

**ROMANIAN NATIONAL ICOMOS COMMITTEE & INTERNATIONAL SCIENTIFIC
COMMITTEE ON LEGISLATIVE, ADMINISTRATIVE AND FINANCIAL ISSUES - I C L A F I**



INTERNATIONAL CONFERENCE:

**"The role of the advisory bodies in the preservation of Historic monuments.
The relationship between THE administrative and THE advisory bodies."**

SIBIU, 1-3 NOVEMBER 2007

**MANIFESTARE ȘI PUBLICAȚIE FINANȚATE DE MINISTERUL CULTURII ȘI CULTELOR
ÎN CADRUL PROGRAMULUI SIBIU, CAPITALĂ CULTURALĂ EUROPEANĂ 2007**

INTERNATIONAL COUNCIL
ON MONUMENTS AND SITES

I C O M O S

CONSEIL INTERNATIONAL
DES MONUMENTS ET DES SITES

**ROMANIAN NATIONAL ICOMOS COMMITTEE & INTERNATIONAL
SCIENTIFIC COMMITTEE ON LEGISLATIVE, ADMINISTRATIVE AND
FINANCIAL ISSUES - I C L A F I**

INTERNATIONAL CONFERENCE :

**THE ROLE OF THE ADVISORY BODIES IN THE
PRESERVATION OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN THE
ADMINISTRATIVE AND THE ADVISORY BODIES.**

SIBIU, 1-3 NOVEMBER 2007

**© COMITETUL NATIONAL ROMAN ICOMOS
EDITOR: SERGIU NISTOR
ISBN 978-973-8401-25-9
SIBIU, EDITURA ETAPE, 2007**

James K. Reap, President

CONTENTS

ICLAFI 2007 Report - James K. Reap, President..... 3

Introductory presentation Sergiu Nistor - Romania 5

Graeme Wiffen - Australia 7

Anne Marie Draye - Belgium 11

Svetoslav Georgiev - Bulgaria 19

Satu-Kaarina Vittala - Finland 23

Dr. Werner von Truetzschler - Germany 25

Athina Christofidou - Greece 27

Adv. Gideon Koren - Israel 35

Roberto Núñez Arratia, Ernesto Becerril Miró - Mexico 39

Alberto Martorell Carreño - Peru 43

Vojciech Kowalski - Poland 47

Arch. Adrian Crăciunescu - Romania 51

Luis Antonio Anguita Villanueva - Spain 57

Prashantha B. Mandawala - Sri Lanka 61

James K. Reap - United States of America 65

Brief member ship ICLAFI 2007 71

Presentation ICLAFI 2007 73

Fotocronica cop III IV

Names and Titles of Committee Officers and
Bureau Members, 2006-2009:

James K. Reap, President	USA
Gideon Koren, Secretary General	Israel
Anne Marie Draye, Vice President	Belgium
Hristina Staneva, Vice President	Bulgaria
Graeme Wiffen, Vice President	Australia

Activities since September 1, 2006:

- Annual meeting and symposium, November 26-December 1, 2006, Hiroshima, Japan.
- Election of Bureau
- Completion of draft guidelines for the development or revision of statutes by National Committees (NCs)
- Completion of guidelines for the development or revision of statutes by the International Scientific Committees (ISCs)
- Assistance to the Secretariat on completion of an agreement for the translation and publication of ICOMOS Charters in Arabic
- Assistance to the Secretariat on legal issues
- Assistance to various ISCs on statutory and other legal issues
- Implementation of a new Committee website
- Proposed the development of an ICLAFI electronic journal

Publications since September 1, 2006:

- *The Protection of Archaeological Heritage; La Protection du Patrimoine Archéologique*, the proceedings of the ICLAFI symposium Held in Brussels, Belgium 23-26 November 2005, Publication du Comité National Belge D'ICOMOS
- *World Heritage Convention and the Buffer Zone*, selected papers presented at the ICLAFI symposium in Hiroshima, Japan 26 November - 1 December, 2006, published by ICOMOS Japan. Website containing the full proceedings of the symposium: <http://www.law.kyushu-u.ac.jp/programs/english/hiroshima/index.htm>



ICLAFI Symposia 1997-2000

1997	Weimar, Germany	Legal Structures of Private Sponsorship
1999	Toledo, Spain	Protection Through Planning.; Public Participation in Planning and Listing Processes
2000	Brijuni, Croatia	The Economic Impact of Financing Conservation and Restoration
2001	Ein Bokek, Israel	Legal Methods of Furthering Urban Preservation
2002	Athens, Georgia, USA	Conservation, Heritage, Law
2003	Paris, France	Cultural Patrimony and Decentralization
2004	Plovdiv, Bulgaria	Tax and Other Economic Incentives
2005	Brussels, Belgium	The Protection of Archaeological H
2006	Hiroshima, Japan	World Heritage Convention and the Buffer Zone
2007	Sibiu, Romania	The Role of Advisory Bodies in the Preservation of Historic Monuments

THE DINAMICS OF THE RELATIONSHIP BETWEEN THE STATE AND THE ADVISORY BODY IN CONSERVATION IN ROMANIA (1890/2007)

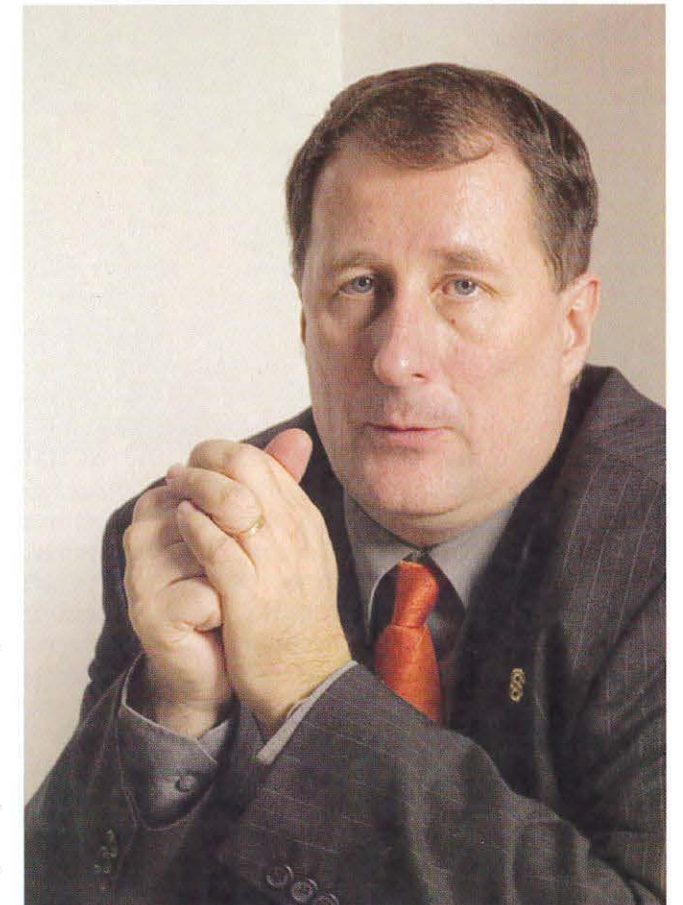
Introductory presentation

By **Sergiu NISTOR**, Arch., PhD, Ass.prof.
President of the Romanian National Committee of ICOMOS

The first moment of public concern about the fate of the historic buildings existing on the Romanian territory was marked, not surprisingly, by the period of the first restoration works the newly independent Romanian state commissioned in late XIXth century.

Shortly after declaring the state as the Kingdom of Romania (1881), King Charles I asked the French architect Anatole de Baudot to expertise the state of the Romanian major historic monuments, i.e. the historic monasteries and churches of the former capitals of Iassy, Targoviste and Curtea de Arges. Later on, Andre Lecomte, a close to Anatole de Baudot was commissioned to start the restoration work at Curtea de Arges Bishopric Church and monastery so to transform it in a symbol of the new status of the Romanian kingdom. Restoration work at this monument was carried out in the manner of the French school of restoration of the late Eugene Emanuel Viollet le Duc. Removal of the antique parts and subjective replacements and reconstruction were the characteristics of the restoration work done by Andre Lecomte (later taking the name of Andre Lecomte de Nouy). With respect to this, a growing discontent and criticism on behalf of historians, architects and writers lead in 1892 to the enforcement of the first law for the protection of historic monuments: The Law for the Conservation and Restoration of Public Monuments. But before that law was passed in the Parliament, and mostly because of the public attitude against the Andre Lecomte restorations, a Committee for the Resistance against the Destruction of Historic Monuments (lead by arch. G. Sterian, 1890) and an Honorary Commission of Public Monuments (1890) were instated. That latter Commission was in 1900 renamed as The Commission for Historic Monuments and reconsidered as both a scientific and administrative body. It played until 1945 a major role in the preservation and restoration of the historic monuments in Romania.

After the IInd World War and the taking over of Romania by Communism, the Commission for Historic Monuments (as an administrative agency) was first closed (1948) and later on replaced by the Directorate for



Historic Monuments (1959), at its turn closed by Ceausescu in December 1977 because of his intentions of changing the face of Romania into a new socialist appearance.

Following the Romanian Revolution of December 1989, after 13 years of quasi total neglect on behalf of the state authorities (to say the least), in March 1990 a Decree calls back to existence a National Commission for Historic Monuments, Ensembles and Sites (NCHMES). According to the administrative and political model of the relationship between the Parliament and the Government, the Decree appoints the NCHMES (a scientific body composed of academics, archaeologists, architects, art historians, painters and restorers) as the decisional body in the preservation of historic monuments and stipulates that a Directorate for Historic Monuments (DHM) is to be the executive body. Giving decisional powers to an academic body was probably because of the fact that the major destructions of the cultural heritage of

Romania, decided by the communist regime, encountered a fragile opposition only from the thin strata of the art historians and historians, some of them from Romania, some other from abroad.

In fact, it was the same situation as exactly one hundred years ago: the civil society was taking the lead in the preservation of the cultural heritage, due to its strong reaction against the destruction of historic monuments. In 1890 against the destructions of the "French restoration school", in 1990 against the effects of the destructions and neglect the monuments faced in the communist period.

This particular relationship between the NCHMS and the DHM, as decisional and executive bodies ended in 1994, due to an administrative reform meant to put the organizational structure of the Ministry of Culture in line with the provisions of the democratic Constitution approved by referendum in December 1991. The NCHMS became a scientific body to advice the Minister of Culture thru the Direction for Historic Monuments. Nevertheless, the responsibilities of the NCHM (as it was called after 1994, loosing the last S from "sites") were practically the same as before, the Commission having the duty to propose the approval or the rejection of the permit to be issued by the Minister of Culture with respect to the listing and the interventions upon historic monuments, in their buffer zone, etc. Practically there was no administrative act in respect to the historic environment which could be issued by

the Ministry of Culture without a submission of the problem to the National Commission for Historic Monuments. Not only this system was time consuming but also produced a lot of controversies and legal appeals on behalf of the owners, complaining about the technical contents or even asking the cancellation of the acts received from the Ministry of Culture.

The advisory and the administrative bodies with responsibilities for the preservation of the historic environment in Romania are now facing a very tough situation: the economic development of the country forces the administration to be very fast and precise in its acts; it is more and more frequent that owners or developers call the Ministry of Culture in justice in order to claim their interests. In this respect, there is a pressure for a new relationship between the advisory bodies (in historic monuments, archaeology or movable cultural heritage) and the administrative ones, to make it more efficient and respectful to the constitutional and legal framework.

Baring in mind all these facts, the Romanian ICOMOS National Committee invited the International Scientific Committee on Legal, Administrative and Financial Issues to held its annual conference in Sibiu with the theme: *The role of the advisory bodies in the preservation of historic monuments. The relationship between the administrative and the advisory bodies.* We do hope that we will all take profit from the debate, to the benefit of the preservation of our historic monuments.

THE ROLE OF ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS AND THEIR RELATIONSHIP WITH ADMINISTRATIVE BODIES

Graeme Wiffen - Australia

The Commonwealth of Australia is a federation comprising the national government, six original States and two largely self-governing federal territories. Each of these 9 jurisdictions has heritage legislation to protect places of heritage significance, and sets up an important advisory body.¹ These are:

National

Australian Heritage Council

States

Heritage Council of New South Wales
Queensland Heritage Council
Heritage Council of South Australia
Tasmanian Heritage Council
Heritage Council of Victoria
Heritage Council of Western Australia

Territory

Australian Capital Territory Heritage Council
Heritage Advisory Council of the Northern Territory.

A. Advisory bodies in national legislation
A.1 Legal status of advisory bodies

Two pieces of national legislation enacted by the Parliament of the Commonwealth of Australia are important in the protection of heritage places in Australia:

- *Australian Heritage Council Act, 2003* and the
- *Environment Protection and Biodiversity Conservation Act 1999*

The Australian Heritage Council is the national advisory body and is established under the Australian Heritage Council Act as an independent statutory body.

A complex national legal and administrative scheme for the protection of the values of heritage places is established under the Environment Protection and Biodiversity Conservation Act, which also regulates environmental matters. The legislation adopts an environmental impact assessment model. The Australian Heritage Council advises the national Minister with responsibility in heritage matters under that



legislation on world heritage, national heritage and the protection of government owned heritage items, called Commonwealth heritage places. The term "heritage" includes both cultural and natural places, and "cultural" includes the heritage of the indigenous population and of more recent, predominantly European, migrants.

There are other scientific advisory bodies under the legislation for issues such as whether species are endangered or threatened.

A further advisory body is planned for matters of indigenous heritage.

Also at the national level, the National Cultural Heritage Committee advises on the import and export of items of movable heritage. The relevant legislation is the *Protection of Movable Cultural Heritage Act 1986* which gives effect to the *UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

A.2 Decentralized advisory bodies

Each of the six States and the two Territories has a Heritage Council set up by legislation in the jurisdiction with responsibilities relating to the State or Territory Heritage Register.

In the States, local government councils have responsibility for places of local heritage significance. The relevant State Heritage Council has an advisory role for local government. Places of local heritage are listed under State land use planning legislation, as local councils generally have administrative and not legislative powers.

¹ Discussed in Ben Boer and Graeme Wiffen *Heritage Law in Australia* (OUP) 2006.

The Territories do not yet separately identify matters as of local heritage significance.

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

The relationship between the advisory bodies at the two levels of government, that is the Australian Heritage Council of the Commonwealth, on the one hand, and those of the States and two larger Territories, on the other, is informal. There is no clear legislated functional relationship. Co-ordination is through Councils of relevant Ministers and committees of departmental officers.

The national *Environment Protection and Biodiversity Conservation Act 1999* empowers the national Minister with responsibility for heritage matters to stop actions that may threaten the heritage values of a World, national or commonwealth heritage place or to allow actions subject to conditions. This Act has an objective of "co-operative federalism" and the Minister may carry out his responsibilities in collaboration with the relevant Minister in a State or territory government. The Minister may, for example, stipulate as a condition that the proponent comply with management principles formulated by a State or territory heritage council. Protection of the recently listed Sydney Opera House is augmented by amendments to planning provisions relating to the City of Sydney and Sydney Harbour under laws of the relevant State, New South Wales.

B. The competencies of advisory bodies with respect to the preservation of historic monuments.

B.1 Listing competencies

Generally, Heritage Councils at the two levels of government in Australia do not have the listing function for heritage places. Listing is by the relevant government Minister on the advice of the relevant Heritage Council. At the national level, the predecessor to the Australian Heritage Council, called the Australian Heritage Commission, had a listing function, but this was lost when the Commission was replaced by the new Council. Australia Icomos criticised this change as confusing and put forward an ideal distinction between the scientific function of listing, which should reside with experts, with the political function of allocating resources to management. Only two jurisdictions in Australia have adopted this distinction.

It is not uncommon at the State and territory level for the Heritage Council to have the power to give a heritage place interim or provisional registration. This step is sufficient to halt any

threatening actions and allows time for the heritage significance of the place to be assessed.

B.2 Advisory competences

At the national level, the Australian Heritage Council is purely advisory. The Minister issues all relevant approvals, permits, etc, through the relevant government department, the Australian Department of Environment and Water Resources, which has large heritage divisions.

In the States and Territories, even where the formal listing function is with the Minister, the Heritage Councils have their own expert staff and issue relevant permits and approvals. They also negotiate directly with owners, and initiate legal prosecutions.

B.3 Monitoring and control competences

At the national level, the Australian Heritage Council is purely advisory. The Minister has the formal power to monitor and control, which is carried out through the heritage divisions in the Minister's department under the *Environment Protection and Biodiversity Conservation Act*. The national legislation also provides for citizen initiated court actions to stop threatened breaches of the legislation.

At the State and territory level, the expert staff of the Heritage Councils carry out monitoring and control, including initiating legal prosecutions.

At the local government level, heritage places are listed in Schedules to the land use planning laws administered by local councils. In matters of local heritage significance, all relevant approvals and permits are issued by the local authority. The State Heritage Council assumes control if a place were, on reconsideration, thought to have State significance in which case it would be given permanent or interim listing on the State Heritage Register.

B.4 Competences - World Heritage List procedures

World Heritage listing has been a controversial issue in Australia. The listing of the Tasmanian Wilderness Areas was the issue, which first led to involvement by the national government in heritage issues. Until then, land use regulation was thought to be the function of the States. Under the Australian Constitution, World heritage is regulated under the national government's power to make laws with respect to "external affairs", which includes the power to enter into and enforce international treaties, in this case the World Heritage Convention. Thus only the national government, advised by the Australian Heritage Council, has competence in world heritage matters. State and territory governments will only be involved through a desire for co-operative federalism.

C. The membership of the advisory bodies
C1. Membership: number, professional eligibility, incompatibilities and time of mandate.

There are 9 relevant bodies in Australia. To summarise, membership is from 8 to 15 members, appointed on the basis of expertise in an area stipulated by the legislation, or on nomination of relevant professional and government and non-government bodies.

Incompatibilities - it would be expected that incompatibilities would be identified in the selection process. To bolster the independence of the Heritage council, members may only be dismissed for limited reasons, such as insanity, a criminal offence, bankruptcy or repeated failure to attend meetings.

All members have a statutory term of office, usually 3 to 5 years.

C.2 Appointment of advisory bodies and the selection procedures of their members

The general situation in Australia is that appointments to statutory bodies are by the relevant Government, national, State or Territory. Formally, appointment is by the Head of State, the national Governor-General, a State Governor or the Administrator of a Territory. Australia has the British derived division of powers and these officials are considered to have only formal powers and are expected to act on the advice of the relevant government.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments.

As described above, at the national level, the Australian Heritage Council is purely advisory and the administrative structure is located in a government department. At the State and Territory levels each Heritage Council has its own staff.

D1. The decision making process in the activity of the advisory bodies

The Heritage Councils meet in formal meetings at which minutes are taken. While generally, the Councils advise the Minister on whether the values of a place are sufficiently significant to justify listing they do not have to wait till a place is referred to them. They may act on their own initiative, on a referral from the relevant government Minister, or after receiving a submission from the public.

D.2 The decision making process in the administrative structures

The administrative structures are contained in Departments in the national, State or Territory civil services. Thus they adopt the form of administrative hierarchies, lead by a Departmental Secretary at the national level, or

a chief of staff in the Heritage Council Office in the States and Territories.

D3. Conflicts between decisions taken by the advisory bodies and the administrative structures.

The formal division of responsibilities relating to listing is based on the assumption that this should not occur. Advice is given to the relevant Minister, which is accepted or not. Informal relationships between elected Ministers and appointed members of advisory Councils is little explored in the Australian context.

E. Local government advisory bodies involved in the preservation of the historic monuments
See above.

E.1 The competences of the decentralized or local advisory bodies in historic monument preservation.

Local government bodies have responsibility for heritage matters as part of their land use planning functions. In this they administer planning schemes legislated by State or Territory authorities. Thus while the national, State or Territory Heritage Councils concentrate on the question of heritage significance, local councils consider heritage as one issue in an application for consent to development of a site. This may present conceptual problems for them.

E.2 The relationship between decentralized or locally set up advisory bodies and local government.

There are no decentralized or locally set up advisory bodies at the level of local government required by legislation. All relevant functions are carried out by the elected members of the local council.

Judicial Review of heritage decisions

Australia does not have a general system for referring to courts the administrative decisions of Ministers and bureaucrats. This also applies to decisions regarding heritage places.

In sketching the position it necessary to distinguish between "review on the merits" and a review of the decision making process. A review on the merits is enabled by legislation. The legislation that sets up an Administrative Review Court or Tribunal, enumerates the administrative agencies that are subject to it. Where it is available it involves the court or administrative tribunal considering whether or not a decision is a good one and, if thought necessary, to substitute its decision for that of the original decision maker.

The common law, or judge made law, of Australia, derived from British sources, provides for the review of a decision making process

where the rights or obligations of a citizen are affected. This unwritten law has far less certain boundaries. It enables a citizen to appeal to the courts on the basis of a defect in the decision making process. To lawyers not versed in this area, the criteria seem extremely subtle. They derive from three principles, two of which are from Roman Law, that proscribe bias and give a right to a hearing. The third major criteria is that the decision maker must behave reasonably. To act reasonably, the decision maker must take into account all relevant factors, and no irrelevant factors. A decision may also be challenged on the basis that it is a decision that no reasonable person could have come to. The result of this form of judicial review is for the question to be sent back to the original decision maker with guidance as to how it should be addressed. Finally, there is another general ground of review on a complaint that the legislation provides steps that are to be taken which have not been followed.

Administrative review in heritage

A decision to list a heritage place by a Minister in a Commonwealth, State or Territory government is not subject to review on the merits. Whether the decision making process is open to review is being determined in individual court cases. It appears the Courts are expanding their reach in this area. There have been a small number of heritage cases that involve the identification of heritage significance or the listing of heritage places.

Appeals in the Australian Capital Territory

The most recent piece of heritage legislation in the Australian States and Territories contains a variation on the pattern set out above. The Heritage Council of the Australia Capital Territory is one of two of the Australian Heritage Councils that lists heritage places, rather than just performing an advisory role, making recommendations to the Minister on whether a place should be listed. An intriguing initiative in the Heritage Act of the Australia Capital Territory is the provision of an appeal to the Administrative Appeals Tribunal of the Territory.

The legislation sets out a long list of **reviewable decisions** (s 112). Some are fundamental questions in a heritage protection system based on lists and include a decision by the Council:

- not to provisionally register or list a place or object (para. 112(a));
- to register, or not register, a place or

object.

- to cancel the registration of a place or object.

Even more unusual in the Australian context is that the AAT may review a decision by the Minister to enforce the protective provisions of the Act.

Permits and Approvals

Generally, outside the Australian Capital Territory decisions by Heritage Councils as to actions that may or may not be taken with respect to listed heritage places are not subject to review by an Administrative Court or Tribunal. A citizen may, however, formally approach the relevant Minister to reconsider the issue.

Local government

Appeals from the planning decisions by local government councils may be taken on appeal to a State planning court or tribunal.

Issues relating to heritage places of local significance are part of this process. As discussed, this blurring of administrative and legal roles is unusual in Australia

F. Annexes (legal texts relevant for the subject, statistics, etc.)

All relevant legislation and cases are most conveniently collected by the Australian Legal Information Institute, located on www.austlii.edu.au.

The major pieces of legislation are:

National

Australian Heritage Council Act 2003 and Environment Protection and Biodiversity Conservation Act 1999
Protection of Movable Cultural Heritage Act 1986

States

Heritage Act 1977 (New South Wales)
Queensland Heritage Act 1992 (Queensland)
Heritage Act 1993 (South Australia)
Historic Cultural Heritage Act 1995 (Tasmania)
Heritage Act 1995 (Victoria)
Heritage of Western Australia Act 1990 (Western Australia)

Territory

Heritage Act 2004 (Australian Capital Territory)
Heritage Conservation Act (Northern Territory).

THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF THE HISTORIC MONUMENTS THE RELATIONSHIP BETWEEN THE ADMINISTRATIVE AND THE ADVISORY BODIES

Anne Marie Draye - Belgium

Preliminary remark.

The answers to the questionnaire 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. Where relevant, references to or comparisons with other regions, especially with the Region of Brussels- Capital, will be made. The situation in the Walloon region is quite similar to the situation in the Flemish Region

A. The advisory bodies in the national legislation

A.1 The Legal status of the advisory bodies in the national legislation

Already in 1835, very shortly after the independence of the country, a Royal Commission for Monuments was created by royal decree. The duty of this commission consisted of advising the Belgian government about several aspects of monument preservation.

In 1912, the competences of this advisory board were extended to the landscapes. From that moment on, we talked about "the Royal Commission for Monuments and Sites".

1970 Was the start of an important state reform in our country. The competence for the protection of immovable heritage was transferred from the national state level to the Cultural Councils and the Communities, later on (first of January 1989) to the Regions. This evolution led to separate legislation, decrees in which the principle of an official advisory board was inscribed and to the creation, by regional governmental decrees, of several "Royal Commissions for Monuments and Sites": one for each of the three Regions and one for the German Community. Due to a special legal regime, this Community regained competences for cultural heritage.

In the Flemish Region, the Governmental decree of the fifth of March, 2004 "concerning the composition, the organization, the competences and the functioning of the Royal Commission for Monuments and Sites of the Flemish Region", is the most relevant document.

In fact, the Commission is composed of a central Commission and of corresponding members. The tasks of this corresponding members are not properly defined in the governmental decree. Living



in the five Flemish provinces, the members can support the central Commission in its tasks by e.g. gathering specific information about goods to be protected, the good or bad condition of protected monuments...

When we use the term "Commission" in this text, we refer at the "Central Commission".

The central Commission is divided up into five divisions, respectively dealing with monuments and urban and rural sites, landscapes, archaeology, nautical heritage and heraldry.

A.2 National advisory bodies / deconcentrated / decentralized advisory bodies (if there is the case)

As mentioned above, a one and single national advisory body does not exist any longer. Taking into account the almost exclusive regional competences for heritage preservation - the national level remained competent only for tax matters -, the creation of regional Commissions was a logical evolution.

We notice in some local communities the existence of "Monument Councils", rendering advices to the local communities for all kind of questions related to the (protected) heritage situated on the own territory. We are confronted here with a voluntary system, without any real legal status.

A.3 *The functional relationship between the advisory bodies and the central, regional and local administration*

As such, there is only a functional relationship between the Commission and the competent minister, eventually represented by his administration. The text of the governmental decree, creating the Royal Commission, is quite clear in this regard: the Commission is giving, on demand or on its own initiative, advice to the minister, and only to him. Advices of the Royal Commission are confidential: it is the decision of the minister to make them public if there is a need to do so. So for instance local authorities seeking for an advice of the Royal Commission on a concrete matter, must obligatorily pass by the competent minister or by his, regional, administration.

B. The competences of the advisory bodies in respect to the preservation of the historic monuments

B.1 Listing competences

In the Flemish Region, it is the minister who decides about inscriptions on the provisional and on the definitive list. Only, even if this is not explicitly inscribed in the text of the decree, it is generally accepted that every owner, citizen, association... can ask him to start the protection procedure. This right of initiative also belongs to the Royal Commission and its (corresponding) members.

B.2 Advisory competences (approvals, permits, etc.)

The decrees on the protection of monuments and urban and rural sites, on the protection of archaeological monuments and sites and on the protection of landscapes all foresee a protection procedure in two steps. At the end of the first step, the provisional protection, a report is made by the regional administration. In this report all relevant information on the good to be protected and on the values that can support the protection is inscribed. It also gives an overview of the results of the public inquiry, the remarks and objections made by the owners and the advices rendered by some concerned authorities.

This report forms the basis for a final, motivated advice on the proposed protection by the Royal Commission. The Commission has to evaluate the value of the good proposed for protection, to comment the given advices, especially when they were negative and to answer the objections, remarks that were made.

The advice of the Commission is an obligatory formality in the protection procedure: the Council of State, the Belgian administrative, high court, affirmed in several judgments that the lack of a

Commission advice leads to the annulment of the protection decree.

Although the advice is not binding for the Minister deciding on the definitive protection, in practice, it is almost always followed. If the minister does not follow the advice, the reason therefore must be part of the motivation of his final decision.

All the decrees on the protection of the immovable heritage also foresee a Commission advice in case of radiation of a protected good from the list.

B.3 Monitoring and control competences (if any)

Legally spoken, the Royal Commission of the Flemish Region does not have monitoring or control competences. In practice, the competent administration asks from time to time for an opinion on a concrete restoration project. Such an opinion hasn't got any legal value.

The Commission is rendering an obligatory advice in case of compulsory purchase, based on the possible threat for the protected good if it stays in the hands of its owner

In the Region of Brussels-Capital however, the Commission dispose of larger competences. She has a general duty of preserving protected heritage and has to search for new destinations for unexploited monuments. She also has to give an advice every time a building permit, related to a protected good, is being asked for. When the advice of the Commission is negative, the permit can not be granted, so in fact it is binding in this specific context.

The Commissions advice is also necessary when implementing orders in the field of town and country planning, related to heritage, are being prepared.

B.4 Competences with respect to the World Heritage List procedures

Here again, no specific legal competences are given to the Royal Commission. The competent administration keeps the Commission informed about proposals to be made for inscription on the (tentative) list. In most of the cases, the Commission discussed this proposals in an indirect way: the World Heritage Convention and the Operational Guidelines stipulate that goods presented for inscription must have met all possible national protection measures before. So normally, a good proposed for inscription on the World Heritage List is already protected at national level, after having obtained the Commissions advice.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

The Flemish Commission consists of maximum 52 members divided over the five divisions:

- division monuments and urban and rural sites: maximum 14 members;
- division landscapes: maximum 10 members;
- division archaeology: maximum 10 members;
- division nautical heritage: maximum 6 members;
- division heraldry: maximum 6 members.

Normally, reunions are organized at the level of the divisions, once a month. Every year there is one plenary session, where the five divisions meet.

The members are appointed by the competent minister for a period of 4 years. Mandates can be prolonged by new terms of 4 years. Members can stay until the age of 70, at that moment they are considered to be resigning. The minister can confirm a mandate, in exceptional circumstances, until the age of 75 is reached.

Members of the Flemish Parliament and civil servants belonging to the Flemish administration are excluded from membership of the Commission.

There are no specific rules or demands as far as university degrees or professional experiences are concerned. In practice, the members of the Commission have a good knowledge of heritage. In the first division, dealing with built heritage, many of them are architect or art historian, in the landscape division, there are many biologists, geologists...

Besides this central Commission, there are maximum 35 corresponding members, 7 for each Flemish province. Members of the Provincial Council and civil servants belonging to the provincial administration can't be corresponding members. These members are also nominated for 4 years, a renewable term.

In the Region of Brussels Capital, the composition of the Commission has to respond to more stringent prerequisites: the 18 members must represent several disciplines: natural heritage, archaeology, history, architecture, restoration techniques. The members are designated for renewable mandates of 6 years.

C.2 The instatement of the advisory bodies and the selection procedures of their members

As mentioned, the members of the Commission are nominated by ministerial decree.

There is for instance no public appeal; the minister seeks the advice of his administration and of the president of the Royal Commission about possible candidates.

In the Region of Brussels Capital, 12 members are chosen by the minister out of a double list

presented by the Parliament, 6 members are chosen after proposal by the Commission itself.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. The decision making process in the activity of the advisory bodies

The governmental decree stipulates that the quorum consists of the majority of the members of the Commission or of one division, the president included. The advices of the Commission are rendered by the majority of the members present and voting. In case of equality of votes, the vote of the president is conclusive.

Very important is the obligation for the Commission to motivate its advices.

D.2 The decision making process in the administrative structures

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

The administration in charge of immovable heritage prepares the proposal for provisional protection, collect advices, objections etc. As mentioned, the administration writes a global report, that is not only send to the minister in order to know whether he wants to continue the protection procedure, but, in case of a positive decision, also communicated to the Commission in order to prepare the advice. The Commission can always ask for supplementary information in order to execute her advisory task; she is not bound by the content of the report neither obliged to follow the vision of the administration.

As the Commission is an independent advisory board, being only in charge of rendering a non binding advice, formal conflicts can not arise.

In the Region of Brussels Capital, the Commission is rendering in some cases a binding advice: in this case, the administration has to respect this binding advice.

E. Local government advisory bodies involved in the preservation of the historic monuments

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

As mentioned, there is no legal text instituting local advisory boards. Our heritage preservation

system is organized at regional level, but shows a centralized character.

Local communities are asked for an advice during the protection procedure that was started up for goods located within their territory: if an (unofficial) local Monument Council exists, the advice can be formulated after consultation of this council. Only, it will be the local community that remains responsible for the advice..

E.2 The relationship between decentralized or locally set up advisory bodies and the local government (instatement, decision making and decision taking process)

Local Monument Councils don't have official status; in many cases, local communities engage themselves at the moment of the creation of the council to consult it in specific circumstances, like the presence of a protection proposal, the making of a plan influencing the historic centre....

F. Annexes (legal texts relevant for the subject, statistics, etc.)

5 MARS 2004. - Arrêté du Gouvernement flamand portant la composition, l'organisation, les compétences et le fonctionnement de la Commission royale des Monuments et des Sites de la Région flamande

Le Gouvernement flamand, Vu le décret du 3 mars 1976 portant protection des monuments, des sites urbains et ruraux, modifié par les décrets des 18 décembre 1992, 22 février 1995, 22 décembre 1995, 8 décembre 1998, 18 mai 1999 et 21 novembre 2003;

Vu le décret du 30 juin 1993 portant protection du patrimoine archéologique, modifié par les décrets des 22 octobre 1996, 18 mai 1999 et 28 février 2003; Vu le décret du 21 décembre 1994 portant fixation des armoiries et du drapeau des provinces et communes;

Vu le décret du 16 avril 1996 relatif à la protection des sites ruraux, tel que modifié par les décrets des 21 octobre 1997, 18 mai 1999 8 décembre 2000, 21 décembre 2001 et 19 juillet 2002;

Vu le décret du 3 février 1998 portant fixation des armoiries de personnes et institutions privées, modifié par le décret du 30 juin 2000;

Vu le décret du 29 mars 2002 portant protection du patrimoine nautique; Vu l'arrêté du Gouvernement flamand du 11 avril 1984 portant création d'un Conseil héraldique flamand;

Vu l'arrêté du Gouvernement flamand du 12 janvier 1994 relatif à la composition et au fonctionnement du Conseil archéologique flamand;

Vu l'arrêté du Gouvernement flamand du 20 avril 1994 portant la composition, l'organisation, les compétences et le fonctionnement de la

Commission royale des Monuments et des Sites de la Région flamande;

Vu la demande de traitement d'urgence, motivée par la circonstance qu'une procédure de protection du patrimoine nautique est déjà en cours dans le cadre de laquelle la division du patrimoine nautique de la Commission royale doit pouvoir émettre son avis avant la fin du mois de février conformément au décret du 29 mars 2002 portant protection du patrimoine nautique;

Vu l'avis 36 635/3 du Conseil d'Etat, donné le 23 février 2004, en application de l'article 84, § 1^{er}, alinéa 1^{er}, 2^o, des lois coordonnées sur le Conseil d'Etat;

Sur la proposition du Ministre flamand des Affaires intérieures, de la Culture, de la Jeunesse et de la Fonction publique,

Après délibération,

Arrête :

Article 1^{er}. Pour l'application du présent arrêté, on entend par :

1^o le Ministre : le Ministre flamand chargé des Monuments et des Sites;

2^o l'administration : le service du Gouvernement flamand ayant le patrimoine immobilier dans ses attributions;

3^o la Commission : la Commission royale des Monuments et des Sites de la Région flamande;

4^o les décrets : le décret du 3 mars 1976 portant protection des monuments, des sites urbains et ruraux, le décret du 30 juin 1993 portant protection du patrimoine archéologique, le décret du 16 avril 1996 relatif à la protection des sites ruraux, le décret du 29 mars 2002 portant protection du patrimoine nautique, le décret du 7 novembre 1990 portant fixation des armoiries, du drapeau, de l'hymne et du jour de fête de la Communauté flamande, le décret du 21 décembre 1994 portant fixation des armoiries et du drapeau des provinces et communes et le décret du 3 février 1998 portant fixation des armoiries de personnes et d'institutions privées, modifié par le décret du 30 juin 2000;

Art. 2. § 1^{er}. Il est créé une Commission composée d'une commission centrale et de commissions provinciales composées de membres correspondants.

§ 2. Les membres correspondants aident la commission centrale à exécuter ses activités.

§ 3. La commission centrale est composée de cinq divisions :

1^o une division des Monuments et des sites urbains et ruraux, à appeler ci-après la division des Monuments;

2^o une division des Sites;

3^o une division de l'Archéologie;

4^o une division du Patrimoine nautique;

5^o une division de l'Héraldique.

§ 4. Le président, les vice-président et les membres de la Commission sont désignés par le Ministre pour une période de quatre ans. Leur mandat peut être prolongé par des nouvelles périodes de quatre ans. Lorsqu'ils ont atteint l'âge

de 70 ans, ils sont démissionnaires. Dans des circonstances exceptionnelles, ils peuvent être confirmés dans leur mandat par le Ministre, pour une durée à fixer par ce dernier, jusqu'à l'âge maximal de 75 ans.

§ 5. La Commission centrale peut inviter les membres correspondants à assister à ses réunions. Les membres correspondants n'ont pas voix délibérative.

§ 6. Chaque membre d'une division peut assister aux réunions d'une autre division en ayant voix consultative.

§ 7. Tout membre n'ayant pas participé à trois réunions consécutives sans justification valable est démissionnaire de droit et en est informé par le président.

§ 8. Le Ministre assure le remplacement des membres décédés ou démis. Lorsqu'un membre est remplacé dans le cours de la période de quatre ans, son mandat est terminé par son remplaçant.

§ 9. Les membres du Conseil flamand et les fonctionnaires des services du Gouvernement flamand ne peuvent pas faire partie de la Commission, à l'exception du personnel scientifique de l'Institut flamand du Patrimoine immobilier.

§ 10. La division de l'Archéologie fait office de Conseil archéologique flamand, tel que visé à l'article 3, 9^o; et à l'article 11 du décret du 30 juin 1993 portant protection du patrimoine archéologique.

§ 11. La division de l'Héraldique fait office de Conseil héraldique flamand tel que visé à l'article 3, § 3, du décret du 21 décembre 1994 portant fixation des armoiries et du drapeau des provinces et des communes, et à l'article 2, 2^o, b, 5^o, du décret du 3 février 1998 portant fixation des armoiries de personnes et d'institutions privées.

Art. 3. L'administration assure le secrétariat et établit les rapports des réunions de la Commission. Le secrétaire est désigné par le Ministre parmi les fonctionnaires de l'administration.

Art. 4. § 1^{er}. La Commission adresse ses avis seulement au Ministre :

1^o dans les cas et compte tenu des délais visés aux décrets;

2^o sur la demande du Ministre ou son mandataire concernant une affaire qui ressort du champs d'application des décrets dans le délai fixé par le demandeur;

3^o de sa propre initiative, sur toute affaire ressortant du champs d'application des décrets.

§ 2. Les avis de la Commission sont motivés. Les avis émis par les divisions de la Commission valent comme avis émis par la Commission.

§ 3. Le quorum est constitué par la majorité des membres de la Commission ou par une ou plusieurs divisions, y compris le (les) président(s). Les avis de la Commission sont fixés par une majorité des membres présents émettant leur voix. En cas de partage des voix, la voix du président est prépondérante.

§ 4. L'administration informe la Commission des décisions du Ministre auxquelles a précédé un avis de la Commission.

§ 5. La Commission peut demander toute information utile en vue de l'accomplissement de sa tâche.

§ 6. Une proposition d'avis peut être préparée par l'administration pour la Commission. Lorsque la Commission confirme cette proposition, le texte vaut comme avis de la Commission.

Art. 5. § 1^{er}. Après avoir entendu la Commission, le Ministre fixe le règlement intérieur de la Commission.

§ 2. Les réunions de la Commission sont plénières ou tenues par division. Les réunions sont présidées par le président et en son absence, par le vice-président, et en absence de ce dernier, par un membre désigné par la réunion.

§ 3. Les réunions de la commission centrale sont plénières ou tenues par division, et ce au moins un fois par mois. L'agenda de la réunion est fixé par le président en concertation avec le secrétaire en tenant compte de l'ordre de priorité fixé à l'article 4, § 1^{er}, et compte tenu des délais fixés par la loi et le décret.

§ 4. Au moins une fois par an, il est tenu une réunion générale à laquelle sont invités tous les membres de la commission centrale et tous les membres correspondants.

§ 5. En principe, les réunions du Conseil ne sont pas publiques. Le Ministre ou son délégué peuvent cependant y assister, uniquement lors des débats, ainsi que ses délégués - fonctionnaires de l'administration - en une qualité consultative.

§ 6. La Commission peut demander à l'administration à donner des explications écrites ou orales relatives à certains points de l'agenda. Les fonctionnaires délégués à cet effet par le Gouvernement flamand désignent les fonctionnaires donnant des explications lors de ses réunions.

§ 7. La Commission peut en tout temps inviter des experts afin de participer en une qualité consultative à ses réunions et afin de pouvoir lui donner des conseils quant à certains problèmes particuliers. Ils quittent la réunion avant que les décisions soient prises.

§ 8. La Commission peut, si elle l'estime nécessaire pour l'accomplissement de sa tâche, constituer des groupes de travail parmi ses propres rangs qui ont une tâche bien définie de nature temporaire.

§ 9. Les rapports des réunions de la Commission mentionnent :

1^o les présences;

2^o l'essence des discussions;

3^o les avis formulés sur les différentes affaires;

4^o le résultat des votes éventuels.

Art. 6. La Commission établit annuellement un rapport destiné au Ministre dans lequel sont mentionnées ses activités et lequel est publié.

Art. 7. Les membres de la Commission sont tenus à la discrétion en ce qui concerne les affaires

traitées par la Commission ainsi qu'aux avis qu'elle émet.

Lorsque lors des réunions, certaines affaires sont à l'ordre du jour qui impliquent des intérêts personnels d'un membre ou qui touchent à ses compétences administratives, ce membre doit alors quitter la réunion.

Art. 8. Les avis ne peuvent pas être portés à la connaissance de tiers, sauf en application du décret du 18 mai 1999 relatif à la publicité de l'administration, ou moyennant l'accord du Ministre.

Art. 9. Les membres ne peuvent pas faire des déclarations publiques qui pourraient compromettre les procédures instaurées par les décrets ou qui anticiperaient les décisions.

Art. 10. Les membres de la Commission ainsi que les experts externes bénéficient de jetons de présence et d'indemnités de voyage et de séjour, en vertu de l'arrêté du Gouvernement flamand du 14 décembre 1983 portant certaines mesures, en vue d'harmoniser le fonctionnement, les jetons de présence et les indemnités aux organes consultatifs.

Art. 11. La commission centrale est composée d'au maximum 52 membres, dont un président, 5 vice-présidents - un par division - et au maximum 46 membres ordinaires, répartis comme suit :

1° division des Monuments : 14 membres au maximum;

2° division des Sites : 10 membres au maximum;

3° division de l'Archéologie : 10 membres au maximum;

4° division du Patrimoine nautique: 6 membres au maximum;

5° division de l'Héraldique: 6 membres au maximum.

Art. 12. § 1. Sans préjudice de sa mission, fixée à l'article 4, § 1^{er}, 1 et 2, la commission centrale émet de sa propre initiative un avis au Ministre, notamment en ce qui concerne:

1° la conservation et l'affectation de monuments et de leur patrimoine artistique;

2° les projets relatifs aux nouvelles constructions ou aux transformations de bâtiments publics destinés au culte ou gérés par des associations de libres penseurs;

3° les projets qui pourraient compromettre l'intégrité ou l'existence d'un site, ainsi que les projets pouvant atteindre les environs immédiats d'un monument;

4° les réparations historiques de monuments, la restauration de monuments ou de biens sis dans des sites urbains et ruraux, la réparation de monuments et de zones archéologiques et la réparation de sites;

5° la gestion de sites;

6° la gestion de monuments et de zones archéologiques;

7° les dossiers importants relatifs aux problèmes de protection et de restauration ou relatifs aux cas qui pourraient être considérés

comme étant des précédents en matière de monuments, de sites urbains et ruraux, des zones et monuments archéologiques et des sites;

8° la gestion de patrimoine nautique;

9° les avis en matière d'affaires héraldiques et de pavillonnaire.

§ 2. Ces dossiers sont inscrits à l'agenda par le président ou par le fonctionnaire délégué à cet effet par le Gouvernement flamand en concertation avec le président.

Art. 13. Les commissions provinciales comprennent au maximum 35 membres correspondants et au maximum 7 par province.

Les membres du conseil provincial et les fonctionnaires des administrations provinciales ne peuvent pas appartenir aux commissions provinciales.

Art. 14. Les règlements suivants sont abrogés:

1° L'arrêté du Gouvernement flamand du 20 avril 1994 portant la composition, l'organisation, les compétences et le fonctionnement de la Commission royale des Monuments et des Sites de la Région flamande;

2° L'arrêté du Gouvernement flamand du 12 janvier 1994 relatif à la composition et au fonctionnement du Conseil archéologique flamand;

3° L'arrêté du Gouvernement flamand du 11 avril 1984 portant création d'un Conseil héraldique flamand.

Art. 15. Le présent arrêté entre en vigueur le jour de sa publication au Moniteur belge.

Art. 16. Le Ministre flamand ayant les Monuments et les Sites dans ses attributions est chargé de l'exécution du présent arrêté.

Bruxelles, le 5 mars 2004.

Le Ministre-Président du Gouvernement flamand,

B. SOMERS

Le Ministre flamand des Affaires intérieures, de la Culture, de la Jeunesse et de la Fonction publique,

P. VAN GREMBERGEN

9 AVRIL 2004. - Arrêté du Gouvernement de la Région de Bruxelles-Capitale adoptant le Code bruxellois de l'aménagement du territoire

(EXTRAIT)

Art. 11. § 1^{er}. Il est institué une Commission royale des monuments et des sites.

Elle est chargée de donner les avis requis par le présent Code (21) ou en vertu de celui-ci.

Elle peut aussi donner un avis au Gouvernement, à la demande de celui-ci ou de sa propre initiative, sur toute question se rapportant à un bien relevant du patrimoine immobilier.

Elle peut également lui adresser des recommandations de politique générale sur la problématique de la conservation.

Dans l'exercice des compétences d'avis et de recommandations que lui attribuent les alinéas précédents, la Commission royale des monuments

et des sites assure la conservation des biens relevant du patrimoine immobilier, inscrits sur la liste de sauvegarde ou classés et veille à leur réaffectation en cas d'inexploitation ou d'innoculation.

§ 2. Le Gouvernement arrête la composition, l'organisation et les règles d'incompatibilité de la Commission royale des monuments et des sites en consacrant l'application des principes suivants:

1. La Commission royale des monuments et des sites se compose de 18 membres nommés par le Gouvernement. Douze sont choisis sur base d'une liste double présentée par le Conseil de la Région et six sont choisis sur présentation de la Commission royale des monuments et des sites.

2. La Commission royale des monuments et des sites est composée de membres émanant de l'ensemble des milieux concernés par la conservation, y compris les associations.

Les membres de la Commission royale des monuments et des sites ont une compétence notoire en matière de conservation du patrimoine immobilier.

Chacune des disciplines suivantes est représentée : patrimoine naturel, archéologie, recherches historiques, patrimoine architectural, techniques de restauration.

Par ailleurs, la Commission royale des monuments et des sites comporte au moins un licencié ou docteur en archéologie et histoire de l'art, un licencié ou docteur en histoire et un architecte.

3. Les membres de la Commission royale des monuments et des sites sont nommés pour un mandat renouvelable de six ans.

4. La Commission royale des monuments et des sites est renouvelée tous les trois ans par moitié.

§ 3. La Commission royale des monuments et des sites adopte un règlement d'ordre intérieur qu'elle soumet à l'approbation du Gouvernement.

Les avis, observations, recommandations et suggestions de la Commission royale des monuments et des sites sont formulés à la majorité simple des membres présents.

Hormis pour les avis, la minorité peut mentionner son opinion au procès-verbal.

§ 4. La Commission royale des monuments et des sites est assistée d'un secrétariat permanent.

Le Gouvernement désigne les fonctionnaires de l'Administration du Patrimoine chargés de ce secrétariat.

Le secrétariat a notamment pour mission d'assurer le secrétariat et l'administration interne de la Commission royale des monuments et des sites. (23)

**THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION
OF HISTORIC MONUMENTS
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES**

Svetoslav Georgiev - Bulgaria

The advisory bodies in national legislation, according to the provision of article 45 of the Administration Act are constituted as social and expert councils and commissions, created for specific trends and for a fixed period of time by order of the respective sector Minister.

According to art.16, par.3 of the Culture Protection and Development Act, the Social and Expert Councils discuss important and current issues in the respective trends, issue opinions and give recommendations on them to the Ministry of Culture, review and make proposals on drafts and regulations.

The Social and Expert Councils function on the base of regulations approved by the respective sector Minister.

The basic tasks, the structure and the participants in the Councils are assigned and appointed by the Minister by way of an order, which is in force for a limited time.

The decisions of the Councils are subject to enforcement by the respective sector Minister.

The following Social and Expert Councils, competent with respect to the protection of historic monuments and properties function at the national level:

1. Affiliated with the Minister of Culture:

- *NCPIMC (HCOHTIK): National Council for the Protection of the Immovable Monuments of Culture* – handles issues related to the protection of the immovable monuments of culture and their setting.

- *NCICH (HCHK): National Council on Intangible Cultural Heritage* – its basic function is to assist the efforts of the Ministry in the application of the "Convention for the Safeguarding of the Intangible Cultural Heritage" adopted by the Last General Conference of UNESCO. The Council assists the Minister of Culture in implementing the State policy for the safeguarding of the intangible cultural heritage.

2. Affiliated with the Minister of the Regional Development and Public Works:

- *ECMC (ECM): Expert Council for the Memorial Complexes* – prepares the methodology and strategies for the Safeguarding of the Memorial Complexes and the cultural heritage properties with memorial functions.

- *NECTMRP (HECYTPH): National Expert Council on Territory Management and Regional Policy* – adopts the Specific Rules and Regulations, related to the territories for cultural



and historic protection in relation to the Territory Development Act.

3. Affiliated with the Minister of Foreign Affairs:

- *National Commission of the Republic of Bulgaria for UNESCO*: grants the interaction and co-ordinates the partnership of the Bulgarian State organizations, public organizations, non-governmental organizations and physical persons with UNESCO, by also executing other functions as defined by a Regulation issued by the Minister of Foreign Affairs.

Operable at the national level is also *The Council for Field Surveys affiliated to the Archaeological Institute with a Museum under the Bulgarian Academy of Science*, which issues the permits for field archaeological surveys in the country.

At the regional level, affiliated with the respective Regional Governors, operate Regional Culture Councils in accordance with the Administration Act, as well as Regional Expert Councils for Territory Management in accordance with the provisions of the Territory Development Act.

The Regional Culture Councils are constant advisory bodies with the Regional Governor for the coordination, consulting and partnership at the regional level while devising and implementing the regional policy in the cultural field.

The Regional Expert Councils for Territory Management are appointed by the Regional Governor, depending on the territorial management objectives and tasks of regional and inter-municipal significance. The participants in the Regional Expert Councils are appointed

according to the nature of the project under examination.

At the municipal level, according to the Culture Protection and Development Act and by order of the Mayor of the respective municipality *Municipal Public Expert Councils* are appointed for a limited period of time, issuing opinions and evaluations for the activity of the municipal cultural institutes, the regional cultural institutes, for the alignment of the principles of the national cultural policy to the local conditions and traditions.

The Social and Expert Councils at the national level are headed by a Chairman, who is appointed by the respective sector Minister. The Chairman of the Council for Field Surveys affiliated to the Archaeological Institute with a Museum under the Bulgarian Academy of Science is an exception to the rule because it is chaired by the Director of the Archaeological Institute with a Museum.

The Managing boards of the Social and Expert Councils consist of: chairman, two deputy-chairmen, secretary and legal adviser. If necessary, the board can form expert and consultative working groups, also including persons not participating in the Council. Every Council member loses this/her right of participation, if he/she for more than three months does not participate on a regular basis in the work of the Council. The reasons for this decision are presented by the Chairman and enter into force after their approval by the respective sector Minister. In the scope of its activity in the Council, every member has the right to:

- Free access to all immovable monuments of culture, according to a procedure as defined by the Ministry of Culture.

- Free access to information and archives at the National Institute for Monuments of Culture and from all organizations with monuments of culture protection activity with the same subject of the activity of the respective Council.

- Information for the decisions taken at the Council

The social and Expert Councils at the regional level are chaired by the Regional Governor. In the absence of the Chairman of the Regional Council, the sittings of the Council are summoned and/or chaired by a deputy-chairman appointed by him.

The activity of the Chairman of the Regional Culture Council is aided by a secretary - expert from the Regional Governor Administration. The secretary of the Regional Culture Council organizes the work of the Council and prepares the materials related to its activity.

The Chairman of the Regional Culture House:
- determines the agenda and chairs the sittings of the Council;

- organizes the expert and information securing of the activity of the Council;

- organizes the control for the execution of the Council decisions;

- appoints the participants and the tasks of the constant and temporary commissions or working groups, adopted by Council decision;

- appoints the secretary of the Council and his tasks.

The members of the Regional Culture Council:

- participate in person in the sittings of the Council, or exceptionally appoint their authorized representatives;

- prepare opinions of the institutions and municipalities they represent, on the issues discussed within the Council;

- submit to the Council proposals for discussion;

- have the right to access the minutes and materials kept by the Council.

The Social and Expert Councils at the municipal level are headed by a chairman, appointed by way of order of the mayor of the respective municipality. The members of the Social and Expert Councils are appointed by way of order of the mayor of the municipality on proposal by the secretary, for a period not less than two years.

The chairman of the Social and Expert Culture Council is assisted by a secretary, elected by the members of the Council. The Council prepares an annual report for its activity and for its intentions within three months after the end of the financial year.

The chairman of the Social and Expert Culture Council submits annually to the mayor of the municipality a cultural calendar of the municipal events and celebrations of historic events and outstanding figures. The funding for them is benchmarked in the budget for the respective calendar year. For each event a cost estimate is prepared, which is approved by the mayor of the municipality.

The Social and Expert Councils have the following competences in the field of the protection of the historic monuments:

1. The NCPIMC (HCOHIIK): National Council for the Protection of the Immovable Monuments of Culture

- participates with proposals in the devising, discussing and solving of issues related to the strategy for the protection of the immovable monuments of culture, the legal frame and the related secondary regulatory acts;

- examines opinions and suggests to the Ministry of Culture opinions and decisions for provision or withdrawal of judicial status, for attributing or changing attributed categories of the immovable monuments of culture, including the Reserves and the contingent zones, on

proposal from the National Institute for the Monuments of Culture;

- discusses and adopts the main priorities in the funding of the activities for the protection of the immovable monuments of culture with funds from the State budget and from other sources;

- discusses methods, projects and technologies for conservation, restoration and socialization of the immovable monuments of culture;

- issues opinions on the aesthetic and philosophical aspects of the activity for the protection of the immovable monuments of culture with priority to those of world and national significance, to the reserves and to the Bulgarian monuments abroad;

2. NCICH (HCHK): National Council on Intangible Cultural Heritage

- participates in the devising and discussing the strategy for the protection and promotion of the strategy for the safeguarding and popularizing of the traditional Bulgarian culture and folklore;

- examines and suggests to the Minister of Culture measures for the Application of the Convention for the Safeguarding of the Intangible Heritage;

- issues opinions and recommendations on issues related to the problems of the protection and preservation of the intangible cultural heritage.

3. ECOMC (ECM): Expert Council for the Memorial Complexes

- prepares a methodology and strategies for the preservation of the memorial Complexes and the cultural heritage properties with memorial functions;

- makes proposals before the Minister of Regional Development and Public Works and the Minister of Culture regarding measures towards the preservation of the memorial complexes, in coordination with all the interested parties;

- issues opinions concerning methods and participants in projects related to memorial complexes of national significance;

- gives opinions on aesthetic and philosophical aspects of the activity for the protection of the memorial complexes;

4. NECTMRP (HECYTPII): National Expert Council on Territory Management and Regional Policy

- adopts specific rules and regulations, related to the territories for cultural and historic protection under the Territory Development Act.

5. National Commission of the Republic of Bulgaria for UNESCO

- consults the Council of Ministers on the issues of UNESCO and solves the main issues related to the selection of the Bulgarian projects in UNESCO.

6. Council for Field Surveys affiliated to the Archaeological Institute with a Museum under the Bulgarian Academy of Science

- approves the contracts, regulating the relationships between the parties of implemented international scientific and research projects, including field archaeological surveys in the Republic of Bulgaria;

- issues the permits for field archaeological surveys in the country.

7. Regional Culture Council

- devises regional priorities and development programmes in the cultural sector;

- co-ordinates the relations between the institutions in the field of culture.

The State institutions and the NGOs at the regional level;

- discusses initiatives and problems risen in the field of culture;

- creates temporary structures for the solution of special tasks;

- gets informed about programmes of the EU in the cultural sector.

8. Municipal Culture Council

- issues opinions and recommendations for the activity of the municipal cultural institutions;

- summarizes the achievements of the respective cultural institutions;

- prepares analyses and opinions regarding specific achievements in concertation with the respective commission of the Municipal Council;

- contributes to the protection, accumulation and safeguarding of the cultural and historic heritage of the municipality;

- adopts long term and short term temporary programmes on different aspects of the municipal policy in the field of culture;

- prepares projects and suggests to the mayor of the municipality that they be implemented.

The structures of the Social and Expert Councils at the national level are similar, therefore only the structure of the NCPIMC, the National Council for the Protection of the Immovable Monuments of Culture (HCOHIIK) is presented, which is the most important Council in terms of issues related to heritage protection.

NCPIMC, National Council for the Protection of the Immovable Monuments of Culture (HCOHIIK)

Structure:

Managing body - Board with participants: Chairman, two deputy-chairmen, secretary and legal advisor. Related to the specificity of the main tasks of the Council, the one of the deputy-chairmen has to be specialist in the preservation of the architectural monuments of culture and the other-in conservation and restoration of artistic elements. The Officer in charge of the

"Immovable monuments of culture" department at the Ministry of Culture is secretary of the Council.

The number of participants is structured for plenary work and into working teams.

The currently operable NCPIMC has 24 participants who represent different institutions and organizations: the National Historic Museum, the National Archaeological Institute with Museum under the Bulgarian Academy of Science, National Ecclesiastical Historic and Archaeological Museum, National Institute for the Monuments of Culture, Directorate "Religious Confessions" under the Council of Ministers, Union of Architects in Bulgaria, Union of Bulgarian Artists, National Fine Arts Academy, New Bulgarian University, Ministry of Regional Development and Public Works, ICOMOS, National Museum Of Bulgarian Fine Art, Chief Architect of the city of Sofia.

Mandate – until expiry date of the order of the Minister of Culture

The Regional Culture Councils are a constant advisory body under the Regional Governor.

Structure: Chairman – the Regional Governor, members – the sector deputy-mayors of municipalities or officers responsible for departments, directors of cultural institutions on the territory of the region, chairmen of boards of trustees of cultural houses, representatives of civil societies and non-governmental organizations in the field of culture.

The chairman of the Council may invite to the sessions other physical and judicial persons, representatives of civil societies and non-governmental organizations in the field of culture. Temporary or permanent expert commissions or working groups may be set by decision of the Regional Culture Council.

The Municipal Culture Councils are created for a determined period of time by order of the mayor of the municipality.

Structure: Chairman – an employee appointed by the mayor of the municipality, members – representatives of unions of artists, of interested institutions and organizations, as well as artists and experts. A secretary, elected by the Council members assists the chairman.

The sittings of the Social and Expert Councils are valid when more than half of their members are present. Minutes are drafted for each sitting of the Council.

Decisions are taken with simple majority, are enumerated in the minutes which are signed by the chairman and the secretary. Decisions may be taken without members being present; the

intended opinion has to be submitted to the secretary of the Council in the writing.

Expressions of disapproval of a decision have to be filed in the writing within three days after the sitting and thus become inherent part of the minutes.

The chairman of the Council or his authorized representative may give statement to the mass media.

All the issues set for examination and discussion are planned within six month plans at the beginning of every half-year with a view to grant the handling of the priority issues. The plans are prepared on the ground of written proposals that may come from the Council members and from every interested institution or physical person. They are discussed and adopted by all members and submitted for approval by the respective sector body. The Social and Expert Councils may examine issues other than the planned when they are pending. To examine such issues extraordinary sittings are convened after approval by the respective sector body. The materials to be examined have to be submitted to the board 15 days in advance at the latest. The Social and Expert Councils may require the opinion of the institutions interested with regard to the issues under examination. In such cases the opinions must be submitted in the writing not later than a week before the sitting. Decisions are taken with simple majority, are enumerated in the minutes which are signed by the chairman and the secretary. Decisions may be taken without members being present; the intended opinion has to be submitted to the secretary of the Council in the writing.

Expressions of disapproval of a decision have to be filed in the writing within three days after the sitting and thus become inherent part of the minutes.

In so far as the Social and Expert Councils are constituted to issue opinions and to give recommendations, in the instance of a possible conflict with the administrative structure, they are denied the possibility to exert influence in the adoption of the decision taken. The interested administrative structure could express disagreement with the decision, but it is not obliged to count with it.

Svetoslav Georgiev

Svetoslav Georgiev, Bulgarian National Committee of ICOMOS was born 31. 07. 1973, and has a master in Public Administration and Archaeology. He works as an eExpert in Sofia Directorate of Ministry of Interior.

THE ROLE OF ADVISORY BODIES

Satu-Kaarina Virtala - Finland

General notes

The Finnish legal system does not recognise the term historic monument, but speaks of buildings and townscapes of historic and cultural values. Among these buildings are approximately 20 000-25 000 buildings protected by detailed plans, about 250 buildings protected by special law and over 1 000 state-owned buildings and groups of buildings protected by special decree. Additionally, there is a group of buildings classified as antiquities. Buildings with historic and cultural values can be owned by anyone – private persons, firms, municipalities and the state. The buildings the state owns, however, are mainly used for its own functions and, nowadays, the state prefers to sell other buildings regardless of their cultural and historic values. Their status though as protected buildings is not altered by the sale. Churches, namely Lutheran and Greek Orthodox churches, are protected according to their own laws and decisions, and always if they were built before 1917.

Land use and building are strictly supervised in Finland, mainly in terms of security and health conditions and the impact of buildings on nature, townscapes, landscapes or on the use of surrounding land areas. There are also regulations concerning qualifications of persons who draw up building designs. No specific regulations exist on the repair and maintenance of buildings with historic and cultural values, except that their characteristic features must be preserved. If a building is protected by special law or decree, it is obligatory to ask the National Board of Antiquities for a statement on repairs before any work begins.

Repair of a building of historic and cultural value

A building permit is required for the construction of a building. It is also required for repair or alteration work which is comparable to building construction, for extensions to a building, and for alteration of the intended use of a building or part of it. Most repair work needs a building permit from the local building supervision authority. In addition, there is an action permit which is required for measures



altering the appearance of a building when a building permit is not required.

When applying for a building permit, the master drawings signed by the designer must be included, among other things. When necessary, as it is with buildings of historic and cultural values, the applicant is required to provide additional information needed for the decision on the application. This additional information usually includes information about the age, history, main characteristics, and condition of a building, and on whether the building is included in an inventory made by an expert authority on the cultural heritage or by a municipality, and so on. An applicant also has to include information on the nature of the intended alterations and how they are planned to be carried out.

The master drawings enclosed with the building permit application comprise a site plan and floor plan, and section and elevation drawings. Additionally, the applicant must submit with the application an extract from the base map covering the area, or a property register extract from the local detailed plan, when building in an area with a local detailed plan, and, when needed, a plot map.

Qualifications of the planners

Persons drawing up a building design or special design must have a construction-related university degree appropriate for the planning functions in question, or an earlier construction higher-level vocational or other degree, and sufficient experience of working on the type of planning in question.

The person in charge of the design in its entirety and of its quality (i.e. the principal designer) and the person in charge of the special design also must have solid professional knowledge and skills to manage the design in its entirety.

• Site managers' qualifications

The site manager of a construction site needs a construction-related university degree. In addition, the site manager must have the construction experience required for the type and extent of the construction project. When applying for approval as site manager, he must prove that he has the qualifications required to carry out the duties.

National Board of Antiquities

The National Board of Antiquities is, in fact, the only advisory body for the preservation of historic buildings. It is attached to the Ministry of Education and it functions as an expert body in the protection of the material cultural heritage.

The Board is a cultural and research institution, but it is also a government authority charged with the protection of archaeological sites, the built heritage, culturally historic valuable environments and cultural property, and it operates in collaboration with other officials and museums. The Board has a professional staff of specialists, exhibitions and collections in its several museums, extensive archives and a specialized library, all of which are at the disposal of the general public.

The Board functions as an expert authority responsible for the protection of the cultural heritage and the cultural environment. It is also responsible for the maintenance and supervision of antiquities. Additionally, it has responsibilities relating to its capacity as the holder of some state-owned real estate.

As an expert authority, the Board gives statements on issues relating to the built heritage, even though the issues themselves are under the responsibility of other officials.

Culturally historic buildings and sites owned by the state are usually in the care of the Board and it is responsible for their maintenance and repair.

Governing Body of Suomenlinna

Suomenlinna is a more than 250-year-old fortress which was included on UNESCO's World Heritage List in 1991 as a representative example of European military architecture. This sea fortress on the islands just off the Finnish capital city of Helsinki was constructed in the middle of the 18th century. At that time, its military shipyard was one of the biggest dry docks in the world and a centre of ship-building expertise. In the 18th century, Suomenlinna was being compared with the maritime fortifications at Gibraltar.

The task of the Governing Body of Suomenlinna is to renovate, maintain and promote Suomenlinna. The Body was established in 1973, when the Ministry of Defence transferred responsibility for the fortress to the Ministry of Education. The Body is an autonomous government department under the ministry and it works closely with the National Board of Antiquities.

Almost all the land of Suomenlinna is owned by the state, along with over 200 buildings. Of these, 181 are administered by the Governing Body. The Body is financed from the state budget and from income from its own operations.

Restoration of the maritime fortress, which consists of seven islands and an area of 80 hectares, requires both expertise and considerable labour. Experts in a variety of fields — architects, engineers, professional builders, stone masons, painters and restorers take part in the work. The work on the structures making up walls and ramparts is done by prisoners in a labour programme of a nearby prison. Restoration works are supervised by the National Board of Antiquities.

THE ROLE OF ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS IN GERMANY

Dr. Werner von Truetzschler - Germany

Introduction

Germany is a federal state. Legislative and administrative powers are divided between the Federation and 16 Laender, the federal states. The regulation of building law is predominantly federal law whereas for heritage law the legislative authority lies exclusively with the Laender. Furthermore there are local authority provisions pertaining to construction and monument law in the form of local authority statutes which have the same binding legal validity as federal or state laws.

The implementation of all laws including federal laws lies with the Laender. The administrative structures in the Laender are similar based on the three tier model. The three levels of administration consist of the lower authority (town, county), the middle authority (= district or similar subdivision) and the upper authority (= state (Land) ministry). In addition most states have consultative specialized bodies with expertise in matters of preservation of monuments, the State Offices for the Preservation of Monuments.

A. The advisory bodies in national legislation

There are no advisory bodies in national legislation. However federal building and planning law provides for public participation in the planning procedures.

Advisory bodies exist however in the majority of the state laws for the protection of monuments. The following answers are based on the provisions of the Thuringian law for the protection of monuments. Questions which are irrelevant applied to the German system are not especially repeated in this paper.

A.1 The legal status of the advisory bodies

The formation of a Landesdenkmalrat (State Monument Council) by the minister responsible for the protection of monuments is foreseen by law. It has the sole function to advise the minister. The minister has given the Council statutes which regulate competence in detail, membership and procedures.



B. The competences of the advisory bodies in respect to the preservation of historic monuments

The only competence of the Monument Council is to advise the minister in matters of general interest. Opinions in individual cases are only given if these cases have aspects of general interest. When drawing up new regulations the minister is obliged to hear the Council. In practice the minister seeks advice of the Council. The Council may however also give advice on its own initiative. The advice is never binding.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

C.2 The instatement of the advisory bodies and the selection procedures of their members

The Council has 19 voting members 8 of which are experts the others represent the 2 churches (protestant and catholic), the Jewish community, towns and cities, the counties, the museums, the proprietors of real estate, the craftsmen, industry and commerce, the architects and government building administration. The experts should have profound knowledge of monument preservation and come from the following disciplines: history of art, archaeology, architecture, town planning, history, the arts and restoration. In addition the political parties represented in the Thuringia Parliament are represented in the Council in an advisory function.

The minister nominates the voting members, the party representatives are chosen by the parties. The term of office is identical with the election term of parliament that in Thuringia is normally 5 years.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D. 1 The decision making process in the activity of the advisory bodies

The Council should meet at least twice a year, if necessary or on the demand of the minister or of at least 4 members additional meetings take place. Simple majority takes decisions.

D.2 The decision making process in the administrative structures

Decisions are taken by the lower administrative authorities after having consulted the State Office for the Preservation of Monuments.

If the lower authority wants to deviate from the opinion of the consultative authority, the middle administrative authority makes the decision then.

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures

As the Council advises only the minister direct conflicts between the decisions making lower authority cannot arise. Indirect conflicts are theoretically possible if the minister does not follow advice given i.e. does not pass it on to the subordinated lower authority in an individual case. As the advice of the Council is in no way binding there are no mechanisms foreseen for such a conflict of interests.

E. Local government advisory bodies involved in the preservation of historic monuments

Cities and counties are free to instate advisory bodies for the preservation of historic monuments. As there are no general regulations for such bodies, it is for the local councils to decide on the instatement of such advisory bodies and the scope of their competences.

LE ROLE DES ORGANES CONSULTATIFS A LA PRESERVATION DES MONUMENTS HISTORIQUES. LA RELATION ENTRE L'ADMINISTRATION ET LES ORGANES CONSULTATIFS. L'EXEMPLE GREC.

Athina Christofidou - Greece

INTRODUCTION GENERALE

La Constitution Hellénique de 1975 (art.24) impose à l'Etat de protéger l'environnement naturel et culturel et de prendre toutes mesures préventives ou répressives nécessaires pour sa sauvegarde. En ce qui concerne la protection des monuments, elle prévoit des mesures restrictives du droit de propriété, moyennant une indemnité des propriétaires.

D'après les dispositions de la loi 3028 de 2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel», le Patrimoine culturel consiste en monuments anciens (datés jusqu'en 1830), monuments plus récents (datés après 1830), sites archéologiques, sites historiques et biens culturels immatériels.

Le Ministère de la Culture est l'organisme principal de protection de l'ensemble des biens culturels de la Grèce, immeubles, objets mobiliers et biens immatériels. Pour la protection des monuments, au sein du Ministère de la Culture il y a des Directions Centrales à Athènes et un réseau des Services Régionaux étendu sur tout le pays. Pour l'organisation des Services du Ministère de la Culture, les monuments sont divisés en trois grandes périodes historiques:

1. Les monuments de la préhistoire et de l'antiquité.
2. Les monuments paléochrétiens, byzantins et post-byzantins jusqu'à la fondation du nouvel Etat Hellénique, à 1830.
3. Les monuments postérieurs à 1830.

Le Service Central chargé de la protection du patrimoine se divise en deux Directions Générales:

1. La Direction Générale des Antiquités et du Patrimoine Culturel
2. La Direction Générale de Restauration, des Musées et des Travaux Techniques.

La Direction Générale des Antiquités et du Patrimoine Culturel se compose de:

- la Direction des Antiquités Préhistoriques et Classiques
- la Direction des Antiquités Byzantines et Post-byzantines
- la Direction des Musées, des Expositions et des Programmes Educatifs
- la Direction des Archives Nationales des Monuments

- la Direction de Conservation des Monuments Anciens et Plus Récents
- la Direction des Expropriations
- la Direction du Patrimoine Culturel Plus Récent (après 1830)
- le Centre de la Pierre
- le Secrétariat du Conseil Archéologique Central

La Direction Générale de Restauration, des Musées et des Travaux Techniques comprend:

- la Direction de Restauration des Monuments Anciens
- la Direction de Restauration des Monuments Byzantins et Post-byzantins
- la Direction de Restauration des Monuments Plus Récents et Modernes
- la Direction de Topographie, de Photogrammétrie et du Cadastre
- la Direction des Etudes des Musées et des Bâtiments Culturels
- la Direction de Construction des Musées et des Bâtiments Culturels
- la Direction de Recherche
- la Direction du Patrimoine Architectural plus récent et moderne
- le Secrétariat du Conseil Central des Monuments Plus Récents

Au niveau local, la responsabilité de la protection du Patrimoine Culturel est répartie, selon des critères chronologiques et topographiques, dans les 86 services régionaux du Ministère de la Culture, qui sont:

- les 39 Inspections des Antiquités Préhistoriques et Classiques
- les 28 Inspections des Antiquités Byzantines
- l'Inspection des Monuments Plus Récents de l'Attique
- l'Inspection des Monuments Plus Récents de la Macédoine Centrale
- les 12 Services des Monuments Plus Récents et des Travaux Techniques
- le Service des Travaux Techniques de Macédoine Centrale
- l'Inspection des Antiquaires et des Collections Privées d'Antiquités
- l'Inspection des Antiquités Sous-marines
- l'Inspection Paléoanthropologique et Spéléologique du Sud de la Grèce
- l'Inspection Paléoanthropologique et Spéléologique du Nord de la Grèce

Les Services régionaux chargés du patrimoine culturel ne dépendent d'aucun degré d'administration locale, mais directement du Ministère de la Culture.

Parallèlement au Ministère de la Culture et en application de l'article 4 du Code de l'Urbanisme, le Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics a la responsabilité d'une partie du Patrimoine Architectural. Dans ce cadre, il s'occupe d'un grand nombre d'ensembles architecturaux et de sites, ainsi que de certains bâtiments ayant une valeur historique, urbaine, architecturale, traditionnelle et esthétique. Il peut aussi sauvegarder des éléments du milieu bâti, comme ceux de l'équipement d'urbanisme ou l'usage d'un immeuble avec ou sans construction.

QUESTIONNAIRE

Question A

Au niveau central il y a trois Organes, qui ont un rôle consultatif pour le ministre chargé de la culture:

- **le Conseil Archéologique Central**, pour les monuments anciens (datés avant 1830) et les sites archéologiques

- **le Conseil Central des Monuments plus Récents**, pour les monuments datés après 1830 et les sites historiques

- **le Conseil des Musées**

Au niveau régional quatorze **Conseils Locaux des Monuments** ont un rôle consultatif pour les services du Ministère de la Culture.

En ce qui concerne les monuments protégés par la loi 1577/1985 «Règlement général de la construction», il y a des **Commissions de Contrôle Urbain et Architectural** qui fonctionnent dans toutes les préfectures auprès des Services régionales du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics. Un **Conseil Supérieur d'Urbanisme et d'Architecture** est situé, à l'échelon national, auprès du Ministre chargé de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics.

Question B

Le Conseil Archéologique Central et le Conseil Central des Monuments plus Récents:

a. suggèrent au Ministre chargé de la Culture les principes qui dirigent la protection du patrimoine culturel

b. suggèrent au Ministre chargé de la Culture les programmes annuels des expropriations, des fouilles et des travaux sur les monuments, les sites archéologiques, les sites historiques et en général les biens culturels protégés par la loi.

c. donnent un avis sur:

c1. des questions qui concernent les monuments, les sites archéologiques et les sites

historiques qui se trouvent dans plusieurs régions, aussi que dans la mer, les fleuves et les lacs,

c2. la protection des monuments inscrits sur la liste du Patrimoine Mondial, aussi que des autres monuments, des sites archéologiques et des sites historiques d'une importance majeure,

c3. les interventions d'intérêt majeur qui concernent des monuments et des sites,

c4. la délimitation et le classement des sites archéologiques et des sites historiques, aussi que la délimitation des zones de protection à l'intérieur des sites et aux abords des sites et des monuments

c5. l'expropriation d'un immeuble pour des raisons de protection des monuments,

c6. le déplacement de tout ou partie d'un monument,

c7. la démolition totale ou partielle d'un monument, lorsque sa conservation dans son ensemble ou en partie est estimée irréalisable par un Comité de cinq personnes,

c8. l'exportation des monuments meubles

c9. l'emprunt ou l'échange des objets mobiliers qui appartiennent à l'Etat,

c10. la reconnaissance d'un collectionneur des objets mobiliers

c11. d'autres questions d'importance majeure introduites par le Ministre chargé de la Culture

En plus **le Conseil Central des Monuments plus Récents** donne son avis sur:

- la démolition des bâtiments plus récents, qui sont antérieurs aux 100 dernières années

- le classement des monuments plus récents (datant après 1830)¹

Les deux Conseils Centraux s'assemblent en commun quand la protection d'un monument ancien exige la démolition, totale ou partielle, d'un autre plus récent.

Les Conseils Locaux des Monuments s'occupent de tous les sujets concernant les monuments immeubles et meubles de leur région. Spécifiquement, l'avis du Conseil est nécessaire pour chaque intervention portant sur un monument immeuble, un site archéologique, un site historique et leurs abords, comme:

- la conservation, la consolidation, la reconstitution, la restauration

- la formation de l'espace environnant

- la réorganisation ou le changement de l'usage

- la mise en place d'une toiture de protection (en cas de ruines archéologiques)

- l'enfouissement (en cas de ruines découvertes après des fouilles,)

- le prélèvement des sculptures, des peintures murales, des mosaïques ou d'autres

¹ Les monuments anciens immeubles, c'est à dire les monuments datant d'avant 1830, sont protégés par la loi sans qu'il soit exigé de publication d'acte d'administration quel qu'il soit.

éléments d'un monument immeuble qui sont indissociables, lorsqu' on estime que c'est absolument nécessaire pour leur sauvegarde matérielle

- la restauration des sculptures, des peintures murales ou d'autres éléments décoratifs faisant partie intégrante d'un monument immeuble

- la construction des nouveaux bâtiments dans un site protégé

- la démolition des bâtiments existants dans un site protégé, qui on été caractérisés délabrés

- la culture de la terre, l'élevage, la chasse et d'autres activités de ce type dans les sites archéologiques

- la pêche, le mouillage, les activités sous-marines, l'exécution de tout sorte de travail portuaire en cas de sites archéologiques maritimes.

- les activités de construction ou tout autre travail exécuté aux abords d'un monument, comme l'exploitation d'une carrière, l'acquisition de matériaux de construction, les opérations de recherche de minerais, l'exploitation des mines, la délimitation des zones d'extraction à ciel ouvert, l'installation d'industries, la mise en place d'installation de télécommunication ou autres.

Le Conseil des Musées:

a. suggère au Ministre chargé de la Culture des principes qui dirigent la politique nationale sur la fondation et le fonctionnement des musées

b. donne un avis sur des différentes questions concernant les musées.

Les Commissions de Contrôle Urbain et Architectural consultent les Services régionaux du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics sur les projets des travaux concernant des monuments, des ensembles architecturaux et des sites, qui sont protégés par la loi 1577/1985. **Le Conseil Supérieur d'Urbanisme et d'Architecture** donne son avis et rend compte au Ministre chargé de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics sur les projets d'urbanisme et d'architecture, ainsi que pour sur des sujets concernant les effets de la construction de tout ouvrage technique dans des lieux et des agglomérations sensibles, au point de vue environnement et culture.

Question C

Le Conseil Archéologique Central est composé de 17 membres:

- le Secrétaire Général du Ministère de la Culture, qui est le président du Conseil

- le Conseiller Juridique de l'Etat auprès du Ministre chargé de la Culture

- le Directeur Général des Antiquités et le Directeur Général de Restauration, des Musées et des Travaux Techniques du Ministère de la Culture

- cinq archéologues, directeurs des services régionaux

- sept professeurs d'Université ou des chercheurs travaillant aux Centres de Recherche reconnus ou des scientifiques d'autorité reconnue, possesseurs d'un titre de doctorat et ayant une expérience relative à la protection du Patrimoine de dix ans au moins

- un architecte, fonctionnaire du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics.

Le Conseil Central des Monuments plus Récents est composé de 15 membres:

- le Secrétaire Général du Ministère de la Culture, qui est le président du Conseil

- le Conseiller Juridique de l'Etat auprès du Ministre chargé de la Culture

- le Directeur Général des Antiquités et le Directeur Général de Restauration, des Musées et des Travaux Techniques du Ministère de la Culture

- trois directeurs des services régionaux du Ministère de la Culture possédant une spécialisation relative aux compétences du Conseil

- six professeurs d'Université ou des chercheurs travaillant aux Centres de Recherche reconnus ou des scientifiques d'autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins

- un architecte, fonctionnaire du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics

- un architecte, représentant de la Chambre Technique de Grèce.

Au Conseil Archéologique Central et au Conseil Central des Monuments plus Récents les directeurs des Services compétents sont des rapporteurs et ils participent aux séances sans droit de vote. Des personnes ayant un intérêt légitime peuvent assister à la séance du conseil et défendre leur opinion. Elles peuvent être accompagnées par un avocat ou un conseiller technique. Les séances sont aussi ouvertes aux représentants de la Presse.

Chaque **Conseil Local des Monuments** est composé de 11 membres:

- un membre du Conseil Juridique de l'Etat, qui est le président

- trois archéologues, fonctionnaires du Ministère de la Culture

- un architecte, fonctionnaire du Ministère de la Culture

- un conservateur des antiquités et objets d'art, fonctionnaire du Ministère de la Culture

- un architecte, fonctionnaire du Ministère de l'Environnement, de l'Aménagement du Territoire et des Travaux Publics

- trois professeurs d'Université ou des chercheurs travaillant aux Centres de Recherche reconnus ou des spécialistes du domaine de la protection du Patrimoine, possesseurs d'un titre de doctorat et ayant une expérience relative de cinq ans au moins,

- un représentant de la Municipalité.

Les directeurs des Services compétents sont des rapporteurs. Des personnes ayant un intérêt légitime peuvent assister à la séance du conseil et défendre leur opinion. Elles peuvent être accompagnées par un avocat ou un conseiller technique.

• **Le Conseil des Musées** est composé de 15 membres:

- le Secrétaire Général du Ministère de la Culture, qui est le président du Conseil

- le Directeur Général des Antiquités, le Directeur Général de Restauration, des Musées et des Travaux Techniques, le Directeur Général du Développement Culturel et le Directeur du Service compétent du Ministère de la Culture

- six directeurs des musées

- deux spécialistes de l'organisation et du fonctionnement des musées

- un représentant de la Section Grecque de l'ICOM

- un représentant de l'Union Centrale des Communes de la Grèce, ayant une spécialisation

ou expérience aux questions de l'organisation et du fonctionnement des musées.

- sept professeurs d'Université ou des chercheurs travaillant aux Centres de Recherche reconnus ou des scientifiques d'autorité reconnue, possesseurs d'un titre de doctorat et ayant une expérience relative à la protection du Patrimoine de dix ans au moins

Les membres des Conseils ci-dessus sont nommés par décision du Ministre de la Culture pour trois ans. Chaque conseil a son propre secrétariat établi par le Ministère de la Culture au siège du conseil.

Question D

Selon la loi 3028 de 2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel» tout ouvrage et tout activité sur un monument, un site archéologique, un site historique ou leurs abords est soumis à contrôle. Les projets relatifs sont approuvés par décision du Ministre chargé de la Culture après l'avis du Conseil convenable. Le service compétent introduit le sujet au Conseil. Son avis n'est pas obligatoire pour le ministre, qui, quand même, au plus part des cas accepte l'avis du Conseil.

Annexe

La traduction en anglais de l' 8ème Chapitre de la loi 3028 de 2002 «Pour la protection des Antiquités et en général du Patrimoine Culturel» (articles 49-52) qui est consacré aux organes consultatives.

CHAPTER EIGHT COLLECTIVE BODIES

Article 49

Local Councils of Monuments

1. By a decision of the Minister of Culture, Local Councils of Monuments shall be established at the seat of every administrative region and in insular regions, where necessary.

The Local Councils of Monuments shall be composed of eleven (11) members as follows:

a) An Associate Judge to the Legal Council of the State, to be replaced by another Associate Judge, as President.

b) Three archaeologists, employees of the Ministry of Culture, to be replaced by other employees with the same specialization.

c) One architect, employee of the Ministry of Culture, to be replaced by another employee with the same specialization.

d) One conservator, employee of the Ministry of Culture, to be replaced by another employee with the same specialization.

e) One architect, employee of the Ministry of the Environment, Town Planning and Public Works, to be replaced by another employee with the same specialization appointed by the Minister of the Environment, Town Planning and Public Works.

f) Three members of the Teaching and Research Staff of university-level institutions, or research associates at recognized research centers or specialists with at least five years research experience following their doctorate (PhD) in the field of archaeology, architecture, ethnology, folk archaeology, social anthropology, art history or other fields related to the protection of the cultural heritage, to be replaced by persons having the same qualifications.

g) One representative of the National Union of Municipalities and Communities, who is appointed along with his deputy.

2. The Local Councils of Monuments shall render advisory opinions on all issues pertaining to the monuments and sites within their municipalities, with the exception of those referred to in article 50, paragraph 5(c). Upon application by anyone interested, the Local Councils may examine anew an issue that has already been decided, only if new substantial evidence has emerged *ex post facto*.

Article 50

Central Archaeological Council. Central Council of Recent Monuments

1. By a decision of the Minister of Culture, the Central Archaeological Council shall be established, composed of seventeen (17) members as follows:

a. The Secretary-General of the Ministry of Culture as President.

b. The Legal Councilor of the State to the Ministry of Culture, to be replaced by another Legal Councilor or Associate Judge at the office of the Legal Councilor to the Ministry of Culture.

c. The Director-General of Antiquities and the Director-General of Restoration of Monuments and Technical Works of the Ministry of Culture, to be replaced by persons having similar qualifications.

d. Five archeologists, heads of regional or special regional services of the Ministry of Culture at the level of a Directorate with specialization relating to the competence of the Central Archeological Council, to be replaced by persons having similar qualifications.

e. Seven professors or associate professors of university-level institutions, research associates of a comparable level at recognized research institutions or other scientists of recognized authority, whether employees or not of the Ministry of Culture, with at least ten years professional and scientific experience following the acquisition of their doctorate (PhD) in archeology, architecture, conservation of antiquities, art history, geology, science and technology of materials, structural engineering and soil-mechanics or other sciences related to the protection of ancient monuments and sites, to be replaced by persons having similar qualifications.

f. One architect, employee of the Ministry of the Environment, Town Planning and Public Works, to be replaced by an employee with the same specialization appointed by the Minister of the Environment, Town Planning and Public Works.

2. By a decision of the Minister of Culture, the Central Council of Recent Monuments shall be established composed of seventeen (15) members as follows:

a. The Secretary-General of the Ministry of Culture as President.

b. The Legal Councilor of the State to the Ministry of Culture, to be replaced by another Legal Councilor or Associate Judge at the office of the Legal Councilor to the Ministry of Culture.

c. The Director-General of Antiquities and the Director-General of Restoration of Museums and Technical Works of the Ministry of Culture, to be replaced by persons having similar qualifications.

d. Three heads of regional or special regional services of the Ministry of Culture at the level of a Directorate with specialization relating to the competence of the Central Archeological Council, to be replaced by persons having similar qualifications.

e. Six professors or associate professors of university-level institutions or research associates of a comparable level at recognized research institutions or other scientists of

the Ministry of Culture, with at least ten years professional and scientific experience following their doctorate (PhD) in archeology, architecture, conservation of antiquities, art history, geology, science and technology of materials, structural engineering and soil-mechanics or other sciences related to the protection of ancient monuments and sites, to be replaced by persons having similar qualifications.

f. One architect, employee of the Ministry of Environment, Town Planning and Public Works, to be replaced by an employee with the same specialization appointed by the Minister of Environment, Town Planning and Public Works.

g. One architect representing the Technical Chamber of Greece.

3. With the decision establishing the Central Archaeological Council and the Central Council of Recent Monuments, the deputy of the Secretary-General of the Ministry of Culture as President of the Central Archaeological Council and the Central Council of Recent Monuments shall be appointed. When the Secretary-General is replaced by another member of the Council, the deputy of this member shall be called in his position as a Council member.

As *Rapporteurs* in the Central Archaeological Council and the Central Council of Recent Monuments shall be appointed the heads of the *raticne materiae* competent Directorates of the Central Service of the Ministry of Culture.

4. All matters pertaining to the protection of ancient monuments, archeological sites and historical sites which have constituted the site of exceptional historical or mythical events up to 1830 shall fall within the competence of the Central Archaeological Council. All matters pertaining to the protection of recent monuments and the remaining historical sites shall fall within the competence of the Central Council of Recent Monuments.

5. Subject to the provisions of the preceding paragraph, the Central Councils shall:

a. Recommend to the Minister principles governing specific aspects of the protection of the cultural heritage, as stipulated in article 3.

b. Recommend to the Minister the annual programs of expropriations or direct purchases, excavations, restoration, conservation, as well as other works on monuments.

c. Give advisory opinion on issues relating to:

i) monuments and sites located within more than one municipality, at sea or in rivers and lakes;

ii) the protection of monuments entered in the World Heritage List, as well as other monuments, archeological and historical sites of outstanding importance;

iii) interventions of major importance on monuments and sites;

iv) the designation and establishment of archeological and historical sites and protection zones in accordance with the provisions of articles 12 to 17;

v) the compulsory expropriation or direct purchase or exchange of immovable for reasons relating to the protection of the cultural heritage;

vi) the removal of immovable monuments or a part thereof or the detachment of elements from monuments of outstanding importance;

vii) the issuance of a permit for demolition in accordance with the provisions of article 6, paragraph 10;

viii) the classification of categories of movable monuments;

ix) the export of monuments;

x) the loan and the exchange of movable monuments belonging to the State;

xi) the recognition of collectors and the acquisition of collections by the State in accordance with the provisions of article 31;

xii) the loan, temporary export, exchange and transfer of antiquities forming part of museum collections referred to in article 45;

xiii) any other important issue referred to them by the Minister of Culture.

6. a) For the implementation of the provisions of article 6, paragraph 11, if both monuments are antiquities, the competent body shall be the Central Archaeological Council, while if both monuments are recent, the competent body shall be the Central Council of Recent Monuments.

b) For any other issue relating to the implementation of these provisions, competent shall be a special body to be established by the Central Archaeological Council and the Central Council of Recent Monuments sitting together in Plenary. The members referred to in paragraph 1(a), (b) and (c) as well as in paragraph 2(a), (b) and (c) shall have one vote, as the other members. In case of a tie of votes, the vote of the President shall decide the issue.

This body shall also give advisory opinion on the classification of an immovable located within an archeological site or an antiquity as a monument, in accordance with article 6, paragraph 1(b) and (c), without waiving their protection.

Article 51

Council of Museums

1. By a decision of the Minister of Culture, the Council of Museums shall be established composed of fifteen (15) members as follows:

a. The Secretary-General of the Ministry of Culture as President.

b. The Director-General of Restoration of Museums and Technical Works, the Director-General of Antiquities, the Director-General of Cultural Development and the Head of the competent Service of the Ministry of Culture, to

be replaced by persons having similar qualifications.

c. Six (6) directors of museums of different categories, among those at least three (3) of State museums, to be replaced by persons with the same status.

d. Two (2) persons having a scientific specialization or professional experience in matters pertaining to museum organization and function, to be replaced by persons having the same qualifications.

e. One (1) representative of the Hellenic Branch of the International Council of Museums (ICOM), with his/her deputy.

f. One (1) representative of the Central Union of Municipalities and Communities of Greece with scientific specialization or professional experience in matters of organization and operation of museums, with his/her deputy.

2. The Council of Museums shall:

a. Recommend to the Minister principles governing the museums policy of the State and measures to support and further elaborate it, as well as cooperation between museums and coordination of their activities;

b. Give advisory opinion on issues relating to the implementation of the provisions of article 45, subject to the provision of article 50, paragraph 5(c)(ii);

c. Give advisory opinion on the implementation of the principle of reciprocity, in the event of loan for the organization of exhibitions in museums;

d. Give advisory opinion on the establishment of State museums as special regional services of the Ministry of Culture pursuant to the provisions of article 7, paragraph 28 of Law 2557/1997, and

e. Give advisory opinion on any issue relating to museums and being referred to it.

3. The provisions of article 6, paragraph 1 of Law 2557/1997 (*Official Gazette A' 271*) shall be abolished. **Article 52**

Common rules for the composition and functioning of the Councils

1. The term of office of the members of the Councils referred to in articles 49 to 51 shall be three (3) years." The term of office of at least half of the members of the Councils who do not participate *de jure* shall be renewed every six (6) years.

2. The Councils may be assisted in their work by assigning, upon their recommendation and a decision of the Minister of Culture, the examination of *ad hoc* issues to committees comprised of some of their members or other specialists or experts, which shall render advisory opinions.

3. The scientific and secretarial support of the Councils shall be undertaken by a secretariat to be established at the Ministry of Culture at the seat of each Council.

4. The *Rapporteurs*, the members of the Councils and their secretariat shall be entitled to remuneration, the amount of which shall be determined by a joint decision of the Ministers of Economy and Finance, and Culture in derogation from every general or special provision.*

5. A decision of the Minister of Culture shall determine all matters pertaining to the organization and functions of the Councils and their secretariats, the possibility of their composition and functioning in chambers as well as even/ other relevant detail. A presidential decree, issued pursuant to a proposal by the Minister of Culture may establish new Councils, allocate competence, merge or abolish Councils and determine every other relevant detail.

6. Members of the Councils and the *Rapporteurs* shall participate in the Councils' sessions. In the sessions of the Central Councils the *Rapporteurs* shall participate without a right to vote.* The individuals whose cases are brought before the Council may appear in person and/or be represented by a lawyer as well as use technical advisors in order to present their views and reply to any questions raised by the members or the *Rapporteurs*.

**THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION
OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.**

Adv. Gideon Koren, - Israel

A. Advisory bodies in Israeli legislation

**A.1 The legal status of the advisory bodies
in Israeli legislation**

The Israeli legislation relevant to the preservation of historic monuments and sites does not create any advisory bodies as that term is normally used - that is, bodies that provide legal or technical support for the decisions, actions and projects of the formal authorities.

In Israel, there is no single authority in charge of historic preservation. Rather, there are a number of different authorities and advisory bodies, whose various fields of responsibility are described below.

Antiquities

In Israel, an "antiquity" is defined as (1) a man-made object that was made before 1,700 A.D, (2) 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, or (3) zoological and botanical remains that predate 1,300 A.D.

Antiquities in Israel are governed by two main laws:

(1) **The Israel Antiquities Authority Law (1978)** establishes the functions and the authority of a national statutory institution that is entrusted with the protection of antiquities and antiquity sites in Israel, and (2) **The Israel Antiquities Law (1989)** deals with the practical aspects of antiquities.

Additionally, Israel has another national statutory institution called **The Israel Nature and Parks Authority** (established by **The National Parks, Nature Reserve, National Sites and Commemoration Sites Law (1998)**) which is the competent authority for, among other things, the preservation of heritage in declared nature reserves and national parks.

The Antiquities Authority is given broad power to protect antiquities, including the ability, in certain cases, to override such basic rights as the right to property and freedom to



earn a living. For example, the Antiquities Authority is empowered to expropriate land for excavation, preservation or research purposes. Furthermore, the Authority is empowered to declare any place an "antiquity site" and such declaration imposes stringent restrictions and prohibits any construction on the site.

The sole advisory body established in these laws is the Israel Antiquities Council ("IAC"), whose role is to set the general policy and work plan of the Israel Antiquities Authority ("IAA"). In addition, it sets the rules for the operation, management and supervision of antiquity sites.

In so doing, the IAC has no legislative powers and, thus, is not considered to be an advisory body. On the other hand, the IAC does approve the IAA budget; overlook the implementation of policy and review reports submitted by the IAA. Thus, at least in these functions, the IAC is often seen as an advisory body.

It should be noted that most of the major antiquity sites in Israel are also national parks and, thus, are managed by the Israel National

Parks Authority. The IAC has no authority to give instructions or advise to the National Parks Authority.

Other monuments and sites

As mentioned above, the Antiquities Law protects only antiquities and antiquity sites which fall into the Law's limited definitions. Other sites of historical importance are not entitled to any protection and there is no statutory framework or national institution entrusted with regulating the protection of such sites, even if they sites have high architectural, historical, heritage or preservation value.

The preservation of such sites may be accomplished under the **Planning and Building Law** (1965). This law establishes national, district and local committees, which are vested with the power to set up zoning and planning schemes at their various levels.

There are no advisory bodies that advise the planning and building committees related to on preservation. However, it should be noted that, under the law, a local planning and building committee must form a preservation sub-committee ("PSC"). The PSC is required, among other duties, to give advice on issues related to preservation. Thus, though it is a statutory sub-committee, many consider it to be an advisory body.

Other advisory bodies

The questionnaire did not relate to NGOs, some of which fill advisory roles. However, a few non-NGOs in Israel are involved in the field of conservation, trying to fill the gaps previously described.

The Israel Academy for Sciences and Humanities ("IASH") is an advisory body, formed by statute in 1961.

IASH has the right to propose policies and projects to government authorities in any field, and has no special role with regard to historic monuments and sites. Nonetheless, it may propose policies and rules with respect to historic monuments, as well as proposing amendments to legislation.

With respect to the Heritage List, there is an advisory body named the Israeli National Commission for UNESCO ("INCFU") that operates within the Israeli Ministry of Education. The functions of this body are to collaborate and provide follow up to the actions and projects agreed between the Israeli Government and

UNESCO, including in the field of heritage preservation.

While INCFU is involved with all aspects of the relationship between Israel and UNESCO, it has created a few sub-committees to deal with specific issues. One such sub-committee is the Israel World Heritage Committee ("IWHC"). It is involved in all the preparatory procedures prior to submission to UNESCO of a nomination of a world heritage site as well as in compiling the Israeli tentative list and in monitoring both categories of sites.

A.2 National advisory bodies and decentralized advisory bodies

IAC - The work of the Antiquities Council is centralized. The Israel Antiquities Authority - to which the IAC provides advice - is national. There are no regional antiquities authorities.

However, this Council does not issue opinions about the recognition or listing of antiquities or about governance of antiquity sites. In addition, it should be noted the Israel Antiquities Authority is not obligated to adopt the Council's opinion and advice.

The PSCs are sub-committees of the local planning and building committees. As such, they have no national function.

IASH, as well as IWHC, are national advisory bodies.

A.3 The functional relationship between the advisory bodies and central, district and local administration

IAC - The functional relationship between the IAC and the Israel Antiquities Authority has been described in A.1. IAC has no relationship with regional or local administration.

PSC - As each PSC is a sub-committee of a local planning and building committee, the latter is under no obligation to accept the advice of its PSC. The PSCs are not related to national or district administration.

The functions of IASH and IWHC are limited to providing opinions and proposals for new projects and verification without the legal validity and force granted by the law to the official authorities. IASH has no relationship with district or local administration. IWHC may be related to local authorities, such as the municipality of a city that has a world heritage site in it.

B. The competences of the advisory bodies in respect to the preservation of historic monuments

B.1 listing competences

IAC - has no listing competences, but it can advise the IAA to do so, if it finds a listing is required.

A PSC - has the role to prepare what is known as the "local preservation list". This list is meant to include all buildings worthy of preservation in the local area. It should be noted that the preservation of buildings under this list has a declaratory nature. The preservation gains legal effect only after it is approved and included in a building plan by the local planning and building committee.

IASH - has no listing competences.

IWHC - decides on sites to be included in the Israeli World Heritage tentative list.

B.2 Advisory competences (approvals, permits, etc.)

IAC - The IAC is purely advisory. The IAA issues all relevant approvals, permits, etc.

The PSCs, IASH and IWHC only have advisory power.

B.3 Monitoring and control powers (if any)

IAC - As mentioned above, the IAC is purely advisory. The IAA has the formal power to monitor and control, which is carried out through the heritage divisions in the IAA.

The PSCs - Matters of local heritage significance, once listed on a preservation list, are administered by the local planning & building committees. All relevant approvals and permits are issued by the local committee.

IASH - has no monitoring or control powers.

IWHC - has no control powers but does conduct periodic monitoring of sites that have been declared as World Heritage Sites or are included in the Israeli tentative list.

B.4 Powers with respect to the World Heritage List procedures

IAC, the PSCs and IASH have no powers with respect to the World Heritage List procedures.

IWHC - is in charge of organizing and managing all procedures relating to submission of Israeli nominations to UNESCO. IWHC also conducts periodic monitoring of sites that have

been declared as World Heritage Sites or are included in the Israeli tentative list.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

IAC - is composed of 16 members, the majority (9) being government employees and the remainder being 2 representatives of universities, 3 representatives of local and district authorities, a representative of IASH (1) and a director of a recognized museum. No specific eligibility requirements are mentioned in the law.

PSC - is composed of 5 members - the chair of the local planning and building committee or his vice-chair, 3 members of the local municipal or regional council and an employee of the council knowledgeable with regard to planning and building issues. A sixth member, without voting rights, is an expert in preservation to be nominated by the local committee. This member is therefore an advisor to the PSC itself.

IASH - the law only provides there will be no more than 30 members. In 1958, when the law was first implemented, a list of founding members formed the GA of the IASH. The GA decides upon any new members.

IWHC - is composed of the majority of organizations and interested in the field of preservation. IWHC was not created by law, so its membership is based on administrative decisions.

C.2 The instatement of the advisory bodies and the selection procedures for their members

See C.1 above.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. the decision making process in the activity of the advisory bodies

D.2 The decision making process in the administrative structures

All the advisory bodies make decisions by vote. There are no decisions which require a special majority.

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

All the advisory bodies have only advisory power. They do not participate in the decision making of the authorities. Thus, even if their advice is entirely ignored, the decision of the advised body will be effective.

E. Local government advisory bodies involved in the preservation of the historic monuments

In Israel, there are no local government advisory bodies. [What about PSCs?]

Conclusion

Israel suffers from a lack of active advisory

bodies in the field of preservation. Several NGOs partly fill this void. However, the current patchwork is not entirely effective and should be revamped to provide more thorough and orderly coverage of preservation matters.

Gideon Koren (Kneller) , LL.B LL.M (hon), TEP, is a founding partner in Ben Zvi Koren law firm with offices in Ramat-Gan and Jerusalem, Israel. In addition to his position as the Israeli member to ICLAFI, Adv. Koren is the president of ICOMOS Israel. Adv. Koren has been teaching various courses on preservation laws as an adjunct teacher in the Hebrew University of Jerusalem faculty of law as well as in Tel Aviv University, The Israeli Technion and the Bezalel Academy.

THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS. THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.

**Roberto Núñez Arratia - Mexico
Ernesto Becerril Miró - Mexico**

A. The advisory bodies in the national legislation

A.1 The Legal status of the advisory bodies in the national legislation

A.2 National advisory bodies/deconcentrated/decentralized advisory bodies (if there is the case)

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

The Mexican legislation on historic monuments preservation does not create advisory bodies in order to provide legal or technical support to the resolutions, actions and projects issued by the authorities.

The advisory bodies are not autonomous and its functions are limit to technical opinions, proposals of new projects and verification actions without the legal validity and force granted by the Law to the official authorities.

The sole advisory body established in the Federal Law on Archaeological, Artistic and Historic Monuments and Zones ("the Law") is the National Commission of Artistic Monuments and Zones mentioned in its article 34.

The role of this advisory body is to issue its opinion about the recognition or not of the relevant esthetic value of a good, building or urban area, as necessary requirement to be declared as Artistic Monument or Zone by the National Institute of Fine Arts and Literature ("INBA").

This opinion will be necessary and obligatory for the declaration of any Artistic Monument or Site.

National Institute of Anthropology and History ("INAH") has established, in its internal structure, two advisory bodies:

a) The External Commission of Historic Monuments is an advisory body, formed by academics and representatives of not governmental and academic institutions, in accordance to the Internal Rules issued by the General Direction of INAH on February 28, 1994. Its function are the following:

1.- To propose to the General Director of INAH policies and projects related to historic monuments

2.- To propose to the General Director of INAH policies and rules respect to the works and investigation of historic monuments

3.- To propose to the General Director of INAH the amendments to the national legislation.

4.- To promote the knowledge and diffusion of the procedures, techniques and methods between the specialists and the civil society

5.- To provide advice to the internal and external areas of INAH.

6.- To emit its technical opinion about the grating of licenses for works in historic monuments and sites.

7.- To emit its technical opinion respect to the projects and its specifications respect to historic monuments and sites.

8.- To verify that the conservation and restoration procedures and methods in historic monuments and zones fulfill the INAH's regulation.

b) INAH has approved a document named "Rules for the Archaeological Investigation in Mexico". This document establishes that the archaeological investigation projects will be authorized by the Archaeological Board.

The participation of the two mentioned internal advisory bodies is not included in the Mexican legislation, only in the internal structure of INAH.

However, it is important to mention that, on 1989, Federal Government created the National Commission for the Preservation of the Cultural Heritage. This body is formed by representatives of governmental agencies and social institutions. In accordance to the Executive Order that created this body, its most important functions are:

a) the creation of inventories of the cultural heritage

b) to receive claims respect to claims against actions those represent the destruction of Cultural Heritage

c) to promote collaboration agreements between authorities involved in the protection of the Cultural Heritage

authorities and the religious associations respect to the religious Cultural Heritage

e) the revision and evaluation of the status of different cultural zones

f) to advise about the opportunities as the program "Adopte una Obra de Arte" provides about this matter.

In accordance to the official reports, this Commission has promoted the creation of more than 100 local Commissions on the Cultural Heritage. However, the most important non-governmental organizations dedicated to the protection of the Cultural Heritage did not have any notice about their activities.

The explanation of this situation is that the Federal Law does not establish any faculties for this Commission on the protection of the Cultural Property.

B. The competences of the advisory bodies in respect to the preservation of the historic monuments

B.1 Listing competences

B.2 Advisory competences (approvals, permits, etc.)

B.3 Monitoring and control competences (if any)

B.4 Competences with respect to the World Heritage List procedures

Except the functions mentioned for the National Commission of Artistic Monuments and Sites, the national legislation does not assign responsibilities to advisory bodies related to the Cultural Property.

The competences of the other advisory bodies mentioned in the last point are established in internal regulations of INAH.

INAH and INBA will be the responsible to monitor and control the actions and resolutions issued by their internal advisory bodies.

Respect to the Heritage List, there is an advisory body named National Commission of Mexican United States for UNESCO (CONALMEX) that depends of Public Education Ministry. This body was created by Executive Order published on November 17, 1947. The functions of this body are to collaborate and provide follow up to the actions and projects agreed between the Mexican Government and UNESCO, including the filing of Monuments and Sites in the World Heritage List.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

C.2 The instatement of the advisory bodies and the selection procedures of their members

The National Commission of Artistic Monuments and Sites is integrated by the following members:

a) The General Director of the National Institute of Fine Arts and Literature, which will be the President of the Commission

b) a Representative of the Public Education Ministry

c) a Representative of the National Council of Culture and Arts

d) a Representative of the National Autonomous University of Mexico

e) Three experts appointed by the General Director of the National Institute of Fine Arts and Literature.

The Commission will invite a representative of the Government of the State, when in the Agenda of the Meeting of the Commission it includes the declaration as Artistic Monument of a good or building located in the State territory.

In the others advisory bodies mentioned in this document, the membership is established by the internal rules issued of INAH and INBA; however, it is important to mention that the structure of these bodies, there is the presence of the representatives of the different governmental offices and agencies related to the Cultural Heritage.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. The decision making process in the activity of the advisory bodies

D.2 The decision making process in the administrative structures

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

Except the approval of the National Commission for Artistic Monuments and Sites for the declaration of an artistic monument or zone, the Mexican Legislation does not establish the participation of advisory bodies in the decision making of the authorities and only fulfill with the requirements indicated in the internal regulation of the authority that created the specific body.

E. Local government advisory bodies involved in the preservation of the historic monuments

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

E.2 The relationship between decentralized or locally set up advisory bodies and the local government

(instatement, decision making and decision taking process)

The local Cultural Property legislation is very different respect to the federal law. In Mexico, approximately 20 states of 32 of the Mexican Republic, have a specific law for the protection of the local Cultural Heritage. In the majority of these laws, we will find the creation of an advisory body in the local level.

These local advisory bodies normally are formed by the representative of the local authorities in different matters (urban planning, culture, tourism, finances, state department, etc.), representatives of professional and academic institutions (universities and professional associations of architects or lawyers) and academics and members of the civil society.

The main faculty of these local advisory bodies is to provide technical or legal support in the following areas:

a) The design and implementation of the governmental plans and programs related to the protection of the Cultural Heritage

b) The design and implementation of the public actions related to the Cultural Heritage

c) The proposal of new projects related to the Cultural Heritage

d) The declaration of a Monument or Site as Local Cultural Heritage

e) The authorization of works and preservation projects in local Cultural Areas.

F. Annexes (legal texts relevant for the subject, statistics, etc.)

The attached documents, as excellent example of this matter, are the following:

a) The Federal Law on Archaeological, Artistic and Historic Monuments and Zones (article 34).

b) The Law for the Preservation of the Cultural Heritage of the State of Baja California (articles 19 to 28)

c) The Law of the Cultural Heritage of the State of Chihuahua (articles 16 to 30).

d) The Historic and Cultural Property Law of the State of Tamaulipas (articles 16 to 20)

e) The Cultural Heritage Law of the State of Veracruz de Ignacio de la Llave (articles 14 to 16).

**THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION
OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.**

Alberto Martorell Carreño - Peru

A. The advisory bodies in the national legislation

A.1 The Legal status of the advisory bodies in the national legislation

A.2 National advisory bodies/ deconcentrated/decentralized advisory bodies (if there is the case)

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

The new Peruvian General Law of the National Cultural Heritage (Law 28296) does not create any specific advisory body for the heritage management and conservation. We find them in the Rules of Organization and Functions of the National Institute of Culture (INC) (D.S. 017-2003-ED).

• National Commission of Culture.

It is the main advisory body of the INC and it is constituted by the Minister of Education, acting as President, the National Director of the INC, acting as Executive President; the Management Director of the INC, acting as Secretary; representatives of the Regional Commissions of Culture; and outstanding civil representatives of the society.

The deconcentrated organisms are the Regional Commissions of Culture. They are constituted by representatives of the Educative Sector, the Regional Government Presidents or their representatives; municipal government representatives and outstanding civil representatives of the cultural sector.

• Technical Commissions.

D.S. 017-2003-ED states that the technical commissions are advisory and consultative bodies to the National Directorate, the National Directorate of Management and the Regional Directorates.

There is not an official list of which are these technical commissions. We will present information on the main Technical Commissions currently constituted.

- National Technical Commission on Archaeology (CNTA)

The CNTA was created by the Article 14 of the R.S. 004-2000-ED, as an advisory Commi-

ssion to the National Directorate of the INC. It is composed by 5 members. Its Chair is the General Director on Archaeological Heritage of INC.

- National Commission in charge of Proposing Administrative Penalties for Offences relating to Cultural Property

This Commission is created by the National Directorate Resolution 1405/INC (23-12-2004) as an advisory body to the National Directorate.

- Technical Qualifying Commission for Cultural Projects (CTCPA)

The CTCPA is not a specialized commission on heritage issues, but it has among its functions to evaluate proposals that could affect architectonic monuments, monumental areas or historic cities. Its regulation was approved by D.S.035-2006-Vivienda (06-11-2006). It states that the President of the Commission must convene INC to send a representative to attend the meetings where a case linked to heritage issues will be discussed.

In the decentralized level, each Municipal jurisdiction must create a local technical Commission. The Regional Directorates of INC are delegated to designate their *Ad Hoc* representative to the local commission meetings.

B. The competences of the advisory bodies in respect to the preservation of the historic monuments

B.1 Listing competences

B.2 Advisory competences (approvals, permits, etc.)

B.3 Monitoring and control competences (if any)

B.4 Competences with respect to the World Heritage List procedures

• National Commission of Culture.

The National Commission of Culture proposes the national cultural policy in general terms. Among other aspects, it includes the national policy on cultural heritage.

• **National Technical Commission on Archaeology (CNTA)**

- a) To evaluate the Archaeological Projects in all its different modalities. To deliver opinion on the permissions to undertake archaeological projects
- b) To deliver opinion and recommend actions for the protection of the Archaeological National Heritage
- c) To deliver opinion and recommend the field marking and delimitation of visiting routes on archaeological sites.
- d) To approve the *Certificate of Non-Existence of Archeological remains* in a determined site.
- e) To deliver opinion on the delimitations and field marking of archaeological sites.
- f) To deliver opinion on the projects to send archaeological remains for scientific studies outside the country.

• **National Commission in charge of Proposing Administrative Penalties for Offences relating Cultural Property**

- a) To propose administrative penalties to be applied to natural or juridical persons guilty of offences against the legal system of protection of the Cultural Heritage.
- b) To deliver opinion in the appealing procedures against administrative Resolutions imposing penalties.
- c) To deliver opinion on other issues linked to its main goals.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

C.2 The instatement of the advisory bodies and the selection procedures of their members

• **National Commission of Culture.**

The National Commission of Culture is integrated by the following members:

- The Minister of Education, acting as its President
- The National Director of the INC, acting as Executive President;
- The Management Director of the INC, acting as Secretary;
- One representative designated by each one of the Regional Commissions of Culture
- Civil representatives of the society.

• **National Technical Commission on Archaeology (CNTA)**

The CNTA is integrated by the following members:

- The General Director of Archaeological Heritage of the INC, acting as President.
- 4 Members designated by the National Directorate of the INC. All these members must have at least 5 years of working experience in archaeological issues.

• **National Commission in charge of Proposing Administrative Penalties for Offences relating to Cultural Property**

This Commission is integrated by the following members:

- The Director of Historic Heritage Defense of the INC, acting as President.
 - 1 Archaeologist
 - 1 Architect
 - 2 Lawyers
- If necessary, it could be convened a Historian to attend some meeting of the Commission.

The Regional Commissions will be constituted to proposal of the Regional Directorate of Culture and approved by Resolution of the National Directorate.

• **Technical Qualifying Commission for Cultural Projects (CTCPA)**

The Local Administrative Government of each Provincial Municipal Government must constitute a Technical Commission, integrated as set out below:

- A representative of the Municipality, which must be Architect or Civil Engineer.
- 2 representatives of the Architects Association, with specialization or accredited experience on urban planning.
- 3 representatives of the Civil Engineers Association.
- Ad-hoc delegates that can include a representative of the INC if the case is necessary to guarantee the protection and conservation of the monumental and/or archaeological heritage.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. The decision making process in the activity of the advisory bodies

D.2 The decision making process in the administrative structures

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

The CNTA and the CTCPA must be consulted and deliver opinion in the cases or projects related to archaeological or urban heritage issues. Normally the opinion delivered by the Commissions is used as the basis for the Resolution approving or rejecting the project.

If the resolution is of Regional level, it can be appealed to the National Directorate of Archaeology or the National Directorate of Historic Heritage respectively. The case must be consulted to the National Commission of the INC. If the Resolution is of National Level, it can be appealed to the Minister of Education.

E. Local government advisory bodies involved in the preservation of the historic monuments

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

E.2 The relationship between decentralized or locally set up advisory bodies and the local government

(instatement, decision making and decision taking process)

Even though the Municipal Governments have among their functions the protection of the Cultural Heritage of the Nation located on their jurisdictions, it is the Regional Institute of Culture, or the National Institute of Culture the responsible of giving a previous approval to any project that could affect heritage monuments or areas. Any decision affecting the cultural heritage goods made without the favorable opinion of the INC is null and void.

F. Annexes (legal texts relevant for the subject, statistics, etc.)

The attached documents, as excellent example of this matter, are the following:

Law 28296, General Law of the Cultural Heritage of the Nation (22-07-2004)

Supreme Decree 011-2006-ED, Rules of Application of the Law 28296 (1-06-2006)

Supreme Decree 017-2003-ED, Rules of Organization and Functions of the National Institute of Culture (INC) (21-05-2003)

Supreme Resolution 004-2000-ED, National Regulations of Archaeological Heritage.

Wojciech Kowalski - Poland

The advisory bodies in the national legislation

There are three central advisory bodies under Polish national legislation, that is Law of 23 July 2003 on the Protection and Care of Monuments (DU 2003, no 163, item 1568). In particular these are: Monuments Protection Council, Main Commission for Conservation, and Polish Advisory Committee (as stipulated in the 1954 Hague Convention). This Law also provides for legal basis for the creation of Regional Councils for the Protection of Monuments and for the activity of certain institution to be used as advisory bodies "ad hoc".

A.1 The Legal status of the advisory bodies in the national legislation.

According to art. 91 sec. 1 Monuments Protection Council is "an opinion-making and advisory" body to the minister responsible for culture and the protection of national heritage. Main Commission for Conservation is an opinion-making body to the General Inspector for Monuments (who is under secretary of State in the Ministry of Culture and National Heritage) (art.98 sec. 1). Polish Advisory Committee is a body associated with the Council of Ministers, and is responsible for co-ordination of all efforts undertaken by various state organs to protect national heritage in the event of armed conflicts and special situations resulting from natural disasters, etc (art. 88 sec. 4).

Regional Councils for the Protection of Monuments as well as "ad hoc" bodies are opinion making bodies of Regional Inspectors for Monuments.

**A.2 National advisory bodies /
deconcentrated / decentralized advisory
bodies (if there is the case)**

Polish Law does not constitute decentralized advisory bodies, although see point E below.

**A.3 The functional relationship between
the advisory bodies and the central, regional
and local administration**

As stated above three main advisory bodies are of national character, that is they are associated with central state administration, see point A.1 above. These advisory bodies have no



functional relationship with regional and local administration.

**The competence of the advisory bodies in
respect to the preservation of the historic
monuments**

B.1 Listing competence

Advisory bodies have no listing competence.

**B.2 Advisory competences (approvals,
permits, etc.)**

Two of the above mentioned bodies have exclusively advisory competence in the sense that they are authorized to make opinion only.

- Monuments Protection Council makes opinion on (art. 97 sec. 2): preliminary draft and draft state program of the protection and care of monuments, practical enforcement of the protection of monuments in the context of state space planning policy, protection of monuments of history, and draft laws connected with the protection and care of monuments.

- Main Commission for Conservation is a specialized body to make opinions on (art. 98 sec. 2): technologies and materials to be used in the conservation of monuments, necessity and correctness of particular works done in the context of monuments and archeological excavations, as well as done if monument was endangered only.

As stated above, A.1, Polish Advisory Committee is responsible for co-ordination of all efforts undertaken by various state organs to protect national heritage in the event of armed conflicts and special situations resulting from,

for example, natural disasters, etc (art. 88 sec. 4). According to para 2 of the Council of Ministers Regulation of 27th April 2004 (DU 2004, no 102, item 1066), this competence covers:

- making proposals to Council of Ministers on legislative, technical or military means that should be undertaken during peace time as well as in case of military conflict, in order to enforce Hague 1954 Convention and Protocols attached to this Convention. This competence refers also to peace and stabilization missions of Polish Armed Forces when they are engaged abroad within the framework of UN operations;
- making proposals to Council of Minister to ensure, that Polish Armed Forces will have knowledge on, and will respect and protect monuments when engaged in armed conflict on the territory of Poland or abroad;
- undertaking of co-operation with similar committees in other countries and proper international organizations;
- explaining the ways of enforcement of Hague 54 Convention and Protocols to public authorities, institutions and other organizations.

B.3 Monitoring and control competences (if any)

Advisory bodies have no direct control competence. They make opinions on execution of protection policies and only in this sense they have monitoring competence in all fields enumerated above under point B2.

B.4 Competence with respect to the World Heritage List procedures

According to art. 15 sec. 2, listing of a particular monument as a Monument of History by the President of the Republic can be made only after Monument Protection Council made an opinion on such proposal. If the monument is finally listed, Minister can initiate the procedure to place such monument on the World Heritage List.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

Monuments Protection Council may consists of 10 to 20 members nominated by Minister of Culture and Cultural Heritage for the period of 4 years. Members should be selected from people, who "has outstanding achievements in the field of the protection and care of monuments" (art. 97 sec. 3). In comparison with this council, composition of Main Commission for Conservation is more flexible. It consists of 15 members who are nominated by the General

Inspector for Monuments for the period of 2 years (para 2, Minister of Culture Regulation of 15 January 2004, Dz. Urz. MK.04.2.3). The only requirement is that they should be experts in relevant areas of protection and care of monuments (art. 98 sec.3). More formal is composition of Polish Advisory Committee. It consists of:

- Head of the Committee, who is minister responsible for culture and cultural heritage or his deputy acting as the General Inspector for Monuments;
 - Secretary to the Committee;
 - 4 representatives of the Minister of Culture and the Cultural Heritage;
 - 2 representatives of the Minister of Interior;
 - 1 representative of the Minister of Defense;
 - 1 representative of the Minister of Justice;
 - 1 representative of the Minister of Education;
 - 1 representative of the Minister of Higher Education;
 - 1 representative of the Minister of Foreign Affairs;
 - 3 experts in the field of the protection of monuments.
- Period of mandate for members of this Committee is not stipulated.

C.2 The instatement of the advisory bodies and the selection procedures of their members

There is no special procedure for instatement of these bodies. Their members are nominated respectively by Minister of Culture and Cultural Heritage, General Inspector for Monuments, and in case of Polish Advisory Committee by Prime Minister and respective ministers.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. The decision making process in the activity of the advisory bodies

Advisory bodies have no power to make decisions. They only make opinions.

D.2 The decision making process in the administrative structures

Decision making process lies in hundred percent in the competence of administrative structures.

D.3 Conflicts between decisions taken by the advisory bodies and the administrative

structures (mechanism of consultation, conciliation and final decision)

Clear division between advisory character of these bodies and exclusive decision making competence of administrative structures allows to avoid these conflicts.

E. Local government advisory bodies involved in the preservation of the historic monuments

According to art. 99 sec. 1 Regional Inspector of Monuments is authorized to compose its own Regional Council for the Protection of Monuments by nominating 5 to 10 its members for the period of 4 years. They should be chosen from experts in the field of the protection of monuments.

It should be also mentioned, that this inspector may ask for opinion any specialized institution if he needs special opinion in connection with deciding on license for export for particular object (art. 60). In such case this institution acts as advisory body and for the need

of this questionnaire can be called "ad hoc advisory body".

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

Regional Council for the Protection of Monuments has general opinion making competence in the field of "the protection and care of monuments" (art. 99 sec.1).

E.2 The relationship between decentralized or locally set up advisory bodies and the local government (instatement, decision making and decision taking process)

There is no other than making opinion relationship between regional councils for the protection of monuments and local governments.

F. Annexes (legal texts relevant for the subject, statistics, etc.)

**THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION
OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.**

Arch. Adrian Crăciunescu - Romania

A. The advisory bodies in the national legislation

In Romania, the advisory bodies for monuments are nominated by the law for the protection of historic monuments (422/2001) under the generic name of "The National Commission for Historic Monuments" and are covering both the national and the regional levels. Even if the zonal commissions are intended to be segments of the national commission, in fact the law defines them distinctly.

- at national level acts the National Commission for Historic Monuments and its 4 specialized sections (for technical aspects, for inventory, for urbanism and protected areas and for artistic components)

- at regional level there are 12 "Zonal Commissions for Historic Monuments"

Other bodies important for historic monuments are the local commissions for urbanism that function as advisory bodies for the ministry of public works and for the mayors and chief architects of municipalities and county councils. They debate all urban plans (general urban plans, zonal urban plans and detail urban plans), including those for areas comprising historic monuments or other protected areas.

A.1 The Legal status of the advisory bodies in the national legislation

The law for the protection of historic monuments (422/2001 with its later modifications) defines the National Commission of Historic Monuments as "advisory body" meaning that its decisions do not necessarily come into force if the minister and the administrative apparatus for historic monuments have different visions over a specific issue. The commission has its own regulation setting the frequency and the way debates are carried on. The regulation is approved by the minister for culture and religious affairs and come into force by a ministerial order.

The law stipulates a fixed number of members for both central (21) and zonal commissions (9 each) and the regulation is allowing supplementary experts to bring specialized expertise within the sections of the National Commissions or, accidentally, within the zonal ones. These specialists are "co-opted



members" or "invited members". The "co-opted members" are nominated as such, along the full members, by a ministerial order and they have a permanent mandate as the full members do. The "invited members" might participate to one debate over a specific issue, either in sections of the National Commission or in zonal ones, following the invitation of the administrative staff, whenever the public clerks consider that is required to do so.

The other commissions acting as advisory bodies for the ministry for public works or for the administration of county councils or for municipalities are defined by the law for urbanism 350/2001 (and its later modifications). They are subject to local decisions of the elected councils, following the proposals made by the mayors, chief architects or presidents of county councils based on suggestions made by local professional bodies or associations.

A.2 National advisory bodies/decentralized/deconcentrated/decentralized advisory bodies (if there is the case)

The national advisory bodies are:

The National Commission for Historic Monuments and its 4 specialized sections for the Ministry of Culture and Religious Affairs

The deconcentrated advisory bodies are:

The 12 Zonal Commissions for Historic Monuments for the deconcentrated offices of the Ministry of Culture and Religious Affairs, grouped in 3 or 4 counties per zonal commission

The decentralized advisory bodies are exclusively set for the municipalities or for the county councils administrations and relate with the law 350/2001 for urbanism and with the local autonomy principle defined in the law 215/2001 regarding local administration.

Those advisory bodies for urbanism are recommended but not compulsory to be organized.

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

The advisory bodies are functioning using the facilities and the budget of the Ministry of Culture and Religious Affairs and its deconcentrated offices. The secretariat of the advisory bodies is also provided by the central and deconcentrated administration of the Ministry of Culture and Religious Affairs.

The regulation of the National Commission for Historic Monuments stipulates that once a month there is one meeting of each category of the commission and that they follow in a certain order. Each subject under debate has a resolution reached by the majority of the members. It results into a recommendation for the notice issued by the Ministry of Culture and Religious Affairs or its regional offices, part of the procedure of obtaining the building permit.

Decisions are taken in zonal commissions and in the specialized sections of the central commission. Decisions taken in the specialized sections (class "A" monuments) have to be validated by the plenum of the National Commission of Historic Monuments. Decisions taken in the zonal commissions (class "B" monuments) have to be validated by the plenum of the National Commission of Historic Monuments only if they are contested by the petitioner or by the public officers. Between the two sessions, both the petitioner and the public clerk have the opportunity to express doubts or denial over the recommendations made. Those disputes are taken to the national commission where a final decision is made. After that, either an official paper is issued following the commission recommendation - that might be taken to court by the petitioner or, if contrary, the responsibility of the administrative decision is entirely taken by the minister and his staff.

The building permit is the competence of the local administration (either municipality or county council - in case of rural monuments)

and is given taking into account all the other notices issued by the institutions entitled by the law on construction (50/1991).

B. The competences of the advisory bodies in respect to the preservation of the historic monuments

Main competences of the National Commission of Historic Monuments are related to the development and promotion of national strategies, methodologies and standards for the field of historic monuments and for its specialists, listing of monuments, and to the advisory of all types of interventions concerning built heritage.

Competences are extended to all categories of interventions on monuments and their protection zones or within protected areas or sites. Whenever the appropriate commission has already regulated a situation, decision is taken then directly by the public clerks.

Romania classifies monuments in two classes of value: "A" - of national or international relevance and "B" - of local or regional importance. Debates regarding "A" monuments take place in sections of National Commission and those regarding "B" monuments take place within the Zonal Commissions.

B.1 Listing competences

Management of the inventory of historic monuments is one of the main tasks of a specialized institution of the Ministry of Culture and Religious Affairs - the National Institute of Historic Monuments. However, the decision of listing or removing from the list of a certain building, group of buildings or sites remains the sole attribute of the National Commission of Historic Monuments through its specialized section for the listing of monuments and of the minister of culture.

The proposal of listing/removal from the list can be done either by the owner, the mayor, and the museums or by ONGs acting in the field of heritage. A detailed study of the history and the values of the subject has to be delivered by a specialist recognized by the Ministry of Culture and Religious Affairs. Clerks of the services of historic monuments within the deconcentrated offices of the ministry (of the specific county where the subject is located) are also delivering their report that is debated first in the Zonal Commission for Historic Monuments. A conclusion is drawn there and put into a report that have to be amended by the section for the listing of monument and afterwards validated by the plenum of the National Commission for Historic Monuments.

A special procedure is the "emergency listing" that can be started also by the deconcentrated offices of the Ministry of Culture and Religious Affairs in case of risk of permanent damaging or

destruction of a potential monument, without any other external proposal as in ordinary cases. During the process of debate, until the building/group of buildings/site is listed or not, the subject is protected (no more than 12 months) as a monument.

The decision of listing a monument is confirmed by the minister of culture through a ministerial order published in the official journal.

B.2 Advisory competences (approvals, permits, etc.)

The central and the zonal commissions are entitled to advise both for urban planning issues and for any construction type interventions on monuments or within their protected areas/buffer zones.

The resolutions issued by the central or zonal commissions do not come into force unless the Ministry of Culture and Religious Affairs and its county agencies officially formulate them. None of those official notices can be used as building permits but as obligatory parts of the building permits.

In terms of urban planning, the approvals of the Ministry of Culture and Religious Affairs are mandatory just for the national level and for the general urban plans of the localities. In lower degrees of urbanism, the permit of the Ministry of Culture and Religious Affairs might be technically avoided unless the public clerks from the heritage system express their "interest" in debating those issues (if learning about them in time).

B.3 Monitoring and control competences (if any)

According to the previous form of the law, the members of the advisory bodies had also monitoring and control competence. The present law does not mention those attributes but leaves the possibility for all members to make direct remarks to the authorities.

B.4 Competences with respect to the World Heritage List procedures

The National Commission for Historic Monuments is entitled to propose the monuments to be submitted to the debate of the World Heritage Committee for inclusion in the list of World Heritage or the list of the endangered monuments of that list.

Monitoring and reporting in case of the already inscribed monuments are the tasks of National Institute for Historic Monuments.

C. The membership of the advisory bodies

Membership of zonal commissions and for the central commission is intended to be limited to specialists and experts in heritage, recognized by a certificate issued by the Ministry of Culture

and Religious Affairs. This can be achieved only for the individuals co-opted or invited as members. Those categories of members of the National Commission of Historic Monuments are nominated by the minister of culture (following the recommendations of his/her staff, based also on proposals of deconcentrated offices and professional bodies from the field of historic monuments in the territory).

The law 422/2001 defines the composition of the National Commission of Historic Monuments. Therefore some members, theoretically, could be nonqualified in historic monuments as they are proposed by: the Ministry of Education and Research, the Romanian Academy, Ministry of Public Works.

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

The number of the members of the National Commission for Historic Monuments is 21 as the law defines the commission. In fact, together with co-opted members, the total number is not fix since each section has 9 members, not all of them being among the 21. For instance, only the president of the section for artistic components is full member; the other 8 members are co-opted.

Professional eligibility is not restricted as long as the person is nominated by an organization mentioned by the law, is proposed by the staff of the ministry of culture and is accepted by the minister of culture. Some of the members of the Zonal Commissions are even irremovable since the law imposes the presence of the chief-architects of the county councils in those commissions.

The duration of the mandate of the commission is 5 years.

C.2 The instatement of the advisory bodies and the selection procedures of their members

Selection of the members of the National and of the Zonal Commissions for Historic Monuments is done according to the law. 15 members of the central commission are proposed by the Ministry of Culture and Religious Affairs, 2 by the Romanian Academy, 2 by the Ministry of Education and Research, 1 by the Ministry of Public Works and 1 by professional bodies on NGOs working in the field of historic monuments.

The co-opted members are generally chosen from the renowned specialists proposed by professional organizations such as the National Union of Restorers or other type of organizations such as ICOMOS.

For the zonal commissions, according to the law, each county council delegates the chief-architect for the specific commission. The

deconcentrated offices of the ministry propose the rest of the 9 members of each zonal commission.

The final decision rests with the minister of culture. The composition of the central and of the zonal commission is instated by a ministerial order published in the official journal.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

There is no subordination relation between the advisory bodies and the administrative structures. Previous law gave an important instrument of control for the central commission: the approval of the budget and the structure of the National Program for Restoration. The present law denied this prerogative, which is now exclusively administrative.

D.1. The decision making process in the activity of the advisory bodies

The decision-making is intended to be deliberative and the conclusions are drawn by qualified majority of votes. The recommendation has to be validated in three steps before is accepted and transformed into official acts by the administrative structures. The first step: an issue is debated within the zonal commission or within the specialized section of the central commission, depending on the rank of the monument. Second step: the bureau of the central commission (president and four presidents of the sections, acting as vice-presidents) prepares the plenum debate by filtering possible contestations. Third step: the plenum of the commission is debating contestations or validate the previous decisions of lesser bodies.

Each séance of debates has a timetable set 24 hours before the meeting (at least) and made public on the Internet. Debates for each subject end up with a vote after the author of the project/study presents the subject and after the public clerk in charge with the dossier expresses his/her point of view. Members of advisory body have the right to express their opposition in written form in the special register of the meetings. Members of the advisory bodies authors of the projects or studies under debate do not vote.

D.2 The decision making process in the administrative structures

Each dossier containing studies or projects concerning a monument is submitted to the County Department for Culture, Religious Affairs and Heritage – deconcentrated offices of the Ministry of Culture – where the monument is listed. The public clerk then submits the project

to the appropriate commission – zonal for “B” monuments and central for “A” monuments – together with an official point of view. After the debates described earlier, the ministry or its agencies are releasing an official notice according to the recommendations of the appropriate commission.

For problems that are already regulated by previous debates and decisions (such as a decision over a property located in context where rules within the protected area are adopted already), do not raise doctrinal or sensitive technical problems or simply they are too minor, the civil servants might deliver the official notice without consulting the advisory body.

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

The regulation of the National Commission of Historic Monuments reserves the right of the petitioner or of the civil servants to demand a second opinion in case they feel the advisory body (zonal commission or specialized section of the central commission) gave an inappropriate recommendation. For this reason, between the séances of the plenum of the National Commission – that is the regulatory body as defined by law – and those of the “lower” advisory bodies (zonal commission or specialized section of the central commission) there is a short period of about 7 to 10 days for appeals.

The civil servant (or the petitioner) might consider that the recommendation of the zonal commissions or of the specialized sections of the central commission are generating confliction situations toward the legal frame or they generally speaking do not serve the monument's well being, transmit their objections to the bureau of the National Commission of Historic Monuments. The president of the National Commission and the four presidents of its specialized sections form the bureau, having the task of preparing the séances of the plenum and to analyze the eventual objections as earlier described. The bureau reviews the documentations and decides if the objection has to be taken to plenum. Objections formulated by civil servants are obligatory taken to debates of the plenum of the commission. The plenum formulates the final recommendation. If the bureau rejects the objection of the petitioner, the official notice is delivered according to initial proposed form.

The unsatisfied petitioner has then the liberty to take the official notice of the administration to court. The public servant has an extra option in case the decision of the plenum of the National Commission seems to be inappropriate for the monument. He/her can appeal to the minister of culture. The minister resends the documentation to the commission

and, in order to maintain the decision, the plenum has to adopt it with two thirds of the votes. After the final vote, the recommendation is put into an official format of the Ministry of Culture and Religious Affairs or its deconcentrated offices.

The official notice that implies the modifications of the projects is not issued until the modifications are made.

E. Local government advisory bodies involved in the preservation of the historic monuments

These are mainly the technical commission for urbanism. The local communities have also the liberty of creating their own structures to monitor and support the preservation of historic monument on their administrative territory. For instance, one district of Bucharest (no.1) already created its own service for historic monuments under the authority of the chief architect of the district. No other advisory bodies for heritage is known until now.

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

Technical commissions for urbanism are substantiating the decisions are taken, by vote, by the elected local councils for urban plans. Historic monuments are no special issues in terms of procedures of local elected councils.

E.2 The relationship between decentralized or locally set up advisory bodies and the local government (instatement, decision making and decision taking process)

The advisory bodies have in fact no direct relationship with the local governments. Even so, quite often, pressure of local governments over the advisory is put over certain projects in order to obtain decisions in favor of local investments in protected areas.

Arch. Adrian Crăciunescu

Arch. Adrian Craciunescu has a master degree in conservation at the Raymond Lemaire Centre in Leuven and teaches at the Bucharest University of Architecture and Urban Studies. Member of the Romanian National Commission on Historic monuments, assumed various positions in the Romanian administration of the Ministry of Culture and Religious Affairs.

**THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION
OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.**

Luis Antonio Anguita Villanueva - Spain

A. The advisory bodies in the national legislation

A.1 The Legal status of the advisory bodies in the national legislation

The advisory bodies are integrated in the administration of the federal government or the Autonomous Communities. Their legal status will depend on the standards that created them. Generally, they are administrative bodies within the Ministry of Culture. They are bodies dependent on the standards within their categories. The only exceptions occur within advisory bodies to universities in which case their legal status depends on the private or public leanings. In the first instance they are within the law that created them and the same administrative standards, and in the second case, they are within the contract between them and the Cultural Consultant.

A.2 National advisory bodies/deconcentrated/decentralized advisory bodies (if there is the case)

In Spain, advisory bodies appear in the standards of Historic Preservation as dependent parts of the Public Administration. There are no private advisory bodies except in exceptional circumstances.

In our legislation, with cultural material falling between federal and regional competence, control is with the regions. We can classify cultural property advisory bodies as:

1.- Federal:

- Historical Heritage Council. It is a body of collaboration between the federal administration and the autonomous regions and it has as final goal the facilitation of communication and the exchange of programs regarding information on Spanish Historical Heritage

- Board for the Certification, Valuation and Export of Property of the Spanish Historical Heritage.

- It is a consultive body ascribed to the general direction of Fine Arts and Cultural Goods



-Other advisory bodies collected in article 3 of the National Historic Preservation Act are the "Reales Academias", the Spanish universities, the Director of Scientific Research and Major Counsel.

They are consultive bodies:

- The General Council of Monuments, and Historic Districts
- The General Council of Archives
- The Coordinating Council for Libraries
- The Joint Heads of Cave Art
- The Joint Heads of Museums
- The Joint Heads of Excavations and Archeological Excavations
- The Joint Heads of Ethnology

2.- Autonomous Communities: Cultural Heritage Councils (Listing competences and monitoring).

3.-Local Administration: advisory bodies in urban planning.

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

As said at A.1, these are bodies dependent on the central and regional administration that have authority in this matter. The functional relation is the location of the advisory bodies within the administrative structure that tends to included them in the General Direction, that is to say, after the respective Ministers.

B. The competences of the advisory bodies in respect to the preservation of the historic monuments

B.1 Listing competences

B.2 Advisory competences (approvals, permits, etc.)

B.3 Monitoring and control competences (if any)

The functions of the Historical Heritage Council are:

- To know the actual programs, federal and regional, relative to Spanish Historical Patrimony, as well as the results of same
- To elaborate and approve the national plans of information on the Historical Patrimony that have as their object the development of the communication between different services and spread information necessary to develop the scientific and technical research
- To elaborate and propose formative activity campaigns on Historical Patrimony
- To inform of the means that should be adopted to guarantee the necessary collaboration with the objective of accomplishing the international responsibilities that affect the Spanish historical patrimony
- To inform on the destiny of the recovered goods from illegal exportation
- To spread information on themes related with historical patrimony that the president submits to his consultants
- Any other function that in the scope of the authority of the council is attributed due to a legal or regulatory disposition

Functions of the Board for the Certification, Valuation and Export of Property of the Spanish Historical Heritage. Analyzes and sends proposals regarding:

- a) To permit solicitations of exports of the goods referred to in the Law of 16/1985
- b) To inform the permit solicitations of temporary leave from Spanish territory.
- c) To inform the regarding the change of movable federal goods projected by article 34 of the Law of 16/1985
- d) To fix the value of the exported illegal goods and to determine the corresponding sanction
- e) To value the goods to be imported to the country for calculating the dues and to to apply the other values of development per Title VIII of the Law of 16/1985
- f) To value the goods that the Minister of Culture projects it will acquire for libraries, archives, and museums of the federal government
- g) Any other function attributed to a legal or regulatory function

B.4 Competences with respect to the World Heritage List procedures

The body in charge of elaborating the list of goods susceptible of being declared world heritage that is required by the Paris Convention is the Historical Heritage Council.

The Spanish list is created as follows:

1. Each Autonomous community selects the goods in its region capable of being declared World Patrimony in the future.
2. Historical Heritage Council analyzes the proposals, debates and coordinates and proposes the Spanish list.
3. Historical Heritage Council approves the Spanish list.
4. The Minister of Culture passes same to the Center for World Heritage, as secretary of the committee.

The Spanish list was approved by Historical Heritage Council that meets May 31, 2002 in Teruel. It has been reformed on June 29 and 30 of 2006 in the Council for Historical Patrimony celebrated in Navarra and the goods included are:

- Mineral Historical Patrimony
- Almaden on the Road of Mercury of the Camino Real
- Renaissance and Baroque Arch of Granada (amplification of Granada).
- Cultural and Natural views of the Mountains of Tramontana in Palma and Majorca
- Altamira and the paleolithic art of the Cornisa Canabrica (amplification of Cantabria)
- Greek archeological districts of Empuries, L'Escala, Girona
- The Mediterranean Vertiente of the Pyrenees (French/Spanish)
- The "Via de la Plata" (Road of Silver)
- The Ribeira Sacra, Lugo and Orense
- Ancares-Brañas.
- San Lorenzo de El Escorial Monastery and its natural environment
- Mediterranean Windmills
- Frontier Castles
- Francisco Javier Cultural Route
- Dinosaur footprint in Iberian Land
- Vine and wine cultural Route in Mediterranean Villages
- Stone dry architectural
- Teide National Park
 - o Historic Heritage El Ferrol
 - o Hercules Tower, La Coruña.
 - o Via Augusta.
 - o Historic Downtown, Palmas de Gran Canaria.
 - o North Route (amplification of St. Jacques Way).

- o Loarre Castles
- o Cave paintings of Siega Verde.
- o Cañadas de La Mesta.
- o Historic Downtown of Ceuta
- o Historic Downtown of Melilla

Autonomous Communities have the powers to prepare the expedient. Usually with Universities and City Councils and other agents interested in. The Ministry of Culture has coordinate and advise functions in this subject. Besides, our Ministry has to send the compete expedient to World Heritage Center before 1st of February each year.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

-Council for the Historical Heritage is made up of:

- a) President: General Director of Fine Arts and Archives, from Ministry of Culture.
- b) 17 Members: each one by Autonomous Community.

-Board for the Certification, Valuation and Export of Property of the Spanish Historical Heritage. Is made up of:

- a) 18 members designated by the Ministry of Culture: 15 of them proposed by the General Director of Fine Arts and Archives and 3 of them proposed by the General Director of Books and Libraries. All of them need to be relevant people in their respective subject.
- b) 4 Members designated by the Secretary of the Treasury: 1 of them proposed by the General Director of Customs and Special Taxes and 3 of them proposed by the General Director of Taxes.

As you can see all of them are political designations and they are forced with the law.

Incompatibilities are the general of their charge inside the Government.

Time of mandate depend on the political Department who designed. They are "trust charges".

C.2 The instatement of the advisory bodies and the selection procedures of their members

The instalment are a plus in the salary. Besides, they have important traveling expenses to assist at the reunions.

Most of them are civil servants. They need to pass public examinations before enter in the Administration bodies.

But as I said, selection procedures are strictly politic to reach a place as member of these advisory bodies.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments

D.1. The decision making process in the activity of the advisory bodies

D.2 The decision making process in the administrative structures

Advisory bodies employ a majority vote in making decisions. Majority votes are important although unanimous votes are preferred.

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

They cannot occur because in Spain the advisory bodies are located within the administrative structure - within a certain hierarchy.

E. Local government advisory bodies involved in the preservation of the historic monuments

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

The local governments in theory do not have competence in the protection of the historical patrimony. I say in theory because in reality their competence in this matter each day is more relevant. When forming urban plans, the city governments develop a special standard for a historic district. In this case, the standards of planning have the ability to have commissions for the protection of artistic/historic patrimony within the urban organization of the city. These commissions develop work around the control of properties of immovables which are more important than those of the regions. This is because the city must approve building permits and demolition permits related to immovables that are part of the patrimony in historic cities.

E.2 The relationship between decentralized or locally set up advisory bodies and the local government (instatement, decision making and decision taking process)

The relation does not exist among jurisdictions in Spain. What has happened in reality is due to the destructive relation that exists between the growth of the new city and the conservation of the old city and that is the advisory bodies of Autonomous Communities control the local

advisory bodies that authorize the building or works that can be contrary to the preservation of the local historical patrimony.

F. Annexes (legal texts relevant for the subject, statistics, etc.)

Law 16/1985 dated 25 June, on the Spanish Historical Heritage (Official State Bulletin of 29 June 1985). PDF file translated by Ministry of Culture.

Luis Antonio Anguita Villanueva, Degree in Law and Doctor in Law by Complutense University in Spain. Lawyer by Illustrious Bar Association of Madrid. Visitor Researcher in Harvard University, Oxford University and UNIDROI Center in Rome. He has written more than twenty publications about cultural heritage law. We can quote: *Private Property in Cultural Goods* (1st and 2nd edition), *Cultural Heritage Codex*, *European Rights and Culture* or *Culture and Spanish Copyright Law*. He has participate of ICLAFI from 1997 and he is member from Athens (USA) meeting in 2002.

THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS

THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES

Prashantha B. Mandawala - Sri Lanka

A. THE ADVISORY BODIES IN THE NATIONAL LEGISLATION

A.1 The Legal Status of the Advisory Bodies in the National Legislation

The national legislations operation in Sri Lanka has provided advisory bodies for the protection of cultural heritage in Sri Lanka. They are:

1. Advisory body established under the Antiquities Amendment Act No. 24 of 1998 (Annexure 1)
2. Advisory body established under the National Museum Ordinance No. 31 of 1942 (Annexure 2)

1. Advisory body established under the Antiquities Amendment Act no. 24 of 1998

Under the Antiquities Amendments Act the minister responsible for the archaeological activities of the country could establish an "Archaeological Advisory Committee" by publishing s order in the Gazette.

2. Advisory body established under the National Museum Ordinance No. 31 of 1942

Under the National Museums Ordinance every National Museum should have an Advisory Committee.

A.2 National Advisory Bodies / Deconcentrated / Decentralized Advisory Bodies (if there is the case)

Both advisory bodies established under the Antiquities Amendment Act and the National Museums Ordinance are national advisory bodies related to the protection of cultural properties in Sri Lanka. Apart from these, areas of historical, architectural, archaeological or aesthetical importance could be declared under the Town and Country Planning Act and the Urban Development Authority Act in order to prohibit or restrict the use or development of land for the purposes which are contrary to the significance of the area. These areas are identified as "Sacred Areas." In order to regulate the activities with in these areas special advisory

committees are established either the chairmanship of the head of the local authority - Mayor, or the head of the administration of the district - the Government Agent/District Secretary. These committees could be identified as decentralized advisory bodies.

A.3 The Functional Relationship Between the Advisory Bodies and the Central, Regional and Local Administration

Both advisory bodies established under the Ordinance/act of Parliament functions as advisory bodies related to the central administration as they have been formed to provide advise to the two departments, namely the Department of Archaeology and the Department of National Museums which are functioning as departments belongs to the Central Administration. Main functions of these two advisory bodies are given below.

Archaeological Advisory Committee

To advise the Director General of Archaeology

- On any or all of the matters the minister considers necessary for the purpose of carrying out or giving effect to the principles and provisions of the Antiquities Ordinance No. 8 of 1940

- Where advice is sought by the Director General of Archaeology on matters connected to the performance of the duties stated under the Antiquities Ordinance No. 8 of 1940 (See Annexure 3 for duties and powers of the Director General of Archaeology)

Advisory Council of the National Museum

- To provide advice on all matters related to the management and administration of the museums which have been directed by the Director
- To perform all duties imposed by any regulation
- To make necessary representations and recommendations related to the management and administration of the museum as the committee may consider necessary

Advisory Committees of the Sacred Areas

The advisory bodies specially appointed for the purpose of activities connected to the "Sacred Areas" has a direction function related to the specific sites for which it has been established. As such these advisory bodies are functioning as advisory bodies related to local administration. The main functions of these advisory bodies are

- To identify the use of the land and buildings with in the areas
- To establish rules and regulations governing the use of land and buildings with in the area
- To establish the rules and regulations related to the development of land and buildings with in the area
- To provide guidance to the approving authorities of development proposals submitted which are related to the area
- To monitor development activities with in the area
- To act as a coordinating body of provision of common amenities with in the area

B. THE COMPETENCES OF THE ADVISORY BODIES IN RESPECT TO THE PRESERVATION OF THE HISTORIC MONUMENTS

B.1 Listing Competences

None of the above mentioned advisory bodies has any listing competence. On the other hand their main role is only to provide advise on the matters related to the management and administration activities related to the institution or the site.

B.2 Advisory Competences (approvals, permits, etc.)

The Archaeological Advisory Committee always provide the guidance for the Director General of Archaeology in issuing permits for the archaeological excavation, conservation of monuments and export of antiquities when requested by the Minister or the Director General of Archaeology.

The Advisory Committee of National Museums also provides guidance for the Director of National Museums to approve the purchase, exchange, sell, loan or transfer of books, documents or objects.

The advisory committee of the Sacred Areas provides the recommendations for the Planning committee of the local government in approving

or rejecting any proposal for the development or use of land with in the area.

B.3 Monitoring and Control Competences (if any)

Advisory bodies has no obligations what so ever in monitoring or controlling activities related to the archaeological heritage of the country as they will be handled by the officers responsible in the institutions. But as an when requested by the authorities, these advisory bodies are given the power of visiting the relevant sites in order to monitor the activities that had been carried out and to provide their expert advice or views on the activities that have been completed.

B.4 Competences with respect to the World Heritage List procedures

Only the Advisory Committee appointed under the Antiquities Act has competence with respect to the World Heritage List procedure. Some of the members of the advisory committee are being professionals they are being call upon to guide the preparation of nomination dossiers and to participate in the nomination process.

C. THE MEMBERSHIP OF THE ADVISORY BODIES

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

Archaeological Advisory Committee

The number of members who serve in the Archaeological Advisory Committee is not stated in the Act. As such the Minister in charge of archaeological activities is permitted to appoint any number for the committee. At present there are 34 members in the committee. The professional eligibility for the appointment of members is also not stipulated in the act. As such at present the members who are appointed consist of Buddhists Priests, Members of Parliament who are competence on the subject of archaeology, Past Commissioners/Director Generals of the Archaeological Department Archaeologists, Architects, Architectural Conservators, Historians, Members of Security Forces, Government Officers, and Members of General Public. Since there are 34 members in the committee it has been observed sometimes it is extremely difficult to come to a consciences with regard to controversial matters. According to the act the time period of the advisory committee is for the maximum of two years.

Advisory Committee of the National Museum

The members of the Advisory Committee of the National Museum consist of the Director of National Museums and ten members appointed by the Minister in charge of the National Museums. Out of these appointed members at least five of them would not be government officers. At present the members appointed are consist of professional and non professionals related to the field. According to the act the time period of the advisory committee is for the maximum of three years.

Advisory Committees of the Sacred Areas

There is no limit of members of these committees. The Chairman of the advisory committee would be either the Mayor of the Local Authority or the District Secretary/Government Agent of the District in which the Sacred Area is situated. The members of these committees consist of the owners of the monuments in the area and the members of Government institutions responsible for the maintenance of the monuments and surroundings and for the provision of common amenities for the users of such areas. There is no time period stipulated for the committee.

C.2 The Instatement of the Advisory Bodies and the Selection Procedures of their Members

D. THE RELATIONSHIP BETWEEN THE ADVISORY BODIES AND THE ADMINISTRATIVE STRUCTURE IN RESPECT TO THE PRESERVATION OF HISTORIC MONUMENTS

D.1. The Decision Making Process in the Activity of the Advisory Bodies

Advisory committees related to the Archaeological Department and the Department of National Museums provides advice to the Head of the Department on the matters posted either by the Minister or the Head of the Department. As such, all meetings are held when the committee meetings are summoned by the head of the institution and the meetings are chaired by the head of the institution. The only exception is that the Advisory Committee of the National Museum has to meet at least in each half year. The Sacred Area advisory committee has their monthly meeting chaired by either the Mayor of the relevant Local Government Authority or the District Secretary/ Government Agent of the District.

D.2 The Decision Making Process in the Administrative Structures Archaeological Advisory Committee

Every meeting is summoned by the Director General of Archaeology as and when matters are posted either by the Minister or the Director General him self. All meetings are chaired by the Director General although it is not stated in the Act. The matters would be discussed in an open forum and the final decision would be arrived at on agreement of most of the members.

Advisory Committee of the National Museum

The committee has made regulations for the conduct and has prescribed the procedure of its business and the meetings are chaired by the Director of National Museums.

Advisory Committees of the Sacred Areas

The Committee has a fixed agenda and a fixed date for its meetings. All matters related to the area have to be essentially discussed by the committee before it is implemented by any institution. But the matters directly related to the Archaeology, i.e. archaeological investigations, conservation and maintenance of Monuments and Sites, etc. do not fall into the preview of the Committee. The decisions taken during the meeting has to be implemented by the relevant authorities

D.3 Conflicts between Decisions taken by the Advisory Bodies and the Administrative Structures (Mechanism of Consultation, Conciliation and Final Decision)

Except the decisions taken by the Archaeological Advisory Committee the decisions taken by the other two advisory committees are final. The heads of relevant institutions that are responsible for the implementation of the decisions cannot change them unless they are referred back to the committee and the decision is amended. But the decisions taken by the Archaeological Advisory Committee are not mandatory and the Director General of Archaeology is empowered either to implement the decision taken or not to implement it. But in most cases the Director General always tends to abide by the decisions taken by the committee. In some cases when a final consensus could not be arrived at by the committee, the Director General tends to consider all arguments and take the most appropriate decision in his personal capacity as a professional.

E. LOCAL GOVERNMENT ADVISORY BODIES INVOLVED IN THE PRESERVATION OF THE HISTORIC MONUMENTS

E.1 The Competences of the Decentralized Advisory Bodies or Locally Set Up Advisory Bodies with Competences in Historic Monuments Preservation

There are no such advisory bodied in Sri Lanka. The competences in the preservation of Historic Monuments are vested with the Department of Archaeology and work is either handled by them directly or by a license issues by them. All licenses issued by the department are subjects to the direct supervision by the representative of the Director General of Archaeology through the powers vested to him by the law.

E.2 The Relationship Between Decentralized or Locally Set Up Advisory Bodies and The Local Government

(Instatement, Decision Making And Decision Taking Process)

As stated in E.1, there are no Local Government Advisory Bodies involved in the preservation of Historical Monuments, apart form the ancillary activities of the areas where historic monuments are situated.

F. ANNEXES (LEGAL TEXTS RELEVANT FOR THE SUBJECT, STATISTICS, ETC.)

Annexure 1 - Antiquities
Amendment Act No. 24 of 1998 - Part V A -
Advisory Committee

Annexure 2 - National Museum
Ordinance No. 31 of 1942 Section 5 & 6 -
Advisory Committee

Annexure 3 - Antiquities
Amendment Act No. 24 of 1998 - Section 10 -
Powers and Duties of Director General of
Archaeology

THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS. THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.

James K. Reap - United States of America

The United States of America has a federal system of government. Therefore, in order to provide a full picture of the advisory bodies in the United States, one must examine the existence and role of such bodies on the national, state and local levels

A. The advisory bodies in the national legislation

A.1 The Legal status of the advisory bodies in the national legislation

There are many advisory bodies appointed to assist agencies and offices of the national government. In 1972, Congress passed the Federal Advisory Committee Act (FACA)¹ formally recognizing the merits of seeking the advice and assistance of citizens while assuring that advisory committees 1) provide relevant and objective advice that is open to the public, 2) act promptly to complete their work, and 3) control costs and keep adequate records. The General Services Administration provides a guide to FACA and its requirements on the GSA website.² This statute and the rules promulgated thereunder govern all federal advisory committees with at lease one citizen member. However, the specific legislation creating advisory committee may supersede some of the FACA provisions for that specific advisory committee.

The Constitution of the United States does not address the issue of historic preservation. The 10th Amendment to the U.S. Constitution provides that any power not given to the federal government or prohibited to the states is reserved to the states or to the people. Courts have held that historic preservation falls within the "police power", traditionally viewed as one of



the reserved powers reserved to the states. Under the police power, states may regulate persons and property for the protection of the general welfare of all the citizens while still respecting basic individual rights guaranteed by the Constitution. All states have enacted legislation in the area of historic preservation and have delegated authority to local governments to enact preservation laws on a variety of subjects within their respective jurisdictions. The federal government has also enacted legislation for the protection of historic resources, the most important being the National Historic Preservation Act of 1966³ which established the overall philosophy and framework for a national approach to historic preservation in partnership with states and local communities. The provisions of the act establish the most important historic preservation advisory body in the United States - the Advisory Council on Historic Preservation. - to advise the President and Congress generally on preservation matters and to provide specific

¹ http://www.gsa.gov/gsa/cm_attachments/GSA_BASIC/with_annotations_R2G-b4T_0Z5RDZ-i34K-pR.doc (Accessed 15 Nov 2007)

² http://www.gsa.gov/Portal/gsa/ep/contentView.do?programId=9140&channelId=-13171&oid=9755&contentId=11869&pageTypeId=8203&contentType=GSA_BASIC&programPage=%2Fep%2Fprogram%2FgsaBasic.jsp&P=MCC (Accessed 15 Nov 2007)

³ <http://www.achp.gov/nhpa.html> (Accessed 15 Nov 2007)

advice to officials of the executive branch of government undertaking public projects licensed or funded by the federal government that may affect historic properties.⁴

Another advisory committee important for heritage conservation on the international level, though less important at the national level, is the U.S. National Commission for UNESCO.⁵ Created by statute in 1946 (22 USC Sec. 287o), the commission has up to 100 members (not more than 60 representatives of non-governmental organizations (NGOs), and not more than 40 "outstanding persons" including not more than 10 officials or employees of the United States Government, not more than 15 representatives of the interests of state and local governments, and not more than 15 individuals at large.) In the area of heritage conservation, the primary focus of the Commission is the World Heritage Convention.⁶

A.2 National advisory bodies / deconcentrated / decentralized advisory bodies (if there is the case)

On the national level there is the Advisory Council on Historic Preservation. (See above.)

Most states provide for some kind of advisory body for historic preservation.

Many local governments have established local bodies with a variety of advisory and regulatory powers. (example)

A.3 The functional relationship between the advisory bodies and the central, regional and local administration

The National Historic Preservation Act provides a partnership between the federal government and preservation programs at the state and local levels. The federal government establishes standards (e.g. The Secretary of the Interior's Standards for the Treatment of Historic

Properties⁷) and incentives (e.g. grants to fund state and local programs⁸) to encourage full participation in the federal scheme by state and local governmental bodies, Indian tribes, nongovernmental organizations and the private sector.

B. The competences of the advisory bodies in respect to the preservation of the historic monuments.

B.1 Listing competences.

The Advisory Council on Historic Preservation has no formal role in the process of listing properties in the National Register of Historic Places. Decisions on eligibility and listing in the Register are delegated to an employee of the National Park Service (within the U.S. Department of the Interior) known as the Keeper of the National Register.⁹ National Register regulations do provide for the creation of state advisory bodies called State Review Boards.¹⁰ State historic preservation officers must submit completed nomination forms and comments received from property owners, local governments and the public to the State Review Board. The Board reviews the nominations and determines whether properties meet the National Register criteria for evaluation and makes a recommendation to the State Historic Preservation Officer to approve or disapprove the nomination. The State Historic Preservation officer then, makes his or her own recommendation to the Keeper of the National Register who makes a final decision on listing. These review boards perform a similar function in states that also have a state register of historic places. The State of Washington's Advisory Council is an example of a council that participates in the nomination process for both national and state registers.¹¹ On the local level, preservation commissions which are certified by the federal government as meeting certain requirements are allowed to formally participate in advisory capacity in the nomination process for the National Register of Historic Places.¹²

⁴ The Advisory Council maintains an excellent website with full information describing its legislative authority, membership, programs and activities:
<http://www.achp.gov/index.html> (Accessed 15 Nov 2007).

⁵ <http://www.state.gov/p/io/unesco/> (Accessed 15 Nov 2007).

⁶ At the 2005 UNESCO General Assembly of State Parties, the U.S. was elected to a term on the World Heritage Committee. In addition to the World Heritage Center, the U.S. Mission's work with UNESCO's Culture Sector focuses on an important new program on endangered movable cultural objects that includes a particular emphasis on museums.

⁷ <http://www.nps.gov/history/hps/tps/standguide> (Accessed 15 Nov 2007).

⁸ <http://www.nps.gov/history/hps/hpg> (Accessed 15 Nov 2007).

⁹ See the National Register regulations at:
<http://www.nps.gov/history/nr/regulations.htm> (Accessed 15 Nov 2007)

¹⁰ Note 10, above, Section 60.6.

¹¹ <http://www.dahp.wa.gov/pages/HistoricSites/AdvisoryCouncil.htm> (Accessed 15 Nov 2007).

¹² See a complete description of the Certified Local Government Program on the National Park Service website:

B.2 Advisory competences (approvals, permits, etc.)

Federal Level: Advisory Council on Historic Preservation has the following advisory competencies:

- Advise the President and Congress on historic preservation issues;
- Recommend legislative and administrative improvements to protect America's heritage;
- Ensure that, through the Section 106 review process, the public, Indian tribes, and State and local governments have a voice in Federal decisions that impact historic properties;
- Mediate between local historic preservation interests and Federal officials when the government's activities could adversely affect historic properties;
- Encourage Federal agencies to make their programs and policies advance national preservation goals established by Congress;
- Educate stakeholders – including federal agencies, state and local governments, Indian tribes, other nations and international organizations, the National Trust for Historic Preservation, and other private groups and individuals – about the benefits of historic preservation, strategies to achieve them, and the activities of the Council.
- Encourage training and education in the field of historic preservation.
- Issue annual and special reports on its activities and the results of its studies. Reports may include the Council's assessment of current and emerging problems in the field of historic preservation, an evaluation of the effectiveness of public and private efforts in the field, and proposed legislation or other governmental actions.

Section 106 of the National Historic Preservation Act creates a role for the Advisory Council on Historic Preservation in providing its comments to the heads of other federal agencies fund or license projects ("undertakings") that may have an effect on historic properties.¹³ The

<http://www.nps.gov/history/hps/clg> (Accessed 15 Nov 2007).

¹³ Section 106 (36 USC 470(f)) provides as follows: "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or

recommendations of the Advisory Council are not binding on the other federal agencies, but Council comments are often persuasive in modifying federal projects to better protect historic resources. The regulations of the Advisory Council provide a major role for state historic preservation officials in assessing impact of the federal undertaking on resources within the state. Each state has an Advisory Council (see Section B.1, above) that participates in the National Register nomination process. These bodies have no formal role in the environmental review process. However, the Manual for State Advisory Councils issued by the National Park Service states:

Although Review Board members do not play an official role in the environmental review process, awareness of the importance of early planning in the Federal Government's environmental review and compliance procedures will allow Review Board members to serve as troubleshooters. . . .

Other general environmental review activities that Review Board members can involve themselves in are:

1. Advising the SHPO in formulating laws or procedures, similar to the Federal Advisory Council process, to ensure that no action or funding that affects a National Register eligible property is taken by any agency of State government until a proper review of the project's impact has been made;

2. Serving in an advisory capacity in any environmental review or National Register determination of eligibility case that the SHPO wants to refer to the Review Board.¹⁴

B.3 Monitoring and control competences (if any)

Federal Advisory Council reviews the policies and programs of Federal agencies. (See response in section B.2, above)

B.4 Competences with respect to the World Heritage List procedures

The Advisory Council has no formal advisory role in the World Heritage listing process. The World Heritage Program is administered by the

eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking."¹⁴

<http://www.nps.gov/history/nr/publications/bulletins/strevman/strevman8.htm> (Accessed 15 Nov 2007).

U.S. Department of the Interior.¹⁵ That department is advised by the Federal Interagency Panel for World Heritage, one member of which is an appointee of the Advisory Council for Historic Preservation. The role of that panel, all federal agency appointees, is to assist in the following activities: 1) The development of policy and procedures for effectively implementing the Convention in the U.S.; (2) The evaluation of draft U.S. nomination documents; (3) The making of recommendations for approval of U.S. nominations; (4) The dissemination of information on the Convention within other Federal agencies; and (5) The promotion of increased awareness and understanding of the importance of heritage conservation.

C. The membership of the advisory bodies

C.1 Members (number, professional eligibility, incompatibilities, time of mandate)

C.2 The instatement of the advisory bodies and the selection procedures of their members

Federal Level: Advisory Council on Historic Preservation:

- (1) a Chairman appointed by the President selected from the general public;
- (2) the Secretary of the Interior;
- (3) the Architect of the Capitol;
- (4) the Secretary of Agriculture and the heads of seven other agencies of the United States (other than the Department of the Interior) the activities of which affect historic preservation, designated by the President;
- (5) one Governor appointed by the President;
- (6) one mayor appointed by the President;
- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archeology, and other appropriate disciplines;
- (10) three at-large members from the general public, appointed by the President; and
- (11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

¹⁵ The federal regulations governing the administration of the World Heritage Program in the United States are found in Title 36, part 73 of the Code of Federal Regulations: http://www.access.gpo.gov/nara/cfr/waisidx_04/36cfr73_04.html (Accessed 15 Nov 2007).

Term of office. Members (1), and (9) through (11) above serve four years from the expiration of their predecessor's term. The members appointed under (5) and (6) serve for the term of their elected office, but not more than four years. Appointed members are limited to two terms, but continue to serve until a successor is appointed.

Each state has different requirements for membership in advisory bodies, generally focusing on expertise in particular academic disciplines such as history, architecture, landscape architecture, archaeology, etc. The composition of local advisory bodies is determined by local ordinance, but must often comply with state enabling legislation.

Local bodies require interest or competence in historic preservation and often specify desirable (or mandatory) professional competencies.

D. The relationship between the advisory bodies and the administrative structure in respect to the preservation of historic monuments.

D.1. The decision making process in the activity of the advisory bodies

D.2 The decision making process in the administrative structures

D.3 Conflicts between decisions taken by the advisory bodies and the administrative structures (mechanism of consultation, conciliation and final decision)

The following chart, provided by the Advisory Council on Historic Preservation, illustrates the consultative and decision-making process undertaken to satisfy the requirements of Section 106 of the National Historic Preservation Act. The federal agency officials responsible for a federal undertaking must consult with the SHPO (State Historic Preservation Officer or THPO (Tribal Historic Preservation Officer) to identify resources eligible for protection, determine whether the undertaking will have an effect on those resources and whether that effect is adverse, and attempt to avoid or mitigate that effect. Where the administrative officials are successful in reaching a agreement ("Memorandum of Agreement") the Advisory Council's role is one of reviewing the memorandum, where no agreement is obtained, the Council attempts to mediate and resolve the issues and may issue a comment. That comment, while persuasive, is not binding of the federal official.

Initiate Section 106 Process

Establish undertaking

Identify appropriate SHPO/THPO *

Plan to involve the public

Identify other consulting parties

Undertaking is type that might affect historic properties

Identify Historic Properties

Determine scope of efforts

Identify historic properties

Evaluate historic significance

Historic properties are affected

Assess Adverse Effects

Apply criteria of adverse effect

Historic properties are adversely affected

Resolve Adverse Effects

Continue consultation

FAILURE TO AGREE

► *No undertaking/no potential to cause effects*

► *No historic properties affected*

► *No historic properties adversely affected*

► *Memorandum of Agreement*

► **COUNCIL COMMENT**

Section 106 Regulations Flow Chart¹⁶

E. Local government advisory bodies involved in the preservation of the historic monuments

E.1 The competences of the decentralized advisory bodies or locally set up advisory bodies with competences in historic monuments preservation

At the local level, many historic preservation commissions have advisory powers and area also are given the power to make binding decisions on the preservation of historic properties by private owners, subject to appeals to the local elected body or the courts. The State of Georgia's Historic Preservation Office provides a model ordinance for modification and adoption by local governments in that state.¹⁷ Several of

the suggested powers and duties of local historic preservation commissions established under such ordinances are advisory in nature:

1. Recommending to the city council specific properties for historic designation
2. Recommending the acquisition by the city of façade and conservation easements
3. Conducting educational programs on historic properties and on general historic preservation activities
4. Investigating and studying matters relating to historic preservation

E.2 The relationship between decentralized or locally set up advisory bodies and the local government (instatement, decision making and decision taking process)

In some communities, local preservation commissions advise administrative officials, planning bodies, or city councils on issuance of permits ("certificates of appropriateness") for the alteration or demolition of designated structures or new construction within historic districts. In other cases, these commissions

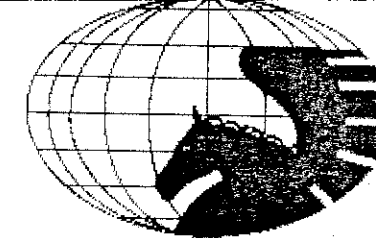
¹⁶ <http://www.achp.gov/regsflow.html> (Accessed 15 Nov 2007).

¹⁷ http://hpd.dnr.state.ga.us/assets/documents/model_hpo.pdf (Accessed 15 Nov 2007).

have the legal authority to grant or deny these permits outright, subject to legal appeal processes.

James K. Reap is an attorney who specializes in historic preservation issues. He teaches in the Master of Historic Preservation Program at the University of Georgia (USA). He has served as chair of the preservation commissions in the City of Decatur and DeKalb County and as vice chair in Athens. He is a founding member of both the Georgia Alliance and National Alliance of Preservation Commissions. His background in planning includes service to 46

cities and 10 counties as Georgia's first regional preservation planner and later as Deputy Executive Director of the Northeast Georgia Area Planning and Development Commission. He has provided training and technical assistance to preservation commissions throughout the country. James is also a Fellow of the Dean Rusk Center, International, Comparative and Graduate Legal Studies. He is currently President of the Committee on Legal, Administrative and Financial Issues of the International Council of Monuments and Sites (ICOMOS) and has worked on preservation issues in Eastern Europe, Central Asia, Africa and the Middle East.



**International Council on
Monuments and Sites**

**Conseil International
des Monuments et des Sites**

**INTERNATIONAL SCIENTIFIC COMMITTEE ON LEGAL,
ADMINISTRATIVE AND FINANCIAL ISSUES**

2007 Membership List

Australia:

Prof. Graeme Wiffen
1/44 Beach Road
Bondi
NSW 2026 Australia

Belgium:

Prof. Anne Marie Draye
Winkelsesteenweg 80
B - 3020 Herent

Brasil:

Dr. Sonia Rabello de Castre
Professor of Public Law
University of the State of Rio de Janeiro
Av. Oswaldo Cruz, 139/601
Rio de Janeiro

Bulgaria:

Dipl.arch. Hristina Staneva
ICOMOS /Bulgaria
11 Slaveykov Sq.
100 Sofia

Chile

Amaya Irarrázaval Zegers
Francisco de Aguirre 4155, depto 23
Vitacura
Santiago de Chile

Colombia:

Claudia Fadul Rosa
Doctor en Derecho y Ciencias Políticas
La Universidad de Cartagena
Castillo San Felipe de Barajas
Centro de Audiovisuales (Cavi) el Espinal
Cartagena de Indias

Finland:

Ms. Satu-Kaarina Virtala
Ministry of the Environment
PO Box 35, FIN-00023 Government

France:

Prof. Patrick Le Louarn
29 rue Tourelles
22190 Plérin

Germany:

Dr. Werner von Trützschler
Thüringer Kultusministerium
Werner-Seelenbinder-Str.7
D 99096 Erfurt

Greece:

Athina Christofidou

Architecte du Patrimoine en Tete des Travaux
Des Monuments Byzantines et Post-Byzantins
Ministere de la Culture
5, Rue Tzortz
Athens 10682

Honduras:

Dr. Gloria Lara-Hasemann
President of ICOMOS / Honduras
Apartado Postal 2933
Tegucigalpa D.C.

Indonesia

Tamalia Alisjahbana
20, Jl. Duren Bangka
Jakarta 12706

Israel:

Gideon Koren
Ben-Zvi, Koren & Co.
Law Offices
8 Ben-Maymon St.
Jerusalem 94187

Italy:

Dr. Massimo Carcione
Lecturer of Cultural Heritage International Law
Università del Piemonte Orientale "A.Avogadro"
Via Legnano 36
15100 ALESSANDRIA (Piemonte- Italy)

Japan:

Toshiyuki Kono
Professor of Law
Faculty of Law, Kyushu Univ. 23
Fukuoka 812-8581

Mexico:

José Ernesto Becerril Miró
Secretary General
ICOMOS Mexicano, A.C.
Retorno Valle Real No. 3, Casa 23,
Colonia Valle de las Palmas, Huixquilucan,
53398, Estado de México, México

Netherlands:

Mr. Leonard de Wit
ROB
P.O. Box 1600
3800 BP Amersfoort
The Netherlands

Norway:

Marie Louise Anker
Sør-Trøndelag Fylkeskommune
Regionalutvikling
Fylkeshuset postuttak
N-7004 TRONDHEIM

NORWAY

Peru:

Alberto Martorell Carreño
Las Matas 31 3ro D.
Madrid, 28039
SPAIN

Philippines:

Atty. Rose Beatrix Cruz-Angeles
Rm 411, National Museum Building
Padre Burgos Street corner Finance Road
Ermita, Manila 1000

Poland:

Prof. Dr. Wojciech Kowalski
University of Silesia, Faculty of Law
Ul. Bankowa 11a
40-007 Katowice

Romania:

asist. drd. arh. Adrian Crăciunescu
Universitatea de Arhitectura si Urbanism "Ion Mincu",
Departamentul de Istoria si Teoria Arhitecturii &
Conservarea Patrimoniului,
Bucuresti, sector 1, strada Academiei nr. 18-20

South Africa:

Andrew Hall
Northern Cape Department of Sport, Arts & Culture
Postal Address: Private Bag X5004, Kimberley 8300
Physical Address: 22 Abattoir Road, Ashburnham,
Kimberley

Spain:

María Rosa Suárez-Inclán Ducassi
President of ICOMOS / Spain
ETS Ing. Minas. UPM
Ríos Rosas, 21
28003 Madrid

Sri Lanka:

Arch. P.B. Mandawala
Head, Department of History and Archaeology
University of Sri Jayewardenepura
Gangodawila
Nugegoda

Sweden:

Thomas Adlercreutz, Esq.
National Fortifications Administration
SE-631 89 Eskilstuna

United Kingdom:

Dr. Christopher Young
Head of World Heritage and International Policy
English Heritage
23 Savile Row,
London W1S 2ET

United States

Dr. James K. Reap

of America: College of Environment and Design
609 Caldwell Hall
University of Georgia
Athens, GA 30602-1845

Uruguay:

Dr. Alberto Quintela Peruzzo
Docente de la Facultad de Arquitectura
Universidad de la República
2 de mayo 1378
Montevideo CP 11.300

Associate Members:

Belgium:

Arlette Verkruyssen
Adviseur Externe Betrekkengen
Kunstlaan 9
1210 Brussel

Bulgaria:

Svetoslav Vasilev Georgiev
"Hadji Dimitar", bl. 140
vh. B, et. 5, app. 37, 1510 Sofia

Mexico:

Lic. Roberto Nuñez Arratia
Nuñez Arratia y Asociados, S.C.
Durango 247, Col. Roma
06700 Mexico D.F.

Romania:

Conf. Sergiu Nistor
University of Architecture and Urbanism Ion Mincu
Bucharest (www.iaim.ro)
Str. Academiei 18-20, Sect. 1, Bucharest

Spain:

Dr. Luis Anguita Villanueva
Universidad Complutense de Madrid
Facultad de Derecho
Departamento de Derecho Civil
Avda. Complutense s/n
Madrid 28040

United States of America:

Barbara T. Hoffman, Esq.
The Hoffman Law Firm
330 W. 72nd Street
New York, NY 10023

Prof. Jennifer Cohoon McStotts
66 George Street
Dept. of Sociology & Anthropology
College of Charleston
Charleston, SC 29424

Autumn Rierson Michael, Esq.
Executive Director
Historic Charlotte Inc.
P. O. Box 33113
Charlotte, NC 28223

Heritage

Democratic Citizenship



Cultural Infrastructure

Enhancement of local traditions

Phase 1: Explorations and partnerships

- 1998 The Conference "Sibiu / European Confluences"
Mounir Bouchnaki: Sibiu is a paradigm of the European culture
- 1999 Partnership with Luxemburg for the restoration of the building in Piata Mica 16
- 2000, Elaboration of the Charter for the Rehabilitation of the Historic Centre



Phase 2: Foreign Expertise and Commitment of the Local Government

- 1999 GTZ Preliminary Study
- 2001 Local Action Plan (2001-2004)
- 2001...Demonstrative actions, consultancy and co-financement
- 2004 Decision to run for the nomination in the UNESCO World Heritage List



Phase 3: The Preparation of the European Cultural Capital

- The City Hall> The Rehabilitation of the urban infrastructure and of the public spaces
- GTZ> Focused, complementary (P-ta Huet) and small, wide spread interventions
- MoC&C> Restoration of historic facades in the central squares and along Balcescu st.



Expertise & capabilities

City hall: Financement capability and credit eligibility

Building approval competences (a special office set up in the City hall)

Administrator of a wide public realm to be rehabilitated

Direct contact with citizens



Expertise & capabilities

MoC&C: Legal capacity to finance the restoration of private owned historic monuments
Technical competences thru central and local advisory bodies
Control and monitoring capabilities



•The Governmental Support:

- The financement of restoration work - 32 buildgs.- 6 Mil. Euro
- Co-financement of the urban infrastructure rehabilitation - 10 Mil. Euro
- Co-financement of the Sibiu interntl. airport rehabilitation - 11 Mil. Euro



The Goals of the Public Intervention on the Historic Facades :

1. The Conservation of the historic values of the facades around the central squares
2. The enhancement of the architectural heritage thru its integration in a turistic and cultural circuit



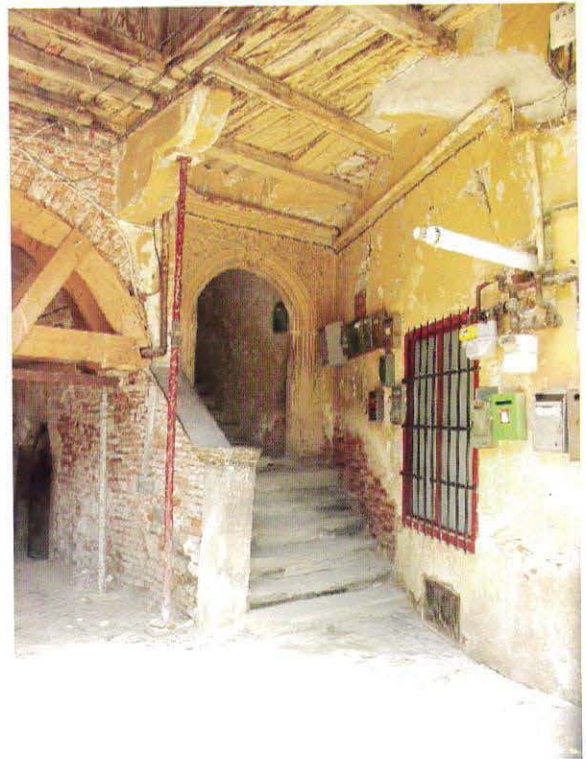
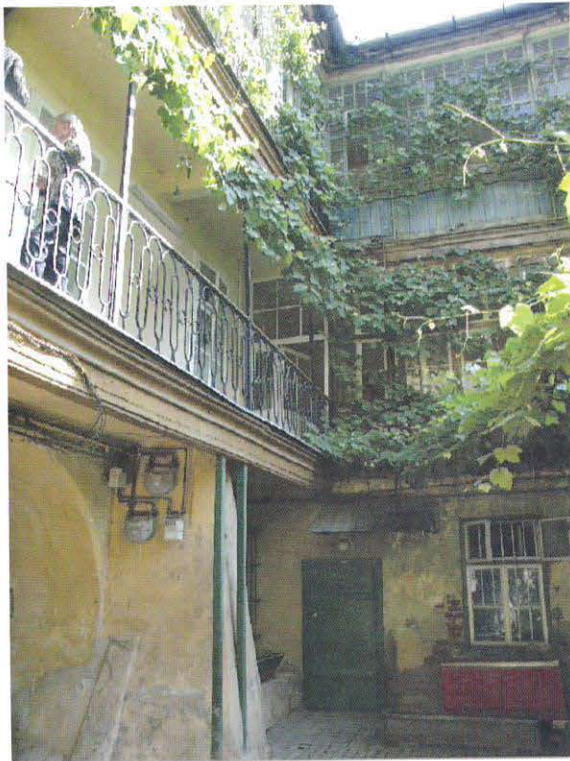
The Objectives of the Public Intervention for the Restoration of the Historic Fronts:

1. The Extension of the domain culturally suitable and publicly available
2. The Conservation of the architectural outstanding values of the site, as an historic city and a potential World Heritage Site



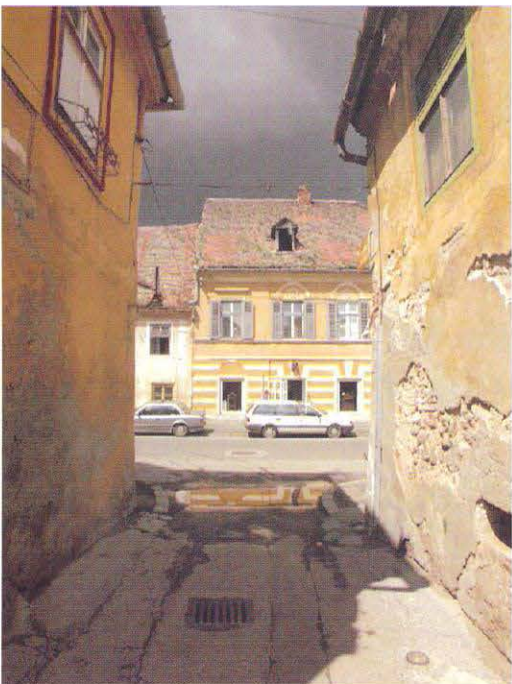
Constrains:

- Short delays for both the elaboration of the studies and the technical specifications and restoration work
- Building structural issues
- An large number of owners having to agree with the restoration works
- Legal texts constrains (i.e. the real estate guarantee)
- Potential for accusations of corruption



Priorities:

- Collaboration with the City Hall in the setting up of the intervention list and theme
- Securing the funds for the studies in 2005 and only for special cases in 2006 (expertise)
- Focusing on buildings without important structural failures
- A proper selection of buildings to be restored according to their position with respect to the public squares and their capacity to provide space for the cultural activities and sufficient public access for visitors.



CONCLUSIONS:

Technical issues:

- The Romanian legislation wasn't prepared for such large operations, even initiated by the Ministry of Culture (MoC&C)
- Insufficient local and regional technical expertise (restorers, architects, surveyors)



CONCLUSIONS:

Operational issues:

- Reduced operational capacity on behalf of the local enterprises lack of manpower for such programs.
- The example of the local authorities is very important and it is followed by the private owners.

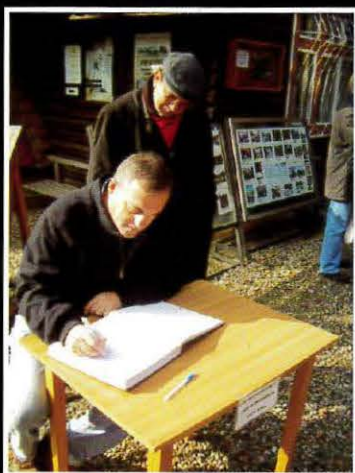


CONCLUSIONS:

Done the first time:

- The elimination of the real estate guarantee for national programs of restoration
- The setting up of agreements between the City and locals for the public access in the private courtyards
- The interventions being explicitly marked with MoC&C signs on the facades
- The public consultation with the citizens upon the restoration works to be carried out





Editura ETAPE Sibiu
ISBN 978-973-8401-25-9