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
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
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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. Published by Comité National Belge D'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 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 Emmanuel 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 Nozy). 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 (led 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 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 issued by the Minister of Culture with respect to the Commission having the duty to propose the approval or the rejection of the permit to be issued by the Ministry 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 to 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 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.

### National Australian Heritage Council

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. 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
  - Australian Heritage 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

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1. Discussed in Ben Bar and Greene Wiffen, Heritage Law in Australia (UP 2000).

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#### 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.
The Territorial Heritage Councils are established to promote and assist in the conservation, protection, presentation and interpretation of heritage places. They are established under the provisions of the Territorial Heritage Act 1997 and consist of members appointed by the Territory Minister. The Council is responsible for advising the Minister on matters relating to heritage places. The primary objective of the Council is to ensure that cultural heritage places are protected and conserved for the benefit of the community. The Council is also responsible for the development of policies and strategies to promote the conservation of cultural heritage places.

A.1. 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 and the Heritage Council of the Northern Territory, is purely advisory. The Minister issues all relevant approvals pertaining to heritage places through the Heritage Council. The national Heritage Council advises the Minister on all matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings.

A.2. Advisory functions

At the national level, the Australian Heritage Council is purely advisory. The Minister has the formal power to monitor and control, which is carried through the heritage divisions in the Ministry. The Minister is responsible for all matters under the National Heritage Act. The Minister may, for example, stipulate as a condition that the proponent comply with management plans 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 places located under the jurisdiction of local government. In the Australian Capital Territory, the listing function for heritage places is carried out by the Australian Capital Territory Heritage Council. At the local level, the Heritage Councils in New South Wales, Victoria, South Australia, Western Australia, and the Northern Territory, have the powers to consider and issue relevant permits and approvals. They also negotiate directly with owners, and initiate legal proceedings.

B.2. 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 through the heritage divisions in the Ministry. The Minister is responsible for all matters under the National Heritage Act. The Minister may, for example, stipulate as a condition that the proponent comply with management plans 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.

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C. The membership of the advisory bodies

C.1. Membership: number, professional eligibility, term of office

There are 9 relevant bodies in Australia. To summarise, membership is from 8 to 15 members, appointed in the context of expertise in the field of heritage protection, by the relevant government Minister on the advice of the Australian Heritage Council. The Minister may also appoint members to statutory bodies. The membership term is usually 3 to 5 years.

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

Appointment of advisory bodies and the selection of members is carried out by the relevant government Minister on the advice of the Australian Heritage Council. The Minister is responsible for all matters under the National Heritage Act. The Minister may, for example, stipulate as a condition that the proponent comply with management plans 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.

C.3. Conflicts between decisions taken by the advisory bodies

Conflicts between decisions taken by the advisory bodies are regulated under the National Heritage Act. The national Heritage Council advises the Minister on all matters relating to heritage values. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceedings. The Council is responsible for advising the Minister on matters relating to heritage values and issues relevant permits and approvals. The Council also operates directly with owners, and initiate legal proceeds
from Roman Law, that prescribe 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 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:

- to cancel the registration of a place or object.
- to request, or not register, a place or object.

Even more unusual in the Australian context is that the Act will allow 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 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.auslaw.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 1905 (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 competencies 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 inserted 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.

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 “the Provincial Preservation bodies” giving 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 administration. The text of a 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. Advice of the Royal Commission is 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 first ask for a decision from the minister, before the minister can ask him to start the protection procedure. In case of compulsory purchase, based on the possible threat for the protected good if it stays in the hands of its owner, the Commission renders an obligatory advice in case of compulsory purchase, based on the content of the report neither obliged to follow the advice or to reason the decision, also communicated to the Commission in the decision making process.

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 Commission and to 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 advises rendered by some concerned authorities.

This report forms the basis for a final, motivated advice on the proposed protection by the Royal Commission. The competent administration keeps the Commission informed about proposals to be made for inscription on the definitive 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 proposal for inscription on the World Heritage List 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, term 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 heritage: maximum 6 members.

Normally, rejections 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. 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 are selected among experts in the different fields: the commission is composed of a general duty of presenting protected heritage and of encircling this duty, members has also to give an advice in the event of an amendment. For instance, with the content of the report neither obliged to follow the advice or to reason the decision, also communicated to the Commission in the decision making process.

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 government 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 5 years.

C.2 The institution 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 advice of the Commission are considered 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 advice.

D.2. The decision making process in the administrative structures

The administration in charge of immovable heritage protection advice on the protection, collect advices, objections etc. As mentioned, the administration writes a global report, that is 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 propose an advisory opinion.

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...
Centralized character. Councils must decide for goods located in their territory: if an administrative authority concerns a plan influencing the historical centre, the municipality consults it in specific circumstances, like the presence of a protection proposal, the making of a study or the consultation of the Commission. The Commission is composed of five members: one from the central authority, one from the municipality, one from the market authority, one from the local council and one from the regional council. Each member has one vote, with the president having two votes. The Commission meets at least once a month and its decisions are taken by a majority of the members present.

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

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


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 et 2000;


Vu le décret du 3 février 1998 portant protection des monuments, des sites urbains et ruraux, à modifier clairement et d'autres décrets de la Commission;


La Commission est composée de cinq membres:
1° une division des Monuments et des sites urbains et ruraux, à appeler clairement et d'autres décrets de la Commission;
2° une division des Sites;
3° une division de l'Archéologie;
4° une division du Patrimoine archéologique;
5° une division de l'Héraldique.

Le président, les membres de la Commission et le secrétaire délibèrent à la majorité des membres présents émettant leur vote. En cas de partage des voix, le vote du président est prépondérant.

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

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

Une proposition d'avis peut être préparée par l'administration et remise à la Commission. Les conclusions sont prises par le président et en son absence, par le vice-président et en absence de ce dernier, par un membre désigné par le président.

Les réunions de la Commission centrale sont précédées ou tenues à la demande de la Commission. Les conclusions sont prises par le président en son absence, par le vice-président et en absence de ce dernier, par un membre désigné par le président.

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Le Ministre fixe le règlement intérieur de la Commission.

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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. 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 compétences et les fonctionnaires des administration provinciales ne peuvent pas appartenir aux commissions provinciales.

Art. 11. La commission centrale est composée d’un maximum de 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° 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 libertés pénitentiaires ; 3° les projets qui pourraient compromettre l’intégrité ou l’existence d’un site, ainsi que les projets pouvant atténuer les enceintes immatérielles d’un monument ; 4° les réparations historiques de monuments, la restauration de monuments ou de biens situés dans des sites archéologiques, les travaux de démolition 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 navigable ; 9° les avis en matière d’affaires héréditaires et de patrimoine.

Art. 13. Les commissions provinciales comprennent un maximum de 35 membres correspondants et au maximum par province. Les membres de la commission centrale et les fonctionnaires des administration provinciales ne peuvent pas appartenir aux commissions provinciales.


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

Art. 16. Le Ministre flamand ayant les compétences et le fonctionnement du Conseil archéologique flamand.

Le secrétariat d’État chargé de l’art, un licencié ou docteur en histoire et un licencié ou docteur en archéologie et histoire de la Région flamande.

Le secrétariat a notamment pour mission d’assurer le secretariat de la Commission royale des monuments et des sites.

La Commission royale des monuments et des sites est chargée de la conservation des biens relevant du patrimoine immobilier, inscrits sur la liste de sauvegarde ou classés et veille à leur réfection en cas d’exploitation ou d’inoccupation.

La Commission royale des monuments et des sites adopte un règlement d’ordre intérieur qui est soumis à l’approbation du Ministre.

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

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

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

Le Ministre flamand ayant les compétences et le fonctionnement de la Commission royale des monuments et des sites de la Région flamande.

La Commission royale des monuments et des sites est assistée d’un secrétaire permanent.

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

Le secrétariat a notamment pour mission d’assurer le secretariat de la Commission royale des monuments et des sites.

La Commission royale des monuments et des sites est chargée de la conservation des biens relevant du patrimoine immobilier, inscrits sur la liste de sauvegarde ou classés et veille à leur réfection en cas d’exploitation ou d’inoccupation.

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

Le Ministre flamand ayant les compétences et le fonctionnement du Conseil archéologique flamand.

Le secrétariat d’État chargé de l’art, un licencié ou docteur en histoire et un licencié ou docteur en archéologie et histoire de la Région flamande.

Le secrétariat a notamment pour mission d’assurer le secretariat de la Commission royale des monuments et des sites.

La Commission royale des monuments et des sites est chargée de la conservation des biens relevant du patrimoine immobilier, inscrits sur la liste de sauvegarde ou classés et veille à leur réfection en cas d’exploitation ou d’inoccupation.
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 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:
   - NCIICH (HICHI): 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 (ECMJ): 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.

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 evaluation.

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 evaluating 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 customs and traditions.

The Social and Expert Councils at the municipal level are assisted by a secretary-expert, determined by the Council. The Social and Expert Councils are also assisted by a secretariat, determined by the Ministry of Culture.

The Social and Expert Councils at the regional level are headed by a chairman, appointed by the Regional Governor. The regional Secretariats of the Social and Expert Councils are appointed by the Minister of Culture.

The chairman of the Social and Expert Culture Council is assisted by a secretary, determined by 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 Social and Expert Culture Council submits annually to the mayor of the municipality a cultural calendar of the municipal cultural activities, together with monuments of culture protection activity with the subject of the activity of the respective council.

The Social and Expert Councils at the regional level are assisted by the Regional Governor. In the absence of the Chairman of the Regional Council, the sitting of the Council is summoned and/or chaired by a deputy-chairman appointed by lot.

The activity of the Chairman of the Regional Council is assisted by a secretariat - expert from the Regional Governor's Administration. The secretariat of the Regional Council organizes the work of the Council and prepares the documents related to the activity.

The Chairman of the Regional Culture House - determines the agenda and chairs the sittings of the Council.
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 value, 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 of a property, or a property register extract from the local detailed plan, when building in a area with a local detailed plan, and when needed, a plot map.

Qualifications of the planners

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 eXpert in Sofia. Directorate of Ministry of Interior.
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 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, 183 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 fortifications 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.
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.

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.

INTRODUCTION GENERALE

La Constitution Hellénique de 1975 (art.24) impose à l'État 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 après 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, immobiliers, 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 État 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

LES ORGANES CONSULTATIFS. L'EXEMPLE GREC.

Athina Christofidou - Greece

- 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 Études 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

Les monuments sont également classés :

- les 39 Inspections des Antiquités Préhistoriques et Classiques
- les 28 Inspections des Antiquités Byzantines
- l'Inspection des Monuments Plus Récents
- l'Inspection des Musées et des Travaux Techniques de la Macédoine Centrale
- l'Inspection des Musées et des Travaux Techniques de la Macédoine Centrale
- les 12 Services des Monuments Plus Récents et des Travaux Techniques
- le Service des Travaux Techniques de la 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 archéologiques et de sites, ainsi que de certains bâtiments ayant une valeur historique, urbaine, archéologique, traditionnelle et esthétique. Il peut également sauvegarder des éléments du milieu bâti, comme ceux de l'urbanisme et de 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.


**Question B**

Le Conseil Archéologique Central et le Conseil Central des Monuments plus Récents sont composés de 11 membres:

- 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 au Centre 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;

Le Conseil Archéologique Central est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- le Conseiller Juridique de l’État 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 au Centre 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;
- un architecte, représentant de la Chambre Technique de Grèce;
- un architecte, représentant de la Chambre Technique de Grèce;
- un architecte, représentant de la Chambre Technique de Grèce.


Le Conseil Archéologique Central est composé de 11 membres:

- 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 au Centre 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;

Le Conseil Central des Monuments plus Récents est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- le Conseiller Juridique de l’État 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

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 questions concernant les musées;
- c. suggère au Ministre chargé de la Culture des principes qui dirigent l’édition ou toute autre activité de ce type dans les sites archéologiques.

**Question C**

Le Conseil Archéologique Central est composé de 11 membres:

- 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 au Centre 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;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre de Recherche reconnus ou des scientifiques d’autorité reconnue, ayant une expérience relative à la protection du Patrimoine de dix ans au moins;

Le Conseil des Musées est composé de 17 membres:

- le Sérénissime du Ministère de la Culture, qui est le président du Conseil;
- 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 au Centre 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

• trois 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 de cinq ans au moins.

• un représentant de la Municipalité.

Les directeurs des Services compétents sont dépourvus de leurs. 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'IFCOM
  - 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 cinq ans au moins.

Les membres des Conseils cit-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, apporte plus au 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 consultatifs.

**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.

2. 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. Seven professors or associate professors of university-level institutions, research associates 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 archaeology, architecture, conservation of antiquities, art, chemistry, 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.

3. 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.

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

5. 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(d). 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 Councillor of the State to the Ministry of Culture, to be replaced by another Legal Councillor or Associate Judge at the Office of the Legal Councillor 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 archaeologists, 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 Archaeological Council, to be replaced by persons having similar qualifications.
   e. Seven professors or associate professors of university-level institutions, research associates at comparable level at recognized research institutions or other scientists of 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 (17) members as follows:
   a. The Secretary-General of the Ministry of Culture as President.
the Ministry of Culture, with at least ten years professional and scientific experience following their doctorate (PhD) in archaeology, architecture, conservation of antiquities, art history, geology, sedimentology 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.

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 corresponding directorates of the Ministry of Culture.

4. All matters pertaining to the protection of ancient monuments, archaeological 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 paragraph the annual programmes of excavations or direct our choices, 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, archaeological 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 of movable or 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:

a) The export of monuments;

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

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

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

e) Any other important issue referred to them by the Minister of Culture.

6. 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, which if both, both competent bodies shall be the Central Council of Recent Monuments.

7. A decision of the Minister of Culture shall determine the measures necessary for the implementation of the provisions of article 35, subject to the provision of article 50, paragraph 5(b):

c. Give advisory opinion on issues relating to the implementation of the principle of reciprocity, in the event of loan for the organisation of exhibitions in museums:

b. Give advisory opinion on the establishment of State museums as special regional services of the Ministry of Culture pursuant to the provisions of article 26, paragraph 28 of Law 2557/1997; and

c. Give advisory opinion on any issue relating to museums and being defined by a law.

8. The provision of paragraph 6, article 52 shall be abolished.

Article 74

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 committees 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 organisation and functions of the Councils and the possibility of the composition and functioning in chambers as well as by other relevant detail. A presidential decree, issued pursuant to a proposal by the Minister of Culture may establish new Councils, allocate competences among existing 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 participation of individuals whose cases are brought before the Council may appear in person and/or be represented by a lawyer as 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 (1996)) 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
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 protected under the law, local planning and building committees. A sixth member, without voting rights, is an expert in preservation to be included on the Israeli Tentative List. This member is therefore an advisor to the PSC itself.

IASH - the law only provides there will be no more than 30 members. In 1998, 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.

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

IAC - 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, 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.

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.

D. 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

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

D.2 The decision making process in the administrative structures

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

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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/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 limited to technical opinions, proposals of new projects and verification actions without the legal validity and force granted by the Law to the officials 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 ("the Law") in the National Institute of Fine Arts and Literature ("INBA").

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 Director 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 granting 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.
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 include 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
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 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.

- 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 commission 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 architectural 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.
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 by proposal of the Regional Directorate of Culture and approved by Resolution of the National Directorate.

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, acting as Secretary.
- One representative designated by each one of the Regional Commissions of Culture.
- Citizens representatives of the society.

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.

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.

The attached documents, as excellent example of this matter, are the following:
- Supreme Resolution 004-2000-ED, National Regulations of Archaeological Heritage.
THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS.
THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES.
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 165, 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. 98 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 /decentralized /decentralized advisory bodies (if there is the case)

Polish Law does not constitute decentralized advisory bodies, although see point B 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. U. 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 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 (technical aspects, inventory, urbanism and protected areas and 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 detailed 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/deconcentrated/decentralized advisory bodies (if there is the case)
The national advisory bodies are:
Ministry of Culture and Religious Affairs

Monuments for the deconcentrated offices of the grouped in 3 or 4 counties per zonal commission the Law 350/2001 for urbanism and with the Law 215/2001 regarding local administration.

and local administration deconcentrated offices. The secretariat of the advisory bodies is also provided by the central services and for the resolution reached by the majority of the notice issued by the Ministry of Culture and Religious Affairs or its regional offices, part of the mandate here mentioned in the zonal commissions (class B).

The deconcentrated advisory bodies are: the National Commission for Historic Monuments. The deconcentrated 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 administration of the Ministry of Culture and Religious Affairs.

The regulation of the National Commission for Historic Monuments sets that once a year there is one meeting of each category of the commission and that they follow in a certain order. Each subject under debate has a dedicated time and 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. They are taken in the specialized sections (class A) and in the zonal commissions (class B) or the National Institute of Cultural Heritage, as well as in the central commission, 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 objections over the recommendations made. Those reports on the right of intervention and legal disputes are taken to the national commission where a final decision is made. After that, either the decision of the zonal commission or the decision of the national commission is published. A special procedure is the “emergency procedure” 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 permit of the National Institute for Historic Monuments is obtained by the minister of culture, the subject is protected (no more than 12 months) as a monument.

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 central commission. The laws 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).

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 give these attributes but leaves the possibility for all members to make direct remarks to the authorities.

For the zonal commissions, according to the law, each county council delegates the chief-architect for the specific commission. The
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 it is accepted and transformed into official acts by the administrative structures. 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 session 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 administrative structures. 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.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 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 (institute of centralized, 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.
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 leavings. 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 consultative body ascribed to the general direction of Fine Arts and Cultural Goods

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 resulting 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 National Council.
Any other function that in the scope of the autonomy 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:
- To inform the permit solicitations of temporary leave from Spanish territory.
- To inform regarding the change of movable federal goods projected by article 34 of the Law of 16/1985.
- To fix the value of the exported illegal goods and to determine the corresponding sanction.
- To value the goods to be imported to the country for calculating the duties and to apply the other values of development per Title VIII of the Law of 16/1985.
- To value the goods that the Minister of Culture projects it will acquire for libraries, archives, and museums of the federal government.
- 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 Heritage 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
- Almadan 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.
- Alhambra and the paleolithic art of the Cantabrian Mountains (amplification of Cantabria).
- Greek archeological districts of Empuries, Ebro Delta, Balearic Islands.
- The Mediterranean Veritable of the Pyrenees (French/Spanish).
- The "Via de la Plata" (Road of Silver).
- The Iberian Sacra, Lugo and Ourense.
- Ancares-Bratas.
- San Lorenzo de El Escorial Monastery and its natural environment.
- Mediterranean Windmills.
- Frontier Castles.
- Cultural Javer Cultural Route.
- Dinosaur footprint in Iberian Land.
- Vine and wine cultural Route in Mediterranean Villages.
- Stone dry architectural.
- Teld National Park.
- Historic Heritage El Ferrol.
- Historic Heritage of the Coruna.
- Maestanza.
- Historic Downtown of Palmas de Gran Canaria.
- North Route (amplification of St. Jacques Way).

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 as well as the local advisory bodies. 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 competences 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 (instancing, 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
THE ROLE OF THE ADVISORY BODIES IN THE PRESERVATION OF HISTORIC MONUMENTS

THE RELATIONSHIP BETWEEN ADMINISTRATIVE AND ADVISORY BODIES

Prashantha B. Mandaawala - 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 legislation 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 a 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 advice 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 land and buildings with in the area
- To establish rules and regulations governing the use 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 COMPETENCIES OF THE ADVISORY BODIES IN RESPECT TO THE PRESERVATION OF 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 advice 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 Museums 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 in issuing permits for the Archaeological Department in the management and export of ancient art pieces. The number of members who serve in the Archaeological Advisory Committee is also not stipulated in the Act. As such 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 present the members who are appointed consist of Buddhists Priests, Members of Parliament who are competent in the subject of archaeology, Past Commissioners/Director Generals of the Archaeological Department, Archivists, Architectural Conservators, Members of the Cabinet, 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 consensus with regard to controversial matters.

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 these members is also not stipulated in the Act. As such present the members who are appointed consist of Buddhists Priests, Members of Parliament who are competent in the subject of archaeology, Past Commissioners/Director Generals of the Archaeological Department, Archivists, Architectural Conservators, Members of the Cabinet, 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 consensus with regard to controversial matters.

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 institution on the matters referred either by the Minister or the Head of the Department. As such, all meetings are held when the committee members 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 of the year. Hence the head of the relevant 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 himself. In some cases the committee chairing the Act 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 or 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.

Advisory Committees of the National Museums

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 submitted to the committee before it is implemented by any institution. But the matters related to the Archaeology, i.e. archaeological investigations, conservation 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 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. But in most cases when matters cannot be resolved the head of the relevant advisory committee 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 bodies 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 issued 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 from 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 least 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

1 http://www.gsa.gov/gsa/en/attachments/GSA_BASIC/with_annotationsYNC-h47-02%2052%2052%204C-6F.pdf (Accessed 13 Nov 2007)
2 http://www.gsa.gov/Portals/gsa/ep/contentView.do?programId=9140&channelId=13171&oid=9755&contentId=11669&eventType=3820&contentType=GSA_BASIC&programPage=%2F%2FProgram%2Fgss basic.jsp&P=5CC (Accessed 15 Nov 2007)
1. Deconcentrated / Decentralized Advisory Council on Historic Preservation. (See above.)

2. The primary focus of the Commission is the preservation of the historic monuments, though less important at the national level, is to have up to 100 members (not more than 60 representatives of non-governmental organizations (NGOs), and not more than 40 "outstanding persons" including no 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.

3. 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 advisory bodies with a variety of advisory and regulatory powers. (See above.)

4. 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 Properties) and incentives (e.g. grants to fund state and local programs) to encourage full participation in all levels of 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. These review boards perform a similar function in states that also have a state register of historic properties and listing in the Registry 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.10 National Register regulations do provide for the creation of state advisory bodies called State Review Boards.11 On the local level, submission of 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 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.12 On the local level, preservation commissions which are certified by the federal government as meeting certain requirements and serve in advisory capacity in the nomination process for the National Register of Historic Places.13

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

Federal Level: Advisory Council on Historic Preservation has the following advisory competences:

- Advise the President and Congress on historic preservation issues;
- Recommend legislative and administrative improvements to protect America's historic places of local significance;
- 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 the Congress;
- Educate stakeholders — including federal agencies, states 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 and how to achieve them, and the activities of the Council;
- Encourage training and education in the field of historic preservation;
- Serve in an advisory capacity in any 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.


7 Note 10, above, Section 60.5.


10 See section B.2, above.


13 The Advisory Council has no formal advisory role in the World Heritage List process. The World Heritage Program is administered by the World Heritage Centre, a United Nations agency. The World Heritage Committee is composed of representatives of 193 countries. The Advisory Council provides comments on the nominations of historic properties for inclusion on the World Heritage List. The Advisory Council also provides comments on the nominations of historic properties for inclusion in the National Register of Historic Places. The Advisory Council provides comments on the nominations of historic properties for inclusion in the National Register of Historic Places. The Advisory Council provides comments on the nominations of historic properties for inclusion in the National Register of Historic Places. The Advisory Council provides comments on the nominations of historic properties for inclusion in the National Register of Historic Places.
U.S. Department of the Interior.

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, archaeology, 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.

Term of office. Members (1), (3), and (8) through (11) serve four years from the expiration of their predecessor's term. The members appointed under (2) 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 an expertize 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 Title 106 of the National Historic Preservation Act. The federal agency officials responsible for a federal undertaking must consult with the SHPO (State Historic Preservation Office) and the THPO ( Tribal Historic Preservation Officer) to identify resources eligible for protection, determine whether the undertaking will have an adverse 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 an 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

Section 106 Regulations Flow Chart

E. Local government advisory bodies involved in the preservation of 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 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. 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 appropriate 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 issues of permits ("Certificates of Appropriateness") for the alteration or demolition of designated structures or new construction within historic districts. In other cases, these commissions...
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 Rank Center, International, Comparative and Graduate Legal Studies. His 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.

### 2007 Membership List

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International Council on Monuments and Sites

Conseil International des Monuments et des Sites

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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…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
Constraints:

- 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