

Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage

Symposium Proceedings Book



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019

22-24 October 2019
Gaziantep, Turkey



Gaziantep Metropolitan Municipality Cultural Publications—37

DEFINING THE ROLE OF LOCAL AUTHORITIES IN MANAGING AND PROPAGATING CULTURAL HERITAGE
International Symposium October 22-24, 2019
Symposium Proceedings Book

ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues, ICOMOS Turkey National Committee, Gaziantep Metropolitan Municipality

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ISBN: 978-605-80940-6-2

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ICLAFI Symposium and Annual Meeting 2019 is supported and hosted by Gaziantep Metropolitan Municipality. The proceedings book is published by Gazikültür A.Ş.

Cover Image: “The Gypsy Girl Mosaic” from the Ancient City of Zeugma (Photo by Nevit Dilmen)



Dear participants, distinguished members of ICLAFI,

We happily welcome you in Gaziantep at the 2019 Symposium and Annual Meeting of the International Scientific Committee on Legal, Administrative and Financial Issues established under the International Council of Monuments and Sites.

Gaziantep has been home to various civilizations throughout the history. Gaziantep region is a place where important civilizations such as Hittite, Roman, Seljuk and Ottoman have lived and left their traces. The uncovered cultural assets in Rumkale, Yesemek, Zeugma, Karkamış and Dülük reveal the historical background of the region and constitute important documents of human history. Gaziantep has been a centre of culture and trade throughout its history and continues to carry out pioneering works in industry, trade and cultural fields in our country.

As Gaziantep Metropolitan Municipality, we are aware of the importance and value of the above-ground and underground cultural heritage elements of the region, and we carry out many projects in order to protect our cultural values and transfer them to future generations. The street rehabilitation works that has started in Bey Neighbourhood in 2008 spread to all streets in the historical city centre. The Culture Road Project, covering Gaziantep Castle and its environs, has been resulted with the active participation of the citizens. Today the historical trade centre continues to contribute to the economic life of the city, with its original function, as an important trade area where traditional products and handcrafts are sold. In the historical city centre, many monumental buildings such as inns and baths are expropriated by the Municipality and re-functioned as museums/traditional production and exhibition centres and opened for public use. Being aware of the importance of public participation and awareness, some of the expropriated buildings were given for the use of women and children, and steps were taken to re-establish emotional ties between society and the historic urban fabric.

The city also has intangible values apart from tangible cultural assets reflecting the historical identity. Gaziantep was included in the UNESCO Creative Cities Network in the field of gastronomy in 2015. In this context, a gourmet restaurant has been opened, where traditional home cooking is made and taught in order to ensure the continuity of traditional culinary culture and to transmit to next generations properly.

Three areas in our region are in the World Heritage Tentative List. In 2012 “Yesemek Quarry and Sculpture Workshop” and “Archaeological Site of Zeugma”, in 2018 “the Underground Water Structures in Gaziantep; Livas' and Kastels” were included in the World Heritage Tentative List. Works on preparing management plan for Yesemek Quarry and Sculpture Workshop is in progress.

The conservation activities lead by the Gaziantep local authorities are carried out mainly by the units established within the Municipality and with the financial resources created by the Municipality. In this context, the Symposium which aims “Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage” and discusses the role of local authorities and the legislative and financial structures of different countries at local level on managing and propagating the cultural heritage, is a up to date and valid topic for Gaziantep.

I hope that the Symposium focusing on the topics of legal and organisational framework, financial issues, managing cultural heritage and capacity building practices and experiences in different countries will create a fruitful sharing environment for everyone.

Fatma ŞAHİN
Mayor of Gaziantep Metropolitan Municipality



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

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ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

Conservation of MOUNT NEMRUT as the Driver of the Development of Adıyaman Province

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Joining the academic staff of the Graduate Program in Conservation of Cultural Heritage, METU Department of Architecture in 1984, Conservation Architect Neriman Şahin Güçhan currently works as a professor at the same department. Her academic fields of interest include preservation, rehabilitation, and management of the heritage places; Turkish legislative & administrative system; training/education on the preservation of traditional houses and historical buildings and their construction techniques; Nemrut Mount Tümülüs, Adıyaman, Southern Anatolia Project (GAP), Ankara, Ancient Greek Settlements in Anatolia. Presently serving as a member of some of the Scientific Advisory Boards of heritage places such as two UNESCO World Heritage Sites as Ani Archeological Site, Diyarbakır City Walls, and Bodrum Castle. In between 2006-2015, Şahin Güçhan had been the coordinator for Commagene Nemrut Conservation and Development Program (www.nemrut.org.tr) which focuses on Nemrut Mount Tümulus, which is also a UNESCO World Heritage Site.

Abstract:

This presentation focuses on a special holistic process defined for the conservation of MOUNT NEMRUT, entitled as the *Commagene Nemrut Conservation and Development Program* and ended up with *Commagene Nemrut Management Plan* (CNMP). Its aim was to conserve Nemrut in accordance with contemporary conservation criteria. In partnership with Turkey's Ministry of Culture and Tourism (MoCT), Middle East Technical University (METU) signed a protocol in August 2006 to launch the Program.

The Program is completed at the end of 2012 and all its stages are gradually approved until 2015. At the beginning of this presentation, I will shortly introduce Mount Nemrut as a heritage place together with the content of the Program. Then I will focus on only three (3) important aspects of the Commagene Nemrut Management Plan (CNMP), as the most important element of this Program. Then I will finalize my talk with some remarking the latest developments about this process.

INTRODUCTION: Mount Nemrut as a Heritage Place

MOUNT NEMRUT was constructed in the north of Karadut village in Adıyaman on a summit dominating the environment. Belonging to the Kingdom of Commagene (~163 BCE - 72 CE) the Hierothesion of Mount Nemrut is a conical tumulus with a 30-35-degree slope at the center. It is surrounded by terraces in the east, west, and north. And there are three sacred processional roads approaching the cult center. The height of the Tumulus from its apex to the terraces is 50 meters while its diameter is 145 meters. It expands approximately over an area of 2.6 hectares together with the surrounding terraces. ⁽¹⁾

On the East and West terraces five limestone sculptures of the deities and King Antiochos I and two pairs of animal protectors, a lion and an eagle on their both sides stand facing backward in front of the Tumulus. Identical in both terraces, an inscription (*nomos*) comprising the will of King Antiochos I written in ancient Greek is placed behind the row of sculptures.

(1) DÖRNER, F.K., GOELL, T., 1963. *Arsameia Nymphaeion*, Verlag Gebr. Mann, des Mithradates Kallinikos von 1953-1956, Istanbul Forschungen 23, Verlag Gebr. 1-60, 305-307; Mann, Berlin, 1963.
GOELL, T., 1952. Nimrud Dagı, *Archaeology* 5, 136-144.
GOELL, T., 1961. T. Goell, Throne Above the Euphrates, *National Geography*, 1961/3, 119, 390-406.
SANDERS, D. H., 1996. *Nemrud Dağı the Hierothesion of Antiochos I of Commagene*, Vol.I-II, Indiana Eisenbrauns, Winona Lake, USA.

On the East and West terraces, there are also bases of stelae with altars in their front. Originally on the West terrace, a series of stelae depicting the hand shake scenes (Dexiosis) a characteristic of Nemrut monument and the Lion Horoscope are located. On the East terrace there is an altar. ⁽²⁾

Content of the PROGRAM

The Since its discovery in 1881, MOUNT NEMRUT has been investigated by many native and foreign researchers in the following chronological order: Otto Puchstein and Karl Sester (1881), Osman Hamdi Bey and Osgan Efendi (1882), Karl Humann and Otto Puchstein (1882), Theresa Goell (1956-1973), Karl F. Dörner (1954-1958 and 1984), Sencer Şahin (1987-1989), Herman A.G. Brijder and Maurice Crijns (2001-2003).⁽³⁾

The major aim of these studies that lasted more than 100 years was to discover the tomb chamber of King Antiochos I. Despite all these efforts, the mystery of King Antiochos's burial chamber remains. Although there are a few repairs and restorations especially after 1973 , the vestiges of MNT could not be conserved effectively and nor they are presented to visitors in an appropriate contemporary manner. In fact, some implementations even damaged the monuments.⁽⁴⁾

While Nemrut's role in Adıyaman's development was included in upper scale planning studies, these decisions did not influence the work on Nemrut, and therefore, its contribution to physical and social environment could not be achieved.

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- (2) SANDERS, D. H., 1996.
(3) BRIJDER, H., MOORMANN, E., 2004. Nemrut Raporu, Unpublished report, Ankara.
BRIJDER, H., MOORMANN, E., 2005. Nemrut Raporu, Unpublished report, Ankara.
DÖRNER, F.K., GOELL, T., 1963.
DÖRNER, F.K., 1990. Nemrut Raporu, Unpublished report, Ankara.
DÖRNER, F.K., 1991. Nemrut Raporu, Unpublished report, Ankara.
GOELL, T., 1952.
GOELL, T., 1961.
HUMANN, K., PUCHSTEIN, O. 1890. Reisen in Kleinasien und Nordsyrien-ausgeführt im Auftrage der Kgl. Preussischen Akademie der Wissenschaften, beschrieben von Karl Humann and Otto Puchstein, Verlag von Dietrich Reimer, Berlin.
OSMAN HAMDI - OSGAN EFENDI 1883. Le Tumulus de Nemrud Dag, Arkeoloji ve Sanat Yayınları, (İstanbul 1987, 2nd. Ed.).
SANDERS, D. H., 1996.
ŞAHİN, S., 1988. Nemrut-Dağ'a Yapılan Bir Keşif Seyahati ve Sonuçları, VI. Araştırma Sonuçları Toplantısı, 11-15.
ŞAHİN, S., 1991a. Nemrut-Dağ 1989 Çalışmaları ve Genel Sorunları, IX. Araştırma Sonuçları Toplantısı, 193-201.
ŞAHİN, S., 1991b. Forschungen in Kommagene II: topographie, Epigraphica Anatolica 18, 110-115.
ŞAHİN, S., 1992. Nemrut-Dağ Jeofizik Ölçümlerinin Arkeolojik Açidan Değerlendirilmesi, X. Araştırma Sonuçları Toplantısı, 121-133.
ŞAHİN, S., 1998a. Nemrut Dağı Tapınak Mezarındaki Büyük Kült Yazıtı Çevirisi, Tanrılar Dağı Nemrut, 30-35 (İstanbul 1998)
ŞAHİN, S., 1998b. Kommagene Ülkesi ve Tanrılar Tahtı Nemrut Dağı, Tanrılar Dağı Nemrut, 36-44 (İstanbul 1998)
ŞAHİN, S., 2004. Sahipsiz Kültür Mirasımız Nemrut Dağı, Bilim ve Ütopya, 26-31.
(4) SANDERS, D. H., 1996.
DÖRNER, F.K., 1991.
ŞAHİN GÜÇHAN, N., 2011a. “The Kommagene Nemrut Conservation and Development Program: An Approach to the Conservation Problem of Nemrut Dağı Tumulus”, in: E. Winter (ed.), Von Kummuh nach Telouch. Archäologische und Historische Untersuchungen in Kommagene. Dolichener und Kommagenische Forschungen IV. Asia Minor Studien 64, Bonn 2011, 309-339.
BRIJDER, H., MOORMANN, E., 2004.
BRIJDER, H., MOORMANN, E., 2005.
ŞAHİN, S., 2004.

Commagene Nemrut Conservation and Development Program was prepared under such circumstances with a holistic approach, consisting of many sub-projects including ⁽⁴⁾

- Documentation, Restitution & Conservation Projects for MOUNT NEMRUT,
- Environmental Design Project for the site and Visitors Center Projects
- and Commagene Nemrut Management Plan in line with conservation legislation in Turkey.

As I mentioned before, between them I will focus only Commagene Nemrut Management Plan (CNMP) today, pointing out its three (3) important aspects. These are:

- Finding the spirit of place of Mount Nemrut, to define the mission of MP,
- Activating economic resource potential of Mount Nemrut together with its context,
- Moderating a Participatory Planning Process in the preparation of the management plan.

First, I would like to show how the Mount Nemrut is a unique site due to the way that significant cultural heritage elements and their places are contextually inter-related.

COMMAGENE NEMRUT MANAGEMENT PLAN

Finding the spirit of place of Mount Nemrut, to define the mission of MP

It is a fact that the cult area is a spectacular structure and it has *material entity based on the aesthetic and visual integrity, which emerges due to its location and landscape*. Together with its unique and extraordinary material entity, it also conveys a valuable immaterial meaning as part of the Commagenean setting, and has symbolic meanings that are formed through its context.⁽⁵⁾

MOUNT NEMRUT was constructed in the period of King Antiochos I (69-32 BC), who was the ruler in the most thriving period of the Commagene Kingdom. The capital of the Commagene Kingdom was Samosata, located at the crossroads of the Euphrates separating the east and west where the Seleucid-Persian cultures meet. Other important cities of the region were Gerger, Arsemia, Perre, Belkis and Zeugma.⁽⁶⁾

(4) ŞAHİN GÜÇHAN, N., 2010. “Adıyaman’daki Kültür Varlıklarının Nemrut Dağı Odaklı Değerlendirilmesi: Kommagene Nemrut Koruma Geliştirme Programı (KNKGP)”, II. Ulusal Medeniyetler Kavşağı Adıyaman Sempozyumu, Ed. S. Öztürk, Y: Tosun, Adıyamanlılar Vakfı, 29-62.

ŞAHİN GÜÇHAN, N., 2011a.

(5) ŞAHİN GÜÇHAN, N., 2011a.

ŞAHİN-GÜÇHAN, N., 2011b. Keynote speaker: “Conservation of relationship between place and context: Mount Nemrut Tumulus”, in Book of Conference Abstracts: BHCICOP-The 4th International Conference on Hazards and Modern Heritage: The Importance of Place, 13 - 16 June, 2011, Sarajevo, pp:151-167.

(6) DÖRNER, F.K., GOELL, T., 1963.

GOELL, T., 1952.

SANDERS, D. H., 1996.

WAGNER, J., 2000. Gottkonige am Euphrat: neue Ausgrabungen und Forschungen in Kommagene, Verlag Philipp von Zabern, Rhein.

King Antiochos I, a descendant of both the Persian and Seleucid cultures, underlined his power by erecting a statue of himself near those of the gods in MOUNT NEMRUT. He also aimed to integrate the Helen and Persian cultures by writing their gods’ names in both languages in his will (*nomos*) which was carved to the rear of the statues of the gods: King Antiochos I, Commagene/Tyche, Zeus/Oromasdes, Apollon/Mithras-Helios-Hermes and Herakles/ Artagnes-Ares, from left to right respectively. This symbolic and meaningful action was attributed to Antiochos’ order to the MOUNT NEMRUT.⁽⁷⁾ In fact, this symbolic expression may be defined as a conscious policy, and in a way a strategic move, given the multi-cultural and geo-politically important territory ruled over by Antiochos I. It can be seen that this strong and existential policy was derived from *the place and formed the context* in an interrelated manner.

As an example of this policy of Antiochos, the relationships of the sacred sites across the Commagenian territory can be shown. While King Antiochos I had chosen the summit of the highest mountain for his tomb as a place, he most probably planned the Karakuş Tumulus as a burial site for his mother and the other women of the Royal family to the south-west of Nemrut, and hierothesion of Arsemia for his father Mithridates I.⁽⁸⁾

The cult area of this powerful king would at the time, have been visible from Gerger, located to the far west of the Kingdom, and from the Zeugma cult area, located to the far south. In terms of location, nearly all the cult areas and burial sites were built at strategically important points, so that today the visual interpretation between them can be understood with a naked eye.

The relationships between these places and the selection of their locations indicate an inter-relationship of the place and the context, as defined by King Antiochos I and the other Commagenian kings with an aim *to integrate the Eastern and Western religions while conveying the contextual symbolic immaterial values*.

This clearly shows that the conservation problem of MOUNT NEMRUT is not only limited to the conservation of the *material entity of the place* with respect to the aesthetic and visual integration created by the landscape but also it addresses the issue of conservation in relation to the *contextual symbolic meaning values* that Antiochos I attributed to Nemrut.⁽⁹⁾

This understanding and redefining of the *meaning and contextual relations* of Mount Nemrut led us to use *the Spirit of Place* as the main driving force behind the vision and policy definitions of the Management Plan. This was also the main theme of ICOMOS – 16th General Assembly and Symposium held in Quebec, Canada, in 2008.

(7) SANDERS, D. H., 1996.

(8) ŞAHİN GÜÇHAN, N., 2011a.

ŞAHİN-GÜÇHAN, N., 2011b.

(9) ŞAHİN GÜÇHAN, N., 2011a.

ŞAHİN-GÜÇHAN, N., 2011b.

Activating economic resource potential of Mount Nemrut together with its context

In accordance with the spirit of *Nemrut* and its context, another important factor that should be taken into consideration was the Adıyaman Province, which on the whole follows the original boundaries of Commagene.⁽¹⁰⁾

Even if the Adıyaman Province has protected the 2000-year-old Commagene context to a large extent, today it is one of the least developed cities in Turkey. MOUNT NEMRUT and Commagene are now the most important (*heritage*) resources of tourism for Adıyaman since it lost 80% of its fertile agricultural lands due to the Atatürk Dam.

So we argued that the presentation of Mount Nemrut following a holistic approach within the context of Commagene should also support the development of tourism in the Adıyaman Province in a controlled manner. Thus, it becomes possible to present the region in such a way that visitors can perceive the context of the *Commagenian* culture.

In this respect, starting the year 2006 all cultural heritage assets of Adıyaman are investigated. Then we developed an *itinerary based on important heritage places having strong relations with each other that have the capacity for the presentation of the region upon a few interventions.*⁽¹¹⁾ The properties and sites comprised by Management Plan are as follows:

1. **Kâhta Province:** Mount Nemrut, Arsameia, Yenikale, Cendere Bridge and Karakuş Tumulus
2. **Sincik Province:** Heroons of Derik
3. **Adıyaman City Centre:** Perre Archaeological site, Palanlı Cave, Haydaran and Turuş rock-cut burial chambers and ancient stone quarries, Tuzhan and Otrakçı Pazar in Adıyaman centre.
4. **Besni Province:** Atmalı village and rock-cut burial chambers, Archaeological remains of Old Besni, Sofraz Tumuli and Kızılın Village

In this respect, we first determined the historical, architectural and natural properties of these places and their problems together with the participation of the local stakeholders. All this generated information helped formulate the vision, policy, and strategies specific to each heritage place as well as to identify in a total of 117 sub-projects specific to each strategy (Table 1). And as an output of the Management Plan, a Spatial Strategic Plan and the project action plans were prepared.

(10) ŞAHİN GÜÇHAN, N., 2016a. “Mount Nemrut”, in: Unesco World Heritage in Turkey, Eds: N. Ertürk, Çulcuoğlu, Y. Erkan, Ö. Karakuş, UNESCO & Turkish National Commission for UNESCO, Grafiker Ltd.Şti., Ankara, pp: 130-161.

ŞAHİN GÜÇHAN, N., 2016b. “Holistic Conservation of a UNESCO World Heritage Site: Mount Nemrut Tumulus”, Conservation of Cultural heritage in Turkey, eds. Z. Ahunbay, D. Mazlum, Z. Eres, English Eds. L. Thys-Şenocak, E. Yıldırım, ICOMOS Turkey, Ege Yayınları, İstanbul, pp. 273-296.

(11) ŞAHİN GÜÇHAN, N., 2016a.
ŞAHİN GÜÇHAN, N., 2016b.

Alongside MOUNT NEMRUT, the Management Plan aims at uniting and presenting the 15 cultural assets, the majority of which belong to the Commagene civilization as well as the villages and the people in their locality within an itinerary scenario for visitors.⁽¹²⁾

Then, upon the completion of the defined projects, visitors will become acquainted not only with Nemrut itself but also with the *material and immaterial* features of the context. This will, in turn, foster local tourism development of the region.

Activating the economic resource potential of Mount Nemrut together with its context by assessing the heritage as a driver of development in the Adıyaman Province became an important policy in pursuit of conservation. This approach is also fully compatible with the Final Declaration (Cominiqué) of 17th ICOMOS General Assembly “Heritage, driver of development” held in Paris in December, 2011.

Moderating a Participatory Planning Process in preparation of the CNMP

The last but not the least important factor that I would like to explain is the moderation of a participatory planning process as part of the knowledge generation of the management plan.⁽¹³⁾

Due to inconveniences caused by the dispersion of power and authority, different levels of expertise on the issue and the lack of experience of institutions in developing joint programs and projects effectively, conservation efforts directed to Mount Nemrut Tumulus could not be implemented effectively yet.⁽¹⁴⁾

To see the list of the number of central and local authorities responsible for the conservation of the MOUNT NEMRUT can illustrate the size of the problem. When the boundaries of the management plan expanded beyond the archaeological site of MOUNT NEMRUT to include 15 more places, the stakeholder map of the study was also changed.

Taking into consideration all these possible managerial problems, we initially designed a process that ensured the participation of stakeholders, yet we allowed it to be modified with respect to the proce-

(12) ŞAHİN GÜÇHAN, N., 2016a.

ŞAHİN GÜÇHAN, N., 2016b.

(13) ATAÖV, A., BİLGİN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019. “Engaging in Politics of Participation: Managing Power through Action Research, Chapter 5, in: Politics and Conflict in Governance and Planning: Theory and Practice (14 Chapters), eds: A. Eraydın, K. Frey, Routledge- Taylor and Francis Group, New York, ISBN: 978-0-8153-6919-6 (hbk); ISBN: 978-1-351-25288 (ebk), pp: 75-92, total ps. 260.

ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., 2017a. “Kommagene Nemrut Yönetim Planı Ana Çerçevesi ve Yöntemi”, Kommagene-Nemrut Yönetim Planı, İpekyolu Kalkınma Ajansı, Adıyaman Valiliği, Kültür ve Turizm Bakanlığı, ODTÜ, Sonsöz Gaz. Mat. A.Ş., Ankara, ISBN 978-975-17-4002-1, ss: 11-35

ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., OSMAY, S., 2017b. “Kommagene Nemrut Yönetim Planı Senaryosu ile gerçekleştirilecek Projeler ve Süreçleri”, Kommagene-Nemrut Yönetim Planı, İpekyolu Kalkınma Ajansı, Adıyaman Valiliği, Kültür ve Turizm Bakanlığı, ODTÜ, Sonsöz Gaz. Mat. A.Ş., Ankara, ISBN 978-975-17-4002-1, ss: 488-521.

(14) ATAÖV, A., BİLGİN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.

dural and contextual needs. As a result, what was implemented contained five processes that ran in parallel to each other.⁽¹⁵⁾

In the first, a process of mobilization and mitigation of central authorities both national and local was moderated. This involved a heavy-duty of managing power relations in politics.

In the second, a group of around 50 experts gathered and produced expertise knowledge about the site. This information was stored and systematized by using GIS.

In the third, we conducted a series of participatory sessions with local/regional decision-makers (as representatives of institutions) and local leaders of involved villages (including mukhtars, teachers and imams) by using workshops and focus groups. This required us to go back to the field periodically and to systematically conduct a simple process of planning with them, including the assessment of the site and the formulation of future decisions.⁽¹⁶⁾

What was unique about this process was that, it allowed involved stakeholders to generate the decisions themselves but not we formulated for them. This was essential for this project because decisions needed to be "meaningful" to locals and we needed to ensure their commitment for future action, both for their empowerment and democratization of the society in general and for the implementation of the projects.

Fourth, the expertise outcomes and the locally generated knowledge were integrated and confirmed back with the central authorities.

And finally, during the whole process, dissemination and coordination took place through numerous meetings and organization to conferences both nationally and internationally.⁽¹⁷⁾ The democratic aspect of this process suits well with the aim of the ICOMOS meeting realized in Delhi, India in 2017. The theme of the Scientific Symposium was “Heritage and Democracy”.

CONCLUSION

CNMP is no doubt an important example as the first Plan in this extent. The PROGRAM is completed and all its stages are approved gradually in 2015. Besides with its big researcher team which reached 50, since 2006 the COMMAGENE NEMRUT CONSERVATION AND DEVELOPMENT PROGRAM can be defined as the first generation management plan of MOUNT NEMRUT.

(15) ATAÖV, A., BILGIN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.

(16) ATAÖV, A., BILGIN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.

(17) ATAÖV, A., BILGIN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.

Because while the hands-on process was continuing between 2006 and 2015, as the METU team we were both in the field in Adıyaman and in Ankara. We brought the problems into the discussion and try to find solutions with the collaboration of various stakeholders.⁽¹⁸⁾

Between these stakeholders, there were central authorities such as the Ministry of Culture and Tourism, Ministry of Forest, and members of the Parliament, academia and experts, local authorities such as Governor, officers and muhtars, people and experts working in the tourism sector, and even local people.

During these years some urgent issues were solved and even some restoration works started. We can mention the Implementation of Kocahisar Village Infrastructure Project, Yenikale Restoration and Implementation Project and Stabilization of Sofraz Tumulus Road as examples.

It has been stated many times by local authorities that the resources provided with the support of the METU team from the center for the protection of cultural assets in Adıyaman between 2006 and 2015 are more than the total resources provided during the history of the Republic. But in 2015 after the approval of our Management Plan, we lost our former active position/role.

By law, besides the Nemrut Site Directorate, Advisory Board and Executive Board were established after 2015. But in fact "Site Directorate" is not a unit, is represented by a single person who is an officer or a director (usually museum directors) living in that locality. This person has some responsibilities but no authority. There is no human and/or financial source to support this person. So, Site Directorship was and still is a weak body not properly defined in our legislation. We as METU team were aware of this problem and forcing the central authority for its solutions and even defined this as a problem and action in our Management Plan.⁽¹⁹⁾

On the other hand, we insisted on to find the most appropriate person to be appointed as Site Director. Mahmut Demirtaş, Adıyaman Governor of that time proposed Onur Yıldız who is an architect. In addition to his duties as an officer working in Silk Road Development Agency, which is an authority responsible from the development of the 3 provinces in the region, including Şanlıurfa, Gaziantep and Adıyaman, Onur Yıldız took the responsibility to be the Site Manager of the Mount Nemrut. In fact, this was a turning point for the implementation of the Management Plan.

Considering the shortcomings related with local capacity and difficulties in provision of sources, we did one more thing in 2009 parallel to the preparation of the Management Plan. While ending this presentation I should mention the project we prepared to create initial financial source for the implementation of the Management Plan.

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- (18) ATAÖV, A., BİLGİN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.
ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., 2017a.
ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., OSMAY, S., 2017b.
- (19) ATAÖV, A., BİLGİN ALTINÖZ, G., ŞAHİN GÜÇHAN, N., 2019.
ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., 2017a.
ŞAHİN GÜÇHAN, N., BİLGİN ALTINÖZ, G., ATAÖV, A., OSMAY, S., 2017b.

A Project for Revitalization of Tourism Sector in Adıyaman

In 2009, together with the support of some local directors we prepared a funding project proposal titled “Revitalization of Tourism Sector in Adıyaman” in the name of the Adıyaman Governorship. The aim was to find financial sources, which would lead for the realization of certain projects under the Management Plan within the scope of the IPA - Regional Competitiveness Operational Programme (RCOP) of the European Union in 2009.

Our Proposal accepted by the Regional Competitiveness Operational Programme with a provision of a fund of 9.5 million Euro.

But due to some shortcomings in implementation, our project postponed to the second phase of the Programme. During this postponing time all liabilities, including preparation of architectural implementation projects, technical specifications and terms of references for tenders et cetera, were provided by Adıyaman Governorship with our support but mainly by the special efforts of the two local directors who believed the whole process.

It is an honour and pleasure for me to mention their names: The first one is Mustafa Ekinici, Culture Director of Adıyaman Province, who is an English Teacher. The second one is Onur Yıldız, Site Director of Mount Nemrut, who is an architect working in Silk Road Development Agency. I must confess that they are my heroes. Without their diligent work ethic and endless efforts, it would not be possible to complete this process successfully.

The Project for Revitalization of Tourism Sector in Adıyaman, which is the beneficiary of the Governorate of Adıyaman, is the operating authority of the Ministry of Industry and Technology and financed under the EU-IPA, consists of 3 components: construction works, consultancy, and technical assistance.

After the completion of the architectural / landscaping projects and their approval by the Regional Conservation Council, following the approval of the project documents by the EU Delegation, the operating agreement was signed between the parties on November 2017.

All 3 tenders for the Revitalization of the Tourism Sector in Adıyaman project are expected to be completed by the end of 2019. As far as I know, two of them already completed. After that, contracts will be signed with the program authority and contractors in 2020, the project activities are expected to begin and to be completed within 18 months. What means this, the physical results of this 13 years of research, work, patience, and determination will become visible within the next two years.

This table shows the titles of the activities/projects to be implemented within the financial support of the Project for the Revitalization of the Tourism Sector in Adıyaman. As can be seen, there are various activities in the Project. Such as implementation of the Landscaping Projects for 9 out of 15 areas

determined in Management Plan or projects aiming capacity building and development of tourism to be applied in different locations.

Thus, in the first phase of the Management Plan approved in 2015, which covers the 2015-2020 period, 57.5% of the 134 projects will be realized despite a two years' delay. This would be more than a success for an unstable country like Turkey, where the agenda is changing quickly.

Final Words

After the completion of all projects' phases by the end of 2021, it is expected that positive changes in MOUNT NEMRUT and Adiyaman will be noticed and they all together indicate the success of the Commagene Nemrut Conservation and Development Program.

It is also expected that this program can serve as an integrated model in the conservation of similar archaeological sites throughout Turkey.

Thus despite all experienced obstacles, the success of implementation will be a collective product of the people of Adiyaman being in the first place, Ministry of Culture and Tourism, Governance of Adiyaman, Scientific Advisory Board of Nemrut and Middle East Technical University Team.

WEB sites:

Commagene Nemrut Conservation and Development Program Website: www.nemrut.org.tr

UNESCO Official Website: <http://whc.unesco.org/en/list/448/documents/>

Table 1: EU Funded IPA – RCOB Project for “Revitalization of Tourism Sector in Adıyaman”			
TA: Technical Assistance component; CW: Construction Works component			
No	PROJECTS to be Implemented in between: 2015-2019	STATUS	FINANCIAL SOURCES & RESPONSIBLE BODY
1	Kommagene Nemrut Area Management Project	Cont'	
2	Monitoring of Historical Areas and Artifacts Project	Cont'	Regularly, by Museum Directorate
3	Improving Administrative and Legal Processes	No Start	
4	Touristic Itinerary Route	Cont'	Revit-Tourism Pr, TA
5	Signboarding Project	Cont'	Revit-Tourism Pr, TA
6	International Commagene Painting & Sculpture Festival	Cont'	Revit-Tourism Pr, TA
7	Informative Publications Project	Cont'	Revit-Tourism Pr, TA
8	Kommagene Nemrut Archive Project	No Start	
9	Documentary Project	Cont'	Revit-Tourism Pr, TA
10	Exhibition Project	Cont'	Revit-Tourism Pr, TA
11	Promotion of Local gastronomy	Cont'	Revit-Tourism Pr, TA
12	Introduction of Commagene Nemrut Management Plan to different target groups	Cont'	Revit-Tourism Pr, TA
13	Area Management Unit Training Project	Cont'	Revit-Tourism Pr, TA.
14	Conservation/Restoration Focused Training Project	Cont'	Revit-Tourism Pr, TA
15	Tourism Focused Training Project	Cont'	Revit-Tourism Pr, TA
16	Social Awareness Project	Cont'	Revit-Tourism Pr, TA
17	Kızılın Bridge Restoration and Landscaping Project (preparation)	Completed	Gen. Dir. of Highways, Dept. of Historic Bridges Landscaping Project approved by the Regional Conservation Council
18	Kızılın Bridge Restoration and Landscaping Project (implementation)	Cont'	Gen. Dir. of Highways, Dept. of Historic Bridges Revit-Tourism Pr, CW.
19	Euphrates Riverfront Landscaping Project (preparation)	No Start	
20	Euphrates Riverfront Landscaping Project (Impl.)	No Start	
21	Göksu River Rehabilitation Project	No Start	
22	Göksu River Environmental Pollution Monitoring Project	No Start	
23	River Type Recreational Boats Procurement Project	Completed	Adıyaman Special Provincial Administration, reserved for use in Birecik Basin
24	Abuldeyş Caves Restoration Project (preparation)	No Start	Beyond the authority of Adıyaman Governance (in Şanlıurfa)
25	Abuldeyş Caves Restoration Project (Impl.)	No Start	Beyond the authority of Adıyaman Governance (in Şanlıurfa)
26	Rehabilitation of Göksu Bridge & Kızılın Village Connection Road	Completed	Gen. Dir. of Highways, Dept. of Historic Bridges
27	Touristic Trekking Route Project	Cont'	Revit-Tourism Pr, TA
28	Trekking Route Landscaping Project	Cont'	Revit-Tourism Pr, TA
29	Mount Nemrut Landscaping Project (preparation)	Completed	Ministry of Culture and Tourism
30	Mount Nemrut Landscaping Project (Impl.)	Completed	Ministry of Culture and Tourism
31	Mount Nemrut Visitors House Management and Operation Project	Completed	Ministry of Culture and Tourism
32	Project for Restoration of Mount Nemrut Tumulus	Cont'	Restoration implementations and training activities included in the Ministry's Investment Program of 2019
33	Nemrut and Karadut Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.

Table 1: EU Funded IPA – RCOB Project for “Revitalization of Tourism Sector in Adıyaman” (continuing) TA: Technical Assistance component; CW: Construction Works component			
No	PROJECTS to be Implemented in between: 2015-2019	STATUS	FINANCIAL SOURCES & RESPONSIBLE BODY
34	Karadut Village Infrastructure Improvement Project	No Start	
35	Karadut Village Touristic Goods Applied Training and Production Project	Cont'	Revit-Tourism Pr, TA
36	Karadut Home Pension Project	Cont'	Revit-Tourism Pr, TA
37	Karadut Organic Vineyard Horticulture Project	No Start	
38	Karadut Livestock Project	No Start	
39	Nemrut Conservation / Restoration Project	Completed	Project and approximate costs have been prepared by METU and approved by Cons. Council
40	Nemrut Conservation / Restoration Project (Impl.)	Cont'	Restoration implementations and training activities included in the Ministry's Investment Program of 2019
41	Field Guidance Training Project	Cont'	Revit-Tourism Pr, TA
42	KNYP Visitor Management	Completed	
43	Monitoring of Services in Mount Nemrut Archeological Site and Visitors Houses	Completed	
44	Arsemia Documentation and Landscaping Project (Prep.)	Completed	Arsemia Documentation and Landscaping Project prepared and approved by the Council
45	Arsemia Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
46	Project for Prevention of Decay in Arsemia	No Start	
47	Yenikale Documentation and Landscaping Project (prep.)	Completed	Yenikale and Landscaping Project prepared and approved by the Council
48	Yenikale Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
49	Yenikale Restoration Project (Impl.)	Cont'	1st & 2nd stages completed, 3rd stage is continuing with the financial support of SilkRoad Development Agency
50	Kocahisar Cultural Village Project	Cont'	Revit-Tourism Pr, TA
51	Kocahisar Village Stone Street Pavement Project	No Start	
52	Kocahisar Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.
53	Kocahisar Village Infrastructure Improvement Project	No Start	
54	Kocahisar Organic Vineyard Horticulture Project	No Start	
55	Kocahisar Livestock Project	No Start	
56	Kocahisar Home Pension Project	Cont'	Revit-Tourism Pr, TA
57	Kocahisar Village and Yenikale Arsemia Archeological Areas Conservation Master Plan Preparation Project	No Start	
58	Karakuş Documentation and Landscaping Project (prep.)	Completed	Karakuş Landscaping Project prepared and approved by the Council
59	Teğmenli Livestock Project	No Start	
60	Karakuş Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
61	Cendere Bridge Documentation & Landscaping Project (prep.)	Completed	Cendere Bridge Landscaping Project prepared and approved by the Council
62	Cendere Bridge Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
63	Cendere Bridge Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.

Table 1: EU Funded IPA – RCOB Project for “Revitalization of Tourism Sector in Adıyaman” (continuing) TA: Technical Assistance component; CW: Construction Works component			
No	PROJECTS to be Implemented in between: 2015-2019	STATUS	FINANCIAL SOURCES & RESPONSIBLE BODY
64	Burmapınar Home Pension Project	Cont'	Revit-Tourism Pr, TA
65	Burmapınar Livestock Project	No Start	
66	Derik Documentation and Landscaping Project (prep.)	No Start	
67	Derik Landscaping Project (Impl.)	No Start	
68	Derik Ters Lale Koruma Projesi	No Start	
69	Derik Heritage Area and Settlement Roads Improvement & Rehabilitation Project	No Start	
70	Derik Sacred Site Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.
71	Derik Village Organic Horticulture Project	No Start	
72	Perre Landscaping Project (Impl.)	Completed	Realized with financial support of Ministry of C&T in 2013.
73	Pirin Village Conservation Master Plan preparation	No Start	
74	Research Project for new settlement alternatives	No Start	
75	Pirin Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.
76	Pirin Home Pension Project	Cont'	Revit-Tourism Pr, TA
77	Pirin Community Center Project	No Start	
78	Irrigation Project for the proper use of Roman Pool	No Start	
79	Perre Landscaping Project (Impl.)	Completed	Financed & completed by Ministry of Culture & Tourism in between the years 2014-2015.
80	Haydaran Documentation & Landscaping Project (prep.)	Completed	Haydaran Rockcut Tombs Landscaping Project prepared and approved by the Council
81	Haydaran Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
82	Taşgedik Village Street Pavement Project	No Start	
83	Taşgedik Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.
84	Taşgedik Home Pension Project	Cont'	Revit-Tourism Pr, TA
85	Taşgedik Touristic Goods Applied Training and Production Project	Cont'	Revit-Tourism Pr, TA
86	Taşgedik Irrigation Project	No Start	
87	Taşgedik Livestock Project	No Start	
88	Taşgedik Village Environmental Pollution Monitoring Project	No Start	
89	Palanlı Documentation & Landscaping Project (prep.)	Completed	Palanlı Cave Landscaping Project prepared and approved by the Council
90	Palanlı Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
91	Palanlı Village Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.

Table 1: EU Funded IPA – RCOB Project for “Revitalization of Tourism Sector in Adıyaman” (continuing) TA: Technical Assistance component; CW: Construction Works component			
No	PROJECTS to be Implemented in between: 2015-2019	STATUS	FINANCIAL SOURCES & RESPONSIBLE BODY
92	Palanlı Village Precaution Development against Geological Threats	No Start	
93	Palanlı Village Livestock Project	No Start	
94	Palanlı Village Environmental Pollution Monitoring Project	No Start	
95	Otrakçı Bazaar Restoration & Street Rehabilitation Project	Completed	Adıyaman Municipality Restoration and Street Rehabilitation Project prepared and approved by the Council.
96	Otrakçı Bazaar Restoration & Street Rehabilitation Project Implementation	Completed	In 2013 and 2014, the project was implemented in two stages with the financial support of the Silk Road Development Agency.
97	Tuzhanı Restoration Project	Completed	Project prepared with the financial support of Adıyaman Governance and approved by the Council
98	Tuzhanı Restoration Implementation	Cont'	Implementation is continuing with the financial support of the Silk Road Development Agency
99	Otrakçı Bazaar Waste Collection Project	Completed	Project prepared with the financial support of Adıyaman Municipality in 2014.
100	Improvement of Accommodation Standards in Adıyaman City Center	No Start	
101	Adıyaman Touristic Goods Applied Training and Production Pr.	Cont'	Revit-Tourism Pr, CW
102	“Kommagene Odak” Building Architectural Design Project	Completed	Project prepared with the financial support of Adıyaman Governance in 2017.
103	Implementation of Kommagene Odak Building	Cont'	Revit-Tourism Pr, CW
104	Turuş Documentation & Landscaping Project (prep.)	Completed	Turuş Landscaping Project approved by the Şanlıurfa KVKBK in 29.03.2018, with the decision numbered 3293.
105	Turuş Landscaping Project (Impl.)	Cont'	Revit-Tourism Pr, CW
106	Turuş Kültürel Miras ve Yerleşim Bağlantı Yollarının Sağıklaştırılması Projesi	Cont'	Revit-Tourism Pr, CW
107	Atmalı Roc-carved Tombs Scientific Excavation and Cleaning Works	No Start	
108	Atmalı Roc-carved Tombs Documentation & Landscaping Project (prep.)	No Start	
109	Atmalı Roc-carved Tombs Landscaping Project (Impl.)	No Start	
110	Atmalı Cultur Village Project	No Start	
111	Atmalı Settlement Stone Street Pavement Project	No Start	
112	Atmalı Heritage Area and Settlement Roads Improvement & Rehabilitation Project	No Start	
113	Atmalı Village Panoramic Viewpoints Project	No Start	
114	Sofraz Tumuli Restoration & Landscaping Project (Prep.)	No Start	
115	Sofraz Tumuli Restoration & Landscaping Project (Impl)	No Start	
116	Sofraz Creek Rehabilitation Project	No Start	
117	Sofraz Creek Environmental Pollution Monitoring Project	No Start	
118	Sofraz Heritage Area and Settlement Roads Improvement & Rehabilitation Project	No Start	
119	Sofraz Tumuli Archeological Sites Conservation Master Plan Preparation	No Start	

Table 1: EU Funded IPA – RCOB Project for “Revitalization of Tourism Sector in Adıyaman” (continuing) TA: Technical Assistance component; CW: Construction Works component			
No	PROJECTS to be Implemented in between: 2015-2019	STATUS	FINANCIAL SOURCES & RESPONSIBLE BODY
120	Sofraz Village Infrastructure Improvement Project	No Start	
121	Üçgöz Village Organic Horticulture Project	No Start	
122	Old Besni Restoration & Landscaping Project	Completed	Project Approved by Şanlıurfa KTVKBK, in 29.03.2018 with the decision numbered 3286.
123	Old Besni Restoration & Landscaping Project	Cont'	Revit-Tourism Pr, CW
124	Besni Creek Rehabilitation Project	Cont'	Besni Municipality working on this project
125	Besni Creek Environmental Pollution Monitoring Project	No Start	
126	Kızılın Culture Village Project	Cont'	Revit-Tourism Pr, TA
127	Kızılın Village Waste Collection Project	Completed	Adıyaman Special Provincial Administration purchased garbage containers for all rural settlements and launched the rural garbage collection project in 2018.
128	Kızılın Village Stone Street Pavement Project	No Start	
129	Kızılın Village Facade Rehabilitation Project	No Start	
130	Kızılın Afforestation Project	No Start	
131	Kızılın Home Pension Project	Cont'	Revit-Tourism Pr, CW
132	Kızılın Village Organic Horticulture Project	No Start	
No Start		56	
Completed		32	
Continuing		44	
TOTAL		132	

Table 2: PROJECTS to be Implemented in between: 2015-2019		
STATUS	#	%
No Start	56	42,5
Completed	32	24,2
Continuing	44	33,3
TOTAL	132	100

Table 3: Number of CONTINUING PROJECTS to be Implemented within the content of Revit-Tourism Project	
Revit-Tourism Pr, CW	13
Revit-Tourism Pr, TA	24
TOTAL	37
% in 132	28



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Turkish Cultural Heritage Management System of Turkey and the Role of Local Authorities: Some Experiences and Reflections

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Dr. A. Ege Yildirim is an urban planner specializing in heritage conservation and management, with over 20 years of experience working in Turkey and internationally. She was a Fulbright Scholar at Pratt Institute- New York City (2006-07) and a J.M. Kaplan Senior Fellow for Archaeological Heritage Management in the Research Center for Anatolian Civilizations of Koç University (2013-14). She is currently the ICOMOS Focal Point for the Sustainable Development Goals, member of ISOCaRP and board member of ICOMOS Turkey and Europa Nostra Turkey. Based in Istanbul since 2013, she is an independent consultant/ part-time academic lecturer, and since 2015, Heritage Site Manager of the Historic Guild Town of Mudurnu, a UNESCO World Heritage candidate.

Abstract:

This presentation will outline the legal, administrative and socio-political system for cultural heritage management system in Turkey, particularly in terms of where local authorities stand within the system. Two case studies will be explained in more detail, based on experiences of formal and informal urban heritage conservation and management processes: Gaziantep as a large, metropolitan centre and Mudurnu as a small, rural settlement. The wide range of issues and differing urban dynamics in these cases will offer an opportunity to reflect on and understand the evolution, problems and possible approaches for solutions for cities in managing their heritage, in the framework of local governance and its relations with the national and international levels.

Context of Heritage Protection in Turkey: Short Chronology

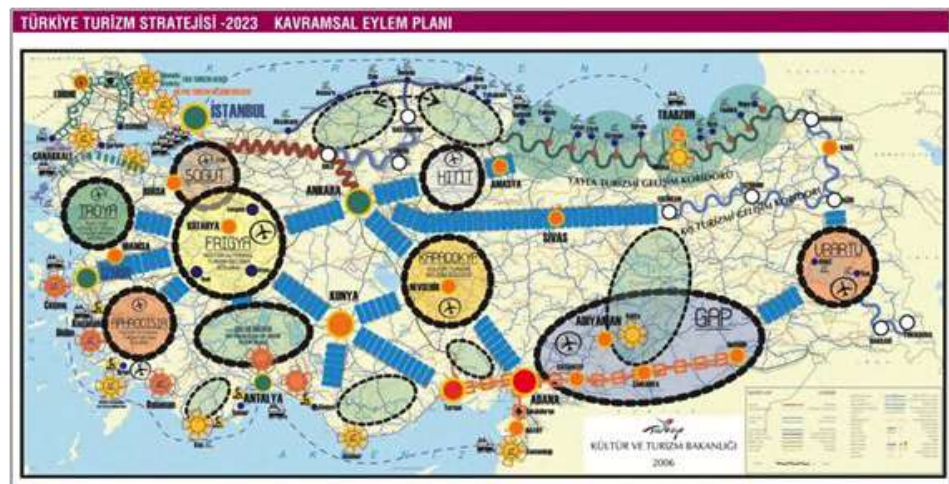
- Established, centralized system of monument and site protection
- Signatory to major international charters
- 1970s: Expanding to the urban scale
- 2000s: New tools of participation: EU accession, legislative reform including powers to local governments for heritage site management
- 2011: Regressive steps: re-centralization of powers, division of culture-nature jurisdictions



Context of Heritage Protection in Turkey: Short Chronology

- Tourism as most viable economic sector for cultural and natural heritage areas
 - National tourism income 2015: \$31,5 billion (Global ranking: 6th);
 - Tourists in 2012: 35.7 million ⁽¹⁾
- 1982: Tourism Incentives Law
- 2003: Merging Ministries of Culture + Tourism
- 2007: Tourism Strategy 2023
- 2009: UNESCO World Heritage drive
- Beyond ‘all-inclusive’: diversification
- Pressures of maximizing ‘profitability’

Figure 1. Turkey
Tourism Strategy
2023—Conceptual
Action Plan



Context of Heritage Protection in Turkey: Legal, administrative and financial structures

Tourism Legislation:

- Constitution, Law 2863 for Conservation, other relevant laws, related regulations

Administration:

- Unitary system, ministries and 81 provincial administrations (‘Vali’, or province governors), district administrations (‘Kaymakam’, or district governors)
- Ministry of Culture and Tourism (MoCT), Province Directorates for C&T, other regional branches (Museums, Survey and Monuments, Laboratories)
- Conservation Councils (Supreme + Regional Council for Protection of Cultural Assets – separated natural assets, with Ministry of Urbanism and Environment)
- Municipal Conservation Implementation and Regulation Bureaus/ ‘KUDEB’s
- Site Management Directorates
- Archaeological Excavation and Survey Directorates

Finance:

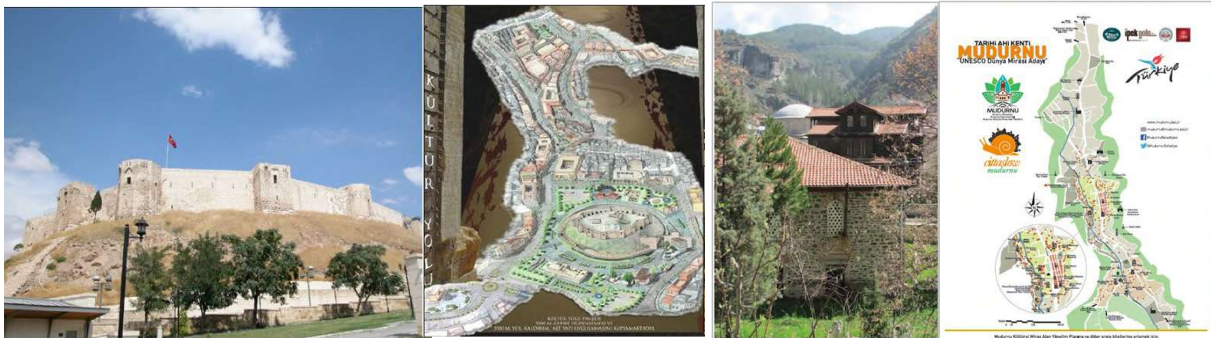
- MoCT grants, Social Housing Administration (TOKİ) credits, Province-Level Real Estate Tax Fund (%10), Regional Development Agencies
- Municipal funds, private sponsorship, culture investment incentives, other public agency allocations
- Expropriation, transfer of use rights as most viable economic sector for cultural and natural heritage areas

Exploring the role of local authorities: A doctoral dissertation and two case studies

2008-2011: PhD Dissertation, ‘Urban Conservation Projects and Governance’⁽²⁾

39 ‘general examples’, 3 ‘focus case studies’:

- Gaziantep (large metropolis, regional centre)
- Kuşadası (mid-size tourist city, recovering environmental quality)
- Mudurnu (small rural settlement in economic decline)



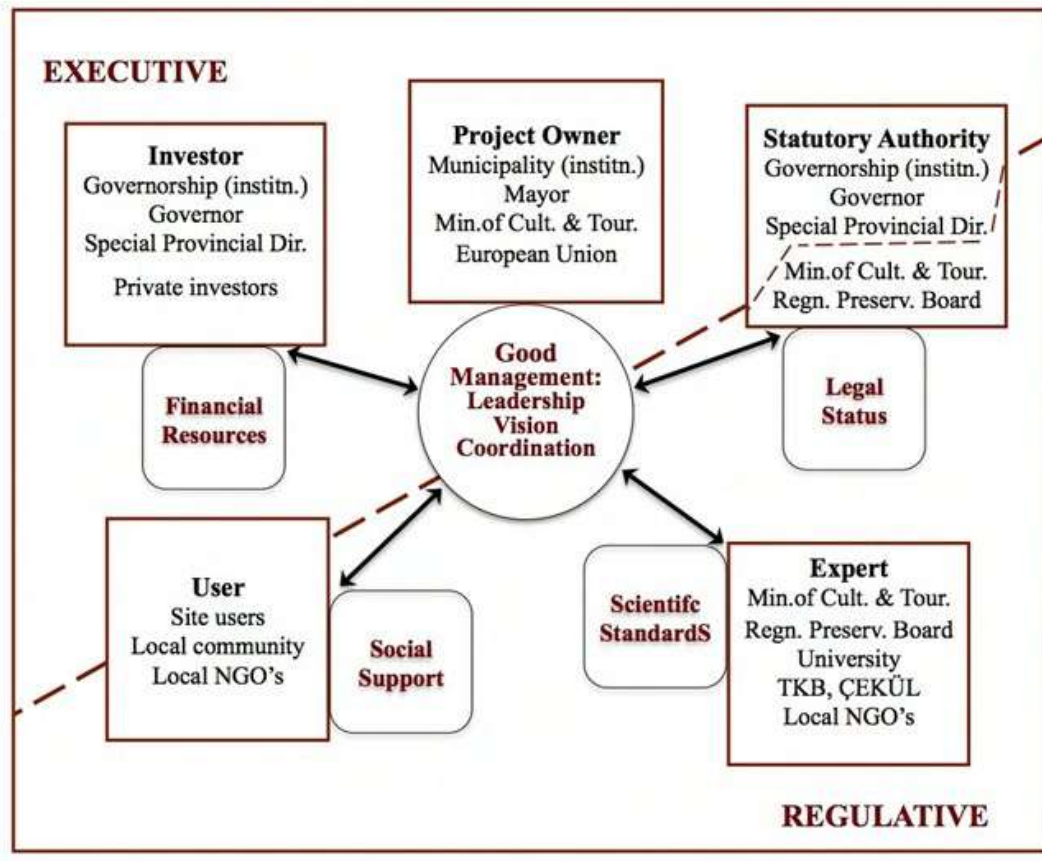
Hypotheses and Conclusions:

1. For a successful urban conservation project , organizational framework must include active participation of all four types of actors (legal, financial, social and scientific + good management)
 - *Research findings largely support Hypothesis 1*
2. Organizational frameworks of urban conservation projects are influenced by the development pressures of urban context and the scale of their cities
 - *Research findings partially support Hypothesis 2*

An optimistic outlook, firm resolution to continue the current efforts; successful outcomes include enhancement of city identity, transformation of project area into an attractive destination, emergence of social and economic expectations from local government and community, improving trajectory for scientific standards, development of local culture of preserving the heritage.

(2) Yıldırım, A. E. 2011. Kentsel Koruma Projelerinde Aktörlerin Örgütlenmesi. Unpublished PhD Dissertation. Env. Sciences Program, Ankara University. Advisor: Emre Madran.

Points of concern: For productive momentum of projects to continue without compromising on scientific standards, need positive relations among many actors, and effective system of coordination/ collaboration; communication, balance between ‘Regulating’ role of ‘Expert’ and ‘User’ and ‘Executive’ role of ‘Investor’ and ‘Statutory Authority’



Continuing research and heritage management work



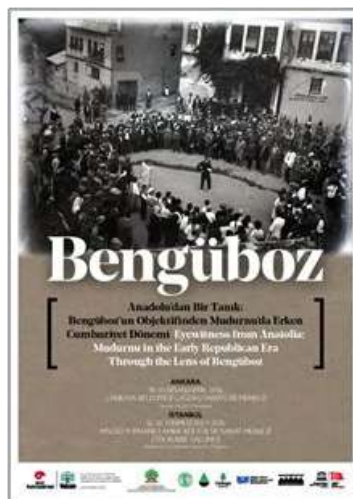
- 2013: Koç University- AnaMed, Kaplan Fellowship for Archaeological Site Management: “Developing a Cultural Heritage Management Plan for Mudurnu ... cultural tourism-led sustainable development... for benefit of the town’s heritage and the local community” / 2014: Site Management Directorate established, operational, plan under revision
- 2019: EU-Turkey Anatolian Archaeology and Cultural Heritage Institute project, based in Gaziantep: “.. an institute that will create an enabling environment for scientific and academic work in archaeology and cultural heritage.. engage with civil society in Turkey and the EU.”

Mudurnu: Site Management Planning in Small Town Context

- Ottoman trading town along river valley on Silk Road, forests and thermal springs, intangible heritage of Akhi Order (guilds) à historic urban landscape
- Poultry-industry, declining since 2001 economic crisis



- Hopes of re-inventing image and economic revitalization through cultural tourism; piecemeal initiatives since 2003, management plan (2014) & implementation process; critical threshold between economic stagnation vs. uncontrolled development



Vision keywords:

Preserves authentic identity, historic, cultural and natural values; Revitalized economy through sustainable development, diversified with tourism and other sectors; visibility nationally and internationally, world heritage site, conserved and prospering, awareness of 'Mudurnu' identity

Lessons from the Ground: Balancing and integrating opposing/ complementary issues

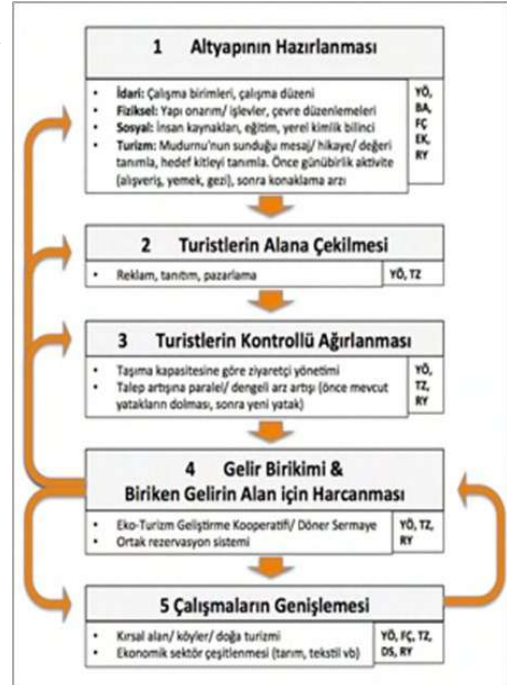
- **Official adoption/ endorsement** of management plans and systems **vs. commitment** at local community level
- **Academic vs. executive** approach development

Lessons from the Ground: Governance and Capacity

Power balance: periodic shifts in political atmosphere



- Central government, neo-liberal private capital
- Ministry of Culture and Tourism, local governments, regional agencies
- Universities/ experts, private philanthropic organizations, NGO's
- Grassroots resistance



Stakeholder relations: Conflict ↔ negotiation ↔ collaboration... ‘win-win’

Different relationships with same stakeholders

Communication, familiarity, trust-building

Balancing/ integrating opposing/ complementary issues

Reconciling conservation vs. Use: upgrading image, infrastructure; promoting diverse values; managing visitation, authenticity and character of place
‘Mutual knowledge-building’, expert + traditional

Capacity-building: knowledge and understanding increased with exposure, exchange, peer-learning

Democracy and agency: Informed, responsible citizenship; Rights and responsibilities; Pluralism, Overcoming polarization, flexibility, openness to change



Heritage management/ stakeholder management as tool of communication and coordination
Finding consensus for decision-making under a common vision and interests

Legislating participation vs. Realities of **implementation** and practice
The ‘doers’, the institutions, jurisdictions

Official adoption/ endorsement of plans
and systems vs. Commitment at
local community level

Importance of **visionary** local governments and leaders

Increasing **technical capacity** and awareness with regional and international exposure, local project experiences...

Funding and economic capacity





ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage

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This paper will present the local authorities' role regarding conservation of sites "of historical, national, architectural, or archeological importance" that were built after 1700 ("non-antiquities sites") in Israel. The conservation of sites dating back earlier than 1700 is regulated by the Antiquities Law and is under the responsibility of the Antiquities Authority. The conservation of non-antiquities sites, is regulated under the Zoning and Building Law, 5725-1965. Unlike the Antiquities Law, which does not give the Antiquities Authority discretion in determining which sites are or are not worthy of conservation, the Zoning and Building Law gives the zoning and planning Committees almost exclusive discretion in determining which sites should be conserved.

The law allows the local zoning committee to take into account conservation considerations when drafting a local zoning plan, and also allows it to pass a dedicated "conservation zoning plan" which is subject to the same rules as those for a regular local zoning plan. Since the local zoning committee is almost always equivalent to the city council (the individuals sitting on the local zoning committee are the members of the elected city council), the local authority indirectly plays a major role in the conservation of non-antiquities sites. Since the courts also tend not to adjudicate questions regarding the conservation or lack thereof of specific sites, decisions regarding conservation of non-antiquities sites in Israel are taken almost exclusively on the local level, and with little oversight from non-local authorities.

Since decisions regarding conservation of non-antiquities sites are almost exclusively taken at the local level, there is no national strategy for conservation. Indeed, even in cases where a national zoning plan declared a certain site as a conservation site, the local zoning committee may succeed in obtaining its demolition. Conversely, since local zoning plans must not conflict with "higher" zoning plans (district/national zoning plans), and "higher" zoning plans tend to encourage "urban renewal" and building larger and taller buildings, conservation efforts can be hampered by building and urban renewal plans drafted on the district/national level.

While the law allows for the local zoning committee to impose the conservation costs on the site owner, the law also legislates that the local zoning committee must compensate a property owner for decreases in value to the property resulting from a zoning plan. Thus, the financial brunt of conserva-

tion falls on the local zoning committee, which must find creative ways to offset these costs. One of the common ways to do so is by giving the property owner building rights in exchange for imposing on them conservation obligations, which limits the type of conservation that can be carried out. When the local authority can find a way to impose the conservation costs directly onto the property owners, the conservation legislated is usually superficial and does not involve maintaining the integrity of original architectural structures. Since, however, there are no tax incentives or offsets for conservation costs, imposing the conservation costs directly on the property owner can create animosity towards the very idea of conservation.

Since local zoning committees do not have the resources available to scout out sites worthy of conservation, most conservation is reactive and not proactive – in reaction to a zoning plan that allows for the destruction of a given site. Thus, conservation-related decisions taken at the local level can indirectly encourages civic mobilization in neighborhoods which its residents believe are worthy of conservation , by encouraging the residents to submit their own conservation plan.

Since neither the local zoning committee nor the local council have the authority to manage conservation sites on private property, there is no real conservation site management in the Israeli public sector, unless it is an archeological site. Indeed, the zoning committee may not even make use of the tool of "nonconforming use" in order to encourage conservation efforts.

The Role of Local Authorities in Managing and Propagating Cultural Heritage in the USA with Examples from the State of Georgia

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Abstract:

This paper focuses on federal legislation in the United State that establishes a partnership among national, state and local governments for cultural heritage preservation and identifies state legislation authorizing local governments to engage in activities fostering heritage preservation. The paper also explores the financial resources available to support the activities of local governments as well as local incentives made available by local government to financially assist private parties to engage in heritage conservation. Finally, the paper addresses the activities of local governments in capacity building.

INTRODUCTION: LEGAL AND ORGANIZATIONAL FRAMEWORK

Division of Authority Between Federal, State, and Local Governments

The United States' Constitution is based on the premise that power should not be concentrated in one person or group, or in one place. Power at the federal government level is divided among three branches of government: the executive (President), legislative (Congress) and judicial (federal courts). Power is also shared among the different levels of government: federal, state, and local. The federal Constitution specifies which powers are granted to the federal government, such as defense, foreign relations, and currency regulations, for example. However, the Constitution also limits the power of the federal government and the Tenth Amendment further specifies that, "[t]he powers not delegated to the United States [the federal government], nor prohibited by it to the states, are reserved to the states respectively, or to the people."⁽¹⁾

Each state has its own constitution, which specifies which powers the state may exercise and which powers are delegated to local governments. The relationship between states and local governments is very complex and differs from state to state. Local governments have no inherent power of their own – their authority comes from the state. Some states have given broad powers to local governments while others have given more limited powers.⁽²⁾

(1) U.S. Const. amend. X.

(2) Berman, David R.: The Powers of Local Government in the United States, <https://web.archive.org/web/20081113085721/http://usinfo.state.gov/journals/itdhr/0499/ijde/berman.htm> (last visited 30 August 2019).

In the matter of taxation, for example, the federal government has the power to tax and spend, but so do the states. States have also delegated some taxing authority to local governments. The primary source of revenue for the federal government is the tax on the income of individuals and corporations. State governments derive their revenues from several sources including taxes on income, on the value of goods and services sold (sales taxes), motor vehicles and gasoline, liquor and cigarettes, the transfer of land, and many other sources. Income and sales taxes are, however, the primary sources.

Local governments raise approximately 65 percent of their own revenue. The remainder comes to them from state and federal sources. The major source of taxes at the local level is the tax on real estate, although many local governments receive revenue from local sales taxes and a few levy income taxes. Other local government income comes from user fees - such as the charges made to property owners for water, sewage, garbage disposal, and the like. In a few locations, revenue comes from legalized gambling operations (which in a few places are dedicated largely to historic preservation.)⁽³⁾

Among the powers traditionally reserved to the states is the so-called "police power," a concept inherited from Anglo-Saxon law. This is the inherent authority of the state to regulate, protect and promote the public health, safety, morals, and general welfare. Exercising this power, states have enacted laws regulating the use of land and have delegated some of their authority to local governments. Many local governments, in turn, have enacted local zoning and historic preservation laws. The U.S. Supreme Court has held that the power to protect buildings and areas with special historic, architectural, or cultural significance is a legitimate use of the police power.⁽⁴⁾

There are limitations on the exercise of the police power, however. The Fifth Amendment to the Constitution provides that "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."⁽⁵⁾ Excessive regulation can constitute a deprivation or "taking" where the value or ability to constructively use the property is reduced to zero. However, the United States Supreme Court has found that historic preservation restrictions do not constitute a taking simply by reducing the potential developmental value or return on investment, even severely.⁽⁶⁾

Thomas "Tip" O'Neill, a longtime Speaker of the House of Representatives in the U.S. Congress, once declared, "All politics is local." He was explaining how the problems and concerns of towns and cities around the country affect the actions of their representatives and senators in Washington, D.C. Those in the preservation community in the United States say, "All preservation is local." While that is certainly an exaggeration, it is the local level where the greatest power to protect specific historic properties exists.

(3) Berman, David (as in note 2).

(4) Penn Central Transportation Co. v. New York City, 438 U.S. 104 (1978).

(5) U.S. Const. amend. V.

(6) Penn Central, 348 U.S. 104.

The movement to preserve historic places actually began at the local level. First came private initiatives, like efforts in the nineteenth century to preserve Mount Vernon, the home of the first President, George Washington. In the late 1920s the City of Charleston, South Carolina was the first local government to adopt a law for the protection of its historic district. This approach was followed by many local governments in the following decades. The United States government did not enact comprehensive preservation legislation until 1966. Even that effort resulted from a study sponsored by the U.S. Conference of Mayors that looked at European models to help formulate a national approach.⁽⁷⁾

Flow of Authority in Historic Preservation

The National Historic Preservation Act of 1966 established a preservation partnership among the federal, state, and local governments. It introduced a new comprehensive program with national standards and economic incentives without pre-empting existing state and local legislation. This law provided for a national inventory of heritage properties – the National Register of Historic Places – which contains properties of federal, state, and local significance. Federal law protects nationally owned heritage properties (e.g. national parks) and offers a degree of protection to any listed⁽⁸⁾ heritage properties at any level that are affected by federally funded or licensed projects (e.g. highway or dam construction). The federal government also is able to impose its standards as a condition for grants or tax incentives to lower level of government or private individuals, but has no control over the local scheme of land use regulation. Because federal law only applies to federal properties or federally funded projects, the United States federal government only has control over World Heritage Sites that it owns or funds. Thus, there are several World Heritage Sites within the United States that are subject only to state and local laws and potentially private ownership.

The National Register of Historic Places is the official list of resources in the United States worthy of preservation.⁽⁹⁾ It includes not only properties that have national significance, but also those with significance to a particular state or local jurisdiction. It is maintained by the Keeper of the National Register, a position within the U.S. Department of the Interior, National Park Service. Nominations to the Register, however, generally begin with a state’s historic preservation office. However, local governments can undergo a certification process to play an active role in federal preservation efforts. When a property within the jurisdiction of a certified local government (CLG) is considered for nomination to the National Register, the State Historic Preservation Officer (SHPO) must notify the CLG.⁽¹⁰⁾ The CLG’s historic preservation commission then determines whether the property meets the criteria of the National Register. The SHPO uses this recommendation and determines whether to nominate the property and transmits this decision to the Keeper.

(7) National Trust for Historic Preservation, *With Heritage So Rich*, 1966.

(8) Or eligible for listing.

(9) Established under the Historic Sites Act of 1935, 16 U.S.C. §§ 461 et. seq., and expanded by the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470a et. seq. (current version at 54 U.S.C. §§ 300101—320303).

(10) 54 U.S.C. § 302504.

The Keeper determines eligibility and lists those properties that meet nationally established criteria⁽¹¹⁾ The Register is primarily a planning tool for federal agencies and plays an important role in the environmental review process for federally licensed and funded projects. It also provides recognition of significance that can be crucial in local preservation efforts. Additionally, inclusion qualifies property owners for certain federal tax benefits.⁽¹²⁾ Though listing in the Register does not prevent a private owner from doing whatever he wishes with the property unless a federal license or federal funds are involved, an owner who objects may prevent their properties from being listed in the Register.⁽¹³⁾

Many states also maintain registers. These, which may be more or less inclusive than the National Register, are often important in the state environmental review process or in qualifying the owner for state or local tax benefits.

Managing Cultural Heritage Sites at the Local Level

Perhaps the most important listing mechanism to protect cultural properties from demolition or inappropriate alteration is found at the local level. Many state courts have held that historic preservation activities fall within the police power granted to states through the Tenth Amendment and the United States Supreme Court has upheld the use of restrictions on private property for preservation purposes.⁽¹⁴⁾

The specific scope and content of local preservation legislation varies considerably due to the differences among the states in the authority delegated to local governments, community need, and the type of resources protected. Generally, though, preservation ordinances regulate changes in buildings and sites that would negatively affect or destroy the character that gave designated landmarks or historic districts their significance. Over 2,000 local governments across the United States have enacted some form of historic preservation ordinance.

A typical preservation ordinance would generally contain the following key components:⁽¹⁵⁾

1. Statement of "purpose" and the legal authority under which the ordinance is enacted.
2. Definitions.
3. Establishment, powers, and duties of the historic preservation commission or other administrative board.
4. Criteria and procedures for designating historic landmarks and/or districts.

(11) 36 C.F.R. Part 60.

(12) Miller, Julia, Nat'l Trust for Historic Preservation: A Layperson's Guide to Historic Preservation Law, p.2 <https://forum.savingplaces.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=b82c80be-d0fb-9399-1e8c-204f060dd342&forceDialog=0> (last visited 3 September 2019).

(13) However, this will not prevent the application of federal laws and review processes for properties which are eligible for the listing in the Register such as the provisions under Section 106 of the National Historic Preservation Act.

(14) Preservation of historic resources was recognized by the court as "an entirely permissible governmental goal" and New York City preservation ordinance as an "appropriate means" for achieving that goal. Penn Central Transportation Company v. City of New York, 438 U.S. 104 (1978).

(15) Miller, Julia (as in note 10), p. 10.

5. Statement of actions reviewable by the commission (e.g., demolition or a material change in the exterior appearance of structure) and the legal effect of such review (e.g., approval or denial, non-binding recommendation.)
6. Criteria and procedure for reviewing such actions.⁽¹⁶⁾
7. Standards and procedures for the review of "economic hardship" claims.
8. "Affirmative maintenance" requirements and procedures governing situations of "demolition-by neglect".
9. Procedures for appealing the final preservation commission decision to a higher authority.⁽¹⁷⁾
10. Fines and penalties for violation of ordinance provisions.

While the content of a historic preservation ordinance and the legality of the regulatory process are crucial, they are insufficient to protect historic resources absent effective enforcement. Most preservation ordinances provide for the imposition of fines for individuals who violate their provisions.⁽¹⁸⁾ In other cases, a preservation commission may order the demolition of inappropriate work completed without a permit or require reconstruction of features improperly removed. An owner who has violated an ordinance may be denied a building permit for a number of years. In cases where owners are required to maintain their properties in good repair, local authorities may order the owner to make repairs or enter the property and make the repairs themselves, recouping expenses through a lien on the property.⁽¹⁹⁾ In rare cases, a recalcitrant property owner might be jailed. However, this penalty is unlikely to be imposed.

Planning

Historic preservation efforts can often be significantly enhanced when the preservation ordinance is closely coordinated with other land use laws and regulations such as those governing comprehensive planning, zoning, and subdivision regulations as well as other government programs such as transportation and housing. Many local communities throughout the United States have developed formal written preservation plans, reconciling in one document all of the policies and procedures regarding the community's historic resources.⁽²⁰⁾ The Georgia State plan, for example, outlines a model process for developing a local preservation plan,⁽²¹⁾ incorporating the Secretary of the Interior's Standards for Preservation Planning. The Georgia model suggests that a broad cross-section of the public be included in the process.⁽²²⁾ One segment of the public, the residents of historic towns and areas, warrants particular consideration. The US/ICOMOS Preservation Charter on Historic Towns has stated that "residents ... should be actively and continuously involved in the planning process. ... Their re-

(16) Commissions generally adopt rules and procedures for conducting business as well as design standards or guidelines by which to judge the appropriateness of a proposal for demolition, alteration or new construction.

(17) Appeals generally go to another administrative board such as a board of zoning appeals, the local governing authority itself (mayor and city council or county commission), or directly to the courts.

(18) The range of fines varies considerably among different communities, from \$100 to \$5,000 per day as long as the violation continues.

(19) Miller, Julia (as in note 10), p. 10.

(20) White, Bradford J. and Richard J. Roddewig: *Preparing a Historic Preservation Plan*, 1994, p. 4.

(21) The Georgia Constitution, Art. 9, § 2, Par. 4, explicitly grants authority to plan and zone to local governments, but also permits the General Assembly to limit this power by generally applicable statutes.

(22) See Georgia Dept. of Natural Resources, *New Vision: The Preservation Plan for Georgia's Future*, 1995, app.

actions and comments to all public and private proposals for the area should be actively sought.⁽²³⁾ While it is important to have a stand-alone local preservation plan to articulate the preservation goals and objectives of the community, it is even more important that those goals and objectives are incorporated in broader community planning. This helps ensure consideration by other programs such as land use, transportation, and development. The US/ICOMOS Preservation Charter supports this approach, declaring that the preservation of historic towns and historic districts or areas must be an integral part of every community’s comprehensive planning process.⁽²⁴⁾

Georgia was one of the first states to adopt growth management legislation with the passage of the Georgia Planning Act of 1989.⁽²⁵⁾ This law requires each local government in the state to prepare a long-range comprehensive plan. The plan is intended to identify community goals and objectives as well as determine how the local government proposes to achieve them. Ideally it is to be used in government decision-making on a daily basis. Failure to have an approved plan can result in the loss of state funding for a range of activities. While the scope of growth management is much broader than historic preservation, almost all such legislation includes historic preservation as a goal and/or a required planning element.⁽²⁶⁾ By including preservation with other key elements, comprehensive planning fosters better coordination between preservation and other land use controls such as zoning.⁽²⁷⁾ The Georgia law requires that historic resources be considered along with land use, economic development, community facilities, population, housing, and natural resources.⁽²⁸⁾

FINANCIAL ISSUES

Funding for historic preservation initiatives comes mainly from tax incentives and grant programs.

Tax Incentives

Federal and state governments offer tax incentives for historic property owners, but some local governments may also offer tax incentives to make historic preservation a more attractive choice for property owners. Cobb County in Georgia, for example, provides abatement of ad valorem property taxes to owners of property listed on the National Register or state register to incentivize listing of historic properties.⁽²⁹⁾ Atlanta property owners may request tax abatement and other financial incentives in order to assist in preserving their property.⁽³⁰⁾

(23) Committee on Historic Towns US/ICOMOS: A Preservation Charter for the Historic Towns and Areas of the United States of America, 1992.

(24) Committee on Historic Towns US/ICOMOS, 1992, as in note 16.

(25) O.C.G.A. §§ 50-8-1 to 50-8-301.

(26) Listokin, David: Growth Management and Historic Preservation: Best Practices for Synthesis, in: The Urban Lawyer, vol. 29, 1997, p. 202.

(27) Such coordination, while dictated by logic, is frequently absent. There are other advantages. By being part of a comprehensive community plan, preservation can blunt criticism that it is part of the NIMBY [“Not in My Back Yard”] process to stop growth. See Listokin, David: Growth Management and Historic Preservation: Best Practices for Synthesis, in: The Urban Lawyer, vol. 29, 1997, p. 206 and 210.

(28) O.C.G.A. §§ 50-8-1 to 50-8-301.

(29) Cobb County, Georgia Code of Ordinances Sec. 114-27.

(30) Atlanta, Georgia Code of Ordinances Sec. 16-20.006.

Grant Programs

Direct grants from the government are one way of reducing rehabilitation costs. Grants can be superior to tax incentives in a number of ways. They can be more closely targeted to certain types of historic properties and particular program users. They are not limited to those with high tax liabilities, but can focus on properties of low and moderate-income owners. Grants also tend to provide better control over the quality of work. While the impact of grants on state and federal budgets is more predictable than incentive programs, grants depend on yearly appropriations and are more subject to reductions or elimination.⁽³¹⁾

The National Historic Preservation Act of 1966, as amended,⁽³²⁾ provides for federal grants to the states, which may be passed through to local governments or individuals. In practice, however, the limited appropriations by Congress have been used primarily to support the administrative infrastructure on the federal and state levels. Since 1980, only a relatively small amount has been awarded in grants, and these primarily to governmental entities.

The federal government also provides grants for other purposes to states and local governments that may be used for historic preservation. In Georgia, 10 percent of federal preservation funds allocated to the state are given to certified local governments for preservation planning.⁽³³⁾ The Fixing America’s Surface Transportation Act (FAST Act) sets aside funding for Surface Transportation Block Grants (STBG) to be used by states for small scale transportation projects, including community improvements like historic preservation.⁽³⁴⁾ States suballocate the funds to eligible entities, including local and regional governmental entities, under a competitive grant application program.⁽³⁵⁾ A number of significant grants programs for state and local governments are funded under the Department of Housing and Urban Development (HUD) Act.⁽³⁶⁾ Community Development Block Grants (CDBG) have been used extensively to help communities with economic development, job opportunities and housing rehabilitation. Funds under this program have been used not only for infrastructure improvements, but also for direct rehabilitation grants for low-income homeowners.

A number of states make appropriations for direct grants to historic preservation projects. The best example is the State of Florida. Between 1985 and 1996, Florida appropriated \$82.3 million for local preservation projects, and when bond-financed monies are included, the total is more than \$250 million. Individual grants are made only to state agencies, local governments and private nonprofit organizations. However, economic incentives work in the public sector as well as the private sector by reducing the overall cost of the project.

(31) Sewell, James A.: State Income Tax Incentives Versus Grants: Which Are Better?, in: Beaumont, Constance: Smart States, Better Communities, 1996, p. 109.

(32) 16 U.S.C. § 470 et. seq. (current version at 54 U.S.C. §§ 300101—320303).

(33) Good News in Tough Times: Historic Preservation and the Georgia Economy, PlaceEconomics, https://www.placeeconomics.com/wp-content/uploads/2016/08/rypkema_georgia_economic_impact_study.pdf (2010)

(34) 23 U.S.C. § 133(h).

(35) Unlike previous iterations of transportation grant programs, like the Transportation Equity Act for the 21st Century and the Intermodal Surface Transportation Act, this program does not require states to set aside funds for historic preservation and other purposes. States may opt out of the STBG program in advance.

(36) 42 U.S.C. §§ 3532—3549; see also WHAT WE DO, HUD, <https://www.hud.gov/topics> (last visited 30 August 2019).

In addition to general appropriations and bond issues, state governments have raised funds for preservation activities through lotteries, taxes on something else -- real estate, mortgage fees, gambling, cigarettes, hotels/motels, and limited partnership -- license plate revenues, and litigation proceeds.⁽³⁷⁾ In addition to programs directed specifically toward historic preservation, states offer a wide variety of local development programs whose resources can often be directed toward preservation activities.⁽³⁸⁾

One cutting-edge grant that is developing in San Francisco is the Legacy Business Program Registry.⁽³⁹⁾ San Francisco is home to some of the highest residential and commercial rents in the United States. This can make it difficult for longstanding, small businesses to stay in the buildings that they historically held. To counter the loss of historic businesses, San Francisco’s Office of Small Business offers both Business Assistance Grants and Rent Stabilization Grants. Business Assistance Grants provide \$500 per employee per year to the historic business while Rent Stabilization Grants provide \$4.50 per square foot of leased space to landlords to incentivizes landlords who extend leases of historic businesses by at least ten years. Meanwhile, use of the Legacy Business logo serves to increase the flow of customers to the historic businesses.

Transfer of Development Rights

Another tool available to local governments are Transfer of Development Rights (TDRs). TDRs allow property owners to preserve their property by transferring their development rights to an area designated for higher density.⁽⁴⁰⁾ In the context of historic preservation, a historic property owner, who may not be able to build additional construction on their land due to zoning restrictions, could sell their development rights to another landowner. This receiving landowner could then use this purchased development right to construct additional units on their land that they would not have otherwise, due to zoning restrictions. In this way, historic property owners can be compensated for their inability to continue developing their property, ensuring the preservation of historic property.

CAPACITY BUILDING

Public Participation

As one of the conditions for state participation in the federal preservation program, the National Historic Preservation Act (NHPA) mandates the provision of “adequate public participation.”⁽⁴¹⁾ An area in which public participation is crucial is the designation of historic properties and districts by local

(37) Beaumont, Constance (as in note 23), p. 71—76.

(38) See, e.g., Downtown Development Revolving Loan Fund (DDRLF), Georgia Dept. of Community Affairs, <https://www.dca.ga.gov/community-economic-development/funding-programs/downtown-development-revolving-loan-fund-ddrlf> (last visited 30 August 2019).

(39) Office of Small Business, City and County of San Francisco, <https://sfosb.org/legacy-business> (last visited 29 August 2019).

(40) Ryan, Meghan et al.: TDR Citizens Guidebook, University of Georgia Land Use Clinic, 2009.

(41) Title I, Section 101(b)(1)(C), codified at 16 U.S.C. 470a (current version at 54 U.S.C. § 302301).

historic preservation commissions. There are over 2,700 local commissions in the United States, many with the power to regulate changes in the appearance of historic properties and delay or deny requests for demolition permits. The implications of designation can be significant for property owners. While their rights in this area are protected by provisions of the federal Constitution as well as the constitutions and laws of every state, they are nonetheless subject to legitimate restrictions on their use of designated historic properties.⁽⁴²⁾ One concept that underlies these legal protections is that every citizen is entitled to “due process” -- basic fairness in making, administering and enforcing laws. A key due process principle is that individuals affected by government action have a right to notice and an opportunity to be heard.⁽⁴³⁾ Among the most common challenges to government action in the context of local preservation ordinances are situations where owners are not given adequate notice of a proposed designation or hearing procedures that do not provide adequate opportunity to present testimony or evidence or rebut the testimony of others.⁽⁴⁴⁾

The Georgia Historic Preservation Act established a framework for local governments to create historic preservation ordinances and institute a process to designate historic properties and districts. Public participation is specifically mandated at two different points: when specific properties or districts are being designated, and when a property owner of a designated property or a property in a designated district applies for a permit to make a “material change” in the exterior appearance of a property. In the first instance, the historic preservation commission and local governing body are required to hold a public hearing on the proposed ordinance. Notice of the hearing must be published at least three times in the principal newspaper of general circulation within the jurisdiction and written notice mailed to all owners and occupants of properties within the area nominated.⁽⁴⁵⁾ Some local ordinances provide for more public notice than required by state law. The DeKalb County preservation ordinance mandates written notice to owners and occupants of properties adjoining nominated properties or districts and posting signs on individually nominated properties or on public streets wherever they intersect the boundaries of historic districts.⁽⁴⁶⁾ These measures are clearly designed to maximize public participation. At the public hearing, those in attendance are afforded an opportunity to comment orally on the proposed designation and allowed to submit written comments to be incorporated in the record. Following the public hearing, the local governing body must adopt a formal ordinance of designation, -- also at a public meeting. Local governments routinely provide additional opportunity for citizens to address these and other issues at their meetings.⁽⁴⁷⁾

(42) Penn Central, 348 U.S. 104.

(43) See White, Bradford J. and Paul W. Edmondson, *Nat'l Trust for Historic Preservation: Procedural Due Process in Plain English* (1994).

(44) Reap, James K and Melvin B. Hill, Jr., *National Park Service Cultural Resources Partnership Notes: Law and the Historic Preservation Commission: What Every Member Needs to Know* (2007)

(45) Notices must be published or mailed not less than 10 nor more than 20 days before the public hearing.

(46) DeKalb County, Georgia Code of Ordinances Sec. 13.5-8.

(47) O.C.G.A. § 44-10-26. For further commentary on the Georgia Historic Preservation Act, see Waters, John C.: *Maintaining a Sense of Place, A Citizen's Guide to Community Preservation*, 1983.

Public Education

Capacity building takes place through public education at the national, state, and local levels, often by mandate of the NHPA. National organizations use their experience to contribute to education of local commissions and people across the United States, through providing teaching modules, hands-on preservation experience, or grants to pursue capacity building efforts. For instance, the Advisory Council on Historic Preservation is a federal agency tasked with promoting preservation of the United States’ cultural heritage and advising the president and Congress on preservation policies. Under the NHPA, the ACHP is responsible for “encourag[ing]... training and education in the field of historic preservation.”⁽⁴⁸⁾ The ACHP offers courses on compliance with the NHPA to federal, state, tribal, and local preservation practitioners, federal agency staff, and students.⁽⁴⁹⁾

The National Park Service is also responsible for preservation education under the NHPA.⁽⁵⁰⁾ NPS offers community assistance programs for conservation, documentation, and education.⁽⁵¹⁾ NPS also offers grants to local governments for technical assistance and capacity building through its Historic Preservation Fund.⁽⁵²⁾

National nongovernmental organizations play a role in local preservation education. The National Trust for Historic Preservation offers Hands on Preservation Experience, also known as HOPE Crews, to train the next generation in preservation skills while restoring historic sites.⁽⁵³⁾ The National Alliance on Preservation Commissions offers the Commission Assistance and Mentoring Program to train local preservation commissions and build knowledgeable local preservation boards.⁽⁵⁴⁾ This assistance to preservation commissions is key as composition of local historic commissions varies from jurisdiction to jurisdiction, meaning that not all historic commissions are composed of preservation experts. For example, the Georgia Historic Preservation Act only requires that commission members be residents of the county that they serve and that “a majority of the members shall have demonstrated interest, experience, or education in history, architecture, or preservation of historic resources.”⁽⁵⁵⁾ On the other hand, all members of the District of Columbia’s Preservation Review Board must “demonstrate[] a competence, interest, or knowledge in historic preservation,” a majority of the members must be nationally qualified in history, archaeology, architectural history, and architecture, and each of the previously mentioned disciplines must be represented across the commission.⁽⁵⁶⁾

(48) 54 U.S.C. § 304102.

(49) Section 106 Classroom Courses, Advisory Council on Historic Preservation, <https://www.achp.gov/training/classroom> (last visited 26 August 2019).

(50) U.S.C. § 303903.

(51) Community Assistance Program, National Park Service, <https://www.nps.gov/getinvolved/community-assistance.htm> (last visited 26 August 2019).

(52) Fund a Preservation Project, National Park Service, <https://www.nps.gov/subjects/historicpreservation/fund.htm> (last visited 26 August 2019).

(53) HOPE Crew, National Trust for Historic Preservation, <https://savingplaces.org/hope-crew#.XWR4c-hKiUk> (last visited 26 August 2019).

(54) CAMP, National Alliance of Preservation Commissions, <https://napcommissions.org/camp/> (last visited 26 August 2019).

(55) O.C.G.A. § 44-10-24; see, e.g., Athens-Clarke County Historic Preservation Commission Bylaws and Rules of Procedure § III.D.

(56) HPRB Membership Requirements, DC Office of Planning, <https://planning.dc.gov/node/601472> (last visited 31 August 2019).

State governments, SHPOs, and statewide nongovernmental organizations also offer education to local preservation entities. The Georgia Alliance of Preservation Commissions offers support to local historic preservation commissions in Georgia.⁽⁵⁷⁾ These programs include training on NHPA compliance, historic survey basics, and preservation ethics.

While programming is provided on the national and state levels, local preservation commissions are often responsible for raising preservation awareness. For example, the Georgia Historic Preservation Act tasks local preservation commissions with “conduct[ing] an educational program on historic properties located within its historic preservation jurisdiction.”⁽⁵⁸⁾ Local nonprofits also task themselves with creating events to engage the public in preservation activities. For example, Historic Athens, a cultural heritage nonprofit in Athens, Georgia, offers brown bag lunches that focus on ongoing preservation projects and preservation issues in the community.⁽⁵⁹⁾ The organization also offers broader engagement and will host Porchfest to showcase local music talent while celebrating the porches of Athens’ historic homes.

(57) Past Training Presentations, Georgia Alliance of Preservation Commissions, <http://www.georgiahpcs.org/page-1795324> (last visited 29 August 2019).

(58) O.C.G.A. § 44-10-25.

(59) Current Initiatives, Historic Athens, <http://www.historicathens.com/brown-bag-lunches> (last visited 26 August 2019).



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Role of Local Government in Protecting Cultural Heritage under Polish Law

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Abstract:

The protection of monuments in Poland has been recognized as one of the constitutional tasks of the state and is carried out mostly by government administration. This does not mean, however, that local government authorities are entirely excluded from the process, although they are limited to their territorial area of activity. In particular, they can enter into an agreement to take over the competences of the regional monument conservation officer and appoint their own local officer. To protect heritage directly, they can establish cultural parks and are also obliged to consider monument protection in their spatial development plans and administrative decisions issued in construction matters. The authorities also have other specific tasks, such as maintaining a commune record of monuments or applying for the appointment of voluntary monument custodians.

Considering Poland's difficult and complex historical background that resulted in, among others, enormous destruction of cultural heritage, protection of such heritage has now been enshrined in Article 5 of the Constitution, where it is listed as one of the most fundamental political and social objectives of the state: "The Republic of Poland shall (...) safeguard its national heritage." This is justified by the fact, noted in the next article, that the heritage is "the source of the Nation's identity, continuity and development." On the other hand, as stated in the Constitution's preamble, the objective is to "bequeath to future generations all that is valuable from our over one thousand years' heritage."

The consequence of ranking heritage protection so highly among the tasks of the state is entrusting the management of this protection first and foremost to state bodies. The authority responsible for protection on the central level is the minister competent in matters of culture and national heritage, whose tasks and competences are carried out in his or her name by the respective secretary or under-secretary of state. Pursuant to Article 89, item 2 of the Monuments Protection Act (hereinafter the "Act"), such person also bears the title of Chief Monument Conservation Officer. As an aside, it should be made clear that the Act distinguishes between "protection", which as explained above is the task of the state, and "care", which is exercised by owners of the monuments.

On the regional level, the state authority responsible for monument protection is the regional governor whose tasks and competences are carried out by the regional monument conservation officer (Article 89, item 2 of the Act). The governor is the first instance in all administrative proceedings

related to monuments, with the Chief Monument Conservation Officer acting as the appeal body. It should also be stated here that the governor may, under a special agreement, assign such competences to local authorities such as counties or communes. These authorities then establish the post of a commune or city monument conservation officer (Article 96).

The tasks of government administration are typical for agencies of this kind: maintaining a registry and record of monuments, removing monuments from the register, issuing permits for conservation works, granting financial aid to perform such works, inspecting the condition of monuments, etc.

Entrusting these fundamental tasks to government administration does not mean, however, that local government authorities have no part in heritage protection. As part of the generally understood public administration, pursuant to Article 4 of the Act, they have the following broadly defined duties:

1. ensuring legal, organizational and financial conditions for permanent preservation of monuments, their development and maintenance;
2. mitigating threats that might compromise the value of monuments;
3. preventing the destruction and improper use of monuments;
4. countering the theft, loss or illegal exportation of monuments;
5. inspecting the preservation status and purpose of monuments;
6. taking protection tasks into consideration in spatial zoning and development plans and environmental management.

As part of these general tasks, pursuant to Article 7, items 3 and 4 specific competences of local government authorities include establishing cultural parks and ensuring monument protection in their own decisions and adopted local legislation. Establishing cultural parks is the sole prerogative of the commune council which may establish such a park in its territorial area of activity by means of a resolution, following consultation with the regional monument conservation officer (Article 16). The resolution states the name of the park, its bounds, manner of protection and prohibitions and limitations effective within the park area. Pursuant to Article 17, item 1 of the Act, such prohibitions and limitations may concern:

1. carrying out construction works and industrial, agricultural, stock-raising, commercial or service activities;
2. changing the manner of use of immovable monuments;
3. placing boards, inscriptions, advertisements and other signs not related to protection of the cultural park, except for road signs and signs related to public order and safety maintenance.
4. principles of installing and location of landscape architecture;
5. storage and warehousing of waste.

The commune council may appoint a special organizational unit to manage the park, and when the park area extends to more than one commune, its establishment requires also the concurrent resolution of all affected communes.

Ensuring monument protection in own decisions of communes and adopted local legislation concerns primarily the issue of spatial zoning and development plans and environment management (Article 4, item 6). This applies in particular to spatial development analyses and studies drafted on county level, as well as the following documents compiled by communes: development strategies, studies of conditions and directions of spatial development, local spatial development plans, development conditions decisions, and permits to carry out road, rail and public airport investments (Article 18, item 1). In all these analyses, studies, plans and decisions the communes are obliged to consider the issues of protecting heritage, in particular, monuments entered into a register or record (Article 19).

Regardless of these duties, local government authorities collaborate with government administration in carrying out specific tasks related to heritage protection. Pursuant to Article 9 of the Act, the regional monument conservation officer notifies the county head about the initiation and completion of proceedings to enter a monument into a register, and the county head makes a public announcement of this fact and may also affix a protection notice on the monument. Based on Article 22, commune authorities maintain a commune record of monuments that should contain:

1. immovable monuments entered into the register;
2. other immovable monuments found in the regional record;
3. other immovable monuments listed by commune authorities in agreement with the regional monument conservation officer.

Local government authorities also have duties related to discovery or finding of monuments. In both cases, they should notify the regional monument conservation officer within no more than 3 days about an accepted notice of discovering a monument (Article 32) or finding (Article 33) during construction or earthworks.

Finally, local government authorities, in particular, county authorities, may pursuant to Article 103 apply to the regional monument conservation officer to appoint a voluntary monument custodian. Either a natural person or non-governmental organization without legal personality may become a custodian. If the candidate is approved, the county head issues an appropriate identity card (Article 105).



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

Responsibilities and Tasks of Local Authorities in Monument Protection and Preservation in Germany

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Dr. Werner von Trützscher, graduated in law, has broad experience in German ministerial administration especially in the cultural and educational sector as well as in the protection of monuments. He represented the Federal German States in the Council of Europe, the European Union, UNESCO and OECD. Since 1984 he is engaged in ICOMOS where he held executive positions both nationally and internationally. He is the founding member of ICLAFI since 1997.

Abstract:

The responsibilities of local authorities both in planning and in building law which both are relevant for the cultural heritage and for monument protection and preservation form the focus of this paper. Introductory the status of local authorities with their constitutionally guaranteed right of self-government is explained and the difference between independent cities and smaller communities which are part of a district is elaborated. The scope of action of the communities, which includes their own and transferred affairs, is described, the distinction between voluntary tasks and compulsory tasks set out. Finally, an overview of the financial support for the protection and preservation of monuments in Germany is given with special reference to the role of the local authorities in this area.

INTRODUCTION

Romania The Federal Republic of Germany is a federal state made up of 16 autonomous states which have their own parliaments and governments. The responsibility for the exercise of state authority and the discharge of state functions is assigned by the Grundgesetz (Basic Law = Constitution) to these states (Länder) except as otherwise provided for or admitted by the Basic Law itself. Thus both legislation and administration including the execution of federal laws is entrusted in principle to the states (Länder). In other words all competences are deemed to lie with the states unless otherwise specified. Under this arrangement legislation concerning cultural heritage is passed both by the Federation (planning and building laws) as well as by the states (laws for the protection and maintenance of cultural monuments).

THE LEGAL POSITION OF LOCAL AUTHORITIES (MUNICIPALITIES) AND THEIR TASKS

The position of the local authorities is also enshrined in the constitution: Art.28 Basic Law reads:

[State constitutions – Autonomy of municipalities]

(2) Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility, within the limits prescribed by the laws. Within the limits of their functions designated

by a law, associations of municipalities shall also have the right of self-government according to the laws. The guarantee of self-government shall extend to the bases of financial autonomy; these bases shall include the right of municipalities to a source of tax revenues based upon economic ability and the right to establish the rates at which these sources shall be taxed.

(3) The Federation shall guarantee that the constitutional order of the Länder conforms to the basic rights and to the provisions of paragraphs (1) and (2) of this Article.

In the following Bavaria is taken as an example for the other German states in which the situation is similar. The position of the local authorities is set in the constitutions of the states in accordance with the Basic Law, for example in Article 11 of the Bavarian Constitution:

(1) Each part of the state territory is allocated to a municipality. Exceptions to this are certain uninhabited areas (areas not incorporated into a municipality).

(2) The municipalities are original administrative units under public law. They shall be entitled to order and manage their affairs themselves within the framework of the laws and in particular to elect their mayors and representative bodies.

(3) By law, further tasks may be assigned to the municipalities, which they must perform in the name of the state.

(4) The self-administration of the municipalities shall serve the purpose of establishing a democracy in Bavaria from the bottom up.

(5) The self-administration of the municipality shall be subject to the principle of equality of the political rights and duties of all citizens living in the municipality.

According to the Bavarian Municipality Code local authorities either belong to a district or they do not belong to a district. The scope of their tasks depends on this classification.

In the tasks of the local authorities furthermore a distinction is made between their own and their assigned tasks, i.e. those tasks which are transferred to the municipalities by federal or state laws. For the tasks transferred to them the local authorities act in accordance with the instructions of the state authorities.

COMPETENCES OF LOCAL AUTHORITIES RELEVANT FOR THE CULTURAL HERITAGE

To the tasks in their own sphere of activity belong according article 83 of the Bavarian Constitution among others the conservation of local cultural and the preservation of local historical monuments and buildings.

The Federal Building Act gives the responsibility to the local authorities for town planning. Essentially there are two levels of planning: the land-use or master plan as the preparatory plan and the building plan as the binding development plan.

Art.3 Bavarian Law for the Protection and Preservation of Monuments commits the local authorities to give appropriate consideration to interests of monument protection and monument care, especially to the preservation of Ensembles when drawing up master plans. When drawing up these plans the local authorities have to consult besides the public the State Office for the Preservation of Monuments, an advisory expert administrative authority which exists in every state.

Federal and state laws give local authorities also the right to pass local by-laws or statutes which among other aims can also help to protect and preserve cultural heritage. E.g. article 172 of the Federal Building Act empowers local authorities to preserve the specific urban character of an area deriving from its urban pattern in a binding statute. Individual building permissions may if such a statute exists be refused in areas where the physical structure, either alone or in conjunction with other buildings, contributes to shaping the character of the locality, the townscape or landscape, or is otherwise of architectural or historical importance.

THE FINANCIAL SITUATION

Direct financial subsidies in the form of non-repayable or repayable grants are given for the restoration and preservation of monuments by the Federal Government and by the states as well as the by the European Union. Local authorities can apply for these grants as well as private persons. In addition there are several private foundations which promote also financially the preservation of monuments. The biggest one is the Deutsche Stiftung Denkmalschutz (German Foundation for Monument Protection). And of course local authorities are free to promote cultural heritage both financially and in any other form.

A program aimed especially at local authorities is the urban development programme. In this program the Federal Government and the states jointly provide grants for investments in the renewal and development of cities and municipalities in the context of urban development. The program includes measures of urban conservation to secure individual monuments and to preserve and revitalise historic inner cities. The Federal Government, the states and the local authorities participate in the financing of urban development. The basic rule is that the federal share is one third. The states raise the same amount of money as the Federal Government. The remainder is provided by the municipalities with the states deciding on the financial distribution of the funds between the state and the local authority.

Currently around 5800 areas of urban development are participating in the program. In the federal budget of 2019, a total of 865 million Euros is available for urban development. If the shares of the states and the local authorities are added about 2.5 billion Euros can be invested in 2019.

LOCAL AUTHORITIES MANAGING AND PROPAGATING CULTURAL HERITAGE

Bigger municipalities have within their administration building and culture departments which care for the cultural heritage including monument preservation. However as the citizen they are dependent on the state as far as the determination of the monument quality of a building is concerned. Whereas local history or other museums are within the sole responsibility of local authorities. Not only larger cities such as Munich seek to promote understanding and pride in its historical heritage in various ways (through brochures, guided tours etc.). Cultural heritage is understood as an asset for tourism.

CONCLUSION

Municipalities play an important role in protecting cultural heritage. They are closest to the citizen and can provide protection and understanding of cultural heritage. However, it must not be concealed that conflicts between the protection of cultural heritage and other tasks and objectives, such as the establishment of industry for example, can also occur in municipalities. Here, a careful consideration of interests is necessary as it is set out in the federal building law for the issue a building permit.

The Role of Local Authorities in Managing and Promotion of Cultural Heritage in Estonia

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Abstract:

The preservation of national monuments in Estonia is in general coordinated by National Heritage Board and the obligations of local authorities are quite limited. However, in some bigger cities the agreements to delegate national obligations to municipalities have been signed. Aside national monuments, there is a significant number of historical suburbs and villages that are protected as “milieu areas” according to the planning act. The protection of these is fully organized by municipalities.

PROTECTION BY CONSERVATION ACT

Estonia has a consistent legislative system of conservation since 1925 when the first Conservation Act was put into force. Since then there have been a few significant changes as in 1940-1991 Estonia was occupied by Soviet Union. These changes influenced also the role of the local authorities in heritage protection. However, this article will not debate the earlier management systems but concentrates only on the current situation.

The first Conservation Act of the restored Republic of Estonia was enacted in 1994. It was drafted according to the examples of the first period of independence in 1918-1940 and several European Conservation Acts, most of all the practice of Sweden. The protection i.e. listing of monuments, approval of research plans, conservation designs and other relevant documents; admitting licenses to restoration companies; supervision of the works and general awareness raising are coordinated by the National Heritage Board which is supervised by the Ministry of Culture.

There are ca 26 647 listed monuments in Estonia (31.08.2019), 13325 of these are movable objects (majority of them are different artefacts in the churches), 6708 archaeological sites, 5273 listed buildings and 1275 historical monuments (mainly different statues, etc.) and 50 monuments of technology. There are also 12 conservation areas (11 historical towns and one rural area). Estonia has 2 UNESCO World Heritage sites – Tallinn Old Town and 3 measurement points of the transboundary site of Struve Geodetic Arc. All objects are protected on equal level, there is no gradation of monuments. All decisions on interference are site-specific and depend on the nature of the monument or site.

The role of local authorities is defined in the Conservation Act⁽¹⁾ as follows:

§ 3. Principles of heritage conservation

(7) Upon the performance of their duties, the state and local governments shall consider cultural heritage as public value and cooperate with each other to support the preservation and keeping in use of cultural heritage.

§ 80. Exercise of state and administrative supervision

State and administrative supervision over compliance with this Act and with the requirements of legislation established on the basis thereof shall be exercised by the Board and local governments.

§ 82. Specifications of state and administrative supervision

(1) The Board and local government shall have the right to suspend any work or activity which may endanger a monument, structure located on a heritage conservation area, archaeological find, protected archaeological site or cultural layer. The Board may determine additional research or conditions for the performance of work, if necessary, to prevent damage to a monument, structure located on a heritage conservation area, archaeological find, protected archaeological site or cultural layer, and also to suspend works or research that are not in compliance with the conditions provided for in the building design documentation, activity plan, research plan or in the permit for the performance of works.

(2) If a local government suspends the work or activity specified in subsection (1) of this section, the local government shall notify the Board thereof immediately. The continuation of works shall be decided by the Board.

One peculiarity of the Estonian legislative system is the delegation of administrative functions from National Heritage Board to local communities that is described in the Act as follows.

§ 77. Authorisation for performance of administrative functions

(1) The minister responsible for the area may, pursuant to the procedure provided for in the Administrative Co-operation Act, authorise a local government to perform the Board's administrative functions provided for in this Act on behalf of the state and exercise state supervision as a law enforcement agency on behalf of the state.

(2) The functions specified in subsection (1) of this section may be transferred fully or in part.

(3) A contract under public law shall be entered into and administrative supervision over the performance of administrative functions authorised with a contract under public law shall be exercised by the Board.

(4) If the contract under public law specified in subsection (3) of this section is terminated unilaterally or there is another reason preventing the performer of administrative functions from continuing the performance of the given administrative function, the subsequent performance of administrative functions shall be organised by the Board.

(1) Heritage Conservation Act. 04.06.2019. <https://www.riigiteataja.ee/en/eli/504062019001/consolide> (31. August 2019).

At the moment National Heritage Board has authorised four municipalities – Tallinn, Tartu, Narva and Viljandi. The authorisation depends on the administrative and expert capacity of the municipality. The most comprehensive of these is the capital city Tallinn which has had its own heritage department since 1950s. Tallinn is also the wealthiest municipality in Estonia and thus there is an unwritten agreement that Tallinn City finances both the majority of the expenses of the department as well the restoration grants to the owners of the monuments. In general, the amount of grants in Tallinn is equal to the grants for all Estonia. The grants from other municipalities are significantly smaller, nearly symbolic, but there is a growing interest to find the means to support the owners of the buildings with heritage value.

PROTECTION BY PLANNING ACT

In addition to 11 urban conservation areas in Estonian towns with medieval city structure, there are dozens of milieu protection areas adopted since 1996. These cover historic suburbs mostly created and developed from the end of 19th century and onwards, the newest ones comprise of housing from 1960s-1970s. There are also several rural settlements and villages of ethnographic and historical value acknowledged as milieu protection areas. The protection of these is regulated by the Planning Act and not on national, but municipal level. The original idea was not to preserve each and every house but to follow the smooth Nordic democratic example protecting the structure of the areas, scale of buildings, greenery, etc. Following the negative effect of the plot-based development, the inventories were carried out to map the existing buildings and identify their values. Based on the inventories the protective rules were created. In general, in the cities the buildings in the same quarters date from the same era and are rather similar. Due to such homogenous structure, the restrictions on materials, design, etc are pretty precise. The difference between the policies of the Conservation Act and Planning Act is that the planning process has to involve public discussion. In the beginning of creating the milieu protection areas since 2001 there was a notable opposition, also among the members of planning departments of the cities as promoting the values of small houses in shabby condition did not withdraw expected investments and limited ambitious plans of modern development. However, the consistent awareness raising campaign in media, but also work with local inhabitants, including discussions, public excursions, etc. to point out the values, has had significant results. The awareness raising has positively affected the real estate price, and it has become very popular to live in a milieu area. Also, the understanding, that in a tense city structure every development in the neighbourhood has an effect on the real estate value of the whole area, has created common interests. The inhabitants have formed numerous local societies that discuss and improve the quality of life in these areas and interfere in case of unwanted developments. The “neighbour watch” has proved to be not just remarkable community involvement but also a very effective tool in heritage protection.⁽²⁾

(2) Alatalu, Riin. The Social and Economic Impact of Heritage in Estonia. Historic Suburbs and Manor Schools. In: Joanna Sanetra-Szeliga; Katarzyna Jagodzińska (Editors Abbr). The Power of Heritage. Socio-Economic Examples from Central Europe. Krakow: International Cultural Centre 2017, pp. 152–177.

PROMOTION AND THE AUTHORITIES

The start of the effective promotion of the values of the wooden suburbs must be credited to experts from Sweden. It was on their initiative that a typical wooden house from 1876 at Väike-Patarei 3 in Tallinn was carefully restored as a showpiece in 1999-2000.⁽³⁾ A NGO Information Centre for Sustainable Renovation (SRIK) was opened in the building in 2001 providing expert knowledge, but also selling restoration products like natural paints, plaster, etc. The centre also initiated the creation of a new business mediating old building materials and details from demolished or reconstructed houses. Similar centres have been opened in Tartu (2004), Viljandi (2005), Paide (2006), Pärnu, Võru, and Rakvere (2007). In 2010s such a business working hand in hand with the production and sale of local handmade ecologic building materials is already run by several companies.

The official promotion of the values of the milieu areas in Tallinn began in 2001 under the slogan “Old house in order!” and with a campaign to restore the main front doors of apartment houses. In just a couple of years Tallinn Culture and Heritage Department (TKVA) funded the restoration of nearly 100 doors. The restoration work was done by a dozen enterprises or private entrepreneurs. At that time, the colourful, freshly painted doors were a stark contrast to the worn-out appearance of the houses themselves and served as a highly visible advertisement for the values themselves but also for the restoration companies. Also, a campaign against the use of PVC windows was launched. Doors and windows have remained the key elements of the restoration process.

During 2007-2012 TKVA initiated a series of free walks to general audience in milieu areas to explain the cultural and architectural history but also the restoration principles. In addition to this a popular series of books introducing the most typical types of houses was published.⁽⁴⁾ Simultaneously, TKVA offered the possibility to order “colour passports” for the historic houses. The idea was that if the owners were willing to start restoration work, the city would provide them, free of charge, with a basic study on the history of the building, a recommended colour scheme, and basic advice for the work. This campaign prompted people to seek funding; it also forced cooperation between flat owners, as although the apartments are privately owned, the outer walls, roofs, attics, cellars, corridors, etc. are common property and responsibility. Most of all, the restoration activities and participation have strengthened the belief that historic houses have both a cultural and real-estate value. The total number of passports scored 400 before the grant for passports was concluded in 2013 as since 2010 the distribution of passports had diminished and nearly stopped due to lack of demand. Majority of the owners preferred to undertake the full renovation of the house, which requires full architectural plans and “colour passports” lost their meaning.

(3) Andri Ksenofontov, Tiina Linna, Heino Uuetalu, Vana elumaja säästev uuendamine - Väike-Patarei 3. Tallinn: Muinsuskaitseinspeksioon; Eesti Muinsuskaitse Selts; Rootsi Muinsuskaitseamet 2001.

(4) Tallinna maja. Hoonetüübi areng ja säästev uuendamine. Tallinn 2008; Lenderi maja. Hoonetüübi areng ja säästev uuendamine. Tallinn 2009; Funktsionalistlik maja. Eramu ja väike kortermaja. Tallinn 2010; Stalinistlik maja. Kortermaja tüübid ja säästev uuendamine. Tallinn 2011; Sõjajärgne individuaalmaja. Hoonetüübi areng ja säästev uuendamine. Tallinn 2014.

The municipal campaigns started as described above with small steps restoring the doors, distributing advice on the painting of the houses and giving small grants to restore the windows, organizing public excursions, etc. These steps have however, generated a huge impact on the historical suburbs. The outlook of the suburbs has significantly changed since 2001 and the historical houses have become one of the most expensive real estate in Estonian cities. The situation in rural areas is more complicated due to ongoing urbanization. The rural municipalities have some interest in heritage but active steps have been taken only by a few of them. The inactivity of municipalities is partly compensated by the highly recommendable work carried out by the Centre of Rural Architecture.⁽⁵⁾ Due to their and National Heritage Board actions the awareness on the values of vernacular architecture is improving with big steps.

The awareness raising started by the heritage experts working on national and municipal level have influenced also the ambitions of sustainable development, the use and production of ecologic building materials and promoting handicraft skills. In addition to the first information centres there is a growing number of shops selling traditional construction materials and building companies that are specialised on historical buildings.

(5) Centre of Rural Architecture. <https://evm.ee/eng/centre-of-rural-architecture>. (31. August 2019).



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GAZİANTEP, TURKEY

Local Governments and the Cultural Heritage in Sweden

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Thomas Adlercreutz, born in 1944, holds a law degree (jur. kand) from Uppsala University (1971). He has served as a judge at several district courts in Sweden, at the Svea Court of Appeals and at the Stockholm Court of Administrative Appeals. He has been a legal adviser at several Swedish ministries and legal counsel for the National Heritage Board, the Swedish government's cultural heritage agency. He had leave from 1994 to 1996 to draft legislation for the government's Cultural Heritage Enquiry (publications SOU 1995:128 and SOU 1996:128). He is the author of *Kulturegendomrätt - med en kommentar till kulturminneslagen* (2001, Cultural Property Law - with a Commentary to the Cultural Monuments Act). His publications in English include 'The Protection of the Cultural Heritage' in Swedish National Reports to the XIIIth International Congress of Comparative Law (1990); *Legal Protection of the Cultural Heritage in the USA* (1991); *Four Issues of Cultural Heritage Law in Six European Countries* (France, Germany, Hungary, Italy, Sweden and United Kingdom) (1993); 'Civil Liability for Costs for Archaeological Investigation Necessitated by Criminal Negligence - A Swedish Supreme Court Case' in *International Journal of Cultural Property* (1997). He wrote for Sweden in the essay collection 'Legal Protection of the Underwater Cultural Heritage; National and International Perspectives' (2006), and also in 'Handbook on the Law of Cultural Heritage and International Trade' (2014). He is a member of the ICOMOS International Scientific Committee on Legal, Financial and Administrative Issues and also a member of the International Law Association's Cultural Heritage Law Committee. - Having served as legal counsel for the National Fortifications Agency of Sweden until 2012, he is now retired.

Abstract:

A survey will be given of the pertinent legislation for preservation of the cultural heritage at the local government level in Sweden. The protective system works through several tiers: from comprehensive plans for the entire local government district, over detailed plans and other measures with binding effect and further through planning permission procedures for individual objects and measures for control of implementation. An overview will also be given of the State legal system for protection, with an emphasis on provisions for preservation of the archaeological and architectural entities. These dual systems do not always match, and some examples of conflict and resolution will be provided. The complex system for compensation in cases where undue restrictions to private ownership occur will be dealt with, but very briefly because it is very seldom applied.

INTRODUCTION

Statutory protection of historic vestiges has a long tradition in Sweden. In 1666 a royal proclamation with the force of law placed under royal prerogative "old monuments and antiquities".⁽¹⁾ It became prohibited to interfere with remains, which reminded of the greatness of the forebears, particularly those of royal ascent. Graves, stones with runic inscriptions, ruined buildings and similar obvious vestiges of the past became protected.

A number of legal instruments have since been developed and replaced by others, but the core of the legal message has survived: The physical elements of the cultural heritage should be preserved. If necessity dictates interference with a monument, then the extent of alterations should be determined and monitored by the authorities and the vanishing elements carefully recorded. To a great extent

(1) See Thomas Adlercreutz, Report to ICLAFI:s annual meeting 2016 in Tallinn

these principles have been adhered to. There has been a difference in attitude towards remains of what has already been abandoned and has lost economic importance, and structures that still have a viable function in society. Rules protecting the archaeological heritage have therefore been adopted earlier than rules protecting architectural values. The architectural values of church buildings have, however, enjoyed supervision of the worldly authorities even before the days of the royal proclamation.

The safeguarding of the cultural heritage has always been a responsibility for the State, formerly through the King, today the Government (Ministry of Culture) and its agencies. These agencies are the National Heritage Board and the cultural heritage departments of the 21 County Boards. Two other Government agencies also have an important role: The National Property Board and the National Board for Housing, Building and Planning.

Gradually local governments have been entrusted with - and become interested in - legal responsibilities, particularly with regard to the architectural values of the built environment. The statutory framework for protection of heritage values consists of several acts of Parliament, supplemented by government regulations.

OVERALL STRUCTURE OF THE CURRENT HERITAGE LEGISLATION

First, it should be mentioned that the cultural heritage has no special mention or standing in the constitution. Second, Sweden is not a federal state. Under the government, it is divided into 21 counties/regions, each run by a government agency: the County Board with competence in heritage matters, but with a somewhat parallel, regional parliamentary administration, responsible inter alia for cultural issues in general and supporting regional museums with an important role in heritage. There are 290 local governments, ranging in size from close to 1 million inhabitants (Stockholm) to approximately 2,500. Their areas also vary considerably: from 20,551 square kms to 8.79. This fact provides for inequality of resources, to some extent mitigated by a tax redistribution system. Local government autonomy is constitutionally guaranteed by inter alia provisions for parliamentary approval of measures interfering with their governance.

Local governments have a great deal of autonomy in land use issues, such as typically affecting heritage monuments and sites within their districts. Most procedural rules are to be found in the Planning and Building Act, which shall be dealt with presently.

THE ENVIRONMENTAL CODE

Superordinated, however, is *the Environmental Code*⁽²⁾ in the sense that it contains material rules for determining the use of land and water areas, so as to maintain the environmental standards laid down in the code.

(2) Svensk författningssamling 1998:808

This code encompasses provisions for all kinds of activities that may affect the environment. It lays down general rules of consideration⁽³⁾, which have to be respected by individuals as well as by the public administration. The Code proclaims as one its aims the protection and care of valuable natural and cultural environments.⁽⁴⁾ With regard to cultural values the code is instrumental in two ways.

First, the code catalogues fundamental requirements for the use of land and water areas. Areas, which are of importance owing to natural or cultural values or to outdoor recreation, shall, as far as possible, be protected against measures which may be substantially damaging to these values. If an area harbours values of national importance, the requirement is stricter: then the area shall be protected. In addition, the code contains certain geographical delimitation of large tracts, especially along the coastline and around lakes and rivers, where the natural and cultural values are defined to be of national importance.⁽⁵⁾

The effect of these provisions is that not just individuals, but also the public authorities, e.g. a local government in applying its planning powers, must refrain from damaging measures in an area of national importance. Decisions that do not satisfy the requirements could be cancelled.

Second, *the Environmental Code* introduces a concept parallel to nature reserves: the *cultural reserves*.⁽⁶⁾ These can be laid out by the County Administrations or — subject to delegation — by local governments in order to protect landscapes which are valuable due to cultural influence. A good international term would be historic landscapes. Use restrictions necessary to ensure the purpose of the reserve may be issued, such as prohibitions to erecting buildings, fences, storage etc., or against digging, mining, felling etc. A property holder may also be bound to endure the construction of roads, parking facilities, public footpaths, sanitary installations etc. within the reserve. The fact that an area may contain buildings or other elements already protected by the Cultural Monuments Act does not prevent the area from being set up as a cultural reserve.

Decisions to set up cultural reserves are possible to appeal, either to the County Administration or to the government.

Property holders whose current use of land are economically affected by a cultural reserve are entitled to compensation from the State or local government, provided their rights are considerably impeded thereby. Compensation is, however, not payable for damage to the extent it falls below the threshold. If restrictions are severe, an owner could also call for redemption at market value of the property. Unresolved questions regarding compensation can be tried by a land and environment court.

(3) Ibid Chapter 2

(4) Ibid Chapter 1 Section 1 Paragraph 2 2

(5) Ibid Chapter 3 Section 6 and Chapter 4. The National Heritage Board has a list: <https://www.raa.se/samhallsutveckling/riksintresse-for-kulturmiljovarden/riksintressebeskrivningar/>

(6) Ibid Chapter 7

THE PLANNING AND BUILDING ACT

When the Planning and Building Act gained legal force in 1988⁽⁷⁾ it marked the end of very long period of deliberation regarding what degree of autonomy local governments should have in land use matters. This autonomy was afforded them, but with a lot of directions as to implementation of material rules, concerning inter alia how the cultural heritage should be identified and safeguarded in planning procedures and in the screening of planning applications.

The act underwent a rehaul in 2010⁽⁸⁾ but remains basically unchanged when it comes to its treatment of the cultural heritage. It contains rules for overall planning but also for trying individual, detailed applications. The planning rules prescribe that all local governments must adopt comprehensive plans,⁽⁹⁾ covering their entire districts. A comprehensive plan shall note the main aspects of the proposed use of land and water areas, the local government's view on how the built environment should be developed and preserved. It should further describe how the local government intends to take into consideration national interests and qualitative norms under the Environmental Code. A comprehensive plan, however, is not binding on either public authorities or individuals.

Binding regulations of land use and of development⁽¹⁰⁾ are effected through detailed development plans. Alternatively, area regulations may be adopted, if needed to achieve the purpose of the comprehensive plan or to ensure the safeguarding of national interests. With these two planning instruments a local government can regulate how new development may come in place, how tall buildings shall be allowed to rise, what designs and colours are permitted etc. The local governments can also adopt provisions, which in several respects affect the preservation of cultural values. It may e.g. regulate the extent to which building permission and demolition permission is needed for individual projects. It may further prohibit demolition of buildings and structures altogether, and lay down provisions for how buildings of particular cultural value should be preserved.

The State may intervene in planning procedures in certain cases, one of which being that a matter of national importance to the cultural (or natural) heritage according to the Environmental Code has not been duly considered. When a comprehensive plan is in the making, the County Board has a duty to react against intentions jeopardising interests of national importance. It cannot veto the plan, but then again a comprehensive plan is not binding. Detailed development plans and area regulations which run contrary to national interests can be annulled by the County Board.⁽¹¹⁾

Individual projects for new buildings and other structures, and alterations to existing ones, are normally tried subject to an application for building permission submitted to the local government's building committee. The State through the County Board may reserve a possibility to intervene also

(7) Svensk författningssamling 1987:10

(8) Svensk författningssamling 2010:900

(9) Ibid Chapter 3

(10) Ibid Chapter 4

(11) Ibid Chapter 11 Sections 10 and 11

in such cases.⁽¹²⁾ It is thus possible for the County Board to annul a permit for demolition of a heritage building.

The act provides for protection of cultural values in other modes too. It contains general requirements for buildings and other structures and for sites and public spaces. Alterations to existing buildings and structures shall be carried out with care so that characteristics are preserved and constructional, historical, environmental and architectural values are taken into consideration. Buildings which are particularly valuable from a historical, environmental or architectural viewpoint, or which are a part of an area of this kind, may not be distorted. All buildings should be maintained to keep their characteristics as far as possible.⁽¹³⁾ Buildings, which are particularly valuable, shall be maintained in such a way that their characteristics are preserved.⁽¹⁴⁾ Protective orders may be adopted to specify what measures apply to particularly valuable buildings with regard to demolition, alteration and upkeep.⁽¹⁵⁾

Decisions under the Planning and Building act can be appealed to a Land and Environmental Court. In certain instances the County Board tries appeals, and in a limited number of cases either the Government or an administrative court.⁽¹⁶⁾

To the extent binding planning measures or refusals to grant demolition permission cause economic damage to holders of property rights, these may claim compensation. As in the Environmental Code there are thresholds, which the damage must exceed in order to give ground for compensation, but the thresholds are somewhat differently defined. A serious impediment to property rights may force the local government to redeem the property at market value. As is the case with other matters of compensation, a Land and Environmental Court can resolve disputes between the parties.⁽¹⁷⁾

Disobedience of provisions under the Planning and Building Act may, and should, cause the local government to intervene. It could then decide on fines, contingent fines or, in the final instance, the pulling down of a new building at the owner's expense.⁽¹⁸⁾

THE CULTURAL HERITAGE ACT ⁽¹⁹⁾

This act is the central one for preserving the cultural heritage in Sweden. It covers archaeological monuments and sites, listed historical buildings and sites, ecclesiastical heritage, and cultural objects (export/return).

(12) Ibid Chapter 11 Section 12

(13) Ibid Chapter 8 Sections 14 and 17

(14) Ibid Chapter 8 Section 13

(15) Ibid Chapter 4 Section 16

(16) Ibid Chapter 13 and 15

(17) Ibid Chapter 14

(18) Ibid Chapter 11

(19) Svensk författningssamling 1988:950

The introductory provision holds that protecting and caring for Sweden's cultural environment is a national concern and that the responsibility is to be shared by everyone. Notwithstanding the bold preamble, in actual practice it is the State that takes the primary charge,⁽²⁰⁾ mainly through the County Boards which have to fulfill this task within their respective regions. Surveillance at the national level is entrusted to the National Heritage Board.

Other actors have an important role in preserving the heritage as well, especially local governments with their far-reaching mandate under the Planning and Building Act. Evidently also museums, public as well as private, are important. Last but not least, private landowners are subjected to the controlling powers of this act, and they also have to face the economic burden of maintenance and up-keep.

Though important in actual practice, the local governments have few provisions in the Cultural Heritage Act that concern them directly and their formal functions are mainly consultative. They also have standing in appeal procedures.⁽²¹⁾

Here is a digest of the contents of the act.

Archaeological Monuments and Sites

pertaining to categories of archaeological remains listed in the act are protected directly by law unless it can be assumed that it dates after the year 1850. No administrative order is necessary. Remains younger than 1850 can be protected subject to an order by the County Board.

Inventories pursued over many years have led to the setting up of a register kept by the National Heritage Board and digitally accessible by the public. In addition, many monuments in the register have been entered onto official maps.

The protective system works as follows. Anyone with the intention of using land where archaeological remains may be affected must consult the County Board as to extent and importance of protected remains. All physical interference with protected remains needs permission by the County Board, and if permission is given, it is generally on condition that the applicant pays for archaeological investigation and documentation. This does not apply if the protected remains were entirely unknown at the start of the operation; then the State takes responsibility for archaeological costs. An applicant may appeal refusals to grant permission to an administrative court, and may contest decisions regarding archaeological costs at the Land and Environment court.

The County Board shall inform the local government of decisions regarding archaeological monuments and sites in their district.⁽²²⁾

(20) Proposition (Government Bill) 1987/88:104 p. 33

(21) 1988:950 Chapter 2 Section 24

(22) Svensk författningssamling 1988:1188 Section 5

The Act also covers portable archaeological finds with rules distributing ownership of finds and regulating matters of State acquisition and compensation. These rules are not directly relevant here.

Historic Buildings

can be protected by listing, which is effected by the County Board. Protective orders will specify what applies to a listed building with regard to demolition, alteration and upkeep. Parks and gardens and structures other than buildings can also be protected. If necessary, the protective order may cover an area adjoining the building to ensure that this area be kept in such a condition that the appearance and the character of the building will not be jeopardised.

The act is not applicable to buildings owned by the State. Such buildings and other structures may be protected on order of the Government. The National Heritage Board is responsible for the monitoring of a special regulation.⁽²³⁾

The basic criterion for listing is that the building should have an "especially high cultural value".⁽²⁴⁾ Only the 'elite' of culturally important buildings etc. should be listed under the Cultural Heritage Act, whereas other buildings of cultural eminence can be protected under the Planning and Building Act.

Owners of buildings to be listed have to be consulted and the protective order should as far as possible take into consideration owners' reasonable designs for the building. This is applicable to holders of other real property rights as well. However, a listing can be done regardless of property holders' consent.

Pending listing, the County Board may prohibit temporarily any measures that might lessen the cultural value of a building; most notably it may stop an imminent demolition.

Non-consenting property holders may claim compensation for adverse effects of listing, but there is a threshold of economic damage that must be passed before owners become eligible for indemnification. Very serious restrictions to the use of property caused by the listing of a building, gives the owner the right to call for redemption of the property. He will then receive compensation for its market value, and will also have his own costs for litigation in a real property court covered by the State.

Once a building has been listed the protective order is meant to govern its continuing upkeep and care. However, it is possible for the owner to apply for permission by the County Board to make changes to the building contrary to the protective order, if he can show special reasons. Permission may be granted on condition that the change is made in accordance with specific directions and that the owner records the state of the building before and during the work that will change it. If listing

(23) Svensk författningssamling 2013:558

(24) 1988:950 Chapter 3 Section 1

causes an obstacle, inconvenience or costs out of proportion to the importance of the building, the County Board may change the protective order or revoke protection altogether.

A breach of the protective rules for historic buildings may lead to consequences of different kinds. The County Administration may issue injunctions for restoring damaged buildings, enforced by contingent fines. There could also be penalties. These, however, could not exceed a fine.

Rules on standing and appeal are probably somewhat unusual from an international viewpoint. Anyone, regardless of legal, economic or even neighbourhood interest in the matter, may apply for listing.⁽²⁵⁾ This means that the County Board cannot on formal grounds dismiss an application — even if it obviously lacks merit — but has to provide a reasoned answer. The local government shall be consulted, unless this is evidently not necessary, as it is in unmerited cases. When a decision has been reached not just the applicant but also the local government shall be informed.⁽²⁶⁾

The unlimited right to apply for listing is not corresponded by a similar right of appeal. A refused listing can only be appealed against by the National Heritage Board. The reason for this — though it is not clearly stated in the preparatory works — seems to be that a reversal of the County Board's rejection might force the State into a situation where compensation eventually has to be paid, though funds may not be available.⁽²⁷⁾

FINANCING

There is a State grant system administered by the National Heritage Board and the County Boards. For the fiscal year 2018 the former agency allotted SEK 244 million (approximately EUR 28 million) to the County Boards for further distribution. Of this sum 181 million went to care measures, 87 million to designated historic buildings, and 54 million to archaeological monuments and sites.⁽²⁸⁾

There are no tax subsidies available for the upkeep of heritage properties. The only tax rule connected to such properties is a provision which may lower taxable value due to e.g. excessive maintenance costs, and thereby also decrease property tax.⁽²⁹⁾

There is no comparable statistics for local governments and their contributions to the upkeep of the cultural heritage.

(25) Ibid Chapter 3 Section 4 Paragraph 1

(26) Svensk författningssamling 1988:1188 Sections 11 and 12

(27) Thomas Adlercreutz. Comments to the Cultural Heritage Act in Lexino, an internet publication, https://pro.karnovgroup.se/document/528839/2#SFS1988-0950_NKAR100

(28) National Heritage Board Annual Report 2018 <https://www.raa.se/app/uploads/2019/02/RAA%CC%88-A%CC%8AR-2018-slutversion.pdf>

(29) Svensk författningssamling 1979:1152 Chapter 7 Section 5

PROBLEMS

Statistics

The National Heritage Board keeps a register of heritage buildings, digitally accessible. It contains precise information as to buildings listed by the County Boards under the Cultural Heritage Act, but no similar amount of information as to buildings protected by special protective orders made in detailed development plans or area regulations under the Planning and Building Act.

There are currently approximately 2,400 buildings, structures and areas listed under Chapter 3 of the Cultural Heritage Act. In addition there are 280 state-owned listed buildings.⁽³⁰⁾

Cultural reserves under the Environmental Code have been created in 44 cases, 10 of which by local governments.⁽³¹⁾

Approximately 1,400 areas of national importance for the cultural heritage have been identified under the Environmental Code. These areas, however, seldom have clear borders, and the preparatory works seem to indicate that impacts outside of a perceivable border should also be taken into consideration.

An evaluation made by the National Board of Housing, Building and Planning in 2003 assessed that only 10 percent of buildings in Sweden were older than 100 years, and that there still was a great need for inventoring in local government districts. It was estimated that between 1,000 and 2,000 buildings had been protected under the Planning and Building Act, but that in addition between 22,000 and as many as 400,000 buildings would be eligible for protection.⁽³²⁾

Difference in Legal Regimes

As has been described there are three different legal instruments applicable to the cultural heritage of Sweden. The Environmental Code holds the administrative rules for cultural reserves — matters which are usually straightforwardly dealt with without tension — but is only indirectly applicable to the protection of areas of national importance. Here other acts come into play, notably the Planning and Building Act, where the rules for planning procedures and permission should be applied with due consideration to the cultural heritage, and damaging measures avoided. There is a certain margin of appreciation here, where the County Boards, representing the State, and local governments may have different opinions, finally to be settled by the Government in cases regarding planning and by the Land and Environment Court if the issue is a permission. It should be noted that conflicts of interests do not only occur in matters regarding the cultural heritage. It is not uncommon that national interests run opposite to one another. A now topical type of conflict exists in areas where reindeer herding is

(30) <https://www.raa.se/kulturarv/byggnader/byggnadsminnen/>

(31) <https://www.raa.se/kulturarv/landskap/kulturresevat/forteckning/>

(32) https://www.boverket.se/globalassets/publikationer/dokument/2003/kulturhistoriskt_vardefull_bebyggelse.pdf

identified as a national interest, but also mineral extraction, which might negatively influence herding conditions.

Another legal problem might arise from the fact that application procedures are not always coordinated. If someone gets permission for a building project in an area where archaeological remains might get affected, the local government should inform the applicant that the project also needs consultation with and perhaps permission from the County Board. If the local government's decision gains legal force, but the County Board refuses permission to interfere with the archaeological remains, then the first decision becomes worthless. This type of conflict does not occur very often, but is still a practical possibility, something that does not boost confidence in the legal system.

The lack of co-ordination between procedures governed on the one hand the Planning and Building Act and the Cultural Heritage Act on the other is not limited to decisions made by the first instance. The observant reader has already noted that appeals go to different bodies: an administrative court in Cultural Heritage Act cases, and the Land and Environmental Court if the case is governed by the Environmental Code or the Planning and Building Act. Also the highest court level is different: The Supreme Administrative Court and the Court of Appeals for Land and Environment. This division has old roots but its recent history starts at the inception of the Environmental Code in 1999. So far, it is difficult to assess if this dual command materially affects the adjudications in any particular direction, but from a juridical viewpoint there seems to be few reasons for having two separate branches of the judiciary dealing with cases that rest on mainly the same fundamentals.

Århus Convention

Another problem stems from an insufficient implementation of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, the Århus Convention.⁽³³⁾ The Environmental Code and the Planning and Building Act have identical provisions for the application of the Convention, but the Cultural Heritage Act lacks any. This notwithstanding, environmental organisations have on at least three occasions been granted standing in matters concerning protection of archaeological monuments and sites.⁽³⁴⁾

CONCLUSION

There is a system for local government involvement and taking of responsibility with regard to protection of the cultural heritage in Sweden. The system has many flaws and ups and downs, but there is still hope and scope for improvement.

(33) <https://www.unece.org/env/pp/treatytext.html>

(34) Court of Administrative Appeals Göteborg Judgement 27 June 2016, case nr 1186-16, Court of Administrative Appeals Stockholm Judgement 6 May 2019, case nr 4285-18, Supreme Administrative Court 2018 ref 10 II

Role of Romanian Local Authorities in Managing and Propagating Cultural Heritage

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Abstract:

After 50 years of communism, Romania had a revolution at the end of 1989. Since then, there is a continuous effort to reform the society, managing cultural heritage being one of the most difficult tasks. In the attempt of gathering cultural legislation into a Heritage Code, some issues have to be tackled. Redefining the limits in interfering with private property rights is imperative. Secondly, a legal solution is still under scrutiny since today it is impossible for any authority to fund private cultural heritage properties, after decades in which the state was fully responsible. Another conceptual issue is to make authorities perceive heritage not as an obstacle for development but as an opportunity for it, allocating resources as an investment rather than an expenditure burden.

CURRENT SITUATION

Romania was affected for half a century by communism, a type of political philosophy based on centralised power of a sole political party and, ultimately of one man imposing his will over the society. This meant that even if at local level there still were mayors and "popular councils", their actions were dedicated to applying the centralised 5 years planning process set by the ruling party. Since the changes fuelled by the revolution of December 1989, it was difficult to reform the administrative system so that local initiative to be put back in its rightful place. For many years, centralism remained very strong, mainly by way of allocating public funding. To underline the difficulty of change, it must be said that the Law 273 on Public Finances was adopted in 2006. In 13 years of being into force, this act had no less than 92 changes through ordinances. In recent years, the objective of decentralisation is assumed or declared by the entire political spectrum but not enough steps have been taken towards this goal. The most recent political action was the adoption of the Administrative Code by Government Ordinance no. 59/2019, replacing the Law no.215/2001 on Public Administration, among others.

For legal and organisational framework, the local administrations have to comply with separate main laws on cultural heritage, dealing with historic monuments (Law 422/2001), archaeology (Government Ordinance 43/2000), movable heritage (Law 182/2000) and museums (Law 311/2003) along with intangible heritage (Law 26/2008) and the community centres (Law 292/2003). Each of

these laws assign specific tasks to the mayors and the local councils, all of them imposing a sort of central control exercised by the Ministry of Culture through consents and other types of notices or certificates. Although in theory the local administrations are responsible of taking care of the cultural heritage of their territories, this heritage is usually perceived to be a central concern of the state at central level. One reason invoked is the fact that scheduling a monument is done at central level, by decision of the minister of culture, without local consultation. Another one is related to archaeological artefacts discovered by chance, that are assigned to national museums by the Ministry of Culture, also without local consultation. Also, the existence of multiple competences in control and sanctioning the violations of the regulations in the field of cultural heritage makes their application rather undetermined or vague. Thus, according to the current legal framework, the exposure of such violations can be done either by the deconcentrated bureau of the ministry of culture, by the local state inspectorate for constructions or by the local police that deals with the discipline in constructions. Therefore, in many such situations, none of the competent authority acts, expecting the others to do so. As for the role of the ministry of coordinating and controlling cultural heritage protection, this has been a permanent dissatisfaction for the mayors of the large municipalities, where most investments are concentrated. This is due to often conflicts generated by interests behind such investments and the needs of heritage conservation. For this reason, in recent years there have been many attempts to dissolve the territorial offices of the ministry and to take over their attributions at local level, under the pretext of decentralization. Obviously, this reflects a need to eliminate any potential opposition to the discretionary way of generating local urban development since an urban plan is the most powerful tool that local authorities have and that are in their power to control. And, as a general trend, it must be observed that, before protecting any cultural heritage, local authorities would rather choose attract investments even if those investments would put cultural heritage in danger. These "General Urban Plans" - as they are defined - have a limited duration, according to the law. Most of them are expired today, having their validity extended more than once. The capital has such a plan, not only expired but very much outdated, being almost 20 years old. Operationally, the built heritage is regulated within these general urban plans through detailed zonal plans of protected built areas. These specific type of plans do not have a formal expiration term. According to the law, it is compulsory for local authorities to develop detailed zonal urban plans for the historic centres, for the buffer zones of historic monuments and for the protected areas. This obligation is only fulfilled for at most some central areas, while many of the protected perimeters are only formally delimited and left without accurate regulations, most of the people assuming that the eventual building permits within these perimeters would anyway be filtered through the consents issued by the Ministry of Culture. It is then very often that the Ministry of Culture becomes the last hope for discontented citizens against excess of local power. In the absence of detailed studies to substantiate these areas, evaluation of such development projects is always difficult by one hand and often seen as arbitrary by the other.

Financial issues are the most difficult due to multiple factors – mentality, availability of resources, poor definition of mechanisms in funding built heritage. In almost all situations, financing the protection and highlighting of the heritage is seen not as an investment but as an expense. The lack of statistics on the costs of restoration and on the resulting benefits is most of the time leading to the unchallenged opinion that it is always more economically efficient to tear down and to rebuild. That is

why it has always been difficult to determine a formula that would establish reasonable cost limits within the state could subsidize the owners restoring according to the proper requirements their monuments. Such subsidies would be possible even at the present, based on the Government Decision no. 1.430 / 2003 for the approval of the "Methodological norms regarding the situations in which the Ministry of Culture and Religious Affairs, respectively the authorities of the local public administration, contribute to cover the costs of the works of protection and intervention on the historical monuments, the proportion of the contribution, the procedures, as well as the conditions that the owner, other than the state, the municipality, the city or the commune must meet ". However, these rules have never been applied because officials belonging to the fiscal administrative system can create problems due to the fact that financing of private individuals from public funds is considered illegal *de facto*. In the provisions of the former law of public administration (Law 215/2001) as well as in the new provisions of the Administrative Code, the local councils must provide "the necessary framework for carrying out public services of local interest regarding the preservation, restoration and enhancement of monuments", without specifying in any way if this framework includes funding or if it may also refer to monuments other than those owned by the municipality. The special law of historic monuments has articles that indicate the possibility of financing or co-financing the restoration of private owned monuments both by the central authorities and by the local authorities. However, in the chapter dedicated to financing, in article 50, the tasks are then set out in a distinct way. Consequently, one could also interpret the text as that the local authorities have obligations only related to the monuments owned by them, since only the ministry of culture is designated as the source of credits for financing or co-financing the private owners. The budget allocated to MC is only 0.1% (approx. 150-180 million euros) from the gross domestic product although, besides the living culture, this budget is supposed be also dedicated to the protection and enhancement of the entire national built heritage. Therefore, the involvement of public authorities is usually concentrated exclusively on the public domain. A concrete example is the campaign to rehabilitate the historic centre of Sibiu in 2006, as preparation for 2007, when the city was European Cultural Capital. All the works financed by the government and the municipality were limited to the public spaces of the streets and squares and to the rehabilitation of the facades delimitating these spaces. No structural intervention on those buildings could be undertaken due to their private ownership. The case was similar with regard to the works in the historic centre of Bucharest from the beginning of the 2010's, where the municipality did not deal with any building at all, neither facade or structure, but exclusively with the street infrastructure. Although this gave a boost to private investments, till today many of the buildings themselves are in a poor shape and even at risk, the consequence being that mainly the ground floors are used as pubs and restaurants. European funds are a distinct category of funding, first available to Romania in the pre-accession period to the EU. If within the first years after the accession in 2007 heritage seemed to be nor so attractive for the funding programs, due to the spectacular effects that the cultural capital program had on the economy of the city of Sibiu, more and more local authorities began to use their built heritage as pretext for attracting European investments. In fact, the excess present in many of the funded projects has made this source to be considered by some specialists rather a threat to the heritage. The major problem is that these projects are evaluated only through accounting checks and not through the quality of the works and the adequacy of the materials to the needs of the heritage instead to those of the standards applied to the quality

norms of the industrial construction materials or of the accounting ones. Those kind of evaluations do not take into account the natural succession of some research and design phases before and during the execution of the restoration works. Another major problem associated with these grants is the selection of the designing teams and of the contractors. This type of problem derives from the total avoidance of the tender procedures involving public architectural contests. Public procurement for such works is always done through the system of tenders having as main criterion the lowest price, with the almost total elimination of the requirements regarding the need of certification for the specialization in heritage restoration when selecting the contractors. This has led to many tragic cases of irreversible mutilation of important monuments throughout the country. A recent example is the intervention from Capidava, a late Roman and Byzantine fortress, where there were even investigations of the criminal prosecutors on the development of this project.

Management plans are also tributary to a past rigid model that is the general urban plan. The Decision of the Minister for Transport, Constructions and Tourism (present day Ministry of Regional Development) no. 523/2003 implemented the set of guidelines for designing zonal plans for protected areas. These guidelines define such urban plans as tools for both determining development and exercising control. In reality, these are not management plans but some relatively static tools for controlling inflexible rules. Typically, urban plans are centred on the action of determining zoning. As a consequence they appear to be at most some ideal images of how the city should be organized and not a management tool that foresees a strategy and some tactics related to reach a specific goal. Undoubtedly, a model for such more adequate approach should be the "Structuurplan Brugge", a 1972 document that successfully led to the restructuring of this city. Using the nuances of two seemingly synonymous words in the translations of international conventions into Romanian from French and English, I argued that, in Romanian, it makes sense to consider they have in fact distinct meanings. Thus, through the Romanian language, I think "gestion" and "management" can get two different translations. The meaning of the first one (of Latin via French origin) would be that one would already have some guidelines that have only to be followed while the second one (of English origin) may imply that one should develop and apply a plan analytically, defining goals, steps and methods of accomplishment. In order to "gestionner", you must have already been told what to do while to "manage" should involve a dose of certain economical creativity. Which, unfortunately, is lacking in the conception of most of the urban planning tools used by the local public authorities in Romania. They often lack a "business plan", which is why most of the administrations, being overtaken by the too rapid trends of urban evolution, leave the development at the will of the real estate investors, who are much faster in elaborating themselves zonal urban plans that are obviously too much focused on their direct and immediate interests. Applied to the built heritage, a "business plan" should first of all mean that one is setting some goals for it and not just some more or less standardized rules for its handling. Therefore, it would be fundamental to the local authorities to know what is it that they actually want from that local heritage. Do they want it to be a beautiful setting and a primary tool for tourism or do they want it to be the framework for a quality community life, as a true tangible testimony for history? Each option would require a different policy. For example, in the 2001 law for the protection of historic monuments, it was established the non-taxation of historical monuments used for residential or non-profit purposes, without any special conditions in return for this exemption.

Recently, through the Fiscal Code, this gratuity has been eliminated and the local authorities now have the capacity to decide whether to apply it or, on the contrary, in case of neglect, to apply a taxation of up to 500% as for any real estate property that is not properly cared for.

For UNESCO sites there is a special procedure set by the Government Ordinance 47/2000. For these areas, the competence of elaborating their management plans, their urban plans, as well as their approval is given to the Government, through the initiatives of the Ministry of Regional Development (its current name). None of these areas have ever got such a set of tools.

Therefore, in terms of good practice, examples come from the activity of some NGOs and not from local or central authorities. One of them is Mihai Eminescu Trust that managed in the UNESCO site of the village of Viscri to get most of the community together in understanding and applying basic rules for maintaining not only the buildings but also a certain rural spirit, one can say even despite the local authority.

Capacity building and awareness raising are also a sensitive issue for heritage preservation in Romania. A set back might be considered the poor definition of the role of the chief architect in the current legislation (Law 350/2001 on Urban Planning and the Administrative Code). This essential function is still defined merely as an administrative one - head of the office issuing urban planning certificates and building permits. It remained so since communist period when every county had a dedicated planning institute providing to all municipalities their urban plans and even the blue prints for their building activities. The architectural offices of the local administrations were only implementing and controlling such development plans, not being set to anticipate development. The mentality of today is still very much tributary to the policies of the last two decades of communist period, a time when the official policy was to deny any value of the past and to replace everything with the creations of the "new man", with achievements that would eventually demonstrate the superiority of socialist planning. The extensive demolition campaign organized by Nicolae Ceaușescu in many of the historical central areas is notorious. Mainly after the catastrophic earthquake of 1977 this campaign intensified, using the pretext of replacing structurally affected buildings although many of those demolished at that time had not been drastically affected by the earthquake. In order not to have opposition or delays, the institutions specialized in the conservation of built heritage were dissolved. It is not by accident that Romania did not join the World Heritage Convention until 1990, after the fall of the regime. The cessation of the training of the specialists, the permanent disregard of the built heritage in relation to the sustained pace of its replacement with new urban structures had a heavy impact on the public mentality, on the capacity of the architects and urban planners trained in that climate, to relate positively to heritage. Reaching their professional maturity in the '90s, most of them acted with minimal involvement in protecting the remaining heritage. It is estimated that roughly one third of the historical city of Bucharest was demolished in the '80s and that in the last 20 years the trend was almost to equate this negative performance, this time as a result of the real estate pressure. It triggered a gradual reaction of dissatisfaction among civil society, which formed several organizations aimed at stopping this tendency. One of them, "Association Save Bucharest", became so important since 2005 that, evolving from combating abuse on cultural heritage to combating corruption or poor

governance, its members decided to turn political in order to be able to participate in local elections in 2016. The party became the third political force in Romania in less than 4 years since its establishment.

INTENDED REFORM THROUGH A CULTURAL HERITAGE CODE

The legal and organisational framework is about to change in order to give more responsibility for the local authorities. It is intended that the process of scheduling historic monuments to be more exacting and leave more space for the local authorities by introducing a new and distinct label of cultural heritage. This new label will not be awarded by decisions at the central level as at present but by decisions of the local councils. This "minor" heritage, or heritage "of local interest" described as "landmark for the cultural memory of the community", will encompass all current categories - built, movable and intangible. Therefore, the criteria for listing historic monuments will have to have higher standards, leaving enough room for the lesser heritage to be identified and protected by the direct involvement of local communities. The emphasis will be applied to protected built areas. The protected areas currently exist only as a direct consequence of urban planning legislation and are not legally perceived as "cultural heritage" but only as urban servitudes, defined rather in the sense in the French practice. In the short term, the new law will explicitly include protected areas in the category of "cultural heritage", which could generate effects both in the form of contraventions and as criminal sanctions.

Financial issues is by far the most problematic issue to be solved given its predominantly political rather than technical character. Essentially, the possibility of financing the restoration works carried on by private owners cultural heritage must be resolved with maximum clarity. First of all, legislators will have to choose between the option to grant lump sums related to a certain type of work and specific areas / volumes of intervention and the one orientated towards compensations, as percentage from the investment values. In either case, the public contribution will be defined as an aid representing the extra costs over the average level of the expenses for similar interventions required for a common property, which the owner has both the duty and the interest to keep it in good maintenance.

Secondly, there is a need to create a distinct funding mechanism for the built heritage. Currently, the Ministry of Culture has a program dedicated to financing cultural projects, based on the past "Culture 2000" model. This EU program had two distinct sections, one dedicated to living culture and another applied to the built heritage, the later almost excluded under the current "Creative Europe". In Romania, the financing of cultural projects is currently done through the Administration of the National Cultural Fund. Assuming that the built heritage already has other financing ways, the priorities set by this agency identify also a minor section dedicated to education and promotion of material heritage. In this regard, the new code will have to introduce a distinct financing mechanism on projects dedicated to built heritage, open to calls from local authorities and NGO's. If it would be possible to create a type of sovereign investment fund versus an annual budget allocation dedicated to a certain number of eligible projects, it would be preferable to do so. But it is more likely that this problem will not be solved because of the complete lack of specialists in the cultural heritage economy.

The manner in which cultural heritage is managed will continue to be a problem since such management is more about the imagination and capacity of local initiative and less about the reform of the legal framework. However, a reforming measure is aiming at the efficient management of protected areas, without the direct involvement of public budgets. There is an intention to import the concept of "transfer of development rights", based on the model of the Australian regulations applicable in the cities of Perth and Adelaide. To this scope, the possibility of developing such a mechanism based on specific conditions will be clearly stipulated in the law. As a consequence, local authorities will be able to determine precise boundaries within their territories where development may be augmented by transfers of virtual developments from the protected areas. The transferred developments rights will be determined by the average coefficients resulted from the local policies on urban planning against which the compensations are calculated. The properties beneficiaries of this mechanism will be noted in the land registries. This is a mechanism expected to produce greater stability and predictability and a greater degree of voluntary compliance with the restrictions imposed on a protected area.

The issue of capacity building is primarily related to the idea of transforming the existing NGOs active in the field of cultural heritage into a partner for authorities instead of being constant opponents or adversaries as is currently the case. There is the intention of setting up a federation of such NGOs in order to have a good base to build the relation between the civil society and the central or local public authorities. This federation would be entrusted with some important tasks, such as the certification of the quality of the activity of some people aspiring to receive the title of "living human treasure". The most important delegated task may be to analyze and select the projects aiming to obtain the public financing through the fund dedicated to the built heritage mentioned above. A major Romanian problem is the massive emigration in the EU countries of its specialized labour force. Therefore it is vital to give greater importance to these labourers through two main measures. Within the process of certification of the specialists in cultural heritage restoration, it will be created the title of "cultural heritage technician" for craftsmen. Currently, only persons with higher education may be certified specialists in heritage restoration. A second measure would be to impose a special tax for construction companies, in order to build a fund for vocational training, based on the model of French legislation. Another aspect that has to be solved is the insufficient number of public clerks assigned to cultural heritage duties. One option is to determine a certain compulsory ratio between the number of built heritage properties within an administrative territory and the number of job positions for the local authority to assign for specialised clerks.

Focusing on the idea of voluntary compliance, it is vital for the new law to find the most effective incentives and not the most effective sanctions for heritage owners. It derives from one of the ten principles set by the Preliminary Theses of the Cultural Heritage Code. It might be the most important of them as it states: "Protecting the cultural heritage is a responsibility for each and every citizen but it doesn't have to be a burden for any of them".



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Management of the World Heritage Site of Angkor in the Siem Reap Province (Cambodia)

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Abstract:

The large archaeological site of Angkor is in the Province of Siem Reap. It was included in the World Heritage List in 1992 under the condition that an effective institutional framework be rapidly established. To address considerable conservation and management challenges, it was decided not to rely on the local or provincial authorities but to create a specific institution, the APSARA Authority, led and managed by the Government. It was initially established in the capital city, reflecting a centralized approach. After a few years, it was moved to Siem Reap where it became a major local player, not only for site conservation and management but also for social, environmental and land planning issues. The present article presents the evolution of this institutional framework and its relations with national, provincial and local authorities.

ANGKOR

The UNESCO World Heritage Centre is describing Angkor in the following way:

“Angkor is one of the most important archaeological sites in South-East Asia. Stretching over some 400 km², including forested area, Angkor Archaeological Park contains the magnificent remains of the different capitals of the Khmer Empire, from the 9th to the 15th century. They include the famous Temple of Angkor Wat and, at Angkor Thom, the Bayon Temple with its countless sculptural decorations. UNESCO has set up a wide-ranging programme to safeguard this symbolic site and its surroundings. The first city conformed to the classic form of Khmer capital with certain fundamental elements: a defensive bank and ditch with a state temple at its centre, built from brick or stone, and a wooden palace. There would also have been many secular buildings, constructed almost entirely of wood, in and around the enceinte. The state temple at Roluos, the Bakong, and the temple built in memory of the royal ancestors, Preah Ko, were erected around 880. Another essential feature of a Khmer capital, a large reservoir, was added a decade later, with in its centre a third temple built to the north-west of Roluos, around the hill of Phnom Bakeng, now known as the Eastern Baray”.

“.....”

“Another significant element of the Angkor complex is the irrigation system of the region based on the great reservoirs, which provided the economic infrastructure for the successive Khmer capitals and their rulers.”

(1) <https://whc.unesco.org/en/list/668/>

HISTORY OF THE PROCESS AND CONDITIONS OF INCLUSION OF ANGKOR IN THE WORLD HERITAGE LIST

Angkor was included in the World Heritage List in under very particular circumstances. After two decades of war and occupation, Cambodia was a very unstable country. In accordance with the “Paris Peace Agreements”, Cambodia was placed in 1991 under the temporary administration of a Supreme National Council (SNC) with the support of the United Nations. Elections were organized in 1993 and led to the constitution of a legitimate government.

At that time, the 80 monuments of the Angkor monumental complex were left with very minimal care. But the newly established authorities wanted the site to be included in the World Heritage List at the soonest, for the sake of its protection but also because Angkor is a symbol of national identity and cohesion. Given the immediate and very serious threats to the integrity of the site, in particular its systematic plundering by looters, the World Heritage Committee had decided to waive some of the conditions required under the World Heritage Convention Operational Guidelines and had inscribed the Angkor site, together with its monuments and its archaeological zones, in the World Heritage List in 1992.

The World Heritage Committee stressed that this action was not to be taken as setting a precedent for the inscription procedure. Therefore, in order to guarantee the protection of the site for a three-year period (1993-1995), the Committee has decided “that a special in-depth study will be made of the Angkor site, and that further reports will be presented to the Committee”. Moreover, in order to respond to several urgent problems of conservation, the Committee had inscribed the site on the List of World Heritage in Danger and had requested, on the recommendation of ICOMOS, that the authorities concerned take the necessary steps to meet the following conditions:

- Enact adequate protective legislation;
- Establish an adequately staffed national protection agency;
- Establish permanent boundaries based on a UNDP project;
- Define meaningful buffer zones;
- Establish monitoring and coordination of the international conservation effort.

During the temporary administration of the Supreme National Council and following the constitution of a newly elected Government after the 1993 elections, several important steps were taken, with the support of the United Nations, to respond to the World Heritage Committee’s requests:

On the enactment of adequate protective legislation for the site, the following had been achieved:

- The new Cambodian Constitution has included specific articles (Articles 69, 70, 71) making the protection of national cultural heritage a duty of the State, and declaring designated national and World Heritage sites to be “combat-free zones”;
- A cultural property protection legislative text, prepared with the technical assistance of UNESCO, was adopted as a Decision of the Supreme National Council on 10 February 1993.
- In November 1993, the Ministry of Environment issued a draft “Decree on the Creation and Designation of Protected Areas”, thereby proposing a national system of protected areas.
- In 1996, a comprehensive Law for the Protection of Cultural Heritage was adopted

As regards the third and fourth request of the World Heritage Committee, the establishment of permanent boundaries and of meaningful buffer zones, the newly elected Government adopted the Royal Decree of 28 May 1994 concerning the zoning and management of the Siem Reap/Angkor region. It sets the boundaries of five protective zones by decreasing levels of protection.

As to the second request of the World Heritage Committee (the establishment of a national protection agency), after the 1993 elections the new Government created an inter-ministerial Supreme Council of National Culture (SCNC) in order to resolve day-to-day matters and to define the mandate and authority of a future appropriate national protection agency to be established.

Finally, in order to respond to the last request of the World Heritage Committee (monitoring and co-ordination of the international effort), an Intergovernmental Committee for the Safeguarding and Development of Angkor (ICC) was decided by the First Intergovernmental Conference for the Safeguarding and development of the Angkor Site (Tokyo, 12 and 13 October 1993). The primary purpose of this Committee, whose Secretariat is provided by UNESCO, is to assist the Cambodian Government in defining conservation priorities and to promote and coordinate international assistance for Angkor. The ICC held its first meeting outside Cambodia, reflecting the strong support from the international community to the fragile new institutions in Cambodia. Later, it held all its subsequent meetings in Cambodia, first in Phnom Penh, and later in Siem Reap in the early 2000s.

A Centralized Approach

At that time, it had never been envisaged that any responsibility for the protection and management of the World Heritage Site of Angkor be attributed to the authorities of the Province or the City of Siem Reap. The involvement of these local and provincial authorities on a site situated on their territory was therefore non-existent. There were several reasons for that situation. At the end of a long period of war followed by internal instability, the country remained extremely poor. Its local and provincial authorities were very weak and suffered from a dramatic shortage of human resources at all levels and in all fields. The very few qualified Cambodian individuals who could contribute to the protection and management of Angkor were based either in Phnom Penh or abroad. In addition, a process of administrative decentralization to the provincial and local levels had not yet started. At that time the priority of the government was to develop basic administrative capacities of the central government. Provincial and local levels had to concentrate on police and security rather than on the management of natural and cultural resources. It is only in the late 1990s that, with support from the United Nations Development Program (UNDP), a process of decentralization was conducted in order to develop capacities of local and provincial levels in order to undertake several administrative competences. Moreover, the Government had understood the high potential of Angkor, as a touristic site of prime importance in Asia and in the world, to generate considerable income for the development of the whole country. At a time when the country was rebuilding its national institutions as well as its education and health systems, it was a natural and pragmatic approach to centralize at the level of the Government and in the capital city, all the competences related to Angkor. This choice appeared to be positive one, but it also had consequences on the relations with local authorities and communities in Siem Reap.

A CENTRALIZED INSTITUTIONAL FRAMEWORK

Supreme Council on National Culture

In August 1993, a Supreme Council on National Culture (SCNC) was established, at the highest levels of the government, as an inter-ministerial body to ensure the coordination of the management of the cultural heritage throughout the country. It ensured that the relevant ministries collaborate for the protection of all cultural sites, including Angkor. It was established in Phnom Penh within the premises of the Council of Ministers, reflecting a very centralized approach.

The APSARA National Authority (ANA)

The Authority for the Protection of the Site and the Management of the Region of Angkor (APSARA National Authority or ANA) was created by Royal Decree on 19 February 1995 to answer one of the conditions of inscription of the Angkor Site on the World Heritage List. Responding to the enormous cultural, scientific, touristic and thus economic importance of the site, APSARA assumes three levels of management responsibility: political, technical and operational. The technical and operational responsibilities which were assumed by the SCNC were progressively transferred to APSARA. Thus, during the 19th Session of the World Heritage Committee in Berlin, in December 1995, the announcement by the Cambodian Authorities of the creation of the National Authority APSARA was welcomed with satisfaction by the international community.

In summary, the main missions of APSARA are the following:

- Ensure, in the region of Siem Reap/ Angkor, the protection, the preservation and the valuation of national cultural property;
- Conceive and lead the development of cultural tourism of the region of Siem Reap/ Angkor
- Carry out sustainable development to contribute to the implementation of the policy of the Royal Government of Cambodia for poverty reduction
- Establish partnerships with provincial and territorial authorities
- Cooperate with institutions and organizations, both Khmer and Foreign, which have objectives answering the vocation of APSARA and are operating in the region.

It is by nature inter-ministerial, while maintaining financial and administrative autonomy. Since 1999, APSARA has become a public administrative institution, endowed with legal entity and with administrative and financial autonomy, exercising responsibilities within the territory of the Province of Siem Reap but with not under the Provincial authorities, as it is accountable directly to the Council of Ministers.

As a result, within the boundaries of the World Heritage sites as well as the 5 protective zones, the administrative competences of the provincial authorities of Siem Reap are either limited or shared with APSARA. However, in order to guarantee an institutional linkage between the provincial au-

thorities and APSARA, the Governor of Siem Reap Province is a member of the Board of Directors of APSARA, the other members being all the Ministers concerned by the above competences.

From my experience, during the first years of the functioning of such an institutional framework, the provincial authorities had little or no influence on the management of the site. The Executive Direction of APSARA defines directives for the implementation of policies in Angkor in collaboration with the appropriate Ministries and through each of its five operational branches: the Angkor Conservation Office, the Institute of Khmer Culture, the Urban Development Agency, the Tourist Development Agency and the Cultural Heritage Police Corps. Operational since 1994, the last of these branches, a specially trained police force responsible for the protection of cultural heritage in the Angkor region, was integrated into APSARA at the time of the legal creation of this institution.

A further development of the APSARA authority is its restructuring by the Governmental decree N° 50 of May 7, 2008. It reflects the adoption of a new organizational chart and new modalities of functioning. It is still placed under the Office of the Council of Ministers and chaired by the Deputy Prime Minister in charge of the Council of Ministers.

Angkor was removed from the List of World Heritage in Danger on 5 July 2004, the World Heritage Committee having considered that the consideration that had led the Committee to include it in this list were no longer valid. This referred to the end of the looting of the site, the enactment of the legislation and the sub-decrees for the application of the law and the functioning of an institutional framework with a specific body in charge of the management of the site.

Local communities in and around the Site

In the 40,000 hectares of the Angkor park, a population of approximately 125,000 people live and work in 112 villages. This population continues to follow a traditional way of life but had to adapt to several constraints imposed by the new regulations to protect the site.

RELATIONSHIP BETWEEN THE APSARA AUTHORITY AND THE LOCAL AND PROVINCIAL AUTHORITIES.

The APSARA authority receives funding from the National Treasury, which itself obtains a percentage of the entry fees of the Angkor Park. With a consistent budget, the APSARA Authority could offer attractive salaries and working conditions. As a result, a new generation of architects, archaeologists and managers, sometimes trained under international assistance, were recruited by APSARA which developed as a large national institution, with many departments, covering several aspects of the protection, conservation, management of the site and the development of the region.

APSARA has done and is still doing an excellent work for the conservation of the site, namely by attracting highly qualified human resources and expertise, including international specialists. But it was more challenging to convince the local population to respect APSARA's regulations when they

influenced the everyday life of families living around the site, such as the regulations on housing and constructions around the site. Similarly, the measures which APSARA adopted in the field of tourism development, hotel construction and town planning were particularly difficult to be respected and implemented. Indeed, given the rapid increase of tourism, the pressure from developers and business-people to build hotels, restaurant and other tourist facilities in Siem Reap and around the site was considerable. From what I could observe during the period when I was the Representative of UNESCO in Cambodia, the private sector received full support from local and provincial authorities with little consideration to the regulations adopted by APSARA, which at that time was still located in Phnom Penh, far from Siem Reap.

As an example, the Government created of a so-called “hotel zone”, situated outside of the city of Siem Reap, near the road between the town and the Angkor Park. APSARA had the responsibility to promote the zone in order to attract large hotels, on the model of Nusa Dua in Bali. It was a failure. All the new hotels were built within the city of Siem Reap or along the road from the airport to the town. The hotel zone remained empty for many years.

Similarly, APSARA issued regulations related to town planning in Siem Reap, including regulations on alignment and water drainage. They were inspired by Cambodian and foreign experts, based in Phnom Penh and abroad and aimed at promoting a harmonious image and a sustainable water management for the town. These regulations were ignored by local developers. Siem Reap therefore developed rapidly as a burgeoning touristic town with uncoordinated constructions of all styles and little consideration to water management and drainage, with the result that, many years after, the region is facing several challenges for its water management. I believe that more consultation between APSARA and local authorities as well as with local business community would have helped to make these regulations better understood and respected.

TOWARDS A MORE DECENTRALIZED APPROACH

Fortunately, step by step, the institutional framework got closer to the realities of the region. The ICC which used to meet in Phnom Penh, started to hold its meeting in Siem Reap. The APSARA Authority left the premises of the Council of Ministers for a separate building in Phnom Penh and finally also moved to Siem Reap. First to a temporary building in the “Angkor Conservation” compound, then in new offices built in the deserted hotel zone. I do not have detailed information on the current state of relationship between APSARA and the local and provincial authorities, but I am convinced that being closer to the local realities can only create better conditions for a dialogue with local stakeholders and communities. And indeed, after its move to Siem Reap, APSARA could be identified by the population and was no longer an abstraction. APSARA did not remain in the hotel zone. It moved again, to a remote village situated close to the boundaries of the Site but further from Siem Reap town. The reasons behind the relocation remain unclear. However, the building left vacant after the departure of APSARA from the hotel zone is now occupied by the administration of the Province of Siem Reap.

Another move towards more decentralization was the transfer of APSARA from the authority of the Deputy Prime Minister in charge of the Council of Ministers to the Minister of Culture to whom the APSARA Authority is now accountable.

THE ANGKOR HERITAGE MANAGEMENT FRAMEWORK

At the request of the World Heritage Committee, a “Heritage Management Framework” (HMF) for Angkor has been prepared to provide the basis for current and future planning, management and conservation of Angkor and significant surrounding areas (Angkor World Heritage Area-WHA).

In this important document, several policies are listed and followed by recommendations. The document reflects a more collaborative approach specifying that “it is the responsibility of the Royal Cambodian Government, the APSARA National Authority, and provincial and local authorities to conserve, protect and present the heritage values of the Angkor WHA. It is the responsibility of UNESCO and other international stakeholders to guide and support the Cambodian Government, the APSARA National Authority, and provincial and local authorities in their work at the Angkor WHA. Ongoing respectful collaboration and open communication between the Royal Government of Cambodia, the APSARA National Authority and the local Khmer community is essential to ensure equity and access to sustainable development”.²

Several further policies and goals refer to the necessity of collaboration and dialogue with local authorities and communities. For instance, Policy 9 specifies that “Communication with the community and stakeholders at Angkor will be strengthened to promote effective engagement, the vision of the APSARA National Authority and the policies of the Heritage Management Framework”. Among the goals, a specific one is to “improve governance and capacity within the APSARA National Authority, ensuring open communication within the Authority and between APSARA and other stakeholders.

On governance, the HMF recommends establishing inter-agency links and program integration between the APSARA National Authority, the Ministry of Tourism and other relevant government agencies to facilitate collaboration and ensure that programs are consistent with the values of the Angkor WHA. It also recommends to actively involve stakeholders in the implementation of the Angkor Tourism Management Plan through communication, consultation and collaboration. The adoption of the HMF is therefore a major step towards a more collaborative approach between APSARA and all local public, private and community stakeholders in the region.

(2) Angkor Heritage Framework, 2013, UNESCO, Royal Government of Cambodia, Australian Government, APSARA, GML Heritage

CONCLUSION

Angkor being one of the largest monumental complex in Asia, I believe that the creation of a specific national institution to protect and manage it and its surroundings, was the only way to respond to all the challenges faced by the Cambodian authorities at the time of the inscription of the Site on the World Heritage List. APSARA evolved step by step, from a very centralized body, located administratively and physically at the Council of Ministers, towards a more decentralized agency, based closer to the Site and working under the Ministry of Culture. The Heritage Management Framework, recently adopted, is a very useful tool for further development of the institutional framework towards a more collaborative approach with all public and private stakeholders in the region around the site.

ANNEX : KEY DATES ³

August 1993:	Creation of the Supreme Council on National Culture - Royal Decree establishing the Supreme Council on National Culture (NS/RKT/0295/11)
September 1993:	Creation of the ICC, co-chaired by France and Japan with UNESCO as standing secretary.
December 1993:	First ICC meeting held in Cambodia, participated in by twenty countries and organizations
May 1994:	Royal Decree No. 001/NS establishing Protected Cultural Zones in the Siem Reap/Angkor Region and guidelines for their management
February 1995:	Royal Decree No. NS/RKT/0295/12 for the creation of the Authority for the Protection and Management of Angkor and the region of Siem Reap (APSARA).
October 1995:	Sub-decree creating the Hotel Zone No. 079/ANKR/PK
January 1996:	Law on the Protection of Cultural Heritage No. NS/RKM/0196/26.
October 1997:	Sub-decree No. ANK-PK establishing the Special Police Corps for the Protection of Cultural Heritage on the Heritage Corps Police supervised by the Ministry of Interior and in close collaboration with the APSARA Authority and the authorities of Siem Reap to assure the security in the Angkor Park and to fight against the illicit traffic of the artifacts
January 1999:	Royal Decree No. NS/RKT/0199/18 strengthening the stature of the APSARA Authority.
October 1999:	Sub-decree extending the Hotel Zone No. 093/ANKR/PK.
December 2001:	Sub-decree creating a Tourist Police Corps No. 025/ANK/PK.
September 2002:	Sub-decree spelling out the provisions of the Law on the Protection of Cultural Heritage.
July 2004:	Removal from the List of World Heritage in danger

(3) Chau Sun, Kerya, Angkor sites, cultural world heritage, in Art and Cultural heritage, Law, policy and practice, Hoffmann, B. , Cambridge university press, 2006

The Role of Local Authorities in Managing and Propagating Cultural Heritage: Brú na Bóinne, Archaeological Ensemble of the Bend of the Boyne World Heritage Site – an Irish Case Study

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Abstract:

This paper considers the role of local authorities in managing and propagating cultural heritage. It describes the governance arrangements for protection of cultural heritage in Ireland and outlines the responsibilities of those who play a role in the management, protection and presentation of cultural heritage. It presents research and analysis concerning the two Local Authorities who have responsibilities in relation to Brú na Bóinne, the Archaeological Site of the bend of the Boyne, World Heritage Site, considering the measures to date which have been used to protect the Outstanding Universal Value of that site as well as recommending ways in which that task of implementing protection could be streamlined. The paper concludes by presenting some findings about helpful practices and valuable processes for management of Cultural Heritage Sites.

INTRODUCTION

The role of local authorities in managing and propagating cultural heritage will vary according to a properties typology and location. One might be considering the management of a sole monument in its setting; perhaps a group or complex of monuments and their broader setting, and one might be referring to a cultural landscape which could be pastoral or an urban ensemble. In addition to those variations, governance arrangements may vary and this can result in a range of differing possibilities about where responsibilities may lie. The types of threat or challenges facing cultural heritage sites will also vary from property to property.

In this paper I propose to describe governance arrangements in Ireland for management and protection of cultural heritage. I will outline the responsibilities of those who have a role in the management, protection and presentation of cultural heritage. For the main part this paper is a reflection on research, in which I was involved, in relation to Brú na Bóinne, the Archaeological Site of the bend of the Boyne, World Heritage Site (WHS). That research involved looking at the role of the two local authorities who have responsibilities in relation to that World Heritage Site, considering the measures to date which have been used to protect the Outstanding Universal Value (OUV) of that

site as well as recommending ways in which that task of implementing protection could be streamlined.

In Ireland the governance arrangements in respect of cultural heritage are complex. This was flagged in 2004, when an inspection of Brú na Bóinne and its environs was made by a joint UNESCO-ICOMOS mission, which had the brief primarily to examine the potential impact of a proposed waste to energy plant. The report from that mission commented on the complexity of the existing organisational arrangements in relation to that site. These had not substantially changed since then until it became clear that new arrangements are to be put in place in conjunction with the implementation of the most recent Management Plan of 2017. I will return to this governance issue, but first I would like to outline the organisational arrangements which are in place for the protection of cultural heritage in Ireland.

The State Party is represented through the Department of Culture, Heritage and the Gaeltacht (DCHG), a ministerial department of government. DCHG has responsibility for policy in relation to cultural heritage. This includes policy concerning World Heritage, the inscription process for World Heritage status and the establishment of the Tentative List for World Heritage. The Irish Tentative List is currently open for submissions until June 2020. DCHG also establishes policy concerning protection and care of monuments and protection and care for the built and natural environment.

The Office of Public Works (OPW) has responsibility for management of monuments and historic properties in state care. The OPW has responsibility for all works of conservation and maintenance, through the National Monuments Service and the Historic Properties Service. They also have responsibility for interpretation and presentation of those monuments, sites and historic properties.

Local authorities have responsibilities under both National Monuments legislation and Local Government (Planning and Development) legislation. Local authorities responsibilities are implemented through County Development Plans. Inscription of a property on the World Heritage List brings no additional statutory controls but protection is afforded through the management system, the planning system and through designations under both planning and monuments legislation.⁽¹⁾

In 2018 the Irish Government launched Project Ireland 2040, a national Development Plan 2018 – 2027. The National Development Plan (NDP) sets out the investment priorities that will underpin the successful implementation of a new National Planning Framework (NPF). The Department of Housing Planning and Local Government, on behalf of the Government, prepared and published the National Planning Framework under Project Ireland 2040, the overarching policy and planning framework for the social, economic and cultural development of the country. This is to guide national, regional and local planning and investment decisions in Ireland over the next two decades. The National Planning Framework (NPF) is a strategic framework document and it is supported by a robust

(1) The Planning and Development Acts 2000-2019;
The National Monuments Act 1930 – 2004

tiering of regional and local level plans within an overall hierarchy. As detail is developed down through the hierarchy, further opportunity for focused assessment will be required to inform decision making at a level of granularity which obviously cannot be undertaken at the national scale.

Ten National Strategic Outcomes (NSO) are outlined in the NPF with corresponding Strategic Investment Priorities and NSO 7 is for Enhanced Amenity and Heritage. The NPF recognises the value of cultural heritage as a key component of and contributor to, the attractiveness and sustainability of our cities, towns, villages and rural areas in terms of developing cultural creative spaces, private inward investment, and attracting and retaining talent and enterprise. This includes all elements of living space including streets, public spaces, built heritage and natural amenity areas, cultural and sporting opportunities and sustainable transport networks, all of which play a central part in defining the character and attractiveness of places.

Since 2015, Ireland has been a signatory to the United Nations Sustainable Development Goals (SDGs) and there is significant alignment between the UN SDGs and the National Planning Framework’s National Strategic Outcomes (NSOs) in areas such as climate action, clean energy, sustainable cities and communities, economic growth, reduced inequalities and innovation and infrastructure, as well as education and health.

There is no legislation in Ireland relating specifically to World Heritage Sites. But, the Planning and Development Acts 2000-2019, give extensive recognition and protection to archaeological heritage and also to other heritage assets, both natural and manmade, via the local government planning system. That system requires development plans to include objectives for the protection of archaeological and natural heritage.⁽²⁾ The Planning and Development Acts recognise the concept of “landscape” (adopting the definition at Article 1 of the Florence Convention) and provide for landscape protection in various ways, through the development plan system or by way of designating Landscape Conservation Areas (LCAs). There is provision for local authorities to make special amenity areas orders for areas of outstanding natural beauty or special recreational value. The legislation also provides for protection of views and prospects of amenity value through the development plan system. There is no government planning policy pertaining specifically to World Heritage Sites in Ireland. I believe that a specific written policy document at national level, setting out national policy, procedural and management approaches to World Heritage Properties would be a valuable resource.

CASE STUDY

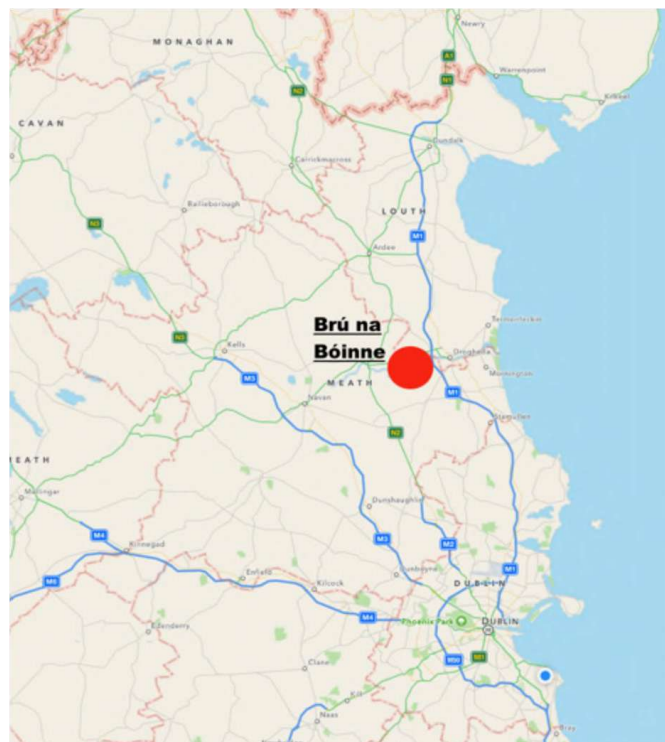
I should like to present some research findings concerning a study of Brú na Bóinne - Archaeological Ensemble of the Bend of the Boyne, World Heritage Site (WHS).⁽³⁾ (The translation of the Irish title Brú na Bóinne means the bend on the river Boyne). I will use findings from this study to assist a

(2) The National Monuments Act, 1930-2004, gives protection of varying degree to archaeological monuments.

(3) <https://whc.unesco.org/en/list/659>

consideration of the role of local authorities in management and propagation of cultural heritage and to extrapolate principles which may be of assistance when considering concepts for good practice. In 2017 I was commissioned jointly with a colleague,⁽⁴⁾ by the Department of Culture, Heritage and the Gaeltacht to carry out a multi-criteria analysis of the way in which the Brú na Bóinne, World Heritage Site is treated in county development plans and related guidance, including any guidance documents, of the two local and planning authorities concerned, counties Meath and Louth, and to make recommendations with regard to the relevant development plan provisions and planning guidelines.

The World Heritage Site The Archaeological Site of the bend of the Boyne (Brú na Bóinne)⁽⁵⁾ inscribed on the World Heritage List in 1993, encompasses an Area of 780 hectares of land, along the northern banks of the River Boyne, upstream of the town of Drogheda and downstream of the town of Slane. The buffer zone, bordering the World Heritage Site (WHS), covers a further 2,500ha, located on both sides of the Boyne river. The land within the World Heritage Property is mostly in private ownership, with 42.75 ha being State property. The WHS lies within County Meath, but the buffer zone straddles the boundary with County Louth. A significant proportion of the buffer zone is in that county. There is rising ground in County Louth to the north of the buffer zone. The WHS is roughly 6km from east to west and varies from approximately 2km to less than 1km from north to south. A map indicating the land covered by the WHS and its buffer zone may be found within the documentation on UNESCO World Heritage List.⁽⁶⁾



*Figure 1. Map
locating the Brú na
Bóinne, WHS*

(4) Karl Kent, Doyle Kent Planning Partnership Ltd

(5) https://whc.unesco.org/en/list/659/multiple=1&unique_number=780

(6) file:///Users/monaorourke/Downloads/IE-659-item15%20(5).pdf

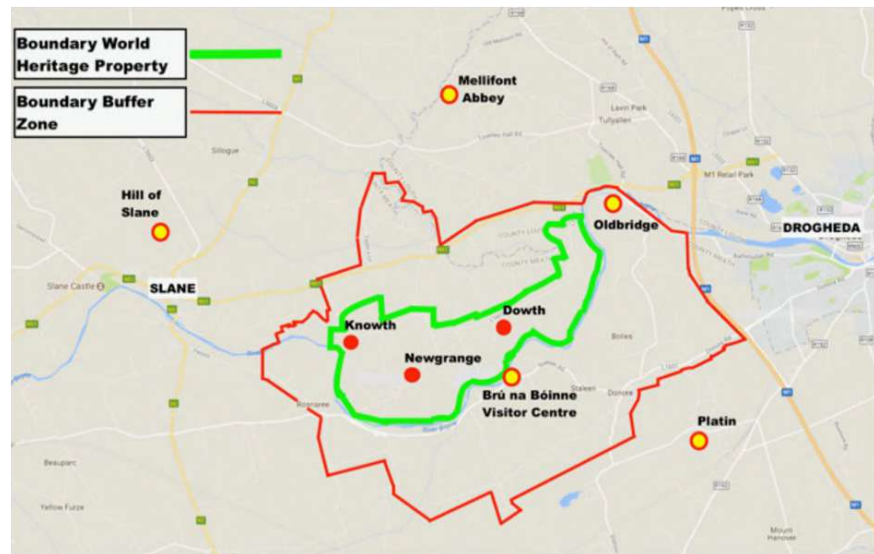


Figure 2. Map indicating the Brú na Bóinne, WHS and its Buffer zone



Figure 3. View of the cultural landscape from the top of Knowth mound



Figure 4. Landscape view of Newgrange mound from the bank of the river Boyne

The World Heritage Site of Brú na Bóinne⁽⁷⁾ is focused on the three great passage tombs of Knowth, Newgrange and Dowth, on the northern side of the River Boyne.

The Knowth group, with features dating from the Neolithic period through to the Anglo- Norman period and later, has thirty monuments listed on the official inventory. These include passage tombs adorned with megalithic art. The Newgrange group is mainly prehistoric, with a cursus, passage tombs and henges. The Dowth group is similar to that at Newgrange but there is medieval evidence in the form of a church and a castle. Recent work at Dowth has revealed further monuments and a settlement pattern over several millennia in the area.

This section of the Boyne Valley has been an important ritual, social and economic centre for thousands of years and has the largest ensemble of megalithic art in Western Europe.⁽⁸⁾ There are many layers of settlement leading up to the current day with its farming activity within a pastoral landscape. It is the longevity of settlement in this location that is of particular significance. From early pre-history, through to the early medieval, medieval and post medieval periods, the landscape contains a large concentration of settlement and ritual sites. This can be seen more clearly from the Record of Monuments and Places (RMP).⁽⁹⁾ Mellifont Abbey, a nearby Cistercian foundation, located in the valley of the Mattock river, had an influence which is still discernible on the landscape, as it was one of the wealthiest monastic foundations in medieval Ireland holding extensive lands.

The area contains other sites of cultural significance of post medieval dates, including the Boyne Navigation, a sequence of 18th century canals running parallel with the river and which is in need of restoration, a number of medieval remains, the 17th Century Battle of the Boyne memorial centre and site toward the eastern part of the WHS around Oldbridge, and some houses from the 18th century. Oldbridge demesne and Townley Hall demesne are both designated as Architectural Conservation Areas. There are also many vernacular structures of importance in the landscape. The foregoing can be identified from the Record of Protected Structures (RPS) within the Development Plans for each of the counties concerned.

(7) Brú na Bóinne was inscribed as a cultural World Heritage Site in 1993. It meets three of the criteria for the assessment of Outstanding Universal Value (OUV), as set down in the Operational Guidelines for the Implementation of the World Heritage Convention, adopted by the World Heritage Committee UNESCO

- It represents a masterpiece of human creative genius;
- It bears a unique or at least exceptional testimony to a cultural tradition or to a civilization which is living or which has disappeared;
- It is an outstanding example of a type of building, architectural or technological ensemble or landscape which illustrates (a) significant stage(s) in human history;

The ICOMOS evaluation at the time of inscription concluded that:

“The archaeological area in the Bend of the Boyne is one of the largest and most important prehistoric and later complexes in Europe, and also one of the least disturbed. Its importance extends beyond Ireland, since it represents the largest assemblage of megalithic art in Europe. It is also outstanding because of the continuity that it demonstrates over two long historical periods, from the 4th to early 2nd millennia BC and from the Early Iron Age to the High Middle Ages. It is important for the information that it provides about social, economy, and, above all, religious organization and continuity. Although megalithic monuments are distributed widely in the “Atlantic Zone” of western Europe, from Malta to Scandinavia, there is no complex that compares in density of monuments and high artistic quality with the Brú na Bóinne group.”

(8) www.worldheritageireland.ie

(9) <https://www.archaeology.ie/publications-forms-legislation/record-of-monuments-and-places>

The purpose our research and analysis was primarily to provide advice to each of the local authorities concerned for their review by addressing,

- the way in which the OUV of Brú na Bóinne is recognised;
- the way in which regard is had to the Brú na Bóinne MP (2017);
- the way in which provisions are made with respect to the protection of the cultural landscape and the enhancement and protection of views within and adjacent to the WHS in the development plans and related guidance documents;

And, having carried out this analysis, to make recommendations,

- as to how the provisions of the county development plans might be enhanced and balanced so to provide for a consistency of approach;
- for the issuing of clear planning guidelines (both within and, where necessary, supplementary to the development plan provisions) by the local authorities with respect to development within and adjacent to the WHS, to reflect both the needs of communities and the conservation of the heritage of the area on a sustainable basis.

The research was based on consideration of,

- the OUV of Brú na Bóinne; (The Statement of Outstanding Universal Value (SOUV) identifies the attributes of OUV, indicating key qualities to be protected and is an important associative document with the Management Plan (MP));
- an examination of the provisions of the MP for the WHS;
- examination of the Development Plans and associated documents;
- visits to the area and environs including its monuments;
- meetings with stakeholders, including local authority officials, officers of the Department, OPW, other government departments, community representatives and other local inhabitants; and consideration of the relevant administrative structures.

When Brú na Bóinne was inscribed in 1993 there was no requirement for a Management Plan(MP) to be in place. Since inscription there have been two MP’s and in 2017 the Department submitted a third management plan to the World Heritage Centre. This fact I believe is relevant because the shift in protection of cultural heritage from a top led process to an upstream process has had implications for how this site is to be managed and I would say can explain some of the tensions that exist concerning the implementation of the latest Management Plan (2017).

The Management Plan is a reflection of the entire management system and it is the primary tool for reviewing and evaluating the management system of the property. Good governance means that those charged with responsibilities in the context of protection of these sites (the State Party and the local planning authorities concerned) together with the landowning partners and the range of other “communities” who have an interest in the properties need to have clearly defined roles, areas of responsibility and a clearly defined set of issues concerning which there is genuine scope for engagement through the management process.

The 2017 Management Plan describes the attributes which contribute to the significance of the WHS, and other values. It sets out a series of outcomes (goals), objectives and the actions required to achieve their protection. Eighteen objectives are set out in the Management Plan, relating to different aspects of the WHS, many of which have some relevance to the content of the study but No’s 1,3,4,9 and 16 are particularly significant.

They are worth setting out here as they are of particular relevance to the topic for consideration namely the role of Local Authorities in protection of cultural heritage:

“1. Statement of Outstanding Universal Value: To inform, and seek the co-operation of all stakeholders in the implementation of measures that set out to preserve the Outstanding Universal Value of the World Heritage Site and to incorporate the protection of the OUV into relevant legislation, planning guidelines and policies.”

In relation to objective 1 the actions envisaged involve putting in place,

- a Site Manager and a Management Team with responsibility for day to day issues;
- a Management Implementation Team with responsibility for overseeing the objectives and actions of the plan, for reviewing the plan and overseeing compliance with the World Heritage Convention;
- a Community Forum to review ongoing implementation of the Management Plan, to consider onsite works programmes and provide the implementation Group with other relevant comments or observations.

“3. Statutory Protection of WHS: Agree adequate measures and procedures with Meath and Louth County Councils for inclusion in their County Development Plans for the protection of the WHS;”

Importantly in relation to the commitment of objective number 3 the action in the Management Plan to achieve this objective is:

- to request Meath and Louth County Councils to incorporate the Management Plan into their respective County Development Plans by invoking appropriate statutory processes as required.

“4. To promote a wider knowledge of the significance of the WHS and its OUV through the dissemination of information relevant to the WHS and the benefits of its on-going preservation and conservation.”

I will revert to this last mentioned objective later in the paper as I believe in this regard there is more work to be done.

“9. Liaison with the local communities: assist communities to continue to sustain and develop the area’s economy and social cohesion.”

Objective 9 is very important. The Plan acknowledges the rights of local communities in relation to sustainable socio-economic growth and development. To this end, while recognising that the foremost purpose of the Plan is the protection of the OUV of Brú na Bóinne, it must also assist communities to continue to sustain and develop the area’s economy and social cohesion.

The actions apart from establishment of a Community Forum include:

- working with local authorities to develop a guidance document which provides advice on siting and design in relation to residential and agricultural development within the WHS;
- working with the local authorities to facilitate consultation with applicants regarding the siting and design of developments affecting the UNESCO World Heritage Site of Brú na Bóinne, and the scope of any necessary impact assessments;
- working with the local authorities and other relevant agencies in promoting and encouraging sustainable economic development in the area, particularly in tourism and agriculture.

“16. To protect and preserve the Outstanding Universal Value of the WHS and its setting by providing appropriate guidance and advice to Local Authorities and development agents concerning the protection of the Outstanding Universal Value of the WHS.”

Finally, in relation to objective 16 the relevant actions set out in the Management Plan are,

- protection of the WHS and OUV from adverse development impacts;
- offering appropriate advice and guidance to Local Authorities and relevant development agencies and agents;
- implementation of the provisions of the Local Authority Development Plans and other relevant legislation or regulations;
- encourage, where appropriate the conservation and sustainable reuse of existing traditional and vernacular buildings, within the WHS;
- monitor and document at appropriate intervals the nature and density of development within the WHS;
- continue in conjunction with Meath County Council to provide an integrated pre-planning service where the Council’s and DCHG’s officials will jointly comment on pre-planning issues within the WHS

I should say that our research was particularly concentrated on assisting in the implementation of the foregoing objective 16.

The current development plan for County Meath is the Meath County Development Plan, 2013-2019. The plan is under review at present. The Louth County Development Plan, 2015-2021 is of more recent origin. Both plans contain much policy directly focused on Brú na Bóinne.

The Meath County Development Plan, 2013-2019, contains many references to Brú na Bóinne, setting out underlying concepts from the UNESCO World Heritage Convention and associated Guidelines, including in respect of the need to sustain the OUV of the WHS. Specific policies apply to pro-

posed development in the area⁽¹⁰⁾ which include policy for individual housing which is to be only for those involved in full time agriculture; that all development shall be subject to assessment criteria in the plan (these are carefully focused on ensuring compatibility with preserving the OUV of the WHS), and that all planning applications within the WHS be referred to DCHG for comment. Other relevant objectives⁽¹¹⁾ are to protect and enhance the OUV of the Cultural Landscape, to protect the ridgelines which frame views within and from the WHS, the encouragement of pre-planning consultation regarding siting and design of developments, and the encouragement of retention conservation and appropriate re-use of vernacular and traditional buildings within the WHS. The Plan states that it is the intention of the planning authority to propose a variation of the County Development Plan to incorporate the revised Brú na Bóinne Management Plan, when completed.

There are county wide maps, inter alia, of landscape character assessment, protected views and prospects and rural settlement pressure areas. The landscape character assessment is presented in a series of good quality county wide maps, of which there are seventeen. These deal with different landscape aspects, including mapping archaeological monuments. The Landscape Character Assessment(LCA) designates the area around Brú na Bóinne as within the “Boyne Valley” character area, in a landscape as of “exceptional value” and high sensitivity. The detailed written document on landscape⁽¹²⁾ states of the Boyne Valley that: *“It is arguably the most significant and highly valued landscape in the county because it contains the Bru na Boinne World Heritage Site. This LCA also includes the heritage towns of Trim and Slane.”*

A very detailed set of policy recommendations is set out, including a recognition that the capacity for development in the valley is low, particularly in respect of one off houses. It is stated that: “Any such development should be carefully planned in terms of location, scale and materials with particu-

(10) Specific policies include:

“CH POL 2: To consider individual housing within the UNESCO World Heritage Site of Brú na Bóinne, as shown on Map No. 9.1, only for those involved locally in full time agriculture, and who do not own land outside of the UNESCO World Heritage Site of Brú na Bóinne and subject to compliance with all other relevant provisions contained in this Development Plan”

“CH POL 3: To require that all development within the UNESCO World Heritage Site of Brú na Bóinne shall be subject to the Development Assessment Criteria set out in Volume 1, Chapter 9, Section 9.6.7, and elsewhere in the Development Plan”

“CH POL 4: To refer all planning applications within the UNESCO World Heritage Site of Brú na Bóinne to the Department of Arts, Heritage and the Gaeltacht for comment. These comments will be considered in the making of decisions on all such planning applications”

(11) Other relevant Development Plan objectives, inter alia, include:

“CH OBJ 1 : To protect and enhance the Outstanding Universal Value of the cultural landscape in the UNESCO World Heritage Site of Brú na Bóinne in accordance with the relevant guidelines and national legislation, so that its integrity, authenticity and significance is not adversely affected by cumulative inappropriate change and development, and to enhance views within and adjacent to the site.”

“CH OBJ 2 : To protect the ridgelines which frame views within and from the UNESCO World Heritage Site of Brú na Bóinne from inappropriate or visually intrusive development.”

“CH OBJ 3 : To encourage and facilitate pre-planning consultation with applicants regarding the siting and design of developments affecting the UNESCO World Heritage Site of Brú na Bóinne, and the scope of any necessary impact assessments”.

“CH OBJ 4 : To encourage the retention, conservation, and appropriate re-use of vernacular and traditional buildings within the UNESCO World Heritage Site of Brú na Bóinne in preference to either their replacement, or the construction of new buildings on green field sites.”

(12) Appendix 7 to the Development Plan

lar regard had to the cumulative effects of one off houses concentrated in a particular area and the sensitivities of the Bru na Boinne WHS.” There is also a Rural Housing Design Guide for the county.⁽¹³⁾

The area of the Buffer Zone to the south and east of the Boyne is shown as under pressure (i.e. “under strong urban influence”) for rural housing on the relevant map. Within the main County Development Plan, there are a number of detailed policy statements and maps for most settlements including for Slane and Donore. (Essentially, current policy does not favour major expansion of either of these two villages.) But, the general County Development Plan maps cover Brú na Bóinne and there is no local plan over and above the map showing the “core area” and “buffer zone”.⁽¹⁴⁾

The County Development Plan for Louth, 2015-2021, selects the relevant part of the buffer zone (Townland of Littlegrange) and the lands to the north including beyond Tullyallen, as a particular Development Zone⁽¹⁵⁾ for land use planning purposes. A similar zoning applies around Monasterboice Abbey. The designation of the relevant area as a “Zone” might be regarded as slightly different from that of County Meath. There is also an objective to formulate a “Framework Plan” for the area. A specific policy, of the Development Plan is to preserve and protect the heritage and cultural landscape of the WHS.⁽¹⁶⁾ It is also a policy of the Louth Plan to permit only limited essential resource and infrastructure developments necessary to sustain the local rural community and appropriate to the cultural landscapes.⁽¹⁷⁾

Chapter 5 of the Louth Development Plan sets out the basic concepts derived from the UNESCO Convention and Guidelines, including Outstanding Universal Value and the relevant criteria pertaining thereto. At section 5.9.6. of the Development Plan, it is stated that: “*The planning authority is cognisant of the potential irreversible and adverse cumulative impact of incremental piecemeal development in this unique landscape. It is critically important that further new development is not permitted to erode the heritage significance of this landscape.*”

Further specific policies are set out, about working in partnership with Meath County Council and relevant agencies and the public to conserve and sustainably manage the OUV of the WHS; to pro-

(13) At Appendix 5 of the Development Plan

(14) Meath County Development Plan Map 9.1 Brú na Bóinne World Heritage Site
<https://meathcountydevelopmentplan.files.wordpress.com/2015/04/9-1-bru-na-boinne-world-heritage-site.pdf>

(15) Zone 6

(16) Section 1.10.6 of the Development Plan states:

“Development Zone 6: To preserve and protect the heritage and cultural landscape of the UNESCO World Heritage Site of Brú na Bóinne, the UNESCO (Tentative) World Heritage Site of Monasterboice and the Site of the Battle of the Boyne.”

(17) Policy RD 41: “To permit only limited development appropriate to these heritage and cultural landscapes including only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community. Such development would include limited one- off housing, agricultural developments, extensions to existing authorised uses and farms, appropriate farm diversification projects, tourism related projects (excluding holiday homes), active recreational amenities such as pedestrian and cycle paths, equestrian trails, ecological corridors, small scale ancillary recreational facilities, and renewable energy schemes.”

Policy RD 42: “Pending the adoption of Framework Plan for this Development Zone, multi-unit residential, large scale intensive industrial, agricultural and commercial developments or other developments of a similar scale or nature would not be considered appropriate within this zone.”

tect the ridgeline to the north of the site from visually intrusive and inappropriate development subject to development assessment criteria set out in the plan and using view-shed analysis to guide and inform development management; again to encourage retention and reuse of vernacular buildings; to ensure that no development be permitted which might have a deleterious attack on the OUV of the WHS, and finally a commitment to prepare a framework plan for the WHS and also the Monasterboice site which is on the Irish Tentative List and the Battle of the Boyne site.⁽¹⁸⁾

Reference is made in the Development Plan to Government policy in the form of the “*Sustainable Rural Housing: Guidelines for Planning Authorities*”. The qualifying criteria in relation to permitting rural housing are set out. Section 5.9.6. of the Development Plan refers to the Management Plan for the World Heritage Site and states also that: “*If required, Louth County Council states that it will propose a variation of the Louth County Development Plan 2015-2021 to incorporate the revised Brú na Bóinne Management Plan, 2017.*” Also that : “*As outlined in Chapter 2 (Core Strategy & Settlement Strategy) and Chapter 3 (Rural Development & Natural Resources) a new Development Zone (Zone 6) has been introduced, which covers the sensitive landscape of the UNESCO World Heritage Site of Brú na Bóinne, the Tentative World Heritage Site of Monasterboice and the site of the Battle of the Boyne, to protect the heritage and cultural landscape. In this regard it is the intention of the Council to prepare a Framework Plan for this area.*”

The map of Brú na Bóinne WHS and Buffer Zone is reproduced in the Development Plan.⁽¹⁹⁾ A map of the ridgeline to the north of Brú na Bóinne⁽²⁰⁾ and a map of Areas of Outstanding Natural Beauty (AONB) are also relevant.⁽²¹⁾ There is also a county wide map of Landscape Character Areas (LCAs).⁽²²⁾

Examination of the development plans for Meath and Louth shows a generally consistent approach to protecting the OUV of Brú na Bóinne World Heritage Site. The attention paid to the WHS and the

(18) These include,

“HER 25: To work in partnership with Meath County Council and the relevant agencies and the public to promote, understand, conserve and sustainably manage the UNESCO World Heritage Site of Brú na Bóinne to maintain its Outstanding Universal Value (OUV).”

“HER 26: To protect the ridgeline to the north which frames the views Map 5.13 within and from the World Heritage Site of Brú na Bóinne from visually intrusive and inappropriate development, subject to the Development Assessment Criteria set out in Section 5.9.7 and using view-shed analysis as a tool to guide and inform development management.”

“HER 27: To require that all development within Development Zone 6 be subject to Development Assessment Criteria set out in Section 5.9.7.”

“HER 28: To encourage the retention, appropriate re-use and conservation of vernacular buildings in Development Zone 6 in preference to either their replacement or the construction of new buildings on green-field sites.”

“HER 29: To maintain the Outstanding Universal Value of the Brú na Bóinne World Heritage Site, Louth County Council will seek to ensure that no development which might have significant, deleterious impacts upon the character of the World Heritage Site is permitted.”

“HER 30: To prepare a Framework Plan for the protection, development and promotion of lands subject to Development Zone 6 (which include for the UNESCO World Heritage Site of Brú na Bóinne, Tentative World Heritage Site of Monasterboice and the Battle of the Boyne Battlefield site).”

(19) 5.12

(20) 5.13

(21) 5.16 The latter shows the small area of WHS Buffer Zone in County Louth and its hinterland to the north as an AONB. Also of note is Map 5.11, showing three widely dispersed areas as the “Battle of the Boyne Sites”, mostly located in Co. Meath

(22) 5.5. This shows the area north of Brú na Bóinne as the “Boyne & Mattock Valley”

consideration of the Buffer Zone is generally similar. There are some significant differences arising from the differing approach of each local authority to the contents and formulation of its own development plan. This is especially obvious in the presentation of policy in mapped form, where the County Meath Development Plan, 2013-2019, has a large set of maps dealing with landscape character assessment in a structured fashion. Each aspect of the landscape is mapped separately. The Louth Development Plan, 2015-2021, is more simply presented and the landscape character map is less developed. In relation to mapping of protected views and prospects, the Meath Development Plan map is more detailed than that for County Louth. However, in relation to Brú na Bóinne, the Louth plan clearly identifies a ridge line to the north of the WHS, which is designated for protection.

Brú na Bóinne is a uniquely special place, located in a peaceful, sylvan valley, through which runs the river. It is striking when standing on the Hill of Slane and looking eastwards over the Boyne Valley, how this is a secluded place. But, the valley is bounded to the east by a major town, heavy industry and a motorway. The question of a by-pass of the town of Slane, located to the west of Brú na Bóinne, has not yet been resolved. Traffic volumes in the east of Ireland continue to grow strongly with population increase and a growing economy. In short, the integrity of Brú na Bóinne and its OUV cannot be taken for granted. To be deemed of Outstanding Universal Value, a World Heritage Property must meet the conditions of integrity and authenticity.⁽²³⁾ This involves examining the conditions of integrity and assessing amongst other factors the extent to which a property suffers from adverse effects of development and/or neglect.

In 2004, an inspection of Brú na Bóinne World Heritage Site and its environs was made by a joint UNESCO-ICOMOS mission, primarily to examine the potential impact of the proposed waste to energy plant at the townland of Carlanstown. In the event, the inspection report found there would be little visual impact on the WHS from the Carlanstown incinerator, but expressed concerns in relation to other matters. These included the nearby cement factory in the townland of Platin, the M1 motorway and possible future quarrying activities and a bypass of the village of Slane. Also, the report stated that some intrusive development had taken place within the Core Area and the buffer zone, without specifying any particular development. The authors of the UNESCO report commented on a lack of clarity of roles between different Government departments in relation to the WHS. Among the many recommendations in the report are that an OPW officer be appointed with “*clear overall responsibility for the management of the World Heritage property at site level*” and that a study of development issues in the WHS and environs be commissioned.

The principal threats to preserving the OUV of Brú na Bóinne appear to arise:

- from major developments outside the WHS and buffer zone, principally infrastructure projects; and
- from a more gradual erosion of the character of the WHS due to the cumulative impact of smaller projects within and adjacent to the WHS and buffer zone;
- from incremental small scale development which can threaten OUV.

(23) Paragraph 78 Operational Guidelines’s for the Implementation of the World Heritage Convention, UNESCO, 2017

Tourism can be a threat to OUV and needs to be managed appropriately. Agriculture can be a threat to OUV and requires constant monitoring and review. A further issue is that of road traffic, especially toward the eastern side of the WHS. Setting is a key factor in maintaining authenticity and integrity.

The Management Plan helps to find the appropriate balance between the needs of the main land use interests, namely the protection of the historic environment, the quality of the visitor experience and the quality of life of the local community. Balancing these issues is fundamental to the achievement of effective sustainable management. It is crucial to work strategically and in partnership with the local landowners, organisations, businesses and the local community to ensure the sustainability of the site’s significance. An example of this collaboration would be environmental stewardship schemes in which local farmers are given grants to protect the archaeology on their land through grass reversion schemes and management agreements. It is important to protect the property from threats that happen outside its boundaries thus enhancing its integrity. All of these pressures referred to, if not checked, can irreversibly damage fragile archaeological remains and their landscape setting.

The construction of the Dublin – Belfast motorway (M1) some years ago resulted in a very strong eastern edge to the buffer zone, although with a muted visual impact for the most part. However, the motorway imposes a barrier between Drogheda and the WHS. The cable stay bridge, which carries the M1 over the Boyne, has a support pylon 85m over sea level and which is visible in some views from within the WHS. Of greater prominence in certain views from and across the WHS is the cement factory complex at Platin. Looking eastwards across the WHS, from the Hill of Slane, this is a particularly prominent and discordant feature in the middle distance. The nearby Carlanstown incinerator is not readily visible, however.

An additional infrastructural project is a possible new N2 bypass of Slane, with a Boyne crossing. Slane suffers greatly from heavy volumes of traffic, which pose a threat to both the environment and the safety of pedestrians and road users in the village. A proposal for a bypass route east of Slane, approximately 500m west of the buffer zone to the WHS, was refused planning permission by An Bórd Pleanála (the ultimate planning appeals authority) in 2012 (ABP Ref. PL 17.HA0026). Two reasons were given for this decision, the first of which concerned the impact on the WHS, which the Board stated would be a *“detrimental impact on the rural character, landscape setting, cultural amenity and archaeological heritage of the Brú na Bóinne archaeological complex, and would be contrary to the heritage protection provisions of the Development Plan”*.

The decision of An Bórd Pleanála in 2012 indicated that it was open to the County Council and the National Roads Authority (NRA) (now transport Infrastructure Ireland (TII)) to prove the need for the road and its route at a future date. In February 2017, Meath County Council appointed consulting engineers to commence appraisal of traffic management alternatives and the development of route options for a bypass of Slane village. It is likely that a public consultation will open in the near future in relation to route selection for this project.

The 2017 Management Plan offers an opportunity to establish a more comprehensive system of looking after the wider interests of the WHS, with clear lines of responsibility and a brief to engage in a more structured fashion with stakeholders, including local interest groups and the planning authorities. The relevant structures are set out in broad terms in the Management Plan. The information about the implementation phase needs to be expanded so that stakeholders and the local communities be given opportunities to participate and to have their concerns addressed. The conservation strategy must allow adequate time and a comfortable environment for engagement and this engagement needs to continue for the life of the Management Plan. Our recommendation was that the model for participation would be dramatically improved were the participatory process to be facilitated and an atmosphere of trust and understanding developed between the State party represented by DCHG, the two local authorities concerned and the community. A policy of inclusivity is critical to the success of the Management Plan.

Meetings with local authority officials showed a system under some stress, with pressure to reconcile the protection of the OUV of the WHS with the needs of the community for residential and commercial development. There were varying views expressed by the local community, as is to be expected in any group of people. In relation to planning issues within the WHS and buffer zone, a consistent theme is of a lack of certainty or consistency in relation to requirements and outcomes, the perceived stringency of the planning regime and the cost of engaging relevant professionals to carry out the necessary research (e.g. archaeological or visual impact) and assemble the various documents and information required to secure planning permission.

The State Party has a mandate to raise awareness and understanding, to enhance the function of World Heritage in the life of the community and to increase participation of local and national populations in protection and presentation of heritage.⁽²⁴⁾ This reflects the upstream process recognised by the World Heritage Committee and the essence of that change is captured in the words of De Caro: “...the shift in the heritage sector from simple physical protection to a more layered approach to management that takes into account social, economic and environmental concerns provides a basis for giving the heritage a function in the life of the community as embodied in Article 5 of the Convention. The more holistic approach has made the management of World heritage properties all the more demanding.”⁽²⁵⁾

The State Party and the two local authorities need to work better with stakeholders and local communities to continue to sustain and develop the area’s economy and social cohesion. Public participation within the administrative and decisionmaking structures of the WHS needs to be improved.

World Heritage Process is complex and at present the existing arrangements are not easily understood either by those who seek to engage with the management process or those who wish to address issues or concerns about land within the inscribed zone of the World heritage Property or the Buffer Zone. The World Heritage system has a unique vocabulary. It’s properties are “*inscribed*” for their

(24) UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1972 Article 5

(25) World Heritage Resource Manual, Managing Cultural World Heritage, UNESCO Paris, 2013, P4

“*Outstanding Universal Value*” (OUV). The cultural heritage within that description of OUV is part of the World heritage Properties “*heritage significance*.” The system of inscription and the responsibilities that flow from inscription could be better communicated. I believe that the provision of a clear explanation of the implications of inscription under the World Heritage Convention to Stakeholders and to communities to demystify the World Heritage Process is a clear responsibility of the State Party. Also for the State Party to comply with the Operational Guidelines requirement of having “*a thorough shared understanding of the property by all stakeholders*” it would seem that there is more to be done in terms of making the World Heritage System more readily understandable to all stakeholders and making the organisational areas of responsibility easier to understand I believe that many misperceptions exist which could be clarified as part of a dynamic dialogue including provision of explanations for the reasons for having certain protective mechanisms in place to stakeholders and the community. I also believe that the World Heritage System is not well embedded in legislation or policy at a National Level. We recommended the development of a graphic representation concerning the administrative and organisational arrangements in place for the WHS in a format that is readily comprehensible to the public.

Following our research we also recommended that the Department of Culture, Heritage and the Gaeltacht, together with the Department of Housing, Planning and Local Government (DHPLG), develop a written National Policy on World Heritage. In the UK, for example World Heritage Properties are referred to in the National Planning Policy Framework (NPPF) as ‘World Heritage Sites’ and are defined as “designated heritage assets of the highest significance” in the NPPF. UK Government advises that the policies of the management plan are “key material considerations” in making plans and planning decisions and that the management plan should be taken into account, when devising core strategies and other documents in the local development framework documents. The UK NPPF suggests that it may be appropriate in some cases to develop the section of the management plan dealing with development control in such a way as to allow adoption of that section within a local development document, following appropriate public consultation and examination. In Ireland local authorities do adopt the management plans into the relevant part of their development plans. However there is no written policy document on world heritage. I believe that a written policy could easily be inserted into the National Planning Framework in Ireland which would give World Heritage Properties a more coherent status in the planning context than they currently have. I believe this approach would give weight to the importance of protection of World Heritage and it would support the efforts of the local planning authorities and An Bórd Pleanála in regarding the World Heritage Status of a property as a “material consideration” thereby reinforcing clear obligations to be met by local authorities in a development context. In Ireland, the Minister for Housing, Planning and Local Government has the power, under Section 29 of the Planning and Development Acts, to issue policy directives to planning authorities, with which An Bórd Pleanála must also comply, regarding any of their functions under the Act. A policy directive could be issued to the effect that World Heritage Status is a material planning consideration and it could offer guidance concerning how it might be addressed. Related to this, the directive could include direct reference to the ICOMOS Heritage Impact Assessment (HIA) Guidance, 2008 citing it as a useful planning tool.⁽²⁶⁾

(26) This Guidance is due to be updated soon

Whilst there is a need for prudent planning policy, to protect the OUV of this national asset, the reasonable needs of the local community must also be met and normal life permitted to continue. Within the WHS and buffer zone, a balance needs to be maintained between facilitating the quality of life and the sustainable socio-economic growth and development of the community; the protection of the OUV of the WHS and the historic and natural environment and the quality of the visitor experience. The existing pastoral landscape is a major element in giving Brú na Bóinne its character and maintaining its OUV. At meetings with local people, we were given examples of planning applications, where either the process or the outcome were deemed unsatisfactory. Ironically whilst the heritage needs to be protected it is that same heritage that provides communities with a sense of identity and place and for may it is heritage that provides a sense of character, distinctiveness and identity and makes it a place people want to live. Key to the sustainability of these communities is their ability to continue to live, work and engage in recreation within the area.

Meeting demand for new development of housing or agricultural structures will always be challenging in these circumstances, and must be tempered by the need to protect the visual integrity of the landscape, from the cumulative impact of many small developments. One of the issues raised by people living in the general area of Brú na Bóinne concerns meeting local housing need. The question of how to address the demand for housing in rural areas has been an issue in Irish planning for many decades. Since 2005⁽²⁷⁾ there has been a planning regime of some complexity with an emphasis on relating housing need to various criteria, including familial connections with an area. The system is based on criteria which are open to interpretation and this can give rise to apparent inconsistencies. The Guidelines put some emphasis on protection of cultural heritage.

More recently, this policy approach has been thrown into doubt, following an infringement notice to Ireland from the European Commission and the outcome of a legal action in Belgium. The joined law cases (C-197/11 and C-203/11), decided on by the European Court of Justice in 2013, related to somewhat different circumstances, but essentially struck down a qualification for building of property whereby a person would be given favourable consideration, if he or she had a connection to an area. The DHPLG now proposes, as per Circular Letter PL2/2017, to issue new guidance following further consideration. It has been indicated that a rural generated housing need may still legitimately be occupation based e.g. a person in full time farming.

As all the WHS is within County Meath, most planning applications in or around Brú na Bóinne are made to Meath County Council. These are referred in turn to the Department of Culture, Heritage and the Gaeltacht for comment although the planning authorities remain the primary consent authority subject a right of appeal to An Bórd Pleanála. There is a pre-application consultation process, which may be availed of by members of the community and this should be highlighted more and framed more positively as a vehicle for addressing concerns.

(27) *Sustainable Rural Housing: Guidelines for Planning Authorities*, issued by the former Department of the Environment, Heritage and Local Government

Some complaints were made by the local community regarding excessively stringent limitation on extensions to existing houses.⁽²⁸⁾ From discussion with Meath County Council officials, we believe that this issue is receiving attention in the current review of the Development Plan. The WHS and environs offer a high quality environment, which benefits residents and visitors. The preservation of this environment must be given high priority, which brings with it a need for applicants for planning permission to reach a high standard of quality in planning submissions. I believe that the emphasis in relation to planning applications should rest with the quality and sensitivity of the interventions rather than their size in relation to the original structure.⁽²⁹⁾

Complaints articulated suggested that excessively expensive demands were made on applicants to supply visual impact and archaeological assessments or architecturally ambitious designs. It is likely that location in or near Brú na Bóinne imposes above average costs on applicants for planning permission, having regard to the need to protect this precious environment with its rich natural and archaeological heritage. It was suggested that the authorities should in some way defray part of the costs currently imposed on applicants for permission and we were given some examples of the financial burden. There are a number of ways that this burden might be eased, for example by giving more design guidance specific to the area, by subventing costs through provision of advice to people in the area, by providing more information in respect of archaeology or visual issues. The Local Authorities might consider commissioning development templates for strategic locations. All of these potential steps bring their own challenges and would require further consideration but local communities need to have clarity and consistency in relation to local policies across county borders.

A scheme for the reuse of vernacular farm buildings in the Brú na Bóinne landscape was initiated by Meath County Council in conjunction with the Department of Culture, Heritage and Gaeltacht. A firm of Grade 1 Conservation Architects⁽³⁰⁾ was employed to assist with this work and a number of exemplar projects were advanced. To date, none has been carried out, but we understand that the first of these is going through the planning system. The quality of architectural treatment in these cases is very fine and could lead to many others taking their lead from this project. If there was further funding advanced in this endeavour and an expansion of this scheme considered it would be really valuable.

Virtually all relevant plans are on a county wide basis and there is no local plan for Brú na Bóinne or the wider environs from the town of Drogheda to the village of Slane. Given the importance of Brú na Bóinne and its vulnerability, we thought there would be considerable merit in formulating a fine grained, local framework plan for the area. We suggested that the protection of this WHS needs a more detailed local framework plan across county boundaries covering the WHS, buffer zone and

(28) The County Meath limit in Brú na Bóinne is maximum 50% additional floor area or overall limit of 2,000 sq.m whichever is smaller. In County Louth the limit is more generous, at 100% floor area or 2,000 sq.m. We were shown an example of an existing cottage where the floor area limit had the effect of limiting the house and any extension to a floor area not much bigger than an apartment in an urban area. We recommended that the floor area limits for extensions in the County Meath part of Brú na Bóinne should be reviewed.

(29) Shaping the Future, Case Studies on Adaptation and reuse in Urban Centres, Department of Arts, Heritage and the Gaeltacht, 2012

(30) Lotts Architecture And Urbanism Ltd

hinterland. This would be on a non-statutory basis to give a unified trans-boundary foundation for future planning in the area. It could provide the fine level of information – archaeology, zones of visual influence, views and prospects – needed for planning in the area. It would also aid congruency of planning on both sides of the county boundary between Louth and Meath. The framework plan could address current issues of concern, including the possibility of identifying a location for a cluster of houses to meet local needs and management of traffic in the area. Through this plan local planning issues could be addressed in more detail than in the county development plans with enhanced public participation. A framework plan could provide more precise information in relation to protected views, archaeology, siting of buildings, design, etc. Design guidance specific to the area and adapted from the respective county development plans, could be included. This plan could ensure consistency across the county boundary and into the surrounding area. It could formulate a specific design guide for new houses and extensions to existing houses in the relevant section of the Boyne Valley. I believe that focus on qualitative engagement will result in well informed decision-making.

The new Management Plan 2017 puts forward revised structures for the administration of the WHS. This offers the possibility of greater interaction with stakeholders, not least the local community. It also provides for a single individual, the World Heritage Property Co-ordinator, who would be the “go-to” person for all issues pertaining to the WHS. For effective management interdisciplinarity needs to be made work and this requires using a facilitated committed team focused on problem solving. For effective management it has become *“essential that the heritage bodies work with other stakeholders as far as possible to develop and implement an agreed vision and policies for managing each heritage place within its broader physical and social context”*.⁽³¹⁾ This places a high premium on collaborative working and the full and transparent involvement of stakeholders that is recommended in the Operational Guidelines. It is also helpful as part of an integrated landscape approach to the conservation of nature to facilitate a policy of interconnection with other natural heritage areas. So *“heritage sites are not made up of isolated natural or cultural attributes split into separate realities but are intertwined, connected and constituted of relationships”*.⁽³²⁾

Arising from our research we recommended that the WHS Management Plan 2017 be incorporated into forthcoming County Development Plans of both Meath and Louth. They had both provided for this to be done as a variation to each of their Plans. We also proposed that a Framework Plan be incorporated into the County Development Plans of each county, in time. Also in relation to limitations on extensions to existing structures we suggested that the emphasis should be on design quality and sensitivity rather than size and that design quality be specified as a planning consideration. We thought it would be helpful to identify sites which would be suitable for new clustered housing to meet local need. We suggested it would be helpful to facilitate exploration of the kind of developments which are viable or desirable in this visually sensitive location. We recommended the pursuit of the pilot study for adaptive reuse of vacant or derelict farm buildings within the World Heritage

(31) Harmon, David, A Bridge over the chasm: finding ways to achieve integrated Natural and Cultural heritage Conservation. International Journal of heritage Studies Volume 13, 2007 Issue 4-5 nature as heritage

(32) Larsen, Peter Bille and Wijesuriya, Gamini (2015) Nature-culture interlinkages in World Heritage : bridging the gap (2015). World heritage Review (75). pp. 4-15

Property and following this with the publication as model examples of good sensitive design high quality design.

Communities need to be given opportunity to gain understanding of the reasons for encouraging caution with design and siting of proposed development. There is a need to explain the challenges incurred in balancing competing interests and multiple objectives and this could be done in the context of communicating the organisational arrangements and the differing duties and responsibilities of those involved. Protection of the landscape in WHS, buffer zone and environs as setting is a key indicator in analysis of authenticity. Planning authorities could consider presenting the buffer zones as being less focused on development control and more about context management. An example of this might be risk mapping. We recommended endorsement by both planning authorities of the Guidance on Heritage Impact Assessments for Cultural World Heritage Properties⁽³³⁾, in the consideration of planning and applications and particularly in relation to applications concerning large infrastructural developments which might have an impact on the World Heritage property and /or its buffer zone. The standard is particularly concerned with the manner in which a World Heritage Property is experienced and it differs in emphasis to an Environmental Impact Assessment (EIA).

The administrative and management structures articulated in the Management Plan need to be implemented as a matter of urgency particularly the appointment of a community based WHS Manager/ Co-ordinator. This is likely to be a full time function and the office holder will need to be based in the area. It is essential that this person is seen to be the person responsible for progressing the implementation of the plan and can act as its champion and as the key point of contact in relation to the Management Plan. This new post needs to be properly embedded within the current diverse administrative arrangements so that there is capacity to unite and engage with the diverse interest groups involved. A role description needs to be drawn up and it is our recommendation that this be addressed as a matter of priority.

There is a need to explain the structures of the implementation framework proposed in more detail and to describe their compositional make up. It is also important for the State party and the local authorities concerned to demonstrate through the management process that the Management Plan is a flexible document that has the capacity to be adjusted and reviewed on an ongoing basis throughout the life of the plan thereby functioning to make the participatory process genuine. The degree of interaction with the community during the implementation of the Management Plan is a key dimension of management effectiveness. There is a need to present and communicate on an ongoing basis the management objectives and to explain the concept of adaptive management in the context of the implementation of and ongoing monitoring and reviewing of the new Management Plan 2017. It must be clear to stakeholders and communities that they have the potential and the capacity to make meaningful inputs within the framework envisaged which can be incorporated through the engagement process.

(33) Guidance on Heritage Impact Assessments for Cultural World Heritage Properties, International Council on Monuments and Sites, January 2011

Before concluding I want to refer to the Human Rights Based Approaches (HRBAs) to protection of cultural heritage. These principles were foremost in my mind throughout the period of our observation and research concerning Brú na Bóinne. A HRBA is rooted in three principle components (1) participation and inclusion, (2) non-discrimination and equality and (3) accountability. There are of course different ways of applying the principles. However, regardless of the different methodologies for application, the principles themselves remain constant.

What, then, does this look like in practice? A human rights-based approach confers accountability on the duty-bearers (primarily the state and its representatives and local authorities) and grants a greater role to participating agents of the rights-holders (such as representatives of local communities). The use of the concept of rights changes the management context to one of empowerment, whereby passive recipients become active rights holders. Groups or rights-holders who would benefit from participation need to be identified. Advocacy and dialogues over rights with duty-bearers are central elements to enable rights-holders ‘claim their rights’. In order to turn ‘participation’ and ‘inclusion’ into reality, I believe it is important to strengthen the capacity for autonomous action. This capacity building process needs to be facilitated and to that end new skills by duty bearers in particular the State Party and local authorities will be needed. Rights holders will also have capacity building needs which need to be facilitated.

Those new skills requirements will involve rights sensitive planning and management for cultural heritage sites. Using the HRBAs within the process of managing and presenting cultural sites informs the need for ongoing clear explanations about the process itself and about duties and responsibilities held. In the course of our work at Brú na Bóinne we found it was helpful to document and recognise both existing and potential issues. The guiding principles also led us to take concrete steps towards problem solving. This meant when we articulated in our report community concerns about for example traffic management or difficulties with signage, people realised that they had been listened to properly and that there was an interest in finding appropriate solutions to address those concerns. Consultation, dialogue and engagement need to be ongoing in relation to cultural heritage sites. Good engagement requirements include active listening, ensuring that there are good communication chains and that there is a consensus building approach to problem solving which needs to be carried out in an atmosphere of fairness, equality and respect. In this process it is essential to create an atmosphere of trust which is informed by a clear and transparent process. The foregoing remarks address participation and inclusion but I would suggest in a similar way it will be important as we proceed in the context of non-discrimination and equality that we consider how we address issues that affect marginalised or vulnerable groups who may have additional concerns. It might be appropriate to ensure there is active involvement in the process for example by the elderly in the community and the youth. It would also be appropriate to be inclusive where there might be vulnerability concerning disability on any level. We will need to ensure that those groups and others are fully represented in the process. That might mean for example our giving consideration to those factors in relation to our meeting processes and their location so that we do not inadvertently exclude for reasons of physical or other impediments. There is more work to be done but we certainly aspire to value the potential of all stakeholders and communities to contribute to the process.

I would like to suggest that the application of the HRBA has led to better outcomes for everyone involved in that solutions to actual concerns raised led to outcomes where participants felt that the solutions were not imposed on them but rather were arrived at after they were heeded and responded to and in an environment whereby they could actively participate and become involved. There is, then, both an intrinsic basis for adopting a HRBA (i.e. it is right to respect peoples’ rights) and an instrumental value (in that it leads to a more satisfactory process for all involved and to more sustainable outcomes).

Apart from the usefulness of the HRBAs to protection of cultural heritage I should also like to endorse the value of the Faro Convention of the Council of Europe⁽³⁴⁾ in relation to management of cultural heritage. This is a framework convention about using heritage as a resource and an inspiration to address challenges. In line with the Faro Convention principles and criteria, civic initiatives enable institutions and communities to develop decision-making capacities and to manage their development processes, ensuring that heritage contributes to the social, cultural and economic dynamics of the communities. The Faro Convention addresses every person’s right of access to cultural heritage of his or her choice whilst respecting the rights of others. It recognises that places and objects have different meanings and uses attached by different people and that the values that they represent may vary. Once again a key concept is respect. The Faro process is about bringing people together, sharing stories and overcoming economic opportunities. It is about co-operation for inclusive policies and the empowering and reassuring of community based actions. It provides an opportunity for dialogue and for more democratic governance with people in appropriate partnerships. I very much look forward to continuing this work for the implementation phase of the Management Plan with the department, the local authorities, the stakeholders and the communities concerned in the spirit of Faro.

(34) Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, 2005) CETS No.199

Local Authorities and Heritage Communities – a Participatory Approach to Heritage Management

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Abstract:

Participatory heritage management at the local level benefits heritage properties and serves the public interest. We discuss three key concepts: participatory management, heritage communities, and the role of local authorities in management. We argue that the definition from the Framework Convention of the Value of Cultural Heritage for Society is the most convincing. We upgrade it with attributes that characterise heritage communities. The paper analyses the notion of participatory heritage management in the context of the evolution of WHC Operational Guidelines and according to the theory of social systems. Conclusions comprise principles defining the role of local authorities and facilitating direct participation of heritage communities in heritage management.

INTRODUCTION

The paper intends to give an overview of the relationship between local authorities and communities that cherish heritage in the territory under the local authority's jurisdiction or have other interests in heritage management. We will take a more theoretical perspective based on international legal standards and some interdisciplinary research. We deal with three key concepts that figure in the title of the paper, namely the participatory heritage management, heritage communities, and the role of local authorities in participatory heritage management.

The notion of local authorities is almost self-explanatory: this is a form of government, usually elected according to democratic principles and operating at the lowest level of territorial organisation of a state to serve the public interest. The European Charter of Local Self-Government outlines guiding standards for their role and organisation. We quote the Charter because, to our knowledge, there is no universally valid instrument defining local authority. The Charter states: "Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen."⁽¹⁾

(1) European Charter of Local Self-Government (ETS No. 122), adopted in 1985, entry into force 1980, Article 4, <https://rm.coe.int/168007a088> (9. 8. 2019).

The notion of "heritage community" needs additional explanation. In academic circles, the term sometimes denotes heritage protection experts⁽²⁾. ICOMOS doctrinal texts use different terms related to "community" in the sense of group(s) of people interested in heritage. The following table, which is not exhaustive gives some examples of terminology from the last 25 years.

Table 1: ICOMOS doctrinal texts - examples of "community" terminology

Year of adoption	ICOMOS Document	Location of the wording	Terms used
1994	Nara Document on Authenticity	Para 8	Cultural community
1999	Ethical Commitment Statement for ICOMOS Members	Preamble	Local communities, communities active in conservation.
2005	Xi'an Declaration on the Conservation of the Settings of Heritage Structures, Sites and Areas	Para 4 Para 11	Local and associated communities, Local, interdisciplinary and international communities.
2008	Charter for Interpretation and Presentation of Cultural Heritage Sites	Principle 4 Principle 6	Local residents and associated communities. Host and associated communities.
2008	Charter of Cultural Routes	Para 6	Local communities.
2017	Delhi Declaration on Heritage and Democracy	Appeal no 2	Local, interdisciplinary and international communities.
2017	Resolution 19GA 2017/20		Communities of interest, local communities, multi-cultural, mono-cultural and indigenous communities.
2017	Resolution 19GA 2017/30		Cultural heritage community.
2018	ADCOM Buenos Aires Declaration on Universal Declaration of Human Right	Background, Para 4	Heritage communities.

We see that the variation in the terminology is considerable, not to speak about other ICOMOS documents, reports, and studies. Another important observation is that in the latest doctrinal texts – those adopted from 2017 on, the terminology tends towards the term "(cultural) heritage community." Later, we will give arguments for the term "heritage community" and hopefully, contribute to a more consistent terminology.

The third theme of this paper is participatory heritage management. Research and studies dealing with participatory management of heritage properties have become more and more abundant since the turn of the centuries. Citizens participation in public matters is a cornerstone of democracy since the antiquity, and it is a value in itself of every modern society. Because of the inadequacies in representational democracies in cases where participation is limited to voting, new ideas about direct participation have emerged. As early as in 1969, Sherry Arnstein presented a model of public participation in the form of a ladder illustrating stages in powers people had in decision-making.⁽³⁾ Arnstein's visualisation is a good starting point for our discussion that follows below.

(2) The following article serves as an example: Ripp, Matthias / Rodwell, Dennis: The Geography of Urban Heritage, in: The Historic Environment, Policy & Practice, vol. 6, issue 3, 2015, pp. 240-276.

(3) Arnstein, Sherry Phillis: Ladder of Citizen Participation, in: Journal of the American Planning Association, vol. 35, no 4, 1969, pp. 216—224.

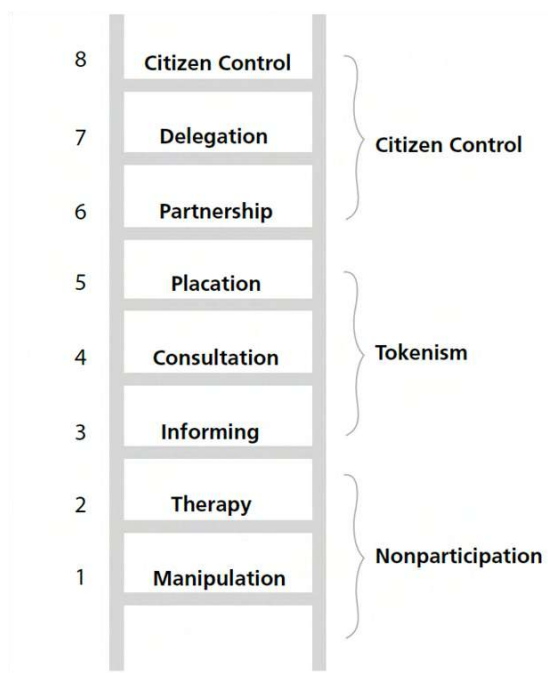


Figure 1. Arnstein's Ladder of Citizen Participation

(source: http://www.citizenshandbook.org/arnsteins_ladder.pdf)

HERITAGE COMMUNITY

As we reveal in the introduction, ICOMOS doctrinal texts lack a description of what the term "community" means in the context of heritage protection. The same is true for UNESCO heritage conventions and recommendations.⁽⁴⁾ Let us consider two recent international studies. The first quotation indicates one of the main challenges in defining the relationship between a community and heritage: "There is also the problem that cultural rights, as human rights, have both a collective and individual dimension. As rights with a collective dimension, they may come into conflict with individual human rights or individual perceptions of human rights... To what extent should (the state) enforce individual rights even in relation to religious, ethnic, and cultural communities?"⁽⁵⁾

The debate over the conflicts between different human rights lies beyond the scope of this paper. From the previous quotation, we can deduct that communities implicated in heritage are composed of individuals who may have their concern and interest regarding heritage. At the same time, they form a group with which they (partially) share their identity. As we know, heritage as a part of human culture and traditions is a crucial factor in identity building.⁽⁶⁾

(4) Although the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage consistently utilizes the expression "communities, groups and individuals", the notion refers to "practitioners and bearers" who play a specific role in safeguarding their heritage. See Basic Texts of the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, Paris 2018, footnote 5, p. 121, https://ich.unesco.org/doc/src/2003_Convention_Basic_Texts-_2018_version-EN.pdf (11. 8. 2019).

(5) Logan, William S.: Closing Pandora's Box, Human Rights Conundrums in Cultural Heritage Protection, in: Cultural Heritage and Human Rights, eds. Helaine Silverman, D. Fairchild Ruggles, Springer 2007, p. 44.

(6) See the definition of intangible heritage in UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage, Paris 2003, Article 2, paragraph 1.

The second quotation argues the following: "Community is considered to be placed at the core of conservation. Heritage is not self-evident, with intrinsic/inherent values ... it is people/stakeholder groups that ascribe (subjective) values to it and define heritage, and thus heritage is seen as an extrinsic and social process."⁽⁷⁾ Stakeholder groups are not identical with heritage communities; they comprise of legal and physical persons with interest that use heritage, and by using it, they benefit or harm heritage. The study further defines different communities according to their physical proximity to a heritage site, and a functional relation to it: the core community lives in the heritage site, and living represents the principal relation; broader communities are associated with the site mainly through different uses, and conservation community provides expert guidance and assistance to the core community.⁽⁸⁾

The concept of three communities brings us closer to the definition with one reservation: it does not solve the challenge of the intersection of individual and collective heritage rights. To name only one usual conflict that arises when individual interests of some core community members are not in accordance with what "...strengthens core community's identity, pride, self-esteem, structure, and well-being."⁽⁹⁾

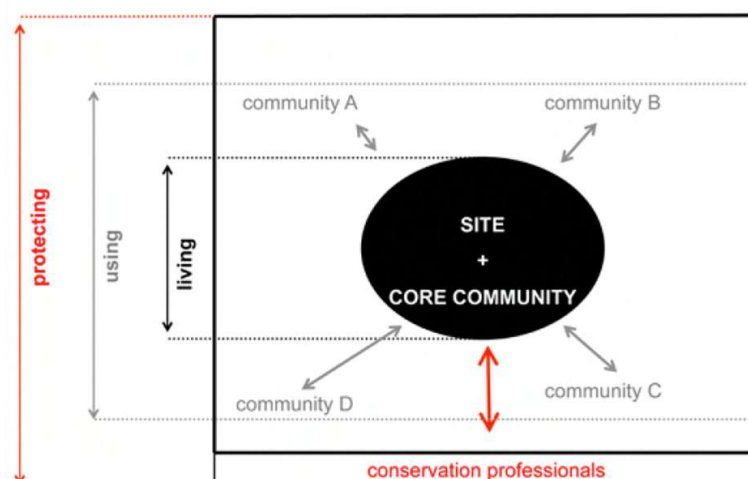


Figure 2. The triple community concept
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The Council of Europe's Framework Convention on the Value of Cultural Heritage for Society gives an elegant and encompassing solution to the definition of heritage communities. The definition goes: "[...] a heritage community consists of people who value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations"; and further on: "The (State) Parties undertake to... take into consideration the value attached by each heritage community to the cultural heritage with which it identifies."⁽¹⁰⁾

(7) Poulios, Ioannis: *The Past in the Present: A Living Heritage Approach – Meteora, Greece*, London 2014, p. 21, <https://www.ubiquitypress.com/site/books/10.5334/bak/> (9. 8. 2019).

(8) Ibid., p. 130.

(9) Ibid.

(10) Council of Europe's Framework Convention on the Value of Cultural Heritage for Society, Faro 2005, Articles 2b and 12b.

Attributes of the heritage community that the definition implies are:

- Heritage community consists of persons that share values of the same heritage. In interaction with others, an individual adheres to a community.⁽¹¹⁾
- That also means that adherence to a community depends on individual members' deliberate decision. Individual adherence to heritage values also solves the question of individual non-heritage related rights superseding the collective ones.
- Its locality in a heritage site nor the expert knowledge do not define heritage community. Ethical commitment to heritage is the only qualification.
- Deliberate decision of an individual and the heritage community to sustain heritage they place value on leads them to engage in its continuation and perpetuation of heritage knowledge.
- Heritage values are a common feature of elements of the physical environment and expressions unrespectable of the categorization introduced by experts who divide heritage in tangible and intangible, natural and cultural, movable and immovable.
- Individuals and heritage communities contribute to the future of heritage within the public interest, which confines undertakings related to family heritage to the private interest sphere.

We describe the difference between the private and public interest in Table 2.

Table 2: Difference between the private and public interest in heritage (Jelka Pirkovič 2019)

Private interest	Public interest
Focused on individual needs	Focused on community needs
Serving individual, non-heritage rights	Striking balance between individual and collective rights
Emphasising use and instrumental values	Striking balance between intrinsic, instrumental, and institutional values
Addressing consumers	Addressing citizens
Short-term orientation adapted to production/consumption cycle	Long-term orientation adapted to heritage life cycle
Meeting private and market interest	Meeting public interest
Benefiting (global) market	Benefiting local and heritage communities

PARTICIPATORY HERITAGE MANAGEMENT

Our knowledge about the significance of direct heritage participation derives from good practices, developed mostly at the local levels and in areas where problems touch people's lives what motivate them.⁽¹²⁾ Heritage management is undoubtedly one of such problem areas especially because it inter-

(11) Explanatory report to the Framework Convention, Faro 2005, p. 6, <https://rm.coe.int/16800d3814> (11. 8. 2019).

(12) For an overview of direct citizens' participation and an associated theoretical model see: Roberts, Nancy: Direct Citizen Participation: Building a Theory, paper presented to the 7th National Public Management Research, Conference, Georgetown University, Washington, DC 2003, https://www.researchgate.net/publication/228870715_Direct_Citizen_Participation_Building_a_Theory (8. 8. 2019).

sects with spatial planning, environment protection, and, what in recent years occupies us, climate change, not to speak about social issues, indigenous peoples' and minorities' heritage. Heritage is rooted in its territory, and heritage communities carry on heritage knowledge. Attachment to the territory also means that we cannot disrupt the localization of heritage without damaging or uprooting heritage.

A textual analysis of the series of Operational Guidelines adopted since 1976 reveals the evolution of the concept of participatory heritage management. The version adopted in 1994 introduced cultural landscapes as a separate heritage category. In the recommendation concerning cultural landscapes nomination, the need for broader participation was mentioned: "The nomination should be prepared in collaboration with and the full approval of local communities."⁽¹³⁾ The 1999 version of the Operational Guidelines went a step further: a separate paragraph was added to the chapter on advice about the preparation of all nominations: "Participation of local people in the nomination process is essential to make them feel a shared responsibility with the State Party in the maintenance of the site."⁽¹⁴⁾ The quotation is indicative because it explains briefly why the participatory approach is significant for heritage management.

The Operational Guidelines of 2005 fully embraced the concept of participation: "States Parties to the Convention are encouraged to ensure the participation of a wide variety of stakeholders, including site managers, local and regional governments, local communities, non-governmental organizations (NGOs) and other interested parties and partners in the identification, nomination and protection of World Heritage properties."⁽¹⁵⁾ State Parties are expected to involve relevant actors in the cycle of heritage management, not limiting it solely to the nomination. The section dealing with the management system also advises on the participatory approach aiming at securing long-term management.⁽¹⁶⁾

A well-known follower of Niklas Luhmann influential theory of social systems, Kristof van Assche published an article on the challenges of the inclusion of heritage in spatial planning.⁽¹⁷⁾ The central claim is that there are no universal recipes on how to guarantee the success of heritage planning. In doing so, we better take into consideration a broad diversity of perspectives. In further elaboration of different aspects, the article points out some concerns that are valid for heritage management, as well. It is easy to see analogies between spatial planning and heritage management; both systems depend on a variety of perspectives because the multiplicity of interpretations, interests, and attachments cannot be reduced to one solution. The best solutions are the adaptable ones. "Participation can increase flexibility and adaptation, but it also poses a risk, since it can undermine a political order based on delegation of power without offering the same quality of checks and balances."⁽¹⁸⁾

(13) Paragraph 41 of the 1994 Operational Guidelines, <https://whc.unesco.org/archive/opguide94.pdf> (8. 8. 2019).

(14) Paragraph 14, Chapter B, <https://whc.unesco.org/archive/opguide99.pdf> (8. 8. 2019).

(15) Paragraph 12, Chapter IC. A similar recommendation refers to nominations to the Tentative list, paragraph 64, <https://whc.unesco.org/archive/opguide05-en.pdf> (8. 8. 2019).

(16) Paragraphs 108—118.

(17) Van Assche, Kristof / Duineveld, Martijn: The good, the bad and the self-referential. Heritage planning and the productivity of difference, in: *International Journal of Heritage Studies*, vol. 19, issue 1, 2013, pp. 1—15.

(18) *Ibid.*, p. 6.

We can draw the following conclusion: the greatest danger in heritage management is when it remains limited to heritage concerns. In Luhmann's terms, heritage tends to be a self-referential system, sticking to its perspective, terminology, and procedures. It is hard to envisage significant shifts in regulatory framework because dominant systems such as the legal and economic ones through their power easily override a plea for changes that come from marginal systems such as the heritage one. System-specific codes make communication between systems problematic. In this way, economic and legal systems prevent marginal systems from introducing change on how dominant systems function, while the latter have the power to impose their rules on marginal ones. In other words, it takes time and effort for marginal systems to induct change. The great advantage of the heritage system lies in the fact that it offers a doorway to heritage knowledge.

THE ROLE OF LOCAL AUTHORITIES IN HERITAGE COMMUNITIES' PARTICIPATION

As a framework for clarifying the role of local authorities in enabling and actively supporting direct participation of heritage communities in public affairs, we take twelve principles of good governance at a local level as a starting point.⁽¹⁹⁾ The principles draw on the above mentioned European Charter of Local Self-Government and refer mainly to the general issues of local self-governing autonomy and services. From the twelve principles, we adapt five to clarify the role of local authorities in heritage management.

Fair participation

The principle of fair participation in heritage management builds on human dignity, the freedoms of expression, assembly and association, and, in the first place on heritage rights⁽²⁰⁾ which derive from the right of everybody to take part in cultural life.⁽²¹⁾ Fair participation at the level near to people's needs and expectations builds mutual respect, civic trust and pride, sense of belonging, and resilience of communities to aversive forces of globalisation.

Ethical conduct

Other rights could be, according to the law, partially limited if heritage as a public good is placed before individual interest. So, the heritage community and the public have access to heritage and interact with it. Local authorities should get a legally binding responsibility to protect the everyday

(19) The Twelve European Principles, Strategy for Innovation and Good Governance at Local Level, adopted by the Committee of Ministers of the Council of Europe, Strasbourg 2008, https://www.regjeringen.no/globalassets/upload/krd/vedlegg/komm/lokaldemokrati/the_strategy_for_innovation_and_good_governance.pdf (9. 8. 2019).

(20) Framework Convention, Faro 2005, Article 1: "The Parties to this Convention agree to recognise that rights relating to cultural heritage are inherent in the right to participate in cultural life, as defined in the Universal Declaration of Human Rights."

(21) United Nations International Covenant on Economic, Social and Cultural Rights, 1966, Article 15: "State parties to the present Covenant recognize the right of everyone... to take part in cultural life."

heritage that heritage communities appreciate on their territories. Participatory heritage management represents a way to assure public physical, intellectual, or virtual access to heritage.

Innovation and openness to change

The participatory approach should enable a multiplicity of interpretation to express themselves, and though this process, stakeholders can negotiate the commonly acceptable solutions.⁽²²⁾ In local heritage management, the rules governing it should encourage adaptation to change and not penalize it.

Sustainability and long-term orientation

Traditional cultures understood a community as an assembly of ancestors, present and future generations. Similarly, 230 years ago, Edmund Burke⁽²³⁾ understood liberal societies as opposed to the one that the French revolution tried to establish, as a partnership between the living, the unborn, and the dead. The modern concept of sustainability developed in the 1987 Brundtland Report, concerned only present and future generations. When the culture as the fourth sustainability pillar is accepted, the full span of humanity gets involved. If local authorities understand the historical, cultural, and social complexities from which sustainability can draw its force, a sustainable and resilient future is achievable.

We need to mention the ICOMOS position towards the implementation of UN Sustainability goals where the "localization" of sustainability represents the "file rouge" of interaction with places, citizens, and local decision-making process.⁽²⁴⁾ Recently, WHC member states also adopted a sustainability policy.⁽²⁵⁾ Moreover, it is now incorporated into the Operational Guidelines at the WHC 2019 General Assembly in Baku.

Cultural diversity and social cohesion

Local authorities and citizens should treat cultural diversity as an asset. Local authorities' role is to ensure, according to the principle of fair participation and in respect of diverse heritage communities, that everybody can get involved in heritage identification, study, interpretation, protection, conservation, and presentation, and participate in the debate on heritage challenges.⁽²⁶⁾

(22) Van Assche, Kristof / Duineveld, Martijn: The good, the bad and the self-referential. Heritage planning and the productivity of difference, 2013, pp. 5—6.

(23) Scruton, Roger: The West and the Rest: Globalization and the Terrorist Threat, Intercollegiate Studies Institute, Kindle Edition 2014, Locations 700—701.

(24) ICOMOS Action Plan for ‘Cultural Heritage and Localizing the SDGs, ICOMOS, Istanbul, 2017, p. 5, https://www.icomos.org/images/DOCUMENTS/Secretariat/2017/ICOMOS_Action_Plan_Cult_Heritage_and_Localizing_SDGs_20170721.pdf (9. 8. 2019).

(25) Policy for the integration of a sustainable development perspective into the process of the World Heritage Convention, adopted by the General Assembly of the States Parties to the Convention at its 20th Session, Resolution 20 GA 13, Paris 2015.

(26) Framework Convention, Faro 2005, Article 12 a.

Considering the principles mentioned above, states to authorities should build an adequate legal, organisational, and financial framework so that participatory heritage management at the local level can flourish. Local authorities should, within their remit, take practical steps in implementing it.

The purpose of these principles is that their application strengthens the democratic legitimacy of local authorities and at the same time, makes them allies with the heritage communities to work together in the public interest.

We conclude our presentation with one task heritage communities should take care of besides being committed to heritage and contribute to its continuation. Within their public action, they should build a safe social space for every individual to feel welcome and included. The trust between members is indispensable for collaborative leadership, creativity, and collective goal-oriented action. The shared effort of local authorities and heritage communities guarantees that civil participation in political decision-making is effective and benefits heritage.



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Role of Local Authorities in Conserving Built Heritage in East Malaysia: A Preliminary Examination

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Abstract:

The Southeast Asian nation of Malaysia, formed in 1963, has a federal system of government. Under its Constitution, both the federal and state governments have competence over “ancient and historical monuments and records”, “archaeological sites and remains”, and “preservation of heritage”, which potentially creates the possibility for overlaps and conflicts between the legal regimes at these two levels of government. This paper provides a preliminary examination of some difficulties faced by local authorities in two East Malaysian states, Sabah and Sarawak, in exercising their function of protecting built heritage, as well as potential clashes between the federal and state regimes.

The modern Federation of Malaysia came into being on 16 September 1963 with the merger of the Federation of Malaya with North Borneo (now Sabah), Sarawak and Singapore. On that date, Malaya had already gained its independence from Britain on 31 August 1957, Sarawak was a Crown colony, and Sabah and Singapore were self-governing territories within the British Empire. (Singapore subsequently left Malaysia to become an independent republic on 9 August 1965.) Geographically, Sabah and Sarawak are located on the island of Borneo in Southeast Asia and are known collectively as East Malaysia, while the remaining 11 states of Malaysia⁽¹⁾ are found on the Malayan Peninsula and are known as West Malaysia.

Malaysia has a federal system of government and, according to the Federal Constitution⁽²⁾ (hereafter referred to as the ‘Malaysian Constitution’), both the Federal Government and state governments have competence to legislate concerning heritage matters. The existence of legal regimes at both levels of government naturally creates the possibility for overlaps and conflicts between the regimes.

This paper provides a preliminary examination of how local authorities in the two East Malaysian states of Sabah and Sarawak, in conjunction with Malaysia’s Federal Government, conserve built

Acknowledgements: I wish to thank Wilson Tay for his valuable comments and assistance with accessing materials.

(1) Johor, Kedah, Kelantan, Melaka, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu. In addition to the States, there are three Federal Territories: Kuala Lumpur, Labuan and Putrajaya. Kuala Lumpur (the nation’s capital) and Putrajaya are part of West Malaysia, while Labuan consists of seven islands off the coast of Sabah in East Malaysia.

heritage. Part I sets out the legal framework, examining first how the Malaysian Constitution allocates legislative power between the Federal Government and state governments. As both levels of government are permitted to make laws concerning the preservation of heritage, the main features of the federal and state laws dealing with this subject are then described. Part II goes on to conduct a preliminary assessment of some difficulties faced by local authorities at the state level in exercising their heritage protection functions, as well as potential clashes between the federal and state regimes.

THE LEGAL FRAMEWORK

The Constitutional Dimension

The Ninth Schedule of the Malaysian Constitution generally sets out three lists of matters that the Federal Government and state governments may make laws with respect to: the Federal List (List I), the State List (List II) and the Concurrent List (List III).⁽³⁾ As the names of the lists suggest, the Federal Parliament may make laws with respect to any of the matters in the Federal and Concurrent Lists,⁽⁴⁾ and state legislatures may make laws with respect to any of the matters in the State and Concurrent Lists.⁽⁵⁾ Federal laws prevail over state laws; a state law that is inconsistent with a federal law is deemed to be void to the extent of the inconsistency.⁽⁶⁾

For present purposes, the following matters specified in the Ninth Schedule are relevant:

List I—Federal List

- [...]
13. Education, including— [...]
(b) libraries; museums; ancient and historical monuments and records; archaeological sites and remains. [...]

List II—State List

- [...]
12A. Libraries, museums, ancient and historical monuments and records and archaeological sites and remains, other than those declared to be federal by or under federal law. [...]

List III—Concurrent List

- [...]
5. Town and country planning, except in the federal capital. [...]
9B. Culture and sports.⁽⁷⁾ [...]
9E. Preservation of heritage.

(3) For the States of Sabah and Sarawak, there also exist a Supplement to the State List (List IIA) and a Supplement to the Concurrent List (List IIIA), but the matters specified therein are not relevant for our purposes.

(4) Malaysian Constitution, above, n 2, Art 74(1). The Federal Parliament is entitled to make laws on matters in the State List, among other reasons, to promote uniformity of the laws of two or more states, or if requested to do so a state legislature: Arts 76(1)(b) and (c). Before doing so, the state government must first be consulted: Art 76(2). After the federal law has been enacted it must be adopted by a state law, and thereafter it is regarded as a state law and may be amended or repealed by the state legislature: Art 76(3).

(5) *Id*, Art 74(2). In addition, a state legislature may make a law with respect to any matter that is not enumerated in any Ninth Schedule lists, if the matter is not one in respect of which the Federal Parliament has power to make laws: Art 77.

(6) *Id*, Art 75.

(7) This item was introduced by the Constitution (Amendment) Act 1988 (Act A704), para 12(c), and came into force on 10 June 1988.

States only gained the competence to legislate with regard to ancient and historical monuments and archaeological sites and remains, other than those declared to be federal by or under federal law, through the addition of item 12A to the State List with effect from 1988.⁽⁸⁾ Later on, "preservation of heritage" became a matter that both the federal and state legislatures could pass laws on, though the introduction of item 9E to the Concurrent List in 2005.⁽⁹⁾

Federal Law

Heritage Sites

Following the 2005 constitutional amendment, the National Heritage Act 2005 ('NHA')⁽¹⁰⁾ was passed by the Federal Parliament. The Act creates the post of Commissioner of Heritage,⁽¹¹⁾ who is empowered to designate any site "which has natural heritage or cultural heritage significance"⁽¹²⁾ to be a heritage site.⁽¹³⁾ *Cultural heritage significance* is defined as "cultural heritage having aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value".⁽¹⁴⁾

The Commissioner is required to notify the intention to designate the site as a heritage site to the site's owner as well as the general public, in the latter case through a notice in the Government Gazette and in a local newspaper.⁽¹⁵⁾ The owner or any person "affected or likely to be affected" by the designation of the site may object to the designation, and where any notice of objection has been served the Commissioner is required to hold a hearing.⁽¹⁶⁾

In addition, where a site is situated in a state, the Commissioner must obtain the consent of the State Authority of the state before making any designation.⁽¹⁷⁾ While the term *State Authority* is not defined in the Act itself, the Interpretation Act provides that the term means "the Ruler or Yang di-Pertua Negeri of a State and includes, in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of

(8) This item was also introduced by the Constitution (Amendment) Act 1988, para 12(c), *ibid*.

(9) This item was introduced by the Constitution (Amendment) Act 2005 (Act A1239), para 4(c), and came into force on 21 March 2005.

(10) Act 645, reprint incorporating all amendments up to 1 June 2006 ('NHA').

(11) *Id*, s 4.

(12) Section 2(1) of the Act, *id*, defines a site as including "any area, place, zone, natural heritage, monument or building attached to land, archaeological reserve and any land with building, garden, tree or archaeological reserve". Natural heritage "includes natural features of any area in Malaysia which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value from the point of view of nature, science, history conservation or natural beauty including flora and fauna of Malaysia". For the meaning of *monument*, see n 37 below.

(13) *Id*, s 24. A site that itself has no natural heritage or cultural heritage significance may be designated as a heritage site if the Commissioner is satisfied that it should be so designated because of its proximity to a heritage site and for the latter site's protection and enhancement: s 25(1).

(14) *Id*, s 2(1). *Cultural heritage* is itself defined by the same provision as including "tangible or intangible form[s] of cultural property, structure or artefact and may include a heritage matter, object, item, artefact, formation structure, performance, dance, song, music that is pertinent to the historical or contemporary way of life of Malaysians, on or in land or underwater cultural heritage of tangible form but excluding natural heritage".

(15) *Id*, s 27. An owner, "in relation to any land, means the registered owner or the holder by customary tenure of the land": s 2(1).

(16) *Id*, ss 28 and 29.

(17) *Id*, s 30.

himself and the Ruling Chiefs”.⁽¹⁸⁾ As the Ruler, Yang di-Pertua Negeri and Yang di-Pertuan Besar are ceremonial heads of states, they are required to act in accordance with the advice of the executive government of their respective states.⁽¹⁹⁾

Once the Commissioner has held a hearing and a State Authority has given its consent, if required, and the Commissioner is satisfied that a site has got cultural heritage significance, he or she shall designate the site as a heritage site, record the site in the National Heritage Register,⁽²⁰⁾ and notify the owner of the decision.⁽²¹⁾ The Commissioner is also required to give notice of the designation in the *Government Gazette* and a local newspaper, and to the land office and local planning authority⁽²²⁾ of the area where the site is situated.⁽²³⁾

Once a site has been designated a heritage site, a number of requirements must be adhered to, including the following:

- (1) On the date of the designation, the site gains the status of a conservation area, and must then be conserved and preserved according to a conservation management plan.⁽²⁴⁾ Conservation management plans are prepared by the Commissioner in consultation with the National Heritage Council⁽²⁵⁾ for the following purposes:⁽²⁶⁾
 - (a) To promote “the conservation, preservation, rehabilitation, restoration or reconstruction of a heritage site”;⁽²⁷⁾
 - (b) To ensure “the proper management of a heritage site including the use and development of all buildings and lands in the heritage site and the preservation of the environment including measures for the improvement of the physical living environment,

(18) Interpretation Acts 1948 and 1967 (Act 388), reprint incorporating all amendments up to 1 January 2006, s 3. Where the three Federal Territories of Kuala Lumpur, Labuan and Putrajaya are concerned, references to the State Authority are to be construed as references to the minister responsible for those territories: NHA, above, n 10, s 2(2). According to the Constitution, above, n 2, Art 160, in general the Ruler of a State is “any person who in accordance with the Constitution of that State exercises the function of the Ruler”, while the Yang di-Pertua Negeri means “the Head of State in a State not having a Ruler”. There are four such States: Penang, Melaka, Sabah and Sarawak.

(19) For example, by the Sarawak Cultural Heritage Ordinance 1993 (Cap 6; ‘Sarawak Ordinance’), s 2(5), the Yang di-Pertua Negeri of Sarawak is required to act in accordance with the advice of the Majlis Mesyuarat Kerajaan Negeri (State Government Council, essentially the State Cabinet) or a member thereof acting under the general authority of the Majlis.

(20) NHA, above, n 10, s 2(1) (definition of *Register*) and s 23.

(21) *Id*, s 31(1).

(22) The term *local planning authority* has the meaning assigned to it by the Town and Country Planning Act 1976 (Act 172; reprint incorporating all amendments up to 1 January 2006) in Peninsular Malaysia and the competent planning authority under the State laws of Sabah and Sarawak: *id*, s 2(1).

(23) *Id*, ss 31(2) and 32.

(24) *Id*, s 45(1). A conservation area may “(a) incorporate a buffer zone around a central core; or (b) incorporate a buffer zone around a site that has been designated as a heritage site”: s 45(2). The buffer zone and central core may be determined by the Minister of Tourism, Arts and Culture in consultation with the National Heritage Council: s 45(3). The terms *conservation* and *preservation* are both defined in s 2(1).

(25) The National Heritage Council’s functions are to advise the Minister and Commissioner “on all matters relating to heritage, and the due administration and enforcement of laws relating to heritage”, as well as on any matter referred to it by the Minister or Commissioner: *id*, s 9(1). Neither the Minister nor the Commissioner is required to act on such advice: s 9(2). The Council comprises (1) a Chairman appointed by the Minister, (b) the Secretary General of the Ministry of Culture, Arts and Heritage or a representative thereof, (c) the Secretary General of the Ministry of Tourism or a representative, (d) the Director General of Town and Country Planning or a representative, (e) the Director General of the Museums and Antiquity Department or a representative, (f) the Commissioner, and (g) “not more than six other members, at least one of whom shall be a public officer who possess experience or expertise in relation to the management, conservation or preservation of sites and objects of natural or cultural heritage significance, to be appointed by the Minister”: s 10 (1).

(26) *Id*, 46(1).

(27) The words *rehabilitation*, *restoration* and *reconstruction* are compendiously defined in the NHA, *id*, s 2(1).

communications, socio-economic wellbeing, the management of traffic and the promotion of economic growth”; and

- (c) To promote “schemes for the education of, or for practical and financial assistance to, owners and occupiers, and for community involvement in decision making”.

The Commissioner must, from time to time, submit conservation management plans to State Authorities or relevant local planning authorities, and “advise and coordinate” with them on the implementation of the plans and their guidelines.⁽²⁸⁾

- (2) The local planning authority must “take into consideration any matter, policy, strategy or plan of action pertaining to the interest of the heritage site in preparing any development plan in that local authority area”.⁽²⁹⁾ The authority is also required to refer applications by any person for planning permission or a development order to the Commissioner,⁽³⁰⁾ who must “coordinate and advise the local planning authority before any planning permission or development order is granted involving a heritage site”.⁽³¹⁾ The advice involves having the authority impose conditions when approving planning permission or a development order, which may include:⁽³²⁾
 - (a) requiring compliance with any conservation guidelines and procedures issued by the Minister [that is, the Minister of Tourism, Arts and Culture];
 - (b) requiring the making good of any damage caused to any heritage site after the works authorized by the planning permission or the development order are completed; or
 - (c) requiring the protection and retention of any specified feature of the heritage site.

Where planning permission has been approved, the Commissioner is also required to “liaise, cooperate and coordinate with the local planning authority to monitor and supervise that the terms and conditions imposed relating to the conservation of heritage are complied with”.⁽³³⁾

- (3) Where a heritage site is situated on alienated land,⁽³⁴⁾ the Commissioner may, after consultation with the State Authority, do the following:⁽³⁵⁾
 - (a) Arrange with the owner or occupier for inspection, maintenance, conservation and preservation of the site. The Commissioner may contribute towards the costs of carrying out necessary conservation or repair works, and if this is done the works must be carried out according to the Commissioner’s directions.⁽³⁶⁾

(28) *Id.* s 46(2).

(29) *Id.* s 32.

(30) *Id.* s 40(2).

(31) *Id.* s 40(1).

(32) *Id.* s 40(4). Any person who contravenes a condition imposed by the local planning authority commits a criminal offence: s 40(6).

(33) *Id.* s 40(5).

(34) The term is not defined in the NHA, *id.* It probably refers to land that is no longer State land but is in private ownership.

(35) *Id.* s 38(1).

(36) *Id.* ss 38(2) and (3).

- (b) Lease or purchase the site.
 - (c) Compulsorily acquire the site in accordance with the provisions of any written law relating to the acquisition of land for a public purpose.
 - (d) Remove the whole or any part of a building or monument⁽³⁷⁾ on the site.
- (4) The owner of a heritage site is under a legal obligation to “ensure that the heritage site is always in a state of good repair”.⁽³⁸⁾ If the Commissioner is satisfied that reasonable steps are not being taken to properly preserve it, he or she may carry out repair works and seek reimbursement of reasonably incurred costs and expenses from the owner.⁽³⁹⁾
- (5) The owner of a heritage site who has entered into an agreement of sale for the whole or a part of the site,⁽⁴⁰⁾ and anyone who purchases or acquires a heritage site,⁽⁴¹⁾ must notify the Commissioner of this fact.
- (6) Various acts done in relation to a heritage site without the Commissioner’s written approval are prohibited,⁽⁴²⁾ including demolishing or modifying a monument on the site,⁽⁴³⁾ erecting a building or structure abutting upon such a monument,⁽⁴⁴⁾ and “destroy[ing] the relationship of a building and its environment which is incompatible with the character of the neighbourhood” in the site.⁽⁴⁵⁾ The commission of such an act is a criminal offence.⁽⁴⁶⁾

National Heritage

The NHA also establishes a special category of heritage known as ‘National Heritage’. Among other things, the Minister of Tourism, Arts and Culture may list a heritage site as National Heritage in the National Heritage Register,⁽⁴⁷⁾ considering factors such as:⁽⁴⁸⁾

- a. the historical importance, association with or relationship to Malaysian history;
- b. the good design or aesthetic characteristics;
- c. the scientific or technical innovations or achievements;
- d. the social or cultural associations;

(37) The word *monument* means “architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science”: *Id*, s 2(1).

(38) *Id*, s 42(1).

(39) *Id*, s 42(2). For some reason, the provision refers to “the monument” (see the definition at n 37, above) rather than “the heritage site”. The Commissioner must give any person appearing to be the owner of the monument two weeks’ notice of the intention to carry out repair works: *ibid*.

(40) *Id*, s 36.

(41) *Id*, s 37.

(42) *Id*, s 112(1).

(43) *Id*, s 112(1)(b).

(44) *Id*, s 112(1)(c).

(45) *Id*, s 112(1)(d).

(46) The maximum penalty is imprisonment not exceeding five years, a fine not exceeding RM [Ringgit Malaysia] 50,000, or both: *id*, s 112(2).

(47) *Id*, ss 67(1) and 71. In addition, heritage objects, underwater cultural heritage, and even living persons can be listed in the Register as National Heritage: *id*, s 67(1).

(48) *Id*, s 67(2).

- e. the potential to educate, illustrate or provide further scientific investigation in relation to Malaysian cultural heritage;
- f. the importance in exhibiting a richness, diversity or unusual integration of features;
- g. the rarity or uniqueness of the natural heritage, tangible or intangible cultural heritage or underwater cultural heritage;
- h. the representative nature of a site or object as part of a class or type of a site or object; and
- i. any other matter which is relevant to the determination of cultural heritage significance.

Any person may nominate to the Minister a site to be declared as National Heritage.⁽⁴⁹⁾

Again, where a site is situated on land within a state, the Minister must first consult the State Authority before making a declaration.⁽⁵⁰⁾ If it is on alienated land or belongs to any person other than the Federal Government or a state government, the owner, custodian or trustee of the site must be notified at least 30 days prior to the date of the proposed declaration.⁽⁵¹⁾ A person who objects to the making of a declaration may submit an objection to the Minister within three months of the declaration's publication and apply for a revocation of the order.⁽⁵²⁾ The Minister will then decide, after having consulted the National Heritage Council, whether to revoke or refuse to revoke the order; the decision is expressed to be final.⁽⁵³⁾

A heritage site that is National Heritage is subject to additional restrictions. In particular, if the owner, custodian or trustee intends to sell a site, the Commissioner must be given priority to purchase the site at an agreed value, “or upon the instruction of the Commissioner to deal with in such manner that the Commissioner deems fit” (the meaning of this clause being somewhat obscure).⁽⁵⁴⁾ If the Commissioner does not wish to acquire the site, his or her approval is still required for a sale of the site to another party.⁽⁵⁵⁾ The Minister is empowered to impose procedures and guidelines for the management, conservation and preservation of National Heritage.⁽⁵⁶⁾

It is an offence to “transfer, demolish, remove, alter, renovate, export, add to or deal with” any National Heritage without the Commissioner's written approval “except in case of urgent and immediate necessity for the safety of persons or property”.⁽⁵⁷⁾

(49) *Id*, s 68. As indicated before, natural heritage, tangible or intangible cultural heritage, underwater cultural heritage and living persons may also be nominated to be declared as National Heritage.

(50) *Id*, s 67(3).

(51) *Id*, s 67(4).

(52) *Id*, s 67(8).

(53) *Id*, s 67(9).

(54) *Id*, ss 70(1) and (2). Where there is a dispute as to the reasonable compensation to be paid to the owner for the National Heritage, the Minister has final say over the matter: s 70(3).

(55) *Id*, s 70(1)(b).

(56) *Id*, s 72(1). The Minister may also approve financial assistance to the owner, custodian or trustee of National Heritage to enable him or her to comply with any procedure or guidelines: s 72(2).

(57) *Id*, s 114(1). The maximum penalty is imprisonment not exceeding five years, a fine not exceeding RM 50,000, or both: s 114(2).

State Law

Sabah

In the East Malaysian State of Sabah, the statute dealing with the protection of heritage sites, among other matters, is the State Heritage Enactment 2017 (‘the Sabah Enactment’).⁽⁵⁸⁾ Many of the provisions of the Sabah Enactment are similar to those in the NHA, which undoubtedly provided a model for the Enactment. For instance, the Director of the Sabah Museum is empowered, in consultation with the State Heritage Council, to designate any site which has cultural heritage significance to be a heritage site⁽⁵⁹⁾ and to record it in the State Heritage Register.⁽⁶⁰⁾ The procedures for designating a site, including giving notice to the owner and the public and conducting a hearing in the case of objections to the designation,⁽⁶¹⁾ are identical to those specified in the NHA.

Like the NHA, the Sabah Enactment lays down various requirements applying to a heritage site:

1. Upon the date when a site is designated as a heritage site, it becomes a conservation area and must be conserved and preserved according to a conservation management plan.⁽⁶²⁾ Such plans are prepared by the Director in consultation with the Council for the same purposes specified in the NHA.⁽⁶³⁾ The Director is required, from time to time, to submit plans to the local planning authority, and to advise and coordinate with the authority for the implementation of the plan and its guidelines.⁽⁶⁴⁾
2. The local planning authority for the area where the heritage site is situated must “take into consideration any matter, policy, strategy or plan of action pertaining to the interest of the heritage site in planning any development plan in that local authority area”.⁽⁶⁵⁾ As the authority must “coordinate and seek the advice of the Director before giving any planning permission or development order involving a heritage site”,⁽⁶⁶⁾ applications for planning permission or development orders involving a heritage site must be referred by the authority to the Director.⁽⁶⁷⁾ The Director is required to have the authority impose conditions when approving planning permission or a development order, including conditions requiring compliance with conservation guidelines and procedures, the making good of damage caused to the site, and the protection and retention of specified features of the site.⁽⁶⁸⁾ Upon the granting of planning permission, the Director shall “liaise, cooperate and coordinate

(58) No 7 of 2017 (Sabah, Malaysia) (‘Sabah Enactment’), in force on 18 December 2017.

(59) *Id*, s 22. A site includes any “area, place, zone, historical site, natural heritage, monument or building attached to land, archaeological reserve and any land with building, garden, tree or archaeological reserve”, and *cultural heritage significance* means “cultural heritage having aesthetic, archaeological, architectural, historical, cultural, scientific, social, environmental, spiritual, linguistic or technological value or any other value”. For present purposes, *cultural heritage* is defined as including “tangible [...] form of cultural property, structure [...] on or in land or in the sea of tangible form [...]”: s 3.

(60) *Id*, s 28(1)(b).

(61) *Id*, ss 25–27.

(62) *Id*, s 39(1). *Conservation* and *preservation* are defined in s 3.

(63) *Id*, s 40(1); as regards the NHA, see the text accompanying n 26, above.

(64) *Id*, ss 40(2)(a) and (b).

(65) *Id*, s 29.

(66) *Id*, s 36(1).

(67) *Id*, s 36(2).

(68) *Id*, s 36(4).

- with the local planning authority to monitor and supervise that the terms and conditions imposed relating to the conservation of heritage are complied with”.⁽⁶⁹⁾
3. When a heritage site is situated on alienated land, the Director has powers similar to those possessed by the Commissioner under the NHA.⁽⁷⁰⁾
 4. The owner of a heritage site “shall ensure that the heritage site is always in a state of good repair”,⁽⁷¹⁾ and if the Director is of the view that the owner has been remiss in this regard, he or she may carry out repair works and require the owner to reimburse the reasonably incurred costs and expenses of doing so.⁽⁷²⁾
 5. The Director must be notified if the owner of a heritage site enters into an agreement for the sale of the whole or part of the site,⁽⁷³⁾ or if any person purchases or acquires a heritage site.⁽⁷⁴⁾
 6. Similar to the NHA, without the Director’s written approval a number of acts done in relation to a heritage site are criminal offences.⁽⁷⁵⁾

The scheme analogous to the National Heritage scheme at the federal level is called the State Heritage scheme. The State Minister of Tourism, Culture and Environment may, on his or her own accord or upon the nomination by any person,⁽⁷⁶⁾ and in consultation with the State Heritage Council, declare a heritage site as State Heritage.⁽⁷⁷⁾ The bases and procedure for making such a declaration, and for dealing with State Heritage, are similar to those for National Heritage,⁽⁷⁸⁾ save of course that one of the factors that may be considered is the “historical importance, association with or relationship to Sabah history”.⁽⁷⁹⁾

In comparison to the NHA and the Sabah Enactment, the statute concerning heritage sites – the Sarawak Cultural Heritage Ordinance 1993 (‘Sarawak Ordinance’)⁽⁸⁰⁾ – is older, though ultimately it appears that the protection given to a heritage site is not very different from what is provided for by the NHA and the Sabah Enactment.

The Director of the Sarawak Museum is obliged, in consultation with the Sarawak Minister of Tourism, Arts and Culture, to compile a register of buildings situated in Sarawak which:⁽⁸¹⁾

- (a) were built before the year 1940 and are of such historical significance to warrant their preservation; or
- (b) are of special architectural, artistic or cultural interest or beauty; or

(69) *Id*, s 36(5).

(70) *Id*, s 33; as regards the NHA, see the text accompanying nn 34–37, above.

(71) *Id*, s 35(1).

(72) *Id*, s 35(2).

(73) *Id*, s 30.

(74) *Id*, s 31.

(75) *Id*, s 61; as regards the NHA, see the text accompanying nn 42–46, above. However, the maximum fine under the Sabah Enactment is RM 500,000 compared to RM 50,000 under the NHA: see the Sabah Enactment, above, n 58, s 61(2).

(76) *Id*, s 56.

(77) *Id*, s 55.

(78) *Id*, ss 55, 58–60 and 63; as regards the NHA, see the text accompanying nn 47–57, above.

(79) *Id*, s 55(2)(a).

(80) Above, n 19.

(81) *Id*, s 20(1).

- (c) are closely associated or connected with a person or event important to the history of Sarawak,

that in the opinion of the Director ought to be retained as a cultural heritage for the benefit of the people.

For the purposes of this paper, such buildings will be referred to as ‘historical buildings’. The word building is not limited to modern architectural works, but is defined to mean “any building, structure or work (whether above or below the surface of the land or water), monument, commemorative statue or memorial”.⁽⁸²⁾ A *monument* means “any temple, mosque, church, building, port, earthwork, standing stone, *keramat*,⁽⁸³⁾ cave or other structure, erection or excavation, and any tomb, tumulus or other place of interment or any other immovable property of a like nature or any part or remains of the same, which ought to be preserved as a heritage of the people by reason of the cultural, architectural, archaeological, religious, historic, traditional interest or value attaching thereto; and includes any part of the site of any monument and such portion of land adjoining such site as may be required for fencing, covering in, cordoning off or otherwise preserving any monument from damage, and also includes the means of access thereto”.⁽⁸⁴⁾ Thus, the range of sites that may be given protection under the Ordinance is fairly wide.

Once the Director enters a building in the register, it is deemed to be a historical monument and the land upon which it is situated is a historical site.⁽⁸⁵⁾ The Director is then required, as soon as practicable, to issue what is termed a preservation notice to the building’s owner (and occupier, if they are different persons), the local authority having jurisdiction over the building, and the Director of Lands and Surveys, that the building is not to be “demolished, dismantled, altered, defaced or interfered with”, unless the Director has granted a permit.⁽⁸⁶⁾ If an owner or lawful occupier of a building in respect of which by a preservation order has been served applies for a permit to carry out work on the building,⁽⁸⁷⁾ the Director may either refuse permission or grant it subject to “such terms and conditions as he may deem fit to impose”.⁽⁸⁸⁾ In particular, there may be a stipulation that “the demolition, dismantlement, alteration or defacement of, or interference with, the building shall not take effect except with the prior approval of the local authority having jurisdiction over the building and only after the Director had the opportunity of examining it and make [sic: making] such records as he may deem necessary in respect thereof”.⁽⁸⁹⁾

Where the Director has decided to refuse permission, he or she may either (1) obtain the written consent of the owner or lawful occupier to agree to carry out work for the maintenance, preservation or

(82) *Id*, s 2(1).

(83) A Muslim shrine, often the tomb of a holy person.

(84) Sarawak Ordinance, above, n 19, s 2(1).

(85) *Id*.

(86) *Id*, s 20(4). The preservation notice “shall bind all subsequent owners or occupiers of the land upon which the building is situated and shall have the effect of a special condition of title”: s 20(5).

(87) *Id*, s 20(6).

(88) *Id*, s 20(7). If the Director refuses a permit, the local authority is to be informed in writing and must not give approval to any building operation: s 20(9)(b). A person aggrieved by the Director’s decision may appeal against it to the Minister, whose decision is expressed to be final: s 20(10).

(89) *Id*, s 20(8).

restoration of the building; or (2) pay the owner or occupier a sum of money approved by the Minister to assist the owner or occupier to carry out the work.⁽⁹⁰⁾

It is an offence for a person to carry out or cause or permit to be carried out any building operation without a permit; to carry out building operations without the local authority's approval; and to fail to carry out necessary maintenance, preservation or restoration work where the duty to do so has been agreed upon and paid for by the Director.⁽⁹¹⁾

In addition to the Director's power to designate buildings as historical monuments, he or she, with the approval of the Yang di-Pertua Negeri,⁽⁹²⁾ may publish in the *Government Gazette* a schedule of historical monuments and historical sites.⁽⁹³⁾ A historical monument must be, or reasonably believed to be, at least 100 years old,⁽⁹⁴⁾ while a historical site must be regarded by the Director to be worthy of preservation “by reason of its archaeological, palaeontological, religious, traditional or historic interest or value”.⁽⁹⁵⁾ The definition of a historical monument under the Sarawak Ordinance is thus narrower than the definition of a heritage site under the NHA and the Sabah Enactment, which contain no requirements as to the age of site. Nonetheless, it would be open to the Sarawak Director to designate a site that is less than 100 years old as either a historical building or historical site.

If the Director intends to declare as a historical site any privately owned land or site that has no building on it, he or she must first notify this intention to the owner and any lawful occupier of the land.⁽⁹⁶⁾ The owner or occupier may then lodge an appeal against the proposed declaration to the Minister.⁽⁹⁷⁾ In addition, the Director may, with the Minister's approval, take steps to compulsorily acquire any land, site or monument that has been declared a historical monument or historical site.⁽⁹⁸⁾

Once a site has been declared a historical monument or historical site, various acts done in relation to the site require the written permission of the Director or other lawful authority, including demolishing or modifying a historical monument;⁽⁹⁹⁾ making alterations, additions or repairs to such a monument;⁽¹⁰⁰⁾ or erecting buildings or walls abutting upon a historical monument or historical site.⁽¹⁰¹⁾ Carrying out unauthorized acts is an offence.⁽¹⁰²⁾

(90) *Id*, s 20(9)(a).

(91) *Id*, s 20(11)(a). The penalty is stated to be “imprisonment for five years and a fine of twenty thousand ringgit”; presumably this is the maximum penalty that may be imposed.

(92) For the meaning of Yang di-Pertua Negeri, see n 18 and the accompanying text, above.

(93) *Id*, s 21(1). The Director has power to determine the limits of any historical monument or historical site (s 21(2)), and any declaration by the Director binds all subsequent owners or occupiers of the land and has the effect of a special condition of title (s 21(5)).

(94) *Id*, s 2(1) (definition of *historical monument*).

(95) *Ibid* (definition of *historical site*).

(96) *Id*, s 21(3).

(97) *Id*, s 21(4) read with s 20(10).

(98) *Id*, s 21(6).

(99) *Id*, s 22(b).

(100) *Id*, s 22(c).

(101) *Id*, s 22(d).

(102) *Id*, s 26(6). The penalty is imprisonment for one year and a fine of RM 3,000; again, this is presumably the maximum penalty for the offence.

Under section 23(a) of the Sarawak Ordinance, when a historical monument or historical site is on private property, the Director may arrange with the owner or lessee for its preservation, inspection and maintenance; and may, with the Minister’s approval, contribute from public funds towards the cost of necessary conservation or repair works which the owner or lessee may be willing to undertake. When such a contribution has been made, the works must be performed subject to any conditions that the Director may impose. The way in which this section is phrased seems to suggest that the owner or lessee of private property on which a historical monument or site is situated is entitled to refuse to carry out conservation and repair works. If this is a correct reading, this is undesirable and the section should be amended along the lines of section 42 of the NHA and section 35 of the Sabah Enactment, which places a legal duty on the owner of a heritage site to keep it in good repair and, if the owner fails to do so, empowers the relevant authority to carry out the repairs at the owner’s expense.

It would appear that if an owner or lessee fails or refuses to maintain a historical monument or site, all the Sarawak Director can do is to offer to purchase or lease the property with the Minister’s approval,⁽¹⁰³⁾ or to compulsorily acquire the land as aforesaid.⁽¹⁰⁴⁾ Alternatively, the Director may, with the Minister’s approval, remove the whole or any part of a historical monument on private property, making good any damage done to the site or to buildings, and paying compensation.⁽¹⁰⁵⁾ From a heritage perspective this is a poor solution as it severs the monument from its historical context, and it is hoped that this power is only used as a last resort when a monument would otherwise be irretrievably damaged.

A PRELIMINARY ASSESSMENT

Issues Faced by Local Authorities

It will be recalled that in Sarawak powers to protect built heritage are statutorily conferred on the Director of the Sarawak Museum. This fact has been criticized by the Sarawak Heritage Society, a non-governmental organization. In a 2015 press release, the Society’s President said it was unrealistic to expect the Museum “to co-ordinate and supervise the number of agencies that heritage protection involves. Even worse, how can we expect the Museum to oversee enforcement? It is simply not their area of expertise.” She called for a specialized heritage unit to be set up, and for a systematic procedure for decision-making (including proper consultations with an appropriate range of agencies) to be introduced.⁽¹⁰⁶⁾ The criticism might be said to apply to Sabah as well, since the Sabah Enactment similarly empowers the Director of the Sabah Museum to designate and protect heritage sites.

A number of other difficulties with the Sarawak Ordinance became evident during a project (completed in 2003) to conserve and provide for the adaptive reuse of the Old Kuching Courthouse, a

(103) *Id*, s 23(b).

(104) *Id*, s 21(6).

(105) *Id*, s 23(c). The amount of compensation is to be fixed by agreement or, if there is a dispute, by arbitration: *ibid*.

(106) *Sarawak Heritage Society Renews Call for a Specialized Heritage Unit in the Face of the Destruction of the Landscape at Fort Alice*, Sarawak Heritage Society website (11 March 2015), p 2 <<http://sarawakheritagesociety.com/storage/2015/03/20150311-f-al-pr-ed2.pdf>> (accessed 17 October 2019; archived at <<https://web.archive.org/web/20191016183236/http://sarawakheritagesociety.com/storage/2015/03/20150311-f-al-pr-ed2.pdf>>).

gazetted historical monument dating back to the 19th century. First, although a permit from the Director is needed before works may be carried out on a historical monument, no administrative procedures for applying for such a permit had been properly laid down. Secondly, unlike the NHA and the Sabah Enactment, the Ordinance does not require the drawing-up of conservation management plans for historical monuments and historical sites. Neither the Sarawak Museum nor the Jabatan Kerja Raya (JKR) Sarawak (Public Works Department of Sarawak) – which is in charge of managing government buildings, including those designated as historical monuments – have expertise on how to conserve and maintain heritage buildings, and are unable to provide directions as to the appropriate methods of doing so. As a result, it is common for the requirement for a permit from the Director to be ignored, and for works on historical sites to be carried out without using conservation methods.⁽¹⁰⁷⁾

Thirdly, approvals for building works are required from various government agencies such as the State Planning Authority and the Protection and Prevention Department of the federal Fire Brigade. Although the project involved a historical monument, neither the Director nor any other agency played a role in facilitating the approval process, or in assisting to obtain dispensations, for example, from modern fire safety requirements. Moreover, the project's architects found that the courthouse was located in what had been designated as a "historical precinct" in Kuching, the capital of Sarawak, in a "Policy Plan and Concept Plan Kuching City 2000" prepared by the Land Custodian and Development Authority (LCDA). The plans contained some conservation guidelines for historical buildings within the precinct, and works on such buildings were supposed to require prior approval by the LCDA and the Kuching City Council. However, the legal basis for requiring this additional approval was unclear, and the architects discovered that the LCDA and City Council were in fact reluctant to be accountable for approving conservation projects. Enforcement of the procedure had been inconsistent, and the LCDA even took the stance that compliance with the guidelines was optional. In the end, to avoid the possibility that the project might infringe the guidelines if the latter were reimposed in the future, the architects decided to plan the works in accordance with the guidelines, and to obtain written approval for the works from the LCDA which was then handed to the City Council.⁽¹⁰⁸⁾

At the time of writing it was uncertain whether steps had been taken in Sarawak to address the difficulties since they were pointed out in 2012. In any case, these experiences and views clearly demonstrate that while legislation provides an important framework for heritage protection, for the system to be effective, clear and streamlined procedures need to be established, there has to be co-ordination between government agencies, and agencies need to be staffed with qualified personnel.

(107) Boon, Mike / Ting, John: Conservation in Sarawak: The Case of the Old Kuching Courthouse, in: King, Stuart / Chatterjee, Anuradha / Loo, Stephen: *Fabulation: Myth, Nature, Heritage. The Proceedings of the 29th Annual Conference of the Society of Architectural Historians Australia & New Zealand*, SAHANZ 2012, p 124 at pp 126–127 <<http://sarawakheritagesociety.com/storage/2015/03/boon-m-ting-j-old-kuching-courthouse.pdf>> (accessed 17 October 2019; archived at <<https://web.archive.org/web/20191016194810/http://sarawakheritagesociety.com/storage/2015/03/boon-m-ting-j-old-kuching-courthouse.pdf>>).

(108) *Id* at 130–133.

Federal–State Relations

As for the interaction between the federal and state legal regimes described above, it is evident that there is potential for them to overlap. A particular site that is located in either Sabah or Sarawak may either be protected at the state level under the Sabah Enactment or the Sarawak Ordinance, as the case may be, or at the federal level under the NHA.

Presumably, the federal Commissioner of Heritage would only wish to invoke his or her powers in respect of a site that is regarded as having importance for the country as a whole, or at the request of a state (perhaps, for example, if the cost of maintaining a site is too high for the state to bear, or the state government feels it lacks the necessary expertise to do so). Without a State Authority's consent, the Commissioner is not entitled to confer heritage site status on a site.⁽¹⁰⁹⁾ It has been suggested that a State Authority may be reluctant to consent to an NHA designation if this means the state loses control over what may be done to the site.⁽¹¹⁰⁾

There does not seem to be anything in the NHA, the Sabah Enactment or the Sarawak Ordinance which provides that a site cannot be protected at the federal and state levels simultaneously. On the other hand, it will be recalled that item 12A of the State List in the Ninth Schedule of the Constitution provides that a state legislature may make laws with respect to, among other things, "historical monuments [...] other than those declared to be federal by or under federal law". The effect of this provision is, it is submitted, uncertain. What does it mean for a monument to be "declared to be federal"? Does the designation of a site by the Commissioner as a heritage site pursuant to the NHA mean it has been "declared to be federal"? The Act does not mention that. In any case, even if that is the effect of an NHA designation, item 12A means the state legislature may not make laws with respect to the designated monument. Does it prohibit the state from also designating the monument as a heritage site under state law?

If the Constitution does not exclude the possibility of a heritage site being protected under both federal and state law at the same time, this might provide a solution where there is a tussle between the Federal Government and a state government, though the respective agencies would need to negotiate details such as how much funding each government is to provide for the site, and how to co-ordinate maintenance works and the approval of development works. When it comes to how workable such an arrangement will be, the devil may be in the details.

Another area of potential conflict concerns the preparation and implementation of conservation management plans for heritage sites at the federal level. The NHA only provides that such plans are to be drawn up by the Commissioner in consultation with the National Heritage Council; while the Commissioner is required to regularly submit the plans to State Authorities or local planning authorities,

(109) NHA, above, n 10, ss 30 and 31(1)(b).

(110) Goh, Poi Sze: Scope and Applicability of National Heritage Act 2005, in: *Conservation of Buildings in Malaysia: With a Look at the National Heritage Act 2005*, unpublished LLB dissertation, Faculty of Law, University of Malaya 2015, pp 14–15 and n 53 <https://www.academia.edu/21086557/CONSERVATION_OF_BUILDINGS_IN_MALAYSIA_WITH_A_LOOK_AT_THE_NATIONAL_HERITAGE_ACT_2005> (accessed 16 October 2019).

this is only for advising and co-ordinating with them on implementing the plans.⁽¹¹¹⁾ The Act makes no provision for institutions at the state level to be consulted and involved in the process of preparing the plans. Amending the law to mandate such participation may result in better plans by tapping on local knowledge about sites, and could help to dispel the sense that the Federal Government is attempting a 'grab' of state assets, thus encouraging greater co-operation from state-level institutions in implementing the plans.

CONCLUDING THOUGHTS

Malaysia has made fairly recent, positive efforts to establish a comprehensive legal regime for the protection of heritage sites, both at the federal level through the National Heritage Act 2005, and at the state level in Sabah through the State Heritage Enactment 2017. In this respect, the other East Malaysian state of Sarawak, with its Cultural Heritage Ordinance dating from 1993, had some catching up to do – which it achieved when the State Assembly enacted a new Sarawak Heritage Act 2019 on 5 November 2019.⁽¹¹²⁾

The Sabah Enactment and Sarawak Ordinance provide a framework for preserving and managing its built heritage, but for such efforts to be effective, additional measures are required, including the establishment of dedicated heritage units staffed by qualified personnel rather than leaving the task to museum staff; and, particularly in Sarawak's case, drawing up conservation management plans, having proper procedures for permit applications, and improving co-ordination between different government agencies. It is hoped that the new Sarawak Heritage Act will address these matters effectively.

The existence of heritage protection regimes at both the federal and state levels creates the possibility for conflicts to arise, for example, over whether a site should be protected under federal or state legislation. It is submitted that the likelihood of conflict might be reduced through the use of dual listing (if permitted by the law), and consultation when conservation management plans are prepared. At the end of the day, the states and the country as a whole stand to benefit when heritage sites are properly protected and managed, as they will attract visitors and, more importantly, provide citizens with a sense of groundedness and ownership.

(111) See the text accompanying nn 24–28, above.

(112) Rintos Mail, "New Bill to Ensure Preservation of Sarawak's Unique Heritage for Posterity", *The Borneo Post* (5 November 2019) <<https://www.theborneopost.com/2019/11/05/new-bill-to-ensure-preservation-of-sarawaks-unique-heritage-for-posterity/>> (accessed 12 December 2019; archived at <<https://web.archive.org/web/20191106175311/https://www.theborneopost.com/2019/11/05/new-bill-to-ensure-preservation-of-sarawaks-unique-heritage-for-posterity/>>); Sulok Tawie, "Sarawak Assembly Passes Bill to have Better Cultural Heritage Law", *Malay Mail* (5 November 2019) <<https://www.malaymail.com/news/malaysia/2019/11/05/sarawak-assembly-passes-bill-to-have-better-cultural-heritage-law/1807213>> (accessed 12 December 2019; archived at <<https://web.archive.org/web/20191106133005/https://www.malaymail.com/news/malaysia/2019/11/05/sarawak-assembly-passes-bill-to-have-better-cultural-heritage-law/1807213>>).



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Role of Municipalities in the Protection of Immovable Cultural Heritage in Slovenia

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Abstract:

Municipalities, as the only form of local self-government in Slovenia, have a large role in the protection of immovable cultural heritage in Slovenia. A great majority of heritage is protected through municipal spatial plans and by the designation as monuments by municipal designation acts. On the other hand, municipalities have little statutory authority to supervise and enforce the protection thus established – most of such measures are implemented by the national protection authorities. Such interdependence results in delicate checks and balances system, in which national authorities and municipalities must closely cooperate to achieve the desired results, and which in general work quite satisfactory. The most glaring omission of the system is the limited financial capacity of municipalities to financially support the owners of heritage and to actively invest in heritage and its protection.

INTRODUCTION

In Slovenia, the system for the protection of immovable cultural heritage is a complex institutional and procedural interplay between national institutions and municipalities. The foremost national authority in charge of cultural heritage is **the Ministry of Culture**. The Ministry of Culture is the head of the State administration responsible for culture in general. Within this broad mandate, the Ministry of Culture is also responsible for the protection of heritage, which includes policy making, financing and supervision tasks aimed at implementation of heritage laws.⁽¹⁾ Within the Ministry of Culture, the Inspectorate for Culture and Media has been established. The Inspectorate is responsible for enforcement and control over the implementation of the cultural heritage legislation.

For the actual hands-on implementation of protection measures regarding immovable heritage, the **Institute for the Protection of Cultural Heritage of Slovenia** is mostly responsible. The Institute is not a part of the State administration, but a public entity established by the State.

(1) The system of heritage protection is almost exclusively regulated in the Cultural Heritage Protection Act from 2008 and in its numerous implementing rules. The Cultural Heritage Protection Act is the framework statute that regulates cultural heritage in Slovenia. It provides the system of protection for all types of cultural heritage (movable immovable and intangible), the institutional framework for the protection of heritage and the responsibilities of institutions authorised for its implementation.

Although the Constitution provides for a two-tiered self-government in the form of municipalities and regions, regions have not yet been established, which means that at present the only form of local self-government are **municipalities**. Given the total population of the country (2 million) and the number of municipalities (212 in total), these are in general quite small, with correspondingly modest human, financial and administrative capacity.

Nonetheless, municipalities play a very important role in the protection of cultural heritage. In Slovenia, there are more than 30,000 buildings, groups of buildings and sites which are cultural heritage. Of these, a great majority is formally protected by the municipalities. At the same time, municipalities have very limited authority and means to actually implement protection they have thus established. This paper gives a short overview of the Slovenian system of protection of immovable cultural heritage, with the emphasis on the role of municipalities in this system.

IDENTIFICATION OF HERITAGE: REGISTRATION IN THE HERITAGE REGISTER

In Slovenia, there are several instruments for protection of immovable cultural heritage, but the first precondition for a building or a site to acquire such protection is to be formally identified as a heritage. The act of identification is the **registration of a building or a site into the Heritage Register**. The Heritage Register is a public inventory kept and managed by the Ministry of Culture. Building, a group of buildings or a site is registered in the Heritage Register by the Ministry of Culture on the proposal of the Institute for the Protection of Cultural heritage.

The inclusion into the Heritage Register is thus solely in the responsibility of national institutions: anyone, including municipalities, may suggest registration of a particular building or a site, but such suggestion is only followed if the Institute and the Ministry consider the suggested building or a site worthy of inclusion into the Heritage Register.

The registration does not have a direct effect – it does not bestow any rights or prescribe any obligations to the owners and users of registered heritage. The registration is just an official acknowledgment that a particular building or a site has necessary heritage values and is as such potentially worthy of protection. The owners of registered heritage are under no obligation to preserve, protect or maintain the registered buildings and sites.

ESTABLISHMENT OF PROTECTION

A building or a site which is registered in the Heritage Register, may acquire effective protection, which has a direct effect and is binding for the owners and other users of heritage, in one of the following two ways:

- by its inclusion into a spatial plan by the municipality on which territory the registered heritage is located;⁽²⁾
- or by its designation as a cultural monument of local significance or as a cultural monument of national significance.

The **main difference between two types of protection** is that the registered heritage is protected through spatial plans in a general manner – as a type (as archaeological heritage, architectural heritage, industrial sites, parks, etc.), whereas each cultural monument is protected individually by a dedicated designation act, which allows for a more detailed and nuanced approach to its protection. Also, some protection measures which may be used for the protection of cultural monuments cannot be used for the protection of registered heritage protected by spatial plans, for example coercive measures, pre-emption rights of the State or municipalities, confiscation, fiscal measures or subsidies etc.

Protection through Inclusion into Spatial Plans

A registered building or site is protected by spatial plan if the municipality in which territory it is located decides that protection of that building or site is in municipal interest. Municipalities are not obliged to protect all registered heritage on its territory – they are free to decide if they want to protect all or some of the registered heritage in their respective territories. In practice, a vast majority of registered buildings and sites is protected by municipal spatial plans. At the time of this study, more than two thirds of all registered heritage is protected by inclusion into municipal spatial plans.

The somewhat surprising result of such system is the fact that majority of heritage, which was exclusively identified and registered by national institutions, is later given its protection status by municipalities which did not have any formal say in the identification and registration of such heritage.

Protection by Designation as a Cultural Monument

The second method to protect registered buildings or sites is to designate them as immovable cultural monuments. The designation of heritage as monuments represents a higher level of protection than the protection of registered heritage through spatial plans. The designation is reserved for heritage with comparatively higher heritage significance than “ordinary” registered heritage and thus with greater public interest for its protection. Consequently, the number of monuments is much smaller than the number of registered heritage protected by spatial plans.

There are two categories of monuments:

- those designated as **monuments of local significance** by municipalities on account of their special importance for them;

(2) In rare cases, heritage is also protected by national spatial plans.

- and those designated as **monuments of national significance** by the Government of the Republic of Slovenia on account of their outstanding significance for the Republic of Slovenia in general.

Monuments are designated **by designation acts**, which are legal acts of general nature (municipal ordinances or governmental decrees). With a designation act, a single building, a group of buildings or a site is designated as cultural monument, and its protective regime is prescribed.

In contrast to spatial plans, which usually only regulate the outside characteristics and appearance of buildings, the designation acts with which the monuments are protected can also prescribe a broader range of protection measures, for example building materials, methods of construction, interior organisation and appearance of buildings, together with their fixtures, furniture and other movable equipment. The designation act can also prescribe a particular use of the monument and the provision of public access. As such, the status of a monument enables a prescription of a more individual, detailed and closely tailored protective regime than is the case with registered heritage protected by plans.

As shown above, the protection of monuments with designation acts also allows the legislator a much broader spectrum of protective measures than the protection of registered heritage via municipal spatial plans. Protection through designated acts allows for an individual approach and thus a much more detailed and nuanced protective regime than protection of registered heritage through general protective regimes prescribed in spatial plans.

Anyone can propose a designation of registered heritage as a national or a local monument. However, the formal proposal to designate a monument (local or national) may only be prepared by the Institute for the Protection of Cultural Heritage. The Institute conducts evaluation of registered heritage and based on these findings prepares a proposal for designation.

In the procedure for the designation of a monument of national significance, the Institute must inform the owners of the proposed monument and provide them with the possibility to give their opinions. In the event of the designation of a groups of buildings or a site, the Institute must carry out a public hearing. The Institute must publish the notification on the hearing in at least one media, at least ten days prior to the public consultation. During the time until the public consultation, public access to the designation materials must be ensured. After the consultation of owners and the public has taken place, the designation act is adopted by the national Government.

Regarding the designation of monuments of local significance, the information of owners, public hearings and public access are organised by the municipality which aims to designate the monument of local significance, in the co-operation with the Institute. After the consultation, the designation act is adopted by the municipal council.

The above system does not allow municipalities a free hand in the protection of monuments of local significance. The municipality cannot designate a heritage as a monument of local significance if the Institute does not agree with it and if it does not prepare a formal proposal. On the other hand, the Institute also cannot force the municipality to designate a monument the Institute deems worthy of designation. This specific system of “division of powers” results in an equilibrium which works quite well in practice: more than 96% of all monuments are monuments of local significance, designated as such by municipalities.

THE IMPLEMENTATION OF PROTECTION: PROTECTION MEASURES

In all, of the 30,832 buildings and sites registered in the Heritage register, 21,370 are protected by municipalities in spatial plans, whereas 8,469 are designated as monuments: 333 as monuments of national significance and 8,083 as monuments of local significance.⁽³⁾

These numbers show the predominant formal role of municipalities in the establishment of the heritage protection, since almost 99 % of all heritage is either protected through municipal spatial plans or through the municipal designation acts.

This predominant role of municipalities in the protection of Slovenian cultural heritage basically ends at this point: although the vast majority of heritage is formally protected by municipalities, these mostly lack the authority to enforce the protection with protection measures. Even more, with few exceptions, municipalities lack the capacity and the means to engage in active support of heritage efforts, for example with subsidies, loans, fiscal measures etc. Most protection measures for both the heritage and monuments protected by municipalities and for monuments of national significance are provided by national authorities.

The most used, the most effective and in consequence the most important instrument for the protection of registered heritage and monuments is **the prior authorisation of works** on registered heritage or monuments. A protection consent or opinion must be obtained prior to any works on immovable registered heritage or monument. Such authorisations are issued to the developers on their demand by the Institute for the Protection of Cultural Heritage. The Institute must issue its authorisations on the basis of the protection regime prescribed in the spatial plan (in case of registered heritage) or in designation acts (in case of monuments). So we could argue that although 99% of all heritage and monuments are protected through municipal plans and through municipal designation acts, it is the national institution which is exclusively authorised to interpret these municipal protection provisions and on their basis approves the intended works. In practice, the contradiction is almost

(3) The data are taken from the Heritage Register database at gisportal.gov.si/portal/apps/webappviewer/index.html?id=df5b0c8a300145fda417eda6b0c2b52b on 30 August 2019. The sum of local and national monuments is 53 short of the total number of monuments. The difference consist of monuments which were designated in the previous political system by authorities which cannot now be neatly classified as either national or local.

non-existent, since these municipal designation acts were mostly prepared by the Institute in the first place, as shown in the preceding part. But this fact again shows the intricate interplay of national and local efforts in the protection of heritage in Slovenia

Slovenia belongs to the ever-growing group of countries which explicitly recognise **demolition of immovable heritage** as one – although extreme – type of works undertaken on heritage. Compared to other such countries, Slovenia regulates the demolition in more detail and outside of the “normal” system of authorisation of works. In principle, a protective regime defined by a designation act or by a spatial plan strictly prohibit a demolition of registered heritage or monuments. Nevertheless, in practice there are exceptional cases when demolition is perhaps the only realistic solution. As with other works on heritage or monuments, such removal requires prior authorisation. Contrary to other authorisations for works, which are issued by the Institute, the demolition consent is issued by the Minister, responsible for heritage. Again, municipalities do not have a word in these procedures.

The law also provides **for coercive measures** when the owners do not provide a proper maintenance of heritage. The only institution which can institute such measures are the Institute for the Protection of Cultural Heritage and the Inspectorate for Culture and Media, which are both national institutions, of course. Municipalities do not have any authority to engage in coercive measures.

Municipalities do have some authority and also obligations regarding **the ownership of heritage**. For example: monuments owned by the State or municipalities may not be sold out of public domain into private ownership, except if this provides for their improved conservation and public accessibility, and if its use complies with the social significance of the monument. {0>(5) Odločitev o odtujitvi spomenika državnega pomena sprejme vlada Republike Slovenije (v nadaljnjem besedilu: vlada) na predlog ministra, pristojnega za dediščino (v nadaljnjem besedilu: minister), odločitev o odtujitvi spomenika lokalnega pomena pa pristojni organ pokrajine ali občine, ki je spomenik razglasila.<}0{> Decisions on the sale of monuments of national significance into private property are taken by the Government upon the proposal of the Minister, responsible for heritage. The decisions on the sale of a monument of local significance is taken by the municipal council which designated it in the first place. Municipalities also have pre-emptive right on monuments of local significance and a right to confiscate endangered monuments of local significance which are not properly maintained.

Funding of protection measures and financial support to owners of heritage are perhaps the most underdeveloped and unsatisfactory aspects of heritage protection in Slovenia – both on national and on a local level. In principle, the State and municipalities may fund or subsidise the conservation of designated monuments (but not the registered heritage). Subsidies may cover works such as rehabilitation and restoration of monuments. As well as traditional subsidies, the law also allows subsidizing of loans taken by developers to implement protective measures. However, unlike in most European countries, there are no institutions or organisations on the national level in Slovenia which would provide credit through low-interest loans, loan guarantees or grants for investments into heritage on a permanent basis. A number of municipalities have programmes for co-funding restoration and maintenance of buildings or sites (which may or may not be protected as heritage or as monu-

ments). From time to time, the Ministry of Culture issues a call for subsidies for restoration of cultural monuments. However, as a whole, the amount of financial support to owners is inadequate.

Fiscal measures to alleviate the burden of owners are few and are all available only on a national level. Municipalities neither have the independent means of income neither the possibility to use tax-based exceptions to promote protection of heritage.

Donations and sponsorship of immovable cultural heritage protection by corporations, companies, private entities and individuals is almost unknown in Slovenia, partially due to insufficiently developed heritage awareness and partially because legal entities are only exempt from the income tax to the total sum of 0.3 percent of income.

All of the above measures provide a negligent relief for owners, which is disproportionately small in comparison to the economic burden that they have to bear to maintain and properly care for their heritage. It is of a special importance that Slovenia would provide an effective system-based instrument for subsidising investment into heritage and/or for more significant tax relief for such investments.

CONCLUSION

In Slovenia, unlike in most European countries, there is a clear functional division between the State administration on one hand and municipalities on the other: each has its own responsibilities; their competences do not overlap and are clearly separated. Municipalities as a rule do not implement national policies and do not provide services for the national government on their territories. As seen from the above overview, cultural heritage may be the most striking exception to this principle, since the municipalities play a major role in the designation of protected heritage and monuments, where the protection is later enforced predominantly by national institutions.

The described system is somewhat paradoxical: as a general rule, the State identifies the heritage, the municipalities protect such heritage via spatial plans and designation acts, and the State again implements and enforces such protection. Each party is for the most part formally independent in these activities, and at the same time practically dependent on the other party without which it can basically not achieve the desired result. Such interdependence results in a delicate “checks and balances” system, which in general work quite satisfactory regarding the general purpose: the effective protection of heritage. The national registration of heritage provides for more unified standards of identification and evaluation of heritage as would be the case if these tasks were left to individual municipalities. Also, the system of inter-dependence “forces” the national institutions and the municipalities to co-operate closely in protection activities, since they cannot achieve the desired effect by the force of law or hierarchy alone.

The only really serious problem of the Slovenian system of protection of cultural heritage does not stem from the inter-dependence of actors described above, but from the limited financial capacity of

municipalities to provide financial support to the owners of heritage. It is a shame that municipalities, which to a large degree recognise the inherent value of heritage and its practical importance for the promotion of municipal life and well-being, do not have more financial capacities to engage in active heritage promotion and support.

A Judicial Court Case in Buenos Aires. 550 Moreno St. Cistern. Methodology of Heritage Economic Assessment

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Abstract:

The court case began with the discovery of a cistern in 550 Moreno St. in the historical centre of the Autonomous City of Buenos Aires (CABA). The parties involved were the owner of the property, a construction company and the government of the city of Buenos Aires. The intervening judge, within the framework of the National Archaeology Law 25743 and the ordinance that frames the plot within the area of historical protection, requested that the historical and the economic assessment of the cistern should be made through a scientific method, as well as the appraisal of the partial destruction to determine the new redefinition of the conservation project of the rescued structures.

INTRODUCTION

The historical centre of the Autonomous City of Buenos Aires (CABA) has a great archaeological potential under 0.00 level where it is recognized no less than three centuries of history in each of its plots. The recognition of this potential is fundamental for the decision-making on the new architectural projects where the scope includes the testimonies that could be found in historical-cultural-patrimonial terms underground and then project their economic potential as cultural resources.

The violation of the construction company by not taking into account the regulations of heritage protection in this sector of the city generated the decision of the Government of CABA to initiate loyal actions. This allowed the partial conservation of the structure found and the rescue of important archaeological material, as well as the opening of interesting discussions: What is the budget of the new construction work designed from the beginning (real estate market)? What is the budget from the project recognition of the patrimonial resources (methodology of heritage economic assessment)? Are there any tools that allow economically assessing the destruction of these heritage resources?

In order to calculate the damages caused by the construction company, historical valorisations were carried out and the Methodology of economic-financial patrimonial assessment was applied. This methodology has 11 principles: intangible, constructed, fashion, authenticity, event, otherness, environment, relationship of the patrimonial piece with the environment, heritage monetary unit (by locality), market and sum of all of them. This system of economic assessment needed the information sources that allowed reaching the real economic value of the property, prior to the partial destruction of the cistern, as well as the budget of the new architectural project that arose from the penalty for noncompliance with the National Law 25743. (Fig. 1 and Fig. 2).



Figure 1. Moment when Justice stopped the works. Graciela Aguilar (December 2017).



Figure 2. Perimeter fencing and expertise requested by the Justice of the city of Buenos Aires. Graciela Aguilar (January 2018).

LOCATION

The cistern is located on 550 Moreno St., in the historical centre of CABA, an area that is legally protected in terms of heritage as APH 1 (Historic Protection Area No. 1, Historical Centre). This property was formerly the old house of an important family in colonial times. There are no vestiges of this house on the 0.00 level on the land.

HISTORICAL BACKGROUND

This plot presents an important historical construction for the CABA. In the plan of land distribution made by Juan de Garay in 1583, the block divided into quarters appears. This property and its boundaries belonged to Antonio Ermud and Alonso Gómez.

In front of the study block, towards 1675 the Society of Jesus had been established, which had been in Buenos Aires since 1608. Today this block is known as the Block of Lights, where the Jesuits built the temple of San Ignacio de Loyola, along with the religious dependencies and houses for rent.

In graphic documentation of the years 1756 and 1764 the corner of the current streets Bolívar and Moreno was occupied by the Bishop's House with a green landscaped space bordering. On a map of the city of Buenos Aires from the mid-eighteenth century, the building at 550 Moreno St. appears with two sides built continuously, the Bishop's House and isolated buildings on Belgrano and Peru streets.

In 1753 Felipe Filiberto de Arguibel de Larregui (1734-1801) had arrived in Buenos Aires. He would be one of the most prominent merchants of the colonial society and would become the owner of the house on 550 Moreno St. and grandfather of Encarnación Ezcurra, wife of Juan Manuel de Rosas, governor of the Argentine Confederation (1835-1852). After the death of Felipe Arguibel in 1801, the economic prosperity of the family began to decline. Between 1837 and 1838, when Encarnación Ezcurra married Juan Manuel de Rosas, he bought the properties of 550, 568 and 574 Moreno St. from his mother-in-law, as well as the corner of Bolívar and Moreno streets. These properties functioned as the seat of his government until its transfer to San Benito de Palermo after the death of his wife. However, they continued to be used by the Restaurateur for social purposes until 1852.

From the reading of the planimetric documentation between the years 1860 and 1883 it can be inferred that the construction consisted of a succession of courtyards linked to each other by broken-way hallways. The main rooms looked to the first yard and the service ones to the second yard with a cistern. The dining room divided the first two yards, while in a third yard, the barnyards, the vegetable garden and other services were located.

From 1852, the buildings that made up the study block, housed various units of the new provincial government and the national state. In the Beare Cadastre of 1860, a School and the Provincial Government House can be seen.

In 1883 a process of restitution of these properties to the heirs of Juan Manuel de Rosas began. At the beginning of 1900 the properties underwent an important process of transformation. Between 1902 and 1903, the house of 550 Moreno St. was demolished and an Italianate style high-rise house was built for shops and tenants. This building was conserved until 1973 when a demolition plan was presented by the new owner in order to establish a parking lot.

The parking lot became the image of this property. Below the 0.00 level there were the remains of the rich history of the city of Buenos Aires. At the end of 2017 its veil was discovered when the earthworks excavations began for the construction of a building.

The material rescued in the archaeological surveys after the intervention of the Government of the City, allowed us to rediscover part of the history of the City of Buenos Aires. (Fig. 3 and Fig. 4)



*Figure 3. Advanced archaeological survey work in the cistern and the rest of the site.
Graciela Aguilar (July 2018).*



Figure 4. Communication of the Project for the recovery and opening of the works to the public within the framework of the V Archaeology Week of Buenos Aires, September 2018. Graciela Aguilar (September 2018).

SCIENTIFIC METHOD

The judicial case requested a scientific method to value the cistern as cultural heritage.

Why would it be necessary to put a price on heritage objects?

The real estate market sets the price, but handles it with its own rules, often depreciates what others value. The monetary value is given locally. The estate is managed by all jurisdictions. Therefore, the

methodology covers the “expenses and resources” determined by law in the Budget of the State administration of each country, in their respective jurisdictions (municipal, provincial and national). When talking about World Heritage “the expenses and resources” that should be taken into account, should be those that come from UNESCO and the bodies of NGOs that participate as advisors in the valuation of assets.

The heritage is part of the treasury of the peoples. Destruction is the loss of that treasury. An original heritage is not the same as a reconstructed heritage, although carried out with the same construction techniques. Therefore, the heritage value will fall on the construction technique that lasts over time.

This method consists of eleven principles and is developed internally with a series of chained tables becoming a system. The result of the heritage value of a legally declared piece is the sum of the data it possesses. The diagnosis of each principle is based on the information and documentation that is possessed at the time when the heritage piece is analysed. The documentation can be a technical drawing, CV of the author/s, description of the property and territory, individual history of both and general history of the good in relation to its environment and country where it is registered, economic data, uses, criteria, graphic criteria and information management, amount of assets declared legally according to the area in question and specific and general regulations. Therefore, each individual result of the documentation of the good is put in the different tables according to the objective of the principle that invokes it.

No-degraded Heritage (Intangible) (NDH)

“...every property has a basic heritage value, legally declared, (which can be zero), which does not change over time...” (Rae 2018).

Bishop's house (BH)	Partial Result	Top
Historical scale, time function	2 x antiqueness (2018–1800) = 318	
Scale 1: philosophical, knowledge values	2 x 6	7
Scale 3: heritage value, existence, inheritance, social, historical and symbolic	2 x (2; 2; 2; 2; 2)	2
Value scale: testimonial, use, development and significance	2 x (2; 2; 2; 2)	2
Scale 7: owners and property	2 x 3	5
Scale 10: graphic representation, scale 1:750	2 x 8	14
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, paper	2 x 4	11
Scale 9: design management, passed	2 x 4	5
Scale 12: graphic technique, ground floor plan	2 x 1	4
Scale 18: scale of land, elements, work and building, land with deteriorated construction	2 x (4; 3)	6
Scale 39: historical appraisal	2 x 1.376	
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
BH = 8.36 x 29.69 = 248.20 heritage points		

Ezcurra family house	Partial Results	Top
Scale 13: by design	2 x 52	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, social	2 x 2	2
Scale 30: by condition of uses, habitability, by potential value	2 x 8	11
Historical scale, time function	2 x antiqueness (2018–1800) = 218	
Scale 10: drawing techniques, graph	2 x 7	9
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, cloth	2 x 3	11
Scale 9: design management	2 x 4	5
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, ground floor plan	2 x (2; 1)	4
Scale 12: graphic techniques, photographs	2 x (3; 7)	7
Scale 18: scale of land, elements, work and building, façade	2 x 5	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
EFH = 6.36 x 22.56 = 143.48 heritage points		

Juan Manuel de Rosas family house (JMRFH)	Partial Results	Top
Scale 13: by design	2 x 52	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, social	2 x 2	2
Scale 30: by condition of uses, habitability, by potential value	2 x 8	11
Historical scale, time function	2 x antiqueness (2018-1813) = 205	
Scale 10: drawing techniques, graph	2 x 7	9
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, cloth	2 x 3	11
Scale 9: design management	2 x 4	5
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, ground floor plan	2 x (2; 1)	4
Scale 12: graphic techniques, photographs	2 x (3; 7)	7
Scale 18: scale of land, elements, work and building, façade	2 x 5	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
JMRFH = 6.1 x 22.6 = 137.86 heritage points		

Government House (GH)	Partial Results	Top
Scale 13: by design	2 x 52	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, social	2 x 2	2
Scale 30: by condition of uses, Executive Power administration, Central Power, by potential value	2 x 9	11
Historical scale, time function	2 x antiqueness (2018-1852) = 166	
Scale 10: drawing techniques, graph	2 x 7	9
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, cloth	2 x 3	11
Scale 9: design management	2 x 4	5
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, ground floor plan	2 x (2; 1)	4
Scale 12: graphic techniques, photographs	2 x (3; 7)	7
Scale 18: scale of land, elements, work and building, façade	2 x 5	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
GH = 5.32 x 22.42 = 119.27 heritage points		

Post Office (PO)	Partial Results	Top
Scale 13: by design	2 x 52	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, social	2 x 2	2
Scale 30: by condition of uses, communication, by potential value	2 x 8	11
Historical scale, time function	2 x antiqueness (2018-1860) = 158	
Scale 10: drawing techniques, graph	2 x 7	9
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, cloth	2 x 3	11
Scale 9: design management	2 x 4	5
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, ground floor plan	2 x (2; 1)	4
Scale 12: graphic techniques, photographs	2 x (3; 7)	7
Scale 18: scale of land, elements, work and building, façade	2 x 5	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
PO = 5.16 x 21.92 = 113.10 heritage points		

Supreme Court (SC)	Partial Results	Top
Scale 13: by design	2 x 52	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, social	2 x 2	2
Scale 30: by condition of uses, legal power, by potential value	2 x 9	11
Historical scale, time function	2 x antiqueness (2018-1863) = 155	
Scale 10: drawing techniques, graph	2 x 7	9
Scale 11: design situation, project	2 x 3	5
Scale 8: design support, cloth	2 x 3	11
Scale 9: design management	2 x 4	5
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, ground floor plan	2 x (2; 1)	4
Scale 12: graphic techniques, photographs	2 x (3; 7)	7
Scale 18: scale of land, elements, work and building, façade	2 x 5	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
SC = 5.1 x 22.02 = 112.30 heritage points		

First Demolition (FD)	Partial Results	Top
Scale 13: by design	0.5 x (-52)	132
Scale 1: philosophical, aesthetic and knowledge values	0.5 x [(-5); 6]	7
Scale 3: heritage value, economic, historical	0.5 x [(-2); (-2)]	2
Scale 7: owners and goods	0.5 x 1	5
Historical scale, time function	0.5 x antiqueness (2018-1908) = 155	
Scale 20: constructive situation, archaeological remains	0.5 x 12	30
Scale 12: graphic techniques, photographs	0.5 x 7	7
Scale 18: scale of land, elements, works and buildings, property that has had a construction, only foundations were found	0.5 x 2	6
FD = 1.27 x 0.13 = 0.16 heritage points		

Parking Lot (PL)	Partial Results	Top
Scale 13: by design	2 x 33	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Scale 3: heritage value, economic, historical	2 x (2; 2)	2
Scale 7: owners and goods	2 x 1	5
Historical scale, time function	2 x antiqueness (2018–1910) = 108	
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, photographs	2 x 7	7
Scale 18: scale of land, elements, works and buildings, property that has had a construction	2 x 2	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
PL = 4.16 x 12.44 = 51.75 heritage points		

Second part of the cistern demolition (2nd PCD)	Partial Results	Top
Scale 13: by design	2 x (-33)	132
Scale 1: philosophical, aesthetic and knowledge values	2 x [(-5); 6]	7
Scale 3: heritage value, economic; historical	2 x [(-2); (-2)]	2
Scale 7: owners and goods	2 x 1	5
Geological scale	2 x 6	6
Scale of uses: cistern	2 x 9	11
Scale of criteria, technical, morphological, social and environmental	2 x 3 x 4	4
Historical scale, time function	2 x antiqueness (2018–1800) = 218	
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale 12: graphic techniques, photographs	2 x 7 x 8	7
Scale 18: scale of land, elements, works and buildings, property with archaeological remains	2 x (-3)	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x (-150.98)	2124
2 nd PCD = 6.36 x 25.52 = 162.31 heritage points		

$$\begin{aligned}
 &\sum BH + EFH + JMRFH + GH + SCMS + PO + SC + FD + PL + 2ndPCD \\
 &= 248.20 + 143.48 + 137.86 + 119.27 + 116.81 + 113.10 + 112.30 + 0.16 + 51.75 \\
 &+ 162.31 = 1205.24 \text{ heritage points}
 \end{aligned}$$

NDH (Cistern) = 1205.24 heritage points

Built Heritage that Deteriorates (BHD)

“...the value of a heritage construction, legally declared, evolves over time ... (while there is no prior intervention)” (Rae 2018).

Ezcurra Family House (construction remains)	Partial Results	Top
Scale 43: degrees of heritage significance	2 x 5	41
Scale 39: historical study, historical appraisal	2 x 1.06	
Scale 13: by design	2 x 33	132
Scale 1: philosophical, aesthetic and knowledge values	2 x (5; 6)	7
Historical scale, time function	2 x antiqueness (2018–1800) = 218	
Scale 11: design situation, project	2 x 4	5
Scale 15: project and work, scale 1:1	2 x 5	5
Scale 18: scale of land, elements, works and buildings, property with archaeological remains	2 x 3	6
Scale 20: constructive situation, archaeological remains	2 x 12	30
Scale of uses: cistern	2 x 9	11
Scale of criteria: technical, morphological, social and environmental	2 x 3 x 4	4
BHD (Cistern) = 173.75 heritage points		

Fashion (F)

“...the fashion value of a heritage construction, legally declared, evolves over time...” (Rae 2018)

$$F = 173.75 \times 0.054 = 9.46 \text{ heritage points}$$

Authenticity (A)

“...there is a gain in value (due to the authenticity of the legally declared assets), which increases over time, therefore the function is inverse to the deterioration process ...” (Rae 2018)

$$A = 5,669,053.48 \text{ heritage points}$$

Event (E)

“... There is a gain in value for each historical event that occurs over time ...” (Rae 2018)

The house where Juan Manuel de Rosas lived (JMRL)	Partial Results	Top
Scale 3: heritage values, symbolic, historical, inheritance and direct use	2 x (2; 2; 2; 2)	2
Scale 30: by condition of uses, habitat, by potential value	2 x 8	11
Scale of criteria: habitat, technical, morphological, environmental, social	2 x (3; 3; 3; 3)	5
Illustrious person, Juan Manuel de Rosas	2 x 42.4	
Historical scale, time function	2 x antiqueness (2018–1813) = 205	
Scale 39: historical study, historical appraisal	2 x 1.08	2 x 1.08
JMRL = 6.1 x 101.2 = 617.32 heritage points		

Where Buenos Aires government house operated (BAGH)	Partial Results	Top
Scale 30: by condition of use, executive administration, central power, by potential value	2 x 9	11
Scale of criteria, government house, technical, morphological, environmental, social	2 x (3; 3; 3; 3)	4
Historical scale, time function	2 x antiqueness (2018–1852) = 166	
Illustrious person, Juan Manuel de Rosas	2 x 42.4	2 x 42.4
Scale 39: historical study, historical appraisal	2 x 0.90	2 x 0.90
BAGH = 5.32 x 94.22 = 501.25 heritage points		

Where the Postal Office operated (POO)	Partial Results	Top
Scale 30: by condition of use, communication, Postal Office, by potential value	2 x 8	11
Scale of criteria, Postal Office, technical, morphological, environmental, social	2 x (1; 1; 1; 1)	3
Historical scale, time function	2 x antiqueness (2018–1860) = 158	
Scale 39: historical study, historical appraisal	2 x 0.74	2 x 0.74
POO = 5.16 x 5.58 = 28.79 heritage points		

Supreme Court (SC)	Partial Results	Top
Scale 30: by condition of use, legal administration, by potential value	2 x 9	11
Scale of criteria: supreme court, technical, morphological, environmental, social	2 x (3; 3; 3; 3)	4
Historical scale, time function	2 x antiqueness (2018–1863) = 155	
Scale 39: historical study, historical appraisal	2 x 0.70	2 x 0.70
SC = 5.1 x 9.02 = 46.00 heritage points		

Where a parking lot operated (PLO)	Partial Results	Top
Historical scale, time function	2 x antiqueness (2018–1910) = 108	
Scale 39: historical study, historical appraisal	2 x 0.41	
Scale of use, parking	2 x 4	15
Scale of criteria, technical, morphological, environmental, social	2 x (4; 4; 4; 4)	7
PLO = 4.16 x 5.9 = 24.54 heritage points		

$$\sum (E1 - JMRL) + (E2 - BAGH) + (E3 - POO) + (E4 - SC) + (E5 - PLO) \\ = 617.32 + 501.25 + 28.79 + 46 + 24.54 = 1217.90 \text{ heritage points}$$

Normative otherness (NO)

“... there is a correction of legal value due to the state of conservation of the good (identification, validity, valorization, categorization, protection, intervention)...” (Rae 2018)

Cistern _ HPA	Partial Results	Top
Heritage coefficient. Historical protection area (H.P.A.)	150.98	
Legal time of the legal declaration (H.P.A)	1992	
Scale 54: relationship of the domain with the valuation, categorization, protection, and intervention	25	41
NO (Cistern) = 151.58 heritage points		

Environment (Env)

“... A heritage piece is inserted within a context. The context has identity characteristics. The context surrounding a heritage piece is called environment. But sometimes the environment has its own heritage characteristics that must also be considered ...” (Rae 2018)

First Foundation of Buenos Aires City (1 st F-BA)	Partial Results	Top
Scale 3: heritage value, symbolic, hereditary, historical	2 x (2; 2; 2)	2
Historical scale, time function	2 x antiqueness (2018-1536)=482	
Scale 2: graphics, perspective	2 x (1; 5)	5
Scale 18: scale of land, elements, work and building	2 x 2	6
Scale 36: condition, town planning, ruins	2 x 1	13
Scale of criteria, morphological and environmental	2x (1; 1)	5
Scale 39: historical study, historical appraisal	2 x 2.03	
Scale 40: Geological process, geographical assessment	2 x 6	6
1 st F-BA = 11.64 x 13.74 = 159.93 heritage points		

2nd Foundation of Buenos Aires City (2nd F-BA)	Partial Results	Top
Scale 13: by design	2 x 38	132
Scale 3: heritage value, symbolic, hereditary, historical	2 x (2; 2; 2)	2
Historical scale, function time	2 x antiqueness (2018–1580)= 438	
Scale 12: graphics	2 x 3	5
Scale of graphic: representation materials	2 x 7	11
Scale of design management: status scale, passed	2 x 4	5
Scale 12: graphic techniques, plan	2 x 1	6
Scale 18: scale of land, elements, work and building	2 x 2	6
Scale 36: condition, town planning, ruins	2 x 1	13
Scale of criteria: morphological and environmental	2 x (1; 1)	5
Scale 39: historical study, historical appraisal	2 x 1.81	
Scale 40: geological process, geographical assessment	2 x 6	6
2 nd F- BA = 10.76 x 17.63 = 189.69 heritage points		

South Cathedral Neighborhood (SCN)	Partial Results	Top
Scale 13: by design	2 x 38	132
Scale 3: heritage value, symbolic, hereditary, historical	2 x (2; 2; 2)	2
Historical scale, time function	2 x antiqueness (2018–1853)=165	
Scale 12: graphics	2 x (1; 2)	6
Scale 10: graph, technical drawing	2 x 7	9
Scale 11: design situation, project	2 x 4	5
Graphic material scale: digital	2 x 1	11
Scale 18: scale of land, elements, work and building	2 x 2	6
Scale 36: condition, town planning, ruins	2 x 1	13
Scale of criteria: morphological and environmental	2x (1; 1)	5
Scale 39: historical study, historical appraisal	2 x 0.78	
Scale 40: geological process, geographical assessment	2 x 6	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
SCN = 5.3 x 9.34 = 49.51 heritage points		

Moreno Street (MS)	Partial Results	Top
Scale 13: by design	2 x 41	132
Scale 3: heritage value, symbolic, hereditary, historical	2 x (2; 2; 2)	2
Scale 1: philosophical values, knowledge	2 x 6	7
Historical scale, time function	2 x antiqueness (2018–1580)=482	
Scale 11: design situation, project	2 x 4	5
Scale 12: graphics	2 x (1; 2)	6
Scale 10: technical drawing, graph	2 x 7	9
Scale of graphic material: digital	2 x 1	11
Scale 16: work file	2 x 2	10
Scale 15: project and work, scale of 1:1	2 x 5	5
Scale 18: scale of land, elements, work and building	2 x 2	6
Scale 36: condition, town planning, ruins	2 x 1	13
Scale of criteria: morphological and environmental	2x (1; 1)	5
Scale 20: constructive value, reinforced concrete	2 x 24	30
Scale 39: historical study, appraisal	2 x 2.03	
Scale 40: geological process, geographical assessment	2 x 6	6
Heritage coefficient. Historical Protection Area (H.P.A.)	2 x 150.98	2124
MS = 11.64 x 25.04 = 291.46 heritage points		

$$\sum (1^{\circ}F - BA) + (2^{\circ}F - BA) + (SCN) + (MS) = 159.93 + 189.69 + 49.51 + 291.46 \\ = 690.59 \text{ Heritage points}$$

Env = 690.59 heritage points

Relationship of the Heritage with its Surroundings (Inf)

“... Intrinsic relationships that are called influences are generated between the environment and heritage assets. This connectivity is due to the fact that the environment has a large scale declaration (urban code-HPA) that values it and is therefore evaluated ...” (Rae 2018)

Visual influence values	Influence values on the case study
$xe = \frac{EV}{m^2} = 0.67 \text{ pp/m}^2$	$Inf = \left[\left(xe \frac{pp}{m^2} \right) * \text{number } m^2 \text{ of each case study built} \right]$ $Inf = HV = 1558.92 \text{ heritage points}$

Heritage Monetary Unit (HMU)

"... Heritage points must be inserted in a system called heritage monetary unit. The monetary unit is drawn from the relationship between the budget of the competition body that manages the assets ..." (Rae 2018)

$$UMP = \frac{53145085 \text{ (C.A.B.A.'s wealth management budget)}}{100 * 152000 \text{ (amount of goods legally declared in C.A.B.A.)}}$$

$$UMP = \frac{53145085}{15200000}$$

The monetary unit of assets was \$/hp 3.49

Conversion to the monetary unit used by the real estate market. By conversion simple rule of three was applied = U\$D/hp 0.23

Market Value (MV)

"... The market value of a construction, or of any heritage piece, must be inserted in the permanent reality, that is, it is valued from the present ..." (Rae 2018)

$$MV - Cist = 173.12 \text{ U\$D}$$

Calculation of Heritage Value (CHV)

"... This is the result of the sum of the ninth and tenth postulates, obtaining the valuation of the heritage piece ..." (Rae 2018)

The sum of all heritage points and multiplication with the heritage monetary unit is

$$CHV - Cist = \{NDH + BHD + F + A + E + NO + Env + Inf\}$$

$$CHV - Cist = \{1205.24 + 173.75 + 9.46 + 5,669,053.48 + 1217.90 + 151.58 + 690.59 + 1558.92\}$$

$$CHV - Cist = HMU * 5674060.92$$

$$CHV - Cist = 0.23 \text{ U\$D/pp} * 5674060.92 \text{ pp}$$

$$CHV - Cist = 1305034.01 \text{ U\$D}$$

$$CHV - Cist = MV + 1305034.01 \text{ U\$D}$$

$$CHV - Cist = 173.12 \text{ U\$D} + 1305034.01 \text{ U\$D}$$

$$CHV - Cist = 1,478,154.12 \text{ U\$D}$$

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The System of Monuments Protection in Russia: Specific Features and Problems

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Abstract:

Russia, the Russian Federation, is a federation. The Ministry of Culture of the Russian Federation forms part of the Russian Government and is the main body in charge of protection of monuments and sites. Protection of heritage is the direct responsibility of the Department of State Protection of the Cultural Heritage of the Ministry of Culture. Every constituent entity of the Russian Federation is to establish a special regional agency to protect cultural heritage sites. Local governance exists in Russia as well. Monument protection powers are exercised by local authorities or a structural department of administration empowered by it. A lot of cultural heritage sites in Russia are the state's property, which is divided into the property of the Russian Federation (federal property), property of constituent entities of the Russian Federation (regional property) and property of municipalities (municipal property). Along with that, starting from restitution of the property institute in Russia in 1991 some cultural heritage sites fully or partly were transferred into private hands.

THE GOVERNMENT

Russia, the Russian Federation, is a federation. It comprises 85 full fledged constituent entities, including 22 republics, 9 lands ("krai"), 46 regions ("oblast"), 3 cities with federal status, 1 autonomous region, 4 autonomous areas ("okrug").

The supreme legislature is bicameral and consists of the Russian State Duma and the Russian Council of Federation. The Russian Ministry of Culture is part of the Russian Government; it is the supreme federal agency for protection of monuments and sites. The protection of heritage is a direct responsibility of the Department of state protection of cultural heritage of the Ministry of Culture. In 2004-2011 there existed the Russian Federal Surveillance Service for Compliance with the Law in Cultural heritage Protection (Rosokhrankultura) – a separate federal agency subordinate to the Russian Ministry of Culture vested with powers to protect monuments.

The Russian Federation is also divided into 8 federal districts, each having its presidential plenipotentiary envoy. In each federal district there is an Agency of the Russian Ministry of Culture, a territorial branch of the federal ministry, with powers limited to the respective district.

Each constituent entity has its own legislative (representative) and executive (government) branches. According to art.11.2 of Federal Law as of 25.06.2002N 73-FZ “On cultural heritage sites (monuments of history and culture) of the peoples of the Russian Federation”⁽¹⁾, each constituent entity of the Russian Federation shall have a special cultural heritage protection agency. However, not all Russian constituent entities have set up such separate agencies for monuments’ protection. For instance, in some entities powers in the sphere of protection of monuments are given to an agency empowered in the sphere of culture.

Local governance exists in Russia as well – in the form of representative and executive local authorities acting on the territory of a municipality. As a rule, a constituent entity of the Russian Federation consists of several municipalities. Powers in the sphere of monuments protection are granted under art.11.3 of Federal Law as of 25.06.2002 N 73-FZ to local administration or a bureau empowered by it. Yet not all constituent entities have cultural heritage sites of municipal significance, for instance, St.Petersburg, a separate constituent entity of the Russian Federation, doesn’t have any.

In Russia cultural heritage protection is regulated by both federal and regional authorities (art.72D of the Russian Constitution)⁽²⁾.

MONUMENTS PROTECTION FUNDING

A lot of cultural heritage sites in Russia are state property, namely the Russian Federation property (federal property), property of constituent entities of the Russian Federation (regional property) and property of municipalities (municipal property).

Yet starting from the restoration of the institution of private property in Russia in 1991 (after the 1917 Revolution the notion of private property didn’t exist in the country) some cultural heritage sites went into private hands, in full or in part. The level of property (federal, regional or municipal) doesn’t depend on the significance of a cultural heritage site (besides sites of special significance and UNESCO World Heritage sites), i.e. a cultural heritage site of regional or municipal significance can be federal property, while a site of federal or municipal significance can be regional property.

Under art. 13 of Federal Law as of 25.06.2002 N 73-FZ, funds for preservation, promotion and state protection of cultural heritage sites are allocated from the federal budget; budgets of the constituent entities; extrabudgetary sources; local budgets.

Under art.210 of the Russian Civil Code⁽³⁾, a private owner of a cultural heritage site, be it an individual or a legal entity, is liable for maintenance of the site in his or her ownership. A preservation order issued in accordance with art. 47.6 of Federal Law as of 25.06.2002 N 73-FZ specifies the obliga-

(1) Rossiyskaya Gazeta, of June 29, 2002, No 116-117.

(2) Corpus of legislative acts of the Russian Federation, of August 04, 2014, No 31, article 4398.

(3) Rossiyskaya Gazeta, of December 08, 1994, No 238-239.

tions of the owner of a cultural heritage site in the sphere of maintenance and funding of a monument, ensemble or a site.

Art.13 part 3 of Federal Law as of 25.06.2002 N 73-FZ stipulates that funding of cultural heritage sites of regional and municipal significance shall be provided at the expense of the funds obtained from the use of regional or municipal property according to the procedure set by a law passed by the constituent entity of the Russian Federation or a legal act passed by the municipality. Besides, art.13 part 4 of Federal Law as of 25.06.2002 N 73-FZ states that Russian constituent entities can at their expense participate in funding of preservation and promotion of cultural heritage sites in federal property, and provide for state protection of cultural heritage sites in federal property.

The state can also allocate funds for works of preservation of cultural heritage sites in the property of religious organizations (art.13 part 5 of Federal Law as of 25.06.2002 N 73-FZ). This provision is widely enjoyed by the Russian Orthodox Church of Moscow Patriarchate, which, as it was stated in the previous article “Some Issues of Religious Monuments' Preservation in Russia”, has a lot of benefits from the current political regime, unlike many other confessions⁽⁴⁾.

Unfortunately, despite Russia being one of the richest countries in terms of natural reserves, a lot of cultural heritage sites are in the advanced state of disrepair or lie in ruins. No funds for their maintenance, renovation or restoration are allocated under the pretext of “there is no money”. Before 01.01.2013 art.381 part 5 of the Russian tax Code was in force⁽⁵⁾; it accorded to owners of cultural heritage sites tax exemption in respect of these sites, which was to encourage transfer of cultural heritage sites into private ownership. At present to solve the problem of ruined monuments the government is promoting a transfer of cultural heritage sites from the state to private ownership at the price of 1 rouble under the condition of their restoration, and if the site is restored it is transferred into private hands. However, positive examples are not numerous.

In some rare cases the state grants subsidies for restoration of monuments (besides religious organizations), for instance, Decree of the Russian Government as of 27.08.2018 N 998 “On Regulations in the Sphere of Federal Subsidizing of the Foundation for preservation and development of the Solovetsky Archipelago to procure preservation and restoration of cultural heritage sites (monuments of history and culture) of the peoples of the Russian Federation located on the Solovetsky Archipelago”⁽⁶⁾. Such subsidies are granted by a special decision of the Russian Government or an executive authority of a constituent entity of the Russian Federation.

In Russia there are positive examples of funding of maintenance and preservation of cultural heritage sites in private property. Unfortunately, practice varies a lot; in some cases private owners perform

(4) Lavrentyev Nikolay, Garevsky Andrey: Some Issues of Religious Monuments' Preservation in Russia, in: Invitation to the PRERICO-ICLAFI Joint Symposium 2018 - Comparative Perspectives: Contemporary Issues on Law, Religion, Heritage and Conservation (16-20 October 2018, Jeju City, Republic of Korea).

(5) Rossiyskaya Gazeta, of August 06, 1998, No 148-149.

(6) Official Internet portal of legal information: State system of legal information, of August 29, 2018, No 0001201808290010.

their obligations properly: comply with the necessary requirements and rules, which are quite bureaucratic in Russia. Yet quite numerous are cases when private owners seek to minimize their compliance with these rules and requirements. As a rule, this is connected with the desire of such “negligent” owners to reconstruct the site to suit their needs as much as they can: for instance, when an old building which has no underground parking space, elevators and so on is converted into a hotel, it is in fact ripped apart, only the external walls are left. As a rule, getting approval for such project implies corruption, which is widely spread in Russia.

The problem of numerous ruined sites in Russia has been mentioned already. It is not a rare occasion that such sites are in private property, yet quite often they are privatized or transferred to investors in normal condition. Later such monuments get demolished, incidentally or intentionally. Then as a result of the site having lost its cultural and historic value owners or developers try to deprive it of the status of the monument or implement “reconstruction”, under the pretext of which a modern replica is built, which often only vaguely imitates the ruined original. For instance, the 19th century building of the Pushkarskiye Bani in St.Petersburg, interesting from the point of view of architecture and history, as it was famous for being frequented by famous Russian opera singer M.Shalyapin. In the course of reconstruction of the building, which is an architectural monument, only one front wall was left (Fig. 1).



Figure 1

To ensure against such situations in which owners thus wreck cultural heritage sites there exist administrative (art. 7.13 of the Code of the Russian Federation on Administrative Offenses)⁽⁷⁾ and criminal (art. 243.1 of the Criminal Code of the Russian Federation)⁽⁸⁾ liabilities, along with procedure of withdrawal of monuments from private property under art 238 of the Russian Civil Code. Unfortunately, despite the fact that the law is quite transparent in this sphere, its enforcement on the part of authorities is often inefficient, and the withdrawal procedure can take a long time, which quite often results in the loss of a monuments which requires urgent emergency prevention activities. For instance, it took many years to make a decision on withdrawal of the estate of Shtilitsen - Zhilyayt-

(7) Rossiyskaya Gazeta, of December 31, 2001, No 256.

(8) Rossiyskaya Gazeta, of June 18, 1996, No 113; of June 19, 1996, No 114; of June 20, 1996, No 115; of June 25, 1996, No 118.

shen in a village not far from Tchernyakhovsk (Kaliningrad region), famous for the fact that it became the place of death of Prince M. Barclay de Tolly (a hero of the 1812 war) (Fig. 2).



Figure 2

MANAGEMENT OF THE CULTURAL HERITAGE

According to article 3 of Federal Law N 73-FZ as of 25.06.2002 in the Russian Federation there are sites of cultural and archaeological heritage. The cultural heritage sites include monuments, ensembles and sites.

According to article 4 of Federal Law N 73-FZ as of 25.06.2002 cultural heritage sites are classified by their significance:

- The federal cultural heritage sites – the sites of historical – architectural, artistic, scientific and memorial significance, which are essential to the history and culture of the Russian Federation, along with the sites of archaeological heritage;
- The regional cultural heritage sites - the sites of historical – architectural, artistic, scientific and memorial significance, which are essential to the history and culture of regions of the Russian Federation;
- The local (municipal) cultural heritage sites - the sites of historical – architectural, artistic, scientific and memorial significance, which are essential to the history and culture of municipalities.

In addition, federal cultural heritage sites have a separate subcategory of most valuable cultural heritage sites. Unfortunately, UNESCO world heritage sites (there are 28 such sites in the Russian Federation) are virtually not considered by the Russian Legislation. According to article 50, part 1 of Federal Law N 73-FZ as of 25.06.2002 the most valuable cultural heritage sites and the world heritage sites are the public property and inalienable.

However, only few UNESCO world heritage sites in Russia have the status of the most valuable cultural heritage site or the federal cultural heritage site. For example, the biggest world heritage site # 540 “Historic Centre of Saint-Petersburg and related groups of monuments” has no status at all and only few of its monuments have the status of cultural heritage, according to the Russian Legislation. Lots of separate monuments have no status at all; for example, monument # 540-001 “Historic Centre of Saint-Petersburg”, monument # 540-036 “the Green Belt of Glory of Leningrad”, monument # 540-034 “the roads” and others. This situation makes it possible for the regional authorities of the Russian Federation, namely St. Petersburg Government Committee for the state preservation of historical and cultural monuments (some members of which for unclear reasons are ICOMOS members), to claim, particularly in court, that, according to the Russian Legislation, a world heritage site is not a cultural heritage site. From this statement Committee representatives draw a contradictory conclusion that a world heritage site must be protected but they can’t protect it as it has no the status of cultural heritage and is beyond their competence. It leads to uncontrolled destruction of the world heritage site and housing development of its territory; the development projects in this case don’t consider either the boundaries of the world heritage site or its outstanding universal value⁽⁹⁾. Moreover, such situation leads to the alienation of separate parts of the world heritage sites from the public property to the private one; for example, part of monument’s territory # 540-006c “The Babolovsky Park” of the monument # 540-006 “The Palace and Park Ensembles of the Town of Pushkin (Tzarskoe Selo)” was privatized in the 1990s and with much difficulty the authorities and public members managed to challenge the attempt to develop this part of the park.

Taking into account three categories of cultural heritage sites it would be reasonable to assume that federal cultural heritage sites are within the competence of the Ministry of Culture of the Russian Federation, regional cultural heritage sites - the agencies for the protection of regional monuments, the municipal cultural heritage sites – the local municipal authorities.

However, according to article 9.1 of Federal Law N 73-FЯ as of 25.06.2002 the regional agencies for the protection of monuments are authorized to protect the federal heritage sites. The Ministry of Culture of the Russian Federation itself deals with a few number of federal cultural heritage sites, the list of which is approved by the Government of the Russian Federation in the Resolution N 759-p as of 01.06.2009 “On the approval of the list of federal cultural heritage sites, the state protection of which is carried out by the Ministry of Culture of the Russian Federation”⁽¹⁰⁾. Only a few authorities of the Ministry of Culture of the Russian Federation are referred to federal cultural heritage sites; besides, the Ministry of Culture of the Russian Federation has the right to inspect regional agencies for the protection of regional monuments to check the quality of the protection of federal cultural heritage sites; it also has the right to take measures against violators.

(9) Lavrentyev Nikolay, Chernushev Vladimir, Malysheva Elena, Romanovskaya Nataliya: Local Residents against Developers and Officials: a Case Study of Protection of Architectural Ensembles of Chesma Palace and Alexandrino Country Estate in Saint Petersburg (Russia), in: 19th General Assembly 2017 - Results of the Scientific Symposium: Official document issued at the end of the Scientific Symposium. New Delhi, 2018. Access mode: https://www.icomos.org/images/DOCUMENTS/General_Assemblies/19th_Delhi_2017/19th_GA_Outcomes/Scientific_Symposium_Final_Papers/ST1/9_ICOA_691_Romanovskaya_SM.pdf

(10) Corpus of legislative acts of the Russian Federation, of June 08, 2009, No 23, article 2856.

CAPACITY DEVELOPMENT IN THE PROTECTION OF MONUMENTS

The political and economic environment in Russia is corrupted to some extent and the system of authorities of all levels responsible for the protection of monuments is not an exception. Such situation takes a heavy toll on the conservation of cultural heritage sites in Russia, including world heritage sites. We believe that the actions taken by St. Petersburg Government Committee for the state preservation of historical and cultural monuments, which were described above, are corruptive as they serve the interests of developers by not taking measures against building new houses on the territory of a world heritage site and destroying outstanding universal value of a world heritage site.

Besides, as it was mentioned above, the Ministry of Culture of the Russian Federation has the right to take some measures relating to federal cultural heritage sites if it decides that regional agencies for the protection of monuments don't execute their duties; but the Ministry of Culture of the Russian Federation doesn't have the right to take measures against regional or municipal agencies which don't execute their duties for protecting regional and municipal cultural heritage sites.

At the same time, we think that there is a quite unique situation in Russia when the civil society (local communities, city preservation activists, including ICOMOS members) litigates in a court illegitimate actions or inaction of agencies for the protection of monuments. Since 2009 legal precedents have been set in Saint-Petersburg, when improper decisions of St. Petersburg Government Committee for the state preservation of historical and cultural monuments were recognized illegal and rescinded by court.

The popularization of cultural heritage sites is one of the main duties of agencies for the protection of monuments of all levels. However, the situation may vary depending on regional agencies for the protection of monuments. Before 2011 St. Petersburg Government Committee for the state preservation of historical and cultural monuments was quite actively involved in the popularization, publishing books and reference books on the history of monuments, carrying out scientific conferences. One of the activities is the organization of guided tours to inaccessible monuments which are privately owned or on the territory of restricted access organizations. Such tours are usually organized on the International Day for Monuments and Sites (18 April). Lots of cultural heritage sites have information plaques, but UNESCO world heritage site “Historic Centre of Saint Petersburg and Related Groups of Monuments” doesn't have public information plaques at all. By 2003 (the 300th anniversary of Saint-Petersburg) the majority of Saint-Petersburg schools had the subject “The history of the city” (local history). This subject is studied by children of different age in other regions too but not in all schools. There are such courses and lectures for adults, both commercial and free. In universities local history is only studied as an optional subject.

Lots of agencies for the protection of monuments have public and expert councils, working parties. However, public members, including ICOMOS members, are involved in this activity in different ways. There is the Public Council and the Federal Research Council affiliated with the Ministry of Culture of the Russian Federation, where issues on specific restoration projects are examined. In

some areas regional agencies for the protection of monuments actively cooperate with public representatives and independent experts, while in other regions such cooperation is reduced to a minimum. For example, it can be noted that the Department for the State Protection, Preservation and Utilization of cultural heritage sites of the Culture Committee of the Leningrad Region is more cooperative than St. Petersburg Government Committee for the state preservation of historical and cultural monuments.

In Russia there is an institution of expert activity in the field of the protection of monuments. Organizations the activity of which is connected to monuments must have a license granted by the Ministry of Culture of the Russian Federation. Specialists, namely restorers and experts must be certified by special committees of the Ministry of Culture of the Russian Federation. The particular emphasis should be on experts who deal with the state historical and cultural expertise, the expertise for the registration of monuments for the protection, the documentation for the restoration of cultural heritage sites, and some other issues. Taking into account the corruption in Russia all these licenses and certifications are often just a formality and dishonest experts could sign any report necessary for developers for a bribe.

The society can take part in the protection of monuments (in Russia, according to article 44, part 3 of the Constitution of the Russian Federation, every citizen has the duty to preserve historical and cultural monuments) by the popularization of cultural heritage sites and by the legal education of population which often doesn't know basic laws. Only recently it's been obligatory to publish all expert reports, conduct public discussions on protection zones for monuments, and post on the Internet preservation obligations between the State and owners of cultural heritage sites. However, it might be insufficient, as it's often necessary to carry out an alternative expertise which could be very expensive for common citizens and activists. In case of highly skilled city preservation activists, independent and impartial experts, availability of legal support and information on city preservation activists the protection becomes more efficient.

The Role of Local Authorities in Managing and Propagating Cultural Heritage in Finland

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Abstract:

In Finland, the preservation of immovable cultural heritage is mostly entrusted to the regional councils and the municipalities. The primary tool for the preservation of immovable cultural heritage is the land use plans, which are made on the regional and municipal levels. The planning system, as well as minimum standards, is laid down in the Land Use and Building Act (2000). Thus, the legitimacy of all regional and local decisions may be tested before Administrative Courts.

However, the role of the municipalities is largely independent in terms of the planning program. They enjoy so called planning monopoly. Also as regards contents, the municipal powers of discretion are wide-ranging, since planning involves coordination of several conflicting interests and obligations. These powers are used by the political councils, which are the highest decision-making bodies in the municipalities.

To cover their obligations the municipalities receive state subsidy and collect taxes and fees. Yet the preservation of public built heritage is often a challenge, since the jobs and population are gathering in the South of Finland, rather than in the North or Middle. Private owners of heritage receive compensation mostly through building volumes. The municipalities usually do not grant direct economic support and the state support schemes only cover a few millions Euros per year.

Yet the general good opinion about the importance of the cultural heritage as well as arts is spreading. This is largely to the credit of the museum sector and their essential capacity building and innovations. The role of the museums is rightly reinforced by a recent legislative and financial reform.

The central government directs the activities in the regions and the municipalities with national guidelines and strategies. For example, the National World Heritage Strategy was launched in 2015 to enhance the fostering of Finland's seven world heritage sites. The world heritage sites are not separately recognized by the national legislation. This was made evident when a plan permitting a massive commercial centre within the buffer zone of Old Rauma was recently found legitimate by the Supreme Administrative Court. However, the complete reform of Land Use and Building Act in the next few years might be an opportunity to fill the gap.

INTRODUCTION

In Finland, the usual official means to protect immovable cultural heritage is a land use plan. Plans are made on three levels: there are regional plans and two kinds of municipal plans. The planning system is based on the Land Use and Building Act (2000), the comprehensive reform of which is underway and due to be completed by the end of 2021.

In addition to the Land Use and Building Act, a few specific pieces of legislation regulate the protection of cultural heritage. The principles of the built heritage are laid down in the Act on the Protection of the Built Heritage (2010), which may also be used as a means of protection, especially in cases where plan orders would be inadequate. The archaeological heritage is protected by the Antiquities Act (1963) and the most valuable ecclesiastical buildings by the church legislation. The specific legislation is observed in the planning process.

The central government directs the planning activities also with instruments such as National Land Use Guidelines (2017—) and the National Strategy for Cultural Environment (2014—2020). The main message of the government is that heritage is an invaluable, cross-sectoral resource for both immaterial and material wellbeing. After 2020, the central government is going to draw up an even more comprehensive national strategy for cultural heritage.

THE PLANNING SYSTEM

Regions

The country is divided into 19 regions. Each region has a politically elected council and an executive government. In practice, a region is a union of municipalities, and many politicians act both in regional and in municipal councils.

Among the 19 regions, two special cases are worth mentioning: One of the regions, the Åland Islands on the southwestern coast, has autonomous status. This means that the Åland Islands is entitled to pass its own legislation in various matters, such as land use and the protection of cultural heritage. The Åland Islands is a demilitarized zone and Swedish is the only official language in the region. Secondly, part of the most northern region, Lapland, belongs to the Homeland of the Sámi people. In their Homeland the Sámi people have self-government in matters of language and culture. The territory, where the Sámi people live, range from Norway, Sweden and Finland to Russia. The Sámi people are the only indigenous people in the European Union.

One of the most important duties of the regional councils is to draw regional plans where they outline the main land use goals in matters such as energy, traffic, industry and protected areas. As regards cultural heritage, sites of national or regional significance are indicated in regional plans.

Municipalities

The next two levels of land use plans usually cover areas in only one municipality. A municipal plan can be a master plan for a larger area or a detail plan for a district or just a lot. The master plans give directions for detailed planning. Binding preservation orders for heritage sites or single buildings are given in detail plans.

According to the first drafts of the reformed Land Use and Building Act, only urban areas might in the future need master plans, whereas other areas might be managed with a single municipal planning level.

The highest decision-making bodies of the municipalities are the municipal councils, which are political and elected every four years. The municipal councils enjoy so called planning monopoly. It is up to them when, where, why — and, to a large extent also, how — a plan is made.

Of course, the municipal decision-makers must stick to the requirements set by the Land Use and Building Act. For instance, the specific values of the built environment should not be destroyed. The plan should also be based on sufficient facts and impact assessment and the relevant authorities, the interested parties as well as all citizens, should be consulted during the planning process. The regional environmental authority of the state is usually a relevant party because it keeps an eye on several land use issues of national or regional importance on the region.

The parties, including also the relevant authorities and the citizens, may refer the plan to the regional Administrative Court to find out, whether it fulfills the statutory requirements or not. As the requirements in many cases are not clear-cut, the courts often comment in their decisions that they only can take a stand on the lawfulness of the plan, and not instruct the municipalities how to make good plans.

Sometimes a municipality ends up in internal conflict. Recently the political council board in Helsinki granted a license to replace the original windows of the Main Post Office with new windows made of modern materials. However, the municipality employees appealed to the Helsinki Administrative Court, since they found the license to be against the preservation orders given in the detail plan the council had approved 20 years earlier. The court agreed with the employees and revoked the license (Helsinki Administrative Court, Decision Number 19/0304/5, given 30 April 2019). The case is still pending, since the council board (along with the original applicant) has filed a petition for leave of appeal with the Supreme Administrative Court.

THE ROLE OF THE MUSEUM AUTHORITIES

Work on the Land Use Cases

The larger municipalities have local museum authorities who give consultation whenever a plan or a license application involves cultural heritage. Many of them serve all the municipalities of the region.

The legal and financial basis for the work is being consolidated through a reform of the Museum Act, which will enter into force 1 January 2020. Thanks to the reform, there will probably be a museum authority for land use issues in every 19 regions, which has not been the case so far. This would also

enable the state museum authority, the Finnish Heritage Agency, to concentrate mostly on specific areas, such as nationally significant or state-owned heritage and the heritage of the church.

The regional work of the local museum authorities is now — and even better in the near future — financed through state subsidy specifically awarded for the purpose. The Ministry of Education and Culture will nominate the museums responsible for regional work and review their funding every four years. The Finnish Heritage Agency will have constant dialogue with the museums.

Examples of Capacity Building

Apart from the authoritative consultation work, the museums do essential capacity building for instance by maintaining local museums and researching local heritage. A good example is the Adopt a Monument –scheme, adopted originally from Scotland in 2007. The museum lists potential sites that need maintenance and contracts with the owner and the adopter. The adopter is in charge for the costs, but the management plan is drawn up together with the museum. In Finland, the scheme has already spread from one region to several others. Now, 36 sites are adopted. The handbook Adopt a Monument — Best Practices is available in English at: <https://issuu.com/vapriikki/docs/adopt-a-monument> (5 July 2019).

Another preferred tool for capacity building are the regional work groups for cultural environment, which can be found in almost all of the 19 regions. Key players are the regional councils, the local museum authorities and the regional environmental authorities of the state. Other parties involved can be for example municipal planning and building authorities, third sector representatives and sometimes even representatives of the private sector. It is important to recognize and invite all relevant parties of the region. The work groups are mainly for information and dialogue on the general level, but it helps different parties to know each other and thus encourages their cooperation on single cases.

The Finnish Museum Association supports the work of local museums effectively. A successful innovation was the launch of the annual Museum Pass in 2015. The Pass is inexpensive and covers some 280 museums all over the country. The museum sector in Finland is enjoying an overall good reputation now, and the Museum Pass is probably one of the key factors behind the change.

THE FINANCIAL RESOURCES

The Financial Resources of the Municipalities

The state subsidy for the regional land use consultation by the museum authorities is an exception to the general rule that the municipalities do not receive ring-fenced state funds for duties of permanent nature. The municipalities do receive general state subsidy, but they decide on its use independently. To cover their obligations the municipalities also collect income tax, property tax and fees. Out of the

budget thus gathered, they finance for example social and health care, schools, land use planning, building and infrastructure, as well as local museum services.

Should the municipal council find it necessary to give preservation orders that would be unreasonable for the owner, the municipality would be liable to pay compensation. Should the building, however, be of national importance, the liability would fall on the state. In practice, the municipalities usually compensate private owners with building volumes and make sure nobody is unjustly favored in compared to the neighborhood. Monetary compensation is hardly ever paid.

It is a universally known fact that the regions and municipalities of a country do not have equal circumstances. In Finland, there are only 5,5 million people per 338 500 square kilometer. Out of these, 1,4 million people live around Helsinki in the Southern Finland. The population growth is only 0,5 percent annually, and many municipalities are virtually emptying of people. At the same time, Helsinki and the surrounding municipalities need to build more and more housing and infrastructure.

The demographic trends have two main consequences for heritage management. Firstly, there is no more use for old schools, hospitals, railway stations, country houses etc. in sparsely populated areas. The municipalities, as well as the state, mainly try to sell these buildings. Many of them today serve small business, but it is not always easy to gather enough cash flow in a country of relatively few potential customers. Secondly, the infill construction in densely populated areas does not always lean on the reuse of built heritage. The constructors often find it cheaper and safer to build new instead of repairing old. The housing also needs to be focused along public transport lines.

Nevertheless, the people in Finland seem to be more and more interested in preserving the heritage, as they are in general interested in immaterial values and the circulation of resources too. The carbon footprint of demolition and new building versus repair has become a relevant theme for research.

The Support Schemes for Heritage

The state has monetary support schemes for private and public owners of heritage, as well as for the third sector. The support is mainly intended for repairs and maintenance; it covers usually less than 50 percent of the total costs. All the state support schemes for immovable heritage together cover about six million Euros annually. The state authorities cooperate with the local museum authorities who help to evaluate the applications and take care of the supervision and guidance on the spot. The support as well as the guidance offered by the museum authorities is popular and there would be demand for distinctly larger resources.

In addition, many projects that involve the repair and use of heritage sites receive financial support through the European Union funding schemes. In Finland, these schemes are managed by the regional councils. Furthermore, the agricultural environmental aid, which is partly national and partly union aid, is significant for the preservation of rural heritage.

WORLD HERITAGE

The World Heritage Strategy and the Seven Sites

Finland has seven world heritage sites. Six of the sites represent cultural heritage: The Fortress of Suomenlinna (in Helsinki), the Old Town of Rauma, the Sammallahdenmäki Bronze Age Burial Site (also in Rauma), the Old Church of Petäjävesi, the Verla Groundwood and Board Mill (in Kouvola), and the Struve Geodetic Arc. The seventh site is the Kvarken Archipelago, which represents natural heritage. The Struve Geodetic Arc and the Kvarken Archipelago are serial nomination sites together with other countries. More information on the sites is available in English at: <https://www.maailmanperinto.fi/en/> (5 July 2019).

The world heritage sites are not separately recognized in the Finnish legislation. Therefore, each of them has individual circumstances as regards the statutory protection. However, the National World Heritage Strategy was launched in 2015 to achieve a more coherent approach. Also the reform of the Land Use and Building Act might be an opportunity to fill the legislative gaps. More information about the Finnish National World Heritage Strategy is available in English at: <https://minedu.fi/en/world-heritage> (5 July 2019).

Case Old Rauma

The Old Town of Rauma is the largest still complete wooden town area in the Nordic countries (Denmark, Finland, Iceland, Norway, Sweden). The current area of Old Rauma was established after the fire in the city in 1682, and the buildings date back between the 18th and 19th centuries. Today, there are some 600 buildings and 800 inhabitants on the area of 29 hectares. Most of the buildings belong to private persons. According to the OUV criteria, Old Rauma is authentic inter alia because it has preserved its function as a residential area and commercial centre with its Market Square and a variety of shops along the main streets.

The site is managed by a steering group and a local manager appointed by the municipality. There is also a renovation centre providing technical assistance free of charge to Old Town citizens. The center also organizes workshops and keeps a bank of traditional building materials.

Old Rauma is surrounded by a buffer zone of 142 hectares, which includes modern shopping and residential areas. In the Northwestern angle of the buffer zone, there is a rather small shopping center. In 2016, the municipal council approved a new detail plan, which enables the shopping center to be replaced by a bigger shopping center, a parking lot and a bus station. Further, the plan area includes new apartment houses, a hotel and some office buildings.

The Finnish Heritage Agency and the Association of Old Rauma were worried about the negative impacts the new shopping center might have on the vitality of Old Rauma. They feared its commercial services might be diminished to seasonal only. Furthermore, they did not agree with the new

building volumes as compared with the built heritage of the Old Town. The municipality, on the other hand, feared chain shops would not settle in Rauma at all, if they had to find other premises than a shopping center. The municipality also thought the building volumes were acceptable compared with existing buildings in the modern areas.

The case proceeded to the Supreme Administrative Court, which gave its decision in Autumn 2018 (the Supreme Administrative Court of Finland, decision number 4989, given 30 October 2018). The Court found the plan lawful. According to the Court, the plan was based on sufficient impact assessment and it contained sufficient restrictive orders to adapt the new buildings and functions to the surrounding. The Court also pointed out that a detail plan needs to take into account several conflicting objectives and obligations, such as the preservation of cultural heritage and the availability of commercial services in downtown rather than on the outskirts.

After the decision of the Supreme Administrative Court, ICOMOS Finland referred the case to the Unesco World Heritage Committee. Now, the municipality of Rauma writes a Heritage Impact Assessment at request of the Committee. At the same time, however, the municipality can prepare construction orders for the new shopping center, since the plan is legally valid after all.



ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

The Constitutional Role of Local Authorities in Managing and Propagating Cultural Heritage in Germany and Bavaria

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Abstract:

The protection and care of our Cultural Heritage is a task on behalf of society that transcends boundaries of states and nations. Although, the 16 German States and the Federal Republic of Germany are responsible, within their capabilities, for the formulation, development and enforcement of a policy whose primary objective is to benefit, to combine and to use available scientific, technical, cultural and other resources to protect and preserve cultural heritage, mainly the municipalities shall maintain, preserve and retain all monuments belonging to them, namely building, archaeological sites and other (not only registered movable) monuments in-situ. In protecting monuments, municipalities have an increased responsibility for their own history as well as a key position.

INTRODUCTION

The protection and care of our Cultural Heritage is a task on behalf of society that transcends boundaries of states and nations. In Europe at least, we share a common past and a common heritage. However, German Conservation and Protection laws and the organisation of Conservation and its administrations differ from these in other European countries and indeed in most countries in the world quite intensively. Due to our quite special “German history” there was created a quite special federalism on the territory of the western part of the former “Deutsches Reich” after World War II; in a legal understanding, after the re-unification of both German States on October 3rd, 1990 there are nowadays existing seventeen States on this territory: the sixteen “Länder”, which have given only some competencies and powers to the seventeenth State, the Federal Republic of Germany. In conformity with the jurisdictional and legislative requirements, the sixteen German States as well as the Federal Republic of Germany are responsible for formulating, developing and applying, as far as possible, a policy whose principal aim is to co-ordinate and to make use of all the scientific, the technical, the cultural and other resources available to secure the effective protection, conservation and presentation of the cultural heritage.

In accordance with the legal and legislative requirements, the 16 German States and the Federal Republic of Germany are responsible, within their capabilities, for the formulation, development and enforcement of a policy whose primary objective is to benefit, to combine and to use available scientific, technical, cultural and other resources to protect and preserve cultural heritage.

On the other hand, the primary and largely complete responsibility and responsibility of the German "countries" exists, in particular for the policy areas "culture" and "cultural heritage". The constitutions of most of the 16 German "countries" (with the exception of the Free and Hanseatic City of Hamburg) emphasize the protection and active maintenance of the architectural and archaeological monuments as State goals.⁽¹⁾

Monument conservation describes “the statutory and legal task and responsibility, the preservation expert advice and care for the public monument” (see f. e. § 1 para. 1 sentence 2 DSchG Thuringia⁽²⁾). The Monument Conservation laws use both terms at the same time, synonymous and without distinction. Conservation and preservation are public tasks in all German States. The “Grundgesetz” (Constitution of the Federal Republic of Germany, so-called “Basic Law”⁽³⁾) contains no relevant corresponding standard for Culture and Cultural Heritage contrary to art. 150 of the Constitution of the Deutsches Reich, the so-called “Weimar Constitution”⁽⁴⁾. In part, the German States have anchored the monument protection or at least the cultural life in their national constitutions with State objectives terms or sentences⁽⁵⁾. “The task is summarized quite well in § 1 DSchG Bremen: *“Monument protection and heritage conservation have the task to explore cultural monuments scientifically, to maintain, to protect and to promote their involvement in urban development, spatial planning and land care”*⁽⁶⁾. The conservation laws of the German States mostly contain a general task, partly abstract, sometimes related only to the State, sometimes on local authorities resp. the municipalities; in the executing State conservation laws of Bavaria and North Rhine-Westphalia such provisions may be missing due to the existing constitutional requirements of this “Länder”. If rules are missing or if gaps e. g. in the field of research exists, these tasks “monument protection” and “preservation” can be revealed from the entire regulatory coherence of the laws. The task is regularly regarded as State task, for the municipalities they are usually established in the sphere of transferred tasks or established as mandatory items under State authority. The true assignment of monument pro-

(1) Hönes, Ernst-Rainer / Göhner, Wolfgang Karl, „Denkmalrecht der Länder und des Bundes - Kommentierungen, Rechts- und Verwaltungsvorschriften“, (abbr. „DmR“), founded by the Interparliamentary Working Group, formerly published by Rudolf Stich and Wolfgang E. Burhenne, with the participation of Peter Rothemund and Reinhard Mast, Erich Schmidt Verlag, Berlin, DmR 1983 ff., suppl. July 2019

RV/B-W 215 01; RV/BAY 220 01; RV/BLN 225 05; RV/BRA 230 01; RV/BRE 235 05; RV/HES 245 05; RV/M-V 250 05; RV/NDS 255 05; RV/N-W 260 05; RV/RH-PF 270 01; RV/SL 275 01; RV/SAC 280 05; RV/S-A 283 05; RV/S-H 285 05; RV/THÜ 290 05

(2) DmR RV/THÜ 290 11

(3) <https://www.gesetze-im-internet.de/bundesrecht/gg/gesamt.pdf>

(4) („(1) The monuments of art, history and nature as well as the landscape are assured of the protection and care of the state. (2) It is for the Reich to prevent the exodus of German art possessions abroad.“, http://www.documentarchiv.de/wr/wrv.html#VIERTER_ABSCHNITT02

(5) DmR RV/B-W 215 01; RV/BAY 220 01; RV/BLN 225 05; RV/BRA 230 01; RV/BRE 235 05; RV/HES 245 05; RV/M-V 250 05; RV/NDS 255 05; RV/N-W 260 05; RV/RH-PF 270 01; RV/SL 275 01; RV/SAC 280 05; RV/S-A 283 05; RV/S-H 285 05; RV/THÜ 290 05; Martin, Dieter / Krautzberger, Michael (ed.): Handbook of conservation and preservation. Munich, 4th edition 2017, lit. B II, 4

(6) DmR RV/BRE 235 11

tection to the law of public safety and order (so-called “police law”) is included in § 6 para. 1 DSchG Berlin ⁽⁷⁾ and § 16 para. 4 sentence 1 DSchG Brandenburg ⁽⁸⁾. § 20 para. 3 sentence 2 DSchG North Rhine-Westphalia ⁽⁹⁾ added: *“As such, the tasks assigned to them under this Act apply as emergency response”*.

The conservation authorities and the monument authorities, (in particular still also) the Building Authority are involved in the enforcement of Monument Conservation laws. The municipalities and the security authorities do have additionally further a variety of tasks. Regularly, protection and maintenance of monuments is explicitly named or mentioned in context of regulations as tasks of monument protection and preservation. Also mentioned are in part research, public relations and collaboration with the owners. The special obligation of public authorities (especially for building guide plans, plan findings and in the road construction!) is put forward by almost all “Länder”, most clearly formulated in art. 141 of the Bavarian Constitution ⁽¹⁰⁾, added in art. 83 combined with art. 3 para. 2 of the Bavarian Constitution ⁽¹¹⁾ for the municipalities.

Conservation authorities are regularly services of the so-called “General internal management”. The “Länder” have established also the competent Monument Conservation authorities (in North Rhine-Westphalia: Monument Preservation Offices). They are responsible regularly for the acquisition and exploration of the monuments, the preparation of opinions and the granting of conservational or archaeological professional support to measures. Some “Länder” have yet separate authorities for construction and archaeological monuments. Individual “Länder” grant a degree of professional independence to their Monument Conservation Office. The competent authorities for opinions, advice and consulting are not bound by administrative instructions in Brandenburg and North Rhine-Westphalia; they are entitled to pass their opinion on authorities and concerned parties. In Saxony-Anhalt the Monument Conservation Offices have to consider only professional aspects for opinions and assessments. In other “Länder”, the competent Monument Conservation offices are fully integrated into the hierarchy of authority, and thus are subject to the authority of the superior authority, including the right of instruction.

The monument protection laws contain only a few formulations on the status and the tasks of municipalities; actually, they are the main actors of preservation and conservation in practice.⁽¹²⁾

Almost all conservation laws (except Mecklenburg-Western Pomerania and Lower Saxony) assigned voluntary advisory committees to the authorities at different levels. They have the task to advise the “Länder”-government (e. g. Bavaria, Berlin etc.) or the law enforcement authorities (such as Hamburg, Hesse) or the competent authorities (such as Bremen). The majority of the “Länder” provided

(7) DmR RV/BLN 225 11

(8) DmR RV/BRA 230 11

(9) DmR RV/N-W 260 11

(10) DmR RV/BAY 220 01; <http://www.gesetze-bayern.de/Content/Document/BayVerf>true>

(11) DmR RV/BAY 220 01; <http://www.gesetze-bayern.de/Content/Document/BayVerf>true>

(12) Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 3rd edition 2010, lit. E I 3

volunteer officers to strengthen the idea of monument preservation and in particular the integrating of the special historical knowledge and monument knowledge at the local level. Special traditions exist insofar in Bavaria (Local Heritage Conservators) and Saxony.⁽¹³⁾

LEGAL AND ORGANISATIONAL FRAMEWORK IN THE FREESTATE OF BAVARIA

The Bavarian Monument Protection Act⁽¹⁴⁾ (BayDSchG)⁽¹⁵⁾ has not limited its scope with regard to the legal or corporate entities mentioned. According to the principle of the generality of the law derived from the principle of the rule of law, the BayDSchG therefore applies without restriction both to natural persons and to the Federal Republic of Germany (the "Bund"), the 16 German "Länder" and other legal entities (of public law and of the private law), in particular the German municipalities. The binding of the entire executive power to the BayDSchG also results from Article 20 para. 3) of the Basic Law for the federal Republic of Germany ("Grundgesetz", the German Constitution).⁽¹⁶⁾ The entire activity and work of the public-law legal persons must also take into account the special obligations of the public hands for the preservation and the maintenance of the Cultural Heritage in Bavaria. At the same time, the awareness of having to act as a role model for the respective subject-specific public task and to follow a binding guideline is of outstanding importance. In contrast to the use of private property by the single citizen, who also has to serve the common good, the public legal entities have to orient themselves exclusively to the common good, which also includes the interests of monument protection and monument preservation.⁽¹⁷⁾ Here, the principle of subsidiarity enshrined in fundamental rights manifests itself as a directive of freedom-preserving division of labor in the fulfillment of a public task common to state and society. The task assigned to the state does not necessarily consist in comprehensively regulating, administrating and financing the matter of the Cultural Heritage. However, due to his ultimate responsibility for the common good, it is unconditionally and incontestably incumbent on him to secure the order: to ensure that the preservation of historical monuments is complied with. The state cannot shift this "monumental responsibility" to others. This responsibility is "fundamentally indispensable".⁽¹⁸⁾ The procedural obligations also apply to monument protection authorities, the Bavarian State Office for the Preservation of Historic Monu-

(13) Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 3rd edition 2010, lit. S I 4

(14) http://media.w-goehner.de/1.88_-_Bavarian_Monument_Protection_Law_-_27.07.2009_01.pdf

(15) <http://media.w-goehner.de/1.269%20-%20Denkmalschutzgesetz%20-%20Deutschland%20-%20Normtexte%20-%20aktuell%20-%20Stand%2003.05.2019.pdf>.

(16) DmR RV/BU 410 05; https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.pdf.

(17) Siebertz, Paul, Denk-mal-schutz in Bay-ern (The Protection of Monuments and Sites in Bavaria), Munich Dissertation, 1977, p. 190 f..

(18) Isensee, Josef, Review of the Judgement of January 30th, 2003 of the Supreme Administrative Court of Baden-Württemberg (VGH) - 1 S 1083/00, Die Justiz (JZ) 2004, p. 912 f.; Isensee, Josef, in: Isensee, Josef / Kirchhof, Paul, Handbook of State Law, 3rd edition 2003, § 57 no. 165 ff; Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), Decision of March 2nd, 1999 - 1 BvL 7/91, https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/DE/1999/03/ls19990302_1bvl000791.pdf;jsessionid=DEB8AB3598A092CD820DA34DA76230CC.1_cid394?__blob=publicationFile&v=2; Göhner, Wolfgang Karl, Review of Martin, Dieter / Michael Krautzberger (ed.): Handbook of conservation and preservation. Munich, 1st edition 2004, BayVBl. 2005, p. 32 / http://media.w-goehner.de/1.15_-_BayVBl_1-2005_-_Buchbespr.-_Martin_Krautzberger_Handbuch_Denkmalschutz_und_Denkmalpflege.pdf.

ments (with the exception of Art. 7 para. 3 BayDSchG) and the Bavarian Administration of the State Castles, Gardens and Lakes (BSV); they too need appropriate permits. There is no difference between fiscal and sovereign action.

MANAGING CULTURAL HERITAGE: "SITE MANAGEMENT PLANS" AS A TOOL

Art. 3 BayDSchG is of far-reaching importance; it goes far beyond the mere maintenance obligations of the owner due to Art. 4 BayDSchG and, like Article 141 of the Bavarian Constitution, covers the entire activity of the municipalities. It is applicable in the fiscal and public spheres and must be regarded as a binding guideline for the actions of the municipalities.⁽¹⁹⁾ In the fiscal sphere, the municipalities shall maintain, preserve and retain all monuments belonging to them, namely building, land and other (not only registered movable) monuments at least the same way as before, unless, after a sale, the preservation of a monument is permanently in place (for example, by corresponding legal obligation of the acquirer, by servitude, in exceptional cases by agreements under debt law, if the acquirer is required to pass on the obligations imposed on him in the event of a further sale and if the municipality is granted a right to repurchase, guaranteed by reservation, in the event of non-compliance with the conditions). In addition, municipal bodies do not always have sufficient expertise in matters of monument preservation and monument protection. Unfortunately, the fear that municipalities neglect the requirements of the preservation of monuments for financial reasons⁽²⁰⁾ is still current when the Bavarian Monument Protection Act was introduced in October 1973. Appropriate consideration for the interests of the preservation of monuments is also required for the municipality if it wants to sell estates on which there are no built or archaeological monuments, but which are adjacent to monument sites and whose development or other use may lead to an impairment of the nearby monuments foreseeable by the purchaser. If the municipality acquires monuments or land on which monuments are located, Art. 3 BayDSchG also applies to the preservation of these monuments; an acquisition of a monument for the purpose of demolition must be examined from these points of view and will not be in accordance with this provision on a regular basis. Precisely because of the constitutional background in Art. 3, 83 and 141 of the Bavarian Constitution, the obligations of the municipality are therefore much broader and broader than the general (private) ownership obligations under Art. 4 BayDSchG.

In the public sphere, the municipalities must comply with Art. 3 BayDSchG when enacting legal clauses (statutes of all kinds, including building plans, municipal ordinances). This requirement also applies to the enforcement of all legislation (not only of the community's one) and to participation in law enforcement; this includes the obligation to participate in the labelling of Hague Convention⁽²¹⁾ and the obligation to comply with these and other conventions (including the “European Convention

(19) Hönes, Ernst-Rainer, Denkmalschutz - Eine Aufgabe der Gemeinden? (Monument Protection – a Municipality's task?, DÖV, 1979, p.286 ff. und DÖV 1981, p. 957 ff.

(20) Siebertz, Paul, Denkmal-schutz in Bayern (The Protection of Monuments and Sites in Bavaria), Munich Dissertation, 1977, p. 193.

(21) <https://unesdoc.unesco.org/ark:/48223/pf0000082464>.

on the Protection of the Archaeological Heritage [Revised]”⁽²²⁾⁽²³⁾ as an international law or German Federal law.⁽²⁴⁾ Art. 3 BayDSchG is, above all, a requirement of conduct for friendly and respectful behaviour towards monuments, especially if the municipalities are given discretion; this will regularly result in strict observance of the protection of monuments and (archaeological) sites.⁽²⁵⁾

The urban development, in particular the building development plans, is becoming increasingly important in connection with the continued reorganization or so-called "deregulation" of the Building Codes of the German Länder, as the tendency is to pursue projects in the scope of building development plans from the building regulations permit requirement; however, the obligation to grant a permit under monument law has not been removed. The importance of the provision of Art. 3 BayDSchG lies in the fact that it seeks to encourage municipalities to develop a forward-looking activity for the preservation of monuments, because, if necessary measures are planned in good time, many monuments and archaeological sites are considered to be preserved in-situ as Bavaria's cultural heritage; the building monuments and archaeological sites in the municipal area must be regarded as a legal situation, that is, not only by the respective (private or public) project promoter, but also by the municipality already in the process of drawing up the urban development plan, that the development provided for there is subject to prior security of the building monuments and archaeological sites.⁽²⁶⁾ With regard to this obligation to actively prevent damage, alteration and destruction of monuments, the local right to self-government (Art. 28 para. 2 Federal Basic Law [GG], Art. 11 para. 2 of the Bavarian Constitution [BV]) is required by these existing natural and legal conditions ("pre-encumbrances"). It is possible that, on the one hand, the municipal planning authority may end at natural building borders such as lake shores or hillsides, but on the other hand, at existing legal boundaries, such as nature conservation and flood areas, restrictions on municipal self-government rights are to be tolerated right down to its core, especially if not any kind of planning is excluded.⁽²⁷⁾ Regularly, this will have to be assumed if further local development is possible, at least in the interior (§ 30, 34 Federal Building Code [BauGB]).⁽²⁸⁾

(22) <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007bd25>.

(23) German Federal Law on the “European Convention on the Protection of the Archaeological Heritage [Revised]”, BGBl 2002 II, 2709 et seq. / https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F%5B%40attr_id%3D%27bgbl202s2709.pdf%27%5D__1566660797237.

(24) Bavarian Superior Administrative Court (BayVG), Judgement of June 4th, 2003 - 26 B 00.3584, juris; Göhner, Wolfgang Karl, Review, DSI 2003/4 pp. 73-77 / https://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf; Schweitzer, Michael, Statement of the Centre for European Law at the University of Passau of July 6th, 2004 for the Society of Archaeology in Bavaria reg. association, pp. 2-3, not published; Dietrich, Reinhard, DSI 2004/3 S. 8; German Federal Constitutional Court (BVerfG), Decision of October 14th, 2004, NJW 2004, 3407-3412 / <https://openjur.de/u/174491.html>; Göhner, Review, DSI 2005/4, 65 ff. / http://www.dnk.de/denkmalchutz_preise/n2393?node_id=2399&from_node=2413&beitrag_id=269.

(25) Similar to the Monument protection Law of Northrhine-Westfalia (DSchG NW): Superior Administrative Court of Northrhine-Westfalia (OVG NW), Judgement of May 18th, 1984 - 11 A 1776/83, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=665.

(26) Bavarian Administrative Court (BayVG) Munich, Judgement of September 14th, 2000 - M 29 K 00.838, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=983; Göhner, Wolfgang Karl, Review, DSI 2003/4 p. 77 ff. / http://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf.

(27) Bavarian Constitutional Court (BayVerfGH), Judgement of June 14th, 1985 - Vf. 20-IX-85, BayVBl 1985, 523-530 / https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=666

(28) Bavarian Administrative Court (BayVG) Munich, Judgement of September 14th, 2000 - M 29 K 00.838, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=983; Göhner, Wolfgang Karl, Review, DSI 2003/4 p. 77 ff. / http://media.w-goehner.de/1.05_-_BayVGH_-_Urt._v._04.06.2003.pdf; Federal

A skilful interplay of the various municipal standard-setting possibilities from urban planning, building planning and building regulations (sub-legal regulations, f. e. through building plans, conservation statutes, conservation and modernization bids, refurbishment statutes, building regulations and, in some German countries, special regulations on the protection of monuments, the law on the misappropriation of living spaces), may even have significant positive effects for the effective protection of cultural heritage without recourse to the protection authorities. In protecting monuments, municipalities have an increased responsibility for their own history as well as a key position. Often the paths through the aforementioned instruments are more effective than a restriction to the power norms of the Monument Protection Act (BayDSchG). With these legal design standards, municipalities have opened up possibilities that go far beyond the often blunt legal bases of the specialist laws.⁽²⁹⁾ Already through their urban development planning and the land use plans, the municipalities can set the course for conservation and care, but also, if necessary, for the development of their town centres, sites, monument areas and individual monuments. They can define the corresponding objectives of their urban development, for example by keeping visible axes, placing construction and commercial areas, and steering traffic flows. From these planning instruments, binding specifications in building plans can be developed, among other things, for the type and extent of the building, restrictions on use, design, etc.⁽³⁰⁾ Municipalities are therefore also entitled, inter alia, to ensure that the licensing, enforcement and supervisory authorities comply with and implement their local regulations, in particular their design statutes.⁽³¹⁾

FINANCIAL ISSUES

In accordance with the constitutional requirements, Art. 22 para. 2 BayDSchG also expressly states the obligation of local authorities to contribute to the costs of monument (and sites) protection and preservation of monuments and sites within the scope of their capacity. The participation consists in the provision of budgetary resources, including, where appropriate, the provision of work services, such as the municipal building authority or municipal boulder's yard. The obligation is ultimately based on Art. 141 para. of the Bavarian Constitution (BV). The municipalities cannot comply with the obligation to participate under Art. 21 para. 3 BayDSchG by referring to their contributions to the special fund under Art. 21 para. 2 sentences 2, 3 BayDSchG, half fed by the Free State of Bavaria and the Bavarian municipalities, the so-called "compensation fund"⁽³²⁾, because both obligations are explicitly coexisting.

Supreme Administrative Court (BVerwG), Judgement of July 22nd, 2004 - 7 CN 1/04, <https://www.bverwg.de/220704U7CN1.04.0>; Superior Administrative Court (OVG) of Saxony-Anhalt, Judgement of April 17th, 2003 - 2 L 150/02, https://www.judicialis.de/berverwaltungsgesicht-Sachsen-Anhalt_2-L-150-02_Urteil_17.04.2003.html.

(29) Superior Administrative Court (VGH) of Hesse, Judgement of November 9th, 1995 - 4 UE 2704/90, <https://openjur.de/u/291285.html>.

(30) compare to the development bid according to § 8 Abs. 2 Federal Building Code (BauGB): Bavarian Superior Administrative Court (BayVGH), Judgement of October 15th, 2003 - 26 N 99.3785, BayVBl 2004, 530 ff.. (Revision: Federal Supreme Administrative Court [BVerwG], Decision of February 19th, 2004 - 4 BN 4.04, <https://www.bverwg.de/190204B4BN4.04.0>).

(31) Federal Superior Administrative Court (BayVGH), Judgement of July 30th, 1997 - 14 B 95.3645, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=756.

(32) “Entschädigungsfonds”

All local authorities are obliged by Art. 22 para. 2 BayDSchG; in addition to the municipalities, the districts and the districts are therefore also obliged. According to the system of Art. 22 sec. 2 BayDSchG, the three municipal levels are cumulatively obliged to work side by side, since the BayDSchG is alien to a classification of monuments. The special regulation of Art. 22 sec. 2 BayDSchG precedes the general regulations of the Bavarian County Code (BayLKrO)⁽³³⁾ and the Bavarian District Code (BayBezO)⁽³⁴⁾.

The obligation of local authorities applies within the limits of their capacity. This obligation is constitutionally entrenched by Art. 3 para. 1, Art. 83 para. 1, 2 of the Bavarian Constitution (BV). It would therefore be inadmissible to unilaterally shift the benefits of local authorities to the detriment of the costs of the preservation of monuments; for, in particular, in the constitutional context of the cultural state principle and the binding state objective of the maintenance and substantial preservation of the common cultural heritage under Art. 141 of the Bavarian Constitution (BV), this goal is by no means a subordinate obligation. However, one of the primary obligations of the municipalities in particular is the preservation of the (local) cultural heritage.

The nature (grants, loans, etc.) and the extent of the municipal participation in the costs of conservation measures are in principle left to the local authorities and to decide by themselves within the framework of their right of self-government. However, support on a "reasonable scale" is needed; the municipality is obliged to include adequate grant funds in the municipal budget.⁽³⁵⁾ In essence, the same principles may be used to justify the calculation of State grants. In addition to, the budget size of each local authority, the scope of a measure, the possibilities of a builder to provide his own services, the overall financing within the financing plan, but also the importance and the scope of the measure for the public and the territory of the individual municipality or the municipal association are going to be crucial. For example, the services of a district may not be made dependent on the services of the lower municipal levels, since this criterion is not specific to monuments or archaeological sites and is therefore not appropriate. Similarly, the Bavarian Monument Protection Law (BayDSchG) does not give municipalities the opportunity to limit themselves to the "small" preservation of monuments or to chapels or to farmhouses, for example, or to reject support in general, if a measure is supported by the special investment funds, the so-called „compensation fund”. Municipalities with a low density of monuments will normally be required to participate more than municipalities with a high level; the latter are in any event disproportionately burdened by the obligations of Art. 22 para. 2 BayDSchG.

(33) <https://www.gesetze-bayern.de/Content/Document/BayLKrO>true>.

(34) <https://www.gesetze-bayern.de/Content/Document/BayBezO>true>

(35) See Bavarian Administrative Court (BayVG) Bayreuth, Judgement of July, 7th, 1983 - B 2 K 82 A.918, https://media.w-goehner.de/1.95_-_Rechtsprechungsuebersicht_-_20090920.pdf#page=360.

The Role of Local Authorities in Managing and Propagating Cultural Heritage in Bulgaria

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Abstract:

The cultural heritage in Bulgaria is regulated by three categories of laws. The first one relates to the protection of cultural heritage, the second category deals with territorial development and urban planning, and the third group covers the protection of the natural environment. The legal framework provides for an exceptional centralization of government, without clarifying the role of local authorities.

The National System for the Protection of Cultural Heritage includes the state and local bodies for the management, museums, and cultural organizations, as well as the Holy Synod of the Bulgarian Orthodox Church and the central bodies of other registered denominations.

The growing market for conservation contractors is largely uncontrolled, creates professionalism problems and risks corruption. Crucially, the system lacks material incentives to attract owners, consumers and the entire community, which would provide additional resources.

The National System for the Protection of the Cultural Heritage is regulated mainly by the Law on Cultural Heritage / in force since April 10, 2009. /. This law aims to create the conditions for the preservation of cultural heritage, the sustainable development of its conservation policy and to guarantee equal access for citizens to cultural values. The state policy for the preservation of the cultural heritage is determined by the Minister of Culture in cooperation with the relevant competent state and local authorities, the Holy Synod of the Bulgarian Orthodox Church and the structures of other registered denominations, and with the assistance of civil society.

The National System for the Protection of Cultural Heritage includes the state and local bodies for the management and control of the activities for the preservation of the cultural heritage, museums, cultural organizations, as well as the Holy Synod of the Bulgarian Orthodox Church and the central bodies of other registered denominations.

The management and supervision of the search, study and preservation of cultural values at the regional level is carried out by the executive authorities in the districts.

The Administration Law defines the following tasks of the **Regional Governor**:

- pursues the state policy in the area, coordinates the work of the executive bodies and their administrations in the territory of the district and their interaction with the local authorities;

- ensures coherence between national and local interests, organizes the development and implementation of regional strategies and programs for regional development, liaises with local self-government bodies and local administration;
- ensure the legality of the territory of the district and enforce administrative control over the implementation of administrative acts;
- coordinates and controls the implementation of the acts and actions of the heads of the territorial units of the central administration of the executive power in the territory of the district;
- is responsible for the protection and protection of cultural property - state property on the territory of the region;
- organize, in coordination with the bodies of the central executive power, the elaboration and implementation of programs for the preservation of cultural values;

In accordance with the Rules of Procedure of the Regional Administrations, the Directorate "Administrative Control, Regional Development and State Property" is organized within the structure of the specialized administration. It is within the scope of its powers to:

- 1 coordinate and support the implementation of activities in the field of environmental protection, cultural and historical heritage and cultural activities;
- 2 liaise with international organizations, regions and regions in other countries, develop and implement joint projects;
- 3 coordinate and support the control of the activities in the field of territorial settlement, geodesy and cadastre;
- 4 prepares and provides for the acquisition, disposal and management of state property on the territory of the district;

The analysis of the powers of the Regional Governor and his administration shows that no specialized bodies have been created for the assigned functions for the protection of cultural heritage, and they are performed in conjunction. This implies a lack of professional training for the staff in these administrations, which casts doubt on the effectiveness of the fulfillment of their cultural heritage protection tasks. The lack of statutory obligations of the Regional Governor to ensure the financial policy of cultural heritage conservation in the district is noteworthy.

The Regional History Museums are created, transformed and closed by the Council of Ministers at the proposal of the Minister of Culture, in agreement with the Regional Governor, following a decision of the municipal council in whose territory their headquarters are located. In addition to their direct museum functions, they also carry out activities for the search, research, presentation, preservation, documentation and promotion of cultural monuments on the territory of the district.

In the territory in which they operate, the Regional Museums have the following functions:

- 1 assist the MC in carrying out the state policy on the protection of cultural values and museum work;

- 2 carry out coordination, qualification and expert-consulting activity for all museums and collections of cultural values in the respective region - regardless of their departmental subordination and ownership;
- 3 provide methodological assistance to municipal and private museums,
- 4 keep a register and control the status of cultural gatherings;
- 5 maintain, within the framework of the single information system, a computer database of museums in the region;
- 6 coordinate between the state and municipal institutions in the region in the implementation of the normative acts for the preservation of cultural values and in museum work;
- 7 organize and conduct, together with other museums in the territory of the region concerned, research activities, including in settlements with no museums;
- 8 develop, implement and support projects for the conservation and restoration of cultural property and carry out restoration and conservation activities when other museums in the region do not have the necessary conditions;
- 9 cooperate with local, regional, national and foreign scientific, cultural, information and educational institutions;
- 10 prepare and implement regional, national and international projects in the field of protection and presentation of cultural values - the subject of their activity.
- 11 evaluate declared movable cultural values - property of legal entities and individuals;
- 12 register movable cultural property owned by legal entities and individuals.

Regional museums, although at a higher administrative level than municipal cultural institutes, are managed and funded not by the Regional Governor but by the municipalities in whose territory their headquarters are located. They are financed from earmarked funds in the republican budget and from contributions to their budgets by the municipalities in whose territory the respective museums operate; the amount of these contributions is determined annually by a decision of the respective Municipal Councils. This contradiction in the status and management of the Regional Museums creates the risk of conflict between state and municipal institutions responsible for the preservation of cultural heritage.

LOCAL SELF-GOVERNMENT BODIES

Municipalities and their bodies have important powers in the system of conservation of cultural and historical heritage. As specific public authorities and organizational units of local self-government, they are more an element of civil society than of the state, and are closer to its problems, among them those of cultural heritage.

The legislator explicitly obliged, through the provisions of the Cultural Heritage Act, the mayors of municipalities to organize and coordinate the implementation of the cultural heritage protection policy on the territory of the respective municipality, such as:

1. assist in carrying out activities for the search, study, preservation and promotion of cultural values in accordance with their powers;

2. establish a public council for the protection of cultural heritage as an advisory body to the municipality.

As the sole body of the executive power, the Mayor of the Municipality, manages all the executive activity of the municipality and exercises within the current legislation general management and control of the municipal administration. In this context, it has the following key functions in terms of cultural heritage:

- directs and coordinates the activities of the specialized implementing bodies;
- organizes the implementation of the decisions of the Municipal Council and reports to it the results; organizes the implementation of the tasks deriving from the laws, the acts of the President of the Republic and the Council of Ministers;
- signs the general and detailed urban development plans, approved by the Municipal Council, containing specific requirements and norms for the protection of sites with cultural and historical heritage, organizes their implementation and implementation, approves their amendments and additions;
- organizes and controls the activity of the Architectural and Urban Planning Commission related to the complex territorial and urban development of the city and settlements in the municipality;
- exercise the powers of the administrative-penal authority in accordance with the effective normative acts.

The Mayor of the Municipality appoints the Municipal Expert Council for Spatial Planning, which includes representatives of the interested central and territorial administrations, the specialized control bodies and the operating companies, with which the projects for development schemes and plans and investment projects are coordinated.

The Mayor of the Municipality appoints the directors of the regional and municipal cultural institutes after holding a competition on the attestation system, determined by the Minister of Culture. It also establishes the Public Expert Councils and Committees as advisory bodies for the protection of the cultural heritage of the Municipality. The Mayor of the Municipality administers the Municipal Museums in administrative and organizational terms and appoints their directors.

The role of **the Municipal Council** is essential for the effective protection of the cultural heritage on the territory of the Municipality. The main obligations of the Municipal Council regarding the protection of the cultural heritage are related to its financial provision.

By a decision of the Municipal Council, in agreement with the Minister of Culture, regional and municipal cultural institutes are created, transformed and closed, and their financing is provided by the municipal budgets.

By a decision of the Municipal Council, a Municipal Culture Fund is set up to carry out activities, projects and programs in the field of culture, and rules for its operation are adopted. The Fund is sup-

plemented by: funds provided for the implementation of targeted programs and projects in the field of culture; donations, wills and sponsorship from Bulgarian and foreign individuals and legal entities; interest on the Fund's accounts; other sources identified by decision of the municipal council. Funds are spent on:

- cultural property management - municipal property;
- support for cultural events;
- participation in co-financing with cultural and natural persons with natural and legal persons with Bulgarian and international participation;
- supporting amateur art;
- providing creative scholarships for gifted children and young people.

The Municipal Council also has financial obligations for the implementation of conservation and restoration activities on the immovable cultural monuments. The municipalities conclude contracts with the contractors of conservation and restoration works in accordance with a model approved by the Minister of Culture, ensuring the financing of investor control, copyright supervision and independent construction supervision from the municipal budgets. The Ministry of Culture covers most of the costs of implementing conservation and restoration activities (50% to 80%) through a budget subsidy. For the adoption of the completed stages of conservation and restoration activities, the municipality appoints and finances the work of reception committees and ensures the obligatory participation in them by representatives of the Ministry of Culture.

The Municipal Council also has authority over the documentation of the immovable cultural monuments on the territory of the municipality. the specialized bodies for the preservation of the cultural property of the municipalities, the districts and the mayoralties create and fill in a local archive of the cultural property and the objects of the real cultural and historical heritage and develop a regulation for its use, which is adopted by the Municipal Council. The same authorities are obliged to file the declared objects in the tax registers and the cadastre of the settlement and to notify all interested persons in accordance with the Code of Civil Procedure.

According to the Regulations for the Organization and Activity of Municipal Administrations, the functions of specialized bodies for the protection of immovable cultural monuments are performed by different organizational units within the specialized directorates. For example, the authority for the conservation of immovable cultural monuments in connection with territorial and urban planning is exercised by the Directorates of Construction and Architecture; the authorities for the implementation of the Municipal Cultural Program, related to the financing of the municipal cultural institutes, are exercised by the Directorates of Education and Culture; the powers for the implementation of the Municipal Tourism Development Program and related activities for the promotion of the cultural and historical heritage of the municipality are allocated between the directorates for economic activities and those for social activities.

In some municipalities with a high concentration of cultural monuments, specialized municipal structures have been set up with specific functions for the management and preservation of the monu-

ments, for example in Sofia - Stara Sofia Municipal Enterprise, Plovdiv - Ancient Plovdiv Municipal Institute, in Nessebar - Association Ancient Nessebar, but their status does not allow them to perform coordinating functions outside the specialized municipal administration.

At the regional level, the respective Regional Governors are functioning **Regional Councils for Culture**, in accordance with the Law on Administration, as well as Regional Expert Councils for the development of the territory, in accordance with the requirements of the Territory Act.

The Regional Councils for Culture are the permanent advisory bodies to the Regional Governor for the implementation of coordination, consultation and cooperation at the regional level, in the development and implementation of the regional cultural policy.

At the municipal level, under the Law on the Protection and Development of Culture, and with an order of the mayor of the respective municipality, **Municipal Public Expert Councils** are set up for a limited period, which give opinions and assessments on the activities of the municipal cultural institutes, regional cultural institutes, in order to combine the principles of national cultural policy with local conditions and traditions.

Regional Council for Culture:

- develops regional priorities and programs for development in the field of culture;
- coordinate the interaction between cultural institutions, state institutions and non-governmental organizations at regional level;
- discusses initiatives and problems encountered in the field of culture;
- establish temporary structures for solving special tasks;
- takes note of EU programs related to the cultural field.

Municipal Council for Culture:

- give opinions and recommendations on the activities of the municipal cultural institutions;
- summarizes the cultural achievements of the relevant cultural ones institutions;
- prepares analyzes and opinions for concrete results achieved and coordinates them with the relevant municipal council committee;
- contributes to the preservation, enrichment and preservation of the cultural and historical heritage of the municipality;
- adopts long-term and temporary programs on individual aspects of the municipal cultural policy;
- prepares projects and makes proposals to the mayor of the municipality for their implementation.

Insofar as the Public Expert Boards are constituted to express opinions and make recommendations, in the event of a possible conflict with an administrative structure, they are deprived of the opportunity to influence the adoption of the decision. The administrative structure concerned may consent to the decision but is not obliged to comply with it.

At the regional level, the structure of the Regional Administrations lacks specialized bodies for implementation of the state policy in the field of cultural heritage. Separate functions, mainly coordinating, are entrusted to the specialized directorate "Administrative control, regional development and state property." state property located in the territory of the district. However, in practice, it is not in a position to exercise these powers as it does not have an appropriate administrative structure.

The same contradiction - the discrepancy between the assigned competences and the possibilities for their realization - is observed at the municipal level. The functions for the preservation of the cultural heritage are performed by different organizational units of the specialized directorates, but no one coordinates their activities.

The problems of local self-government bodies are compounded by their obligation to provide funding for cultural heritage conservation activities. Due to low revenues in their budgets and the inability to determine the levels of local taxes and fees themselves, municipalities are in most cases unable to fulfill their assigned responsibilities. And the inability to create extrabudgetary funds for culture, stemming from the actions of the currency board, casts doubt on the activities of the Municipal Culture Funds.

GOOD PRACTICES

The Heritage Alive Project

/ Austria, Italy, Poland, Romania, Hungary, Greece, Bulgaria /

The Heritage Alive project was implemented between April 2006 and March 2008. within the EU INTERREG IIIB CADSES Neighborhood Program. It was selected for co-financing under Priority No. 3 - Promotion and management of landscapes, natural and cultural heritage, Measure 3.1 - Protection and development of cultural heritage.

Project partners:

- Salzburg Research - E-culture department, Austria - non-profit research organization - project coordinator;
- Department for the Protection of the Historic City of Salzburg, Austria;
- Municipality of Urbino, Italy;
- Gorlice Municipality, Poland;
- Muritix Association, Constanta, Romania;
- Municipality of Holoho, Hungary;
- Municipality of Kardjali, Bulgaria;
- Center for Economic and Social Strategies / CISAS / , Kardzhali, Bulgaria;
- Ionian Islands Region, Corfu, Greece;

Main objective of the project:

Strengthening the capacity of the sites, world cultural heritage on the territory of partner organizations, turning them into centers for regional development and attractive tourism with the help of innovative information technologies.

The main element in the implementation of the project is the involvement of the local community, with an emphasis on the younger generation in presenting the value and uniqueness of the sites and sites of cultural heritage included in the project.

The project partners are introducing new technologies experimentally in their regions, the aim being to achieve a multiplier effect for other similar sites of the World Cultural Heritage.

During the implementation of the project virtual guides were developed and the Learning Quest method was introduced - cognitive search for six pilot regions - Holoho, Salzburg, Sighisoara, Gorlice, Perperikon and Urbino.

The Learning Quest method enables the younger generation to take an active part in exploring and exploring cultural heritage sites in the regions where they live.

The main benefits of the project:

- enables the use of information technology in the promotion of World Heritage Sites.
- the pilot project activities created create a model for implementation in other similar regions.
- involves the local community and especially the younger generation in discussing the importance of cultural heritage for the development of their region.

Cultural Heritage Program of Sofia Municipality

Purpose and principles of the Program:

- financial support for property owners of cultural property
- preparation of investment projects for the conservation, restoration and socialization of real cultural property

Management of the Program:

Programming Board:

- adopts annual activity plan
- accepts the application documentation for the Program
- prepare and present to the City Council an annual report on its activities and a report on the implementation of the budget of the Program
- decides on project financing based on an evaluation by an expert committee

- selects external experts for project evaluation, monitoring and control
- informs the public and promotes the activities of the Program
- exercise control over the implementation of the Program

Coordinator:

- organizes and manages the administrative activities of the Program
- assists in the Program Board meetings
- prepares and submits to the Mayor of the Municipality a draft of the contracts with the beneficiaries approved by the Program Council
- coordinates work with contractors on research and design contracts
- organizes monitoring of the activities performed and provides reports on them.

Financing the Program:

It is financed by the budget of the Sofia Municipality for the respective calendar year or by a decision of the Municipal Council.

Additional funding from external sources is also allowed.

Terms and conditions for financing:

1. Preparation of investment projects for the conservation, restoration and socialization of real cultural property.
2. Performing activities for coordination and approval of the completed investment projects.
3. Exercising copyright supervision during the implementation of the investment projects.
4. Performing administrative activities related to investment projects.

Right to apply are property owners of private, state or municipal property of category "national" significance, "local" significance, "ensemble" significance and for "information" according to the Cultural Heritage Act.

Application procedure:

1. The Program Board shall establish the Application Guidelines, which shall include:
 - application form,
 - methodology for project evaluation
 - draft financing contract.
2. The Program Board shall, by decision, announce an application session under the Program, together with the Application Guidelines.
3. Upon the proposal of the Program Council, the Mayor of the Municipality appoints an Expert Commission for the evaluation of the applications for application.
4. Ranking of applications according to the evaluation methodology.

Conclusion of Financing Contract:

The beneficiaries of the contracts have the following obligations in the implementation of the Program:

1. Submit to the Coordinator of the Program the ownership documents of the building and other construction papers.
2. Provide access to the building for research and design activities.
3. Perform conservation, restoration of the building in accordance with the approved investment projects within three years from the date of entry into force of the building permit.
4. Assist the Program experts in evaluating the results of the implementation of the activities.

In case of non-fulfillment of the conservation and restoration activities of the building prescribed in the investment projects within three years from the date of entry into force of the building permit, the owners shall be obliged to reimburse to the Sofia Municipality the sums spent for the preparation of the investment projects and the performed conservation activities and restoration of the building together with the statutory interest for the period.

In case of non-reimbursement by a decision of the Program Council, after the report of the Program Coordinator, the compulsory collection shall be proceeded according to the procedure of the Civil Procedure Code.

Each year an audit of the expenditures under the Program is carried out.

Cultural Assets Fund as a Financial Source for the Conservation of Cultural Heritage in Turkey

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Abstract:

Conservation of cultural heritage requires not only an expertise and experience, but also financial sources for the realization of conservation tasks. This presentation will outline the financial system for cultural heritage conservation in Turkey, with a particular emphasis on “cultural assets fund” has been introduced as an important financial source since 2004 in the Turkish legislative system. The system how the fund is collected, allocated and used by the municipalities will be explored in general and the case of Gaziantep will be studied as an example.

INTRODUCTION

Cultural assets are heritage of humanity. In order to pass this heritage to next generations properly, it is the duty of present generations to conserve and maintain assets for not being deteriorate or de-grade. Conservation could be defined as either simple or comprehensive physical interventions to ensure especially continued structural and physical integrity of the cultural asset. Conservation works cannot be executed once and for all; it is an ongoing process which needs to be repeated regularly through maintenance tasks. Technical details, expertise, preparation of projects are all important in conservation, yet they are not enough to realize the implementation. Increasing the number and efficiency, and ensuring the continuity of conservation activities, financial resources are vital.

The built heritage is common to all humanity and it should therefore be the duty of every country to ensure that adequate funds are available for its protection. International agreements during the last decades have affirmed the national obligation of subsidizing the upkeep and maintenance of built heritage. This obligation must be acknowledged through relevant legislation and the provision of adequate funds for the supporting programs necessary for effective heritage management. But there is a fact that public funding for preservation becomes more and more scarce world wide as was agreed among delegates attending the 9th General Assembly of ICOMOS in Lausanne 1990.

(*) Statistical data in the study is obtained from Ministry of Finance official central budget reports, Ministry of Culture and Tourism annual reports, Directorate General of Cultural Assets and Museums official webpage, Gaziantep Governorship, Gaziantep Metropolitan Municipality annual reports and Turkish Statistical Office.

There are many registered, irreplaceable monuments, group of buildings and sites in Turkey. We are hosting valuable and unique heritage from prehistoric times to modern times including different civilizations. The number of registered monuments, group of buildings and sites is increasing in parallel to conservation studies conducted by central and local authorities. The growing number of built heritage today offers riches in the form of cultural assets, but our prosperity of cultural heritage can only be guaranteed only on condition they receive regular upkeep and maintenance, and therefore adequate and sufficient funding for this purpose must be available. The continuous registration of monuments, group of buildings and sites helps us to indentify the cultural treasures of Turkey, but also the upcoming financial obligations.

Type of Built Heritage	Number
Civic Architecture	69,104
Religious Buildings	10,147
Cultural Buildings	12,530
Administrative Buildings	2,985
Military Buildings	1,252
Industrail Buildings	4,171
Graveyards	5,169
Martrydom	307
Monuments	375
Remains	2,702
Streets	71
Total	108,813

Conservation Status	Number
Archaeological Sites	17,958
Urban Sites	299
Historical Sites	171
Urban Achaeological Sites	35
Mixed Sites	95
Overlapping Sites (with Natural Sites)	375
Total	18,933

Table 1. Number of registered cultural assets in Turkey by the year 2018

Year	Number of Cultural Assets
2002	64,963
2003	65,888
2004	68,185
2005	68,599
2006	77,419
2007	81,887
2008	84,830
2009	90,336
2010	94,388
2011*	98,228
2012	94,290
2013	96,000
2014	98,542
2015	100,749
2016	103,571
2017	106,359
2018	108,813

(*) Until 2011, natural assets are also included.

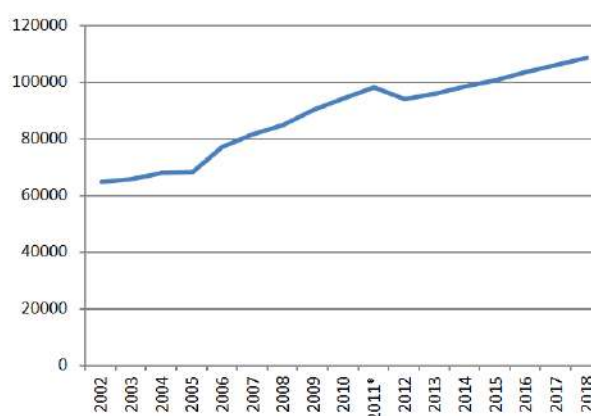


Table 2 and Graphic 1. Changes in the number of registered cultural assets (excluding sites) in Turkey by the year 2018

There are different challenges that we face in cultural heritage conservation, but especially for developing countries, financial problems could be marked as one of the most challenging issue where financing conservation activities has not always been a priority. Having a look at the budget allocation of Turkish government will help us to understand the interest in conservation of built heritage actually. All of which explains the present financial deficit in financing conservation activities. In order to confront the growing funding demands outlined, new solutions need to be developed, if we are to improve the inevitable funding burden. In the past, heritage funding for maintenance was always the owner's concern and only public built heritage could be funded by public. Successful attempts have been made for alternative funding solutions as well, but we are still in need of new finance solutions for built heritage to be maintained and preserved.

Table 3. The share of Governmental Institutions from Central Budget, 2018

General Budget Governmental Institutions		Total Share from the General Budget	% of Share
1	Ministry of Finance	38.500.000.000 €	27,09
2	Secretariat of Treasury	18.500.000.000 €	13,02
3	Ministry of Education	17.500.000.000 €	12,32
4	Ministry of Labor and Social Security	11.300.000.000 €	7,95
5	Ministry of Defense	7.600.000.000 €	5,35
6	Ministry of Health	7.100.000.000 €	5,00
7	Ministry of Transportation, Maritime Affairs and Communication	6.000.000.000 €	4,22
8	General Directorate of Security Affairs	5.200.000.000 €	3,66
9	Ministry of Family and Social Policies	5.000.000.000 €	3,52
10	Ministry of Food, Agriculture and Livestock	4.100.000.000 €	2,89
11	Ministry of Forestry and Water Affairs	2.800.000.000 €	1,97
12	Ministry of Youth and Sports	2.700.000.000 €	1,90
13	Ministry of Justice	2.600.000.000 €	1,83
14	General Command of Gendarmerie	2.500.000.000 €	1,76
15	Directorate of Religious Affairs	1.500.000.000 €	1,06
16	Ministry of Interior Affairs	1.400.000.000 €	0,99
17	Ministry of Science, Industry and Technology	1.100.000.000 €	0,77
18	Ministry of Economy	850.000.000 €	0,60
19	Ministry of Culture and Tourism	755.000.000 €	0,53
20	Ministry of Foreign Affairs	625.000.000 €	0,44
21	Revenue Administration	610.000.000 €	0,43
43	State Personnel Administration	6.000.000 €	0,004
44	General Secretariat of National Security Council	5.500.000 €	0,004
45	Undersecretariat of Public Order and Security	3.500.000 €	0,002
TOTAL		142.100.000.000 €	

Exchange rate for July 2018 1 € = 5.3 TL
Numbers are rounded.

Table 4. The Budget of the Ministry of Culture and Tourism, 2018 (planned)

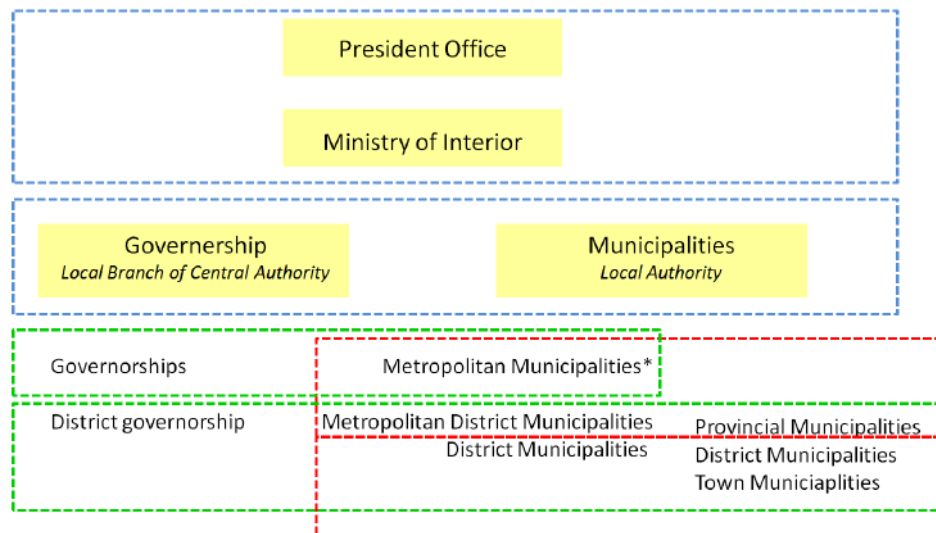
	Recurring Expenses (r)	Investment Costs (i)	Total (T=r+i)	% of Share (T/MB)
Provincial Directorates	33,900,000 €	520,000 €	34,400,000 €	5.30 %
General Directorate	66,600,000 €	85,500,000 €	152,100,000 €	23.46 %
Total Budget for Conservation Actions (CB)	100,500,000 €	86,020,000 €	186,500,000 €	Share (CB/MB) 28.76 %
Total Budget of the Ministry (MB)	470,800,000 €	177,700,000 €	648,500,000 €	

Exchange rate for July 2018 1 € = 5.3 TL
Numbers are rounded.

The study focuses on a new public financial source introduced in Turkey in 2004 as a public fund to finance conservation activities in the local level. First, I would like to summary the administrative and conservation systems in Turkey, then explain tools about financing private properties under conservation decision, and finally provide details about the new public fund—Conservation Assets Fund by examining Gaziantep case.

THE ADMINISTRATIVE AND CONSERVATION SYSTEMS IN TURKEY

Turkey has a central administrative system. Cities are administered by local municipalities. There are also central local authorities in responsible of governing the cities. Ministry of Interior is the central authority for administering cities, and in the local level governorships are responsible bodies. Cities more than 750,000 population are named as metropolitan municipalities, and the responsibility area of the metropolitan municipality is the boundary of the province. Each city is divided into districts, and districts are governed by district governors and local municipalities. For cities under 750,000 population, the responsibility boundary of the municipality is determined according to the urban built-up area, and the rest of the province is administered by governorships. According to this system, by the end of 2018 there are 81 provinces including 922 districts; 30 metropolitan municipalities, and 519 metropolitan district municipalities; 51 provincial municipalities, 403 district municipalities, and 386 town municipalities in Turkey.



*Provinces with population > 750,000 people

Figure 1. The Administrative System of Provinces and Municipalities in Turkey

According to Turkish Republic Constitution Article 63, “State secures suitable conditions in which historical, cultural and natural values and assets are protected and takes supportive and incentive precautions for this purpose. It also legislate the limitations where these values and assets are subjected to private interests, the contributions to the entitled parties due to those limitations and the exemption provisions.” Based on this statement, the main conservation law declared for the protection of cultural assets is Cultural and Natural Assets Conservation Law no. 2863 dated on 1983 (amendment in

1987, 2004, and 2011). According to Conservation Law Article 10, “The Ministry of Culture and Tourism shall take the necessary measures to ensure the protection of immovable cultural and natural assets, and undertake all kinds of inspections or have them done by public institutions and organizations, municipalities and governorships, regardless of who owns them.” The Ministry of Culture and Tourism is the main responsible central administrative unit from the protection of cultural assets in Turkey, and Directorate General of Cultural Assets and Museums coordinate tasks in the name of Municipality in the centre. In the local level and as local branches of central authority, there are different branches in charge of various conservation tasks. Alongside the governmental offices and branches, there are scientific council in charge of giving decisions about conservation issues in central and regional levels, given the name Conservation High Council and Conservation Regional Councils. By the end of the year 2018, there are 36 Regional Conservation Councils responsible from a region including 1 to 6 provinces. Some of the metropolitan cities have more than one regional councils according to the intensity of cultural assets within their boundaries; such as Ankara and İzmir that have 2 regional councils or İstanbul that has 5 regional councils. In year 2018 Regional Councils conducted 1,507 meetings, and discussed and approved 31,707 conservation decisions.

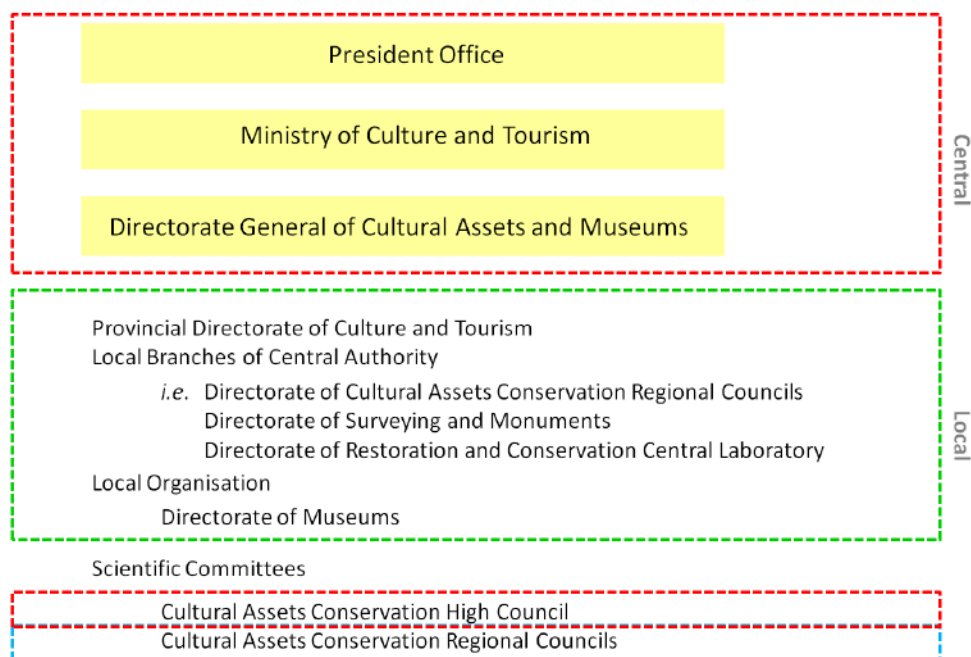


Figure 2. The Administrative System of Conservation in Turkey

Not only the central authority, but also municipalities are assigned roles in conservation of cultural assets. Municipality Law no. 5393 Article 13 states that “The municipality shall carry out the necessary works for the development of social and cultural relations among the citizens and protection of cultural values. In these studies, measures are taken to ensure the participation of universities, public institutions, professional organizations, trade unions, non-governmental organizations and experts.”, whereas Article 14/b states that “[The municipality shall carry out the necessary works for] ... preservation of cultural and natural assets as well as the historic fabric and the spaces and functions that are important for urban history; for this purpose, it can perform maintenance and repair, and rebuild the ones that cannot be protected in accordance with the original.” Aiming to reduce the workforce of

Regional Conservation Councils, in 2004, the Conservation Law introduced a new administrative system, transferring some of the conservation tasks defined in the Law to local authorities – namely KUDEB (Conservation, Implementation, Supervision Bureau). These bureaus are organised under development and/or planning directorates of metropolitan municipalities or governorships and also in other municipalities by the approval of the Ministry of Culture and Tourism. By the end of 2018, there are 51 Conservation Bureaus organised under municipalities and 12 Conservation Bureaus organised under Governorships.

The conservation tasks defined in the Conservation Law varies from project and plan preparation to approval of restoration projects, from identification and registration of cultural assets to securing protection actions in cultural assets and conservation sites – regardless the property ownership of the cultural asset. The cultural assets in Turkey could belong to private owners or public institutions. All these tasks require financial capacity to be realized.

PUBLIC FUNDS FOR CONSERVATION ACTIVITIES IN TURKEY

We need money to restore historical buildings, to prepare and implement conservation plans and projects, and to maintain these implementations over time. Central and local authorities are defined as responsible to provide financial support for heritage conservation. Heritage assets privately owned are generally funded by the owner, but also there are funds available for private owners to conduct conservation activities. The leading actors of fund provision in Turkey are Ministry of Culture and Tourism as central authority, Municipalities and Governorships as local authorities. TOKİ, Vakıflar General Directorate and non-governmental organisations, as well as international organisations also financially support conservation activities – yet they are not going to be detailed here.



Figure 3. Main public institutions in financing conservation activities by public funds in Turkey

Public funds for conservation actions of privately owned properties in Turkey can be studied under two main groups based on the provision type; indirect funds and direct funds. Public funding is all governmental financial recourses matching and it is set up by political decision nationally in a finance budget. Not only public funds, but financiers could also contribute with funding forms in favour for the protection of the built cultural heritage. Financiers could be public organisations or private investors providing funds either as monetary or human capital.

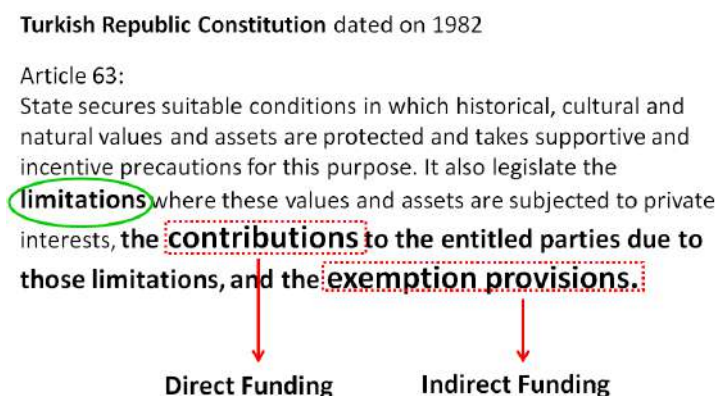


Figure 4. Legal basis of public funding for conservation activities

Indirect Funds

Much income loss for proprietors is due to the fact that most significant built heritage is designated as historical landmarks. Sites have been protected so as not to be altered any further, which unavoidably would be the case should a building be put to any alternative use. There are indirect public subsidies we use to finance private owners, including tax breaks or deductions.

1. Tax breaks
Due to the restrictions on property rights of private owners of registered buildings and parcels on conservation areas, there are tax breaks and exemptions defined in different legislative documents. According to Municipality Income Law no. 2464, the owners of registered buildings or parcels on conservation areas are exempted from property taxes and fees. These owners are also exempted from fees defined in Construction Inspection Law no. 4708 and Inheritance and Transfer Tax Law no. 7338 (Article 4/m), Fees Law no. 492 and Public Procurement Law no. 4734 (Article 3/i).
2. Trade-off / exchange rights
Private owners are given the right to trade off their registered building or parcel with another urban parcel in any other part of the city – which is mostly a public land. Planning Law and Conservation Law defines the rules of these trade-offs.
3. Transferring development rights
4. Tax incentives in case of donations for the use of conservation activities

Direct Funds

Direct public fund means a lump-sum connected to prices, production factors or products. There are tools we need money to finance conservation actions;

1. Expropriation

In required cases, privately owned historic assets or parcels could be expropriated by public authorities for an appropriate protection action.

2. Aids for Project Preparation and Implementation

Heritage investment projects typically provide for a range of activities; including the preventive maintenance, conservation, upgrading, or adaptive reuse of the cultural asset all of which should base on an implementation project in different scales. According to Conservation Law Article 12, real, financial and technical aids are provided to private owners by public authorities, including;

- Aids provided by the Ministry of Culture and Tourism
- State Housing Agency Restoration Loans
- Promotion Fund provided by Presidential Corporate Communication Directorate

These direct and indirect funds are allocated from the central budget for the use of any cultural asset in any part of the country. Considering the limited amount of money allocated from central budget for conservation tasks and also considering the amount of cultural assets to be conserved in Turkey, the financial sources are not enough for proper protection and maintenance. So, in 2004, a new fund was introduced providing new opportunities for solving financial problems – Cultural Assets Fund.

CULTURAL ASSETS FUND

In 2004, the Conservation Law was changed under the influence of international agreements and European Union Adaptation Process. One of the major changes applied was about financial issues. Aiming to increase funds in the local level and to finance conservation activities, a new financial source was created by regulating property taxes collected within the boundaries of provinces.

Conservation Law no. 2863 (amendment in 2004)

Article 12:

10 % additional amount of the property tax defined in accordance with Articles 8 and 18 of the Property Tax Law no. 1319 dated 29/7/1970 is collected as Cultural Assets Fund to be used for the protection and evaluation of cultural assets remaining in the realm of authority of municipalities and governorships, and the contribution is accrued by the municipality together with the property tax.

Right after the change in the Law, Regulation on Collection of Contribution for the Conservation of Immovable Cultural Assets is enacted in 2005 aiming “...to determine the principles of application of

the contribution to the protection of the immovable cultural assets to be collected, accrued and spent at the rate of ten percent (10%) of the property tax in order to protect and use the immovable cultural assets within the realm of authority of the municipalities.”

The fund is collected by municipalities alongside the collection of property taxes, and it is deposited into a separate bank account under the control of governorship. The fund is accumulated, and it is not transferrable to any other provinces or central authority—it is a local fund to be used within the boundaries of the provinces for the use of conservation of cultural assets. This purpose-specific fund could only be used by local authorities, and the governorship calls for application is twice a year. Whenever public funding is allocated, decisions need to be based on a policy that primarily is for the common good. For this reason evaluation methods were developed with the intention to prove the accuracy of financial investments. The density of cultural assets within the borders of municipalities, current situation of the asset, and possible contribution of the project to the province is considered while allocating the fund.

The fund could be used for three basic purposes:

1. Expropriation: According to Law no. 2863 / 15, municipalities have the right to expropriate a cultural asset in order to (a) assign a new use approved by the Conservation Council; (b) implement technical and social infrastructure (roads, parking lots and green areas) proposed on a registered area; (c) implement the conservation plan.
2. Project and Planning: Municipalities have right to apply the fund for (a) preparation of conservation plan; (b) preparation of plans in lower scales for specific project areas; (c) preparation of street rehabilitation projects; (d) preparation of urban design projects around a conserved building or group of buildings; (e) preparation of restitution and restoration projects for built heritage.
3. Implementation: Municipalities have right to apply the fund for the implementation of plans and projects mentioned above.

The Regulation also clarifies maximum amount to be used. The fund shall not be higher than %49 of the total amount of the expropriation value or cost of project prepared for conservation and reuse of cultural asset. For planning, projects and implementation, this percentage could be altered to below mentioned values with the approval of governance.

- For metropolitan municipalities up to %60
- District municipalities within the borders of metropolitan municipalities and first degree (provincial) municipalities up to %80,
- Municipalities other than metropolitan municipalities up to %85, and
- Other municipalities up to %95.

The fund has been collected since 2004, and the records about collected and spent amounts are archived both in local and central administrative units. Since the archive system at the beginning was not very accurate, the data about the fund between years 2014-2018 obtained from Gaziantep Governorship is examined as an example for the use of cultural assets fund in local level.

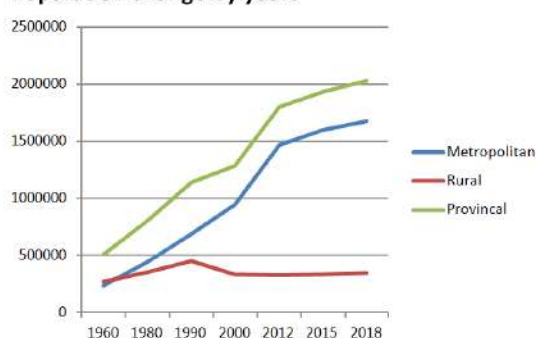
EXAMINING THE USE OF CULTURAL ASSETS FUND IN GAZIANTEP

Gaziantep is one of the leading industry and tourism cities in South Eastern Turkey. The provincial population is 2,028,563. The central districts, Şahinbey and Şehitkamil Districts have the main share (%82.83) in the population with 1,680,222 people. This concentration is also observable in number of cultural heritage in Gaziantep. Most of the registered cultural assets and conservation sites are located within the metropolitan districts, especially in Şahinbey District where the historical city centre is located, a part of them along the river and the rest is scattered along the rural areas of the province.

Population of Gaziantep, 2018

District		Population
Rural	Karkamış	10,436
	Yavuzeli	22,192
	Oğuzeli	32,653
	Araban	32,846
	Nurdağı	40,151
	İslahiye	67,674
	Nizip	142,389
Metropolitan	Şehitkamil	774,179
	Şahinbey	906,043
Total		2,028,563

Population change by years



Share of rural/metropolitan in total population

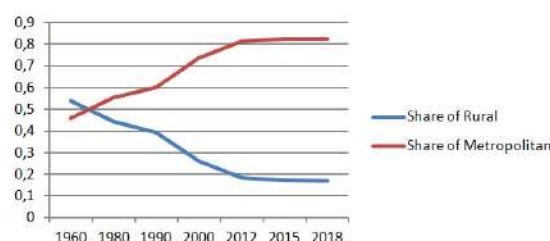


Table 5 and Graphics 2-3. Population dynamics in Gaziantep Province, 2018

Type of Built Heritage	Number
Civic Architecture	761
Religious Buildings	68
Cultural Buildings	81
Administrative Buildings	30
Military Buildings	5
Industrial and Commercial Structures	17
Graveyards	20
Monuments	3
Remains	6
Archaeological Sites	299
Urban Sites	2
Historical Sites	1
Urban Archaeological Site	1
Total	1,294

Table 6. Number of registered conservation assets in Gaziantep by the year 2018

Despite the richness of the cultural heritage in Gaziantep, which has always been supported also with diverse intangible heritage - including especially gastronomy, conservation activities within the city was limited mostly due to limited financial sources for conservation activities. By the introduction of the cultural assets fund, local authorities became financially more strong to implement projects.

Year	Money collected in the Fund	Year	Fund used
2014	2,130,000 €	2014	3,750,000 €
2015	2,610,000 €	2015	2,375,000 €
2016	2,890,000 €	2016	1,200,000 €
2017	2,350,000 €	2017	800,000 €
2018	1,800,000 €	2018	275,000 €
Total	11,780,000 €	Total	8,400,000 €

Exchange rate for July 2014 1 € = 2.90 TL
for July 2015 1 € = 3.00 TL
for July 2016 1 € = 3.21 TL
for July 2017 1 € = 4.01 TL
for July 2018 1 € = 5.30 TL
Numbers are rounded.

Table 7. Money collected in the Fund over years and Fund spent between years 2014-2018 in Gaziantep

District	# of projects
City wide	1
Araban	2
İslahiye	1
Nizip	5
Oğuzeli	5
Şahinbey	34
Şehitkamil	2
Yavuzeli	2
Total	52

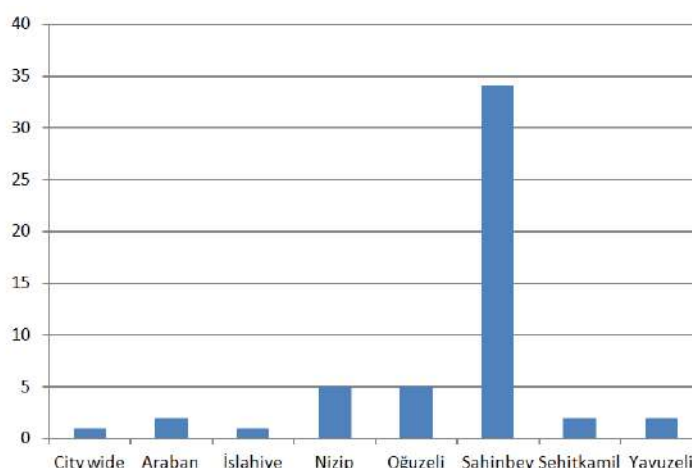


Table 8 and Graphic 4. Distribution of the Fund spent between years 2014-2018 among districts in Gaziantep

Administrative Unit	Times used
Provincial Directorate	2
Governorship	21
Metropolitan Municipality	13
Metropolitan District Municipalities	10
District Municipalities	5
Ministry	1
Total	52

Table 9. Distribution of the Fund spent between years 2014-2018 among local authorities in Gaziantep

Type of project	# of Project
Expropriation	1
Excavation	3
Project/Plan Preparation	
Restoration	4
Interior Design	1
Landscape Design	2
Street Rehabilitation	6
Conservation Plan	1
Implementation	
Restoration	28
Interior Design	2
Landscape Design	3
Street Rehabilitation	1
Total	52

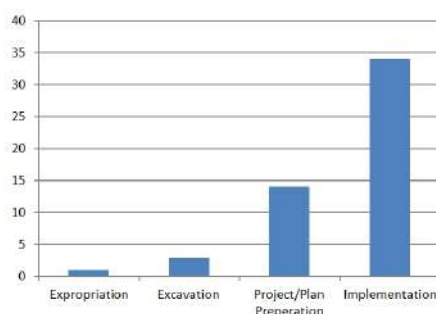


Table 10 and Graphic 5. Distribution of conservation actions for which the Fund spent between years 2014-2018 in Gaziantep

CONCLUDING REMARKS

Public funds for conservation activities is important for the protection and maintenance of cultural assets. However, especially for developing countries, creating an efficient fund for conservation activities is not always a priority for governments or municipalities. There has always been more prior or important subjects like education, health or providing basic municipal tasks, to transfer funds rather than using for a restoration projects or implementation of landscape project in an archaeological site.

Having limited financial sources in our country is one of the challenging threats against spreading the successive implementations all over the country or the province. Cultural Assets Fund introduced an active and local financial source for conservation activities. The Cultural Assets Fund created a remarkable budget for conservation activities in the local level as;

- Being a specific budget for conservation activities,
- Being carried over the next year without any cuts,
- Being used within the borders of province only, and
- Being a specific fund for local authorities, especially for municipalities.

The Fund does not only provide a financial source, but also it creates a social justice within the society by distributing the cost of conservation activities among citizens. As “the built heritage belongs to all humanity”, the protection of cultural assets should be a collective public responsibility and considered as a moral obligation upon all human beings.

SYMPOSIUM THEME

"Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage"

The aim of the Symposium is to create an international platform to discuss the role of local authorities and the legislative and financial structures of different countries at local level on managing and propagating the cultural heritage, and to share the experiences and disseminate the knowledge through different examples and best practices.

Conservation of cultural heritage has been assigned as a major responsibility to central governments. Yet, local authorities, especially municipalities as the territorial administrative units are in more direct contact with the day-to-day life of the local community. Local authorities are responsible for the construction, administration and maintenance of the city, including cultural heritage located within their boundaries.

There are different legal and organisational structures of countries regarding the role of local authorities in management of cultural heritage; such as, planning and implementation, legislative and regulatory control, and the use of financial sources. Although the circumstances change from country to country, it is accepted that local authorities have a considerable importance in protection and management of cultural heritage. Thus, the Symposium focuses on the authority and role of local authorities in relation to the conservation, protection, use, enhancement and management of cultural heritage.

1. Legal and Organisational Framework

Responsibilities assigned to local authorities in cultural heritage preservation; Organizational structures of local authorities for cultural heritage preservation; Relations between central and local authorities and share of responsibilities; Examples and experiences

2. Financial Issues

Financial resources for the use of cultural heritage preservation available for local authorities; Allocation of financial tools by central authorities, and share and limitations of local authorities in using financial sources

3. Managing Cultural Heritage: "Site Management Plans" as a Tool

The role and responsibilities of local authorities in managing cultural heritage sites; Conflicts and differences between national and international implementations for World Heritage Sites; The dual structure of central and local authorities; Best practices

4. Capacity Building

The effectiveness of local authorities in capacity building; including education and training programs, participation and involvement of actors in conservation processes, awareness raising in local community; Best practices for capacity building driven by local authorities

SYMPOSIUM PROGRAM

22 October - Tuesday

20.00-21.30 Welcome Dinner

23 October – Wednesday

Venue: Zeugma Mosaic Museum, Conference Hall

08.30-09.00	Registration
09.00-10.00	Opening Speeches
10.00-10.15	Coffee Break
10.15-12.30	Session I – Keynote Speakers
12.30-13.30	Lunch
13.30-15.00	Session II
15.00-15.15	Coffee Break
15.15-16.45	Session III
16.45-18.30	Visit of the Zeugma Mosaic Museum
19.30-21.00	Dinner

24 October – Thursday

Venue: Gaziantep Art Centre

09.00-10.30	Session IV
10.30-10.45	Coffee Break
10.45-12.15	Session V
12.15-12.30	Coffee Break
12.30-13.00	Presentation of Gaziantep Historic Centre
13.00-13.30	Discussion Session
13.30-14.30	Lunch
14.30-17.00	Guided Walking Tour: Gaziantep Historic Centre
17.30-19.00	ICLAFI Annual Meeting
19.30-21.00	Dinner

25 October - Friday

End of the Symposium and Annual Meeting
Departure for Post-Meeting Tour

SESSIONS

Session I

10.15-12.30

Chair: Tamer GÖK

Conservation of Mount Nemrut as the Driver of the Development of Adıyaman Province
Neriman ŞAHİN GÜÇHAN

The Turkish Cultural Heritage Management System of Turkey and the Role of Local Authorities:
Some Experiences and Reflections
Ege YILDIRIM

Yesemek Hittite Stone Quarry and Sculpture Workshop in the Light of the Latest Archaeological
Research
Atilla ENGİN

Session II

13.30-15.00

Chair: Toshiyuki KONO

Defining the Role of Local Authorities in Managing and Propagating Cultural Heritage: The Is-
raeli situation
Gideon KOREN

The Role of Local Authorities in Managing and Propagating Cultural Heritage in the USA with
Examples from the State of Georgia
James K. REAP

The Role of Local Government in Protecting Cultural Heritage under Polish Law
Wojciech KOWALSKI

Responsibilities and Tasks of the Local Authorities in Monument Protection and Monument
Preservation in Germany
Werner von TRÜTZSCHLER

Session III

15.15-16.45

Chair: İclal DİNÇER

Defining the Role of Local Authorities in Managing and Promotion of Cultural Heritage in Estonia
Riin ALATALU

Local Governments and the Cultural Heritage in Sweden
Thomas ADLERCREUTZ

Role of Romanian Local Authorities in Managing and Propagating Cultural Heritage
Adrian CRĂCIUNESCU

The Role of Municipalities in the Protection of Immovable Cultural Heritage in Slovenia
Borut ŠANTEJ

Session IV

09.00-10.30

Chair: Neriman ŞAHİN GÜÇHAN

The Management of the World Heritage Site of Angkor in the Siem Reap Province (Cambodia)
Etienne CLEMENT

Taking Care of Windmills: A Very Very Dutch Example of Heritage Protection
Leonard de WIT

The role of Local Authorities in Managing and Propagating Cultural Heritage: Brú na Bóinne,
Archaeological Ensemble of the Bend of the Boyne World Heritage Site – an Irish Case Study
Mona O'ROURKE

Local Authorities and Heritage Communities – a Participatory Approach to Heritage Management
Jelka PIRKOVIČ

Session V

10.45-12.15

Chair: Mert Nezih RİFAİOĞLU

The Role of Local Authorities in Managing and Propagating Cultural Heritage in East Malaysia
Jack Tsen-Ta LEE

A Judicial Court Case in Buenos Aires. Cisterna Moreno 550. Methodology of Heritage Eco-
nomic Assessment
Graciela AGUILAR & Maria Marta RAE

Cultural Assets Fund as a Financial Source for the Conservation of Cultural Heritage in Turkey
Yasemin SARIKAYA LEVENT

Presentation Session

12.30-13.00

Chair: Namık Kemal DÖLENEKEN

Presenter: Zafer OKUDUCU

Discussion Session

13.00-13.30

Chair: James REAP

Reporters: Yasemin SARIKAYA LEVENT, Meltem UÇAR, Ege YILDIRIM

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ICLAFI SYMPOSIUM AND ANNUAL MEETING 2019
GAZİANTEP, TURKEY

ICLAFI RECOMMENDATIONS FOR GAZİANTEP METROPOLITAN MUNICIPALITY

It is observed and identified that;

1. Gaziantep's creative and productive features that come from the past continue to live with the active participation of local people today which makes the city unique with its historical bazaars, living crafts and gastronomic culture that make the intangible cultural heritage visible.
2. **Dülük** where flint stone tools production workshops from Palaeolithic age are located; **Zeugma** which has an inaccessible potential with the presence of more than a hundred thousand seals and masterpieces of re-located and in-situ exhibited mosaics; **Yesemek** which includes a workshop of more than five hundred sculptures of the mysterious city; and **Livas and Kastels** as parts of the historical underground water system that surround the whole city like a net reflect the treasures of cultural heritage in Gaziantep.
3. And most importantly, Gaziantep deserves all kinds of praise with its local administration, which gives importance to tangible and intangible cultural heritage.
4. Aiming to conserve tangible and intangible cultural heritage, important steps have been taken to ensure the contemporary protection standards that UNESCO and ICOMOS have framed in the protection of cultural heritage, and the cooperation of local government, central government, universities and stakeholders play important role.
5. The collaboration and cooperation between stakeholders is the guarantee of protecting the multicultural and multi-layered cultural heritage and transmitting it to the future generations.

Being located in a difficult geography such as the Syrian border and while searching for solutions to and multidimensional problems of asylum seekers by prioritizing human values, we state that the efforts to preserve cultural heritage are beyond any discretion and that we see this approach as the guarantee of permanent peace in the region and the elimination of all threats to the common cultural heritage.

We would like to state that;

7. Based on the fact that the preservation and promotion of cultural heritage of humanity will reinforce common values between countries and nations,
8. Goals and strategies to be set with a sustainable holistic approach will be able to overcome the problems with the participation of local dedicated human force and be an example to other cities.
9. Despite the constraints on administrative and financial issues, it is important that the conservation efforts are carried out uninterruptedly with the participation of local government, central government, non-governmental organizations, universities and all stakeholders.
10. In order to protect the tangible and intangible cultural heritage that will be realized with the participation of all stakeholders, especially the local people, it is necessary to take necessary measures to ensure the balance of between development and protection and not to harm traditional life.

We suggest Metropolitan Municipality;

11. To continue its effective role in the protection and promotion of cultural heritage and to ensure the continuity of coordination between district municipalities and also other institutions,
12. To maintain the effective use of the contribution fund collected from real estate taxes, which is an important financial resource in the protection of cultural heritage, and to regularly carry out researches on the creation of new financial resources by following national and international funds and project calls,
13. To take active role in the activities of the "Anatolian Archaeology and Cultural Heritage Institute" which was decided to be established in Gaziantep,
14. In parallel with Gaziantep's conservation and cultural tourism targets, to carry out awareness raising studies in the local level in all areas, especially regarding tradesmen and businesses,
15. To equip and empower of technical personnel with necessary qualifications for the identification, protection and monitoring of cultural assets of different qualities including tangible and intangible cultural assets underground and aboveground in Gaziantep, to raise awareness of technical personnel, and to establish a system in which these experts can work efficiently in collaboration within the municipality.
16. Due to the fact that there are conservation studies ongoing at different scales in Gaziantep, to establish an integrated and transparent Geographical Information System defining the importance and conservation status (vulnerability) of the heritage as well as the historical and physical characteristics of the intangible cultural heritage in order to prioritize and monitor the practices carried out in these studies.

Considering the fact that many unwritten information about tangible and intangible heritage is in the memories of local people, to adopt the database to include also verbal information in order to integrate the information to be collected from local people into Gaziantep Cultural Heritage Database, and by this way, to carry out identification and development of "living human treasures" database.

17. To establish Gaziantep Human Resources Database to determine the human resources that can work in and outside of Gaziantep who have the capacity to contribute different aspects of the cultural heritage from different parts of the society, to search for possibilities of working in joint projects.
18. To prepare Gaziantep Cultural Heritage Protection Strategy Plan by considering the regional importance and historical contextual relations of the cultural heritage of different historical layers in Gaziantep, by complying with the universal protection standards, by creating a holistic system using the two databases mentioned above to contribute to the cultural, social and economic development of its citizens, which determines city-specific policies and strategies including;
 - Setting priority / importance based on cultural heritage database, grouping, staging,
 - Developing cultural heritage protection policies and strategies,
 - Preparing Site Management Plans (Yesemek, Livas and Kastels, etc.),
 - Preparing conservation development plan(s) and individual restoration / landscaping projects,
 - Creating financial sources.

GAZİANTEP BÜYÜKŞEHİR BELEDİYESİNE YÖNELİK ICLAFI TAVSİYE KARARLARI

GÖZLEM VE TESPİTLER:

1. Gaziantep'in geçmişten gelen yaratıcı, üretici özelliklerinin günümüzde yerel halkın aktif katılımıyla yaşamaya devam etmesi; somut olmayan kültür mirasını gözle görünür kılan tarihi çarşıları, yaşayan el sanatları ve mutfak kültürü ile eşi olmayan bir kent olduğunu,
2. Alt paleolitik çağın çakmak taşı aletleri üretim atölyelerinin bulunduğu **Dülük**; yüz bini aşkın mühür varlığı ile erişilmez bir potansiyele sahip, taşınan ve yerinde sergilenen mozaikleri ile başyapıt olan **Zeugma**; gizemli kentin beş yüzü aşkın heykellerini barındıran atölyeye sahip **Yesemek**; ve tüm kenti bir ağ gibi saran tarihi yer altı su sisteminin parçaları **Livaslar ve Kasteller**,
3. Ve en önemlisi somut ve somut olmayan kültür mirasına hak ettiği önemi veren yerel yönetimi ile Gaziantep'in her türlü övgüyü hak ettiğini,
4. Kültür mirasının korunmasında UNESCO ve ICOMOS'un çerçevesini çizdiği çağdaş koruma standartlarını sağlama yolunda önemli adımlar atıldığını ve bu konuda yerel yönetim, merkezi yönetim, üniversite ve paydaşların işbirliğinin rol oynadığını tespit ederek,
5. Bu birlikte çalışmanın ve işbirliğinin çok kültürlü-çok katmanlı coğrafyanın korunarak yarınlara taşınmasının güvencesi olduğunu vurgular,
6. Suriye sınırı gibi zor bir coğrafyada; sığınmacılar ve çok boyutlu sorunlarla insani değerleri önde tutarak mücadele ederken, kültür mirasının korunması çabasının her türlü takdirin ötesinde olduğunu ve bu yaklaşımın, bölgede kalıcı barışın sağlanmasının ve ortak kültür mirasına dönük tüm tehditlerin ortadan kaldırılmasının güvencesi olarak gördüğümüzü belirtiriz.

İLKELER VE HEDEFLER:

7. İnsanlığın mirası kültür varlıklarının korunmasının ve tanıtılmasının ülkeler ve milletler arasında ortak değerleri pekiştireceği gerçeğinden hareketle,
8. Sürdürülebilir bütüncül bir yaklaşımla konacak hedefler ve belirlenecek stratejiler ile yereldeki inançlı ve yetişkin insan gücünün katılımıyla sorunları aşmak mümkün olacak ve diğer kentlere de örnek olunabilecektir.
9. İdari ve finansal konulardaki kısıtlara karşın koruma çalışmalarının yerel yönetim, merkezi yönetim, sivil toplum kuruluşları, üniversiteler ve tüm paydaşların katılımı ile kesintisiz sürdürülmesi önemlidir.
10. Tüm paydaşların, özellikle yerel halkın, katılımı ile gerçekleşecek somut ve somut olmayan kültür mirasını koruma çalışmalarında, koruma kullanma dengesinin sağlanması ve geleneksel yaşamın zarar görmemesi için önlemler alınması gereklidir.

ÖNERİLER, EYLEMLER:

11. Kültür mirasının korunması ve tanıtılması konusunda yerel yönetimlerin etkin rol almasının devam etmesi ve büyükşehir belediyesi ile ilçe belediyeler arasında koordinasyonun sürekliliğinin sağlanması,

12. Kültür mirasının korunmasında önemli bir mali kaynak olan emlak vergilerinden toplanan payın etkin kullanımının devamlılığının sağlanması ve ulusal ve uluslararası olanakların/proje çağrılarının takibi ile yeni finansal kaynak oluşturma araştırmalarının bir ekip tarafında düzenli olarak yürütülmesi,
13. Gaziantep'te kurulması kararlaştırılan "Anadolu Arkeolojisi ve Kültürel Miras Enstitüsü"nün etkinliklerinde yerel yönetimin aktif rol alınması, bunun için belediyenin hazırlık yapması.
14. Bilinç yaratma ve farkındalık çalışmalarının yürütülmesi; Gaziantep'in koruma ve kültür turizmi hedeflerine paralel olarak, başta esnaf ve işletmeler olmak üzere yerel düzeyde her alanda bilinç yaratma ve farkındalık çalışmalarının yürütülmesi.
15. Teknik kadro oluşturulması; Gaziantep'te yer altında ve yer üstünde somut ve somut olmayan farklı nitelikte kültür varlıkları olduğu gerekçesi ile bu farklı nitelikteki kültür varlıklarının tespiti, korunması ve izlenmesi konusunda gerekli niteliğe ve donanımına sahip teknik personelin yetiştirilmesi/ bilinçlendirilmesi ve belediye bünyesinde bu uzmanların görev yapabileceği sistemlerin oluşturulması.
16. Gaziantep Kültürel Miras Koruma Veri Tabanı oluşturulması; Gaziantep'te yerel yönetimin yürütmekte olduğu farklı ölçeklerde koruma çalışmaları olması nedeni ile bu çalışmalarda öncelik belirlenebilmesi ve yapılan uygulamaların izlenebilmesi için somut ve somut olmayan kültürel mirasın tarihi ve fiziksel özelliklerinin yanı sıra mirasın önemini ve korunmuşluk durumunu (kırılganlığı) tanımlayan bütünlük ve şeffaf bir Coğrafi Bilgi Sistemi'nin geliştirilerek, hazırlanması.
- Veri tabanının sözlü bilgileri de içerecek biçimde hazırlanması; somut ve somut olmayan mirasa dair yazılı olmayan birçok bilginin yerel halkın hafızalarında olması nedeni ile yerel kişilerden toplanacak bilgilerin Gaziantep Kültürel Miras Koruma Veri tabanına entegre edilmesi ve "yaşayan insan hazineleri" tespit çalışmaları yapılması/ geliştirilmesi.
17. Gaziantep İnsan Kaynakları Veri Tabanı oluşturulması; Gaziantep içinde ve dışında Gaziantep'in kültürel mirası ile ilgili çalışan, çalışabilecek insan kaynaklarının tespiti, toplumun farklı kesimlerinden, kültürel mirasın farklı yönlerine katkı koyabilecek insan kaynağının ve kapasitesinin belirlenmesi, bunların ortak projelerde çalışma olanaklarının araştırılması ve buna yönelik veri tabanının hazırlanması.
18. Gaziantep Kültürel Miras Koruma Strateji Planı hazırlanması; Gaziantep'teki farklı tarihsel katmanlara ait kültürel mirasının kentin bölgesel önemi ve tarihi bağlamsal ilişkileri gözetilerek, evrensel koruma standartlarına uyarak, hemşerilerinin kültürel, sosyal ve ekonomik gelişmesine katkı sağlamak üzere yukarıda belirtilen iki veri tabanından yararlanan bütüncül bir sistem oluşturarak, aşağıdaki aşamalara göre kente özel koruma politika ve stratejilerini saptanmalı:
 - Kültürel miras veri tabanına dayanarak öncelik / önem belirleme, gruplama, etaplama,
 - Kültürel miras koruma politika ve stratejileri geliştirme,
 - Alan bazlı Yönetim Planları hazırlama (Yesemek, Kasteller, vb),
 - Koruma İmar Plan(lar)ı ve tekil restorasyon / çevre düzenleme projeleri hazırlama.
 - Finansal kaynak araştırma ve yaratma.

SYMPOSIUM PHOTOS



Opening speech by Fatma Şahin, the Mayor (by Gaziantep Metropolitan Municipality)



Symposium Participant (by Gaziantep Metropolitan Municipality)



Symposium participant in the historic city centre of Gaziantep (by Gaziantep Metropolitan Municipality)

SYMPOSIUM PHOTOS



Presentations (by Ege Yıldırım)



Presentations (by Ege Yıldırım)



Presentations (by Yasemin Sarıkaya Levent)

SYMPOSIUM PHOTOS



Symposium participants (by Tamer Gök)



ICLAFI Annual Meeting (by Adrian Crăciunescu)



Symposium participant in the historic city centre of Gaziantep (by Yasemin Sarıkaya Levent)

SYMPOSIUM PHOTOS



Symposium participants in the city
 centre of Gaziantep (by Adrian
 Crăciunescu)



Symposium participants visiting
 Zeugma Mosaic Museum (by Ege
 Yıldırım)



Symposium participants visiting histori-
 cal underground water system in
 Gaziantep (by Ege Yıldırım)

SYMPOSIUM PHOTOS



Symposium participants during post-meeting excursion (by Etienne Clement)



Symposium participants during post-meeting excursion (by María Marta Rae)



Symposium participants during post-meeting excursion (by Tamer Gök)

SYMPOSIUM PHOTOS



Symposium participants around wish tree during post-meeting excursion (by James Reap)



Symposium participants around wish tree during post-meeting excursion (by Tamer Gök)