4. Does the age of a building matter when deciding on its protection / conservation? Please specify.
5. Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?

### II HOW ARE THE CRITERIA DETERMINED?

1. Which instance/s or person/s determine/s the criteria for the conservation of built heritage in your country? Please describe the process of determining these criteria.
2. What are the respective roles of specialists, civil servants and citizens in this process? Are owners and/or citizens given the possibility of being heard in the process? Is information on the criteria available for the public? If yes, at which point of the process is it made public? What are the ways for citizens of acting upon decision making?

### III CRITERIA IN PRACTICE

3. How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors (e.g. fixtures, fittings and technical devices) be protected/conserved on the basis of the afore mentioned criteria?
4. Do publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?
5. Have there occurred problems in defining the criteria for the protection/conservation of built heritage? / In your opinion, what are the main problems and challenges of the criteria in use at the moment and the process in deciding on them?



## I CRITERIA FOR BUILT HERITAGE

### 1. What are the criteria leading to the conservation of built heritage?

Australian heritage laws do not distinguish between built heritage and other forms of heritage. One State once had an Historic Buildings Act, but this was been repealed. The Heritage Laws of all Australian jurisdictions follow the World Heritage Convention in covering items of both cultural and natural heritage. Built heritage is, therefore, within the definitions and criteria relating to cultural heritage. The definitions identify indigenous and non-indigenous cultural heritage.

Australia is a federal state and has heritage laws at the national and provincial level. What might be termed the provincial level is that of the 6 Australian States and the two larger federal Territories that are moving to having the same status as the States.

The national or Commonwealth laws are contained in the omnibus *Environmental Protection and Biodiversity Conservation Act 1999*, which contains the environment and heritage laws of the national or Commonwealth government. The legislation follows the model of American Environmental Impact Assessment laws. This legislation protects "places and their heritage values" (ss324C and 341C).

*A place is defined to include:*

- a. a location, area or region or a number of locations, areas or regions; and
- b. a building or other structure, or group of buildings or other structures (which may include equipment, furniture, fittings and articles associated or connected with the building or structure, or group of buildings or structures); and
- c. in relation to the protection, maintenance, preservation or improvement of a place - the immediate surroundings of a thing in paragraph (a) or (b). (s528)

The breadth of the definition of "place" is matched by the breadth in the definition of "heritage value" defined to: "include the place's natural and cultural environment having aesthetic, historic, scientific or social significance, or other significance, for current and future generations of Australians. (s528)

The heritage provisions of the legislation establish a number of national heritage lists and places must also meet criteria for entry onto a list. For the list most relevant to this discussion, the National Heritage List, the criteria are set out in the Environmental Protection and Biodiversity Regulations 2000.

(1) For section 324D of the Act, subregulation (2) prescribes the National Heritage criteria for the following:

- a. natural heritage values of places;
- b. indigenous heritage values of places;
- c. historic heritage values of places.

(2) The National Heritage criteria for a place are any or all of the following:

- a. the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
- b. the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
- c. the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
- d. the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
  - (i) a class of Australia's natural or cultural places; or
  - (ii) a class of Australia's natural or cultural environments;

- e. the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
- f. the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
- g. the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- h. the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
- i. the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

(3) For subregulation (2), the cultural aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.

While these criteria are the most comprehensive in Australian jurisdiction, they still leave room for wide discretion in decision making. Note the repetition of the word "outstanding". The Heritage Council advising the Minister would then sponsor research and the publication of guidelines as to what this word might mean, and how the criteria are to be applied.

The heritage legislation of the Australian States and Territories, also creates lists that are managed by those jurisdictions. The management model follows a national pattern of Ministerial decisions supported by advice from specialist Heritage Councils established by the Heritage Acts of the jurisdictions. The definitions in this legislation have a similar breadth to those in the national legislation, and generally also include criteria that a place or an item has to meet before it may be added to a Heritage list.

The intricacies of constitutional interpretation in Australia may mean that a place that the national government wishes to list, should also be listed on a State Heritage Register or list to provide full protection. Another aspect that is leading to some integration of the national and State legislation is a desire for "co-operative federalism" being pursued through the Council of Australian Governments. Thus under the national laws referred to above, the national Minister may accept obedience to nominated State and Territory laws as adequate compliance with the national legislation. The Sydney Opera House World Heritage Site, for example, while protected by, and listed in the World Heritage List under, the national legislation, is also covered by State based planning laws in the State of New South Wales. Compliance with the State law is accepted as compliance with the national laws.

### 2. Where are these criteria defined (acts, regulations, conventions)?

In the national scheme, the criteria are in the Act and in the Regulations, as shown above. In the States and Territories, the criteria tend to be set out in the Heritage Acts.

### 3. Are there different levels of criteria, e.g. national, regional and local or other levels?

In the States and Territories, heritage legislation sets up State and Territories Heritage Registers. Further, in the States, planning legislation makes provision for heritage places of local significance.

### 4. Does the age of a building matter when deciding on its protection / conservation? Please specify.

In Australia, the age of a building would be mainly relevant to whether the building meets criteria relating to history. The age of the building would not be relevant to other criteria.

Australia's indigenous peoples were nomadic and do not have a strong history of building. Therefore, there is a widespread realisation that places or items of cultural heritage value are not necessarily buildings. This consideration is also important in responding to Australia's very expansive post-War migration. The cultural heritage of immigrant groups will often not be very old (by European standards) nor be represented in sophisticated and expensive buildings.

### 5. Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?

Australian legislation has been formulated after the World Heritage Convention and, while the formulation of criteria for cultural heritage values has developed, the developments have not been much affected by subsequent Conventions. This may change as the possibilities under the Biodiversity Convention are better realised.



### 1. Which instance/s or person/s determine/s the criteria for the conservation of built heritage in your country? Please describe the process of determining these criteria.

In the Australian jurisdictions, criteria are set out in legislation, either in Acts of Parliament or in Regulations made under them. Regulations are made by the Executive Branch of Government by the Governor-General of the Commonwealth or by a Governor of a State on the advice of a Minister of the relevant Government department. Regulations are also scrutinised by a Parliamentary Committee and may be disallowed by either House of the relevant parliament.

### 2. What are the respective roles of specialists, civil servants and citizens in this process?

Specialists and members of the public need to involve themselves in the process whereby policy is formulated. Often in heritage matters, policy documents, and the subsequent draft legislation, are made available for public comment, but this may be too late in the process for interest groups to be able to effect major changes.

Civil servants are closely involved in the legislative process as advisors to government.

### 3. Are owners and/or citizens given the possibility of being heard in the process? Is information on the criteria available for the public? If yes, at which point of the process is it made public? What are the ways for citizens of acting upon decision making?

After policy has been formulated and legislation enacted, the application of the policy and legislation to individual cases is considered to be an administrative matter. The application would be as to whether to list a place or item of heritage significance, or whether to allow development that might affect a listed place or item. The views of the public, whether owners or interested citizens, are sought as part of this process.

It cannot be assumed that the resulting decision is subject to administrative review by a court or administrative tribunal. At the Commonwealth and State levels, decisions as to listing are generally made by Government Ministers and are not subject to judicial review. The views of the Heritage Council in the jurisdiction advising the Minister are, except in one jurisdiction, also not subject to review. Decisions as to development applications are generally made by the Heritage Council of the jurisdiction, and are also, with one exception, not subject to review. It remains to be seen whether the one exception will become the nationwide model, or remain the exception.

Decisions that affect places or items of local heritage significance are more usually subject to review. The Minister of the State in which a local government area is located approves planning instruments, including those that add places or items to a local heritage list. Decisions as to development applications are usually subject to appeal to a State Court with jurisdiction over local government issues.

## III CRITERIA IN PRACTICE

### 1. How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors (e.g. fixtures, fittings and technical devices) be protected/conserved on the basis of the aforementioned criteria?

The criteria are comprehensive and can cover all these issues.

### 2. Does publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?

Yes. The criteria in Australian legislation usually apply to all items and places of heritage significance in the jurisdictions, irrespective of the status of the owner. The legislation, however, applies additional requirements on the public owners of a place or item. This usually consists of an obligation to compile an inventory of heritage place or items owned by an agency, and to provide the Heritage Council with regular reviews of their condition.

### 5. Have there occurred problems in defining the criteria for the protection/conservation of built heritage? In your opinion, what are the main problems and challenges of the criteria in use at the moment and the process in deciding on them?

The criteria are very broad and few definitional problems have arisen. The limited avenues for review of Ministerial and bureaucratic decisions relating to heritage means that there are limited opportunities for problems of interpretation to arise.

This text will mainly deal with the situation in the Flemish Region. Belgium is indeed a federalized country, in which the competence for heritage preservation belongs to the regions. As far as conservation criteria are concerned, the situation is very much the same in the three regions. Where relevant, specific references to, or comparisons with the two other regions will be made.

## I CRITERIA FOR BUILT HERITAGE

### 1. The Criteria

The criteria leading to the conservation of built heritage are inscribed in the definitions of monument on the one hand, of urban or rural sites on the other hand. Those are the two major tools for protecting the built heritage in the Flemish Region.

Monuments are immovable goods, works of man or of nature or combined works, presenting a general interest due to an artistic, scientific, historical, folkloric, technical or other social/cultural value, including their fixtures and fittings (art.2,2° Flemish decree 1976 as amended).

Out of this definition we learn in the first place that, in order to be protected, monuments must present a general interest. This means, according to the jurisprudence of the Council of State, the Belgian Administrative High Court, a more than local interest. On the other hand a building must certainly not be unique to be protected<sup>1</sup>.

The values leading to protection are described in a very large way. Especially the words in the definition "or other social/cultural value" add lots of possibilities for the competent authorities to protect the buildings they consider to deserve protection. They thus obtain an important power in the field of heritage protection.

At the moment the protection proposal is formulated, at least one of the above mentioned values must be present; in many cases monuments proposed for protection present several values.

Finally, monuments are protected including their fixtures and fittings: they are considered in their entirety. In some protection proposals and definitive protection decrees a detailed inventory of those fixtures and fittings is inscribed: this implies their maintenance in situ, unless a previous permission for replacement<sup>2</sup>.

The notion "urban or rural site" has got a double meaning in the Flemish legislation: either a larger group of buildings - including yes or no individually protected monuments - and their surroundings being of general interest because of their artistic, scientific, historical, folkloric, technical or other social/cultural value, either the surroundings of a protected monument having a function for its maintenance (art.2,3° Flemish decree 1976).

Especially the first meaning, being the oldest one, is relevant for the theme we dealt with in the conference: by means of a protection as urban or rural site, larger built entities can be safeguarded. The criteria in order to protect urban or rural sites are identical to the ones inscribed in the definition of monument.

The second meaning of urban and rural site, added by an amendment of the 1976 decree in 1995, refers to the delimitation of a buffer zone around a protected monument, in order to safeguard the view on and from the monument<sup>3</sup>.

In the Region of Brussels Capital, monuments and built ensembles can be protected on behalf of an, historic, archaeological, artistic, aesthetic, scientific, social, technical or folkloric value. A general interest is not requested. In the Walloon Region, the values that lead to protection are almost the same<sup>4</sup>, again no general interest is requested.

<sup>1</sup> Convention on the protection of the archaeological, historical and artistic heritage of the American nations. (Organization of American States, 1976)

<sup>2</sup> Convention on the protection of the archaeological, historical and artistic heritage of the American nations. (Organization of American States, 1976)

<sup>3</sup> Convention on the protection of the archaeological, historical and artistic heritage of the American nations. (Organization of American States, 1976)

<sup>4</sup> Convention on the protection of the archaeological, historical and artistic heritage of the American nations. (Organization of American States, 1976)



## 2. Where to find the Criteria

The criteria for the conservation of built heritage are inscribed in the decree of March, 1976 for the protection of monuments and urban and rural sites as amended, and in the decree/ordinance into force in the other regions.

In general, the most important rules governing a specific subject must be inscribed in the basic decree; those rules can be worked out further in implementing orders. The criteria for protection are considered to be essential for the protection procedure and its legal consequences, and thus inscribed in the decree itself and not further completed in implementing orders.

## 3. Only one level of protection

Within the Belgian context, the only level of heritage protection is the level of the regions. So conservation criteria are only worked out by the regions, in their decrees<sup>5</sup>.

Local communities can try to stimulate the protection of heritage of local importance, not being protected by regional legislation, by e.g. instituting supplementary premiums, but this remains a voluntary system, which is not taken into consideration in this text.

Local monuments lists on which buildings only presenting a local interest are inscribed, don't have legal force. They can although lead to an enhanced protection by town and country planning regulation.

## 4. Age is not a criterion in the Belgian legislations

In none of the regions, the age of the building does matter at the moment of its protection. No minimum age is foreseen in the decrees governing the protection of monuments and urban and rural sites. This was a deliberate choice of the legislators. Nevertheless, in practise it was quite unusual until a few years ago to protect younger architecture. In most cases, protection decisions concerned buildings of at least fifty years old. The last years, several buildings constructed during the sixties got legal protection. Younger monuments remain although a minority in the three regions<sup>6</sup>.

## 5. Enlarged criteria

Compared to the law of August, 7, 1931<sup>7</sup>, one notices an enlargement of the criteria likely to lead to protection. In this law, the condition of "national interest" was already inscribed. National interest meant, just like the actual general interest, a more than local interest. The values however that must be present in order to protect a monument<sup>8</sup> were defined in a more restrictive way: article 1 of the 1931 law only referred at a possible historic, artistic or scientific value. The enlargement of the protection values in the 1976 decree was not directly<sup>9</sup> influenced by international texts, but rather the consequence of an increasing interest for architectural minor, for industrial heritage. The idea of what a monument could and should be changed, and so did the values supporting protection.

The Walloon decree dates from 1991; the Brussels ordinance from 1993<sup>10</sup>: their texts were more directly influenced by the Granada Convention.

# II HOW ARE THE CRITERIA DETERMINED?

## 1. A task for legislative assemblies

The regional parliaments are determining the criteria for the conservation of the built heritage while approving the decrees in which they are inscribed. The text of the 1976 decree was prepared by the regional government, in practice by civil servants working for the Flemish Heritage Service.

Civil servants in charge of the preparation of the text of a decree can always consult external experts. In practice this happens rather seldom.

The criteria are discussed in parliament during the approval procedure of the decree as such, first in a specialised commission, afterwards in plenary session. Parliamentary commissions often hear specialists or e.g. representatives of owners associations.

<sup>5</sup> Legal acts adopted by the parliament of the Region of Brussels Capital are called "ordinances", having although more or less equal value with decrees.

<sup>6</sup> Under the 1931 law, monuments of less than 100 years old were very seldom protected.

<sup>7</sup> This law remained, almost unchanged into force, in the whole country until 1970.

<sup>8</sup> This law dealt with the protection of monuments and landscapes, and did not include the tool of urban and rural sites. In some cases large built entities were protected as "urban landscapes".

<sup>9</sup> The new decree was prepared in a period of increased interest in heritage within the framework of the Council of Europe (e.g. organisation of the European Heritage Year in 1975). The Council of Europe stressed at that moment the importance of an adequate legislation. A recommendation on the active protection of the cultural heritage had been adopted in 1970.

<sup>10</sup> Both texts were amended already several times.

## 2. Information to the public

The text of a proposal of decree is made public, the parliamentary procedure in order to approve the proposal can be followed by every citizen, even at internet. Citizens can intervene by members of parliament, having the right to amend the text of the proposal.

The approved decree is published in the Belgian State Gazette; information on the decree as such is made public by the competent authorities, including an explanation on the values that can lead to protection.

# III CRITERIA IN PRACTICE

## 1. Large protection criteria

As mentioned above, the values leading to protection are described in a quite large way in the actual legislation; a broad interpretation is also given to the idea of "general interest". This means that various buildings and larger built ensembles can be protected. As far as monuments are concerned, fixtures and fittings are supposed to be included in the protection. As mentioned above, inventories of valuable movable goods can be part of the protection decision in order to enhance protection.

In practice some archaeological remains were protected as monument or as urban or rural site, even if a more specific legislation exists for the protection of archaeological goods. Historic gardens are protected as monument or as rural or urban site as well.. Cultural landscapes normally get protection under the 1996 landscape decree.

## 2. Only one legal status

Public and private owned built heritage shares an equal status as far as conservation criteria are concerned.

## 3. Judicial protection

The large protection criteria offer an important decision making power to the competent authorities but a very poor judicial protection to owners of valuable goods. Even if they are being heard during the protection procedure, their consent is not requested for a definitive protection. Since protection criteria are described in a large and even vague way, it is not always easy to argue that a specific value is not present.

Every individual protection proposal and final decision however, must be formally motivated, meaning that competent authorities must indicate in the decision itself, for every monument or urban or rural site, the concrete general interest and explain which values are supposed to justify the protection. This motivation offers owners a guarantee against unlawful protection. In case of insufficient motivation, the Council of State can annul the protection decision.

In practice, the concrete protection policy becomes very important and can vary considerably from minister to minister, being restrictive or mild.



## 1. RELEVANT BACKGROUND

In 1878 Bulgaria established an independent state after five centuries of ottoman domination. Cultural heritage preservation in Bulgaria has its peculiarities in terms of date of appearance and progress as compared with the other European states. While elsewhere experience has been gathered prior to the establishment of institutions and of the legal frame, in Bulgaria it was done vice-versa - first the institutions (museums) and the legal frame were put in place and after that the physical preservation of the cultural heritage was launched.

Only 10 years after the Liberation the first regulatory document in this field was passed. It was dedicated to the preservation of the heritage as it was understood at the time i.e. - "coins, tombs, manuscripts and elements of the immovable heritage" with preservation consisting mainly of "searching" and "documenting" of objects and remains.

The first Act for the search of monuments and artefacts was passed in 1890. The next Act passed in 1911 defined the mechanism and the administrative structure of preservation as granted by the state. Subject to preservation this time were not only the monuments and artefacts from all historic periods (including those from ottoman times), but also the immediate setting of the monuments.

An ordinance for the preservation of the historic buildings in the localities was passed in 1936. In this instance measures were foreseen for the preservation of whole streets, squares, constructions, fortresses, monasteries, churches etc.

The present Monuments of Culture Act, in force since 1969, was subject to many amendments up to the present day but nevertheless it does not correspond to the changed socio-economic conditions in the country. Until 1990 the planning and carrying out of architectural, construction and conservation activities fell in the priorities of the National Institute for Monuments of Culture. Nowadays the private sector is gaining terrain in this field.. Currently a new Law on Heritage Protection is in the process of approval.

## 2. CRITERIA LEADING TO THE CONSERVATION OF BUILT HERITAGE

Criteria for almost any segment of the conservation field have been established. Regarding the identification of monument, according to the Monuments of Culture Act, those cultural and historic assets which possess scientific, historic and artistic significance may be granted the judicial status of "monument of culture". They are declared by the National Institute for Monuments of Culture (NIMC) after a preliminary assessment of their value and significance. The declaring act defines:

A. The preliminary typological characteristic. These criteria are defined according to:

- Belonging of an asset to a specific historic period - pre-historic; ancient; medieval; from the Revival period, from the modern times.
- The spatial structure and territorial scope the monuments: single sites and sites as a whole group subdivided into: ensemble; complex; historic settlement; historic zone.
- The scientific and cultural field to which the monuments pertain -archaeological; historic; architectural; artistic; monuments of urban development and cultural landscapes; ethnographic; technical- industrial and technological-industrial
- The location. In this sense the monuments of culture are: within the territory of settlements and outside the territory of settlements.

B. The criteria for the definition of *categories* correspond to the cultural and historic value of the monument: The monuments are divided into:

- Monuments of universal significance – sites with universal value according to the criteria set in the Convention on Protection of World Cultural and Natural Heritage
- Monuments of national significance – sites with exceptional significance for Bulgarian history and culture

- Monuments of local significance – sites, linked to local history and culture
- Monuments of significance as ensembles; immovable heritage properties with relatively low individual cultural and historic value, supporting the spatial characteristic of the group monument, to which they belong
- Monuments for the sake of information. Sites with low individual cultural and historic value, conveying information for the cultural and historic field to which they belong.

C. The criteria for defining temporary *protective regime* for preservation of the sites is a complex of rules and norms including:

- territorial scope;
- boundaries of the site and it constituting elements;
- boundaries of its buffer zone;
- guidance for the preservation of the site and of its setting.

The status of "reserve" as a special regime for preservation is granted to some group monuments or parts of them falling into the category "monuments of national significance" ( fig.4). According to art.20, par.4 of the Law of Cultural Monuments and Museums, conservation and restoration works, repair and adaptation of immovable monuments of culture as well as new construction within their borders and buffer zones, are carried out on permission by the National Institute for Monuments of Culture, under its control and in line with the provisions of the Territory Management Act.. The main criteria in the process of study, protection and development of the reserves are:

- compliance with the provisions of the Spatial Development Plans of the reserves;
- complete preservation of the architectural and historic heritage from the periods of the Antiquity, the Middle Ages and the Revival period;
- complete preservation of the separate ensembles and architectural monuments;
- maximal preservation of the authenticity of the monuments of culture;
- recreation of lost architectural, artistic and historic monuments of culture is solely made given available proven scientific data;
- application of the achievements of world and Bulgarian conservation theory and practice;
- application of a complex approach in the planning and carrying out of the archaeological, architectural and ethnographic survey and documenting in the course of conservation, restoration and rehabilitation works

The declared sites are subject to *final complex assessment*, clarifying their value and significance. The assessment is carried out in compliance with the following criteria: authenticity integrity; scientific and artistic value; interaction with the setting; interaction with society.

Regarding the intervention to the monuments of different significance there is a differentiated approach. For the categories "universal significance" and "national significance" the regimes with the highest degree of protection are fixed. In the instances of monuments of culture "of local significance" minimal interventions are accepted, regarding the specificity of each site. For the categories "significance as ensemble" and "for the sake of information" a higher degree of intervention is accepted in their substance and in their volume and spatial characteristics. The most important factor, which defines the intervention, is the significance of the monument. Usually the older the monument is – the higher level of importance it has. All the archaeological monuments have the status of state property and are subject of high level of protection.

The financing of the conservation activities is ensured mainly through the Republican budget adopted annually by the National Assembly in accordance with the following scheme:

A. Through the budget of the Ministry of Culture:

For each financial year the National Institute for the Monuments of Culture makes a proposal for the benchmarking of the state subsidy for specific monuments of culture and for special types of activities which is being approved by the Minister of Culture. The following criteria for selection of the monuments to be included in the "State assignment" are primarily being considered:

- Monuments from categories "universal" and "national" significance;
- Monuments in an advanced stage of conservation and restoration, whose completion is possible in the course of the financial year;
- Monuments in the process of conservation and restoration where interrupting the technological process is inappropriate;



- Monuments in decaying physical state whose integrity is threatened;
- Monuments whose owners and the municipality on whose territory they are located commit themselves to provide additional financing for the different types of activities during the financial year.

B. Through the budget of the Ministry of Finance, which (according to art. 18, par. 3 of the Monuments of Culture and Museums Act) has to secure credits for the study and preservation of monuments of culture discovered in the course of construction, that require more funds than the funds benchmarked in the project.

C. Through the budget of the municipalities – for specialized activities concerning monuments of culture from category “local significance” and “significance in ensemble” – owned by the municipality and for some monuments of culture – owned by the Bulgarian Orthodox Church and by other religious communities, as well as for the preparation of specialized management layouts and plans for protected territories with cultural and historic heritage properties.

D. Through the Directorate for Religious Confessions affiliated with the Council of Ministers. The main criterion in this instance is that the site be an operating worship place

E. During the recent years private and institutional donations and subsidies from abroad support the preservation of the cultural heritage of the country. The existing legal framework in this field includes statutory acts at two legislative levels. The International Acts ratified or signed by the Republic of Bulgaria are the following:

- Convention on Protection of World Cultural and Natural Heritage-UNESCO, ratified on 1974
- Convention on protection of underwater heritage-UNESCO, ratified on 2003
- Convention of Granada on Protection of Europe's Architectural Heritage - Council of Europe, ratified on 1991
- The Convention of La Valetta on protection of the European archaeological heritage - Council of Europe, ratified on 1993
- European Landscape Convention - Council of Europe, ratified on 2004
- Framework Convention on the Value of Cultural Heritage for Society of the Council of Europe

The national legislation provides criteria for the identification, preservation and use of the cultural and heritage mainly in the following Acts and Ordinances :

- The Constitution of the Republic of Bulgaria, adopted by the Great National Assembly in 1991, which stipulates the commitment of the state to take care of the national cultural and historic heritage preservation; determines that the natural and archaeological reserves defined as such by law are exclusively owned by the state; guarantees the natural and irrevocable right to access to the cultural heritage and the rights to creating cultural values without discriminative restrictions of ethnic-cultural and religious nature.
- The Monuments of Culture and Museums Act adopted by the Council of Ministers in 1969, provides for the identification, research, protection and promotion of the monuments of culture on the territory of the Republic of Bulgaria and for the development of the museums.

The instruments complementing the Act in its part relating to the immovable monuments are the following:

A. *Rules for the Organization and Tasks of the National Institute for Monuments of Culture* (State Gazette No. 14/ 2006), which stipulate the NIMC as a state body under the Minister of Culture, which is entrusted with the implementation of the state policy for the preservation of the cultural and historic heritage.

B. Regulations by the Ministry of Culture, referring to specific preservation issues, such as:

- Ordinance No. 5 for Listing the Immovable Monuments of Culture (State Gazette No. 60/1998). It regulates the procedure for registration of the monuments of culture and for the delineation of their boundaries; contiguous zones and prescriptions for their safeguarding; it provides for the legal protection of all the declared monuments of culture; it introduces a system of categories of the monuments of culture in line with the international standards; regulates the creation and maintenance of a national archives fund and of a national register; regulates the specific responsibilities of the local authorities in this respect.

- Ordinance No. 6 on Usage and Presentation of the Immovable Monuments of Culture (State Gazette No. 30/ 1979)
- Ordinance No. 17 on Determining the Limits and Regimes for Usage and Preservation of Immovable Monuments of Culture Outside Population Centres (State Gazette No. 35/1979)

The Territorial Development Act (State Gazette, No.1/02.01.2001 with last amendment – State Gazette, No.61/ 21.07.2007) regulates the public relations, linked to the territory management, the investment design and construction in the Republic of Bulgaria. According to this act, there are five types of territories in the country with regard to the purpose of their use: urbanized areas, agricultural lands, forests, protected and deteriorated areas (to be rehabilitated). There are two types of protected territories – for protection and safeguarding the nature and for protection of the cultural and historic heritage properties. The Act stipulates that it is possible to devise specialized detailed management plans and that it is obligatory to provide specific rules and regulations as part of the general and detailed territory management plans. Coordination with the National Institute for Monuments of Culture with regard to territory management is obligatory. The last amendments to the Act provided that any activity within the limits and in the contiguous zones of cultural heritage properties should be coordinated with the National Institute for Monuments of Culture.

With regards of the new status of the country as a member of the European Union, which gives wider possibilities for enhancing heritage conservation, a priority list for treatment of monuments has been elaborated. At present Regional Programme for Cultural and Natural Heritage in South-Eastern Europe 2003-2005” is underway in Bulgaria. The procedure for the preparation of the List of the Priority Treatments /LPT/ is an important part of the Programme. The List is part of component “B” – Integrated plan for rehabilitation projects/ Study of the architectural and archaeological heritage in South-Eastern Europe, implemented jointly with the European Commission. The LPT aims to identify in each country or respective territory included in the Programme, the monuments and important heritage sites, deemed to need emergency conservation and/ or restorations works. This List has to include examples from the whole scope of monuments and sites with great significance. The preparation of the lists observes the general principles and the policy of the Council of Europe and of the European Commission: are being included elements of the religious heritage representing all confessions, monuments in ensembles and single monuments, the architectural and archaeological heritage is being treated as a whole encompassing buildings, ensembles and sites from ancient times up to the present day;

The three basic criteria for the preparation of the List of the Priority Treatments are: significance, present state and the degree of threat.

### 3. DEFINING CRITERIA FOR BUILT HERITAGE

The criteria for the conservation of the immovable cultural and historic heritage properties and sites are determined by the National Institute for Monuments of Culture (NIMC) according to art. 21 of the Monuments of Culture and Museums Act and Ordinance No 5 of the Ministry of Culture. All scientific reports and other documents linked to the immovable cultural and historic heritage properties and sites and to the preservation of the immovable monuments of culture – scientific reasoned proposals, scientific papers, guiding conceptual plans, supporting plans and territorial management layouts, copies of the current urban regulation plans, archive plans and cadastres are part of the National scientific and documentary archive of the NIMC.

The Ministry of Culture gives the status of monuments of culture subject to proposal submitted by the National Institute for Monuments of Culture, after obligatorily consulting the opinion of the Mayor of the municipality on the territory of which the respective monument of culture is situated. The spatial territorial plans are subject to public debate prior to their submittal to the expert councils for territory management.

All the types of activities that are necessary to be carried out on buildings-monuments of culture are being defined on the ground of preliminary surveys, analyses of their state and are based on devised projects that have been coordinated with the respective certified authorities.

Survey, planning and carrying out of conservation and restoration for the monuments publicly owned, the implementation of conservation projects takes place after tendering procedure. One of the terms is that candidates be specialists and have proven professional experience in this field with priority given to physical and legal persons registered under the Trade Act with object of the activity “conservation and restoration of immovable monuments of culture”. At the same time a regulation for licensing the architects specialized in the field of conservation and restoration of immovable monuments of culture needs to be passed.

In case the conservation of a certain monument is subsidized not by the state, the programme and the conservation projects are proposed by the owner and the investor, but they should be approved by the National



Institute receiving building permission from the relevant Municipality.

The owners of monuments of culture, are obliged (according to art. 20, par. 1 of the Monuments of Culture and Museums Act) to keep them in good repair. They have to finance all the repair works and activities they undertake on their initiative with a view to update their living conditions and the use of their property. According to the Monuments of Culture and Museums Act if the owners cannot secure funds for emergency repair works and maintenance, the expenses are assumed by the municipality against mortgage of the property, but there is not such a case for the last 20 years.

#### 4. CRITERIA IN PRACTICE

The existing criteria do not respond entirely to the needs of society for better preservation of built heritage. There is not conformity of the Monuments of Culture and Museums Act with the other relative Laws in the field of conservation, as well as with the Penalty code

Regarding the identification of monuments, some more types should be included in the list, namely the cultural landscapes, the industrial heritage, the cultural routes etc. As for the criteria ensuring its safeguarding and the conservation, a lot is to be desired – license system for conservators, criteria for recording the conservation process, more comprehensive control and monitoring from the relevant actors, clear instruction for presentation and interpretation of monuments, etc.

Although the private and state properties share equal status when deciding on the criteria applied and on its protection, the private owners should be supported by appropriate incentives.

As a conclusion it may be stated that the existing criteria for built heritage should be adapted to the new socio-economic condition of the country and harmonized with the European legislation. The criteria ensuring efficient preservation, appropriate use, and successful presentation of built heritage are expected to be included in the new Law on Cultural Heritage.



Photo: Hristina Staneva

## CROATIA

Jadran Antolović

### I CRITERIA FOR BUILT HERITAGE

#### 1. What are the criteria leading to the conservation of built heritage?

The leading criteria for protection of built heritage are:

- the characteristic: authenticity, rarity, representativeness, diversity, integrity, ambient and landscape value, aesthetic-artistic value
- the importance and functions
- the time of origin: age and condition
- Special criteria for built heritage: purpose, formation, materials, environment, structures, culturally importance

#### 2. Where these criteria are defined (acts, regulations, conventions)?

Legal act regulates the establishing of criterion for protection of heritage. Criterion determines the Special expert's commission. Criteria and the methodology of implementation are published in guidelines of the special expert commission.

#### 3. Are there different levels of criteria, e.g. national, regional and local or other levels?

Criteria for protection of built heritage have been determined on the national level: for registration of built heritage and for status of national built heritage.

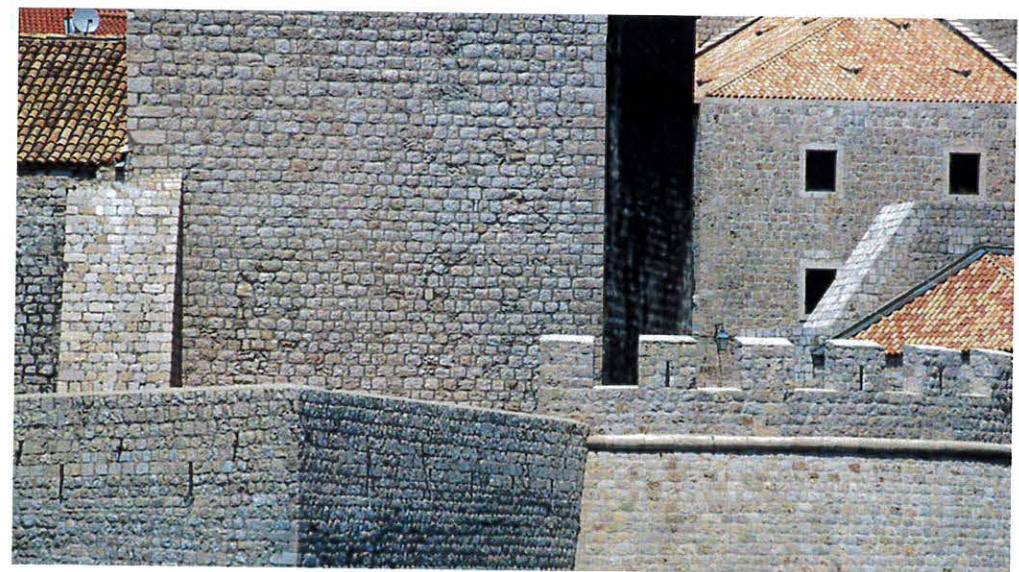
On the level of local community is possible to determine criterion for protection of built heritage of the local importance.

#### 4. Does the age of a building matter when deciding on its protection / conservation? Please specify.

One of criterion is the age and the condition of built heritage.

#### 5. Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?

In 1999 the Croatian cultural heritage protection system has been significantly changed. Then it has been brought the new legal act and today the Republic of Croatia is member state in all international conventions connected with cultural heritage.





## II HOW ARE THE CRITERIA DETERMINED?

1. Which instance/s or person/s determine/s the criteria for the conservation of built heritage in your country? Please describe the process of determining these criteria.

Special commission for cultural heritage in the Ministry for culture determines criteria for protection of built heritage.

2. What are the respective roles of specialists, civil servants and citizens in this process? Are owners and/or citizens given the possibility of being heard in the process? Is information on the criteria available for the public? If yes, at which point of the process is it made public? What are the ways for citizens of acting upon decision making?

Decision about protection of the heritage brings as part of professions based on established criteria. Criteria are publicly available. The procedure has been regulated with the legal act. Public finds out about protected heritage through announcement of act. Owners are entitled complaints on this act, because he rips in their ownership right.

## III CRITERIA IN PRACTICE

1. How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors (e.g. fixtures, fittings and technical devices) be protected/conserved on the basis of the afore mentioned criteria?

Criterion determines the Special commission which then applies in practice. With that ensures their carrying out in practice.

2. Do publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?

Public and private ownerships share equal status in process of protection.



# FINLAND

Satu-Kaarina Virtala

## I CRITERIA FOR BUILT HERITAGE

In Finland the criteria for built heritage consist mainly of the historical values, such as the historical value as evidence, (historical)construction value, landscape- and environmental values, authenticity, rarity, uniqueness, artistic and visual values and identity- and symbolic significance.

The criteria for built heritage are stipulated in two acts, namely in the Act on Protection of Buildings (1985) and in the Land Use and Building Act (1999). The international conventions which Finland has ratified, are broadly considered to be included in them. Of these the Act on Protection of Buildings is more specific, it says that in order to preserve the national cultural heritage buildings, groups of buildings or built areas connected with history or cultural development shall be protected. The Land Use and Building Act concerns more culturally sustainable development in the terms of protection of the beauty of the built environment and of cultural values. Also in the Nature Conservation Act (1996) and in the Act of Antiquity (1963) are provisions for built heritage.

In addition of laws, the criteria is being defined also in inventories made by experts. The National Board of Antiquities has a right to give guidelines for the policy of contents in the inventory. The new guidelines are just now being prepared and they will be based also on international conventions. Because the inventories are based on research, they are the most fundamental means of deducing the status of built heritage.

In Finland three levels, national, regional and local, are used widely in town planning and regional planning. National and regional importance lead to protection in town planning, whereas local importance seldom leads there. Buildings of local importance are, however, often renovated by their owner, if they have been granted subsidies.

In addition to the general inventories made in specific area or region, there are also so called sector inventories in which objects are valued by their functions, for instance military buildings and industrial buildings, like those linked to forestry industry. In these cases the criteria are determined by expert authorities in those sectors.

During past decades inventories have changed to match better with international conventions especially after Granada convention and now there is some movement towards the ideas of Florence convention.

The age is not a requirement when protecting a building. In general, buildings in Finland are comparatively young, over 80 per cent have been built after World War II, and only about 5 per cent before 1920. This means that old buildings are very rare indeed. Perhaps this is one reason that in Finland we do not have age limit for built heritage. Inventories on modernistic buildings have been made and some of them are protected, usually by detailed plan, but some of them by the special law. Inventories on modernistic heritage cover only small areas and a handful of most prominent buildings in few cities. One difficulty in protecting modern buildings is that the perspective is too short. In protecting these buildings the architectural and building constructional criteria are dominant. An example of protected modern building is the Finlandia Hall by Alvar Aalto, which was protected by law under 20 years from its construction.

All the clerical buildings of the Finnish Lutheran Church and the Finnish Greek Orthodox Church are protected by law if they were built before 1917, that is before Finland became an independent state. It is not the state or municipality who decides on the protection of newer churches, but the churches themselves. The churches have no right to compensations, but they pay for the costs themselves. Unlike in other built heritage, art works and movable property in the churches are also protected by law. Churches belonging to other religions are protected as any other buildings.

## II HOW ARE THE CRITERIA DETERMINED?

The criteria are determined by different quarters depending for what purpose the inventory is being made. To put it roughly, the decision-maker is the person who does the inventory, for instance for spatial planning purposes. However, there are the guidelines by the National Board of Antiquity to help. The criteria can be determined also by persons who make the decision to protect the building by law and, ultimately, the Supreme Administrative Court.



In the course of inventory the local value of the building is always determined. The local objects can be determined by local, regional or national experts. In the regional level the decision-maker is the cultural-historical museum in the region after consulting other regional experts.

In the national level the criteria are determined by the national expert authority, which is the National Board of Antiquity. Moreover, what comes to land use questions, there are the national land use objectives given by the Council of State. These objectives provide in terms of built heritage that the extensive inventories made by national experts should be used as a starting-point for planning.

As I already mentioned, the criteria are determined by experts. In case of local inventories civil servants and citizens cannot object the criteria as such, but they have a say in the consequences, for instance in question of planning and conservation. It is also possible for private citizens to have their own evaluation-processes and put it forward to the local authorities for implementation. To conclude, the criteria are determined by experts, but what happens to the object, lies on civil servants and town councillors who make decisions on town planning or protection.

Private citizens and groups can act as advisers during inventories. Inventories are always public as well as all kinds of land use plans. During the planning process citizens have the opportunity to participate in it. If the criteria are mainly determined during protecting process, the opportunity for the public to participate is more limited, and mainly takes place via media.

### III CRITERIA IN PRACTICE

The comprehensiveness of the criteria are in so far rather general and depend largely on the nature, quality, accuracy and content of the inventory. Especially landscapes, fixtures, fittings and technical devices need defining. In Finland there is at present going on a reform of the legislation of built heritage, and it is to be hoped that some defining is to be done there.

Publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its conservation in theory, but in practise publicly owned built heritage is more often and in more detail protected or conserved.

There are many problems and challenges in defining the criteria for the protection of built heritage. The most basic problem is that experts have not stated reasons for selecting an object, but described the history of it. It is to be noted that history as such does not make ground for significance or protection.

The quality of inventories varies greatly. The best and most accurate inventories are national inventories, mainly because there is not enough expertise to other levels available. Also the landscape inventories are just at their beginning.

It is also common belief that protection by law is more "valuable" than by land use planning. There is no significant difference between the ways of protection, except that the actor in planning is municipality and in using the Protection Act it is the state. This difference can sometimes lead to false assumptions among owners and citizens.

### I CRITERIA FOR BUILT HERITAGE

#### The criteria leading to the conservation of built heritage in Israel

Under Israeli law there are three laws that govern the conservation of built heritage;

Antiquities are governed by the Israel Antiquities Authority Law (1978); which defines an "antiquity" as a man-made object that was made before 1,700 A.D. or a man-made object that was made after 1,700 A.D. has historic value and was declared as an antiquity by the Minister of Education, Culture and Sport.

Built heritage other than antiquities are governed by the Planning and Building Law (1965); which establishes national, district and local planning committees, that are empowered to adopt zoning and building plans at their various levels. The objectives of the zoning and building plans are determined by Section 61 of this law; Clause 61(3) determines one of the said objectives as conservation of any building ... which has architectural, historical, archeological or other importance. Section 76(a) determines that the fourth appendix governs conservation plans. Section 1 of the fourth appendix defines a conservation site as "a building or group of buildings, as well as their immediate surroundings, that the planning and building committee find to have historical, national, architectural or archeological importance". It should be noted that, under the forth appendix to the Planning and Building law (1965), a local planning and building committee is obligated to establish a preservation sub-committee that is required, among other duties, to advise on issues related to conservation.

Built heritage other than antiquities are also governed by the National Parks, Nature Reserves, National Sites and Commemoration Sites Law (1998), which establishes the Israel Nature and Parks Authority, responsible for the preservation of national heritage (amongst other things). The Minister of Internal Affairs, under Section 38 of this law, has the authority to conserve a building or group of buildings, as well as their immediate surroundings, if they have historical or national importance.

#### Defining these criteria

The only criterion mentioned above that has a formal definition is defined in the Israel Antiquities Authority Law (1978) as a man-made object that was made before 1,700 A.D. The criteria for man-made objects made after 1,700 A.D. as well as the criteria in the Planning and Building Law (1965) and in the National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998) are very general and open to subjective interpretation by the relevant bodies.

#### The application of the criteria

The criteria in the Israel Antiquities Authority Law (1978) have countrywide application. The criteria for zoning and building plans in accordance with the National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998) are also having countrywide application. The criteria for zoning and building plans in accordance with the Planning and Building Law (1965) are applied by national, district and local planning and building committees. Most zoning and building plans are approved by the local planning and building committees, although some are approved by the national or district planning and building committees. Under the forth appendix to this law, each planning and building committee prepares a list of sites for conservation. That list includes the following: the reasons the site should be conserved, its development potential, the details of the current land owners and other holders of rights in the land and any other details the planning and building committee sees fit.

#### The age of a building and its protection

As mentioned above, any building built before 1700 A.D. is automatically an antiquity and required to be conserved. As for newer buildings, the Minister of Education, Culture and Sport can declare a building built after 1700 an antiquity if it has historic value, the Minister of Internal Affairs can declare a building as a national heritage site if it has historical or national importance, and the planning and building committees can decide to conserve a building as part of zoning and building plans.



### Changes in the criteria through the decades

The forth appendix to the Planning and Building Law (1965); was added in 1991. As far as antiquities are concerned, there is an advanced initiative to change the existing - pre-1700 A.D. criterion to a more suitable pre-1870 A.D. criterion. It should be noted that none of the changes mentioned above are the result of any international conventions.

## II HOW ARE THE CRITERIA DETERMINED?

### The process of determining the criteria

As mentioned above, the main set criteria are in the Israel Antiquities Authority Law (1978) those criteria were determined by the legislature and can only be changed by it.

As for built heritage not discussed in any law, the Minister of Education, Culture and Sport, the Minister of Internal Affairs, or national, district and local planning and building committees can set their own criteria as to which built heritage should be conserved. The processes and considerations differ from one to the next and rely on their personal judgment. For example, last year the local planning and building committee for Tel-Aviv approved the "White City" conservation plan, in which 1,300 buildings with historical or architectural value are to be conserved. The local planning and building committee for Tel-Aviv, set different criteria for buildings to determine which buildings are to be ignored, which buildings are to be conserved and which buildings are to be subject to strict conservation. It is important to mention that this "White City" conservation plan and its criteria have no obligatory effect on other planning and building committees, which may set a whole different set of criteria.

### The role of specialists, civil servants and citizens in the process

Different laws vary as to the roles they assign to specialists, civil servants and citizens. When antiquities are concerned, the Israel Antiquities Authority Law (1978) gives the Minister of Education, Culture and Sport the authority to declare a man-made object that was made after 1,700 A.D and has historic value to be an antiquity. The Minister is an elected politician. The necessary information in the process is provided to him by the Antiquities Authority, which is comprised of civil servants. The minister's decisions are published in official government records. Citizens and other interested parties may make suggestions to the Antiquities Authority or directly to the minister, but are not given a formal right to be heard in the process.

As far as built heritage other than antiquities is concerned, the National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998) gives the Minister of Internal Affairs, the authority to conserve a building or group of buildings, as well as their immediate surroundings, having historical or national importance. The Minister is an elected politician. He is advised by the Israel Nature and Parks Authority which is comprised of civil servants. Citizens and other interested parties may make suggestions to the minister but are not given the formal right to be heard in the process. When a building is about to be declared as a national heritage site, the local city councils have 60 days to object. The minister's final decision is published in official government records. Further, The Planning and Building committees, established under The Planning and Building Law (1965) are vested with the power to set up zoning and building schemes at their various levels. These committees are comprised of elected politicians and civil servants, and can decide to conserve a building as part of the zoning and building scheme. They can decide to conserve a single building or define conservation plans and criteria for entire zones (and even cities). The committee prepares a raw draft of its planned zoning and building plan which is deposited and made public for citizens and other interested parties to review and they have the right to object to the plan. After the plan is approved, there is an appeal process to the higher level Planning and Building committee. Once the final decision is made it is published.

## III CRITERIA IN PRACTICE

### Comprehensive criteria

The criteria are only comprehensive with regard to antiquities, as demonstrated in The Israel Antiquities Authority Law (1978). The National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998); and the Planning and Building Law (1965), each with regard to its own area, allow the conservation of built heritage other than antiquities. The aforesaid allows for protection of built heritage and their immediate surroundings. It is important, however, to note that the criteria set by the following are not necessarily as comprehensive as the former, and some criteria's are not comprehensive at all.

### The different statuses of publicly and privately owned built heritage

There are no separate criteria for privately or publicly owned built heritage; therefore officially they have share equal status. Practically, the authorities are reluctant to conserve privately owned built heritage, because Section 197(a) of the Planning and Building Law (1965) states that, if real estate is devalued by a zoning and building plan, the land owner is entitled to receive compensation from the local planning and building committee. Because of this financial uncertainty, the local planning and building committees are usually reluctant to include privately owned property in their zoning and building schemes. Generally, that is not the case with regard to publicly-owned built heritage, and for that reason alone, more publicly owned built heritage is chosen for conservation.

### The main problems and challenges of the criteria in use

As for antiquities, since the criteria are set by law, no problems have occurred with their definition or implementation. As noted, there is an advanced initiative to change the existing pre-1700 A.D. criteria to a more suitable pre-1870 A.D. criteria. That should improve the conservation and protection of built heritage in the State of Israel.

As for built heritage other than antiquities, two major problems were shown:

National, district and local planning and building committees are vested with the power to set up zoning and building schemes at their various levels. As a result, there are no set and uniform criteria to define built heritage.

Clause 197(a) of the Planning and Building Law (1965) states that if the value of real estate is affected by a zoning and building plan, the land owner is entitled to receive compensation from the planning and building committee responsible. As a result, wealthier planning and building committees would tend to set broader criteria for the conservation of built heritage, while planning and building committees lacking in resources would tend to set narrower criteria for the conservation of built heritage, again leading to different and possibly contradictory results as to what should be conserved.



## I CRITERIA FOR BUILT HERITAGE

The criteria used in the conservation of the Built Heritage in Mexico have been subjected of an evolution during many years. In the beginning, the idea of "Antiques" was the fundament in the protection of the cultural heritage during the XVII century, especially as an academic activity. In the last years of the XIX century, the Mexican government issued the first law for the protection of the archaeological monuments, establishing that this kind of monuments were property of the Nation, determining as a felony the destruction or damage to these monuments and providing the creation of an inventory of the Archaeological Heritage called "Archaeological Chart of the Republic".

In the first years of the Mexican Revolution (1910-1920), the Law of Conservation of Historic and Artistic Monuments, Natural Sites and Landscapes began the development of the concept of "Cultural Heritage" in the Mexican legal system. This evolution was characterized by the incorporation of new cultural goods in the followed laws: i.e. the churches were considered as protected goods in the new law issued in 1916; typical and folkloric zones were incorporated in the Laws issued in 1930 and 1934. In the Law issued in 1970, the concept of "Cultural Heritage" was temporally included in the mexican legal system. We can verify the evolution of the criteria about the concept of "Cultural Heritage"; however, we can find the lack of an integrated legislation with other legal branches.

In addition to the legal aspect, it is important to take in consideration that, as result of the interchange of the Mexican experience with the information provided by the international organisms, the trend of the Mexican Cultural Policy recognizes the value of the cultural goods based on the esthetic criteria, antiquity, historic values and use value. However, the mentioned criteria are not present in the Mexican legislation.

The cultural legislation and policy share the criteria consisting that the conservation of the Cultural Heritage is a social responsibility and a matter considered as public utility and national interest, controlled by the INAH in the case of archaeological and historic monuments and the INBA in the case of artistic monuments.

The most important criterion established by the article 6<sup>th</sup> of the Federal Law of Archaeological, Artistic and Historic Monuments and Zones ("the Law") is the following: *"the owner of a monument has to conserve and restore in accordance to the authorization granted by the competent Institute."*

In accordance to the article 13 of the Law, the same principle is applicable to movable monuments.

The fundament for the establishment of a criteria for the protection of Historic Centers and other cultural zones is provided by the Federal Law of Archaeological, Artistic and Historic Monuments and Zones (May 6, 1972), the Rules of the Federal Law of Archaeological, Artistic and Historic Monuments and Zones (December 8, 1975), the Organic Law of the INAH, the Rules of the Council of Historic Monuments (February 28, 1994), the Law that creates the INBA (April 30, 1946) and, finally, the Presidential Resolution that creates the National Commission for the Preservation of the Cultural Heritage (June 27, 1989).

In accordance to the article 9<sup>th</sup> of the Rules of the Federal Law of Archaeological, Artistic and Historic Monuments and Zones ("the Rules"), the declarations of archaeological, artistic and historic zones have to include the dispositions related to the conditions that the building are subjected in order to protect the Cultural Heritage. In other word, when we are talking of "conditions", we considered that we are talking about the conservation criteria.

In the practice, the declarations do not include these conditions for the realization of conservation or restoration works, letting the resolution of the common problems respect to the Cultural Heritage to the personnel of INAH or INBA in accordance to their own criteria. The liberty granted to the personnel to the INBA or INAH to solve the resolution of a restoration license, for example, is so ample that ICOMOS Mexico has detected that the authorities have solved in different ways the application for license of two similar restoration projects in two similar buildings in the same city without a real fundament in both resolutions.

Only in specific cases, we could find examples of the establishment of preservation criteria in important cultural zones and buildings. One of the most important examples of this situation is the declaration of the

archaeological zone of Teotihuacan. This declaration establishes a specialized regulation of the construction activities and interventions in monuments in order to protect the authenticity of the archaeological buildings in Teotihuacan, to regulate the archaeological research and protect the relation of the archaeological zone with the important natural setting. However, this case is normally very rare in the Mexican legal system.

In consequence, the lack of definition of technical criteria for the protection of the Cultural Heritage in Mexico permits to the authorities to solve the authorizations in accordance to their own criteria and not in accordance to a legal or technical disposition. This situation has provoked that when the owner of a private building considered as monument is affected by a resolution of the authorities, normally, he decides to file a complaint in order to obtain the revocation of such resolution having as the most important argument that the resolution is based on the own criteria of the authority and not in the Law. In the majority of the cases, the courts confirm the argument of the owner and decide to revoke the resolution of the authority causing damage to the Cultural Heritage.

One of the most important criteria in the Mexican system consists in the conservation of the archaeological, artistic and historic monuments and zones because this matter is of national interest. However, we have to consider that these criteria are limited to the federal legislation.

The federal authorities are competent for the emission of laws related to the protection of monuments and zones which conservation is of national interest. The states of the Republic are competent to issue local laws for the protection of the regional Cultural Heritage, but additionally, the local authorities can also protect the cultural through the urban development or environmental legislation.

In accordance to our Constitution, the protection of the cultural goods not included in the federal law is competence of the local authorities. The format, dispositions and fundaments in each local cultural Heritage Law is different.

In the case of the state of Coahuila, the Cultural Development Law establishes a detailed definition of the criteria that the authorities and citizens have to fulfil respect to the protection of the Cultural Heritage.

In the case of the Law of the Cultural Heritage of Baja California, the declaration of cultural buildings or zones has to include a specific regulation for the protected good. These dispositions have been fulfilled by the authorities of Baja California. For example, the declaration of the old wine factory "Bodegas of Santo Tomas" –the first wine factory in Baja California– as Cultural District included an important technical regulation for the protection of this building developed in more than 50 pages.

In the case of the Law for the Safeguard of the Built and Architectonic Heritage of Mexico City, it is established that the conservation criteria of the protected zones will be included in the respective preservation programs issued by the local authorities.

In other states, the urban development programs are the documents that provide the criteria for the preservation of the cultural heritage.

However, in the majority of the local legislation related to the protection of the Cultural Heritage, there are not specific dispositions in order to provide the criteria for this kind of buildings or zones.

The age of a building is a factor considered by the current Law (continuing the same criteria established by the law of 1934). In accordance to the current law, the determination of the cultural value of a monument is the chronological criteria, considering the time provides value to a monument. These criteria have been constantly critized by academic sectors.

In accordance to the criteria provided by the LFMZ, the monuments are divided in the following categories:

- Archaeological monuments.- goods produced by cultures located in national territory before the establishment of the Hispanic Culture in the country.
- Historic monuments.- the goods involved with the history of the country since the establishment of the Hispanic Culture in the country.
- Artistic monument.- the goods with relevant esthetic value. This value is based on the following aspects: representativeness, to be an example of an artistic trend, innovation, used materials and techniques, and others.

However, in the federal legislation, there is not any disposition that establishes an age range or limit in order to divide *"the historic"* and *"the contemporary"*.

In several local laws, it is indicated an age range as requirement of a building for its protection. This age range could be since 50 to 70 years old.



In the last decades, the criteria respect to the definition of Cultural Heritage has changed. In the 80's, some States of the Republic issued laws with an object more ample than the Federal Law of 1972 because these laws protect not only the Built and Movable Heritage. The object of these local laws also includes the natural heritage in relation with the cultural heritage, the immaterial heritage, the ways of living, practices, traditions and languages of the indigenous communities. Additionally, these laws protect the natural and built setting of monuments and zones as well as urban and natural image, the monumental open spaces, typical or folkloric areas, natural sites, areas with regional cultural value and cultural centers.

There are municipal rules that establish dispositions in order to coordinate the governmental levels (federal, state and municipal) in the protection of the Cultural Heritage.

The World Heritage Convention had an important roll in the recognition of new categories of cultural goods and zones in the Mexican legislation. As we could appreciate, the influence of the World Heritage Convention permitted the development of the local legislation in this matter through the emission of local laws in this matter (i.e. Baja California, Coahuila, Nuevo Leon, Veracruz, etc.).

## II HOW ARE THE CRITERIA DETERMINED?

The authority that determines the criteria for the conservation of the archaeological and historic monuments is the INAH through internal advisory bodies.

The Commission of Historic Monuments is the responsible to provide to INAH the criteria for the conservation, restoration and investigation of the historic monuments and sites. This Commission has the faculty to provide suggestions for the safeguard of the Historic Heritage.

Other internal body of the INAH is the Archaeology Council. This body is the responsible to provide assistance and advice in the archaeological projects, establishing the criteria for these kinds of works.

However, the action of these bodies is not recognized by the law. Their participation depends of a specific requirement by an internal department of the INAH. For this reason, the majority of the resolutions adopted by the INAH are based on personal criteria, with the influence of political, economical, social and personal interests and pressures.

In the case of INBA, there is not an advisory body for the determination of criteria for the protection and conservation of artistic monuments and sites.

In the case of local legislation, the criteria could be determined by a specific advisory bodies created by the local Cultural Heritage Law. In other cases, the criteria are established by the authorities. In both cases, there is not a regulation for the procedure for the creation of the criteria in this matter

In the federal legislation, there is not any disposition that obligate the authorities to promote the participation of social and academic institutions in the design of a criteria for the protection of the archaeological, historic and artistic heritage. Inclusive, the participation in the internal bodies of the INAH is subjected to an invitation issue by these authority.

Other problem respect to this matter is the absence of a procedure in order to permit to the owner of a good declared as monument to present a claim against this decision. This situation represents a violation of the audience right provided by the Federal Constitution. For this reason, the Supreme Court of Justice has considered the Federal Law of Monuments as unconstitutional.

Only in the local legislations is provided the creation of advisory bodies, the participation of specialists, citizens and other social sectors in the creation of criteria for the protection of the local cultural heritage. However, it is important to take in consideration that, in the majority of these legislations, the participation in these advisory bodies depends of an invitation issued by the authorities.

Unfortunately, the resolution adopted by the federal and local advisory bodies is not available for the population.

## III CRITERIA IN PRACTICE

In the case of the federal and local authorities, sometimes, the criteria used in the emission of resolutions that affect the rights of the owners of a monument are explained to the owners by the authorities. However, not in all cases, the population understands these criteria, because the concepts are normally too technical. In consequence, we can detect that one important problem is the diffusion respect to the criteria used by the authorities for the protection of the Cultural Heritage.

For this reason, we consider necessary to include the diffusion as one the most important objectives of the Federal Law of Monuments and Sites.

The private and public owners of a monument do not share an equal situation. The conservation of the Built Heritage owned by the federal authorities has the economic support and the technical advice of the INAH, the INBA and the National Commission for the Preservation of the Cultural Heritage.

In the other hand, the private owners of monuments do not have in all moment the technical advice of the cultural authorities. The private owner of a monument is obliged to conserve and restore it in accordance to the Federal Law of Monuments and Sites. In general, the private owner does not have access to economic, financial or tax benefits in order to support conservation activities and projects. As consequence of this situation, private owners of monuments must assume the cost of the conservation works as first option, having as second option, to try to get the support provided by governmental programs, specific funds and resources provided by civil associations.

Finally, we can conclude that there is not a balance between the measures of control and the measures of benefits and promotion to the private sector for the conservation of the cultural heritage.

The most important problem respect to the criteria for the preservation of the cultural heritage is the lack of dispositions that provide and obligate the authorities and the private to fulfill it. The following recent cases represent an important problem respect to the application of criteria related the protection of the cultural heritage:

- a. Historic Center of Mexico City:- this area was declared zone of historic monuments by the federal authorities and was included in the World Heritage List. The Area "A" has a surface of 3.2 Km<sup>2</sup>, and includes 4,527 buildings as well as 1681 catalogued buildings. This zone had suffered the invasion of the streets and public areas by informal merchants. In 2007, the current government of Mexico City decided to retire the informal merchants of this zone and restore the public services. This action was done, however, its cost was too high. In order to avoid a conflict with the organizations of informal merchants (partners in the same political party), the government of Mexico City decided to provide spaces in the Downtown through the demolition of 14 historic buildings without the previous INAH authorization. This situation has provoked the protest of the neighbors, academic institutions, specialized organizations, etc. The government of Mexico City ordered to stop the demolition and in this moment, it is studying the way to solve the problems caused by the demolitions. In this example, the lack of criteria in order to define the cultural importance of the buildings in the zone and the importance to conserve them constitute the most important issue in this matter.
- b. Bicentenario Building:- In the middle of 2007, the government of Mexico City presented a new project in order to celebrate the Bicentenary of the Mexican Independence and the Centenary of the Mexican Revolution: a skyscraper of 300 meters tall, planned by the Architect Rem Koolhaas, named "Torre Bicentenario". This project included Mexican and Spanish investment. In accordance to the project, the skyscraper would be built in the same land occupied by the building named "Super Servicio Lomas", the first functionalist building made in Mexico by the architect Vladimir Kasper. The intention of the Government of Mexico City was to demolish this building based on different arguments: one of them was the fact that the artistic value of this building had not been recognize by the Mexican authorities; other argument was based on the idea of the development of the city justifying the demolition of an important example of the architecture of XX century in order to substitute it by the most important example of the architecture of the XXI century. In order to protect this building, the INBA declared it as artistic monument. Also the project breaks the rules of urban development and causes a serious environment impact; therefore the neighbors, several civil organizations and institutions like Icomos México have opposed this project. This situation caused a conflict between the federal and Mexico City authorities. The Mexico City authorities indicated that the declaration of the INBA constituted a political action against the local programs for the urban development of the city. Finally, the Government of Mexico City decided to cancel the project. This case proved the irresponsible use of architectonic criteria by the Government of Mexico City in order to justify the demolition of an important cultural building.



# NETHERLANDS

Leonard de Wit

I should like to thank our Finnish host for her choice of subject for this symposium, which for several reasons is a very topical issue in the Netherlands at the moment. Our present culture minister has launched a wide-ranging debate on the principles of heritage management. He has instructed us to modernise the system, our major challenge being to link traditional, object-oriented heritage management with spatial planning and care of the historic environment as a whole. This inevitably brings us to the criteria on which we base the designation of protected monuments and historic buildings.

We also face a major challenge in expanding the current list of monuments and historic buildings to include the period of post-war reconstruction between 1940 and 1965. We are still not entirely clear as to how we should tackle this period, and there is no agreement as to which criteria we should use.

In this presentation, I should first like to talk about the current list of monuments and historic buildings and the criteria on which it is based. I will then turn to our struggle with reconstruction architecture.

In 1903 the government set up a special committee to catalogue and describe the Netherlands' historic and artistic monuments. This committee laid the foundations for what would later be the monuments and historic buildings list, producing what was known as the Preliminary List (1908-33). The list was published in eleven parts – one for each province plus a separate one for Amsterdam. This exercise would eventually culminate in a general handbook of architectural history in the Netherlands, known as the Illustrated Description. When it was completed in 1933, the Preliminary List featured 12,000 structures, as well as many movable objects that were regarded as important by virtue of their association with the churches, castles, town halls and aristocratic homes that housed them. This was the first systematic, national inventory based on a uniform definition of what was to be regarded as a monument or historic building. That definition read: 'all buildings and objects in the Netherlands dating from before 1850 that are important as artistic expressions, or by virtue of their historic association'. The new criterion of before 1850 had been included on the basis of the idea that two generations, or fifty years, must have passed before the value of a monument or historic building could be properly judged.

After the Second World War, the Interim Monuments and Historic Buildings Act was introduced in 1950, and extended in 1955. The first Monuments and Historic Buildings Act proper was passed in 1961, protecting monuments and historic buildings from defacement or demolition. The first list of monuments and historic buildings was compiled on a very tight schedule, and with limited resources. It was based on the Preliminary List and, for convenience, the same criterion of 'dating from before 1850' was used, although the fifty-year point had since moved up to 1910. War damage, alterations, comprehensive inner-city restructuring and land parcelling meant the Preliminary List had to be reviewed. More than 100,000 homes and over 15,000 farmhouses had been destroyed or badly damaged in the war, as well as a thousand 'major monuments'.

Section 1 of the Monuments and Historic Buildings Act 1961 listed the following key criteria:

- *general importance*
- *man-made immovable object*
- *at least fifty years old*
- *beauty*
- *folkloric value*
- *significance to academic learning*
- *objects and sites with a historic association*

The new statutory criterion of folkloric value opened the way for the protection of 'small monuments' such as historic homes, farmhouses and windmills, the majority of which had not been included in the Illustrated Description because, by pre-war standards, they had no artistic value. The growing appreciation of 'small monuments' was prompted not only by the rapidly declining number of buildings representing old Dutch building traditions, but also by an academic broadening of the terms 'culture' and 'history', blurring the distinction between 'high' and 'low' culture.

In 1970, partly in response to social pressure, which produced an unremitting flow of new applications for protected status, and to the ongoing demolition of many buildings, a start was made on expanding the list of monuments and historic buildings to include recent monuments dating from after 1850.

Besides selecting 'top monuments and historic buildings' a method was also developed for selecting a broad range of objects based on regional inventories. For the first time, the procedure was dominated by the cultural heritage perspective. This approach met the need among the public and academics for artefacts from the past to be viewed in a more integrated way, reflecting both high and low culture, architecture, urban planning, land development, society and technology. As a result, non-traditional categories such as industrial heritage, cemeteries and cultural landscapes became part of heritage management.

At the same time, the broadening of the concept of a monument or historic building gave rise to a need to refine the selection criteria and account for the choices made. Quality always took precedence over quantity (national interest). In this context, quality was interpreted on the basis of the new, broader definition that denoted a building worthy of preservation because of its architectural or cultural heritage value. A relatively small proportion of objects were selected in virtually every category of building.

The present Monuments and Historic Buildings Act was introduced in 1988. The definition of monuments and historic buildings includes the following criteria: *Any objects produced at least fifty years ago that are of general interest because of their beauty, their significance to academic learning or their cultural heritage value.* Interestingly, the criteria of 'folkloric value' and 'historic association' have made way for the broader concept of cultural heritage value.

The Monument Selection Project, or MSP, had a major influence on the development of criteria for conservation of the built heritage. The aim of the project was to protect examples of more recent architecture from the period 1850-1940. It ran from 1987 to 2005, eventually selecting 8,500 buildings from an inventory and description of 165,000. The four main criteria used in this selection process were laid down in a circular drafted by the culture minister. They represent a more detailed working of the statutory criteria:

- national or international milestone in the history of Dutch architecture between 1850 and 1940 ('benchmark value')
- prime and intact example of a characteristic development in the same, in general terms or as an important local or regional variant ('transition value')
- prime and easily recognisable example of a characteristic cultural heritage/social historical and/or typical regional development in same
- nationally/regionally rare but characteristic and easily recognisable example of a key development in Dutch architecture or construction techniques between 1850 and 1940.

The project took a decentralised approach, with eleven provinces and four major historic cities collaborating on the inventories.





We have arrived at an impasse has arisen since the MSP was completed. Since 2000, policy on designating monuments and historic buildings has been very cautious. We refer to this as a temporary hitch, though by now it is beginning to look rather permanent. This policy was laid down in Ministerial rules that flesh out the criteria for designating monuments and historic buildings.

The debate has come to be dominated by the issue of managing the list. Since designating monuments leads to a claim on financial resources (in the form of grants, tax offsets and low-interest loans), there have been calls for a reselection process.

The current list is also an issue in the modernisation debate I touched upon at the beginning. The aim is to achieve a more regional approach to heritage management, and this threatens to undermine object-oriented management.

Different types of management for different types of monument is also being considered, perhaps on the basis of three categories: A, B and C. I can assure you that nothing has boosted the call for clearer criteria on which to base conservation than this debate.



Photo: Leonard de Wit

### The reconstruction heritage

Aside from the political debate, in the late 1990s my organisation – the National Service for Archaeology, Cultural Landscape and Built Heritage – began to prepare for the next phase: the reconstruction period.

Unlike in the 1850 to 1940 phase, we have not opted for a regional approach, taking instead a categorised and centralised approach. Since 1999 we have performed 26 studies on different categories of monuments and historic buildings, looking at post offices, water towers, town halls, health care institutions, schools etcetera. Comparing the quality and condition of examples within these categories helps us make choices. The criteria developed for the MSP have proved useful in this exercise, too, the aim of which has been to designate 2500 monuments and historic buildings from the reconstruction period.

Our culture minister has not yet adopted this approach. His desire for modernisation has prevented him from undertaking any new designation policy. In June last year he instructed us to compile a 'top 100' list of monuments and historic buildings from the reconstruction period and list them for statutory protection under national law.

This led to the drafting of a set of 'policy rules', which do not constitute a legal document, but which interest groups can use in support of their arguments. It is interesting to consider what criteria we used for this selection process.

The Ad-hoc Policy Rules on the designation of protected monuments and historic buildings 2007 stipulate that 'internationally or nationally recognised monuments or historic buildings characteristic of Dutch architecture, urban planning, land development, construction techniques or spatial art, which as such number among the approximately 100 most valuable monuments or historic buildings from the period 1940-1958' qualify for protection.

Photo: Leonard de Wit

The policy rules also stipulate that the following criteria must be applied for the purposes of selection:

- the monument or historic building should clearly represent a milestone in the development of architecture, urban planning, land development, construction techniques or spatial art in the Netherlands, as evidenced among other things by its leading status and by reference in the national and international specialist literature; or
- the monument or historic building should be a prime example of the main developments in the cultural or social heritage of the reconstruction period in the Netherlands.

Finally, the policy rules also state that, in his selection, the minister will also consider the current condition of the monuments and historic buildings in question. There must be good prospects for preservation in both technical and functional terms. In other words: he does not want to designate any monuments or historic buildings on which he will have to spend any money. The rules also state that he will take account of the extent to which the monument or historic building has a positive impact on the quality of its environment.

The 'top 100' have now been selected. Indeed, they even made the front pages of all the national and regional newspapers. The phenomenon of reconstruction architecture also received a good deal of coverage on television. This positive publicity should prove very good for this part of our heritage, which has not enjoyed great popularity to date.



Photos: Leonard de Wit





## THE CULTURAL HERITAGE LEGAL CONCEPT IN PERU

*A property part of the Cultural Heritage of the Nation is any tangible or intangible expression of the human work, which because of the paleontological, archaeological, architectural, historical, artistic, military, social, anthropological, traditional, religious, ethnical, scientific, technological or intellectual importance, value and significance is expressly declared as such or if there is a legal presumption for it. These assets have the condition of public or private property with the limitations established by this Law.* (Article 2, preliminary part of the Law 28296, General Law of the Cultural Heritage of the Nation).

The above transcribed article, is defining in general terms the cultural heritage goods in Peru, including both tangible and intangible as well as movable and immovable ones.

The long list of values and significance (i.e. paleontological, archaeological, architectural... ) is covering more or less all the variety of human creations. Maybe it was more accurate to opt by a more restrictive and technical criteria instead of that such a long relation contained in the Article II of the Preliminary Title of the Law 28296. However, what is clear is that the built heritage in Peru is part of a wider concept which is the "Cultural Heritage of the Nation" one.

During many years the specialists have criticized and discussed on the legal figure of the "presumption", that was instituted by the former law on heritage issues (24047), replaced by the Law 28296. From a juridical point of view, the presumption can be a suitable instrument to protect the big and extended Peruvian cultural heritage. The in force legislative framework has improved the former one concerning to the presumption. However, from a juridical logic point of view a presumption mechanism is creating a general legal status which will operate for all the goods of the category, up to the moment that the jurisdictional body is formally declaring that an identifies and individualized good are not embraced in the category. Thus, the criteria to enforce the presumption or to revoke it.

However, we do not consider appropriate the part declaring that the goods protected by effect of the international treaties ratified by Peru, are also included in the *presumption*. If an international treaty is declaring that some goods are having the quality of cultural heritage goods, the national protection must be applied in full to them. This is exactly the case of the Article 2 of the Convention of San Salvador<sup>1</sup>

## THE LEGISLATIVE FRAMEWORK

The highest legal instrument concerning the Cultural Heritage of the Nation is contained in the article 21 of the Peruvian Constitution. The constitutional article is as follow:

*The archaeological sites and remains, buildings, monuments, places, bibliographical and on file documents, artistic objects and testimonies of historic value expressly declared as cultural assets, and those provisionally presumed as such, are cultural heritage of the Nation regardless of its condition of private or public property. These are protected by the State. The law guarantees the ownership of such heritage. In compliance with the law, the State promoted the private participation in the conservation, restoration, exhibition and diffusion o it, as well as its restitution to the country when it would have been illegally transferred out of the national territory.*<sup>2</sup>

From our point of view the Constitutional article above transcribed is not contributing to define the legal protection of the Cultural Heritage of the Nation category.

As stated in the first part of this article, there is an specialized law for the protection of the cultural heritage in Peru. It is the *The Ley General del Patrimonio Cultural de la Nación* (General Law of the Cultural Heritage of the Nation) (Law 28296 of July 21st, 2004) states all the basic criteria applied for heritage conservation issues in Peru. It is complemented by its Bylaws approved by Supreme Decree 011-2006-ED (01-06-2006).

This General Law constitutes the normative regime for all the cultural goods including as said above tangible and intangible and, movable and immovable goods. It includes the archaeological, architectonic,

<sup>1</sup> Convention on the protection of the archaeological, historical and artistic heritage of the American nations. (Organization of American States, 1976)

<sup>2</sup> Translation of the Article 21 of the Political Constitution of Peru of 1993, available at the UNESCO

environmental, librarian, documentary, traditional and, anthropological heritage.

The built heritage in Peru corresponds mainly to the archaeological and architectonic categories, but we can also talk of the constructed or man-made landscapes, which could be considered built heritage too.

Peru is a signatory country of almost all the international conventions regarding heritage issues<sup>3</sup>. However, it can be sustained that the Peruvian legal system has not incorporated in a clear way all the international conventions. However, some issues must be specially mentioned.

- The DS 011-2006-ED incorporates in its Article 7 the Convention of the Hague (1954) and its Protocols (1954 and 1999) to the Peruvian legal system. Specifically it indicates that in case of an armed conflict those international texts shall be evoked.
- The DS 011-2006-ED incorporates the concept of sub-aquatic heritage to the Peruvian legal system. It can be considered also a reaction to the international framework given by the Convention for the Protection of Underwater Cultural Heritage (UNESCO, 2001).
- Regarding to the legal presumption, the Article 2 of the Law 28296 states that it is to be applied to the goods fulfilling the values and protective criteria already commented "and/or those included in the international treaties or conventions ratified by Peru".

## THE INSTITUTIONAL FRAMEWORK

The institution responsible for the application of all the legal system concerning the heritage conservation in Peru is the National Institute of Culture (INC). The INC is constituted by one Central office in Lima (the Peruvian capital city) and has 24 decentralized offices, which have been adapted partially to the new regional-like administrative structure of the country. Among the main structure of INC, the following directions are responsible for the built heritage conservation:

- a. Direction of Historic, Colonial and Republican Heritage
- b. Direction of Archaeology
- c. Direction for the defence of the historic heritage
- d. Direction of Cultural Landscapes studies
- e. Direction of World Heritage sites.

The condition of Cultural Heritage of the Nation of an immovable good must be inscribed in the Public Register for Real State Property. INC is responsible for requiring the inscription of those goods.

In parallel, there is a specific National Register of the Cultural Heritage of the Nation Goods. INC is responsible for managing it.

In the case of the goods affected by the presumption of being part of the national heritage, it is the particular proprietary who must ask to the INC a resolution specifying that a determined good does not belong to the category.

Any intervention, new work or infrastructural development that could generate damages to a national heritage good (or to a good protected under the presumption) must be authorized expressly by the INC (or the corresponding regional office). Any license given without the previous authorization of INC is declared null and void. The INC has the power to detain any work in course and to order the demolition (in an executive way) of illegal constructions and, to denounce the criminal infractions when corresponding.

The State has the right to expropriate those immovable goods in risk of deteriorating or collapsing, so as those neglected or abandoned. This kind of expropriation is declared of public priority.

## PARTICIPATION

The Bylaw of the Law 28296 (DS. 011-2006-ED) declares that the State recognizes and promotes the citizenship participation in the management of the cultural heritage. The INC should promote the creation of regional or local associations or committees for the management and monitoring of the heritage. Those private institutions should participate in the recording, declaration, protection, identification, inventorying, inscription, researching, conservation, diffusion, enhancement, promotion and restitution of the cultural heritage. These

<sup>3</sup> Peru is a State Party of the next Conventions regarding cultural heritage issues:

Convention for the Protection of Cultural Property in the Event of Armed Conflict – 1954

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Property - 1970

Convention concerning the Protection of the World Cultural and Natural Heritage – 1972

Convention on the protection of the archaeological, historical and artistic heritage of the American nations – 1976

UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – 1995

Convention for the Safeguarding of the Intangible Cultural Heritage – 2003



institutions should integrate representatives from the regional and local governments, specialists, researchers, academics, NGOs, private companies and native communities.

By this way it is recognizing the private initiative for the general protection of the cultural heritage of the nation.

We consider that it would be better to establish a general participative framework. The citizen right to participate must be expressly enforced. But after this an specific plan of public participation should be drafter case by case for the cultural sites. Some technical activities like recording or inventorying must be done by specialized bodies and cannot be undertaken by any person or group of persons on the basis of their good intentions and willingness to do. However, some specialized private actors such as the professional organizations can participate on it.

## GENERAL CRITERIA FOR THE PROTECTION OF THE GOOD BELONGING TO THE CULTURAL HERITAGE OF THE NATION

We will mention first some general criteria that are not limitative to the case of the built heritage but embrace all the heritage manifestations.

The Law 28296 declares that the identification, register, recording, declaration, protection, restoration, researching, conservation, valuation and diffusion of the cultural heritage of the nation are activities with "social interest and public necessity".

Which are the consequences of the "social interest and public necessity" condition? First, when the circumstances are requiring so, the public bodies must act in an emergency basis; second, the allocation of special funds due to natural disasters affecting the heritage should be quick and effectively allocated. Finally, when it is necessary to decide between two different projects, the priority must be given to that of social interest and public necessity.

It would be more realistic to establish some cases where the public action is required to avoid the destruction of the heritage. The contrary generates a situation where the declaration is having a poor real applicability.

The private property of cultural goods is recognized by the Law 28296, but it is still a very conflictive issue in the Peruvian cultural policies framework<sup>4</sup>. What is very clear is that the property rights on cultural goods is limited in reason of the social interest and cannot be exerted as in the case of normal goods. Furthermore, the Article 6 of the Law 28296 states that all pre-Hispanic immovable goods discovered or undiscovered are of public property. However the real state property where they are located could be public or private. Viceroyalty and republican immovable goods can be public or private, unrestrictedly. We will extend on the limitations to the property of heritage goods later in this article.

The State has the capacity to act as a preferential buyer in case of offers of cultural goods under protection. The proprietary should communicate the conditions of the offer to the INC, who will dispose of 30 days to buy or to refuse the exercise of the preferential option.

According to the Article VI of the Preliminary Title of the Law 28296 the rights "of the Nation" regarding the conservation of the Peruvian cultural heritage are not subjected to prescription.

The concept "Cultural Heritage of the Nation" has a national scope. There are no cultural goods of regional, local or other levels. The only one institution declaring that a good belong to the national heritage system is the National Institute of Culture (INC<sup>5</sup>). INC has regional offices which are able to start the declaration process of the goods located without their jurisdiction. However, once a good is inscribed, it is considered of national relevance.

## SPECIFIC CRITERIA TO BE APPLIED TO THE BUILT HERITAGE

The basic classification of the goods belonging to the Peruvian cultural heritage includes material and immaterial goods. The material goods can be both immovable and movable goods. There is not any specific reference to *built heritage* as a specific category. They form part of the immovable goods, where it could be also included non-built areas of specific interest (such as some burial places where non monumental construction are located).

The Article 1.1.1 defines the material immovable heritage. It includes buildings (monuments), infrastructural works (bridges, towers, and similar goods), environments (landscapes and urban groups of environmental value), monumental complexes (archaeological complexes with constructions, groups of

<sup>4</sup> For further information on this topic, please see our article "Cultural heritage and Property Rights in Peru" In Hoffman, B., "Art and Cultural Heritage: Law, Policy and Practice". Cambridge University Press, 2005-

<sup>5</sup> Except in the case of books and similar which are under the competency of the National Library of Peru and documentary goods, under the National Archive.

buildings, groups or urban structures, etc.), historic centres (delimited historic spaces in wider urban areas and cities) and other constructions or material evidences resulting of the urban or rural human activity. They can embrace goods from different periods of time.

Despite of the general definition contained in the Article II of the Preliminary Title above commented, the Article 1.1.1. is also containing a relation of criteria to qualify an immovable into the cultural heritage of the Nation category. This can be considered an inaccuracy from the legislative point of view. It was enough to establish the general criteria. In fact, both groups of criteria are not fully compatible.

The concept includes the environmental landscape where the punctual goods are located. It also protects heritage subaquatic sites.

It is declared that the protection of the immovable goods comprises the surface and undergrounds where they are located, the air spaces and surrounding area. The limits of this extension must be determined case by case following technical criteria.

According to the period of construction, the immovable cultural goods in Peru are under one of the following categories.

- Pre-Hispanic: all the immovable goods coming from the different cultures which developed was before of the Hispanic domination (buildings constructed before of the third decade of the 16<sup>th</sup> Century)
- Viceroyalty: those constructed during the Viceroyalty period (1524-1821).
- Republican: all those constructed after 1821.

There is not a specific antiquity criterion (i.e. a certain number or years) to qualify a good as part of the heritage of the nation.

The institution responsible for the application of all the legal system concerning the heritage conservation in Peru is the National Institute of Culture (INC). The condition of Cultural Heritage of the Nation of an immovable good must be inscribed in the Public Register for Real State Property. INC is responsible for requiring the inscription of those goods.

In parallel, there is a specific National Register of the Cultural Heritage of the Nation Goods. INC is responsible for managing it.

In the case of the goods affected by the presumption of being part of the national heritage, it is the particular proprietary who must ask to the INC a resolution specifying that a determined good does not belong to the category.

Any intervention, new work or infrastructural development that could generate damages to a national heritage good (or to a good protected under the presumption) must be authorized expressly by the INC (or its corresponding regional office). Any license given without the previous authorization of INC is declared null and void. The INC has the power to detain any work in course and to order the demolition (in an executive way) of illegal constructions and, to denounce the criminal infractions when corresponding.

The State has the right to expropriate those immovable goods in risk of deteriorating or collapsing, so as those neglected or abandoned. This kind of expropriation is declared of public priority.

## PRIVATE PROPRIETARIES OBLIGATIONS AND RESTRICTIONS

The category "cultural heritage of the nation" includes both public and private goods. The Law states the system for its protection, which is applied to all the cultural goods without exception.

Regarding the private property rights, it is limited by the specific administrative rules approved by INC, respecting the general legal system. The property of cultural goods is not considered only as a right, but it is also generating legal duties.

The article 21 of the Law 28296 states that the owners of an immovable heritage good inscribed as national heritage (or being protected by the presumption of belonging to this category) have the next basic duties:

- To allow to the functionaries of the INC to visit the site for evaluating its state of conservation;
- To permit duly identified researchers to access to the property for scientific researching activities;
- To facilitate all the historic and other kind documents for scientific researching goals;
- To allow the realization of all urgent works (i.e restoration, reconstruction or enhancement works) necessary to guarantee the conservation of the good.

The visits to the heritage site should be previously coordinated with the owner, except in justified emergency cases.

All the undiscovered cultural goods are under the public property system. The Law declares also that all the pre-Hispanic goods are of public property. However, those constructions integrating in a singular building



both pre-Hispanic remains and ulterior constructions, can be under private property rights. In this specific case, property rights are considered valid. However, the Law should state a clear temporal criterion because it is only fair in the case of traditional constructions that are mainly coming from the Viceroyalty period or the first years of the Republican period. Modern constructions should not be benefited by the application of this criterion.

## FINAL COMMENTS

The main problem for the conservation of the heritage in Peru is the lack of enough economic resources. Therefore, inventories and records are limited to the most important cultural goods. In many cases the goods belonging to the national heritage are not clearly identified. In many other cases the inscription is not providing more than a “formal” protection, but not generating resources for duly research, conserve and develop the site.

The definition of the surrounding protected areas is also a problem. Many goods inscribed as belonging to the heritage of the nation have not any kind of environmental protection. The definition of the buffer zones surrounding an inscribed monument is not clear in many cases.

Several of the most important archaeological heritage sites are in areas under urban development pressures. Illegal occupation of these sites is the most serious problem for the archaeological Peruvian heritage.

Regarding the monuments from the Colonial and Republican periods, the private owners are obligated to conserve them. Any work affecting buildings qualified as monuments, and those located in monumental areas, must be previously approved by the INC. The INC has not any system for founding the conservation and maintenance of this kind of buildings, being the owner the only one assuming all the costs. In many historic centres such as the World Heritage Historic Centre of Lima, the owners are not able to assume by themselves the costs of preserving and restoring the houses. The tax incentives system was repealed and not a new system to promote private owners restoring or preserving the monuments has been created. Furthermore, there is not a system to promote the cultural activity of private companies.

In 2008 it has been approved the Law 29164, “Ley de promoción del desarrollo sostenible de servicios turísticos en los bienes inmuebles integrantes del patrimonio cultural de la nación”. (Law for the promotion of the sustainable development of tourism services in the immovable goods belonging to the cultural heritage of the nation”). This Law has generated strong criticism from the more relevant Peruvian cultural actors.

The promotion of tourism services would be considered positive. But, from our point of view, the Lay 29164 is not promoting the tourism, but using that image for receiving the social acceptance and support for a very different goal. It is creating a very risky situation that would affect many important Peruvian cultural monuments and damage seriously the tourism industry in Peru.

The Law is giving priority to the tourism use as the main activity to be developed in heritage sites. Despite of the title of the Law, it is not promoting a “sustainable development” model for the Peruvian cultural heritage. The creation of services by foreign capitals is not necessarily guaranteeing the social development of the population of the surrounding area of a heritage site. The experience is demonstrating in many cases that the results are really the opposite. The endogenous development model for local communities should be considered as a priority in the case of less developed countries with a very rich cultural heritage, such as Peru.

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# ROMANIA

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## I CRITERIA FOR BUILT HERITAGE

### 1 What are the criteria leading to the conservation of built heritage?

Criteria definitely changed in Romania over the years since the first law on historic monuments of 1892 and the first list of historic monuments of 1908. For a general view, the first list of historic monuments had less than 500 positions – exclusively churches, the official list from 1955 had less than 5000 positions and extended the interest also to castles, manors, other important public buildings while the present list approaches 30.000 positions and includes a wide spectrum of categories of historic properties.

According to Romanian law for protection of historic monuments (422/2001, modified by the law 259/2006), an inventory of historic monuments (basically described in art. 12) is set, as a data base, comprising valuable properties, part of them being listed in the official list of historic monuments. The properties might be identified in other acts like the regulations of urban planning or just held in the records of the National Institute for Historic Monuments as potential listed buildings. In theory, properties included in this so called inventory might be protected in different degrees, according to their legal classification: monuments class “A” or class “B” or properties part of a “protected zone” as identified in an urban development plan.

Main criteria used for inscribing properties in the list of historic monuments are:

- Age and degree of authenticity of the building, ensemble or site (the three categories for a monument);
- Quality of architecture and its urban setting;
- Rarity, frequency or unicity of the type of the property;
- Memorial and historical significance for the community (local or national).

For protected zones of local regulations in urban planning, other criteria might be used in accordance with the local specificity. Although these criteria can lead to official recognition of a certain value that implies special care and protection, they do not necessarily lead to the conservation of the identified valuable built heritage neither in the case of listed monument nor in the case of identified valuable heritage.

### 2 Where are these criteria defined (acts, regulations, conventions)?

Criteria are defined according to the international conventions ratified by Romania – Paris 1972, Granada 1985, Valletta 1992, Florence 2000 so that the terms provided by those conventions are reflected in the national legislation.

Mainly the laws that define general criteria, needs and means for identification and classification of built heritage are:

- Law for historic monuments (422/2001);
- Law for urban and land planning (350/2001);
- Law for archaeology (258/2006 for modifying the Government Ordinance 43/2000)

Specific criteria and procedures for listing a monument are provided by ministerial ordinances of the minister of culture and religious affairs::

- O.M.C. 2682/2003 for approval of methodology for the listing of historic monuments
- O.M.C. 2435/2006 for approval of the regulation for of the National Commission of Historic Monuments

Related to the same general frame of identifying the values might be quoted also the methodology for elaborating special urban plans concerning historic areas. The methodology was developed by the Ministry of Public Works (repeated changing in its denomination) and was approved by Ministerial Order 562/2003 (Ministry of Transports Constructions and Tourism at the time).



Following the administrative/scientific criteria of identification and listing the valuable properties, some other criteria were developed in order to provide public funding for restoration/conservation. These are subject of two Governmental Decisions:

1. H.G. 1430/2003 for the situations when public funding may be granted through the Ministry of Culture and Religious Affairs or the local administrations (county council, municipality) to private owners
2. H.G. 610/2003 for defining the criteria and the procedures for granting credits with low interest rate for restoration of historic monuments

### 3 Are there different levels of criteria (national, regional and local or other levels) ?

General rules concerning listing monuments and financing the restoration works are national. Differences might occur when evaluating the local heritage in view of defining protected areas within the local urban plans and regulations. But even so, the methodology for elaborating the "local zone plan" (in Romanian: "Planul Urbanistic Zonal" – P.U.Z.) of the historic centres and protected zones is set to create uniform administrative measures all around the national territory. However, additional care might appear in a certain municipality if the local council has the initiative of approving such a direction.

In terms of decisions of approval of a certain manner of approaching the restoration of built heritage, in case when this heritage is listed, the responsibilities are at two levels: national and regional. Any technical project for obtaining the building permit for works upon a monument or upon a building located in a protected area or within the buffer zone of a monument has to contain in any case the legal notice from the Ministry of Culture and Religious Affairs. The Romanian list of historic monuments is made of two categories: Class "A" (international and national signification) and Class "B" (regional and local significance) monuments. For class "A" monuments, approval comes from the national level - the Ministry of Culture and Religious Affairs - after consulting the National Commission of Historic Monuments and for the class "B" the approval is delivered by the decentralized office of the Ministry of Culture and Religious Affairs (at the county level), after consulting the Regional Commission of Historic Monuments.

Since Romania joined E.U. in 2007, structural funds are also available. Romania is made of 8 "Development Regions" each of them being held responsible in elaborating a strategy/plan for development and for identifying the direction of public investments. The "Regional Operational Plan" should be specific for each of those regions even its structure is similar. Unfortunately, monuments or, more generally speaking, the problems of built heritage are not present enough within these plans. Among the 6 priorities of the National Plan for Development 2007 – 2013, only two of them refer to heritage: rural development and regional and local tourism. At the level of Regional Operational Plan some other actions are mentioned such as rehabilitation of built environment, where heritage is also identified as a target. Regrettably, in segment 5 – "Tourism" – monuments class "B" located in rural area are in fact excluded from funding!

### 4 Does the age of a building matter when deciding on its protection / conservation? Please specify.

There are two aspects of the age of the building when protection/conservation/ restoration is taken into account: giving legal protection and deciding priorities for conservation/restoration activities.

In the first place, the age of the building is one of the four criteria when evaluating a building, ensemble or site that is taken into account for inscribing in the list of historic monuments. The older the built heritage is, the higher score it gets.

According to current methodology, there are six temporal steps:

- objects built before 1775 are evaluated with "exceptional value"
- objects built between 1775 and 1830 are evaluated with "very high value"
- objects built between 1830 and 1870 are evaluated with "high value"
- objects built between 1870 and 1920 are evaluated with "average value"
- objects built between 1920 and 1960 are evaluated with "low value"
- objects built after 1960 are evaluated with "no value"

Any score that the evaluator - attested specialist or expert – gives to the analysed piece of heritage has to care for the authenticity of concept, techniques and materials and for the setting. It is also taken into account, when discussing the age of the potential monument, the initial parts of the building, any archaeological remains associated to the building, the proportion of original and added parts.

The age of the building becomes also an important factor when deciding conservation/restoration measures from several points of view:

- older buildings are usually associated with material decay and higher risk of technical incidents therefore they get higher scores when evaluating the necessity of starting interventions, in an indirect way.
- age of the building is also important since it expresses the number of major earthquakes involved in the period of the building's existence since large part of the Romanian territory is exposed to earthquake risk. Even if it is not expressed in a direct way in the methodologies for funding the conservation/restoration procedures, this aspect is often decisive.
- Criteria for listing a building as a class "A" monument is requiring, in one of the three possibilities, to have at least one "exceptional value" for any of the four categories of investigation. Since buildings built before 1775 are evaluated as having "exceptional value", it results that those buildings erected before 1775, if classified, are automatically listed in class "A".

### 5. Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?

Current legislation is rather recent since between 1977 and 1989, due to the dictatorial regime in Romania heritage protection was kind of random following the dissolution of the department for historic monuments.

Immediately after the revolution of December 1989, monument's protection was re-established and new acts were adopted. Among the first actions in this field was the ratification in March 1990 of the Convention concerning the protection of world cultural and natural heritage, Paris 1972. Most of current legislation is therefore in accordance with international charters and conventions.

Most relevant, in order to set an example in this respect, the records concerning information of listed monuments are made in almost identical mode as the Council of Europe's recommendation R(95)3 on co-ordinating documentation methods and systems related to historic buildings and monuments of the architectural heritage.

In terms of selecting the priorities for funding and supporting the conservation/restoration programs, Romania is currently part of a programme of the Council of Europe – Regional Programme for South – East Europe (RPSEE) with its specific project The Integrated Rehabilitation Project Plan/ Survey of the Architectural and Archaeological Heritage (IRPP/SAAH) – that aims to set a standard procedure/methodology in selecting priorities in order to attract funding for conservation/restoration activities in south-east of Europe.

Current trend (expected changes for criteria), following the rapid growth in local economy of recent years, especially in the construction industry, with huge impact over the built heritage (it is considered among the specialists that more damage for heritage came with recent economical development than in the period of dictatorship and planned demolitions of the '80s) will hopefully lead to the extension of the protective measures more and more at urban level in a way that would give better attention to the wider areas following the principle set by articles 6 and 7 of Venice Charter.

## II HOW ARE THE CRITERIA DETERMINED?

### 1 Which instance/s or person/s determine/s the criteria for the conservation of built heritage in your country? Please describe the process of determining these criteria.

According to the law for historic monuments, the Ministry for Culture and Religious Affairs has the responsibilities concerning these matters. The minister appoints, by a ministerial ordinance, a National Commission for Historic Monuments as an advisory body and has also a subordinated institution – the National Institute for Historic Monuments, held responsible for developing norms and procedures and for scientific substantiation of the decisions that have to be taken by the administration. In order to have a better filter, the ministerial order O.M.C. 2682/2003, article 14, specifies that the historical/architectural evaluation should be done by an attested specialist. Specialists or experts are attested by the Ministry of Culture and Religious following provisions of the law 422/2001 for the protection of historic monuments and in accordance to the rules provided by O.M.C 2032/1999 that establishes the commission for attesting specialists and experts for heritage.

There are several degrees of importance of the acts governing criteria:

- Laws, promoted by a group of deputies or senators (following the initiative of a deputy/senator or a citizen initiative sustained by a number of signatures) or by government (following the initiative of a ministry). These bear the responsibility of the parliament and the signature of the president of the



republic and sets obligations at a national level and through different levels of administration and civil procedures. Governmental Decisions or Ministerial Orders might detail rules set by the laws.

- Governmental Decisions, promoted by a ministry and adopted by the government (as a body) in case of decisions that involve the responsibility of several ministries like in the case of the funding of conservation/ restoration that involves the ministries for: culture, finance, public administration and internal affairs.
- Ministerial Orders, promoted by a ministry and entering into force when the minister adopts it through his signature and after publishing the act in the Official Gazette of Romania. It is designed to clarify the internal procedures and criteria that affect only the tasks of the specific ministry. It is the case of the regulation for the organisation and function of the National Commission of Historic Monuments or of the norms and procedures for listing historic monuments and several other mechanisms provided by the law for historic monuments.
- Local administration's decisions concerning approval of urban plans or local policies of development and building the annual budgets and providing appropriate measures for taking care of the built heritage.

In case of government or single ministry decisions described above, specialists and public officers manage to impose, usually after formal or informal consultation, a more professional approach of matters such as criteria for the conservation of built heritage.

For the provisions of the laws operating also with such criteria mentioned by the question, course of decision is almost impossible to predict and might evolve even in a bad direction from the point of view of heritage interests for instance (if we would refer to the process itself). As an example, within the committees for cultural affairs of the two chambers of the parliament, even definitions of the built heritage posed some problems for the process of reaching a consensus since the large majority of its members are no specialists in this field.

## 2. What are the respective roles of specialists, civil servants and citizens in this process?

In terms of listing a building, all categories mentioned above might have a role. part from the owner, the proposal for inscribing a building or a site in the list of historic monuments can be made by specialists or citizens organized in an N.G.O. (if having recognized activity in the field) or specialists of a local museum. Proposal can be made by the decentralized office of the Ministry of Culture and Religious Affairs (civil servants) in case of emergency means (imminent destruction of a potential monument) but also by the mayor of the administrative unit of the building's site.

The owners of a building that is proposed for listing have the right to appeal the decision in several steps during the procedure of listing. They might also have the possibility to contest the decision in court if the previous appeals to the National Commission of Historic Monuments and to the minister of culture have failed but, normally speaking, a judge should not interfere with the decision unless a failure in the procedure is present.

The information is public since the criteria and the procedures are subject of a ministerial ordinance published in the Official Gazette of Romania. Also, the obligation of the decentralized office of the Ministry of Culture and Religious Affairs, that is intitled to start the process of listing a monument, is to immediately (after that an official request for this is registered) inform the owner about this beginning of the procedure. According to present regulation of National Commission of Historic Monuments, owners of the buildings subject of debate have the opportunity to present their point of view (them or the specialists/architects representing them) to the zonal and/or the national commission.

In terms of definig or redefining criteria itself, the responsibility lay entirely upon the Ministry of Culture and Religious Affairs. The minister relies on the National Comission for the Historic Monuments and on the specialists of the National Institute for Historic Monuments (for scientific decisions such as criteria for listing) or on specialists of the National Office for Historic Monuments (for decisions concerning building, contracting or other norms related to this matter) to reach a formula. It is explicit mentioned in the law for decisional transparency (law 52/2003) that the public should be consulted if the criteria and procedures are part of a new law, a governmental decision or ordinance, since proposed acts of a ministry or public authorities have to be subject of public debate before entering approval procedures. In practice, norms or new criteria are debated (even in informal way) even if they would become valid through a ministerial ordinance, with organisations such as National Union of Restorers, Order and Union of Arhitects, N.G.Os. As an example, on the web page of the Ministry of Culture and Religious Affairs, new norms of listing movable heritage are under debate since 10.04.2008.

Regulations proposed at local level through an urban plan are always subject of general public debate as,

besides the decisional transparency law, also the specific law for urbanism stipulates clearly this obligation. The law does not though specify if public oposes in any way (proportional, in majority, or totally) if this might stop the procedure, since it is the responsibility of local council to decide the aprouval or disaprouval of a local urban plan and the law 52/2003 provides that any oppinion expressed from civil society is considered to be "a recommendation".

## III CRITERIA IN PRACTICE

### 1 How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors (e.g. fixtures, fittings and technical devices) be protected/conserved on the basis of the before mentioned criteria?

Criteria for inscribing the different categories mentioned above in the list of historic monuments are flexible enough in order to refer to all of them. Regardless this aspect, antiquities (archaeological heritage – sites and movable objects) are subject of ordinance 43/2000 mentioned before. Landscapes, territories/zones, parks might be subject of both law of historic monuments or subject of land and urban planning as defined by the Governmental Decision 525/1996 for approving the General Regulation for Urbanism and, subsequently, of the law 350/2001 for urban and land planning. They are also subject of the law for environment protection (137/1995), under the authority of a central authority for environment protection that keeps a record called "catalogue of protected area and natural heritage". The content of the catalogue should be reflected in the urban and land planning (National Plan for Land Use, County Plans for Land Use, General Urban Plans for localities and so on). As for interiors, fixtures, fittings and technical devices, they should automatically be judged according to general criteria for built heritage since the definition of the monument in the Romanian law contains also the expression "building or part of a building". Although some parts, due their nature are considered according also to the Civil Code of Romania as "immovable" like the fix furniture of churches – e.g. iconostasis – or other similar parts, they might also be subject of listing in the movable heritage database. It happened recently that an icon that was part of iconostasis of one important monastery, after being restored in accordance to the procedures of monument's artistic components, to be inscribed in the list of movable heritage. Problems occurred when restoration had to be revised since the law for movable heritage imposed rules that made almost impossible to restart procedures (work in an attested laboratory, specific environment conditions, authorisation according to other procedure than in the case of first restoration).

### 2 Do publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?

In principle an equal status is granted to both forms of property. There are though some minor differences in terms of listing, property management and funding of conservation/restoration works.

In case of public owned buildings, listing procedure can be started ex officio, which is not the case for private owned buildings.

Also, the historic monuments that are public property of the State or of the local administrative units are inalienable, unprescriptible and non-seizable; they may only be given to the public institutions for administration or they can be licensed for a maximum of 49 years or rented with the legal notice of the Ministry of Culture and Religious Affairs. Private owned monuments may be subject of legal transactions on the free market, only after the Ministry of Culture and Religious Affairs exercise its right of pre-emption.

In terms of getting financial support, private owned heritage is less fortunate even some legal provisions could help the private owners in the process. By far the main investor in important restoration is the State through the budget of Ministry of Culture and Religious Affairs and the special annual programme called "National Programme for Restoration" managed by its subordinated institution – the National Office for Historic Monuments. Within this programme are supported 164 sites this year (182 in 2007), all of these positions being public buildings or properties of the recognized religious cults. Private owners have each year the possibility of getting financial support for conservation/restoration of their monuments on the basis of a dossier selection, according to priorities set by scores obtained by the rules and criteria set by the Government Decision 610/2003. Other legal fiscal facilities do not exist, the only support (whenever it applies) being the exempt of annual tax for monuments in case they are used for non-profit or non-commercial purposes like: housing, cultural centres and similar other.

Procedures in evaluating projects and delivering the legal notices of the Ministry of Culture and Religious Affairs in order to obtain the building permits are the same and no distinction is made among public or private monuments (although sometimes public monument's restoration generate more "pressures" upon the decision making persons in order to approve some lesser procedures or even changes of use and substance due to financial and temporal management of those projects).



3 Have there occurred problems in defining the criteria for the protection/conservation of built heritage? / In your opinion, what are the main problems and challenges of the criteria in use at the moment and the process in deciding on them?

Probably the criteria used for inscribing a property in the list of historic monuments should be refined in the near future since at least two of the four criteria are to subjective in the way that scores awarded to these criteria may vary extremely depending on the cultural background of the evaluator and on the way that these criteria could be interpreted. In fact the last criteria – memorial value – is so ambiguous and might be applied to so few properties that it even does not get a scale of evaluation as the other three criteria. In fact the only unquestionable criteria is the age, the only problem seems to be the way of defining the periods, which is fact is somehow inevitable.

Recent problem appeared when the Ministry of Culture and Religious Affairs promoted a new law on industrial heritage protection. The form proposed initially by the specialists of the ministry was twisted in parliament so that today we have a new law completely useless since the specific criteria and special measures needed for this special heritage category were in fact eluded. This, in fact, exemplifies a general tendency in providing law texts empty of substance ore repeating concepts already present in other legal texts (sometimes in different manner, therefore generating confusion) since they only communicate definitions and possibilities without clear procedures and sanctions. It is also the case of the law for historic monuments that sets many obligations for private monument owners without mentioning the proper sanctions and procedures in case they fail to fulfil their obligations.

As a conclusion of that, I consider that the main problem in Romania, within the process of defining, adapting or renewing the legal acts setting criteria and methodology is that most of the texts produced by specialists are misinterpreted and twisted by people that have the legal ability of processing and approving these acts, the result being acts that do not serve the initial goal (most relevant being the example of law for industrial heritage). Another issue is that, when proposing such norms and criteria, with best intentions and correct principles, specialists mentioned above have a tendency of neglecting the practical aspects of putting into practice of the rules they are designing, leading to – very often – the impossibility of applying them.

Note:

"H.G." is the abbreviation of "Hotărârea Guvernului" (Romanian) – "Government Decision"

"O.M.C." (recently "O.M.C.C.") is the abbreviation of "Ordinul Ministrului Culturii" (Ordinul Ministrului Culturii și Culelor, in Romanian) – "Order of the Minister of Culture" (and Religious Affairs)

## I CRITERIA FOR BUILT HERITAGE

### 1. What are the criteria leading to the conservation of built heritage?

The legal protection of built heritage in Spain has been an historical concern of our country. From the first regulation in the XVIII century historical buildings has been protected and regulated against jeopardize. Protection of monuments, historical places, gardens and archaeological sites has ever joined with their owns criteria of conservation.

Today, from the Law 16/1985, Spanish Historical Heritage until Law 4/2007, Autonomous Region of Murcia Cultural Heritage, we can find criteria for the conservation of built heritage. Besides, these criteria not only appear in Cultural Heritage Laws. Exist more criteria mixed in other kind of regulation as Urban Planning, Natural Heritage, Road Laws, etc.

In spite of this regulation dispersion, we can find the main important criteria for this subject in the Law 16/1985 on Spanish Historical Heritage (from now on LPHE). They are defined around the types of cultural goods as part of limitation of public and private ownership. They can be classified in:

#### 1. General criteria:

- Property forming part of the Spanish Historical Heritage shall be preserved, maintained and safeguarded by its owners or, where appropriate, by the holders of real rights or the possessors of such property (art. 36.1 LPHE).
- The use of property declared shall only be possible when the values recommending its preservation are not placed at risk (art. 36.2.I LPHE).
- Public authorities shall aim, using all technical methods, to preserve, consolidate and improve property declared (art. 39.1 LPHE).

#### 2. Authorization required:

- Property declared to be of cultural interest may not be subject to any type of treatment without the express authorization of the organizations that are responsible for enforcement of this Law (art. 39.1.II LPHE).
- Restoration of property shall respect any existing contributions made at any time. The elimination of any of these shall only be authorised exceptionally and provided that the elements to be removed amount to a clear degradation of the property and elimination is necessary to allow better historical interpretation of the property. The parts removed shall be duly documented (art. 39.2 LPHE).
- Any change of usage must be authorised by the bodies responsible for enforcement of this Law (art. 36.2.II LPHE).
- In property declared, no internal or external building work may be carried out that will directly affect the building or any of its parts or belongings without express authorisation from the organisations responsible for enforcement of this Law (art. 19.1.I LPHE).
- The same authorisation shall be necessary for placing any type of sign or symbol on facades or roofs and for carrying out any work in the surrounding area covered by the declaration (art. 19.1.II LPHE).
- Any plans for building work or earth moving to be carried out in a historical site or in an archaeological area declared shall require authorization from the Authority responsible for protecting such property and the latter may, prior to granting authorisation, order prospecting and, where appropriate, archaeological excavations (art. 23.1 LPHE).

#### 3. Prohibitions:

- Reconstruction. Except when the original parts of the buildings are used and their authenticity can be proved. If materials or essential parts for stability or maintenance are added, such additions must be recognisable and confusion through imitation should be avoided (art. 39. 3 LPHE).



- b. The placing of commercial advertising and any type of cable, aerial and visible ducting in historical gardens and on the facades and roofs of monuments declared shall be prohibited (art. 19.3.I LPHE).
  - c. Any construction that alters the character of the buildings declared or alters the view of them shall also be prohibited (art. 19.3.II LPHE).
  - d. An immovable property declared to be of cultural interest is inseparable from its surroundings.
  - e. It cannot be displaced or moved unless this is essential for reasons of cause major or social interest (art. 18 LPHE).
  - f. Under no circumstances shall a building be demolished without prior confirmation of the declaration of ruin and authorization from the relevant official Administration which shall only grant such authorization on receiving a favourable report from at least two of the consultative institutions referred (art. 24.2 LPHE).
4. Legal charges:
- a. Any people who note a danger of destruction or deterioration of property forming part of the Spanish Historical Heritage shall, in the shortest time possible, make this known to the appropriate Administration which shall check the substance of the report and act in accordance to the provisions of this Law. Action taken to demand that the administrative bodies and judicial review courts comply with the terms of this Law for the defence of property forming part of the Spanish Historical Heritage shall be public (art. 8 LPHE).
  - b. Any person may request proceedings to be initiated for the declaration of cultural interest for a property. The appropriate official organisation shall decide if such proceedings can be admitted. This decision and, where appropriate, any incidents and the resolution of the proceedings shall be notified to the person who requested them (art. 10 LPHE).
5. Measures of promotion:
- a. a) Direct:
    - Grants assistance (art. 67 LPHE),
    - Cultural 1% (art. 68 LPHE): *The budget for any public works that are financed completely or partially by the State shall include an item for at least 1% of the funds provided by the State for financing work on the preservation or enrichment of the Spanish Historical Heritage or for promoting artistic creativity, preferentially on the actual site of the work or in the immediate surroundings.*
    - And datio pro soluto (art. 73 LPHE). *Tax debts may be paid by delivering property belonging to the Spanish Historical Heritage that is entered in the General Register of Property of Cultural Interest or included in the General Inventory in the terms and conditions officially established.*
  - b. Indirect: Tax benefits (art. 69, 70, 71 and 72 LPHE).

## 2. Where are these criteria defined (acts, regulations, conventions)?

As you can see most of these criteria are defined in Laws. The main important are:

### 1. Federal Statutes:

1. Law 16/1985, Spanish Historical Heritage.
2. Royal Decree 11/1986, about partial development of Law 16/1985.
3. Decree 798/1971, about use of traditional techniques and materials in the conservation and restoration works in monuments and historic districts.

### 2. Autonomous Communities Statutes:

1. Law 4/1990, Autonomous Communities of Castilla - La Mancha Historical Heritage.
2. Law 7/1990, Autonomous Communities of País Vasco Cultural Heritage.
3. Law 1/1991, Autonomous Communities of Andalucía Historical Heritage.
4. Law 9/1993, Autonomous Communities of Cataluña Cultural Heritage.
5. Law 8/1995, Autonomous Communities Galicia Cultural Heritage.
6. Law 4/1998, Autonomous Communities of Valencia Cultural Heritage.
7. Law 10/1998, Autonomous Communities of Madrid Historical Heritage.
8. Law 11/1998, Autonomous Communities of Cantabria Cultural Heritage.
9. Law 12/1998, Autonomous Communities of Balear Islands Historical Heritage.
10. Law 3/1999, Autonomous Communities of Aragón Cultural Heritage.

11. Law 4/1999, Autonomous Communities of Canary Islands Historical Heritage.
12. Law 2/1999, Autonomous Communities of Extremadura Historical and Cultural Heritage.
13. Law 1/2001, Autonomous Communities of Principado de Asturias Cultural Heritage.
14. Law 12/2002, Autonomous Communities of Castilla y León Cultural Heritage.
15. Law 7/2004, Autonomous Communities of La Rioja Cultural, Historical and Artistic Heritage.
16. Law 14/2005, Autonomous Communities of Navarra Cultural Heritage.
17. Law 4/2007, Autonomous Communities of Murcia Cultural Heritage.

### 3. Local regulations:

*From the Local Government Law (RDD 2/2004, arts. 60,62,95,103 and 105) until Urban Planning Develop Acts we can find a lot of rules about criteria in works on cultural heritage goods. We need to know that art. 21 Spanish Historical Heritage of 1985 obligated to Town Councils to approve Special Plans of Protection Historical Districts, with their owns criteria of conservation of these goods.*

### 4. International Conventions:

*A special interest has the Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985) made by Council of Europe because is one of the most important influences in Spanish Historical Heritage of 1985 in this subject.*

## 3. Are there different levels of criteria, e.g. national, regional and local or other levels?

Yes. General lines of intervention are designed in LPHE as we can see before. Most of Autonomous Communities repeat the same criteria about conservation built heritage and control them. But, Town Councils are who executed the urban laws, with some harmonization problems between Autonomous Communities and Town Councils.

## 4. Does the age of a building matter when deciding on its protection / conservation? Please specify:

No. Spanish regulation about built heritage use "cultural relevance" as protection criteria not age of the monuments or buildings. "The most relevant property forming part of the Spanish Historical Heritage shall be inventoried or declared of cultural interest in the terms of this Law", said art. 1.3 LPHE. This line is following for all de Autonomous Communities. Only municipal tax benefits in some taxes consider the age of he building how a criterion to obtain benefits.

## 5. Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?

No. International conventions are rules of minimum compare with Spanish regulation of these criteria. Except the case of Granada Convention I don't know an international convention, act, criteria etc. with influence in our statutes. Probably, we can find more influence from another national regulations (France or Italy) than with international conventions.

## II HOW ARE THE CRITERIA DETERMINED?

### 1. Which instance/s or person/s determine/s the criteria for the conservation of built heritage?

It's a Statute who determinate the criteria. Another thing is the selection of special buildings to preserve. Declaration by Royal Decree shall require prior administrative proceedings to be taken by the appropriate. These proceedings shall include a favourable report from one of the Federal consultative institutions, or one that is recognised as being of this nature within the area of an Autonomous Community. Three months after this report is requested, if it has not yet been issued, it shall be understood that the report requested finds in favour of the declaration of cultural interest. When the proceedings refer to immovable property, a period of public information shall be opened and the interested Town Council shall be heard. The proceedings shall result in a decision within a maximum period of twenty months as from the date on which they were initiated. They shall expire at the end of this period if a delay has been reported and provided there is no decision during the four months subsequent to report of the delay. Once the proceedings have expired, they may not be re-initiated during next three years, except at the request of the holder.

### 2. What are the respective roles of specialists, civil servants and citizens in this process?

The role of specialist, civil servants and citizens basically is about control and execute the law. If owners or citizens don't want to fulfilment with the law criteria, Administration starts a penalty process under the rules of this kind of procedures. These procedures are public because most of the times finished in a trial.



### III CRITERIA IN PRACTICE

1. How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors be protected/conserved on the basis of the afore mentioned criteria?

When Town Council execute these criteria they publish it, with terms to fulfil it. There are technical teams who visit the owners of these goods to notify and explain the criteria.

2. Do publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?

Yes, in theory. In practice, we can find a lot of differences between the implementation of criteria in monuments if the owner is Catholic Church or another kind of owner.

5. Have there occurred problems in defining the criteria for the protection/conservation of built heritage? / In your opinion, what are the main problems and challenges of the criteria in use at the moment and the process in deciding on them?

The most important problems have been in rebuild criteria. See the powerpoint images and explanation.

## SWEDEN

Thomas Adlercreutz, jur. kand

I have tried to provide a list both of *object criteria*, pertaining obviously to what kind of objects the legislation refers to, and to *evaluation criteria*: the adjectives used to describe an object in order for it to be eligible for protection.

### I CRITERIA FOR BUILT HERITAGE

1. What are the criteria leading to the conservation of built heritage?

There are many criteria applicable to various levels of protection, here listed roughly from a higher degree to a lower.

- a. For protection against unlicensed displacement, removal, excavation, covering up, alteration or damage caused by building development, planting or in any other way, of "Ancient remains" under the "lag (SFS 1988:950) om kulturminnen m.m.", Cultural Monuments' (etc) Act.

- object criterion: *"traces of human activity in past ages, having resulted from use in previous times and having been permanently abandoned... 5. remains of homes, settlements and workplaces and cultural layers, 6. ruins of fortresses, castles, monasteries, church buildings and defence works, and also of other remarkable buildings and structures... An ancient remain includes a large enough area of ground... to preserve the remains and to afford them adequate scope with regard to their nature and significance"*

- evaluation criterion: none. Protection results directly from the list of categories laid down in the Act (ipse lege). Obviously there is an element of evaluation when it comes to defining the area around the remain.

As can be inferred from the quotation above, the full list is longer. What is mentioned here are the objects which can be said to be part of the built heritage. To guide implementation there is a nationwide register of Ancient Remains and many are also marked on official maps. Protection is not absolute; permission for measures infringing on Ancients Remains can be granted with, or without, conditions. Conditions regularly are that the applicant must pay for archaeological investigation and/or preservation measures.

- b. for a designation as a "Historic Building" with an ensuing Protective Order under the Cultural Monuments' Act, (the term historic building is used in a semi-authorised English version of the Cultural Monuments' Act, , but a more literal rendering in English would be Monument Building)

- object criterion: *"building, a building forming part of a settlement, parks, gardens or other amenities"*

- evaluation criterion: *"outstanding interest on account of its historic value"*

- c. for monitoring of maintenance and protection against unlicensed alteration under the Cultural Monuments' Act.

- object criterion: *"all church buildings, church sites and burial grounds" (including non-Christian and secular) erected before 1940, and owned or managed on 1 January 2000 by the Church of Sweden" and "newer church buildings, church sites and burial grounds (including non-Christian and secular), listed by the National Heritage Board"*

- evaluation criterion, applicable only to objects listed by the National Heritage Board: *"remarkable by virtue of its cultural heritage value"*.

- d. for the creation of a "cultural reserve" for protection of objects and features, and regulation of access or restricted access under the Environmental Code (SFS 1998:808)

- object criterion: *landscapes (including buildings and other constructions)*

- evaluation criterion: *"valuable cultural landscapes"*



- e. for a prohibition against distortion (demolition and alteration) under the "Plan och Bygglag (SFS 1987:10)" Planning and Building Act :
  - object criterion: *"buildings, other constructions (amusement parks, zoological gardens, sports grounds, ski slopes and lifts, cabin cableways, camping grounds, shooting ranges, yachting marinas, open-air baths, motor-racing tracks, golf courses, storage areas, supply yards, tunnels and rock cavities, other than for subways and for mining operations, permanent cisterns or facilities for chemical products, radio or telecommunication masts and towers, wind power stations of a certain size, walls or fences, outdoor parking areas, cemeteries), sites and public spaces"*
  - evaluation criterion: *"especially valuable from a historical, cultural, environmental or artistic viewpoint"*
- f. for cautious alteration under the Planning and Building Act
  - object criterion: same as under e)
  - evaluation criterion: *"a building's characteristic features with regard to constructional, historic, cultural, environmental or artistic values"*

• **2 Where are these criteria defined (acts, regulations, conventions)?** Answered under 1

**3 Are there different levels of criteria, e.g. national, regional and local or other levels?**

Pertaining to the built heritage *per se*, there is no formal division between national, regional and local. With regard to the cultural heritage in its entirety, however, there are in the Environmental Code (SFS 1998:808) provisions that protect zones of national heritage interest, specified in the Code. Examples of such zones with predominantly architectural entities are many: city and town districts, villages, naval yards etc. A few are also World Heritage Sites. The protection afforded by the zones specified in the Environmental Code is indirect. The intention is that decisions on local zoning ordinances or other decisions with binding effect on land use will be taken with due consideration to the national interests defined in the Environmental Code. To sharpen this intention the Code contains provisions under which the national administration can intervene against or annul decisions which jeopardise the national interests.

Unofficially, in various publications and inventories there certainly are attempts to categorise architectural monuments as of national, regional or local importance. These categorisations, however, cannot be said to have a direct influence on the decision making process. It is sometimes voiced that a designation as a "historic building" can be seen as an expression of the national interest, but it is difficult to see any undisputed legal impact of this line of reasoning. A designation of this kind is in itself hard core protection, and should not need reinforcement from the Environmental Code. It is possible, however, that when it comes to development negatively impacting the surroundings of a historic building, but outside the protected area, this kind of reasoning carries more weight.

**4 Does the age of a building matter when deciding on its protection / conservation? Please specify.**

As has been illustrated in 1 c) above the protection of the ecclesiastical heritage is largely dependent upon the fact that the building etc. has been erected before 1940. But other legally expressed criteria do not mention age. However, it is in the nature of things that the older a building gets, the more unique – and worthy of preservation – it will be considered.

**5 Have these criteria changed during the past decades by virtue of international conventions or other acts, regulations and/or conventions? In what way?**

Not in my opinion. Sweden ratified the Convention for the Protection of the Architectural Heritage of Europe in 1990, but it had by then already been considered that the Swedish legislation satisfied the convention. The European Landscape Convention has been signed, but not yet ratified by Sweden.

**II HOW ARE THE CRITERIA DETERMINED?**

**1 Which instance/s or person/s determine/s the criteria for the conservation of built heritage?**

With regard to I/1.

- a. the County Administration, the national government's regional representation, tries applications for infringements in Ancient Remains after consultation with the owner,
- b. the County Administration tries designations after consultation with the owner, holders of rights of use, neighbours affected, the respective local government and the National Heritage Board. I also tries

applications for alterations.

- c. the County Administration tries applications for alteration after consultation with the local parish. As mentioned above the National Heritage is responsible for listing church heritage erected after 1939.
- d. the County Administration in consultation with landowners, holders of rights and the respective local government
- e. and f. the local government, either through its Council (in matters regarding zoning and other measures affecting areas), or through its Building Committee (in matters of planning permission or demolition). Consultation with owners, tenants and other affected residents and neighbours.

**2 What are the respective roles of specialists, civil servants and citizens in this process?**

The *County Administrations* are usually organised in one department for heritage matters, with similar departments for nature conservation, physical planning and legal matters. The head of the heritage department is generally responsible for decisions regarding the heritage, after internal consultation with one or several other officials of that department and other concerned departments of the County Administration, particularly the legal department in matters which concern civil rights. If an issue affecting several departments cannot be resolved in agreement the matter will be brought to a higher level within the County Administration.

The County Administration will treat matters openly, after consultation with concerned parties, particularly local governments, and communication of relevant material. There are, however, no provisions for conducting hearings with the general public, and the procedure is normally conducted in writing. In preparing a matter for the County Administration and as a general resource of heritage expertise regional or sometimes local museums may be asked to take part. Especially with regard to documentation museum staff will often provide valuable service.

The County Administration's decision can be appealed to an administrative court-of-law by a losing party with standing. The court's verdict may in its turn be appealed to an administrative court of appeal, provided the case is deemed by that court to have precedential value, or the court finds that the lower court's decision should be quashed. The final appeal is to the Supreme Administrative Court, where ever tighter qualifications apply as to trying cases with precedential value. It could be noted that in the past five years the Supreme Administrative Court has determined several cases regarding church heritage.

Special rules apply to designations of "Historic Buildings". Here *anyone* can apply for a designation, regardless of connection to the object in question. An application will prompt the County Administration to formally try the issue, regardless of the merits behind the application. However, unfounded applications may be denied after quite summary treatment. In a somewhat striking contrast, however, *nobody* can appeal a negative decision, except the National Heritage Board. The reason for this is that an affirmative decision might force the State to pay compensation to the owner of the building; it has therefore been considered that only the State authority controlling the relevant budget should be in the position to cause this fiscal effect.

Matters for the *local governments* are prepared by civil servants at the Building Committee office, headed usually by the "City Architect" (the term applies also to rural districts). Sometimes the City Architect has been empowered by the Building Committee to try and decide matters, but this is not usual in controversial issues. These, then, will be decided by the members - local politicians - of the Committee. Issues regarding zoning rest in principle with the local government Council, but may have been delegated to the Building Committee.

An applicant in matters regarding planning/demolition permission or zoning has standing as a party under the procedural rules of the Planning and Building Act in combination with general rules for administrative procedure, and has insight into whatever written material will be brought to the matter. If there is another concerned party, the same applies to him. The circle of concerned parties is particularly wide in zoning matters; there is usually a hearing and anyone residing within or close to the area under zoning provisions will have standing, provided he or she has filed a written objection before the end of the exhibition of the zoning proposal. Once zoning provisions have gained legal force, however, the right of appeal will be precluded in respect to issues already covered by the provisions.

In general a losing party has recourse to appeal to the County Administration. If an appeal against its decision is to be pursued to a higher level, the procedure becomes forked. Matters regarding planning/demolition permission can be brought to an administrative court-of-law, and from there to an administrative court of appeal. The latter will, however, try the case only if it has precedential value or if there is reason to overturn the lower court's decision.

Zoning issues, however, take a different route. The County Administration's decision can be appealed to the national government (Ministry of the Environment). If the appellant is not satisfied by the government's decision, there is recourse to judicial review at the Supreme Administrative Court, but for that court to try the case the appellant must convince the court that the government has stepped outside its legal margin of



appreciation (which is fairly wide).

A recent government inquiry proposes that the forked procedure should be replaced so that courts get to try also zoning issues.

### III CRITERIA IN PRACTICE

#### 1. How comprehensive are these criteria? That is, can e.g. antiquities, landscapes, territories/zones, parks and interiors (e.g. fixtures, fittings and technical devices) be protected/conserved on the basis of the afore mentioned criteria?

The question has largely been answered already. Here it could be added that “antiquities”, into which term I suppose movables in general are to be included, cannot in principle be covered by most protective devices mentioned above. If a building is designated as a “Historic Building” only the fittings and fixtures which under general civil law are considered as appendage to the immovable property will be covered by the protective order issued for that building. Inventory, however crucial it may be to the perception of the building’s heritage value, does not fall under the appendage notion. Furniture, a collection of paintings or china, a library or an archive may thus be protected only if there is an agreement with the owner. Technical devices: fire places, furnaces or other heating systems, pipes etc. are generally appendage, and thus protectable (but tend to become unsafe with increasing age).

As an exception to this general principle the Cultural Monuments’ Act contains provisions regarding Church Inventory. Movables with a cultural heritage value belonging to the Church of Sweden must be registered. Registration in turn means that objects must not be transferred, struck of the register, repaired or else changed or be moved from their traditional location, without permission of the County Administration.

#### 2 Do publicly and privately owned built heritage share an equal status when deciding on the criteria applied and on its protection/conservation?

Property of the State cannot be designated as “Historic Buildings” under the Cultural Monuments’ Act. However, a government regulation binding on property managing state authorities provides for a very similar procedure. The designation and the issuing of protective orders rest with the national government, but permission for alteration of designated entities can be given by the National Heritage Board. The selection *criteria* under the regulation are the same as for other property.

#### 3 Have there occurred problems in defining the criteria for the protection/conservation of built heritage? / In your opinion, what are the main problems and challenges of the criteria in use at the moment and the process in deciding on them?

Determining whether the criteria for the various forms of protection for the built heritage are fulfilled is, of course, a matter that does not invite just one opinion. There are often controversies. As mentioned above, questions regarding church heritage have had to be settled in court in quite a few instances. This does not reflect any particular problems with regard to the specific criteria for church buildings, problems which do not exist in relation to other types of buildings. Instead, a new situation for the Church of Sweden is a more likely reason. The Church until 2000 was an established church governed ultimately by State through ecclesiastical legislation, government appointed clergy etc. In that year, however, the Church acquired a new relationship with the state with autonomy in most matters. However, the old State control of the heritage remained in place. It will probably take some time – and some more government money for maintenance of church buildings – before the system has come to a more complete rest.

In 2006 the number of “Historic Buildings” amounted to approximately 2 400, out of which some 200 were State properties. The number is not overwhelming, and the rate of increase seems to be sloping. The bulk of protection under government policy is considered to rest on the local governments, using the legal tools available to them under the Planning and Building Act. However, in the same year one third of the local governments had not issued demolition injunctions at all. To blame this on vague or cumbersome criteria would probably not be fair. A general lack of resources seems to be the main explanation. It should be remembered that until 1966 no building could be designated as “Historic” without owner consent. Since in that year it became possible to issue designations regardless of consent, instead there is an issue of compensatory claims to be reckoned with. The possibility to issue demolition prohibition under the Planning and Building Act is of an even more recent date. Before 1987 no such permanent possibility existed. Also under the Planning and Building Act the eventuality of compensation is something that has been the subject of much thought and talk, but less action.

## UNITED STATES

James Reap

### OVERVIEW OF THE LEGAL FRAMEWORK FOR HERITAGE CONSERVATION IN THE UNITED STATES

The United States’ Constitution is based on the premise that power should not be concentrated in one person or group, or in one place. Power at the federal government level is divided among three branches of government: the executive (President), legislative (Congress) and judicial (federal courts). Power is also shared among the different levels of government: federal, state, and local. The federal Constitution specifies which powers are granted to the federal government, such as defense, foreign relations, and currency regulations, for examples. However the Constitution also limits the power of the federal government and the Tenth Amendment further specifies that, “The powers not delegated to the United States (i.e., the federal government), nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

Each state has its own constitution, which specifies which powers the state may exercise and which powers are delegated to local governments. The relationship between states and local governments is very complex, and differs from state to state. Local governments have no inherent power of their own – their authority comes from the state. Some states have given broad powers to local governments while others have given more limited powers.<sup>1</sup>

Among the powers traditionally reserved to the states is the so-called “police power”, a concept derived from Anglo-Saxon law. This is the inherent authority of the state to regulate, protect and promote the public health, safety, morals, and general welfare. Exercising this power, states have enacted laws regulating the use of land and have delegated some of their authority to local governments. Many local governments, in turn, have enacted local planning, zoning and historic preservation laws. The U.S. Supreme Court has held that the power to protect buildings and areas with special historic, architectural, or cultural significance is a legitimate use of the police power.<sup>2</sup>

### CRITERIA FOR CONSERVATION AT THE FEDERAL LEVEL

The National Historic Preservation Act<sup>3</sup> of 1966 (NHPA) forms the framework for current American preservation program. It embodies the philosophy that preservation must be a partnership between the federal, tribal, state and local governments and the private sector. It has had great influence on the evolution of preservation in the United States since the 1960s by establishing national standards and by promoting those standards through regulations and through incentives.

A key component of the national preservation program is the National Register of Historic Places. Authorized under the NHPA, the National Register is the official list of properties deemed worthy of preservation in the United States. There are over 80,000 properties listed in the Register comprising districts, sites, buildings, structures and objects significant in American history, architecture archaeology, engineering and culture.<sup>4</sup>

Any person or organization can prepare the documentation for a nomination to the Register—property owners, local governments, preservation organizations, etc. Nominations from the state level are submitted to a state review board composed of professionals in the fields of history, architecture, archaeology and related disciplines who recommend its nomination if the members believe it meets the criteria for listing. Formal nominations are submitted by State Historic Preservation Officers (SHPO)<sup>5</sup>. Properties under the ownership

1 Berman, David R., “The Powers of Local Government in the United States”, United States Information Service (USIS), <http://usinfo.state.gov/journals/itdhr/0499/ijde/berman.htm>, accessed November 14, 2008.

2 Penn Central Transportation Co. v. New York City, 438 U.S. 105 (1978).

3 Public Law 89-665; 16 U.S.C. 470 *et seq.*

4 <http://www.nps.gov/nrl/about.htm>, accessed October 25, 2008.

5 The SHPO is a state official who has been appointed under the provisions of the NHPA to administer the federal-funded preservation program in his/her state under in accordance with federal regulations and grant agreements. During the review period at the state level, property owners of properties being considered may object to their listing. If the owner of an individual property, or the majority of owners



or control of the federal government or Native American tribes may be nominated by Federal Preservation Officers (FPO) or Tribal Preservation Officers (TPO), respectively.<sup>6</sup>

The standards for evaluating the significance of properties nominated for listing in the Register were developed by the United States National Park Service through a process that sought to recognize the significant contributions of all peoples to the nation's heritage. The criteria for evaluation are as follows:

#### Criteria for Evaluation

*The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:*

- a. *That are associated with events that have made a significant contribution to the broad patterns of our history; or*
- b. *That are associated with the lives of persons significant in our past; or*
- c. *That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or*
- d. *That have yielded or may be likely to yield, information important in prehistory or history.<sup>7</sup>*

There are special considerations for certain properties:

#### Criteria Considerations<sup>8</sup>

*Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:*

- a. *A religious property deriving primary significance from architectural or artistic distinction or historical importance; or*
- b. *A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or*
- c. *A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or*
- d. *A cemetery which derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or*
- e. *A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or*
- f. *A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or*
- g. *A property achieving significance within the past 50 years if it is of exceptional importance.<sup>9</sup>*

The National Park Service has compiled a detailed guide to assist in determining whether properties meet the criteria for designation: *How to Apply the National Register Criteria for Evaluation*.<sup>10</sup> In addition, there are a number of publications designed specifically to assist in evaluating particular types of properties: historic residential suburbs, archaeological properties, historic aviation properties, aids to navigation, battlefields, cemeteries and burial places, landscapes, mining properties, properties that have achieved significance within the past fifty years, post offices, rural historic landscapes, traditional cultural properties, and vessels and shipwrecks.<sup>11</sup>

Federal procedures require that a property considered for nomination must be significant—that is, “it must represent a significant part of the history, architecture, archaeology, engineering, or culture of an area, and it

within a district, objects to their nomination, the historic property cannot be listed in the Register.

<sup>6</sup> <http://www.nps.gov/nr/listing.htm>, accessed October 25, 2008.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Properties must generally be 50 years of age before listing in the Register; those less than 50 years of age must have exceptional significance.

<sup>10</sup> 1990; revised 1991, 1995, 1997. Revised for Internet 1995, <http://www.nps.gov/history/nr/publications/bulletins/nrb15/nrb15.pdf>, accessed October 25, 2008.

<sup>11</sup> <http://www.nps.gov/history/nr/publications/bulletins.htm>, accessed October 25, 2008.

must have the characteristics that make it a good representative of properties associated with that aspect of the past.”<sup>12</sup>

In order to determine whether a property is significant, the Park Service guidelines require that it be evaluated in its historic context—“those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear. Historians, architectural historians, folklorists, archaeologists, and anthropologists use different words to describe this [Sic.] phenomena such as trend, pattern, theme, or cultural affiliation, but ultimately the concept is the same.”<sup>13</sup>

The guidelines suggest that to decide whether a property is significant the following must be determined:

- The facet of prehistory or history of the local area, State, or the nation that the property represents;
- Whether that facet of prehistory or history is significant;
- Whether it is a type of property that has relevance and importance in illustrating the historic context;
- How the property illustrates that history; and
- Whether the property possesses the physical features necessary to convey the aspect of prehistory or history with which it is associated.<sup>14</sup>

If the property is determined to represent an important aspect of the area's history or prehistory and also is determined to possess integrity, it qualifies for listing in the Register.<sup>15</sup>

As part of this process, it is important to determine whether the property has local, state or national significance by examining the historical contexts at these different levels. Local historical contexts are used to establish the importance of a property within the history of a town, city, county, cultural area or region. State historical contexts help establish the importance of a property within the history of a state, *as a whole*, while national contexts are used to establish that properties represent an aspect of United States history.<sup>16</sup> Among the properties designated as nationally significant in the National Register are prehistoric and historic properties included in the National Park System.<sup>17</sup> Also included are properties designated as National Historic Landmarks.

## NATIONAL HISTORIC LANDMARK PROGRAM

Properties designated as National Historic Landmarks are distinguished from other properties considered of national significance by possessing “exceptional value or quality in illustrating and interpreting the heritage of the United States.”<sup>18</sup>

The National Park Service primarily uses theme studies to identify potential National Historic Landmarks. These studies employ comparative analysis to establish the relative importance of properties associated with a specific area of American history such as Presidential Sites, Women's History, and Man in Space.<sup>19</sup> The historic importance of potential Landmarks is evaluated by the Park Service and an advisory board comprising citizens who are experts in the conservation of natural, historic and cultural areas. While they are able to make recommendations, decisions on designation are made by the Secretary of the Interior.<sup>20</sup>

Criteria for selection as National Historic Landmarks are very similar to those for listing properties in the National Register of Historic Places:

*The quality of national significance is ascribed to districts, sites, buildings, structures and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture,*

<sup>12</sup> [http://www.nps.gov/history/nr/publications/bulletins/nrb15/nrb15\\_5.htm](http://www.nps.gov/history/nr/publications/bulletins/nrb15/nrb15_5.htm), accessed October 25, 2008.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid. These five steps are discussed in more detail in this bulletin.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid. The bulletin emphasizes that properties of national significance must be “of exceptional value in representing or illustrating an important theme in the history of the nation,” but they need not be of a property type found throughout the entire country. An example given is a Civil War battlefield, found only in the eastern part of the country, but having great significance to the history of the whole country.

<sup>17</sup> This paper will not discuss criteria for acquisition or designation of properties as part of the National Park System.

<sup>18</sup> <http://www.nps.gov/nhl/publications/bro2.htm>, accessed November 10, 2008.

<sup>19</sup> <http://www.nps.gov/nhl/themes/themes-all.htm>, accessed November 10, 2008. The thematic framework currently in use is a departure from earlier outlines used by the Park Service. For a more detailed description of the revised thematic framework, see <http://www.nps.gov/nhl/themes/themes.htm>, accessed November 11, 2008. Revisions were made, in part, because of a 1980 federal court decision (*Historic Green Springs, Inc. v. Berglund*, 497 F. Supp. 839 (E.D. Va. 1980)) that declared invalid a National Historic Landmark designation based on a “failure to prepare and publish rules of procedure to govern the designation process.” This subsequently prompted the Department of the Interior to also seek an amendment to the National Historic Preservation Act that would “grandfather” all National Historic Landmarks designated prior to February 6, 1979. 16 U.S.C. 470a(a)(1)(B).

<sup>20</sup> <http://www.nps.gov/nhl/themes/themes.htm>, accessed November 11, 2008.



archeology, technology and culture; and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- (1) That is associated with events that have made a significant contribution to, and are identified with, or that outstandingly represents, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or
- (2) That are associated importantly with the lives of persons nationally significant in the history of the United States; or
- (3) That represent some great idea or ideal of the American people; or
- (4) That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for the study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or
- (5) That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or
- (6) That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past 50 years are not eligible for designation.

## THE UNITED STATES AND THE WORLD HERITAGE CONVENTION

The United States took a leadership role in the creation of the World Heritage Convention and became the first nation to ratify it in 1973 by a vote in the Senate of 95-0. The United States has served as a member of the World Heritage Committee for much of that body's existence and in 1978 hosted the first Committee meeting that listed sites. Of the 12 sites listed at that time, two were in the United States: Mesa Verde and Yellowstone National Parks. Since that time, implementing laws and regulations— and politics — have had the practical effect of limiting U.S. participation.

As a signatory to the Convention, the United States is obligated to “ensure the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage . . . situated on its territory” and take “effective and active measures” to protect this heritage.<sup>21</sup>

After the Convention entered into force, implementing legislation was established in the U.S. by the 1980 Amendments to the National Historic Preservation Act (NHPA)<sup>22</sup>. The 1980 amendments gave the Secretary of the Interior the responsibility of directing and coordinating U.S. activities under the Convention in coordination with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation.<sup>23</sup> Regulations setting forth policies and procedures used by the U.S. Department of the Interior to direct and coordinate participation were adopted in 1982 and continue in force. The regulations also address maintenance of the U.S. Indicative Inventory of Potential Future World Heritage Nominations<sup>24</sup> and the nomination of sites to the World Heritage List.<sup>25</sup>

21 Convention Concerning the Protection of the World Cultural and Natural Heritage, Nov. 23, 1972, 27 U.S.T. 37, 11 I.L.M. 1358, arts. 4-6.

22 The National Historic Preservation Act of 1966, 16 U.S.C. § 470 *et seq.*, is the key federal statute in the area of historic preservation, establishing a partnership between federal, state and local governments following closely the approach set out in *With Heritage So Rich*, a report of a special committee under the auspices of the United States Conference of Mayors. The federal approach involves the establishment of national standards, designation of properties worthy of preservation (National Register of Historic Places), protection of listed properties from federally licensed and funded projects (Section 106), appropriate management of federally-owned properties, and the provision of incentives to state and local governments and private individuals. This law has served as a model for preservation laws in some other nations and represents a departure from the early European model that traditionally focused on listing monuments to an approach focused on a broad range of heritage properties. It is at the local level in the United States where government has the “teeth” to protect heritage properties from damage or destruction by private owners. The regulation of land use through the police power is one of the traditional powers of state government guaranteed through the Tenth Amendment of the U.S. Constitution. State governments have, in turn, authorized local governments to exercise this power by enacting historic preservation ordinances.

23 Public Law 96-515, December 12, 1980, 94 Stat. 3000.

24 The United States was the first nation to prepare such a list, commonly referred to as the “tentative list”, and the current version is a slightly amended form of the document prepared in 1982. This list is intended to be an open-ended or revolving list. James Charleston, “The United States and the World Heritage Convention”, a paper presented at the annual symposium of US/ICOMOS in Indianapolis, Indiana in 2000, [www.icomos.org/us/icomos/Symposium/SYMP00/charleston.hum](http://www.icomos.org/us/icomos/Symposium/SYMP00/charleston.hum), accessed November 11, 2008.

25 36 CFR 73.

The criteria for listing properties in the World Heritage List are established by the World Heritage Committee and are contained in the Operational Guidelines for the Implementation of the World Heritage Convention.<sup>26</sup> These criteria, of course, apply to properties nominated by the United States.<sup>27</sup>

To date, twenty sites in the United States have been inscribed on the World Heritage List, two of which are sites jointly listed with Canada. Eight listings are cultural sites. However, no properties have been added to the list since 1995.<sup>28</sup> With few exceptions these properties are National Parks, owned by the United States government.

The relatively small number of U.S. inscriptions on the World Heritage List given the size of the country and its rich resources is due in part to the owner consent requirement included in the 1980 Amendments to the NHPA. The law prohibits any non-Federal property from being nominated unless the owner concurs in writing. The Interior Department adopted regulations requiring written concurrence not only from the owner of an individual property but from 100 percent of property owners in a multiple property nomination.<sup>29</sup>

Additionally, each owner must pledge to protect the property by executing a legal agreement specified in federal regulations. For non-governmental properties, the regulations require (1) A written covenant executed by the owner(s) prohibiting, in perpetuity, any use that is not consistent with, or which threatens or damages the property's universally significant values, or other trust or legal arrangement that has that effect; and (2) The opinion of counsel on the legal status and enforcement of such a prohibition, including, but not limited to, enforceability by the Federal government or by interested third parties.<sup>30</sup>

Properties nominated to the World Heritage List also must be determined to be “nationally significant”. A property will be considered “nationally significant” only if it is: A property that the Secretary of the Interior has designated as a National Historic Landmark (36 CFR part 65) or a National Natural Landmark (36 CFR part 62) under provisions of the 1935 Historic Sites Act (Public Law 74-292; 49 Stat. 666; 16 U.S.C. 461 *et seq.*); an area the United States Congress has established by law as nationally significant; or an area the President of the United States has proclaimed as a National Monument under the Antiquities Act of 1906 (16 U.S.C. 433). If a property proposed for nomination relates to an historical theme that has not been studied by the National Park Service, it may not be able to be listed as a National Historic Landmark, at least not in a timely matter.<sup>31</sup>

## STATE REGISTER OF HISTORIC PLACES

Many states operated historic preservation programs prior to the enactment of the National Historic Preservation Act (NHPA). Those programs were often limited in scope, involving for example, historic marker programs and management of state-owned historic properties or museums. The elements and operation of the programs tended to be quite different from state to state. The enactment of the NHPA brought much more uniformity to the programs by providing grants to the states provided they assume certain responsibilities and adhere to federally-mandated standards and guidelines for those activities and programs.<sup>32</sup> Each of the state historic preservation offices has a role in nominating properties to the National Register of Historic Places. In addition, many states have established and maintain state registers of historic places. Although these registers differ, most include all properties and districts with their borders that are listed in the National Register. Some state registers also include properties in their states designated as historic by local governments. The criteria for listing, and even the procedures are often identical to that for listing in the National Register. There are several reasons for maintaining these seemingly duplicative listings. Officials in some states may wish, for political or other reasons, to withhold National Register listing for a property. In some cases, they may wish to list properties considered important in their state that were not accepted for listing in the National Register. In addition, state law may provide tax benefits, grants, or other economic incentives only for properties listed in the state register or provide protections for properties listed in the state register from state-funded projects that would threaten them.<sup>33</sup>

The Georgia Register of Historic Places is a good case in point. An information sheet on that program prepared by the Georgia Department of Natural Resources, which administers the program, states:

26 <http://whc.unesco.org/archive/opguide08-en.pdf>, accessed November 11, 2008.

27 The National Park Service provides a publication that discusses the World Heritage Criteria and how that criteria differs from criteria normally applied to listing in the National Register of Historic Places. See “Users Guide to World Heritage Criteria”, <http://www.nps.gov/oia/topics/worldheritage/Users%20Guide%20to%20World%20Heritage%20Criteria.pdf>, accessed November 11, 2008.

28 Of these sites, two were subsequently placed on the List of World Heritage in Danger: Everglades National Park and Yellowstone National Park.

29 16 U.S.C. 470a(a)(6); 36 CFR 60.6; 36 CFR 65.5(f)(1).

30 23 CFR 73.13(c).

31 See the discussion on theme studies for National Historic Landmarks, above.

32 Tyler, Norman, *Historic Preservation*, (New York 2000), at 52.

33 Lyon, Elizabeth A. and David L. S. Brook, “The States” in Robert E. Stipe, ed., *A Richer Heritage*, (Chapel Hill, NC 2003) at



*The Georgia Register is the state's official list of historic buildings, structures, sites, objects, and districts worthy of preservation. The Georgia Register program is administered by the Historic Preservation Division (HPD) of the Department of Natural Resources. Listing in the Georgia Register helps preserve historic properties and provides recognition of a property's architectural, historical, or archaeological significance. Georgia Register listing also identifies properties for planning purposes and ensures that these properties will be taken into account in the planning of state assisted projects. Owners of historic properties listed in the Georgia Register may also be eligible for a state property tax abatement for rehabilitation work which meets preservation standards; eligible properties owned by public agencies or nonprofit organizations may qualify for state grant assistance. Georgia Register listing does not place obligations or restrictions on the use or disposition of property.*

*The Georgia Register uses the same criteria and documentation procedures as the National Register of Historic Places. Properties listed in the National Register are automatically listed in the Georgia Register. Conversely, properties in the Georgia Register are not included in the National Register unless they are separately nominated. The Georgia Register is the state designation referenced by state laws and regulations regarding state grants, property tax abatements, the Georgia Environmental Policy Act, the State-owned Historic Properties Act, and other state preservation and environmental programs.<sup>34</sup>*

Connecticut uses the same criteria as the National Register, except that special considerations are not applicable.<sup>35</sup> The State of New Hampshire also utilizes criteria that are based on National Register criteria.<sup>36</sup>

## LOCAL HISTORIC PRESERVATION ORDINANCES

The most important listing mechanism to protect cultural properties in the United States is found at the local level. States delegate authority to local governments to enact laws or ordinances for the protection of heritage resources. The specific scope and content of local preservation legislation varies considerably due to the differences among the states in the authority delegated to local governments, community need, and the type of resources protected. Generally, though, preservation ordinances regulate changes that would negatively affect or destroy the character that gave designated historic properties or historic districts their significance. There is a particular emphasis on mandatory control over changes in the exterior architectural features of designated buildings. Over 2,000 local governments across the United States have enacted some form of historic preservation ordinance. A typical preservation ordinance would generally contain provisions setting out criteria and procedures for designating historic districts and landmarks. While state enabling legislation and local ordinances vary, many contain remarkably similar criteria for designation, and the influence of National Register criteria is quite evident. Three examples follow.

The Georgia state legislation authorizing local governments to protect historic resources provides the

34 "Georgia Register of Historic Places: Recognizing and Protecting our Historic Properties", revised September 2005, [http://hpd.dnr.state.ga.us/assets/documents/ga\\_reg\\_fs.pdf](http://hpd.dnr.state.ga.us/assets/documents/ga_reg_fs.pdf), accessed November 11, 2008.

35 <http://www.cttrust.org/index.cgi/1028>, accessed November 11, 2008. Special considerations for National Register listing are detailed in the section dealing with the National Register, above.

36 "The New Hampshire State Register of Historic Places", New Hampshire Division of Historic Resources, [http://www.nh.gov/nhdhr/programs/state\\_register\\_listing.html](http://www.nh.gov/nhdhr/programs/state_register_listing.html), accessed November 12, 2008. "Properties may be listed on the State Register for the story they tell. This story can be about a single event, such as a major labor strike at a factory, or about a much longer historical trend, such as the rise of textile manufacturing in the Merrimack River valley, or a number of stories that are together meaningful to a community's history, such as a mill complex that has housed a number of different industries on which a village has depended. Although the State Register recognizes that many of these types of historical resources have changed over the years to accommodate evolving technologies, styles and needs, the listed resource must retain enough of its historic fabric to illustrate its historic uses and role in the community.

"Properties may also be meaningful for their associations with people who made important contributions to a community, profession or local tradition. These types of resources could be the workshop of a popular painter, the home of successful local chair manufacturer or the store of the first merchant in town. Again, these resources should retain the bulk of their historical physical fabric. One test is to question whether the person whose life the property illustrates would recognize it today.

"Properties may also be listed on the State Register for their tangible merit, either as a well-preserved example of local architecture, design, construction or engineering, or as long-standing focal point in a neighborhood or community. A variety of resources can be ushered into the State Register under this criterion: a well-preserved although typical example of a New Hampshire farmhouse, a town common or cemetery, or the intact stone foundations of a local grist mill. These types of resources need not be extraordinary or the best example in town; they often can be a common, although irreplaceable, feature on the New Hampshire landscape.

"Identified, but unexcavated and unevaluated archeological sites may also be listed on the State Register of Historic Places. Artifacts at these sites can yield significant information about the lives, traditions and activities of New Hampshire's earliest residents."

following general criteria that local governments must incorporate in their own legislation:

*'Historic district' means a geographically definable area, urban or rural, which contains structures, sites, works of art, or a combination thereof which:*

- Have special character or special historical or esthetic interest or value;*
- Represent one or more periods or styles of architecture typical of one or more eras in the history of the municipality, county, state, or region; and*
- Cause such area, by reason of such factors, to constitute a visibly perceptible section of the municipality or county.<sup>37</sup>*

*'Historic property' means a structure, site, or work of art, including the adjacent area necessary for the proper appreciation or use thereof, deemed worthy of preservation by reason of its value to the municipality, county, state, or region for one or more of the following reasons:*

- It is an outstanding example of a structure representative of its era;*
- It is one of the few remaining examples of a past architectural style;*
- It is a place or structure associated with an event or person of historic or cultural significance to the municipality, county, state, or region; or*

*It is a site of natural or esthetic interest that is continuing to contribute to the cultural or historical development and heritage of the municipality, county, state, or region.<sup>38</sup>*

The State of Florida has published a model historic preservation ordinance for adoption by local governments. This model contains the following criteria for designation:

- 1. Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or*
- 2. Are identified with historic personages or with important events in national, state or local history; or*
- 3. Embody the distinguishing characteristics of an architectural type or specimen inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship; or*
- 4. Are representative of the notable work of a master builder, designer or architect who influenced his age; or*
- 5. Have yielded, or may be likely to yield, information important to prehistory or history.<sup>39</sup>*

The historic preservation ordinance in the City of Seattle, Washington established the following designation criteria:

*An object, site or improvement which is more than twenty-five (25) years old may be designated for preservation as a landmark site or landmark if it has significant character, interest or value as part of the development, heritage or cultural characteristics of the City, state, or nation, if it has integrity or the ability to convey its significance, and if it falls into one (1) of the following categories:*

- It is the location of, or is associated in a significant way with, an historic event with a significant effect upon the community, City, state, or nation; or*
- It is associated in a significant way with the life of a person important in the history of the City, state, or nation; or*
- It is associated in a significant way with a significant aspect of the cultural, political, or economic heritage of the community, City, state or nation; or*
- It embodies the distinctive visible characteristics of an architectural style, or period, or of a method of construction; or E. It is an outstanding work of a designer or builder; or*
- Because of its prominence of spatial location, contrasts of siting, age, or scale, it is an easily identifiable visual feature of its neighborhood or the City and contributes to the distinctive quality or identity of such neighborhood or the City.<sup>40</sup>*

37 O.C.G.A. §44-10-22(5).

38 O.C.G.A. §44-10-22(7).

39 "A Model Historic Preservation Ordinance", <http://growth-management.alachua.fl.us/historic/modelordinance.htm>, accessed November 14, 2008.

40 SMC §25.12.350



Conservation districts are similar to historic districts, but are often applied in areas that do not possess a degree of significance or integrity high enough for designation as historic districts. In other cases the property owners in the area are not prepared to accept the degree of control over their properties typical of an historic district. While some type of design review is part of most conservation districts, what is reviewed varies from ordinance to ordinance based on the resources to be protected and the desired level of protection. Binding review of exterior architectural alterations is usually not part of the review provided in conservation districts. The review in conservation districts may be mandatory or advisory. Many conservation district ordinances regulate demolition or new constructions of vacant lots. Others focus on general urban design issues such as height, scale, building placement, setback, materials, or landscape features.<sup>41</sup> These objectives may be implemented through incentives in addition to or in lieu of legal mandates. Conservation districts do provide a vehicle for public education and encourage involvement in the local planning process. To the extent that they address overall environmental character, they may be quite appropriate for buffer zones.

The criteria for designation in many conservation district ordinances, particularly those that have a historic preservation planning purpose, may be quite similar to criteria in local historic district ordinances or for the National Register of Historic Places.<sup>42</sup>

In San Antonio, Texas, conservation districts must meet the following criteria:

*To be designated as a Neighborhood Conservation District, the area must meet the following criteria:*

- (1) contain a minimum of one blockface (all the lots on one side of a block);*
- (2) at least 75% of the land area in the proposed district was improved at least 25 years ago, and is presently improved; and*
- (3) possess one or more of the following distinctive features that create a cohesive identifiable setting, character or association:*
  - a. scale, size, type of construction, or distinctive building materials;*
  - b. spatial relationships between buildings;*
  - c. lot layouts, setbacks, street layouts, alleys or sidewalks;*
  - d. special natural or streetscape characteristics, such as creek beds, parks, greenbelts, gardens or street landscaping;*
  - e. land use patterns, including mixed or unique uses or activities; or*
  - f. abuts or links designated historic landmarks and/or districts.*<sup>43</sup>

The Chapel Hill, North Carolina ordinance is almost identical, but adds a fifth criterion: "The area must be predominantly residential in use and character."<sup>44</sup>

## CONCLUSION

Since historic preservation in the United States operates independently—though cooperatively—at the national, state and local levels, the criteria for designation of historic resources differ accordingly. However, the criteria for designation to the National Register of Historic Places has strongly influenced the criteria contained in state registers and local ordinances. This influence comes not only from the prestige of the National Register, but its mandatory use in federal projects and programs and the economic incentive programs that are tied to it. The independence of the various levels of government within the framework, however, allows state and local programs to mold their criteria to meet political needs and to address local circumstances and unique resources. One National Register criteria has engendered a good bit of debate in recent years as interest grows in protecting the "recent past": ordinarily properties that have achieved significance within the past 50 years are not eligible for designation. In spite of that debate, there seems to be general consensus that the criteria established over the past forty years at the various levels of government remain appropriate for the designating historic properties.

<sup>41</sup> Zellie, Carole, "A Consideration of Conservation Districts and Preservation Planning: Notes from St. Paul, Minnesota," *Conservation Districts*, Cultural Resources Partnership Notes, Sue Henry Renaud, Editor, National Park Service, <http://www.cr.nps.gov/hps/pad/partnership/index.htm>, accessed November 11, 2008.

<sup>42</sup> Ibid, at 10.

<sup>43</sup> San Antonio Uniform Development Code, Section 36-335 (b), [http://www.sanantonio.gov/planning/pdf/neighborhoods/jefferson\\_ncd/NCD\\_Enabling\\_Ordinance.pdf](http://www.sanantonio.gov/planning/pdf/neighborhoods/jefferson_ncd/NCD_Enabling_Ordinance.pdf), accessed November 12, 2008.

<sup>44</sup> <http://townhall.townofchapelhill.org/planning/ncd/NCD.html>, accessed November 14, 2008.