



HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION.  
BALANCE BETWEEN LAWS AND VALUES



## HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION. BALANCE BETWEEN LAWS AND VALUES

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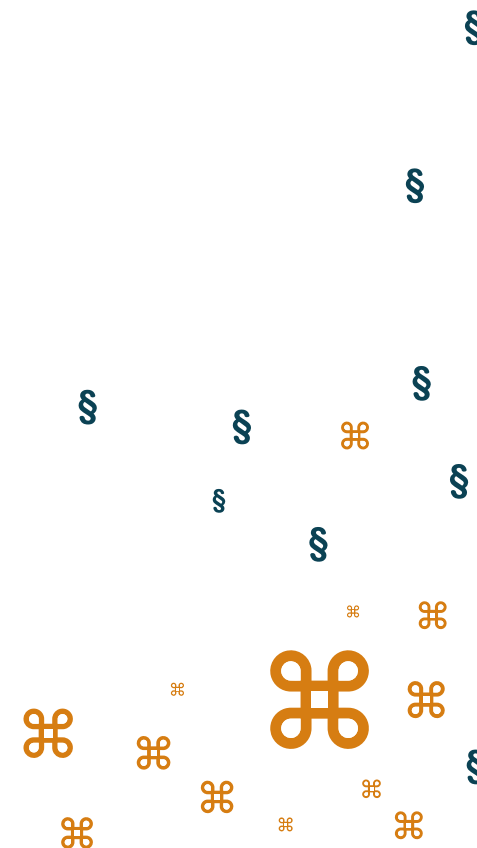
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## FOREWORD

Conservation of cultural heritage aims at protecting heritage values of diverse heritage sites. Heritage values were often understood as “historic and aesthetic” values at an early stage of the conservation (for instance, the Athens Charter [1931]; the Venice Charter [1964]; Art.14 (v) of the Operational Guidelines of the World Heritage Convention [1977]; Art.1 of the Florence Charter [1981]). Heritage values however did not remain static. More dimensions of heritage values were developed. For instance, the Washington Charter [1987] requires conservation plans to address all relevant factors, including archaeology, history, architecture, techniques, sociology and economics. The Paris Declaration on Heritage as a Driver of Development [2011] clearly refers to “economic, social and cultural values” of heritage. The myriad of values attributed to heritage and the variety of actors involved today has created a complexity that did not exist in the certainty of the aesthetic and historic significance of the expert who crafted of the Venice Charter (de la Torre [2012]).

As some important instruments such as the Burra Charter [1979, 1981, 1988, 1999], the Washington Charter [1987] and the Budapest Declaration [2002] stress, it is strongly expected to involve local communities in the process of the conservation. Furthermore, our societies have drastically changed over the last two decades, due to Internet, globalization, immigration as well as technological developments. Traditionally, regulatory approach has been the typical methodology for conservation of heritage, i.e. prohibition and regulation combined with some incentive measures. This has been the most effective way for relationships between owner and authority. But

how could the legislator cope with new situations, i.e. the expansion [or changes] of values and more involvement of communities in rapidly changing societies? What would be adequate design of legal tool to cope with emerging situations? The ICLAFI Conference organized in 2016 by ICOMOS Estonia, “Historical Perspective on Heritage Legislation – Balance between Laws and Values”, was a great opportunity to reflect such important questions for heritage conservation.

This volume contains papers submitted at the Conference. I thank all participants of the Conference for their active participation in discussions. Last, but not least I would like to express my sincere gratitude to Ms. Riin Alatalu who made such an impressive conference possible and happen.



Prof Toshiyuki Kono

President of ICOMOS  
President of ICLAFI



# HISTORICAL PERSPECTIVE OF HERITAGE LEGISLATION. BALANCE BETWEEN LAWS AND VALUES

Conference commemorating the 350th Anniversary of the 1666 Conservation Act by King Charles XI of Sweden and the 50th Anniversary of establishing Tallinn Old Town Conservation Area  
Tallinn 12.-13. October 2016

In October 2016 the correlation between legislation and the efficiency of heritage protection today and in the past were discussed in Tallinn, Estonia. The conference commemorated important legislative cornerstones – the 350<sup>th</sup> Anniversary of the 1666 Conservation Act by King Charles XI of Sweden and the 50<sup>th</sup> Anniversary of establishing Tallinn Old Town Conservation Area. Both acts were the standard setters of their time and have had a broad-scale influence on the developments in heritage protection as well as social values and human behaviour.

The conference brought together experts on heritage, administration and legal issues from all over the world. Tallinn hosted 40 foreign experts and attracted far more than 100 local experts, students and others. The conference was organised by ICOMOS Estonia, ICOMOS International Scientific Committee on Legal, Administrative and Financial Issues (ICLAFI) and Nordic- Baltic ICOMOS committees in cooperation with Tallinn Urban Planning Department Cultural Heritage Division, Estonian Academy of Arts and National Heritage Board and with the help of Ministry of Culture and Nordic Council of Ministers. The special value of this conference was the interdisciplinary approach – among the speakers were lawyers, historians, architects, conservators and archaeologists.

The aim of legislation through all times has been to regulate peoples' behaviour. However, the rules that highlight the common values also serve as the generators of these. The development of legislations reflects the development of ideas, problems and political decisions. The following is a unique collection of articles on development of her-

itage legislation worldwide. In addition to conference presentations many members of ICLAFI contributed with an article. As a result, one can find here an overview of the history of heritage legislation in Sweden, Germany, Ireland, Lithuania, Belgium, Turkey, Poland, Finland, Slovenia, Bulgaria, Mexico, Chile and Estonia. The contributions from Singapore, Thailand, Sweden, Italy, France and Argentina open the background of international legislation and tendencies, the correlation between legislation and common values in faraway countries.

We hope that the reader finds this selection as a useful tool to create better understanding in the mission of heritage protection. Diverse background of the authors enables to compare the national legislations as well as global tendencies.



Dr Riin Alatalu

President of ICOMOS Estonia  
Vice-President of ICLAFI



# THE ROYAL PLACAT OF 1666

## BRIEFLY ABOUT BACKGROUND AND FURTHER IMPORTANCE

THOMAS ADLERCREUTZ, Jur.kand.

The royal "Placat" of 1666, issued by the governing council under the minority of King Charles XI Sweden, has in some circles in Sweden been hailed as "the first antiquities legislation of the world". Ironically, this is very much in keeping with theories, entertained by the 17th century academicians particularly at Uppsala University, that Sweden itself was also the origin of all civilisation. This extravagant notion has been fuelled both by Sweden's military success in the Thirty Year's War and by a very imaginative reading of the Old Testament, compared to remains and place names in Sweden. In the article, I shall endeavour to translate excerpts of the placat into modern English. I shall also look into preceding legal texts from other jurisdictions, and investigate possible similarities. Furthermore, I will look into the Swedish background to this document. An interesting trace is one leading to Rome, where the abdicated Swedish Queen Christina resided, still with many bonds to Sweden and her cousin's dowager and their son, Charles XI, and his governing council. Finally, I shall try to evaluate the importance of the placat and summarise what happened afterwards.



### The Placat: the condensed version

The entire text, in an attempt to translate it fully into modern English, is affixed to the end of this text. The baroque language is difficult to follow in all its flowery intricacies, but here is a condensed reader's review.

The young king, Charles XI, eleven years old by a couple of days, and as his thoughts are expressed by his governors, is dismayed by the way cultural property is being manhandled. He refers to castles, fortresses and cairns, stones with runic inscriptions, tombs and other remains of the old kings of Sweden and Gothia (part of today's Sweden) and other nobles. Such monuments should be treated as objects which by themselves and by virtue of their creation ought to be saved from desecration and disrepute, to the immortal glory of ancestors and the realm. Therefore, he has decided to protect and manage them against unlawful handling, by ordering his subjects, firstly that no-one shall in

any manner make asunder or destroy remaining castles, houses, fortresses, strongholds or cairns, regardless of how small these remains may be, nor should standing stones or stones with runic inscriptions be wasted, but should be left unscathed in their original places. The same applies to all big amassed mounds of earth and burial sites, where many kings and other worthies have established their tombs and resting places. All such old monuments on land pertaining to king or crown, be it the king's or taxable property, are protected regardless of whether it is still that kind of property or has been in the past. Such property is taken into royal custody and trust.

Members of the nobility are requested to take care of antiquities in their lands of tenure as their honour would command. No-one, regardless of standing in society, is permitted to plunder or rob tombs of royals, princes or other nobles, which may be found in ruined or still standing churches or monasteries, much less to use them for own interment or in any way cause their old and rightful proprietors any infringement.

All churches and monasteries and all their inventory, gear, decorations on walls and windows, paintings or any kind of mindfully created interior, as well as tombs and

Thomas Adlercreutz has a law degree from Uppsala University (1971).

His legal career includes serving as a judge in various courts, serving in various capacities for ministries of the Swedish Government and as a secretary to the Planning, Building and Housing Committee of the Swedish Parliament. He was legal counsel for the Swedish National Heritage Agency in 1988-2000. Retired, still commenting on Heritage Law in legal gazettes.





burial places inside churches or outside in churchyards, should be shown care, peace and safety as befits their Christian customs, practice and exercise, so that conclusively all elements may serve as confirmation and remembrance of a historic deed, person, place or family, should carefully be respected. No permit should be given to waste or destroy even the slightest part thereof.

And if anyone should contravene the placat, this person should suffer punishment as anyone who disobeys royal command but also be subjected to the king's disgrace. Any abuse, disorder or damage should be corrected, and restitution executed to former condition.

The general vicegerent in Stockholm, governors general, governors, provincial governors, stewards, mayors and councils in the cities, provincial and town constables in the countryside should watch over this placat. The archbishop, bishops, superintendents, provosts and vicars should make the placat publically known and also watch over the objects which may be found in their dioceses, deaneries and parishes and which are of the abovementioned kind. Everyone with knowledge of such objects, or who may possess old scripture, books, letters, coins or seals, should report to their vicars or constables, to facilitate communication.

### Short observations as to content

We see that the legal technique of categorising protected objects is applied here. It is not just some particular runic stones that should be spared, but all. Some categories that today would seem natural to protect, such as hidden archaeological remains like traces of settlements, trading posts, workplaces etc. are missing, but this is at the very dawn of the archaeological science.

A further observation reveals that the call on the clergy to make the placat publically known is explained by the fact that the clergy in those days was the only workable channel to the people at large. Attendance at mass was almost obligatory and a part of the service was the announcements from the pulpit of everything from family events such as births and christenings, excommunications, and deaths to various messages from the rulers.

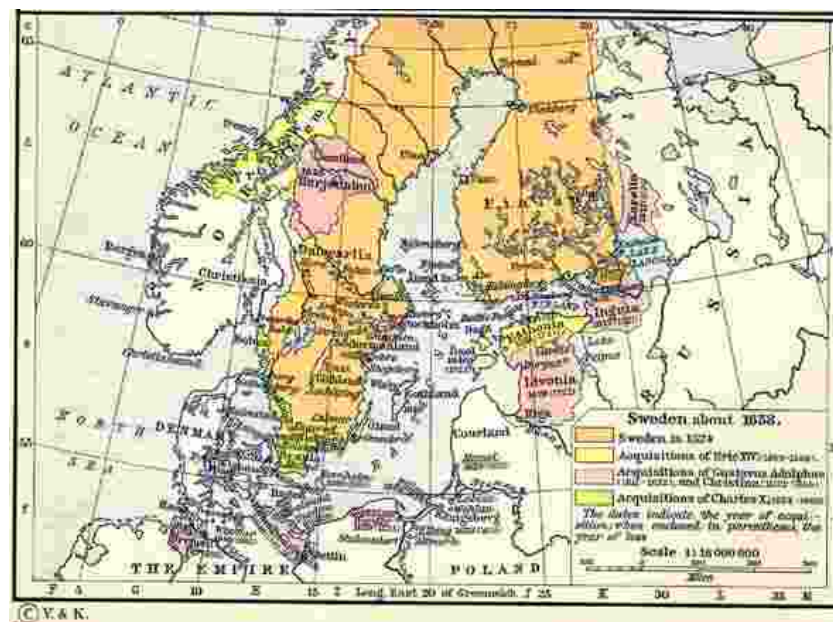
There are two questions as to content that also come to mind. What punishment – apart from royal disgrace – could be imposed? Is it less imposed on the nobility than on the lower classes? I have no clear answer to these questions. These two questions may have a connection.

The nobility clearly had a special relationship to the king, and a special status as the dominant landowners with tax concessions for providing man- and horsepower to the armed forces. But in Sweden there were also landowning farmers. They too wield-

ed some political power as one of the four estates of Parliament (*Rikens ständer*). The system of privileges for the nobility implied that the king would be more lenient with regard to transgressions on land that was exempt from tax. This is probably why the nobility is called to do as “their honour would command”. But there is also a message of punishment for “anyone who disobeys”. The nature of that punishment would likely have to be sought after in the general code of the country – in its edition of 1608 – but I have not investigated what particular provisions might have been applicable.

What effect could “royal disgrace” have had? Probably a great deal, depending on the culprit's dependence of king and government. For a military man or a courtier it meant loss of rank or office and accompanying salary – though not all offices were paid. Needless to say, loss of influence and status also followed. Therefore, nobles, clergy and the occasional farmer or merchant were the ones most sensitive to that kind of royal dissatisfaction. Royal disgrace, however, was in most cases temporary.

### The immediate background



The year 1666 was not vital in Swedish history, but 1660 was. Two years earlier the Peace Treaty of Roskilde had resulted in a territorial apogee. The Swedish realm now encompassed former Danish provinces all the way to the strait of Öresund, plus the Bornholm island, from Norway the province of Trondheim, Finland (which had been



a part from the 12<sup>th</sup> century) all through to Ladoga lake and the mouth of river Neva (the later site of St. Petersburg), Estonia, Livonia (parts of present day Estonia and Latvia) and several provinces and cities in northern Germany. The expansion at the cost of Denmark-Norway had been achieved by the daring military expedition from Jutland across the frozen-over Danish straits under the personal command of king Charles X Gustavus, an adventure which nearly knocked the Danish realm over. In 1660, however, the King's concluding effort to capture Copenhagen failed and Bornholm and Trondheim had to be restituted. Then the King died, at the age of 37. His waistline is reported to have measured two meters.



Charles X  
Gustavus  
1622-1660

Charles XI at  
the death of  
his father

1660 marked a turning point: hundred years earlier another king, Gustavus Vasa, had died after nearly forty years of successfully resurrecting the Swedish State from many centuries of internal family feuds and wars with Denmark over succession. There were now two Scandinavian powers with defined borders, confirmed royal lineage and constantly at odd's end. Gustavus's grandson Gustavus II Adolphus entered the internal religious wars of the Holy Roman Empire, and when they finally ended in 1648, Sweden had gained the northern German provinces – in addition to much booty acquired during the many years of criss-crossing Swedish troops throughout central Europe. Though the Swedish war efforts had largely been financed by France that had an old bone of contention with the German emperor, there was no question that Sweden had become one of the major power players on the European stage. But how could this continue? The population of Sweden incl. Finland has been estimated at 1.675 million in 1650, Germany had roughly 10 million inhabitants (having been decimated by 5 million since 1600). England and Wales had 4.5 million. France (in 1670), 18 million, and Russia 15 million. The only comparable neighbouring power Denmark with Norway was populated by approximately 1.25 million.<sup>1</sup>

Now in 1660, when the King was dead and no successor ready to step into his boots, one can say that one key issue was how this big but very thinly populated kingdom could be able to maintain the tremendous effort of keeping territories, which many far more resourceful countries and their allies would dearly want to lay their hands on, particularly Denmark, and the emerging power Russia.

As we know, Sweden's status as a major European power did not last long, but that is another story.

The years after 1660 became a period of relative tranquillity for the soon-to-end superpower. The undisputed successor, Charles XI, was only four years old at the time of death of his father, so governing passed to hands of a regency government with Dowager Queen Hedvig Eleonora as its nominal head.

Chancellor of the realm was Magnus Gabriel de la Gardie. By all standards he was a remarkable character in Swedish history. His grandfather, of unclear French origin, had joined Swedish armed forces in 1565 as a mercenary. Excelling in martial achievements, he married into royalty, and his son continuing along the same line also amassed an immense fortune, and strengthened the aristocratic liens. One of the offices he held was that of the governor of Estonia.

The grandson, Magnus Gabriel, having been born with a silver spoon in his mouth, made very good use of his starting position, holding early in life among other positions that of the ambassador to France. His wife was the sister of the now dead king Charles X Gustavus, and he had ingratiated himself with this king's predecessor queen Christina, his wife's cousin. Shortly before her unexpected abdication in 1654, he fell out of favour with the queen and exiled himself to his many landed estates. Now, in 1660, in the will of Charles X, he was named Chancellor of the realm.

Already in 1654 he had become Chancellor of Uppsala University, a position he held for 32 years with vigour. He showed a great interest in arts and culture, particularly projects that would shed magnificence on the realm (and himself personally). One project of great importance to the heritage was the a collection of illustrations of new and old buildings, *Svecia Antiqua et Hodierna*, which was inaugurated at Magnus Gabriel's behest by the regency government in 1661 and conducted under the leadership of Erik Dahlberg.<sup>2</sup> Not always true to life, the painstakingly detailed etchings portrayed what official Sweden found most worthy of presentation and remains even today a much sought after publication, having appeared in many reprints. Another example of his commitment



Magnus Gabriel De la Gardie  
1622-1686

1 <http://www.tacitus.nu/historical-atlas/population/>, accessed 22.10.2017.

2 Peter Ullgren, *En makalös historia. Magnus Gabriel De la Gardies uppgång och fall* [A Story without Parallel. The Rise and Fall of Magnus Gabriel de la Gardie], (Stockholm: Norstedts, 2015), 219.



IN HIMINΛ YEIHNAI  
 NΛMΛ PEIN UIMΛI  
 ΨINAINASSNS  
 PEINS YΛIKΨΛ  
 YIΛGΛ PEINS SYE  
 IN HIMINΛZGΛH  
 ΛNΛ ΛIKΨΛI HΛΛIF

From the Lord's Prayer in the Silver Bible

was the purchase and subsequent donation in 1669 to the university library of the Silver Bible, translated into the Gothic language by bishop Ulphila around 500 AD, and today the main source of knowledge of that defunct tongue.

A historian, Laurentius Bureus, had in 1657 been appointed Antiquarian of the Realm and was, one year later, also made *Historiarum et Antiquitatum* Professor, a fact that to a degree united the administrative and scientific faculties.<sup>3</sup> This union was quickly dissolved when Bureus had to resign his academic position, but before his death in 1665 he had authored a memorandum regarding the sorry state of monuments and antiquities, pleading for an inventory being made and special measures being taken to restore especially royal tombs that had fallen derelict.<sup>4</sup>

De la Gardie had noticed that the young secretary to the university, Johan Hadorph, had shown special knowledge with regard to antiquities. Hadorph took Bureus' concern for the poor conditions of many monuments as a departing point for a proposal directed to the Chancellor in the summer of 1666, calling for regulatory measures against further destruction.

This proposal starts out with an enthusiastic description of the former glory of the realm with castles and fortresses, earthen mounds and stately church buildings, runic inscriptions and other monuments to the memory of the past. All this should be inventoried and preserved. The proposal is in wording very similar to what later the same year, 28 November, was made public as the Royal Placat.<sup>5</sup>

### The immediate aftermath

The placat ends with an admonition to the clergy and governors to make inquiries into the state of the antiquities under their domain, and on 18 December 1666 the regency government followed through with special instructions to the same circle of officials. These instructions were accompanied by an "extract" of the placat, edited by Hadorph. But the extract is more than just a summary. It is more succinct and more detailed as to the protected objects. It adds literary sources as objects both to be collected and protected, such as "monkbooks", i.e. chronicles, letters and notes from monasteries and cloisters, books containing legal texts, collections of tales and songs.



Johan Hadorph 1630-1693

Seals and coins are also added. There is an affirmation that when it comes to manuscripts, seals and coins, the king does not request ownership, but promises to return or pay for them.

But of great importance was another idea of Hadorphs', the setting up of a special academy dedicated to research. A decision by the government of the 14 December 1666 marks the start of the *Collegium Antiquitatis*, with its seat at Uppsala and governed by Stiernhielm, Loccenius, Schefferus, Verelius, Celsius and Hadorph. The latter became in actual practice its executive officer.<sup>6</sup> Hadorph was also appointed Antiquarian of the realm in succession of Stiernhielm.

The Collegium aimed at collecting all the information that governors and the clergy should bring in under the placat and the special instructions issued accordingly. In order to solidify the status of the placat and the Collegium de la Gardie took the matter to the Parliament, where all four Estates in 1668 confirmed the bill of 17 June to that effect. One desired effect of bringing the matter to the Parliament was that economic resources for the inventorying could be more easily be asked for.

The call for a general inventorying of ancient remains was – as could be expected – met with varying results in different parts of the realm. All of the clergy were not happy with tracing and preserving remains connected with heathen times. Nevertheless much documentation was collected during the 17<sup>th</sup> century, both before and after the placat. Not least valuable were the drawings of church buildings, then still to a large degree preserved as when built in the Middle Ages.<sup>7</sup>

As regards church buildings, there had already been rules aiming at preservation. In the Order of the Church, adopted in 1571/72 and confirming the Reformation with its royal supremacy in Sweden, there were provisions both as to how churches should be built and safeguarding their maintenance.<sup>8</sup> Further rules were thereafter issued in the Church Act of 1686.<sup>9</sup>

Rule-making continued. Another Royal Placat was issued in 1684 – Charles XI was now of age – regarding finds of coins of gold, silver, copper and metallic vessels. This placat applied to objects that had been hidden in the earth in unruly times or finds from lakebed or seabed, and stated that such finds should be reported. If no one turned up with proof of ownership within a year, then the find would fall to the king by two thirds and the remaining third to the finder. Punishment would follow "according to law", which in this case meant the rules on theft in Chapter 32 of the general country code.<sup>10</sup> The fact that the finder would get just one third for his troubles probably led to a lack of enthusiasm for turning in valuable finds, and the share was later augmented to one half.<sup>11</sup>

3 Henrik Schück, *Kgl. Vitterhets Historie och Antikvitetsakademien. Dess Förhistoria och Historia*, 1 and 2 [The Prehistory and History of the Royal Academy of Learning, History and Antiquities], (Stockholm: Wahlström & Widstrand, 1932, 1933), 43.

4 Schück, *Kgl. Vitterhets Historie och Antikvitetsakademien*, 1, 252.

5 Schück, *Kgl. Vitterhets Historie och Antikvitetsakademien*, 1, 255 and 2, 60 ff.

6 Schück, *Kgl. Vitterhets Historie och Antikvitetsakademien*, 2, 65 ff.

7 Erik Flodérus and K.A. Gustawsson, "Fasta fornlämningar" [Ancient fixed Remains], in *Ad Patriam Illustrandam* (Uppsala: Almqvist & Wiksell, 1946), 246.

8 Thomas Adlercreutz, *Kulturegendomsrätt. Med en kommentar till kulturminneslagen* [Cultural Property Law. With a Commentary to the Cultural Monuments Act], (Stockholm: Fakta Info Direkt, 2001), 27.

9 Per-Olof Westlund, "Byggnadsminnen" [Historic Buildings], in *Ad Patriam Illustrandam*, 321 ff.

10 I. A. Hedenlund, "Fornfynd och hembudspåbåd" [Ancient Finds and Pre-emption], in *Ad Patriam Illustrandam*, 376.

11 Thomas Adlercreutz, "Sweden," in *The Protection of the Underwater Cultural Heritage. In National Perspectives in Light of the UNESCO Convention 2001*, ed. Sarah Dromgoole (Leiden: Martinus Nijhoff, 2006), 298.





The Funeral Procession of Charles XII.  
Gustaf Cederström 1878

How well the placat came to be respected by the population at large is difficult to tell. Inventorying, however, was ongoing during most of the 17<sup>th</sup> century and certainly saved many monuments from neglect and destruction. At the turn of that century into the next Sweden was involved in unsuccessful wars which took most of the attention and resources away. When Charles XII was killed in 1718, autocratic government ended and the Parliament effectively took over. Less interest went into the study of the past. The 18<sup>th</sup> century came with the Enlightenment and a study of the present and the future.

The placat, however, was never rescinded but replaced by a royal regulation of 17 April 1828. This statute built on the former, augmented the number of protected categories of remains and introduced procedural rules for permission to make infringements under certain conditions. There were even rules on economic compensation in certain cases of refused permissions. However, here is not the place to indulge in a further description of the history of cultural heritage legislation in Sweden.

### The long-term background: Gothicism

Sweden's rise to become one of the European superpowers underscored a need for a story of a glorious past. The ideological concept of Sweden's primordial significance in global history has become known as Gothicism (*göticism*). The concept was developed in Sweden in the late Middle Ages, when the conflict over the crown between the Swedish and Danish aristocracy led to the doctoring of various chronicles purporting to tell the true series of events since time immemorial. The concept in itself, however, was not even Scandinavian. It goes back to the demise of the Roman Empire and the invasion of tribes from the north, here notably the Visigoths and Ostrogoths, settling on the Italian and the Iberian peninsulas. Their historians had the same need as their counterparts in Sweden one thousand years thereafter, to portray a glorious past, not inferior to that of the Romans.

Iordanes, one of the historians whose works survived, related an older theory of the Goths being direct descendants of Noah and his ark. Departing from the northerly island Scandza, the Goths had spread over Europe and founded many of the dynasties there. Isidorus, bishop of Seville stated in the beginning of the 7<sup>th</sup> century that Magog (from which name the Goths derived their tribal designation), son of Yaphet, son of Noah, had started the lineage of Goth kings.<sup>12</sup>

The Iordanes/Isidorus theory eventually caught on to Scandinavia. In the 15<sup>th</sup> century Bishop Nicolaus Ragvaldi of Växjö launched a fantastic version at the Church Coun-

cil in Basel. From their home in Scandinavia the Goths had stormed south and conquered Egypt, Asia and Sicily. They had taken part in the Trojan war and were involved with the Amazons. Philip of Macedonia had married the daughter of a Gothic king. No people were nobler than the Goths, and particularly their contemporary descendants in their place of origin.<sup>13</sup>

The recording of Swedish history only started in the early 13<sup>th</sup> century, later than in Denmark, Norway and notably Iceland, where the chronicles provided versions for the royal lineage of the other Nordic countries.<sup>14</sup> Several Swedish chronicles appeared, most of them anonymous in origin. One exception is the *Chronica Regni Gothorum* by the theologian Ericus Olai, written in the latter half of the 15<sup>th</sup> century. He took Swedish/Gothic history back to the birth of Christ.

Three major works from the 16<sup>th</sup> century mark a high-point of classic Gothicism, authored by the Magnus brothers, Iohannes and Olaus. They were clerics. Iohannes was an archbishop elect, but due to the Reformation reaching Sweden in the late 1520s did not take office but went into exile. Posthumously, his *Gothorum Sveonumque Historia* was published in 1554. Leaning on older sources, he nevertheless embellished the feats of the old Goths up to the point when the work came to be characterised as a "Gothic Iliad". Magog Yaphetson had emerged from Scythia and sailed from Finland to settle in the part of Sweden called *Götaland*, the land of the Goths. His son Sven became king of the Suiones and another son, Göthar, king of the Goths. 836 years after the deluge, Berik ascended to the throne and began the march into the world outside. What other historians, e.g. Herodotus, Justinus and others had related to the Scythians, was in reality to be ascribed to the Goths of Swedish descent. Notably, the Gothic invasion of the crumbling Roman Empire and the Iberian Peninsula was also a work of the Swedes of that period.<sup>15</sup>

Olaus Magnus followed his older brother into exile, but before that he had conducted a journey into the wild north of the Scandinavian Peninsula. His experiences served him well when he drew the great map of all of northern Europe from Scotland and



12 Sten Lindroth, *Svensk Lärdomshistoria. Medeltiden, Reformationstiden* [A History of Swedish Learning. The Middle Ages and the Reformation], (Stockholm: Norstedts, 1975), 167 ff.

13 Ole Klindt-Jensen, *A History of Scandinavian Archaeology* (London: Thames & Hudson, 1975), 10; Lindroth, *Svensk Lärdomshistoria. Medeltiden, Reformationstiden*, 168.

14 Lindroth, *Svensk Lärdomshistoria. Medeltiden, Reformationstiden*, 92 ff.

15 Klindt-Jensen, *A History of Scandinavian Archaeology*, 11; Lindroth, *Svensk Lärdomshistoria. Medeltiden, Reformationstiden*, 288–296.



Orkneys into Iceland and Greenland, in nine gigantic sheets, the *Carta Marina*. It has remarkably vivid illustrations of people and fauna, ships and crafts, and mythical animals. His *Historia de gentibus septentrionalibus* was published in 1555. It was a work of great originality, describing not just the history of the Goths but also the nature and environment. It told tales of climate, mountains, rivers and lakes, of religion and superstition, of Finns and Lapps, and of Amazons, and the everyday lives and crafts of the population. Its aim was to portray a people living in a land of great natural beauty, but also containing enormous challenges during dark and cold winters, all of which had contributed to the fostering of a nation of heroes.<sup>16</sup>



Charles IX defaming the corpse of his enemy Klas Fleming. Albert Edelfelt

Sweden in 1630 to join in the wars in Germany – never to return alive – his farewell speech to the four estates parliament recalled the Gothic ancestors’ “widely spread and immortal name”. His name Gustavus was decoded as “Gotstavus”: the staff of Goths.<sup>18</sup>

But the king’s death at the battlefield of Lützen in 1632 dampened the former rhetoric, and Gothicism took a somewhat different path. Now linguistic aspects came into focus. So far no other assumption had been thought possible than that the primordial language must have been Hebrew, Adam’s tongue. Now Georg Stiernhielm, one of the first antiquaries, with elaborate comparative studies of the Gothic language as it appeared in the newly discovered Silver Bible of bishop Ulphila tried to assert a theory evolving from analysis, that Swedish was instead that first language.



Gustavus II Adolphus

Gothicism came to play an important part in the political game. One amusing example dates to the Kalmar war in the beginning of the 17<sup>th</sup> century. The Swedish king Charles IX invited his Danish adversary to settle the matter in a duel man-to-man “according to the lawful customs and tradition of the old Goths”. (The Danish king abstained, mocking “the old fool”, quoted from Wadén<sup>17</sup>).

Iohannes Magnus’s *Gothorum Sveonumque Historia* became available in Swedish as of 1620, and its alluring tales were used to collect financial support for the ensuing war efforts. When Gustavus II Adolphus left

This was in sum the ideological background to the issuing of the Royal Placat, with its concentration both on monuments and on runes, being examples of the Goths’s intellectual achievements. But just to conclude this narrative on Gothicism, the perhaps most bizarre manifestation of them all should be mentioned: Olaus Rudbeckius’ *Atlantica*, compiled at the end of the 17<sup>th</sup> century and so without any influence in itself on the issuing of the Placat. The quintessence of the *Atlantica* was that Sweden – and particularly Old Uppsala – was not just the origin of all language and civilisation, but also the sunken continent, the *Atlantis*, as related by Plato in *Critias* and *Timeos*.

### “Scientific Gothicism”

But there were Gothicists less prone to phantasies, and more eager to apply factual observation and scientific methods. In 1599 King Charles IX issued a passport for Iohannes Bureus, a clergyman’s son who had already been noted for *inter alia* his interest in the runic alphabet. He had also shown quite an ability to depict runic inscriptions, which he had started to collect and disseminate. The king now charged him with a mission to travel throughout the country to extend this work. Bureus also became a tutor to the Crown Prince Gustavus Adolphus.<sup>19</sup>



Iohannes Bureus

In 1622 the Danish king Christian IV – the man who declined to duel against Charles IX – issued instructions for similar work in Denmark, where the runic specialist was Ole Worms, by twenty years junior of Bureus’. The two exchanged vehement diatribes on the true science of runes.<sup>20</sup> Bureus was supported by Gustavus Adolphus, who now, as king, appointed Bureus officially as an Antiquarian of the Realm with two assistants. In the same year he instructed his antiquarians – probably inspired by the preceding Danish instructions – to find and collect monuments and other objects fit “to illustrate the Fatherland”<sup>21</sup> Together with his assistants he managed to depict 663 rune-stones. This made up almost a quarter of the runic inscriptions found until modern times.<sup>22</sup> Focus of their inventorying was mainly on literary sources of all kinds, apart from runic inscriptions interest was directed to coins, calendars, wills and manuscripts of all kinds.<sup>23</sup>

A cousin of Bureus’, Andreas Bureus, known as the “Father of Swedish Surveying” became instrumental in adding information regarding ancient remains onto the official maps which were being produced as of the 17<sup>th</sup> century.<sup>24</sup>

Iohannes Bureus was succeeded as an Antiquarian of the Realm by Georg Stiernhielm, born in 1598 and with a background as a pupil of Bureus but also as an administrator, judge and estate holder in Livonia and also as one of Sweden’s prominent poets.<sup>25</sup> Stiernhielm in turn was succeeded by Laurentius Bureus and thereafter by Iohan Hadorph, which we have both met: the first one as instigator and the latter as draftsman of the placat.

16 Lindroth, *Svensk Lärdomshistoria. Medeltiden, Reformations tiden*, 296–307.

17 Ingel Wadén, *Personhistorisk tidskrift* 1936.

18 Sten Lindroth, *Svensk Lärdomshistoria. Stormaktstiden* [A History of Swedish Learning. The Great Power Era], (Stockholm: Norstedts, 1975), 250–254.

19 Olle Källström, ed. *Svensk Kulturminnesvård. Ett 300-årsminne* [Swedish Cultural Heritage Management. The 300<sup>th</sup> Anniversary], (Stockholm, 1930), 14.

20 Oscar Almgren, “Om tillkomsten av 1630 år antikvarie-institution,” in *About the Creation of the Antiquarian Office of 1630*, *Fornvännen* 26, (1931): 28.

21 Reprinted in Källström, *Svensk Kulturminnesvård*, 7, and Almgren, “Om tillkomsten av 1630 år antikvarie-institution,” 35 ff.

22 Klindt-Jensen, *A History of Scandinavian Archaeology*, 16 ff.

23 Lindroth, *Svensk Lärdomshistoria. Stormaktstiden*, 244.

24 Flodérus and Gustawsson, “Fasta fornlämnningar,” 245.

25 Lindroth, *Svensk Lärdomshistoria. Stormaktstiden*, 161 ff.



### “The oldest antiquities’ legislation in the world”

On the official website of the Swedish National Heritage Board – and in print – you can find an essay by archaeologist Ola W. Jensen, in which he asserts that the Royal Placat was the world’s first law on the protection of ancient monuments.<sup>26</sup> As many readers will already know, this is not correct.

The fact of the matter is that already the proverbial old Greeks and Romans had adopted rules in order to preserve monuments – movable as well as immovable – including buildings, graves, statues and other works of art. At what precise time in history this count should start is, of course, debatable: perhaps with the *Lex Iulia Municipalis* of 44 BC. Or with an injunction issued by the Senate during the reign of Claudius against wilful destruction of buildings.<sup>27</sup> But certainly the *Novella Mariana*, issued by emperor Maiorian in 458 AD will be in the early count. This, one of the last Western Roman emperors, managed – after the Vandals’ looting of Rome in 455 AD – to hold back the Goths until he was himself deposed in 461. The novella was directed to the Senate, and ordered that all buildings still standing of beauty or usefulness must not be destroyed or damaged. If anything needed to be removed, this question should be submitted to the Senate, and the purpose should be embellishing or restoring another building. Heavy (i.e. cruel) punishments should be meted out for contraventions, including those committed by judges and assistants to the court.<sup>28</sup>

When Rome was threatened by total destruction by the Gothic king Totila in 546 AD, the latter received a letter from the Eastern Roman commander Belisarius, telling the Goth that Rome was a masterpiece of human achievement and that obliterating it would be a crime against humanity. Facing this forerunner of the 1954 Hague convention, Totila abstained.<sup>29</sup>

There are many other examples of rules earlier than the Royal Placat. Several of the city states on the Italian Peninsula adopted prohibitions against wanton destruction of buildings and other constructions: Parma (1254/55), Modena (1327), Piacenza (1391), Carpi (1353), Cremona (1387), Visso (1461), others left unmentioned.<sup>30</sup> In Rome the interest to preserve was more outspokenly directed to historic remains, shown in a statute of 1363. The popes also issued several injunctions against unauthorised destruction. Martin V in 1425 ruled that new buildings causing damage to ancient buildings should be removed.<sup>31</sup> Pius II issued a bull in 1462 forbidding interference with ancient buildings without authorisation.<sup>32</sup> Leo X made Raphael not just his chief architect of St. Peter’s but also custos of Rome’s monuments. In an edict of 1515 the pope instructed him not to use marble blocks with inscriptions for the work on the cathedral.<sup>33</sup> Further, cardinal Aldobrandini in an edict of 1624 forbade excavation conducted without permission and ordered landowners to report ancient finds within 24 hours.<sup>34</sup> That the states on the Italian Peninsula are early with protective legislation

is not strange, given both the richness in remains from Antiquity and the renewed cultural interest in the period, the Renaissance. As O’Keefe and Prott point out “Italian history is characterised by early looting, early protective legislation and early planned excavations”.<sup>35</sup> A little stranger is the claim from Swedish authors, among them Jensen, that “we were the first”. When this claim is also asserted on the website of a government agency, a direct descendant so to speak from the *Collegium Antiquitatis*, then one cannot but help feeling a bit comically reminded of Gothicism, today so absent from official thinking about history. In fairness to both Jensen and the National Heritage Board it should be pointed out that they are not alone. The unfounded claim goes back to the well-respected scholar Henrik Schück and his very thorough history of the Academy of Letters, History and Antiquities from the 1930s.<sup>36</sup>

The Italian connection, however, is interesting from quite another viewpoint. Abdicated queen Christina, a cousin of the deceased Charles X Gustavus, had resided in Rome since 1655 after her conversion to Catholicism. There she developed tight and sometimes complicated relations with the popes and the Vatican administration. She kept a keen eye on what was going on in Sweden from where she would get the main source of income to maintain her court in exile. When news about her cousin the king’s death reached her in 1660 she decided she had better visit Sweden in order to look after her interests in person. Her entourage consisted of fifteen persons. Negotiations in Stockholm with representatives of the regency government were about finances, faith and succession, all touchy issues, where she would also have to meet the man she had once humiliated, Magnus Gabriel De la Gardie.<sup>37</sup> It seems unlikely



Queen Christina (left) with Descartes (right)

that the issue of preservation of Swedish monuments and antiquities took any part in the conversation between the parties, yet it does not seem improbable that knowledge of the Vatican rules and the handling of such issues in Rome was somehow disseminated during the many years the queen and her courtiers – according to Furuhausen<sup>38</sup>, 170 persons – were in contact with their counterparts in Sweden.

Magnus Gabriel De la Gardie too was a man with many contacts, also internationally. In the 1640s he was on his way to Italy when

26 Ola W. Jensen, *Fornlämningsbegreppets historia* [The History of the Concept of Ancient Remains], (Stockholm: Riksantikvarieämbetet, 2006), 14, <http://kulturarvsdata.se/raa/samla/html/7499>.

27 J. J. Bachofen, “Ausgewählte Lehren aus dem römischen Recht,” in *Selected Studies from Roman Law* (Bonn, 1848), 185.

28 Heinrich Giesker, *Der rechtliche Heimatschutz in der Schweiz. Darstellung des Denkmalschutzes, Kunstschutzes, Naturschutzes und Heimatschutzes in engem Sinn, unter Berücksichtigung der Geschichte und des Auslandes* [The Legal Protection of the Homeland in Switzerland. A Description of the Protection of the Cultural Heritage, Arts, Nature and Homeland in a Historic and International Perspective], (Aarau: Sauerländer & Co, 1910), 104 ff.

29 Hans Furuhausen, *Rom. Marmor och Människor* [Rome. Marble and People], (Stockholm: Natur och Kultur, 2000], 97.

30 Giesker, *Der rechtliche Heimatschutz in der Schweiz*, 109.

31 P. J. O’Keefe and L. V. Prott, *Law and the Cultural Heritage*. Volume 1. *Discovery and Excavation* (Abingdon: Professional Books, 1984), 34.

32 Giesker, *Der rechtliche Heimatschutz in der Schweiz*, 110, O’Keefe and Prott, *Law and the Cultural Heritage*, 34.

33 Giesker, *Der rechtliche Heimatschutz in der Schweiz*, 111, Furuhausen, *Rom*, 234.



due to yet another war with Denmark he had to abort his Grand Tour and return home. He had then been on this tour for about ten years and made many acquaintances, also in the highest political circles.<sup>39</sup>

However, it seems far from necessary to presuppose any exchange of ideas between the very elite of the courts in either country in order to assume that there could have been an influence of Roman, canon or Italian city state law on Swedish lawmakers. As e.g. Stig Jägerskiöld<sup>40</sup> has shown there was widespread knowledge in Sweden of Roman and canon law and many personal connections between judges, professors of law and more widely in academe. In fact, even queen Christina before her abdication and in her role as sovereign judge showed insight in Roman law<sup>41</sup>. It seems more than probable that some inspiration could have reached Hadorph and De la Gardie in as far as the feasibility to protect monuments under law was concerned.

The fact that the placat must be dethroned from the proclaimed position as the absolute origin of protective legislation should not detract from its importance as such for the territories it covered, mainly Sweden as it is today and Finland, which remained part of Sweden till 1809 and where Swedish law continued to be in force even under Russian rule. My guess would be that it had little importance in northern Germany, but Gothicism would have been cherished there too. It will be interesting to learn how it was applied in present-day Estonia, which partly was under Swedish rule as of 1561. I would be surprised if it had much influence in Latvia, where the contested eastern part of Kurland was under Swedish rule for a shorter period in the 17<sup>th</sup> century.

From a Swedish viewpoint the placat showed foresight. The legal technique of declaring by statute what is under protection rather than itemising piecemeal protected monuments remains to this day. One could say that such a system lacks precision, and it would, if it had not been supplemented by having the monuments marked out on maps. Today it works through an ever expanding digital system, available free of charge to the general public. There you can find the sum of inventorying, from the 17<sup>th</sup> century up to the new finds of ancient remains – even runic stones – that are reported in every year. So there is reason to celebrate what those old Goths beyond all their wild phantasies were actually able to achieve.

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34 O'Keefe and Prott, *Law and the Cultural Heritage*, 35.

35 O'Keefe and Prott, *Law and the Cultural Heritage*, 35.

36 Henrik Schück, *Johan Hadorph. En minnesteckning* [A Biography], (Stockholm: Svenska Akademien, 1933), 264.

37 Marie-Louise Rodén, *Drottning Christina. En biografi* [Queen Christina. A Biography], (Stockholm: Prisma, 2008), 209 ff.

38 Furuhausen, *Rom*, 28.

39 Ullgren, *En makalös historia*, 72.

40 Stig Jägerskiöld, *Studier rörande receptionen av främmande rätt i Sverige under den yngre landslagens tid* [Studies of Reception of Roman Law in Sweden in the Period of the Younger Country Code], (Lund: C. Bloms, 1963), 46 ff., 51 ff. and 93 ff.

41 J. E. Almqvist, "Från gången tid. Drottning Kristina den första kvinnliga domaren i Sverige," [From Times Gone. Queen Christina, the first female Judge in Sweden] *Svensk Juristtidning* 19 (1941): 828.



## Appendix



Translated by Thomas Adlercreutz

### His Royal Majesty's Placat and Decree regarding Old Monuments and Antiquities

We Charles, by the grace of God, King and Heir Principal of Sweden, Gothia, Vendia, Grand-Duke to Finland, Duke in Scania, Estonia, Livonia, Carelia, Bremen, Verden, Stettin-Pomerania, Cassubia, Vendia, Duke to Ruegen, Lord of Ingria and Wismar,

And also Palatinate Count at the Rhine in Bavaria, at Guelich, Clewe and Bergen, Duke, etc.

Do hereby make publicly known, as We with great discontent experience how not just the Antiquities, Remains and Monuments of Time immemorial, which from heathen Times by deceased Kings of Sweden and Gothia, and other eminent Men and Subjects by their manly Achievements all over Our Realm, partly in Castles, Strongholds and Cairns, partly in Monuments and Stones with runic Inscriptions, partly in their Tombs and Burial Sites in great Numbers, are being treated with such Recklessness and unlawful Self-indulgence that Day by Day they succumb to Wreckage and Destruction,

and also Monuments which have been left by Kings, Queens and Princes, and other Eminences of the Nobility and the Clergy in our Christian Churches to their Honour and Memory, are being destroyed and occupied and damaged by others, something that must be condemned and averted, as such Monuments should be treasured as Objects which by themselves and by Virtue of their Creation ought to be saved from Desecration and Disrepute, to the immortal Glory of our Ancestors and our entire Realm.

For this Reason, with a view to the particular Zeal Our Ancestors, Kings of Sweden, have dutifully exerted, as well as publically to confirm the discontent We take to the abovementioned Disorder, We have decided henceforth to protect and manage against unlawful Handling, by ordering Our faithful Subjects thereby concerned as good and necessary and according to this Our public Placat, firstly that no-one whoever he may be from this Day forward shall in any manner make asunder or destroy the Castles, Houses, Fortresses, Strongholds or Cairns, which still may remain in any or one place, regardless of how small these Remains may be, nor should he in any way waste Standing Stones or Stones with runic inscriptions, but should leave them altogether unscathed in their right former places, the same applying to all big amassed Mounds of Earth and Burial Sites, where many Kings and other Worthies have established their Tombs and resting Places, as We all such old Monuments on Our Land or on Land pertaining to the Crown, be it Our Property or taxable Property, regardless of whether it is now Our property or has been in the past and now surrendered, protect against all wilful Injury as if it were Our private Property, and take it into Our Royal Custody and Trust.

Turning to Our faithful Subjects of the House of Nobility, if there are any such Antiquities in their Lands of Tenure from Time immemorial, requesting them to care for their Conservation, in the vein of this Our Intention, the Importance of the Matter at hand, and as their own Honour would prescribe.

Thereafter We declare that no-one, of high or lowly Status, Cleric or Secular, pertaining to any Estate or Class, is permitted to plunder or rob tombs of Royals, Princes or other Nobles, which may be found in ruined or still standing Churches or Monasteries, much less to use them for own interment or in any way cause their old and rightful Proprietors any Damage or Infringement.

As it is Our will that all Churches and Monasteries and all their Inventory, Gear, Decorations on Walls and Windows, Paintings or any Kind of mindfully created interior, as well as Tombs and Burial places of the dead inside Churches or outside in Churchyards, be shown the Care, Peace and Safety as befits their Christian Customs, Practice and Exercise, so that conclusively all Elements, no matter how small they may meet the





Eye, may serve as Confirmation and Remembrance of a Historic Deed, Person, Place or Family, should carefully be respected and cared for, and that no permit should be given to waste or destroy even the slightest Part thereof.

§

And if anyone should presume to do anything against or else contravene Our Commandment, then it is Our will that he should suffer as anyone who disregards Our Decree, but also be subjected to Our High Disgrace.

Should there be any Abuse, Disorder or Damage done to any of the Objectives mentioned in this Placat, then We command earnestly that any such Act be corrected, and restituted to its former Condition.

For this reason We command not just Our General Vicegerent in Stockholm, Governors General, Governors, Provincial Governors, Stateholders, Mayors and Councils in the Cities, Provincial and Town Constables in the Countryside to watch over this Placat in full and careful Earnest, but also the Archbishop, Bishops, Superintendents, Provosts and Vicars all over Our Realm, that they each in his Place publically proclaim and also watch over the Objects which may be found in their Dioceses, Deaneries and Parishes and which are of the abovementioned Kind, to which End We also order every Person who may know of such Things, or who may possess old Scripture, Books, Letters, Coins or Seals, that they report to their Vicars or Our Constables, so that We through them may be able to communicate.

§

Every Person in general and particularly everyone concerned shall dutifully oblige. Furthermore, We have confirmed this with Our Royal Seal and the signatures of Our Highly Honoured and Beloved Mother and other Members of Our Regency Government.



Stockholm, 28 November 1666

(Locus Sigilli) Hedvig Eleonora

Seved Bååt	Gustav Banér	Gustaf Otto Stenbock
In lieu of the Justiciar	In lieu of the Marshall	Admiral of the Realm



§

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Magnus Gabriel de la Gardie	Gustav Soop
Chancellor of the Realm	In lieu of the Treasurer

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§



# DEVELOPMENT OF HERITAGE LEGISLATION AND INSTITUTIONS IN ESTONIA

RIIN ALATALU, PhD

The article gives an overview on the development of heritage legislation and administrative system in Estonia. The article is in large extent based on Riin Alatalu's PhD dissertation *Heritage Protection in Transitional Society 1986-2002: From Nation's Conscience in the Estonian SSR into the Harasser of Private Owner in the Republic of Estonia*. Estonian Academy of Arts 2012.

The preamble of the Constitution of the Republic of Estonia declares that the role of the state is to preserve the Estonian nation, language and culture through the times. Such a preamble signals that heritage and culture are important for the state and its citizens even if the administrative and financial measures in place don't make it look so self-evident.

## Heritage protection until 1940

The history of heritage protection in Estonia dates back to 1666 when the Swedish King Charles XI signed the order to protect old monuments and items because "the spirit of the time ruined them". However, there is not much evidence on the actual influence of this act. The territory of Estonia was conquered by Russia soon after and as heritage protection remained an unregulated area in the Russian Empire there were no significant legal activities in Estonia. The ideas and ideology of heritage evaluation developed in the scientific and historical societies. One of the first steps was the formation of the Commission for Protection of Architectural Monuments by Tallinn City Council in 1895, mainly to control the ongoing demolition of Tallinn medieval town wall.

Modern heritage legislation in Estonia dates back to the 1925 and 1936 Antiquities Acts that were based on the ideology of national self-determination. Typically for the time and European tradition, main attention was given to the archaeological heritage from the Iron and Viking Age and built heritage from the Middle Ages. At least from the 1930s serious debates were held on the Baltic German heritage and the first representative manor houses of the recently overthrown nobility were listed. Majority of the listed monuments were according to the rhetoric of the law "old, former, prehistoric or out of use". Especially the latter quality diminished the direct danger and need for

strict rules. Regulations were quite formal and the situation in the whole country was controlled by only one inspector working in the system of the Ministry of Education. Majority of the work was done on more or less voluntary basis by the Heritage Advisory Panel consisting mainly of Tartu University professors. Despite the decades of nationwide effort of collecting historical items and artefacts for the Estonian National Museum, the overall knowledge and respect for heritage was still evolving. The act from 1936 introduced the avocation of voluntary heritage confidants who were asked to safeguard local monuments and organise awareness raising events. The vocation was very popular among rural teachers and the number of confidants exceeded 300 by 1940.

## Soviet period 1940-1991 Legislation

In 1947 the first Soviet decrees to protect heritage were put into force. Few heritage professionals took the initiative to protect as many ruins as possible to prevent them from demolition and to avoid the planned extensive reconstruction of demolished city centers. Although the decrees were enacted by Council of Ministers the declared principles were ignored and dozens of protected buildings brutally demolished. In retrospect these decrees still have historical significance as efforts to regulate heritage protection in an occupied territory.

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In 1961 the Estonian “Act on protection of historic and cultural monuments” was the first heritage act in the whole USSR. It was compiled by local officials and reflected local problems in the temporary period of liberalism. Several parallels with the pre-war legislation can be seen, including heritage confidants and expert-based Heritage Advisory Panel.

The protection of monuments had positive reputation with the Soviet government and at the same time was nationally significant. Heritage was one of the fields where Estonia could boast with special status and advanced ideology. Beside the first law of its kind in the USSR, also the first conservation zone was created in Tallinn in 1966. In fact the first conservation areas for Tallinn Toompea and Narva were created already in 1947, but this fact was later ignored. Estonia together with Latvia and Lithuania differed from the rest of the USSR as regards architectural and protection traditions and attitude.

The first “Act on protection of historic and cultural monuments” of the USSR was legislated in 1977, and a year later the same law with minor modifications was legislated in all Soviet republics. The new law regulated the main goals of protection and reflected the Soviet rhetoric. According to the law the responsibility for heritage was divided between a wide range of institutions including communities, kolkhozes, factories, schools, etc. The law demanded also that the responsibility for legacy should be shared with unions of protection of historic and cultural heritage. In the Soviet system these unions on different fields of activities were civil societies only by name, as they were controlled and censored by the Communist Party. The Estonian SSR was the only Soviet republic where a union for heritage protection was not formed. This fact became profitable in 1987 when the new born citizens’ movement, the Estonian Heritage Society, had to be registered. The Society played the leading role in the independence movement in the end of 1980s.

## Administration

After WWII the responsibility for the monuments was divided between the Ministry of Culture (historical, archaeological and movable monuments) and the Committee of Construction (architectural monuments). Although the administrative regulations and methods were different, the list of monuments was common since 1964.

### ⌘ Architectural Monuments

The forerunner of the later State Inspection of Architectural Monuments was established as a small department already in 1944. In 1950 Scientific Conservation Workshop was formed as a base of future National Cultural Monument Design Institute (KRPI). By the end of the 1980s nearly 300 people worked in the biggest research institute of historical architecture and archaeology. In 1978 a special or-

ganisation Inrestaator was created to coordinate the work of restorers from Poland who became the leading conservators in many places in the USSR.

### ⌘ Historical and Archaeological Monuments

The first department to administer archaeological and historical monuments was formed in 1949 in the forerunner of the Ministry of Culture. Four years later a State Cultural Monuments Protection Institute with two officials was formed. The Inspection underwent several changes. In 1976 a subordinating Scientific-Methodological Council of Museums and Cultural Heritage was formed. The Council was responsible for organizing archaeological excavations, consents on activities and research of the objects.

### ⌘ Movable Monuments

The protection of movable objects was organized since 1953 under the supervision of the Ministry of Culture. Some inspectors were working also in the municipalities. The 1977 USSR “Act on protection of historic and cultural monuments” and its republican analogues stated that it was forbidden to export from the USSR movable heritage and objects of artistic and historical value. In the 1970s there was a significant theft wave from Estonian churches and manors. As many stolen items were later found in several museums in St Petersburg, Estonian officials proposed to state in the Estonian law that export was even forbidden out of the Estonian SSR. Of course such a separatist amendment was not approved.

To maintain ideological control over people, a new type of monuments – documentary monuments – was defined. The aim of this new type was to register all privately owned rare books, documents, pieces of art, cult objects, tablatures, coins, jewellery, etc. The collection of rare objects now required a special permission. The idea of the law was to keep an eye on antiquaries and of course to control the artefacts of history. The new law was enacted when the whole Soviet Union was preparing for the Moscow Olympic Games in 1980. The games were spread between numerous cities and regions in the USSR, including the regatta held in Tallinn. Thousands of foreigners were expected into the closed country and to control the inflow of hard currency and possible export of treasures, a special Expert Group of Export of Cultural Objects was formed in Tallinn to control possible export items. This group was incorporated into the National Heritage Board in 1994.

The control over the restoration works was relatively easy as the state or municipalities had the control over the majority of historical premises and the conservation works were mostly carried out on public buildings. The main problems were caused by lack of coordination and cooperation between different institutions. In retrospect,



it can be claimed that during Soviet years the systematic protection of heritage developed. The biggest problem was the dividing of responsibility which weakened the social responsibility.

## Heritage protection since 1991

### Legislation

Preparations for the new law for now again independent Estonia started already in December 1990 but it was enacted only in 1994. The changing society, preferred international and local examples, but also the internal competition is reflected in the preparation process of the law. Unlike in many other fields, the legacy legislation had to be modified not only according to the changing social and economic relations but also according to the administrative reform in heritage protection.

The new law followed mostly the tradition of the 1925, 1936 and 1961 laws and restored the institution of confidants and the expert-based and independent Heritage Committee with its sub-committees. There were very few completely new norms in the law. One of them was the temporary listing of objects following the example of Latvia. Temporary listing allowed implementing immediate protection for up to six months in the threat of violence. The Conservation Act was compiled mostly by experts of the field and not by lawyers, which was the case with many other laws at that time. Only minor amendments were made to the law till 2002. One of the main problematic issues is that the Conservation Act was not linked with other important laws. Several mismatches with the Planning Act and the Building Act have been later improved, but there are still gaps to work on.

In 2002 a new Conservation Act was enacted as a part of systematization of national legislation. The motivation behind the revision of the law was also the protest against the licensing system and against the demand for often expensive but mostly time-costly studies of object's values. Mainly architects demanded the right to work on national monuments without having a specific education. However, the principles for studies and licences were not changed but underwent some cosmetic amendments.

The significant political change in the new law was the transforming of the Heritage Advisory Panel from the advisory body of National Heritage Board to the advisor of the Minister of Culture. The justification was an upgrade in hierarchy but in reality its influence was lessened. Till 2002 Advisory Panel had the authority to decide whether an object fulfils the criteria to be listed as a monument, in 2002 its opinion became merely a recommendation. The political ministers have misused this amendment on several occasions, ignoring the decisions of specialists. Neither the law of 1994 nor 2002 provided any measures for forcing malevolent owners to maintain their property. Ridiculously small fines for illegal repairs and demolishing were considered natural and corrupt free. The first enforcing regulations were enacted only in 2004.

Majority of the amendments to the law were still quite insignificant and heritage administration kept a strong line of licensed professionals, consent and supervision.

A suggestion to establish the gradation of monuments was made. The gradation seemed to be a solution both for the owners of the monuments that wanted to escape the regulations and for those who expected to get rid of competitors for state conservation funding. The Estonian Union of Architects had also proposed that buildings with high historical but modest architectural value could be replaced, commemorating the originals only with a sign or a model. The answer of the Minister of Culture was straightforward, accusing architects of corruption. This amendment was not approved.

In 2013 another initiative to word new Conservation Act was launched. The leading idea is to rearrange different obligations in heritage conservation system to justify the need for additional funding from state budget. To ease the burden of the owners a new system for carrying out studies and the supervision of conservation works is been worked out. So far it has been the obligation of the owner, with the potential amendment it will be partly transferred to National Heritage Board. The main risk of this process is that the obligations taken will probably exceed the NHB's capacity as the raise in funding agreed for 2019 is only 1,5 mln Euros but the number of monuments in maintenance is constantly growing. So are the prices for work and materials as the huge difference between the salaries in European Union in general and Estonia is constantly diminishing. The other potential risk is that the research and reporting will fall into the "grey zone" and may affect the quality of this highly important work.

### Administration

Changes in the heritage system started already at the end of the 1980s. As a part of Mikhail Gorbachov's perestroika politics, private initiative and small enterprises were allowed. Already in 1988 the first entrepreneurial architects started to establish their own companies. On the basis of the National Restoration Unit and its 22 local branch offices several new conservation companies were founded. Among humanitarians, the archaeologists were the first to take the initiative to form private companies. After the restitution of the Republic the number of excavations started to decrease, as the funding became the obligation of the landowner and state funding for scientific excavations and also research on prehistoric and medieval fortifications stopped nearly completely.

Majority of the architects and conservators found a new challenge in private companies. As they left, the majority of the employees remaining in National Heritage Board were historians, art historians and archaeologists who transformed from researchers to supervising inspectors.

### Formation of the National Heritage Board (NHB)

The initiative for a joint administration for all monument types dates back to at least 1988. The restitution of the state gave the idea a new perspective. Besides good coop-



eration there had always been many serious problems with coordination. Untypically for the Soviet mentality, the initiative was bottom up and strongly supported by the newly founded Heritage Society. The NHB was formed on 11 October 1993 after several years of preparations. The main disputes were about jurisdiction, structure and subordination. According to the Soviet tradition the suitable form would have been a state inspection. In many matters Estonia followed keenly the example of Sweden and Finland and thus not state inspection but Board was formed. Still, the Nordic example of cooperation with local museums was not followed and thus in comparison to neighbours NHB overloaded itself with work.

The formation of NHB had started at the peak of social and cultural responsibility, local and generous foreign donations that illustrated the period of restoration of the independent state. Simultaneously it was the period of quick solutions and profit. No major attention was paid to the fact that culture had nearly everywhere remained an underfinanced subject.

During Soviet times heritage administration was mainly centralized in Tallinn and Tartu. In counties there were conservation units for architectural monuments. The historical and archaeological monuments had often been partly supervised by the local museums. The first county inspectors for architecture were employed only in 1989. With NHB a decision was made to employ an inspector in every county. Proposed optimal structure foresaw 74 employees of which 38 in 15 counties. In addition to them a 10-member research group was planned. The formation of NHB fell to the time of saving budget and all state institutions were forced to penny-pinching to stabilise the state and the new currency, Estonian kroon. In the worst position were the still-to-be-founded boards. From the proposed structure the research centre was cut off and so was 1/6 of the planned staff. Research and conservation remained completely a private business. With the next budget cut in 1997 NHB was lessened to an inspection for five years and another 10 positions were lost. In the new century only a few positions have been restored. For example, in Lithuania the cutback was not so dramatic.

NHB had in the mid-1990s serious problems with capability. The new administrative system had to be built up with a relatively small number of people and serious financial problems. For example, in 1999 NHB still had only 5 cars to cover all of Estonia. A major problem was updating the list of monuments. To improve the work administrative agreements were signed with Tallinn City Government and a few other municipalities to delegate several obligations of NHB.

The number of monuments has constantly grown and so has the conservators' workload and responsibility. Not only the restitution of private property, but most of all the concept of vernacular history has expanded the activities of heritage administration to the monuments in daily use. The number of people who have to follow the Conservation Act daily has grown significantly. In the totalitarian society, the control and

maintenance of heritage was the task of state authorities. However, legal problems are not only based on matters of ownership.

The restoration and promotion budget of heritage was largest in the Soviet period. The protection of costly architectural monuments was the task of the well-financed Committee of Construction where there was money both for research and restoration. The centralization of the whole field under the subordination of the Ministry of Culture remarkably diminished the budget and conservation has remained one of the under-financed fields in Estonia for decades. The shortage of money was magnified by the property reform. Until then the priorities and order of works were set by a State Inspection, after the reform a large number of the new owners started to maintain their property simultaneously. Majority of the restituted property was in very bad condition. Half a century earlier this property had been confiscated from the current owners or their ancestors and its condition was morally the matter of the whole society. With the habit of rebellious attitude towards the state the fresh owners blamed the state over the poor maintenance of their heritage and turned minor attention to the fact that the regime that had caused the injustice had been replaced by an independent state. NHB was at least partly morally responsible for the heritage that was listed recently or whose maintenance depended on municipalities or third persons. The Conservation Act was definitely not owner-friendly, setting strict restrictions but not compensating them.

In the Soviet society the heritage administration had monopolised not only the maintenance of heritage but also the responsibility for its preservation. The minimal cooperation with local municipalities and people as well as the totalitarian restrictions-based protection resulted in the low awareness and mainly in lack of personal responsibility for common heritage. NHB confirmed also in the independent state its dictate by wording the obligations but not the rights and personal mission. The cooperation with local municipalities depended mostly on the person of the local inspector and not the overall policy of NHB. However, the establishment of the profession of the county inspector was an important prerequisite to reach every municipality and owner. The prestige of this occupation has been violated by penny-pinching. In majority of the counties a single inspector has been responsible for nearly 20 years for thousands of monuments, turning the task into mission impossible.



# THE DEVELOPMENT OF THE LEGAL PROTECTION OF MONUMENTS IN GERMANY

WERNER VON TRÜTZSCHLER, Dr.

The paper shows the development of legal protection of monuments in Germany from the very limited princely decrees in the 17th century, different regulations and laws in the 42 states of the German Confederation (Deutscher Bund) from the 19th century, up to the German Reich (Deutsches Reich) and the post World War II legal systems. The legal protection of monuments has become more and more comprehensive. The paper demonstrates how this development is related to the periods of Enlightenment, Romanticism, Historicism and the constitutional rule of law in our democracies.

## A historical outline

Presenting the history of legally codified monument conservation in Germany is very complex because Germany was not a unified state until the 19th century, but consisted of a number of countries. The German Confederation (1815 - 1866) comprised 42 states. A unified federal state was created in 1871. The German Reich, headed by an emperor, was made up of 25 states and Alsace-Lorraine as a territory with a special status. The German Reich changed its form of government several times until the end of World War II (Weimar Republic, centralized government under the Nazis). In 1949 two German states were founded: the Federal Republic of Germany with 11 federal states (hereinafter Länder) and the centralized German Democratic Republic (GDR). In 1990, Germany was reunified. Today's Federal Republic of Germany is a federal state with 16 Länder. Before the background of this history it is only natural that the development of the legal protection of monuments varied regionally and in scope.

Cultural epochs are also reflected in the development of the protection of monuments. During the late Enlightenment, in the second half of the 18th century, monuments were protected primarily as historical documents for the purpose of historical research. In the Romantic era, in the first half of the 19th century, monuments were seen mainly as artistic creations. Historicism, in the second half of the 19th century, finally discovered the Antiquity, the Romanesque and Gothic styles as models for its own contemporary architecture and art. This meant that monuments were to be protected as sources of one's own creative work. Accordingly, the protection of monuments became more and more comprehensive.

First provisions for preserving historical evidence were adopted in some German States in the second half of the 17th century and in the first half of the 18th century. They decreed that historic finds had to be delivered to the authorities and their prime objective was to fill the princely and royal collections. Examples are the edict of the Duke Eberhard III of Württemberg in 1670 and a decree of King Frederick I of Prussia in 1712, which also contained the request to submit historically important findings. Another example is an order from the Palatinate in 1749 for the delivery of antiquity finds against a reward.

The Regulation of the Margrave Karl Alexander of Ansbach-Bayreuth in April 10, 1780 is seen as the first German Regulation on the protection of monuments. It was preceded in 1771 by a similar order. It refers only to crest stones, slabs with inscriptions, grave monuments etc., but includes principles of conservation that are still valid today, in particular: all sections of the population are addressed, in particular civil servants, artisans and the clergy. It obliges them to deal carefully with the "monuments"; the artisans are threatened with "severe punishment" when they do "harm" to the "monuments"; when renovating monuments or when they are in bad condition they should be inventoried; drawings, plans, etc. are to be delivered to a central archive. A similar regulation was issued by Landgrave Friedrich II of Hessen-Kassel in 1779/80. Also other German states adopted rules for the delivery of finds and legislation for inventories after 1700.

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Initial approaches to a comprehensive codification of monument protection are found in the first half of the 19th century. In 1818 in Hessen-Darmstadt a regulation was enacted to preserve the existing monuments. However, it did not apply to monuments in private ownership. Intervention in private property was generally avoided in this period. For state, local and ecclesiastical buildings worthy of protection extensive licensing requirements were imposed, e.g. in Prussia in 1815 and in Bavaria in 1826. Also the Prussian General Land Law of 1794 is to be mentioned here, which contained regulations for the conservation of buildings and monuments and for the approval of new buildings and demolitions, from which historical buildings benefited.

A significant improvement in the protection of monuments brought the creation of the Office of Conservator, meaning monument administrations were installed in various German states. First in Bavaria, where in 1835 a General Inspection of the Sculpted Monuments was introduced and an Inspector General was appointed. In 1843 a Curator of Art Monuments was appointed in Prussia. In 1853 Baden followed, and then Württemberg in 1858. Initially, the conservators worked only in a secondary function, were financially modestly equipped and had no executive powers. Over the years they developed into the present Offices for the Preservation of Monuments, which today are found in all German states.

In the second half of the 19th century several states drafted comprehensive protection laws, which however were not put into effect. One of these drafts, which later served as an example, was elaborated in 1883 in the Grand Duchy of Baden. This bill included monuments in private ownership, contained specific provisions for immovable monuments, regulated the protection of archaeological monuments and contained provisions for the protection of movable monuments in the public ownership. Offences against this detailed catalogue of duties were punishable. This draft was not implemented because of widespread opposition to monument protection. This opposition came not only from private owners, especially the nobility, but also from the churches who feared a new secularization and by local authorities, who resisted limitations of their rule of self-government.

The first comprehensive conservation and protection legislations in Germany were adopted in the early 20th century; in 1902 in Hessen-Darmstadt, in 1911 in Oldenburg, and in 1915 in Lübeck. Laws protecting only archaeological monuments were issued in 1908 in Bavaria, in 1914 in Prussia and Baden, and in 1917 in Saxony-Weimar-Eisenach. The protection of historical buildings was introduced in the planning laws of some states.

The protection of monuments was embedded in the constitution of the Weimar Republic (proclaimed on 9 November 1918 with 24 federal states) as a state objective in Article 150. Until 1933 protection laws were adopted in some other German states (Hamburg, Mecklenburg-Schwerin). The Reich promoted conservation through its tax

laws: expenditures for conservation could be utilized for tax purposes, thus reducing the tax. A judgment of the Supreme Court of the Reich (Reichsgericht) in 1927 found that enforcing conservation measures on private owners are indemnifiable acts.

Under the Nazis, in 1933 a central government was introduced in Germany and the sovereignty of states was lifted. The state laws however remained in force as particular laws. After World War II, in number of the Länder of the newly created Federal Republic of Germany the new constitutions included the protection of monuments as a state objective. This, however, had barely a concrete legislative impact at first. It was not until 1970 that a reaffirmation of the values of cultural heritage took place not only in Germany, which culminated in the proclamation of the European Architectural Heritage Year 1975 by the Council of Europe. Between 1971 and 1980 all Länder created modern conservation laws or amended existing laws. All these laws institute State Conservation Authorities in the tradition of the conservator offices created in the 19th century, but with more far-reaching powers.

In the German Democratic Republic (GDR), in 1952, the Regulation for the Conservation and Maintenance of the National Cultural Monuments was adopted. 1975 follows a historic preservation law with a socialist definition of monuments ("... physical evidence of the political, cultural and economic development, which have been declared a monument because of its historical, artistic or scientific importance in the interest of the socialist society by the competent authorities in accordance with" the law).

After reunification the present Federal Republic of Germany now comprises 16 states. The 5 new Länder formed on the territory of the former GDR adopted state constitutions all of which proclaim the promotion of culture and/or the preservation of monuments as state objectives. In all the 5 new Länder between 1991 and 1993 conservation laws were created, which are based on the laws of the „old“ Länder of Western Germany, and develop these partially.

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# THE EVOLUTION OF A LEGISLATIVE FRAMEWORK FOR PROTECTION OF CULTURAL HERITAGE IN IRELAND

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This paper traces the evolution of measures for the protection of monuments in Ireland from the 19<sup>th</sup> century through to the present system, which is in place since 1930. It looks at the role played by a range of voluntary organizations and individuals in campaigning for recording of antiquities and for the introduction of statutory protection for sites of importance identified. The review contextualizes the disparate and somewhat anachronistic measures now in place.

The effectiveness of any country's approach to the conservation of cultural heritage is assisted or constrained by the national context of public commitment defined by the value which society places on its built heritage and the priority, which it accords to its conservation. In Ireland there is no single piece of legislation, which deals with the protection of the cultural heritage. There are two main strands of legislation in place, first the National Monuments Acts, 1930-2004<sup>1</sup>, which constitutes a broad piece of legislation dealing with the protection of historic monuments and secondly, the Planning and Development Acts, 2000 - 2015 where measures affecting historic buildings<sup>2</sup> form an integral part of a broader framework for local authority planning. Both of these strands are tempered by the provisions of our written Constitution (Bunreacht na hEireann), 1937.<sup>3</sup> The primary means through which protection of the architectural heritage is achieved is through the operation of local government planning legislation.<sup>4</sup>

In presenting this paper about the history of protection of cultural heritage in Ireland, I would like to acknowledge my deep indebtedness to the unpublished research of my dear friend Rachel MacRory (R.I.P.), a former President of ICOMOS Ireland.<sup>5</sup> The concern for historic monuments in the early part of the 19<sup>th</sup> Century was a European wide phenomenon, arising out of the Romantic Movement and the increased sense of nationalism in individual countries at this time. When we view laws in the context of the time of their passing as an inheritance of the history of the time in which the provisions were enacted, the anachronistic nature of the current monuments legislation is better understood.

In Ireland it was through the Ordnance Survey<sup>6</sup> that the first official recording of monuments was made. This work had the effect of initiating much discussion about the care of monuments. The Ordnance Survey had been extended to Ireland for civil purposes in 1824. The House of Commons recommended that a Survey of Ireland be

executed under the direction of Colonel Thomas Colby, director of the English Survey at that time. This was to facilitate a uniform valuation for local taxation and was a prelude to a nationwide valuation of land and buildings (the Griffith's Valuation).

The Ordnance Survey was directed to map the whole country at a scale of 6": 1 mile. This was so that the boundaries of the 60,000 or so townlands could be accurately and uniformly mapped.<sup>7</sup> The scale selected dictated the level of detail. Each officer was instructed to enter in a journal all the facts he could obtain about communications, manufactures, geology and antiquities<sup>8</sup>. It was intended from the outset that as much archaeological detail as possible should be included on the maps, but in reality routine survey work could not encompass comprehensive field archaeology.<sup>9</sup>

Colby appointed Lieutenant Thomas Aiskew Larcom (who had worked with him on the English Survey) to manage the project locally from the O.S. H.Q. at Mountjoy House, Phoenix Park, Dublin.<sup>10</sup>

The task was to provide place-names and to provide historical data for the Memoir. Field officers were to collect in name-books the various versions of the place name by consulting the best available authorities, landowners, clergy, schoolmasters, and

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agents. Larcom had the final decision on what to engrave on the map and he opted for the version, which came nearest to the Irish form of the name. He employed an Irish scholar John O'Donovan as part of the team. To get as near to the original name as possible O'Donovan had to listen to the names pronounced by Irish speaking residents and to study them in the context of local topography and antiquities. The authority listed in the name books had to be supplemented by spellings collected from historical documents. A new division, the Topographical Department, was established to execute the research of achieving a suitable orthography for place names, which were to be printed on the final map. The superintendent of this department was the painter and archaeologist George Petrie and he gathered a team around.<sup>11</sup> The division was based in Petrie's house in Great Charles Street, Dublin.

Larcom got ready to publish what became known as the Ordnance Memoir in a series of volumes in conjunction with the maps, organized by parish. The Memoir idea was not new but the comprehensive nature of the Memoir envisaged by Larcom certainly was. The compilation of these 'Memoirs' commenced in 1830. During the 1830s vast amounts of material pertaining to history and monuments were collected. The field officers of the Ordnance Survey, gathered a wealth of historical and socio-economic information for many parishes in their notebooks.<sup>12</sup> Letters and drawings sent back to Dublin from O'Donovan, Wakeman, Du Noyer etc. provide a good record of the work done. The scale of the work was ambitious and the results not always accurate.<sup>13</sup> The first volume was published in 1837 and sold over 1,250 copies in six years, which was at the time a success.<sup>14</sup>

The Memoir was not well received within government. The Chancellor of the Exchequer, Thomas Spring Rice who had approved the project changed his mind as he did not envisage a county and city history of all Ireland.<sup>15</sup> Colby opposed the employment of a non-engineer namely Petrie as head of a topographical department. It would appear that Spring Rice feared the potential of the research to "open all debatable in Irish party division".<sup>16</sup> There was much deliberation and ultimately Larcom was told by Colby to revert to the original object under the Valuation Acts to arrange existing material but not to collect any more. After this Petrie and the topographical team continued to work on place name research, which allowed some historical and archaeological material to be collected.

In 1842 an anonymous letter signed by 'a protestant conservative' went to government complaining that the Catholic staff in the topographical department were opponents of government who gave work to political sympathizers.<sup>17</sup> There was political unease with the surveys work and within a year the department was closed.

The public debate once the project ceased was kindled. Lord Adare enlisted the support of the Royal Irish Academy (R.I.A.), which led to furious debate over reviving the Memoir. From this debate came the first serious discussion about the need for official

means of preserving historic monuments. A deputation from the R.I.A. to the Lord lieutenant of Ireland calling for the restoration of the Topographical Department held a meeting with some members of the Irish aristocracy at the house of the Marquis of Downshire in 1843. From this a resolution seeking the reinstatement of the work of the Memoir was presented to Sir Robert Peel, Prime Minister. Peel yielded to pressure and agreed to appoint a Commission to consider the history of the Memoir and to make proposals for its future.<sup>18</sup> The Report was published in 1843.<sup>19</sup>

From the original Memoir 22 pages out of 320 were devoted to history and antiquities. Yet this stimulated the most discussion. Opinion was unanimous as to the invaluable contribution made by the work of the Topographical Department and the Ordnance Memoir to the recording and preservation of Ireland's National Monuments.<sup>20</sup> The national press gave a great display of interest.<sup>21</sup> There was also great awareness shown in the public debate about the activities on the continent concerning the preservation of monuments.<sup>22</sup>

One other question considered was whether the work could be carried out in the absence of the Ordnance Memoir and it was not considered to be possible even by the R.I.A., which had at that stage published 19 volumes of Transactions but the only part relating to antiquities which could satisfy a reasonable mind was the Memoir on the antiquities of Tara by Petrie, a specimen of what had been conducted in the survey. The debate did not result in the re-establishment of the Topographical Department and the Memoir was put to rest in July 1844 by Peel's government. So although the capabilities of voluntary societies were deemed inadequate by the commission it still fell to them to continue the work.

### Volunteer activity in creation of a monuments record

Many historical and archaeological societies were formed at this time which for the following few decades provided an important vehicle for the study and preservation of historic monuments. The types of societies formed in Ireland were typical of those formed throughout Europe and the type of work publications and debate were not unique to Ireland. The activities of a range of volunteers in relation to the recording of monuments is an important if inconsistent record but it also served to raise awareness of historic monuments and the need to preserve them. Post 1840, these societies undertook a vast amount of recording on a voluntary basis most of which was published in their journals. These organisations contributed to the campaign for monument legislation. Many societies, some of which were not directly architectural or archaeological, contributed to the climate of concern for monuments.

The Royal Irish Academy (R.I.A.) founded in 1785,<sup>23</sup> played a key role in the development in particular, of archaeological studies,<sup>24</sup> but also in medieval architectural history.



The R.I.A. promoted recording and publishing as a step to monument preservation they also took part in a campaign for official means of protecting monuments.

The Royal Society of Antiquaries of Ireland (R.S.A.I.) was founded in 1849 and was formulated on the lines of the Archaeological Institute of Great Britain and Ireland (1844). Originally a local Kilkenny Archaeological Society, it grew and took on national status quite quickly. It campaigned for the preservation of architectural remains and recorded and published extensively. It also sought to implement any of the existing limited legislation for the protection of historic monuments and campaigned for new legislation and, in the absence of legislation undertook emergency repair work to historic ruins in immediate danger. The Society set up a system of reporting from members on the state of remains in their neighbourhood and to give notice of wanton injury inflicted so that influence could be exerted for their preservation. Secretaries of local groups prepared reports and arranged outings to sites of interest.<sup>25</sup>

In 1850 the Kilkenny Archaeological Society had published "Hints and Queries" to advise on the investigation and recording of archaeological or architectural remains.<sup>26</sup> This step replicated the example set to all archaeological associations by the Royal Society of Northern Antiquaries in Copenhagen.<sup>27</sup> Members of the R.S.A.I.'s attention was drawn to the Act for better Protection for Works of Art, 1845 which contained a provision making it a crime to destroy a monument. In relation to preservation works for monuments in danger of collapse the Society intervened only where ownership or responsibility for a monument could not be established. The society also sought to assist with costs of repairs.<sup>28</sup> A number of national campaigns were run.<sup>29</sup> Work was initiated at Glendalough and Monasterboice but these properties became vested in the Crown (in effect the State) by virtue of the Church Act, 1869 section 25, so it is unclear how much work was completed by the Society. In the Society the driving force behind the works were founding members and cousins, Reverend James Graves and John Prim<sup>30</sup>, editor of the *Kilkenny Moderator*, and upon their deaths in 1875 and 1886 respectively, all practical works to monuments ceased. This change may also be due to the establishment of the National Monuments Branch of the Board of Works, which from the early 1870s undertook responsibility for the major monuments on which the Society had focused attention. Because the focus of the Society had been on medieval ecclesiastical ruins the transition from unofficial to official means of preservation was easy.

With well over 1,000 members by the 1890s the then secretary, Robert Cochrane claimed that it was "not only the largest Antiquarian Society in Great Britain and Ireland, but also the largest in the world". Contacts abroad were maintained with the Danish Royal Society of Northern Antiquaries and with France through Boucher de Perthes who was elected an honorary member in 1850. The sphere of influence of the Society was great.

So, when the Bill for the disestablishment of the Church of Ireland was proposed in the 1860s, the Royal Irish Academy, with the Royal Society of Antiquaries fought for the inclusion of a clause, which would cater for the protection of ecclesiastical buildings, which were no longer in use. This was secured in the provisions of section 25 of the Irish Church Act, 1869. The R.S.A.I. efforts throughout the century led to the Society's appointment with the R.I.A. as advisors to the Office of Public Works, National Monuments Branch. The Irish Church Act was seen as a bad omen for many in Britain and in Ireland. Concern within the established church led to a drive for reform. A manifestation to show strength in the church was the restoration of cathedrals.

The developments in archaeology, architectural history and subsequently preservationism was in the Irish context a by-product of a variety of forces both nationalist and unionist all of whom "wanted to lay claim to an essential Irishness, but none could agree on what it's identifying marks were - Catholicism, the Gaelic culture, the Protestant tradition" and in effect "the cultural renovation of Ireland became for unionists and nationalists alike, a political project".<sup>31</sup> Reclaiming history was on both the Catholic and Protestant agenda. Restoration however, was on the other hand almost exclusively the concern of the Protestant church as very few medieval buildings were in Catholic hands.

The study of ecclesiastical history for which architectural remains offered the most tangible expression, was an intrinsic part of this renewed interest in securing a credible legacy to the early Christian and medieval church in Ireland. In the Protestant church this was enhanced by the theological revivalism initiated in Britain with the Oxford Movement, 1833, which in Ireland expressed itself in the drive to convert Roman Catholics, while in the Irish Catholic Church there was an intensification of activity before and as a result of emancipation (1829). The Camden Society founded in Cambridge had a broad readership of their journal, *The Ecclesiologist* in Ireland and they reported regularly on Irish ecclesiastical architecture, encouraging restoration projects and reporting on them. The integration of antiquarian study with the furtherance of religious political ideology was a key factor in Irish developments.<sup>32</sup>

The Royal Institute of the Architects of Ireland (R.I.A.I.) was founded in 1839.<sup>33</sup> In 1850 a series of lectures was given relating to Irish antiquities and measured drawings of medieval buildings were displayed. Toward the end of the century the R.I.A.I. became involved with the conservation of historic monuments. Many members were also members of various archaeological societies. In 1915 the R.I.A.I. formed the Ancient and Historic Buildings Committee.<sup>34</sup> One act of the Committee was to send a statement regarding the current state of protective legislation highlighting weak points and necessary changes to a wide range of individuals and institutions. It fought to have the cover extended to post-medieval buildings.



The Committee became active in campaigning for the preservation of certain buildings e.g. Weavers Hall (erected in 1745 in Dublin) in the 1920's.<sup>35</sup> It became concerned about the Casino, in Marino, Dublin, in the 1920's as a unique 18<sup>th</sup> century building which was in poor condition and decaying rapidly. Detailed survey drawings were prepared by Alfred E. Jones. Members of the R.S.A.I. and the R.I.A.I. committee came together and met the Church of Ireland Archbishop of Dublin (as the Charlemont Estate, where the Casino was situated, was the property of the Church) with a view to enlisting help to rescue the Casino from total decay. Progress was slow. Harold Leask was appointed Inspector of Ancient and National Monuments with the Board of Works in 1923, and was an active member of the R.I.A.I. Committee. That Committee thought that the Casino should be taken into State care and a letter was sent to the Archbishop requesting that the Casino be placed in Guardianship. It was the drive to take it into State care that was largely responsible for the wording of the 1930 National Monuments Act, which opened the service to post medieval buildings for the first time.

Returning to the 19<sup>th</sup> century, many periodicals, journals and newspapers carried articles on architectural monuments and could be said to have provided a platform for discussion of conservation ideology.<sup>36</sup> *The Dublin Builder* was one of the most important periodicals published in this period as it acted as a forum for discussion and debate, particularly on the subject of restoration. There was much debate on various approaches to restoration. New modes of travel, such as inland navigation, and the development of railways increased visitor numbers to sites. Voluntary organisations influenced public opinion creating an awareness of the need for architectural preservation. In Ireland a major factor was the politicisation of history and culture in which historic buildings represent a tangible element.<sup>37</sup> The rehabilitation of historic buildings was a development from the study of medieval buildings growing since the end of the 18<sup>th</sup> century through antiquarianism and the Gothic Revival. A number of churches were restored totally or partially in the early part of the century.<sup>38</sup> The approach taken by the Royal Society of Antiquaries of Ireland in practical conservation works to ecclesiastical ruins followed the principles established by John Ruskin and William Morris through the medium of the English Society for the Preservation of Ancient Buildings (S.P.A.B.) founded in 1877,<sup>39</sup> e.g. as demonstrated at the rebuilding of the chancel arch in the nun's Church Clonmacnoise, Co. Offaly, where plain voussoir blocks have been inserted to differentiate from the Romanesque chevron.

It was primarily the Royal Irish Academy and the Royal Society of Antiquaries of Ireland that played an active role in seeking to change the official position on protection of cultural heritage.<sup>40 and 41</sup> In April, 1849, John Prim told the Royal Society that the law offered them some assistance in the protection of ancient monuments from wanton injury. The Act For the Better Protection of Works of Art and Scientific and Literary Collections, 1845<sup>42</sup> made a misdemeanour punishable by imprisonment not exceeding six months, and by public or private whipping once, twice, or thrice at the discretion

of the court to unlawfully or maliciously destroy or damage "any picture, statue, monument or painted glass in any church chapel or other place of worship, or any statue or monument exposed to public view". This act (as amended) in 1861<sup>43</sup> was used by the R.S.A.I. to prosecute a case of vandalism at Clonmacnoise, at a court in Birr, Co. Offaly. The alleged offender was acquitted due to the circumstantial nature of the evidence. There was, however a considerable amount of publicity arising from this and as a direct result the government issued an order to the constabulary highlighting the provisions and their duties under the Act in relation to such misdemeanours. As a result, the R.S.A.I. published handbills for circulation about this legislation at Clonmacnoise and Glendalough, Co. Wicklow.<sup>44</sup>

Concern arose within the R.S.A.I. when local Burial Boards were appointed to enclose churchyards so as to prevent cattle grazing and damaging the graves. The Society was concerned about building contractor's engaged by the Burial Boards practice of using stones from the churches to build the enclosure walling. It wrote to the Poor Law Commissioners who had overall statutory responsibility for the work. In 1868 the Poor Law Commissioners agreed to include in all future contracts a clause against the use of any portions of the ruins of ancient churches or monuments or sculpted stones found within cemeteries.<sup>45</sup> The Public Works (Ireland) Act, 1831 established a separate Board of Works for Ireland by virtue of which three Commissioners could be nominated under Royal Warrant.<sup>46</sup> The Public Works (Ireland) Act, 1839 provided for an extension of the types and varieties of public works that could be carried out in Ireland by the Commissioners. The Board of Works was the official organisation with responsibility for the care of historic monuments. The R.I.A. continued its watchdog role suggesting monuments which should be taken into State care on an ongoing basis. Representatives of the R.I.A. were in time appointed as an unofficial advisory committee, which was made official through the 1930 Monuments Act.

As already referred to, section 25 of the Irish Church Act 1869<sup>47</sup> provided protection for churches no longer in use in that these were to be vested in the Commissioners of Public Works for Ireland.<sup>48</sup> This Act disestablished the Church of Ireland from the Crown, and partially dis-endowed the Church of Ireland, and its churches still in use were vested in a new entity, the Representative Church Body. Graveyards other than those privately owned were vested in the local Burial Boards and ultimately with the reorganization of local government in 1898 became the property of the relevant Local Authority. The Church Act vested a number of disused ecclesiastical buildings or groups of buildings in the Commissioners of Public Works in Ireland. These buildings were deemed National Monuments. Funds for their maintenance were provided for from the Commissioners of Church Temporalities, which had been established by the 1833 Church Act referred to earlier, and a part time post of Inspector of Monuments was established.



The Ancient Monuments Protection Act, 1882 permitted owners of scheduled monuments, being “ancient or medieval structure” to appoint the Commissioners of Public Works in Ireland as owners or guardians of those monuments. This applied to monuments other than ecclesiastical monuments which had been provided for by the Church Act. The 1882 act allowed for purchase of ancient monuments with treasury consent. Initially this was applied only to prehistoric monuments. The 1882 act vested a number of scheduled prehistoric monuments in the Commissioners of Public Works with provision to take into their care (with the permission of the owner) any monuments of like character. These structures were deemed ancient monuments. It provided funds for the maintenance of these monuments from annual parliamentary grant. It was made a criminal offence to injure or deface any ancient monuments. The Act established a part time post of Inspector of Ancient Monuments. Building had to be taken into care with the consent of owner but if an owner did not avail of this provision, they were not punishable for injury to their own monument.

The Ancient Monuments Protection (Ireland) Act, 1892 extended the range of monuments provided for in the 1882 Act, allowing the Commissioners to accept any medieval or prehistoric monument or a “monument in respect of which the Commissioners are of the opinion that its preservation is a matter of public interest by reason of the historic, traditional or artistic interest attaching thereto”. This act applied to Ireland only. By the Local Government (Ireland) Act, 1898, local government in Ireland was reorganised and among other authorities, County Councils were brought into being. Now with the consent of owners County Councils were permitted to become guardians of ancient and medieval structures.

The Church Act 1869, together with the Ancient Monument Protection Acts, 1882 & 1892 provided protection for many of the more important early Christian and medieval ecclesiastical ruins as well as for numerous prehistoric monuments. The Board of Works (colloquially referred to as the Office of Public Works or the O.P.W.) had responsibility for the care of monuments scheduled in those Acts.<sup>49</sup> Funds were provided from central government and from the Church Temporalities Commissioners so at this time the official expenditure on historic monuments was far greater in Ireland than in Britain. The Acts had established two part-time posts of Inspector of National Monuments and Inspector of Ancient Monuments.<sup>50 and 51</sup> In formulating the schedule for the Ancient Monuments Protection (Ireland) Act 1892, the Commissioners of Public Works sought the opinion of the R.S.A.I., the R.I.A., the Kildare Archaeological Society and the Cork Historic and Archaeological Society.<sup>52</sup> As a result of the passing of this legislation many voluntary organisations devoted to historical and archaeological matters were given an advisory role in relation to the responsibilities of the Commissioners of Public Works concerning monuments. They have continued their watch-dog role and their campaign for more comprehensive legislation.

The new system had limitations e.g. there was no provision for recording monuments other than those scheduled under the Acts. Royal Commissions for Historic Monuments were formed in England, Scotland and Wales but none was established in Ireland, notwithstanding representations made by the R.S.A.I.. It was suggested that this would be left for the consideration of the Irish administration at some future time, and so it remained with the voluntary organisations and societies to continue this function. Ireland was excluded from the Ancient Monuments Consolidation and Amendment Act, 1913, which provided more control over scheduled monuments, created an official advisory board and instituted a system of Preservation Orders. A further limitation was that the concept of historic monuments appearing in the legislation was narrowly construed. It was only towards the end of the 19<sup>th</sup> century that attention began to turn to post medieval buildings and that such structures began to be considered worthy of preservation.

The Irish Georgian Society (I.G.S. ) was formed in 1908 initially to inspect and note 18<sup>th</sup> century architectural and decorative work in Dublin and to record by sketches, measured drawings or photographs.<sup>53</sup> This approach was similar to the practice of the various archaeological and historical groups in awareness raising and recording in the hope of encouraging preservation. With a focus of recording 18<sup>th</sup> century structures, this indicated a new interest in later architecture. Post medieval buildings began to feature in Irish archaeological journals but were not the main focus. The first five volumes of the Irish Georgian Society Records (1909 – 1913) mark the first serious recognition in Ireland of Georgian Architecture as having historic significance and being worthy of preservation. After the publication of the five volumes the I.G.S. disbanded, to be revived in 1958 with the purpose of “preserving buildings of architectural merit in Ireland especially those built in the 18<sup>th</sup> century”.

After the establishment of the Irish Free State in 1922, there was an opportunity for an independent policy for Ireland. Pressure for more comprehensive legislation was increasing on many fronts particularly from the various societies and organizations referred to earlier by reason of the fact that there had been no replacement for the type of work carried out by the Ordnance Memoir and the fact that no Commission for Historic Buildings had been established. The call was for work to be initiated comparable to the work of the English Commission on Ancient and Historic Buildings. There was also debate about ruins and about key sites such as the Rock of Cashel, Co. Tipperary in the context of bringing them back into use. That debate remains open to this day.

### **The National Monuments Acts 1930-2004<sup>54</sup> provide the current framework**

The 1930 Monuments Act sought to redress the limited provisions of the earlier legislation which was confined to ruinous ecclesiastical buildings or prehistoric remains. The intention was to introduce a coherent piece of legislation to reduce the earlier



fragmentation. The 1930 Act repealed section 25 of the Irish Church Act, 1869, the Ancient Monuments Protection Acts, of 1882 and 1892 and is the basis of our current National Monuments Service. The 1930 Act was wider in scope than earlier provisions. It differentiated between monuments in the architectural sense and archaeological sense and was the first piece of legislation to provide protection for archaeological objects (apart from treasure trove provisions). The distinction between National and Ancient monuments was abolished and the single category of National Monument was applied to these structures. The two part-time posts of Inspector of Monuments were merged into one. The separate funding arrangements were abolished so that all work concerning National Monuments was funded from the annual central government grant administered by the Minister for Finance who was given overall responsibility for the O.P.W.

The term “monument” was given a broad definition to encompass any man-made or natural structure adapted for use by man. A National Monument was separately defined as: “a monument or the remains of a monument the preservation of which is a matter of national importance by reason of the historical, architectural, traditional, artistic or archaeological interest attaching thereto” and included all monuments already in either ownership or guardianship of the Commissioners of Public Works, as vested under the 1882 Act. It is unclear why the wording does not mention the monuments scheduled under the Church Act 1869, or the later 1892 Act when the monuments continued in State care as before. This ambiguity was clarified in the 1954 Act. The new definition expanded the range of monuments, which could be included. Some months after the passing of the Act the Casino, Marino, Dublin was taken into State Guardianship. Apart from the Casino, few 18<sup>th</sup> century structures have been considered for designation as national monuments. The 1930 Act established a National Monuments Advisory Council (N.M.A.C.) and Local Monuments Advisory Committees (L.M.A.C.s). The Act placed the monuments service on a much firmer footing. Ecclesiastical buildings in regular use for worship were still excluded and the 1930 Act did not apply to buildings occupied as dwellings. Compulsory Purchase provisions and Preservation Orders could only be made for unoccupied buildings.

The Monuments Act, 1987 introduced the concept of “Historic Monument” which included “any monument associated with the commercial, cultural, economic, industrial, military, religious or social history of the place where it is situated or the country and all monuments predating 1700 A.D”, that is to say there are seven factors to be taken into account when assessing whether a monument comes within the definition.

“Historic monuments” is intended to introduce a general concept by which monuments can be described. The term “National Monument” is reserved for a monument the protection of which is a matter of national importance. The concept of “historic monuments” is broader in that the factors to be taken into account for a monument

to be so registered are more numerous. Thus all national monuments are also historic monuments but not all historic monuments will be national monuments. All monuments prior to 1700 A.D. are automatically accorded the status of “Historic Monument”. However there is nothing to prevent a post 1700 A.D. site or building from qualifying as an historic monument so long as the Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs (AHRRGA) considers that the factors to be taken into account are satisfied.<sup>55</sup>

The 1987 Act introduced the term “archaeological area” which means an area which the Minister for AHRRGA considers to be of archaeological importance. This marked the enshrinement of the concept of an archaeological landscape.

The scope of the legislation has been extended since the Principal Act of 1930 and many issues not originally addressed had to be provided for including provision for underwater archaeology and control of treasure hunting. A review of archaeological policy and practice in Ireland was announced in 2007 and an Expert Advisory Committee was established. The work that was carried out should pave the way for the enactment of consolidated and where appropriate, revised and extended piece of legislation to replace the five existing pieces of legislation which comprise the National Monuments Acts. The review concentrated on providing effective mechanisms for the protection of monuments and effective but streamlined regulation activities such as archaeological excavation which require a licence. The new legislation will introduce some new concepts such as historic landscapes.

The heads of the Bill were approved by the then Government and were sent to Parliamentary Counsel in the Attorney General's office for the formal drafting of the Bill. The next stage should involve the introduction of the Monuments Bill to the Houses of the Oireachtas and subsequently the enactment. Unfortunately, the Bill does not form part of the current Government's Programme as set out when it came into power in March 2016. Implementation of any Act when passed will require preparation of regulations, policy documents and guidelines as appropriate. Sad to report, there has been no announcement about the fate of this proposed Bill, a significant and important piece of cultural heritage protection, let alone the publication of its terms in the course of this Government's lifetime to date.<sup>56</sup>



1 There are five Acts, (construed as one): *The National Monument Act 1930* known as *the Principal Act*; *The National Monuments (Amendment) Act 1954*; *The National Monuments (Amendment) Act 1987*; *The National Monuments (Amendment) Act 1994*; and *The National Monuments (Amendment) Act 2004*.

2 *The Local Government (Planning and Development) Act 1999* was an important milestone in the history of legislative protection for the architectural heritage in Ireland. The Act brought about the most significant change in relation to the protection of the architectural heritage that has been known in this country. The changes were introduced to give effect to *the Granada Convention of 1985*, which was ratified by Ireland in 1997, and it is this ratification which provides the basis for national commitment to the protection of the architectural heritage. Apart from *the 1999 Planning Act*, the other piece of legislation which implemented national obligations under *the Granada Convention*, was the Act which formally established the National Inventory of Architectural Heritage (NIAH) and placed it on a statutory basis. (*Architectural Heritage (National Inventory) & Historic Monuments (Misc. Provisions) Act, 1999*). The Heritage Service of the Department of Arts, Heritage, Rural, Regional and Gaeltacht Affairs (AHRRA) has responsibility for the compilation of the NIAH. *The Planning and Development Act, 2000* revises and consolidates the law relating to planning and development by repealing and re-enacting with amendments *the Local Government (Planning and Development) Acts 1963-1999* etc. An Expert Advisory Committee Report on the operation of Part IV of the Act is due to be published in December 2016.

3 The provisions of our written Constitution take precedence over acts of the Óireachtas in the event of there being a conflict. Under the Constitution certain fundamental personal rights such as property rights are guaranteed by the State. There is a constant search for balance between the need to protect cultural heritage and the need to have regard for individuals' rights and freedoms. The Constitution also guarantees freedom to religious denominations to manage their own affairs and to own and to administer property. The whole area of protection of churches is complex since it involves the constitutional guarantee, the churches own code of law *the Canon code*, and civil laws. Suffice it to say that *the Monuments legislation* circumvents this complexity by excluding churches, which are in use for ecclesiastical services, from its ambit. There are special provisions in current planning law in relation to development to churches which impose an obligation on planning authorities to respect liturgical requirements and to consult appropriately when making declarations or assessing planning applications which affect the interiors of those structures.

4 The State relies on *Planning Legislation* to protect buildings in use. Many major 18<sup>th</sup> century public buildings as adopted for state use such as the Custom house (Headquarters of the Department of Arts, Heritage, Rural, Regional and Gaeltacht Affairs (DAHRRG) and Leinster House (Dáil / Parliament Building) are all in control of OPW. They are looked after independently of the monuments service. State owned buildings were for many years as a matter of practice considered to be exempt from planning requirements, however this was successfully challenged in the Irish courts.

5 Rachel MacRory, *The Evolution of Policy for the Conservation of Historic Monuments in Ireland*, M.U.B.C. (University College Dublin, 1994).

6 The Ordnance Survey took its name from the Board of Ordnance which was reconstituted in 1683 under the Master General of the Ordnance. Its purposes were to deal with fortification and national defence, to take charge of commissariat and ordnance supplies to fighting services and to control the regiment of artillery and the corps of engineers. MacRory, *The Evolution of Policy*, 1.

7 J. H. Andrews, *History in the Ordnance Map* (Dublin, 1993), 1.

8 MacRory, *The Evolution of Policy*, 4.

9 J. H. Andrews, *A Paper Landscape, The Ordnance Survey in the 19<sup>th</sup> Century Ireland* (Oxford, 1975).

10 MacRory, *The Evolution of Policy*, 3.

11 including the Irish Scholar Eugene O'Curry, the poet James Clarence Mangan and the topographical artists William Wakeman and Georges du Noyer.

12 All the original manuscripts are deposited in fifty boxes in the Royal Irish Academy in Dublin. They cover nineteen of Ireland's counties.

13 Much editing was required for the publishing of this material in the 1990s by the Institute of Irish Studies at Queens University and Royal Irish Academy.

14 MacRory, *The Evolution of Policy*, 8.

15 Larcom Papers ex MacRory, *The Evolution of Policy*, 8.

16 Larcom Papers 7553.

17 Larcom Papers ex MacRory, *The Evolution of Policy*, 10.

18 The commission was led by Lord Adare, John Young, and Captain H.J. Boldero. Peel's instruction to the commission included a list of people they should interview. Larcom, Colby, Petrie, J.H. Todd and the Rev Dr. Romley Robinson, practically all of whom were supportive of the Memoir.

19 MacRory, *The Evolution of Policy*, 13. Evidence I.W. Croker in *Ordnance Memoir of Ireland: Report of Commissioners appointed to inquire into the facts relating to the Ordnance Memoir of Ireland*: "There are at present more monuments of early antiquity existing in Ireland than in England. Some districts are particularly rich in them; but from the injuries of the weather, neglect and the increase of cultivation, they are rapidly disappearing. So that if Irish Antiquities are "to escape the shipwreck of time" it would seem they must do so now or never-there are at hand admirable instruments, framed as they have been in the orthographic department of the Survey."

20 MacRory, *The Evolution of Policy*, 12.

21 As did Thomas Davis, founder of *The Nation* newspaper.

22 Within the debate Thomas Wyse M.P. in 1844 pointed out that systematic recording of monuments was already taking place in France, Belgium and Germany. Wyse summarised the function of the French Comité des Artes et Monuments: first, to encourage enquiry into certain practices of archaeology hitherto inadequately cultivated in France and in the course of such inquiry to search and collect such remains of antiquity as may have escaped the devastation of time second, to reduce this material into a shape as to be easily reachable for a range of purposes and third, to preserve such monuments and relics as still existed from further injury and decay by enlisting public knowledge and interest, the public sympathy to ward off that destruction. The *Dublin University Magazine* published the Ordnance of the Grand Duke of Hesse Darmstadt concerning preservation of monuments from 1818.

23 Founded by Lord Charlemont to promote exclusively scholarly matters such as pure science, history, and antiquities and literature.

24 Much of the Academy's focus was on prehistoric archaeology, excavation and the preservation of artefacts. Much energy went into its museum, which was incorporated later into the National Museum of Ireland.

25 In 1853 the London Society of Antiquaries initiated a similar practice.

26 Medieval monuments tended to be the focus and within that primarily ecclesiastical buildings tended to be the principal focus. Wherever possible the preparation of accurate drawings (plans and sections) of unexcavated archaeological sites and standing remains was actively encouraged. Developments in photography meant that visual record could be photographic.

27 The Ossory Archaeological Society adopted a simplified version of this enquiry as an obligatory requirement of membership. MacRory, *The Evolution of Policy*.

28 e.g. by ceasing to post notice of meetings to members and placing a notice in the newspapers instead and using the money to assist the cost of repairs.

29 e.g. Jerpoint Abbey, Co. Kilkenny, became a national campaign in 1853 as did the campaign for repair of the nun's church at Clonmacnoise, Co.Offaly the round tower at Temple Finchin, Co Offaly and the restoration fund for St. Francis' Abbey in Kilkenny and so on.

30 Founders of R.S.A.I. with Charles Vignoles, Dean of Ossory.

31 Seamus Deane, ed., *The Field Day Anthology of Irish Writing*, Volume 2 (Derry, 1991), 4, MacRory, *The Evolution of Policy*, 40.

32 In 1818 a Protestant based Irish Society was founded to teach clergy to preach through the medium of Irish. The College of St Columba's was founded in 1841 to supply the church with clergy who could appeal to their countrymen in their native language. St Columba's also had the additional aim of promoting the study of Irish History and antiquities within the college with people like du Noyer and Wakeman teaching drawing and familiar names like J.H. Todd and the Earl of Dunraven as founding members.

The Irish Ecclesiological Society was founded in 1848 by J.J. McCarthy, Charles Gavin Duffy and Charles Russell. In St. Patrick's Maynooth, the St. Patrick's Society for the study of ecclesiology was founded in 1855 by J.H. Todd and George Petrie.

33 "To facilitate the acquirement of knowledge of the various branches of science connected with civil architecture, and for influencing the right practice of the profession among its members."

34 The committee sought to intervene where buildings in immediate danger came to its attention. It campaigned for comprehensive education in the protection of monuments and fought to have the cover extended to post-medieval buildings. It sought feed responses on buildings of architectural interest that required protection.



35 The building was erected thanks to funds provided by the Huguenot banker David Digges La Touche. It was demolished in 1956. Flora H. Mitchell (Nebraska 1890 – 1973 Dublin), *Weavers' Hall, 1745, The Coombe, Dublin*, c.1950s.

36 Petrie had established *The Dublin Penny Journal* in 1832 with articles on history, biography, poetry, antiquities, natural history and folklore.

37 MacRory, *The Evolution of Policy*, 52.

38 In the early years there was little philosophy about the way in which work should be undertaken. No identifiable philosophies of how to treat a medieval building, which incorporated generations of alterations and change existed. In the 1830s and 1840s in Britain ecclesiologists promoted restoration by which they understood “to revive the original appearance... lost by decay, accident or ill-judged alteration.” The debate only found a forum in Ireland 20 years after Britain in the 1840s, during the work to St. Patrick's Church of Ireland Cathedral in Dublin under the patronage of Benjamin Lee Guinness. Repair of St. Patrick's with the famine as a background meant that funds were not forthcoming until Guinness agreed to fund the works on condition that there be no architect and that he himself would supervise the works. There was criticism from J.J. McCarthy and some praise from others. *The Dublin Builder* provided the forum for debate. There was debate around works to many buildings including St. Mary's Church of Ireland Cathedral, Limerick, St. Canice's Church of Ireland Cathedral, Kilkenny and Christ Church Cathedral, Dublin.

39 “That every stone be set back in its actual place after any operation necessary for the safety of the building. That if any stones are added instead of being made to resemble the old ones they should be left blank of sculpture and have the date of insertion engraved on it.”

40 In the early years much cry for protection was directed at what we would now categorise as archaeological finds or movable works of art. Both the R.I.A. and the R.S.A.I. formed a museum to act as repositories for such artefacts.

41 As part of their concern for the vulnerability of movable works of art both of the societies campaigned to have the provision of Treasure Trove, whereby the Crown could claim right to objects of art found either through excavation or by accident, extended to Ireland. If the Crown decided to make good its claim the Trove was usually donated to the museum and the finder given a sum of money. In 1861 the grant of Treasure Trove was given to the Royal Irish Academy, so it protected those who sold antiquities to the Academy against claims from the Crown.

42 8<sup>th</sup> & 9<sup>th</sup> Vict. Cap. 44 s. 1.

43 24<sup>th</sup> & 25<sup>th</sup> Vict. Cap. 97 s. 39.

44 MacRory, *The Evolution of Policy*, 86.

45 MacRory, *The Evolution of Policy*, 86.

46 Section 5.

47 An Act to end the Establishment of the Church of Ireland, and to make provision in respect of the Temporalities thereof, and in respect of the Royal Colleges of Maynooth, 26<sup>th</sup> July, 1869, 32 & 33 Vict. Cap. 42.

48 There are 195 entries in the schedule.

49 Baldwin Brown, *The Care of Ancient Monuments* (Cambridge, 1905), based on *Report of Commissioners of Public Works in Ireland*, 1904.

50 Technically two separate roles but both held by Thomas N. Deane until his death in 1899 when he was succeeded by Robert Cochrane.

51 The provisions were supplemented by further limited protection established under *the Local Government (Ireland) Act*, 1898 and the various *Land Acts* of the 1890s.

52 *Annual Report of Commissioners of Public Works in Ireland* (Dublin, 1893).

53 In England, *The Survey of London* had been in place and during the 1870s. There was discussion about the formation of legislation as well as the formation of The Society for the Protection of Ancient Buildings (S.P.A.B.) and the work of the Society for the Photographing of Old Relics of London formed in 1875, which recorded 17<sup>th</sup> Century coaching inns.

54 There are five Acts: *The National Monument Act 1930* known as *the Principal Act*; *The National Monuments (Amendment) Act 1954*; *The National Monuments (Amendment) Act 1987*; *The National Monuments (Amendment) Act 1994*; and *The National Monuments (Amendment) Act 2004*.

55 The Minister for AHRRGA has primary responsibility for implementation of the Acts. The Minister is also the legal owner/guardian of almost 1,000 National Monuments. Responsibilities are exercised by the Minister through the Nation-

al Monuments Division of the Department AHRRGA and also through the Office of Public Works, National Monuments Service. In terms of the protection given to buildings with monument status, the powers and duties of the Minister for AHRRG are set out in the Acts, as are the mechanisms for protection. Monuments, National Monuments, Historic Monuments or Archaeological Areas are not afforded legal protection simply by being such. Certain mechanisms must also come into play before protection comes into effect.

56 The recommendations made suggest that a new Monuments Bill should provide for:

- A broad definition of monuments
- The establishment of a single Register of Monuments
- That the interface between planning and national monuments legislation be improved
- A requirement to report discoveries of certain classes of monuments and protection for such monuments prior to entry into the register
- The continuation in revised form of ownership / guardianship by Minister and local authorities
- The role of the O.P.W. to be set out in primary legislation
- The protection of certain prescribed classes of monuments (under regulation)
- The Minister being able, following a consultation process, to designate Outstanding Historic Landscapes
- The provision of management plans developed in consultation with local communities
- In relation to archaeological and historic objects, a statutory path from discovery to disposition; and consideration for a system of protection for a wider category of moveable objects than archaeological objects / “historic objects”
- The protection of underwater archaeological heritage

The integrated licensing of all works and activities for which the minister has capacity to license.





# LITHUANIA - THE STANDARD SETTER FOR URBAN HERITAGE PROTECTION IN THE FORMER USSR?

VILTE JANUSAUSKAITE

The post-war period is seen as an ambiguous time concerning the aspect of heritage protection. The situation appeared to be even more complicated in the Baltic States that had been forced to join USSR. The old capitals were not only the symbols of their independent past, but also did not meet any of the criteria set according to the standards of modern socialist planning. It was not until 1956 when the first conservation project for Vilnius old town was launched after criticism on the demolitions in the Old Town had been expressed by many professionals. The first "Reconstruction project" came into force in 1959 and it's been known in Lithuanian historiography as the first project of this type and thus the model for subsequent ones in the entire USSR. Only thirty years later, together with the emerging Lithuanian National Independence movement, did the criticism towards the Soviet period heritage protection system become audible and public interest in heritage conservation considerable. However the concept of urban heritage and the means of its protection, though discussed a lot, were not embedded. After 1990, it resulted in many different voices ranging from the strict preservation to liberal "laissez-faire" and leaving their reflections both in legislation, planning documents, and the old towns themselves.

The post-war period is seen as an ambiguous time concerning the aspect of heritage protection. The situation appeared to be even more complicated in the Baltic States that had been forced to join the USSR. The old capitals were not only the symbols of their independent past, but also did not meet any of the criteria set by the standards of modern socialist planning. However, Lithuanian historiography remembers Soviet Lithuanian urban heritage protection practice as a success, even as the leader and standard setter for the entire USSR. Thus, in this paper I will try to answer whether this statement is exaggerated or not and how that system encompassing both legal framework and urban conservation projects developed to achieve such status.

To show a little bit of a broader context, one must start with the interwar situation. For most of that period, the current territory of Lithuania was divided: independent Re-

public of Lithuania emerged with its capital in Kaunas while Vilnius and its surrounding regions belonged to Poland. The situation in the field of heritage protection in those two parts of the country was as different as it could probably be. In "Kaunas Lithuania" there was no law for cultural heritage protection and all the institutions created to promote or supervise it struggled due to poor funding, management, etc. The law for immovable heritage protection only came into force in 1940 under the Soviet regime (even though it had been prepared in independent Lithuania). No urban heritage protection plan had even been thought of and only a small number of architectural conservation projects (mostly in emergency cases) had been carried out. In the Vilnius Region the situation was quite the contrary. First of all, the general approach was completely different. The Polish heritage system was quite advanced and holistic: as early as in 1928 the Law for Monuments Protection provided protection not only

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1 John H. Stubbs and Emily G. Makaš, *Architectural Conservation in Europe and the Americas* (Hoboken: John Wiley & Sons, 2011), 260.

2 Jolanta Fedorovič, "Nekilnojamojo kultūros paveldo apsauga Vilniaus krašte 1920-1939 metais: lenkiško paveldosaugos modelio raiška", *Lietuvos istorijos studijos* 29 (2012): 91.



for individual buildings or sites but also for historic quarters and towns.<sup>1</sup> Vilnius was declared a “relic” in 1936 and a very complex regulation system was established not only on particular monuments but on the entire central part of the old town.<sup>2</sup>

It would have been expected for this valuable experience to be carried over in 1939 when the Vilnius Region came back to Lithuania. In fact, this intention only lasted for a few months. As soon as 1941 came Soviet specialists whose task was set to create a real socialist capital according to the Soviet standards.<sup>3</sup> No wonder that Vilnius Old town with its narrow courtyards, cobbled streets, and a large number of protected ancient monuments was regarded as an obstacle<sup>4</sup> rather than a proper capital city. However those plans were interrupted by the German occupation. After WWII the same Soviet city vision was remembered, still neglecting heritage but this time a little bit less dramatic, asking to “combine architecture and history with the principles of socialist planning”.<sup>5</sup> Moreover, most of the Polish heritage specialists who had been active in Vilnius before WWII expatriated or repatriated to Poland, so not only the continuity of heritage conservation tradition was lost, but also the shortage of architects and conservators became obvious.

In 1950 the MRGD (Scientific Workshop for Restoration and Production) was established (according to central government decision they were established in most Soviet countries, including Estonia), which soon became the main institution regarding heritage conservation including plans or projects for urban heritage protection. Young specialists – architects, historians, engineers etc., originating mostly from rural areas, often with no special academic background in the field of heritage conservation but driven by their enthusiasm and sometimes guided by a few older and more experienced colleagues, had to create the heritage protection system anew.

Despite the fact that Vilnius Old Town was listed on the Soviet Historic Towns List in 1947 and the specialised workshop existed, it had very little if any effect on the planning documents and construction works within the old town. In early 1953 a new general plan for Vilnius was approved that designed two wide highways cutting across the old town.<sup>6</sup> Next year, the Vokiečių (German) street project that literally demolished all the buildings at one side of the street, was implemented. These processes resulted in huge and even public criticism within the architects’ society. However, it was not until 1956 when the first conservation project for the Vilnius Old Town was launched. This date can be considered as a break point - two competing projects had been commissioned and they offered two completely different possibilities for the future of this part of the city: a Soviet city by the Projects’ Institute or a limited intervention area by the Restorers’ Workshop.

The main problem the restorers encountered was non-existent methodology, i.e. how should the projects be done and what measures should be used to ensure the pro-

tection of the Old Town? It is known however, that already in 1957 a visit occurred to the former Czechoslovakia where two Lithuanian professors from Kaunas Polytechnic Institute attended a conference on urban conservation. They came back and wrote a really euphoric article in professional press describing the wide range of research and complex attitude with a goal to preserve not only individual monuments, but the entirety of architecture and urbanism that had been applied in Czechoslovakian historic towns.<sup>7</sup> It is as early as then that Czechoslovakia became a model to follow for many years. The head of Vilnius old town reconstruction project famous urbanist professor Kazimieras Šešelgis was also aware of this methodology (a colleague of him even remembered that he had a half illegal copy of one project to be used as a model<sup>8</sup>) but it can’t be confirmed with certainty that there had been more visits before 1956.

The first reconstruction project came into force in 1959 when the restorers’ version was finally approved. Its complexity, holistic approach and innovativeness in the Soviet context are noticeable. For example not only the main monuments, but also their environment and skyline were to be preserved, maintaining “general character”.<sup>9</sup> The project also sought to solve transport, engineering and even some social issues – i.e. to find a compromise between preservation and development or modernisation as it was understood at the time. The Old Town was to be restored in quarters and a few years later detailed projects for the first quarters were initiated.

Since then it’s been known in Lithuanian historiography as the first project of this type and thus the model for subsequent ones in the entire USSR.<sup>10</sup> Moreover at national discourse the whole Lithuanian urban heritage protection system was acknowledged as a leading one. When remembering the past, the architects and bureaucrats of that time still tend to stress the special Lithuanian position within USSR.<sup>11</sup> Only Estonians were regarded as equals.

In fact the late 60s presented a couple of arguments to ground this statement. In the republics of USSR the old laws for cultural heritage protection (like the Lithuanian one of 1940) were not valid anymore, so in 1967 in Lithuania at the same time as in Belarus, the new laws of cultural monuments protection came into force (only in Estonia such law had been enacted as early as in 1961). USSR managed to create one only in 1976. All the republics then had to accept this “central” law, but in Lithuania it was still successfully adapted to the local situation and understanding by adding 15 additional articles. While the law of 1967 discussed „complexes of buildings” (this point particularly reflects the influence of the Venice charter) the more recent law already provided a category of “urban construction and architectural monuments” which included historical centres, layout of other residential locations, folk architecture and even landscapes. Following the law a special institution – Scientific-Methodic Council for Monuments Protection, dedicated to documentation and evaluation of possible

3 Marija Drėmaitė, Vaidas Petrulis and Jūratė Tutlytė, *Architektūra sovietmečio Lietuvoje* (Vilnius: Vilniaus dailės akademijos leidykla, 2012), 65.

4 Jūratė Markevičienė, “Vilniaus kultūros paveldo apsauga Lietuvos respublikos (1939-1940), Sovietų Sąjungos okupacijos ir aneksijos pradžios (1940-1941 ir 1944-1945) ir nacistinės Vokietijos okupacijos (1941-1944) laikotarpiu,” in *Vilniaus kultūrinis gyvenimas, 1939-1945* (Vilnius: Lietuvių literatūros ir tautosakos institutas, 1999), 157.

5 Juozas Jurginis and Vladislovas Vokietičius, *Vilnius tarybų Lietuvos sostinė* (Vilnius: Valstybinė politinės ir mokslinės literatūros leidykla, 1956), 38.

6 *Ibid.*, 161.

7 Bronius Janavičius and Henrikas Zvolinskas, “Čekoslovakijos miestų rekonstrukcijos praktika,” *Valstybinės LTSR architektūros paminklų apsaugos inspekcijos metraštis 1* (1958): 113-114.

8 Justinas Šeibokas, interview by Viltė Janušauskaitė, 14 March 2013.

9 Kazys Šešelgis, Justinas Šeibokas and Sigita Lasavickas, *Vilniaus senamiesčio rekonstrukcijos projektas. Aiškinamasis raštas. I tomas. Architektūrinė - Statybinė dalis* (Vilnius: Mokslinė Restauracinė Gamybinė dirbtuvė, 1958), 13. (VRVA, F.1019, Ap.11, B.4385).

10 For example, Algimantas Miškinis, *Lietuvos urbanistika: istorija, dabartis, ateitis* (Vilnius: Mintis, 1990), 82.



cultural monuments, was also established in 1967 even though there was no separate division for urban monuments as they had to be covered by the architectural section.

The second important event happened in 1969 and is especially linked to urban heritage protection – the list of Lithuanian urban monuments of local significance was approved. It consisted of 62 positions and that meant that not only the so-called old towns of national significance (5 at the time – Vilnius, Kaunas, Klaipėda, Kėdainiai and Trakai) were protected, but also a number of smaller and less important towns. An Institute for Construction and Architecture with urban historian Algimantas Miškinis in the lead, started historic research on them as well as to draw the boundaries and buffer zones and to write some general regulations.<sup>12</sup> Still, this work might be considered more as research and inventorisation but its effectiveness in practice remains in question.

In the early 70s new projects for 5 historic old towns, the so-called “projects of second generation” were started. Again, they were based on renewed Czechoslovakian methodology<sup>13</sup> (there were no real possibilities to learn directly or to apply Western European practices) and included economic and sociological studies. The spirit of these projects was quite modernistic – the authors evaluated the artistic value of each and every building within the old towns by classifying the buildings into 4 categories “as it was done in Czechoslovakia and Germany”.<sup>14</sup> Quite shockingly, from the contemporary point of view they concluded that most of these buildings were “grey and common” (only 0.6% of Klaipėda old town was recognised as valuable, i.e. architectural monuments).<sup>15</sup> For example, wooden buildings were a priori considered of no value. This opened further opportunities for large scale interventions. Another significant feature found in those projects was concern on social issues that would probably be called nothing else but some kind of social engineering today – i.e. relocating inhabitants to obtain a deserved social composition.<sup>16</sup>

In 1973 a regional ICOMOS symposium was held in Vilnius. It was dedicated specifically to urban conservation issues in socialist countries. By that time architect Jonas Glemža was already an active member of Soviet ICOMOS (later even elected vice president of ICOMOS). There is little evidence preserved in Lithuanian State archives but it is known that the event was successful and well attended by delegates from socialist countries such as Poland, Czechoslovakia, Hungary, and GDR, as well as numerous colleagues from the USSR (from Moscow alone there were 20 participants, Estonia was represented by 7 people including Fredi Tomps, Dmitri Bruns and Helmi Ūprus).<sup>17</sup> At the end of the symposium a formal resolution praising socialism and opportunities for monument protection (e. g. relocating residents) was declared, created by nearly absolute state ownership.<sup>18</sup> An exhibition of Lithuanian restorers’ works was also or-

ganised and it is generally remembered that their works were well evaluated by the President of ICOMOS Pietro Gazzola himself.

The Monuments Conservation Institute also used to organise local conferences. These were mostly practical – aimed to share experiences between professionals involved.<sup>19</sup> J. Glemža also remembered that every few years there were conferences in each of the Baltic countries to share knowledge within the region. For instance one of them, probably the last during Soviet times, took place in Riga in 1987 and was dedicated to preservation and restoration of complexes of monuments. Various conservation specialists from Lithuania, Latvia, Estonia and Belarus gave speeches that were later published.<sup>20</sup> Moreover, some of the most prominent Lithuanian specialists were constantly invited as experts and consultants to other States within the USSR including Russia and Ukraine. For example A. Pilypaitis was invited as an expert to a conference on the reconstruction of Riga’s historic centre organised by the Latvian Union of Architects.<sup>21</sup> Later on he also consulted the project teams of Vladimir, Kamianets-Podilskyi and Tomsk.<sup>22</sup> Lithuanian urban conservation practice was known and recognised not only within the limits of the republic but in neighbouring countries as well (in Estonia it was shortly described as early as in 1960<sup>23</sup>). It is thus reasonable to define this period as the zenith of Lithuanian urban heritage protection and its prestige.

However in the mid-80s together with the emerging Lithuanian National Independence Movement, the criticism towards the Soviet period heritage protection system became audible and public interest in heritage conservation grew. The protection mechanism began to struggle and not only because of the slow implementation that was criticised even formally. The basic principles were questioned and specialists had even been accused for methodically destroying old towns.<sup>24</sup> Thus the period from 1988 to 1992 was a breaking point again. If in 1959 the Lithuanian model was established and its recognition started, the early 90s marked its failure. During these years the last (half) Soviet project for the Vilnius Old Town was prepared. It represented some really utopian ideas with a main goal to recreate the spirit of the capital of the Grand Duchy of Lithuania.<sup>25</sup> On the other hand there was still some social engineering left from the Soviet past. Either way it did not correspond with international trends of the period (i.e. Washington charter) even if Lithuanian specialist claimed it to do so.

Completely different urban heritage objects and completely different attitude towards them were revealed in the late 1980s when 5 soviet urban monuments were listed. The best known of them – mass housing district Lazdynai, built in the early 1970s and awarded the Lenin prize in 1974. The question of protection was presented at the Scientific-Methodic Council for Monuments Protection several times until the goal was finally achieved. The procedure didn’t go smoothly: the chair of the council pressed on that similar objects had been already listed in other republics but some

11 Jonas Rimantas Glemža, interview by Viltė Janušauskaitė, 12 March 2013.

12 Most of the collected data was published in the 11 volumes of the series *Urbanistikos paminklai* [Urban monuments] (1978-1988).

13 Vytautas Jurkštas, *Senamiesčių regeneracija: Architektūros harmonizavimo problema* (Vilnius: Technika, 1994), 26.

14 *Ibid.*, 38.

15 Stasys Priokockis, Nijolė Zubovienė and Vytautas Zubovas, “Klaipėdos senamiesčio regeneracijos projekto problemos” *Architektūros paminklai VII* (1982): 25-26.

16 Emanuel Hruška, “La fonction sociale des noyeux historiques des villes,” *Ochrana pamiatok - monumentorum tutela 3* (1967): 39.

17 *ICOMOS konferencijos medžiaga. Organizaciniai klausimai* (Vilnius: Paminklų konservavimo institutas, 1973), 79. (VRVA, f. 1019, ap.11, b.489).

18 Luce Hinsch, *ICOMOS 1965–1980*, (Oslo, 1980), 19, accessed February 6, 2017, [http://ip51.icomos.org/~fleblanc/projects/1979-1983\\_ICOMOS/pub%20icomos%201965-1980%20hinsch/pub\\_1980\\_ico-mos\\_1965-1980\\_hinsch\\_e.pdf](http://ip51.icomos.org/~fleblanc/projects/1979-1983_ICOMOS/pub%20icomos%201965-1980%20hinsch/pub_1980_ico-mos_1965-1980_hinsch_e.pdf).

19 For example, Romualdas Kaminskis, ed., *Mokslinė konferencija. Istorijos ir kultūros paminklų tyrimas ir restauravimas Lietuvos TSR 1976–1980 m.* (Vilnius: PKI, 1980).



members expressed doubts whether these relatively new objects required protection at all. One and probably final argument presented by a ministry official was: "if there are no Soviet monuments, there is no list at all."<sup>26</sup> However it was only a formality and no effective protection measures have been taken on these monuments until now.

Concluding on the Soviet Lithuanian urban heritage protection system and its leadership in the Soviet Union one might ask - was it true or only a myth? First of all I would argue that there were three contexts embedded in Lithuania: (i) international trends that were usually perceived via intermediaries and often only important on the surface; (ii) Czechoslovakia and other "friendly" republics that were regarded as the "teachers" and acted as intermediaries as well; (iii) the Soviet Union or the "followers", with the exception of Estonia whose specialists were recognised as partners. Lithuanian heritage professionals saw themselves as leaders in the Soviet context but historical analysis and evidence reveals that this statement can be approved only partially and certainly not to the extent it was believed.

Another important point is whether the system corresponded to the international trends and the answer is mostly no. Neither was it adaptable under free market conditions. This gap and sometimes even ignorance could be the reason why it finally failed, because one can clearly see that the concept of urban heritage and the means of its protection, though discussed a lot, were not implemented and the system itself collapsed together with the Soviet Union.

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# LEGISLATION AND COMMON VALUES: A REPORT FROM BELGIUM/ THE FLEMISH REGION

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Already in 1835, very shortly after the “creation” of the Kingdom of Belgium, a Royal Commission for Monuments was appointed by royal decree. The duty of this expert commission consisted of advising the Belgian government on several aspects of heritage preservation. This early public interest in the maintenance of historic buildings is very often linked with the firm intention of a young nation to affirm its own identity through the remains of a glorious past, and with the state of neglect of many monuments as a result of the French Revolution. Despite the efforts of the Royal Commission, it would last until 1931 before a formal law was voted on the protection of monuments and sites. This first Belgian heritage law offered possibilities for protecting monuments presenting a national interest due to a historic, artistic or scientific value. In order to preserve these “common values” for the future, the property rights of owners were restricted: they were not allowed to bring alterations to the exterior of a monument without prior permission of the Royal Commission for Monuments and the local authorities. These restrictions, public easements, didn’t lead to compensation for the owners of protected monuments. However when restoration works became necessary, subsidies could be granted within the budget available. The intention to preserve monuments even led to the inscription in this first monument law of an article creating the possibility of expropriation for the national and the local authorities when a monument was threatened with severe damage or decay in case it remained in the hands of his owner.

## Back to history

Already in 1835, shortly after the “creation” of the Kingdom of Belgium, a Royal Commission for Monuments was appointed by royal decree.<sup>1</sup> The task of this expert commission consisted of advising the Belgian government on several aspects of heritage preservation. This early public interest in the maintenance of historic buildings is very often linked to the firm intention of a young nation to affirm its own identity through the remains of a glorious past, and by the state of neglect of many monuments as a result of the French Revolution. However, despite the efforts of the Royal Commission, it was not before 1931 when a formal law was voted on the protection of monuments and landscapes.<sup>2</sup>

This first (Unitarian) Belgian heritage law offered possibilities for protecting monuments which were of *national interest* due to a *historic, artistic or scientific value*.<sup>3</sup> In order to preserve these “common values” for the future, the property rights of owners were restricted: they were not allowed to alter the exterior of a monument *without prior permission* of the Royal Commission for Monuments and the local authorities. These restrictions, or so-called public easements, did not lead to compensation for the owners of protected monuments. When restoration works became necessary, subsidies could be granted within the budget available. The will to preserve monuments even led to the inscription in this first heritage law of a provision allowing for expropriation by the national and the local au-

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1 Arrêté qui institue une Commission pour le conservation des monuments du pays, 7 January 1835, Bull. off, January 11 1835, no. 111.

2 Loi sur la protection des monuments et sites, MB, September 5th 1931, MB September 5 1931, hereafter called as the 1931 Heritage Law.



thorities in case a monument was threatened with severe damage or decay if it was to remain in the hands of its owner.<sup>4</sup>

The 1931 Heritage Law enabled also the protection of landscapes, *presenting a historic, aesthetic or scientific value of national interest*.<sup>5</sup> No subsidies were foreseen for maintenance works on protected landscapes. However, in case the protection caused significant damage (loss of at least 50% of the value of the landscape), owners could claim a compensation. This first heritage law also provided for specific enforcement measures: unauthorized works carried out on protected monuments or protected landscapes could lead to rather significant fines as well as to the obligation of restoring the monument or landscape into its former state.

### Many different values can justify protection; the Flemish region as an example

From 1970 onwards, a state reform transformed Belgium from a Unitarian to a Federal state. On the 1st of January 1989, the power to govern the preservation of immovable heritage was allocated to the Regions. The three Regions, and due to a later transfer of powers also to the German Community, adopted decrees and ordinances on the preservation of monuments, urban and rural sites, landscapes and archaeological sites. Many of the basic principles inscribed in the 1931 Heritage Law, were copied in the first decrees and ordinance.

Compared to the 1931 Heritage Law, the values enabling legal protection were *expanded* in all these legal texts. This evolution was influenced by international texts. It was also the consequence of an increasing interest for various types of landscapes, formal gardens, minor architecture, and industrial heritage. The idea of what a monument or landscape could and should be, changed, and so did the values on the basis of which protection was allowed.

For instance, in the recent Flemish Immoveable Heritage Decree of 12th of July 2013 (entered into force on 1<sup>st</sup> of January 2015), monuments, cultural landscapes, urban and rural sites and archaeological sites presenting a *general interest* due to an *archaeological, architectural, artistic, cultural, aesthetic, historic, industrial- archaeological, technical, urbanistic, social, folkloric or scientific value* can be protected.<sup>6</sup> Precisely the presence of one or more of this values assigns an actual or future significance to the monument or site. When monuments host valuable (movable) *cultural goods*, these goods can be protected at the same time as the building itself. In such cases the individual protection decision contains a detailed inventory of those goods.

### A discretionary power for the executive power

The values enumerated in article 2.1.26 of the Flemish Immoveable Heritage Decree, mentioned above, offer the criteria for the Flemish Government - or by delegation

the competent minister - for protecting various kinds of objects. These criteria confer an almost discretionary power upon these authorities, but offer *a very poor judicial protection* to owners of valuable goods. Owners have the possibility to make remarks and objections during the protection procedure, however, their consent is not requested for a definitive protection decision. Since protection criteria are described in a broad and even vague way, it is not always easy for an owner to argue that a specific value is not present. In practice, the specific protection policy can vary considerably from minister to minister, ranging between restrictive and mild.

Nevertheless, every individual protection proposal and final decision must be formally motivated. This means that the competent authorities must indicate in the decision itself, for every monument, cultural landscape, archaeological site or urban or rural site, the specific "public interest" and explain which values are supposed to justify the protection. This motivation offers owners a guarantee against unlawful protection. In case of insufficient motivation, the Council of State can annul the protection decision.

### Legal consequences of a protection

The legal consequences of a protection as a monument, cultural landscape, urban or rural site or archaeological site are significant. Most of the consequences concern the owners.<sup>7</sup> The listing decisions enter into force at the moment of the first ministerial decision, i.e. the start of the protection procedure. First of all, the Immoveable Heritage Decree stipulates that owners of (provisionally) protected goods must maintain them in a good condition by carrying out the necessary maintenance and restoration works. They must also take adequate security measures and manage the relevant goods properly.<sup>8</sup> This principle is generally referred to as the "Active Maintenance Principle". The second important obligation for owners of (provisionally) protected goods consists of the prohibition of disfiguring, damaging or destructing the goods. Any activity leading to diminution of the "heritage values" is also prohibited.<sup>9</sup> This second obligation which, for legal purposes qualifies as an easement, is called the "Passive Maintenance Principle". Easements imposed by a protection decision generally have a relative character: the acts they prohibit at the moment of the protection, can be allowed later on by a specific ministerial decision or by means of an urbanistic permit.

In addition to the maintenance principles, mentioned above, two specific legal consequences apply.<sup>10</sup> Protected monuments cannot be entirely demolished: a permit to this end cannot be granted. A partial demolition remains possible; at least when it does not harm the monumental values that have led to protection. Cultural goods included in the protection, cannot leave the monument without a previous permission of the competent Heritage Agency. When this permission is refused, there is a possibility for appeal. A second refusal can be appealed before the Council of State. This administrative high court can annul an unlawful refusal which, however, does not automatically lead to a permission.

3 Article 1, 1931 Heritage Law.

4 Article 4-5, 1931 Heritage Law.

5 Article 6, 1931 Heritage Law.

6 Article 2.1.26, Immoveable Heritage Decree of July 12 2013, MB October 17 2013.

7 The decree mentions not only owners, but also holders of other rights in rem.

8 Article 6.4.1., Immoveable Heritage Decree.

9 Article 6.4.3., Immoveable Heritage Decree.

10 Articles 6.4.5 and 6.4.7., Immoveable Heritage Decree.



Maintenance obligations, easements and specific consequences of a protection are described in detail in a voluminous *implementing order*, issued by the Flemish Government.<sup>11</sup> This order contains quite detailed rules for protected goods in general or in relation to specific categories of goods. Additionally, *individual obligations* can also be inscribed in the protection decision itself. In fact, this is the preferred technique of the Flemish Government for the future. Individual obligations incorporated in the protection decision take priority over general obligations and easements. The Flemish Immovable Heritage Decree still provides measures to enforce maintenance obligations and easements. In the past, certain owners were condemned by judicial courts for negligence or for carrying out works without the required prior authorization or permit.

### Easements with or without compensation

Preserving our past for the future is widely accepted by society as an important task for public authorities. Active preservation policies, including the abovementioned easements and maintenance obligations, are generally accepted as a tool for preserving the common values of monuments and sites for future. They can however impact property rights in a very significant and far reaching way. Especially the last decade, courts were confronted on a regular basis with the important question whether those restrictions were to be accepted by owners with or without compensation.

A general principle in Belgian administrative law, which has been confirmed at several occasions by (higher) courts, stipulates *that restrictions to property rights for public interest purposes, not being the result of an unlawful act of a public authority, do not lead to a compensation entitlement for owners, unless a law or a decree explicitly provides such a compensation*<sup>12</sup>. Easements cannot be assimilated to expropriation: in case of expropriation, legal title to the property as such is transferred to a public authority, whilst easements leave legal title to the property with the owner, even when they significantly constrain his property rights.<sup>13</sup> Some heritage decrees instore a compensation for specific categories, as the 1931 Law did. However, this is not the case for the Flemish Immovable Heritage Decree.

All decrees and the Brussels ordinance instore a premium or subsidy system. These systems, however, cannot be considered a compensation in the strict sense of the word. This is the case as their only aim is to cover the additional cost in case of maintenance or restoration works, due to the fact that special conditions are imposed for protected heritage. Premiums or subsidies never cover the entire cost of works. Besides, they are only granted within the limits of the budgets available. Numerous court cases demonstrate that the discussion about compensation for easements is not new and it is certainly not limited to heritage preservation law. In the past, court cases were also introduced in the field of town and country planning, nature conservation, preservation of dunes, etc.

The issue was also dealt with by the European Court of Human Rights. Particularly the Varfis case<sup>14</sup>, in the field of landscape protection, deserves attention. After having bought a piece of land in Marathon, important restrictions were brought to the property rights of Mr. Varfis: whereas at the moment of the purchase a building right existed, this was skipped by the protective measure taken two years later. No compensation was granted to the owner. He addressed the European Court of Human Rights, invoking the violation of Article 1 of Protocol No 1.<sup>15</sup> The Court reaffirmed<sup>16</sup> in its judgement that restrictions can be put on private property rights in the light of heritage preservation and/or nature conservation, both legitimate aims presenting a public interest. The Court considered the interference by the Greek government in the property rights of Mr. Varfis as justified, but stressed in its judgement the obligation of the government to offer compensation in case of excessive burden put to a property right. The protective measure imposed to Mr. Varfis seemed indeed excessive to the European judges.<sup>17</sup>

The recent case of Matas v. Croatia<sup>18</sup>, dealt with heritage protection. Mr. Matas was the owner of a commercial building in Split which he used as a car repair shop. At the time of purchase of the building no limitation on its use was registered or apparent. Two years later, a measure of preventive conservation was taken by the Split Department for the Conservation of Cultural Heritage, pending the final evaluation of the (early industrial architectural) value of the commercial building. According to the Croatian Law, the measure of preventive conservation remained valid for a period of three years, offering the same protection as a final protective measure. After the expiry of the three-year period no final decision was taken; the Department ordered although a new preventive protection measure arguing that the determination of the heritage value required further assessment. Finally, no definitive protection measure occurred. Also in this case, the Court decided that the interference in the applicants right of a peaceful enjoyment pursued a legitimate aim; only the concrete circumstances and especially the double period of preventive protection without due motivation, were considered as a violation of the fair balance between the demands of the general interest of the community and the protection of the individual property right.

### The Belgian jurisprudence: a turnover

For many years, Belgian courts have adhered to the abovementioned principles regarding compensation. Since 2010, however, jurisprudence has been evolving. In a judgement concerning a *lawful* house search which severely damaged a private property, the Court of Cassation stressed the principle that public authorities cannot impose a burden upon a citizen which is more important than the burden this citizen must bear to serve the common interest, without any form of compensation.<sup>19</sup> This judgment laid down the principle that a burden cannot be *disproportionately* imposed on one citizen or on a limited group of citizens. Burdens are to be spread in

11 *Decree of the Flemish Government of May 16; 2014 implementing the Immovable heritage decree of July 12 2013.*

12 See e.g. *Court of Cassation*, March 16, 1990, Cass 1989-90, 922.

13 *Constitutional Court*, July 2 2003, no. 94/2003; *Council of State*, November 10 2001, no. 216.218; *Court of Cassation*, June 13 2013, TBO 2014, 91.

14 *ECHR*, July 19 2011, Varfis v. Greece, Requête no. 40409/08.

15 "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possession except in the public interest and subject to the conditions provided for by any law and by the principles of international law. The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

16 See e.g. *ECHR*, November 8 2005 Saliba v. Malta, no. 4251/02.

17 See also *ECHR*, November 13 2014, Varfis v. Greece, no. 40409/08 about the compensation.

18 *ECHR*, October 4 2016, Matas v. Croatia, no 40581/12.

19 *Court of Cassation*, June 24 2010, RW 2010-11, 1217.



an equal way over all members of society. The (dis)proportionate character of a burden has to be evaluated by the civil courts on a case-by-case basis. Only if, and to the extent that a burden was disproportionate, compensation will be due.

Other judgments followed. This short overview will address two judgments of the Constitutional Court. The first judgment, delivered in 2012,<sup>20</sup> underlined the constitutional value of the principle of equality of citizens before public burdens (*égalité devant les charges publiques*) and accepted it as a basis for compensation in case of lawful government acts. The power to enforce this principle was constitutionally,<sup>21</sup> allocated to the civil courts. In case of absence of a legal rule providing compensation, the citizen address such a court. The second judgment, explicitly deals with heritage preservation legislation, more specifically with the Flemish Immovable Heritage Decree.<sup>22</sup>

Following an appeal by private owners of a protected monument and by a heritage association, the Constitutional Court had to decide on the absolute lack of compensation for owners of protected goods in this decree. In its judgement, the Court confirmed as a general rule that public authorities can impose restrictions on property rights to serve the general interest, without being automatically required to pay a compensation. The Court decided that the Flemish authorities had the power not to instore a compensation, which it considered a policy decision, at least when owners of protected goods, which are confronted with heavy burdens that exceed the average burden a citizen can expect, have the right to address civil courts in order to obtain a compensation.

The decision whether a burden should be considered disproportionate is left to the civil courts, under a case-by-case approach. The Constitutional Court stresses that the impact of a legal protection on property rights, in accordance with the Flemish decree, can vary considerably taking into account that the legal consequences of a protective measure will be defined in a rather specific way in every protection decision. Additionally, owners can find themselves in very different situations: was the good protected at the moment they purchased it, or could they at least have expected a legal protection decision? Or did they apply for protection themselves? And what about the impact of the protection on the economic value of the good?

In many cases, the protection will not lead to an excessive burden. In case there is an excessive burden, civil judges will have to decide on a compensation. They can base their decision on the heritage value of the good, subsidies or premiums already obtained, state budgets available. In this framework, the judge will not have the power to question the expediency of the protection as such.

### Some comments on the 2015 judgement of the Constitutional Court

The recent decision of the Constitutional Court deals with the balance between public/common values and private property rights, in the specific field of heritage preservation. The principles are quite clear: owners must bear “normal” restrictions to their property rights without any compensation. In case a legal protection results in a disproportionate burden, they can obtain partial compensation. But of course “the proof of the pudding is in the eating”. The judgement was rendered at the end of 2015, so there is no jurisprudence of the civil courts available yet.

The future will show, in the first place, whether many owners will address courts and will be able to prove that they are indeed subject to an extraordinary burden. The task of the civil courts will be difficult, their responsibility important: they will have to decide whether a protection decision results in a disequilibrium or not. It will also be challenging for these courts, which are not really specialized in heritage preservation, to decide on the amount of the compensation. The regime of ad hoc judgments in specific cases implies uncertainty for competent authorities. It will be very difficult to estimate the budget to be reserved for compensations. A non-desirable side effect could even be a diminution of the number of protection decisions.

Considering the aforementioned, it would likely be better to consider the (re)introduction of a general compensation system by decree, providing a clear regime within well-defined limits. In any case, the most appropriate legal approaches towards preserving common values - and at what price - need to be reconsidered by public authorities.

20 Constitutional Court, April 19 2012, no. 55/2012.

21 Article 144 of the Belgian Constitution.

22 Constitutional Court, October 1, 2015, no. 132/2015.





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*Constitutional Court*, 2 July 2003, no. 94/2003.

*Council of State*, 10 November 2001, no. 216.218.

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# CONSERVATION OF CULTURAL HERITAGE IN TURKEY: DEVELOPMENT OF LEGAL RULES AND INSTITUTIONS

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The aim of this article is to give an overview of the chronological development of the legal rules and regulations concerning the protection of cultural heritage in Turkey; to give a brief description of their concepts; overview of the organizations and institutions related to the preservation of cultural heritage, together with their functions and responsibilities.

The article discusses on the important issues of the management and maintenance of cultural heritage in Turkey as well as tackles on the problems of financing the conservation efforts.

## Chronological development of heritage legislation

⌘ Ottoman Period. The concept of conservation of cultural heritage started together with the modernization movements in the Ottoman Empire in 1840s.

**1869** *Ancient Monuments Decree*. The decree was amended in 1874, 1884 and 1906.

**1912** *Conservation of Monuments Decree*. By this decree the decentralization of preservation activities was introduced.

**1917** *Ancient Monuments Conservation Council* was established.

⌘ Early Period of Turkish Republic. Several new institutions were founded and legal acts enforced in parallel with the secularization process of the State.

**1933** *Directorate of Museums and Commission for Conservation of Monuments* were established.

**1951** *The High Council for the Ancient (Real Estate) Artefacts and Monuments* was established. The council took the lead in working out the principals and concepts of the contemporary concept of "conservation of cultural heritage".

**1973** *Law of Ancient Monuments* was enacted.

**1974** *Establishment of ICOMOS Turkey National Committee* by an ordinance of the Ministry of Culture.

⌘ Recent Developments. The notion of cultural heritage and the concept of "site" rather than single artefact or monument is widely accepted and adopted.

**1983-2011** *Conservation of Cultural and Natural Heritage Act* came into effect with major amendments made in the years 1987 and 2004. In 2011 conservation of "natural heritage" was separated and the authority and responsibility for those transferred to the Ministry of Environment and Urbanism. Regional Boards for the conservation have been established.

Local governments are empowered both administratively and financially, being more active in conservation and restoration activities.

## Definitions

A *Cultural Property* should have the following characteristics according to the National Law:

- ⌘ Authenticity, cultural and scientific value.
- ⌘ Origin from "historic" or "pre-historic" times.
- ⌘ Represent social and cultural life, arts, folklore, etc., of a specific period.
- ⌘ Situated on ground, underground or underwater.
- ⌘ Tangible, immovable (generally) or movable physical assets.

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## Architectural heritage:

### Buildings

- ⌘ *Monuments*: temples, churches, mosques, palaces, amphitheatres and related public buildings.
- ⌘ *Traditional houses*: residential units and houses of old times that have architectural and cultural attributes.

Architectural heritage is grouped in two grades:

- ⌘ *1<sup>st</sup> grade*: the monuments and similar public buildings, where the holistic character, authenticity and the identity has to be preserved. No major interventions or alterations are permitted. A new function can be assigned to the building; however, the originality of the cultural asset should not be disturbed.
- ⌘ *2<sup>nd</sup> grade*: simple buildings and residential units may be re-functioned and alterations of the interiors are allowed. The exteriors and the facades of the buildings must be preserved.

### Sites

Sites are conservation areas and are divided into four categories:

- ⌘ *Archaeological Sites*. These sites are the remains of various civilizations both from pre-historic and historic (antique) times, dating in general from the times before the creation of the Ottoman Empire that is the end of 13<sup>th</sup> century.
- ⌘ *Historic Sites*. There are places and locations where a historic event has happened and the site is a carrier of memory of the society or group of people. There usually stands a physical element or an architectural object that reminds the historic event.
- ⌘ *Urban Sites*. These are the parts of cities or settlements that have an authentic/historical nature, represent the traditional fabric of a way of living and/or culture. These clusters of dwellings and buildings of a certain historical period have significant cultural value.
- ⌘ *Urban-Archaeological Sites*. Such places are locations of both urban and archaeological categories, overlapping and sort of mixed with each other.

### Archaeological Sites

The Ministry of Culture is entitled to categorize the archaeological sites:

- ⌘ *1<sup>st</sup> Grade Archaeological Site*: ruins and remains of cultural heritage are clearly observed and preserved. Only scientific excavation and restoration performed by the museums or archaeological excavation teams is permitted.

- ⌘ *2<sup>nd</sup> Grade Archaeological Site*: the precious archaeological sites that are *de facto* living urban areas or parts of a human settlement.
- ⌘ *3<sup>rd</sup> Grade Archaeological Site*: potential archaeological sites with a strong evidence that remains could be discovered if any excavation is conducted. Urban development in such areas is not permitted unless a proper examination or preliminary excavation is carried out by the museum archaeologists.

### Buffer Zones (protection zones)

A protection zone is provided around the listed entity (monument, traditional house, or similar architectural object). Buffer zones cannot be created around archaeological sites due to the provision of the law, but there is a need for this and the law has to be amended to enable such protection.

### Heritage institutions

*The Ministry of Culture and Tourism and its local branches:*

The main public institution in Turkey responsible for the preservation and conservation of cultural heritage is the Ministry of Culture and Tourism and under its authority General Directorate of Cultural Heritage and Museum.

Besides the General Directorate located in the capital, there are regional offices that are in charge of conservation issues in the districts. Every regional office has also a decision making body Regional Board for the Conservation of Cultural Heritage that is composed of architects, urban planners, archaeologists, art historians and lawyers.

Municipalities, the local public authorities of big cities and districts are authorized and responsible for the implementation and realisation of conservation decisions of the Regional Board. For this purpose, there are KUDEB Units (Conservation, Implementation and Supervision Office) established at almost every municipality.

### Management and maintenance issues

- ⌘ **Owners**: the preservation of a listed cultural property is the responsibility of its owner or holder. He/she is obliged to preserve the authenticity of the property and to keep it in good condition. If these obligations are not fulfilled, a legal action may be started against him/her by the public prosecutor.
- ⌘ **Municipalities**: the local administration has also a responsibility to provide all necessary measures for the safeguarding of the cultural heritage. Among these are the physical delimitation, consolidation and reinforcing required for the proper preservation of the asset. It is the duty of the municipalities to prepare urban conservation and gentrification plans, and to implement them for the future liveability of the area.



- ⌘ Ministry of Culture and Tourism: The Ministry is the national organisation for the overall administration and supervision of all types of cultural heritage. By law, the state is the sole owner of any archaeological remains and elements within the boundaries of the country regardless of being underground, over ground or in water. In Turkey the state as the representative of “humanity” is the ultimate owner of the cultural heritage. Private persons or organizations may be the possessors of the heritage with the permission of the state and under its surveillance. Any intervention to the protected monument or site, whatever the nature and type, has to be in accordance with a conservation design or plan consented by the responsible bodies of the Ministry. The Ministry may give financial aid or loan to those individuals who intend to restore their protected buildings.
- ⌘ Archaeological areas: as stated above the excavation, conservation and restoration of archaeological sites are controlled and regulated by the Ministry. The artefacts found can either be removed to a museum or kept in-situ depending on the conditions of the site and according to the decision of the Regional Board for the Conservation of Cultural Heritage.
- ⌘ Monuments: monuments are the buildings that have been built mainly for public use and are of outstanding architectural value and represent their era, for example temples, amphitheatres, public baths, palaces, churches, mosques, etc. Such cultural heritage properties are grouped as 1st grade buildings, meaning that they require utmost attention and no alteration is allowed during the restoration process. Drawings of the existing situation, conservation and restoration plans have to be examined and ratified by the Regional Boards for the Conservation of Cultural Heritage. If a new function is assigned to such a monument, it should never disturb or alter the monumental character of the property. For such monumental buildings detailed designs and often technical reports are required as most of them are centuries and even millenniums old artefacts. Careful handling is compulsory and UNESCO, ICOMOS and other international conservation principles have to be followed.
- ⌘ Traditional houses: traditional houses or such dwellings are advised to be preserved as part of the clusters to preserve their historical context. The historic urban fabric reflects the life and culture of old civilizations. The protected vernacular buildings may be given new functions and uses when necessary, since the viability of them depends upon proper management and good maintenance. They are usually grouped as 2nd grade buildings, i.e. changes in the interiors and layout are tolerated, as long as the authentic exteriors as well as the stability of the structure is maintained. When only minor repairs are targeted, the written permit of the local museum and the municipality is sufficient, no extra efforts like designs or plans are asked. Otherwise drawings of the present situation, restoration designs are compulsory. In general,

the designs are a remarkable financial burden to the owner and skipping this obligation often leads to unwanted and also illegal physical modification of the cultural property.

- ⌘ Disappearance of listed properties: It might look strange but this has been a big issue in the field of the cultural heritage in Turkey. The Directorate and the Regional Boards for Conservation of Cultural Heritage have been several times notified that certain monument or traditional house has disappeared from existence. In such cases the owner or the holder demands the removal of that specific cultural property from the register of monuments, consequently this removal will enable the holder of the property to develop freely without any limiting criteria.

The reasons usually given for the unintended disappearance are: *demolished by natural causes like excess rain, storm, earthquake, or being burnt or knocked down by vagrant, illegal stray people*. If the delinquent is not defined, the owner or the holder would not be held responsible for the irresponsible attitude towards the listed property. Unfortunately, this is a designed scenario.

Normally the case is taken to the court by the public prosecutor, but such a consequence has not been a discouraging factor for the people who intend to destroy their property.

Banning and prohibiting have not proved to be effective policies in conservation process. One potential solution is to reduce the burden of the maintenance of cultural properties and to inform the owners of the opportunities how to take advantage of the historical and cultural values. One effective way has been the rehabilitation plans and gentrification efforts of the whole neighbourhoods by the municipalities, thus increasing the cultural and real estate value of the property. Such investments and implementations could be done by the local administration.

### Financial resources

Conservation of a cultural property is a difficult and costly process. The expenses of maintenance and repair have either to be generated by the property itself (rent, revenue, similar income, etc.) or there should be an outside resource to back-up or supply the amount needed. The first way is unfortunately very seldom an option and outsourcing is unescapable.

Outsourcing for conservation of cultural heritage has of course a conceptual and legitimate base, which is that we, the inheritors of old civilizations, are responsible and even obliged to keep them in good condition and to transfer the heritage to the future generations. What I mean by “we” is the general public, central and local governments, NGOs, citizens, and all others.



For this purpose, Turkish government has enacted a law which allocates a certain percentage of the annual real estate tax to be spent on the preservation of cultural heritage by the local administration. This has been a good start of financial aid to the conservation process, but still other resources have to be found.

The Ministry of Culture and Tourism is trying to give some financial help to the citizens for their preservation efforts but that is very limited. Some quasi-public organizations like the “Mass Housing Authority” are involved in urban renewal and gentrification projects. The implementation of their projects has still aroused concerns and serious debates as the preservation of authenticity and paying respect to cultural heritage principles has remained in the background in several cases.

In the rural areas many of the archaeological sites are on privately owned estates, and it is very costly to expropriate those lands. Another measure to acquire the sites is the “barter” instrument – an equivalent piece of land is given to the owner in exchange for the archaeological parcel in question. The difficulty in this mechanism is of course the limited availability of plots of similar value in the ownership of the public authorities.

### Concluding remarks

Turkey is a country where numerous cultures and civilizations have trodden on, left remains and traces of valuable historic and architectural elements. In fact, it is one of the rare countries which exhibits and reflects such a great variety of diverse cultures over a long time span. The heritage inherited is an invaluable national richness, but at the same time a responsibility as well as a burden to preserve it in good way.

Looking at the history of the preservation and conservation processes in Turkey, one can see that there has been a gradual but continuous development throughout a period of approximately fifteen decades. There is no need to criticize the overall performance of heritage protection in the country, but I want to point out some of the important problems or failures in this context.

The administrators both at the national and local levels have not paid enough attention and importance to the conservation activities of cultural heritage. This has led to inadequate resource allocation for this field, and this is still causing the problems.

The people and the citizens of this land have not had the necessary respect and willingness to care, wider unconsciousness of the inherited cultural properties has led to savage destruction and sometimes plundering of the valuable artefacts and treasures. The leaders and politicians of the country have not introduced timely measures and mechanisms to prevent this destruction.

Laws and regulations are quite adequate, and the technical expertise level of the country is well developed. What is urgently needed is a campaign of “awareness raising” and “consciousness creating” among citizens, so that everyone believes in the value of the heritage of our predecessors and supports actively this goal.



Hagia Sophia in Istanbul. Patriarchal Basilica (537-1453), Imperial Mosque (1453-1935), Museum (1935- present). A good example of a well preserved monument.

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# SENSE OF PLACE: THE INTERSECTION BETWEEN BUILT HERITAGE AND INTANGIBLE CULTURAL HERITAGE IN SINGAPORE

JACK TSEN-TA LEE

Built heritage in Singapore is safeguarded through two legal regimes, one relating to national monuments declared under the Preservation of Monuments Act (Cap 239, 2011 Rev Ed), and the other relating to conservation areas declared under the Planning Act (Cap 232, 1998 Rev Ed). In contrast, no particular legal protection exists for intangible cultural heritage. Considering examples such as tomb inscriptions and rituals for honouring the deceased at Bukit Brown Cemetery, this article explores how built heritage can be secured and enriched by giving greater recognition and protection in international and domestic law to the intangible cultural heritage associated with it. There is also scope for built heritage to be used as a means of protecting intangible cultural heritage.

Tangible and intangible cultural property are sometimes thought of as occupying discrete spheres, with the result that different legal frameworks are required for their protection. While this may be true in some instances, in others there is likely to be an overlap. It is submitted that the protection of built heritage – a form of tangible cultural property – is one of the latter areas. In this paper, I will suggest that the concept of intangible cultural heritage can be used to assist in the preservation of built heritage, both in the international and domestic legal spheres. Conversely, built heritage can also help to safeguard some aspects of intangible cultural heritage. The discussion will be situated in the context of Singapore, a small city-state in Southeast Asia where the imperatives of urban development constantly pose a threat to its natural environment and its built heritage.

## I. The International Law Dimension

### A. Intangible Cultural Heritage

Singapore, which became an independent republic in 1965, was a member of UNESCO from that year until it left at the end of 1985, at that time the first developing country to do so.<sup>1</sup> This happened in the wake of the United States' decision to leave on 31 December 1984 over criticisms that the agency was then "overly political, badly managed, and often anti-Western",<sup>2</sup> not to mention "riddled with corruption".<sup>3</sup> Nonetheless, Singapore's Ambassador to France, who acted as the country's permanent representative to UNESCO, claimed that the decision was "totally independent" of the action taken by the US decision and had been "in the works for a long time, a very long

time, way before the United States made known its reactions". It was "not intended to indicate any disagreement or disapproval or criticism"; rather, over the years Singapore had not found participating in the agency's activities "of immediate interest", and as a small country it had other priorities "for our limited resources".<sup>4</sup> It appears the Government felt that Singapore had been asked to pay a disproportionate contribution to the agency's coffers.<sup>5</sup>

A hiatus of more than two decades followed, until Singapore officially rejoined UNESCO on 8 October 2007, having been wooed back by Director General Koichiro Matsuura.<sup>6</sup> (The United States had resumed membership in 2002.) In relatively short order, Singapore accepted the 1972 World Heritage Convention<sup>7</sup> ('WHC') on 19 June 2012,<sup>8</sup> and welcomed its first world heritage site – the Singapore Botanic Gardens – on 4 July 2015.<sup>9</sup> At present, the WHC is the only heritage-related convention that Singapore is a state party to.

In particular, it has yet to ratify the 2003 Intangible Cultural Heritage Convention ('ICHC').<sup>10</sup> There is every likelihood that this step will be taken at some stage, given that the Convention has gained wide international acceptance with 166 states parties

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as of 20 January 2016. Article 2 (1) of the Convention defines *intangible cultural heritage* in the following terms:

The “intangible cultural heritage” means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and *cultural spaces* associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups *in response to their environment*, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. ... [Emphasis added]

Intangible cultural heritage is therefore seen as a “response to [the] environment”, and embraces “cultural spaces” associated with practices, expressions, and so on. This obliges a state party, when fulfilling its obligation to “take the necessary measures to ensure the safeguarding of the intangible cultural heritage present in its territory”,<sup>11</sup> to provide adequate protection for built heritage that is associated with the strictly intangible elements of cultural heritage.

The reference to “cultural spaces” in the ICHC harks back to UNESCO’s Masterpieces of Oral and Intangible Heritage of Humanity programme which was established in 1997 before the adoption of the Convention. In the annex to a letter dated 26 April 2000 from the UNESCO Director-General to member states, a cultural space was defined as follows:<sup>12</sup>

[T]he anthropological concept of a cultural space shall be taken to mean a place in which popular and traditional cultural activities are concentrated, but also a time generally characterized by a certain periodicity (cyclical, seasonal, calendar, etc.) or by an event. Finally, this temporal and physical space should owe its existence to the cultural activities that have traditionally taken place there.

Harriet Deacon and Olwen Beazley have noted that “[i]ntangible heritage is probably best described as a kind of significance or value, indicating non-material aspects of heritage that are significant, rather than a separate kind of ‘non-material’ heritage”, and includes “social and spiritual associations, symbolic meanings and memories associated with objects and places. Tangible heritage forms all gain meaning through intangible practice, use and interpretation: ‘the tangible can only be interpreted through the intangible.’”<sup>13</sup>

The interconnectedness between cultural practices and built heritage is emphasized in the 2011 UNESCO Recommendation on the Historic Urban Landscape.<sup>14</sup> Clause 9 defines the term *historic urban landscape* as including “social and cultural practices and values, economic processes and the *intangible dimensions of heritage* as related

to diversity and identity”. Hence, when seeking to conserve urban heritage, intangible cultural heritage cannot be ignored.

The importance of this fact may be illustrated in the Singapore context by considering two adjoining cemeteries used by the Chinese community, Bukit Brown Cemetery and the smaller Seh Ong Cemetery – I will refer to them collectively as ‘Bukit Brown Cemetery’. The cemetery was established in the late 19th century by Chinese individuals and clan associations, and the land passed into the ownership of another clan association, the Seh Ong Kongs. In 1922, despite resistance from the clan association, the Government compulsorily acquired the land and converted the private cemetery into a municipal one. It remained in use until 1973 and is estimated to contain some 100,000 graves, making it the largest Chinese cemetery outside China.<sup>15</sup> There is democratization in death: the cemetery is the resting place of well-known pioneers of the Chinese community as well as of ordinary people, some of whom occupy the sections of the burial ground designated for “paupers”.<sup>16</sup> The cemetery was also a battle zone during World War II, and contains unmarked war graves.

From October 2013, the Government began constructing a four-lane road across the cemetery to deal with traffic congestion in the area,<sup>17</sup> with the loss of 4,153 graves.<sup>18</sup> Before the graves were exhumed, a documentation project was carried out on them. The cemetery as a whole remains in a highly vulnerable position as the Government has announced that it will eventually be cleared completely to make way for public housing.<sup>19</sup> Upon being nominated by an informal interest group called All Things Bukit Brown, the cemetery was placed on the 2014 World Monuments Watch list of cultural heritage sites at risk “from the forces of nature and the impact of social, political, and economic change”;<sup>20</sup> the first time a Singapore site has been listed.<sup>21</sup>

There are numerous forms of intangible cultural heritage associated with Bukit Brown Cemetery. The tombs themselves vary in grandeur, depending on the wealth of the deceased persons’ families. Many of them consist of a throne-shaped front portion into which an inscribed tombstone and an altar are incorporated, with a horseshoe-shaped wall forming the rear portion. The area within the wall is filled with soil, forming a mound. Explanations for this tomb shape vary; one is that the tomb is meant to resemble the womb, with the suggestion that the deceased is thus ‘reborn’ into another realm. Another is that the tomb represents a tortoise, a symbol for longevity.<sup>22</sup>

The tombs are often embellished with colourful tiles, some imported from Europe,<sup>23</sup> and poetry and sculptures from Chinese mythology. For example, some tombs feature statues of a young boy and girl – the *Jingtong* (Golden Boy) and *Yunü* (Jade Maiden), who may be disciples of the Buddha guiding the deceased’s soul through the underworld to paradise.<sup>24</sup> Tombs are also frequently supplied with sculpted protectors, either in the form of lions, *menshen* (‘door gods’ dressed in warriors’ garb), or – possibly



unique to this part of the world – Indian guards. The Chinese in Singapore were familiar with immigrants from India working as police officers, soldiers and security guards, and saw supernatural significance in these roles.<sup>25</sup>

Tombs were positioned according to principles of *fengshui* (literally ‘wind–water’), a system of philosophy which calls for structures such as buildings and gravesites to be oriented in certain ways with respect to the environment in order to bring good luck to deceased persons and their living survivors. High ground was believed to be particularly auspicious, which may explain the popularity of Bukit Brown as a burial site – *bukit* is a Malay word meaning ‘hill’. This belief was not well understood by the colonial government, which thought it undesirable that “all the small hills, which are the only suitable places for healthy houses in these countries, are taken forever, merely as a monument to the honour of one Chinese family and the personal vanity of one Chinese individual”.<sup>26</sup>

Also of importance are the religious rituals carried out at the cemetery, especially during the *Qingming* Festival (“Bright and Clear Festival” or “Festival of Clarity”), which falls on the 23rd day of the second lunar month, or in early April according to the Gregorian calendar. People visit their relatives’ tombs to clean them and to make offerings. The spring-cleaning may involve having the tomb repainted and the grass cut, and sweeping the area. A typical ritual begins with prayers made to the *Tudi Gong* (Earth God), often at a shrine that is part of the tomb itself, for permission for the deceased to accept the offerings. Food, candles and joss sticks are then laid out on the altar of the tomb, and a libation of tea or wine made. ‘Hell money’ and other paper offerings in the form of clothes and consumer goods are burned, the belief being that the smoke conveys the items to the deceased relative in the spirit world. Finally, pieces of coloured paper are scattered over the tomb’s mound to beautify it and show that the family has carried out its duties. Sometimes, such rituals are performed by temples or other organizations to honour forgotten ancestors whose family members have not come to pay their respects.<sup>27</sup>

There is arguably some justification for these aspects of intangible cultural heritage to be collectively inscribed on to the Representative List of the Intangible Cultural Heritage of Humanity or the List of Intangible Cultural Heritage in Need of Urgent Safeguarding if Singapore accedes to the ICHC, with the consequence that Bukit Brown Cemetery itself should be protected as the locus of the heritage. Indeed, the cemetery itself might be regarded as a cultural space deserving of inscription. Comparable examples of cultural spaces on the Representative List include Jemaa el- Fna Square in Marrakesh, Morocco, which “represents a unique concentration of popular Moroccan cultural traditions performed through musical, religious and artistic expressions”,<sup>28</sup> and sacred hills in Querétaro, central Mexico, which are an annual pilgrimage site for the Otomí-Chichimeca people.<sup>29</sup>

Concomitantly, it is submitted that the material culture and ritual practices associated with Bukit Brown Cemetery might also support it being declared a World Heritage Site under the WHC. In fact, this possibility was floated when the Government announced its bid to have the Singapore Botanic Gardens inscribed on the World Heritage List.<sup>30</sup> This prospect has been ruled out by the Singapore Government, at least for the time being. In July 2013 when Lawrence Wong, the Acting Minister for Culture, Community and Youth, was asked in Parliament whether, among other things, the Government would study if the cemetery met the criteria for qualifying as a world heritage site and whether a portion of the cemetery not designated for future residential development would be preserved, the Government’s written response was that “[n]ot all sites with local heritage value will qualify”, and that when it was considering which sites could be put up for a bid, “none of our stakeholders had surfaced the Bukit Brown cemetery as a candidate for consideration”. Nonetheless the Government recognized the cemetery’s “heritage value” and would study how it could be preserved, “taking into account future development plans for the area”. It intended to focus on the Botanic Gardens bid, as this would allow the Government “an opportunity to better understand UNESCO’s requirements and processes, before exploring other possibilities in the future”.<sup>31</sup>

The takeaway from the above discussion is the reciprocity between built (tangible) and intangible cultural heritage: built heritage may be protected as a locale closely associated with intangible cultural heritage (or even as intangible cultural heritage itself as a cultural space), while intangible cultural heritage may provide the significance justifying protection of built heritage.

## B. Memory of the World

An intriguing possibility is whether documentary content that is linked to built heritage, which is a form of intangible cultural heritage, may justify the protection of built heritage. In 1992, UNESCO launched the Memory of the World Programme (‘MWP’), and the first items of documentary heritage were inscribed on to the Memory of the World Register in 1997. According to the Organization, the programme’s vision “is that the world’s documentary heritage belongs to all, should be fully preserved and protected for all and, with due recognition of cultural mores and practicalities, should be permanently accessible to all without hindrance”.<sup>32</sup> A significant feature of the MWP is that nominations for the Register can be made by individuals and non- governmental organizations.<sup>33</sup> In contrast, under the World Heritage Site and Intangible Cultural Heritage schemes, nominations can only be made by the governments of member states.

The tombstones in Bukit Brown Cemetery contain a wealth of epigraphic material. Apart from lines of poetry and pictorial representations of Chinese legends, the in-



scriptions contain information about the deceased persons' ancestral villages in China, which may be used to reconstruct migration patterns. Biographical data such as achievements and honours received, photographs, and the names of spouses and descendants may also be present. It has been noted that female family members are often omitted from written genealogies, so examining tomb inscriptions may be the only way to draw up more complete family trees.<sup>34</sup>

Whether the cemetery would in fact meet the MWP's criteria would require much more study, but it is worth noting that inscriptions on stone stelae have been entered into the Register. These include the 82 stelae at the Temple of Literature in Hanoi, Vietnam, bearing information about laureates of Royal Examinations held between 1442 and 1779 which were given recognition in 2011;<sup>35</sup> and the Kuthodaw Inscription Shrines in Mandalay, Myanmar, consisting of 729 slabs on which are carved the Buddhist *Tipitaka* which were included in the Register in 2013.<sup>36</sup>

## II. The Domestic Law Dimension

### A. The Role of Intangible Cultural Heritage in Protecting Built Heritage

Naturally, one would expect the interconnectedness of built heritage and intangible cultural heritage that is evident in international law to be reflected in domestic law as well. In Singapore, built heritage is legally protected through two schemes: the conservation area scheme under the Planning Act ('PA'),<sup>37</sup> and the national monument scheme under the Preservation of Monuments Act ('PMA').<sup>38</sup>

The conservation area scheme is part of the broader way in which land development is managed according to a Master Plan applicable to the entire country. Essentially, the Minister for National Development has power to amend the Master Plan to declare an entire area, group of buildings, or even a single building as a conservation area.<sup>39</sup> The Urban Redevelopment Authority ('URA'), which is the government agency responsible for planning matters, then issues guidelines on how buildings or land within a conservation area may be developed, and the measures that must be taken to protect the setting.<sup>40</sup> A conservation area is defined as "any area... of special architectural, historic, traditional or aesthetic interest".<sup>41</sup>

The national monuments scheme gives to built heritage in Singapore the highest form of legal protection available. Hitherto, the status of national monument has generally been accorded to iconic structures such as large public buildings constructed during the colonial era, and religious buildings such as churches, mosques and temples. Under the PMA, one of the key functions of the National Heritage Board ('NHB') is "to identify monuments that are of such historic, cultural, traditional, archaeological, architectural, artistic or symbolic significance and national importance as to be worthy of preservation under this Act, and to make recommendations to the Minister for

the preservation under this Act of the monuments so identified".<sup>42</sup> Having consulted with the NHB, the Minister for Culture, Community and Youth may make a preservation order giving a site the status of a national monument. The preservation order may extend to land adjacent to a monument which is in the same ownership as the monument that is necessary to preserve the monument in its setting, to provide or facilitate access to the monument, or to enable the monument to be properly controlled or managed.<sup>43</sup>

It is also the NHB's responsibility "to determine standards and issue guidelines for the restoration and preservation of monuments... and for the proper control, management and use of such monuments", and "to determine the best method for the preservation of any national monument, and to cause or facilitate the preservation of such national monument in accordance with such method".<sup>44</sup> Owners and occupiers of national monuments have a duty to take all reasonable measures to properly maintain monuments in accordance with guidelines issued by the Board.<sup>45</sup>

The references to "historic", "cultural" and "traditional" interests or significance in the PA and PMA suggest that at least in some cases intangible cultural heritage such as traditional uses of, or activities associated with, a particular site are relevant when deciding whether the site should be gazetted as a conservation area or a national monument. The extent to which these matters are taken into account is unclear, as the processes for declaring sites to be conservation areas or national monuments tend not to involve much public participation.<sup>46</sup> There is no legal requirement for heritage impact assessments to be conducted and publicized, though presumably confidential assessments of some kind are carried out.

Moreover, although the URA has an obligation to notify the public of any proposal to amend the Master Plan by adding or removing a conservation area and allow people to submit objections or representations, and to hold a hearing or public inquiry,<sup>47</sup> the Minister for National Development has taken the position that a hearing may be dispensed with if nothing "new" and "substantive" has been raised.<sup>48</sup> This is despite the fact that the legislation only allows for "frivolous" representations to be disregarded.<sup>49</sup> Before a site is sought to be declared a national monument, the NHB is only required to give written notice to "the owner and occupier of the monument and any land adjacent thereto which will be affected by the making... of the preservation order".<sup>50</sup> As the Minister's intention to issue a preservation order is given no wider publicity, it is hard to see how other stakeholders such as non-governmental organizations can participate in the process unless they are specifically invited by the NHB to do so.<sup>51</sup> There is therefore scope for making the conservation area and national monument schemes more transparent and participative in general, which may aid in identifying intangible cultural heritage associated with built heritage that would bolster a case for the latter to receive legal protection.



## B. The Role of Built Heritage in Protecting Intangible Cultural Heritage

If Singapore accedes to the ICHC, thought should be given to whether legal protection should be given to intangible cultural heritage in its own right, perhaps through a statute akin to Japan's Law for the Protection of Cultural Properties.<sup>52</sup> Such a law might, in fact, help the authorities administer the conservation area and national monument schemes by ascertaining in advance important manifestations of intangible cultural property that should be taken into account. In the meantime, it is worth thinking about how built heritage can be one of the means of protecting intangible cultural heritage.

Given that built heritage often embodies the cultural space within which intangible cultural heritage is given expression, it stands to reason that it may be appropriate to regulate some sites in ways that preserve and promote cultural activities and practices associated with them. Where conservation areas and national monuments are concerned, the relevant authorities can achieve this by specifying prohibited and permitted (or preferred) uses for the sites.

An illustration of how the insensitive use of a site can lead to anger and unhappiness is provided by an incident involving CHIJMES, a dining and retail complex in the city centre occupying a former convent and school called the Convent of the Holy Infant Jesus (often abbreviated to 'CHIJ'). The convent's chapel, now renamed CHIJMES Hall, was deconsecrated and declared a national monument in 1990, while other parts of the complex are a conservation area. The Hall may be rented for functions such as weddings and what the CHIJMES website calls "corporate events".

In 2012, complaints were made to the police and various government departments about an event at the CHIJMES Hall billed as the "Escape Chapel Party" to be held on Holy Saturday, the day between Good Friday and Easter Sunday. In promotional material for the event, the organizer, which had rented CHIJMES Hall, had said it would be a "sacriligious night of partying", and included photographs of women dressed in skimpy costumes resembling nuns' habits.<sup>53</sup> The Roman Catholic Archbishop of Singapore called the event "scandalous to the Church" and said it should not be held in the chapel.<sup>54</sup> The company managing CHIJMES eventually stepped in and asked the organizer to cancel the event, and the organizer issued an apology for any offence caused.<sup>55</sup> Although some people might have considered the event harmless fun, it clearly offended the Roman Catholic Church and some of its adherents. The fact that CHIJMES Hall had been deconsecrated and was no longer a chapel in the strict sense of the word made no difference – there remained a strong connection between the building and its previous use as a place of worship. In a statement, the Ministry of Home Affairs said that if the event had gone ahead, the organizer might have breached one of the conditions of the public entertainment licence issued for the event.<sup>56</sup> In addition, given CHIJMES's status as a national monument and conservation

area, should the NHB and URA have issued guidelines proscribing certain uses of the complex to preserve people's 'cultural memory' of the buildings' significance and thus safeguard the intangible cultural heritage associated with the complex?

## III. Conclusion: The Challenges Ahead

Intangible cultural heritage and built heritage are frequently intertwined, and thus mutually supporting. The intangible cultural property associated with built heritage may be the element that makes the mere bricks and mortar worthy of preservation. Indeed, the built heritage itself may be a form of intangible cultural property as a space in which cultural activities and practices are performed. On the other hand, built heritage may continue to resonate with the cultural memory of its former use, and thus preserving a site may help to protect intangible cultural property.

Of course, protection of cultural heritage in all forms poses various challenges. For instance, given Singapore's largely immigrant population and close cultural links to neighbouring countries, claims over what constitutes its intangible cultural heritage are likely to be controversial. In 2009, Malaysia's then Tourism Minister, Ng Yen Yen, claimed that "other countries" which she did not name had "hijack[ed]" some of its traditional dishes. Versions of some of the dishes she identified, such as *bak kut teh* (pork rib soup), chilli crab, Hainanese chicken rice, and *laksa* (noodles in coconut gravy), can be readily found in a number of Asian countries, including Singapore.<sup>57</sup> This issue was foreseen by the ICHC which recognizes that intangible cultural property often cannot be confined within the borders of one country, and thus encourages countries to propose multinational inscriptions.<sup>58</sup>

We have already seen how economic development may be prioritized above preserving heritage. While legally restricting the uses to which built heritage can be put in the name of protecting intangible cultural heritage seems like a good idea, one must be aware that such conditions may conflict with the principle of adaptive reuse of buildings. Restrictions may also cause such buildings to become less attractive to developers or lessees, resulting in a fall in value. It may be worth exploring whether a combination of restrictions and the use of incentives to encourage voluntary adherence to recommended or preferred uses would be more appropriate. Ultimately, if a nation's people are not to feel dislocated or that they have lost their identity, some way to accommodate both heritage and progress must be found.



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# HERITAGE LEGISLATION IN BRUSSELS: INTEGRATED CONSERVATION AND URBAN DEVELOPMENT

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The cultural heritage legislation in Belgium has been several times modified since the middle of the 20th century. First of all, there are the following principal European heritage impulses: Venice Charter 1964, Heritage Year 1975, Heritage Days since 1991, the ratification of several European and international conventions.

Besides this, there is the evolution in the structure of the Belgian state from an unitary state to a composite Belgian state. In this process, the decentralization of the heritage public policy led to an important fragmentation of the practice of it by the different, newly created, federated, public authorities of Belgium.

Each federated public authority received the possibility to adopt and develop its own legislation, in accordance with its own specificities.

For historical monuments and landscapes, the integrated conservation's doctrine has been put in place and, in the case of the urban territory of the Brussels Capital Region, it has led to a heritage priority in the management of the existing urban fabric.

## The implementation of legal protection for cultural heritage in Belgium (1931-1989)

In Belgium, the legislation facilitating protection of elements of cultural heritage dates from the Interwar period, namely the Law of 7 August 1931 on the conservation of monuments and sites. The first elements protected were mainly churches, castles and some municipal public buildings. In the aftermath of the Second World War, Belgium got back on its feet particularly quickly. The 1950s were characterised by a major economic, industrial and urban expansion during which little attention was given to the preservation of old buildings, which were seen as obstacles to progress. All major Belgian cities experienced the phenomenon of "urban renewal" which, at the time, meant demolishing the existing fabric and rebuilding it from scratch; this reached its height in Brussels and the phenomenon soon became known as "Brusselisation". At the same time, the Second Vatican Council resulted in profound changes in how churches were used, which was not without consequences for the preservation of the ancient heritage that they represented.

In response to these rapid changes, the eco-museum of Bokrijk (province of Limburg) was created in 1953, which brought together, in an open air museum, a hundred or so traditional Flemish rural and urban houses which had been dismantled and reassembled. In Brussels too, a number of architectural elements were also transformed into archaeological objects, being moved and partially preserved away from their original site. In Wallonia, the Saint Michel Foundry Rural Life Museum in Saint Hubert followed the same principle but over ten years later. This method of protection by means of relocation has now been completely superseded by the increasing importance of authenticity.

Another type of response emerged via the creation of associations for the protection of urban heritage and the environment with a sometimes more "militant", sometimes more "scientific" focus; these were the neighbourhood committees that were spontaneously supported by numerous intellectuals, most notably by heritage architects, such as Brussels' Arts Quarter in 1967 and the Marolles Committee in 1968, but also included associations with a broader vision such as the *Atelier de Recherche et d'Action Urbaines* (ARAU: Workshop on Urban Research and Action) and the *Archives d'Archi-*



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*tecture Modernes* (AAM: Archives of Modern Architecture) in 1969; the *Brusselse Raad Voor Het Leefmilieu* (BRAL: Brussels Council for the Environment) in 1973, *Inter-Environnement* in 1974 (which started in the capital but was also exported to Wallonia) and *Sint-Lukasarchief* (the Flemish section of the archives of the Saint-Luc Institute of Architecture) in 1979. This proliferation of associations, which could be found at different levels, sometimes in each locality or each urban district, is still largely in evidence today but have sometimes struggled at around the forty-year mark: the founders have left, momentum is petering out and such structures do not directly appeal to the new generation. The new web-based media is, bit-by-bit, taking over and old associations are modernising their communication methods with a move towards blogs, Facebook pages and other “Heritage Alert” type websites which can also raise awareness and mobilise hundreds of people.

Conservation professionals have also been mobilising themselves since the early 1960s. In Belgium, the Belgian inventory of built heritage was launched in 1965 under the auspices of the Ministry of Culture (it used the inventories compiled at the time of the two world wars as a basis. These were drawn up by Belgians concerned with preservation or reconstruction as well as by the occupiers busy with preparing a Pan-Germanic inventory). At international level, the Venice Charter of 1964 led to the founding of the International Council of Monuments and Sites (ICOMOS) in 1965, with the active founding participation of two post-war Belgian figures, Professor Raymond Lemaire, in the field of immovable heritage, and Professor Paul Philippot, in the area of moveable heritage. The Belgian national committee of ICOMOS was established the same year.

The regulatory state and architects of urban structures, spaces and landscapes were more reluctant and slower to incorporate the movement of heritage status recognition. The Organic Law on Land Use and Urban Planning of 29 March 1962 was amended several times to enable greater incorporation of heritage as an element of quality in planning for the living environment of citizens as well as to ensure priority for the major property groups wishing to invest in development projects. This meant that it was a slow process and while R. Lemaire was able, in 1964, to convince the Catholic University of Leuven to restore and convert the former *béguinage* (a type of lay convent) in the city into a residential complex, it was not possible to prevent the destruction of Victor Horta’s *Maison du Peuple* in 1965.

The 1970s marked a turning point that benefited from the proliferation of the aforementioned initiatives while, at the same time, the heritage conservation movement joined forces at international level, most notably via ICOMOS and ICOM. The movement found an official spokesperson in the Council of Europe which was conferred with competence in cultural matters and which eventually led to the European Year of Heritage in 1975. At the same time, UNESCO adopted the World Heritage Convention in 1972. In Belgium, all of this was only slowly and with difficulty echoed in the new

institutions that were established. In fact, from 1970 onwards, Belgian democracy underwent profound changes in terms of the empowerment of the linguistic communities and regional realities. This resulted in the establishment of separate cultural councils for French-speakers and Dutch-speakers with separate parallel commissions for the bilingual territory of Brussels. In charge of culture, these institutions, supported by a very powerful regionalist political movement, wholeheartedly exercised their new authority; a case of showing that they existed. One of the areas of activity was precisely heritage; administrations were established, secured resources (quickly reduced by the 1974 crisis) and introduced new policies. In this way, the volumes of the Inventory of Belgium’s Built Heritage appeared at regular intervals, starting in 1971, with the monumental task taking a quarter of a century. The inventory is currently being revised, updated and reclassified. A new actor appeared at the end of the 1970s, the King Baudouin Foundation (KBF). The objective of this public benefit institution, founded in 1976, is to improve the living conditions of Belgian citizens. The protection and promotion of cultural heritage was, quite naturally, soon identified as a major area of concern for the KBF. In 1981, it published a “White Paper on Immoveable Cultural Heritage”, a landmark event that served to define public policy in the area for a number of years. At the same time, the transformation of the Belgian state continued with the almost complete transfer of state competencies in cultural matters to the federated entities defined on the basis of their languages. Between 1970 and 1990, heritage as an area of public action found itself stuck at a crossroads as the complexity of the new institutions not only precluded any action from being taken at national (now referred to as federal) level, but also pretty much at regional and community level as well. The reference to linguistic community is especially delicate in the case of heritage because, while the language of heritage is certainly universal, monuments and masterpieces cannot be asked to choose their linguistic role. Territory was therefore used as a criterion (in 1962, the territory of Belgium had been divided into several linguistic regions): for regions officially declared to be linguistically homogenous, connecting monuments to a given linguistic community did not pose any problem. However, for the bilingual Brussels region, this led to an impasse, to 20 years of stasis that was highly damaging to this silent heritage. This situation continued until very recently (Sixth State Reform of 2014, currently being implemented) in the case of movable cultural heritage and intangible cultural heritage located within the bilingual territory of Brussels. During this period, Belgium did not succeed in ratifying the World Heritage Convention and did not therefore register any asset on the list under this Convention.

### The regionalisation of immovable cultural heritage in Brussels (1989-2014)

The situation greatly improved for immovable cultural heritage after 1988-1989 (but at the expense of separation from all other cultural matters) since the Regions became fully competent in this area, completely independent with no more federal remit. This was also the case to the same extent for policy relating to land use planning



and public works. Since the early 1990s, heritage policy has been reinvigorated under the auspices of the regional entities (Flanders, Wallonia and Brussels) as a result of two phenomena:

1. In the end, the three regions opted for the principle of “integrated conservation” (advocated by the Venice Charter, tested in Belgium during the German occupation with a certain amount of success), namely that the administration and legislation concerning heritage conservation (i.e. monuments and sites as well as archaeology) become a branch of the administration and legislation relating to land-use planning (this option is a two-sided coin: on the one hand, heritage conservation can become just as essential as the administration of land use planning administration with the latter’s support and where it endorses conservation options; on the other hand, the heritage sector has lost a large part of its independence and can no longer serve as an official actor to intervene in the face of planning permission that is incompatible with heritage).

2. The Regions viewed the authority that they had been given in relation to heritage as a mechanism for developing a budding identity > Belgian heritage making way for Patrimoine wallon (Walloon heritage) and Vlaams Erfgoed (Flemish heritage). In Brussels, the phenomenon took off in a more unobtrusive manner since a bilingual regional identity had, politically, been very slow to emerge. Nevertheless, heritage departments were created in each region, independent regional legislation was adopted which replaced, in less than 5 years, the framework inherited from federal level (namely the 1931 law); research and management institutions were created and a policy of communication, messaging, publication as well as major awareness-raising campaigns was initiated, such as “Heritage Days” and “Heritage Classes”. Like everywhere else, there was real enthusiasm. However, it involved three separate parallel but similar regional dynamics with little cooperation between them. Cooperation was only re-established within an international context such as, for example, within the European Heritage Heads Forum.

Wide-ranging campaigns to protect heritage assets were launched. Belgium’s delay in this area was constantly alluded to in the 1980s and 1990s. The situation in the Netherlands was often taken as a comparison. In 1980, the KBF’s white paper stated: Belgium 3,500 listed monuments, the Netherlands: 42,000; in 1992 Brussels 350 listed buildings and Amsterdam 3,500! State buildings, traditionally not listed, were listed; typological series were completed and, above all, new ones inserted. In the 1931 law, a monument or site could be listed due to its national historical, aesthetic or scientific interest. The new regional legislation, evidently, no longer refers to the “national” requirement (it is therefore implicitly both “regional” and “national” in the sense of the part of the national heritage located within the territory of each region, with this national level often being *de facto* defined by what merits being recognised abroad and it is therefore, in reality, about an international level; European or global).

As regards the values highlighted, the three adjectives used in the 1931 law are supplemented by: historical, archaeological, artistic, aesthetic, scientific, social, technical or traditional (this is the Brussels list; there are some slight differences in the two other regions). New areas are being investigated both in terms of inventories and conservation campaigns and concern industrial and commercial (shops, cafés, front windows, etc.) heritage. Works of art are also listed along with bridges, train stations, hydraulic structures. The notion of “everyday heritage” is also being developed; in towns, urban furniture such as tram or bus shelters, kiosks or elements of building façades; in rural settings, fountains and chapels, boundary markers, etc. Whether listed or not, local heritage such as this is identified in each village or urban district. The general enthusiasm and success of the awareness-raising campaigns, as well as the developments of the citizens’ movement goes to show that alongside the heritage of “historical monuments” there is an entire series of heritage elements that make sense at local level. The neighbourhood committees are very active in Belgium (intersecting all three regions). Public policy and politicians have reinforced this sense of regional identity by recognising, through the process of listing, the heritage values present. On top of this, the initiative regarding listing is no longer exclusively reserved for public authorities, and property owners and associations may now also submit applications.

Within the Belgian institutional system, the competition between the different components of the state is very real. Within this context, heritage is a way for the regional authorities to obtain positive exposure and recognition. It is a sector in which there is no longer any policymaker at federal level. The highest authority within the country is the quartet of ministers in charge of heritage (and, more often than not, land use planning too). Without a doubt, this situation was very favourable to the development and support of public heritage policies. However, the role of local authorities must not, of course, be under-estimated, with certain cities, particularly in Flanders (Bruges, of course, as well as Ghent, Antwerp and Mechelen, for example), making their immovable and moveable cultural heritage their main pride and joy and a veritable centre of development and draw for tourism and housing.

An in-depth comparative study would need to be carried out of the content of the heritage inventories in the 3 regions as well as the list of protected heritage, to identify the trends specific to each that are likely to emerge and which would be interesting to interpret. In any event, some general trends can be seen, most notably: an attempt to ensure balanced distribution > there needs to be heritage recognised by the regional authority throughout the territory of the Region, preferably in each municipality (which is easier since the merger of municipalities in 1977); the attention given to the works of major architects: Flemish, Walloon and Brussels-based architects provided that their creations are well represented in their original or adoptive region. In Flanders, there is no doubt that great prominence is given to the historical heritage of the main medieval towns. In Wallonia, the showcasing of industrial and social heritage



is closely managed. In Brussels, given that the question of identity is more sensitive and due to its smaller surface area of 165 km<sup>2</sup>, meaning that the amount of heritage is also limited, it was easier to institute operations of a systematic and exhaustive nature. The same is true for the inventories: an archaeological map at urban plot scale for all periods from prehistoric times to the 17th century; a systematic inventory of all landscaped green spaces and all notable trees; an inventory underway of all premium buildings based on a systematic examination of all the planning archives in all the municipalities, etc. In this exhaustive inventory, the listings were positioned to show the full diversity of the heritage as well as to highlight what were deemed major phenomena such as Art Nouveau, the key figure there obviously being Victor Horta, but which resulted in the gradual conferring of heritage status on everything developed based on the works of Horta and his disciples.

### The future of heritage in Brussels

Listed? Then, let's keep it! Not listed? Then, let's discard it! Defenders of heritage want to prohibit any contemporary work on the city while urban developers dream of demolishing everything and rebuilding. The gap between an idealised theoretical option and what the pragmatic reality of common sense should dictate is particularly wide in both camps. We too often witness a minimalist, dichotomous, simplistic debate consisting of applying a highly demanding conservation policy to listed assets and too frequently proposing the demolition and rebuilding of anything that has not been listed.

The decision to integrate heritage conservation with land use planning taken 25 years ago was intended to overcome the apparent conflict between heritage conservationists and developers. This wish has not yet been completely fulfilled. The weight of tradition, unsuitable academic training curricula and old habits giving rise to mutual mistrust have all directly prevented this ideal from being achieved. It is necessary to put an end to this antagonism via an objective alliance between two tendencies, each of which now have a lot to lose by maintaining contradictory positions. In fact, heritage is a major asset for Brussels. Developers cannot reasonably disregard it simply because they do not think it is possible to engage in dialogue with conservationists. In the same way, conservationists cannot expect to conserve for and by themselves. It is therefore necessary to encourage and increase dialogue between the two sectors so that they can live up to the high expectations of citizens.

The protagonists are faced with another challenge today: how can they contribute to sustainable development? Heritage, by the simple fact of its continued existence today, sometimes several hundred years old, is testament to a particular efficiency in terms of sustainability that ought to be a source of inspiration for our own development. First of all, in the spirit of reducing use of the planet's natural resources and the

energy costs resulting from such use, the demolition of brickwork to replace it with materials currently available on the construction market is clearly very wasteful. Similarly, in the area of energy performance of buildings, the method of calculation generally proposed, but not, however, required by the 2002 European Directive, routinely leads to an under-evaluation of the performance of existing buildings. Indeed, article 4 of the European Directive stipulates: *"When setting requirements, Member States may differentiate between new and existing buildings and different categories of buildings. These requirements shall take account of general indoor climate conditions, in order to avoid possible negative effects such as inadequate ventilation, as well as local conditions and the designated function and the age of the building. These requirements shall be reviewed at regular intervals which should not be longer than five years and, if necessary, updated in order to reflect technical progress in the building sector"*. Furthermore, even if the energy performance of a new building is exemplary - with regard to the standards currently in force - it is often forgotten to calculate the energy costs of demolition and removal of materials, even if they are at least partially recycled, as well as the energy costs of production and the methods used to install the high efficiency materials for which the guarantees over one hundred years are unknown. The burden of proof must be reversed. It is not the job of heritage to prove that it is efficient over a one hundred year lifetime; it is the job of new building technologies to do so.

When a public or private property owner wishes to renovate and repurpose an existing building, with the price being the same, he or she has two options: demolish and rebuild or renovate and restore. For the owner, the renovation/restoration option implemented by small and medium enterprises does not cost any more than the demolition/reconstruction option carried out by the major construction groups.

This extreme clash between the possible options available to mainly public sponsors is apparent in another area, namely the appropriateness of renewal with regard to maintenance. There, too, the excuse of lower costs is, once again, often put forward. In this way, for any given public space, the option chosen is a renovation that will use materials and planted areas necessitating the least amount of maintenance possible, to the possible detriment of the very quality of the urban environment and aesthetics, and even at a high price, provided that there is no need to invest in the management of maintenance staff, and even if it means repeating the operation more frequently than normal. Here too, cost is not the issue over the long term because, over the long term, maintenance is always less costly than significant investments.

These examples are an attempt to show that heritage and architecture, which are essential to ensuring the quality of the urban living environment, have everything to gain from making well-reasoned choices in terms of quality that satisfy the triple requirements of being economical, efficient and effective and which are recommended for proper management of both public and private affairs. However, such choices are





not the ones towards which the most powerful players in the market attempt to steer both public and private decision-makers. It is therefore up to such decision-makers to resist these diversions by demanding quality options.

The *"Brussels Declaration for the future of architects"*, adopted on 10 April 2008 by the Conference of the Architects' Council of Europe which was held in Flagey, contains a number of elements which are reflected in the above considerations: *"It is necessary to better understand why the market does not completely respond to the desire of citizens for a high quality built environment", "it would be necessary to reform the procedures for awarding public tenders by making quality the main objective which must take precedence over the cheapest bid", "all professionals of the built environment must recognise that sustainability is essential. One challenge that needs to be overcome is the need to renovate our cities, to design policies and techniques that are on the scale of the challenge that will ensure a sustainable future for our cities.", "cultural quality and diversity generate dynamism, an identity, character and real appeal for places - which is also accompanied by economic, social and environmental benefits".* The 34th Congress of the International Union of Architects which was held in Turin in July 2009 confirmed this positioning in its final declaration which also reiterated that *"heritage, in all its forms, must be preserved, showcased and passed on to future generations as a testament to human experience and future aspirations so as to encourage creativity in all its diversity and inspire a real dialogue between cultures"*.





# HISTORICAL PERSPECTIVE ON THE TRANSPOSITION OF THE 1972 UNESCO WORLD HERITAGE CONVENTION IN THE NATIONAL LEGISLATIONS OF ITS STATES PARTIES

BÉNÉDICTE GAILLARD

As of August 2017, the 1972 UNESCO World Heritage Convention counts 193 States Parties and can be consequently considered as one of the most universal treaties. This Convention aims to protect the cultural and natural heritage of humankind at the international level. To do so, the World Heritage Committee – a body of 21 States Parties to the World Heritage Convention elected for 4 years – decides yearly to inscribe new sites on the World Heritage List. The World Heritage Committee also reviews the state of conservation of the World Heritage Sites when they are endangered by threats such as armed conflicts, natural disasters, development projects, etc. It can decide to place a site on the List of World Heritage in Danger or to delist a site if it considers that the site has lost its Outstanding Universal Value, authenticity and integrity, based on which it had originally been inscribed on the World Heritage List. At the national level, the States Parties to the World Heritage Convention have rights but also obligations and responsibilities towards the Convention. After ratifying it, how do the States Parties transpose the World Heritage Convention in their national legislations? What are the direct and indirect legal effects? Is there a difference between centralised states and federal states? 45 years after the adoption of the 1972 UNESCO World Heritage Convention, this paper presents a historical perspective on the interpretation of this Convention in the national legislations of its States Parties. First, an analysis of the rights, obligations and responsibilities of the States Parties to the World Heritage Convention is elaborated. Then, a selection of case studies from different political systems permits to enlighten the similarities and differences among the States Parties. Finally, based on these results some perspectives for the future use of the World Heritage Convention are elaborated upon.

## Introduction

In order for a state to be part of an international treaty, it has to adopt it via a certain type of instrument. As table 1 shows, there are four different types of instrument to become a State Party to the World Heritage Convention: ratification, acceptance, accession, and notification of succession. The majority of the States Parties to the World

Heritage Convention has ratified it (105). Then, the second most popular type of instrument is the acceptance (71). Finally, only a very few States Parties to the World Heritage Convention have opted for the accession (3) and some States Parties have chosen the notification of succession (13).

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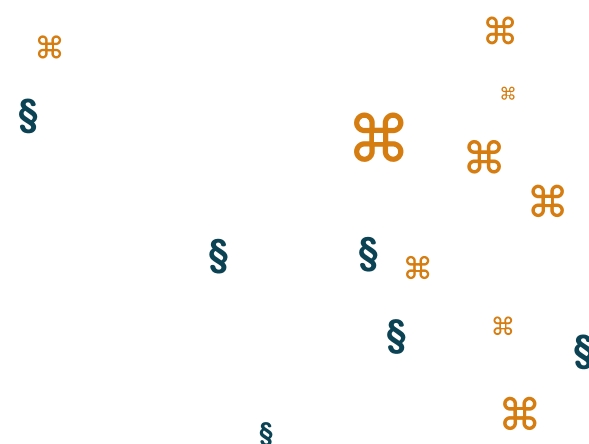




Type of instrument	Definition	States Parties
Ratification	<p>Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act.</p> <p>[Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]</p>	105
Acceptance	<p>The instruments of “acceptance” or “approval” of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty.</p> <p>[Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969]</p>	71
Accession	<p>“Accession” is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.</p> <p>[Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]</p>	3
Notification of Succession	<p>Means in relation to a multilateral treaty any notification, however phrased or named, made by a successor State expressing its consent to be considered as bound by the treaty.</p> <p>[Art. 2 Para. 1.g., Vienna Convention on Succession of States in respect of Treaties 1978]</p>	13

Table 1: Definition of the four types of instrument and their repartition among the States Parties to the World Heritage Convention. Source: B. Gaillard

Consequently, the aim of this article is (1) to analyse the rights, obligations and responsibilities of the States Parties to the World Heritage Convention; (2) to compare the transposition of the World Heritage Convention in the national legislations of centralised vs. federal states with the cases of France, Germany and Spain; and (3) to develop perspectives for the future use of the World Heritage Convention.





## Rights, obligations and responsibilities of the States Parties to the World Heritage Convention

Table 2 summarises the rights (Article 3, WHC), obligations (Article 4, Article 7, Article 11 paras. 1, 2, 3, 4, WHC) and responsibilities (Article 5, Article 6 paras. 1, 2, 3, WHC) of the States Parties to the World Heritage Convention. For a detailed legal analysis of the articles of the World Heritage Convention, see Francioni & Lenzerini (2008), Gaillard (2014) and Albrecht and Gaillard (2015).

### World Heritage Convention (WHC)

World Heritage Convention (WHC)	Purpose of the Article
Article 3, WHC	States Parties identify the cultural and natural heritage as defined in Articles 1 and 2, WHC located on their territory
Article 4, WHC	Duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage situated on its territory, belongs primarily to the States Parties. They do all they can to this end, to the utmost of their own resources.
Article 5, WHC	To ensure that effective and active measures are taken for the protection, conservation and presentation of the cultural and natural heritage each State Party shall endeavour: <ul style="list-style-type: none"> <li>⌘ to adopt a general policy</li> <li>⌘ to set up within its territories services for the protection, conservation and presentation of the cultural and natural heritage</li> <li>⌘ to develop scientific and technical studies and research</li> <li>⌘ to take appropriate legal, scientific, technical, administrative and financial measures</li> <li>⌘ to foster the establishment or development of national or regional centres for training</li> </ul>
Article 6 para. 1, WHC	Cooperation of the international community to protect the heritage defined in Articles 1 and 2, WHC while respecting the sovereignty of the States Parties

Article 6 para. 2, WHC	The States Parties undertake, in accordance with the provisions of this Convention, to give their help in the identification, protection, conservation and presentation of the cultural and natural heritage referred to in paragraphs 2 and 4 of Article 11 if the States on whose territory it is situated so request.
Article 6 para. 3, WHC	The States Parties do not take measures which could damage the heritage defined in Articles 1 and 2, WHC
Article 7, WHC	International protection of the world cultural and natural heritage shall be understood to mean the establishment of a system of international co-operation and assistance designed to support States Parties to the Convention in their efforts to conserve and identify that heritage.
Article 11 para. 1, WHC	Submission of a Tentative List by the States Parties
Article 11 para. 2, WHC	The World Heritage Committee “establish[es] keep[s] up to date and publish[es]” the World Heritage List
Article 11 para. 3, WHC	The consent of the States Parties is required for the inclusion of a site on the World Heritage List
Article 11 para. 4, WHC	The World Heritage Committee “establish[es], keep[s] up to date and publish[es]” the List of World Heritage in Danger

Table 2: Description of the purpose of the relevant articles of the World Heritage Convention concerning the rights, obligations and responsibilities of the States Parties. Source: B. Gaillard



## Case studies

In order to compare the transposition of the World Heritage Convention in different political systems, three case studies have been selected: (1) France because it is a centralised state; (2) Germany because it is a federal state, that has been reunified from a federal state (Federal Republic of Germany) and a centralised state (German Democratic Republic); and (3) Spain because it is a federal state whose federated states have the legislative competence regarding heritage protection and nature conservation.

### France

Acceptance of the World Heritage Convention	26 June 1975
Centralised State	18 “régions” and 101 “départements”
LAW n° 2016-925, dated 7 July 2016 concerning freedom of creation, architecture and heritage modified Heritage Code, Legislative Part, Book VI, Title I, Chapter II, Art. L. 612-1 Heritage Protection	Mention of World Heritage
Environmental Code, last modified on 1 October 2016 Nature Conservation	No mention of World Heritage

Table 3: Relevant information on the case of France as a State Party to the World Heritage Convention. Source: B. Gaillard

### Germany

Ratification of the World Heritage Convention 23 August 1976 (FRG) 12 December 1988 (GDR)	Accession of the GDR to the Basic Law of the FRG, with effect from 3 October 1990 Union of the two German States to form one Sovereign State.
Federal State	16 “Länder” with exclusive legislative competence of the <i>Länder</i> for heritage protection and concurrent legislative competence of the Federation and the <i>Länder</i> for nature conservation
Mention of the WHC Nature Conservation	Federal Nature Conservation Act, dated 29 July 2009
No mention of the WHC (11) Heritage Protection	Bremen (1975), North-Rhine Westphalia (1980), Baden-Württemberg (1983), Hessen (1986), Saxony (1993), Berlin (1995), Mecklenburg Western-Pomerania (1998), Brandenburg (2004), Saarland (2004), Thuringia (2004), Bavaria (2009)
Mention of the WHC (5) Heritage Protection	Hamburg (1973), Lower Saxony (1978), Rhineland-Palatinate (1978), Saxony-Anhalt (1991), Schleswig-Holstein (1996)
No mention of the WHC (16) Nature Conservation	Saxony-Anhalt (1992), Lower Saxony (1994), Hessen (1996), Thuringia (1999), North-Rhine Westphalia (2000), Mecklenburg Western-Pomerania (2002), Brandenburg (2004), Baden-Württemberg (2005), Saarland (2006), Schleswig-Holstein (2007), Saxony (2007), Hamburg (2007), Berlin (2008), Bremen (2010), Bavaria (2011), Rhineland-Palatinate (2015)

Table 4: Relevant information on the case of Germany as a State Party to the World Heritage Convention. Source: B. Gaillard



## Spain

Acceptance of the World Heritage Convention	4 May 1982
Federal State	17 “ <i>comunidades autonomas</i> ” Competence for heritage protection and nature conservation to the <i>comunidades autonomas</i>
No mention of the WHC Heritage Protection	Law 16/1985, dated 25 June, on the Spanish Historical Heritage
Mention of the World Heritage Sites Nature Conservation	Law 42/2007, dated 13 December, on the Natural Heritage and Biodiversity
Mention of the WHC (1) Heritage Protection	Aragon (1999)
No mention of the WHC (16) Heritage Protection	Basque Country (1990), Catalonia (1993), Valencia (1998), Cantabria (1998), Balearic Islands (1998), Canary Islands (1999), Extremadura (1999), Asturias (2001), Castilla y Leon (2002), La Rioja (2004), Navarre (2005), Murcia (2007), Andalusia (2007), Castilla-La Mancha (2013), Madrid (2013), Galicia (2016)
Mention of the WHC (1) Nature Conservation	Aragon (2015)
No mention of the WHC (16) Nature Conservation	Asturias (1991), Murcia (1992), Valencia (1994), Madrid (1995), Navarre (1996), Extremadura (1998), Castilla La Mancha (1999), Canary Islands (2000), Galicia (2001), La Rioja (2003), Balearic Islands (2005), Catalonia (2005), Cantabria (2006), Andalusia (2007), Basque Country (2014), Castilla y Leon (2015)

Table 5: Relevant information on the case of Spain as a State Party to the World Heritage Convention. Source: B. Gaillard

The comparison of these three case studies shows that while France and Spain have accepted the World Heritage Convention, Germany has ratified it. The three states have become States Parties to the World Heritage Convention at a rather early stage (1975 for France, 1976 for the Federal Republic of Germany, and 1982 for Spain).

In addition, in the three cases, if the World Heritage Convention is mentioned in the national legislations it is more likely to be mentioned in the legislation regarding heritage protection than in the legislation regarding nature conservation.

For example, in France the law concerning heritage protection mentions World Heritage but the law concerning nature conservation does not mention World Heritage.

In Germany, the legislations concerning heritage protection of only five *Länder* mention the World Heritage Convention whereas the eleven others do not mention it. Although the federal legislation concerning nature conservation mentions the World Heritage Convention, none of the 16 legislations of the *Länder* concerning nature conservation mention the World Heritage Convention.

In Spain, the federal legislation concerning heritage protection does not mention the World Heritage Convention, but the federal legislation concerning nature conservation mentions the World Heritage Sites. In the cases of both legislations of the *comunidades autonomas* concerning heritage protection and concerning nature conservation only the legislations of Aragon mention the World Heritage Convention, whereas the legislations of the 16 other *comunidades autonomas* do not mention it.

## Perspectives for the future use of the World Heritage Convention

Based on the analysis of the rights, obligations and responsibilities of the States Parties to the World Heritage Convention and on the comparative analysis of the transposition of the World Heritage Convention in France, Germany and Spain, some perspectives for the future use of the World Heritage Convention can be elaborated.

First of all, the World Heritage Convention should be transposed in the national legislation of its States Parties. In the case of centralised states, the World Heritage Convention should be transposed in the legislation concerning heritage protection and concerning nature conservation. In the case of federal states, the World Heritage Convention should be transposed in the legislation of both the federal and federated levels concerning heritage protection and concerning nature conservation.

Second, the World Heritage concepts should be adopted in the national legislations of the States Parties to the World Heritage Convention, including at federal and federated levels for federal states, concerning heritage protection and nature conservation. Indeed, the definition of cultural sites (monuments, groups of buildings, sites) and



of natural sites (natural features, geological and physiographical formations, natural sites) as well as mixed sites and cultural landscapes as described in the World Heritage Convention and in its Operational Guidelines should serve as a reference for the national legislations of the States Parties to the World Heritage Convention.

Third, a harmonisation of the regional legislations in the case of federal states should take place. The encouragement and assistance of the federated states to harmonise the legislation across the territory would ensure an equal protection of the World Heritage Sites independently from the federated state they are located in.

## Conclusion

This historical perspective on the 1972 World Heritage Convention has enabled to describe the different types of instrument a state can use to be part of an international treaty and to analyse the rights but also the obligations and responsibilities at the national level of the States Parties to the World Heritage Convention.

The study of the cases of France, Germany and Spain as States Parties to the World Heritage Convention has revealed a great disparity in the legislations regarding heritage protection and nature conservation. It has been observed that if the World Heritage Convention is mentioned in the national legislations, it is then rather mentioned in the legislations regarding heritage protection than in the legislations regarding nature conservation. This means that the States Parties to the World Heritage Convention have solely partly understood it. Thus, there is a misunderstanding of the purpose of the World Heritage Convention, which is dedicated to the protection of both the cultural and the natural heritage. Another observation concerns the difference between centralised and federal states. In a centralised state, a single legislation regarding heritage protection and a single legislation regarding nature conservation are applied on the whole territory, which ensures an equal protection of all the World Heritage Sites. On the contrary, in federal states there exist as much legislation regarding heritage protection and nature conservation as federated states in addition to the legislation regarding heritage protection and regarding nature conservation at the federal level. In this context, all the World Heritage Sites located on the federal territory are not necessarily equally protected.

Finally, although the World Heritage Convention can be considered as the most universal treaty looking at the high number of its States Parties (193 as of August 2017), it is rather differently transposed in the national legislations of its States Parties according to their political systems. Subsequently, in order for the universalisation of the World Heritage Convention to take place also within the States Parties, the Convention and its concepts should be transposed in the national legislations regarding heritage protection and nature conservation.

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# HISTORICAL ASPECTS OF THE LEGAL PROTECTION OF CULTURAL HERITAGE IN POLAND

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The article concentrates on the historical evolution of the legal instruments of the protection of monuments in Poland including the following: legal protection of monuments in 19th century under Austrian, Prussian and Russian laws at that time in force on the Polish lands; law after restitution of Poland in 1918; legal solutions 1945-1991; and the current situation.

Presentation of the evolution of legal framework for the protection of cultural heritage in Poland should start by mentioning an important postulate in this area from as early as the 16th century. In *Leges seu Statuta ac privilegia Regni Poloniae omnia...*, published in 1553 in Krakow, the author of this lecture of law, Jakub Przyłuski, wrote that not only religious objects should be excluded from the right to be destroyed in war, which was already a customary law, but also outstanding works of literature and art. He added further that soldiers, when fighting, should also "spare the lives of men famous for their virtues and knowledge".<sup>1</sup> At that time, this statement was revolutionary because the contemporary classics of the Law of Nations, such as Alberico Gentili or Hugo Grotius, considered the war looting of works of art legal for a long time, although less and less willingly.<sup>2</sup> Regulations in the spirit of Przyłuski's demands were included both in earlier and later peace treaties concluded by Poland, for example, with Moldova in Krzemieniec in 1510, and with Sweden in Oliwa in 1660.<sup>3</sup>

They were related solely to international relations, but the demand of protection of historical heritage contained in them also fought its way to the widely understood national law and was soon reflected in the recommendations of the king and the municipal and church authorities. We know from archival sources, for instance, that the Krakow synod of bishops, by resolution of 1621, ordered parish priests to take care of paintings and other monuments in churches,<sup>4</sup> and on the Wawel Royal Castle in Krakow painter Jan Tretko was commissioned to "repair paintings" in 1684<sup>5</sup>.

This was not yet even a modest legal regulation of wider importance, and so we can hardly call it the formation of a conservation service in our modern understanding. It began to develop in Europe only in the mid-nineteenth century, when Poland officially no longer existed after the partition between Prussia, Russia and Austria in 1792. For this reason, both the law of the protection of monuments, and the formation of public

service responsible for their care, began to be created on the Polish territories, which belonged to these countries, according to the principles adopted at this time for the whole states.

The office of the state conservator was created at first among these three countries in Prussia, and thus also the parts of former Poland were included in it. This took place in 1843, when Ferdinand von Quast, who earlier developed a project of organisation of the system of this administration, was appointed to this position.

Protection of monuments was based on the provisions of §§ 33, 35, 38 and 71-72 of *Preussisches Allgemeines Landrecht* of 1794, supplemented with further provisions, and since 1907 on a special act.<sup>6</sup> Since 1891, provincial *landesconservatoren* for individual provinces were appointed.<sup>7</sup> In 1892 Johann Heise was appointed for Pomerania, in 1893 Adolph Boetticher for East Prussia, and Julius Kohte for Wielkopolska, Hugo Lemcke for Western Pomerania and Hans Lutsch for Silesia.<sup>8</sup> It should also be emphasised that these officials implemented the policy of the Prussian State, *inter alia*, resulting from the needs of the ongoing process of unification of Germany. In the case of Polish monuments, this policy meant in practice Germanisation.<sup>9</sup> Therefore, Polish organisations, such as the Society of Friends of Learning, established in 1800 in Poznan, and the Society of Friends of

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<sup>1</sup> W. W. Kowalski, *Art treasures and war* (Leicester: Institute of Art and Law, 2014), 19.

<sup>2</sup> *Ibid.*, 19.

<sup>3</sup> *Ibid.*, 20.

<sup>4</sup> J. Pasierb, *Ochrona zabytków sztuki kościelnej* (Warszawa: 1968), 17.



Fine Arts, which focused on preserving the Polish legacy, were trying to function simultaneously to state administration and limit the effects of its activity. Situation was even more complicated in towns where there were German minorities. For example in towns such as Toruń, there were two societies functioning in one city, the Polish Toruń Learned Society and the German *Copernicus Verein*.<sup>10</sup>

Unlike in Prussian State, Russia had no state system of protection of monuments until 1918. Only archaeological monuments attracted some interest which was reflected in the creation of the Imperial Archaeological Commission in 1859.<sup>11</sup> However, it was not interested in the Polish monuments, with the exception of studies of the Orthodox mural paintings in the Castle Chapel in Lublin in 1903 and in 1914.<sup>12</sup> Only the local authorities with a limited independence initiated an action of taking inventory of the monuments on Polish territory in 1827 which, between 1844 and 1855, bore fruit in the form of visits to 386 places where, among others, 250 churches and 80 castles were inventoried.<sup>13</sup> Social organisations, fuelled by patriotic motives, were trying to fill in the lack of an institutionalised conservation service, for example, the Society of Friends of Learning, which was interested in protection of the historical heritage, formed in 1800 in Warsaw. However, after the Polish November Insurrection in 1832, it was liquidated by the occupation authorities and revived only in 1907.<sup>14</sup> It was also then, when the Society for the Protection of Monuments of the Past, operating to this day, was established.

On the Polish territories belonging to Austria the situation in terms of protection of the Polish cultural heritage was relatively the most favourable, as in 1850 the Imperial Royal Central Commission for the Research and Preservation of Architectural Monuments was established in Vienna by the emperor's decree. Three years later, its responsibilities and the statute were determined, under which teams dealing with individual countries of the Habsburg Empire were created within its framework. In 1856, the first two official conservators were appointed for the Polish territories – Paweł Popiel in Krakow and Franciszek Stroński in Lvov. The social activity existing there only assisted them in protection of Polish heritage. One of the most active was, *inter alia*, the Department of Art and Archaeology of the Krakow Scientific Society, created already in 1848. In 1888, the conservation congress took place in Krakow, and the result was the division of the above-mentioned official team into two: one based in Lvov and the other in Krakow. Between 1888 and 1890, this demand was executed. At the beginning of World War I in 1914, the state National Conservation Office, managed by Tadeusz Szydlowski, was created in Krakow.<sup>15</sup> Taking into account the essential role played in this service by Polish specialists and a large degree of autonomy in their operation, it is generally acknowledged that it was the service that became the prototype of the Polish administration on the protection of monuments.<sup>16</sup>

With the restitution of Poland in 1918 after World War I, this service was considered as loyally performing its duties to the reconstituted state and carried them out until a new

conservation administration was formed for the whole country.<sup>17</sup> It was established on the basis of a rapidly issued Decree of the Regency Council of 31 October 1918 on the care of art and culture monuments.<sup>18</sup> It had a uniform and centralised nature, and the authority competent for the protection of monuments was the Minister of Religious Affairs and Public Enlightenment. All activities related to this protection were performed by provincial conservators of art and culture monuments appointed by the Minister, who worked in their assigned districts. Under the instruction of the Minister, they kept an inventory of monuments, open for those interested. In order to be able to prepare it, all owners of monuments were required to make them available for the purpose of investigation of possible historic value. Pending the entry into the register, all real property and personal property “demonstrating art and culture of past eras,” older than 50 years were subject *ipso jure* to “legal protection” (Article 11). It was not allowed to destroy, alter, reconstruct, etc., the monuments without permission of a provincial conservator who also had the right to control the course of work carried out on the basis of his authorisation. This also included “archaeological research” (Article 25).

Similar restrictions and prohibitions, to “destroy, remove, sell, replace,” etc., were related to movable monuments and their collections owned by the “country, cities, administrative or religious communities, parishes and social institutions” (Article 20). Also “sale, exchange, pledge or donation of monuments... owned by communes, cities, parishes and public institutions” was controlled and to ensure it all such legal actions were declared as *ipso jure* as null and void (Article 33). Finally, the discussed decree introduced a general prohibition of the export of movable monuments abroad and provided for the possibility of expropriation of movable and immovable monuments in the event of specific threats. For example, “the danger of destruction, damage or export abroad” of a privately owned monument could lead to its expropriation, if it had “outstanding national importance” (Article 22). The decree also provided for the possibility to confiscate a movable monument “in the case of a secret export or attempt to export from the state borders” (Article 34). Failure to comply with the decree was punishable by imprisonment and fines.

As can be judged from this brief analysis, issuing the decree in 1918 was the attempt of the authorities to try to stop the process of destruction of Polish cultural heritage, which took place during 125 years, when Poland was not independent country, and also during World War I. Massive destruction of monuments during World War I, including, for example, destruction of entire cities, as in the case of the bombing of Kalisz, justified the adoption of often strict rules in the decree. All generally defined monuments older than 50 years were covered by legal protection even before their examination and entry into the register. A far-reaching limitation referred not only on the property right, but also the right to dispose the monuments, especially the movable ones. Another question is whether they could be applied effectively in the phase of organisation of the state and its administration.

5 A. Franaszek, *Działalność wielkorsządców krakowskich w XVII w.* quoted after B. Rymaszewski, *Polska ochrona zabytków* (Warszawa: 2005), 10 et seq.

6 P. Dobosz, *Systemy prawne ochrony zabytków z perspektywy teorii prawa administracyjnego* (Kraków: 2015), 119.

7 P. Dobosz, *op. cit.*, 118.

8 J. Frycz, *Restauracja i konserwacja zabytków architektury w Polsce w latach 1795-1918* (Warszawa: 1975), 11.

9 B. Rymaszewski, *op. cit.*, 13.

10 *Ibid.*, 12.

11 *Ibid.*, p8.

12 J. Frycz, *op. cit.*, 11.

13 B. Rymaszewski, *op. cit.*, 14-15.

14 *Ibid.*, 12-13.

15 See in detail, P. Dobosz, „Jubileusz 1000 lecia,” in P. Dobosz, K. Szperlak, W. Górny (eds.), *Dziedzictwo, dobra kultury, zabytki, ochrona i opieka w prawie* (Kraków: 2015), 119 et seq.

16 P. Dobosz, *Systemy*, 70.

17 *Ibid.*, 125.

18 *Dziennik Praw Państwa Polskiego* 1918, No. 16, item 36.



The provisions of the second act related to the protection of monuments of 1928<sup>19</sup> introduced some changes to the existing system of legal protection of monuments, and supplemented and specified it at the same time. One of more important changes was the introduction of a synthetic definition of monument which was “every object, either immovable or movable, characteristic for a certain era, having artistic, cultural, historical, archaeological or paleontological value, confirmed with a certificate issued by provincial conservator and in result deserving preservation” (Article 1). As follows from this provision, and what is additionally confirmed further, only an official confirmation of the historic value of an object qualified it as a monument which, from the moment of delivery of the relevant certificate, was subject to legal protection (Article 3). What is worth noting, the conservation authorities were required to specify in this decision the borders of the immovable monument and the borders of its surrounding area which were also subject to protection (Article 2(2)). Moreover, the certificate determining an immovable monument was to be entered not only to state inventory of monuments but also to proper real-property register (Article 3 *in fine*) run for all real properties in the whole country (Article 4).

Another important change was the establishment of the principle that the protection of monuments was at first provided by the conservation authorities, who were provincial authorities of general administration (Article 5). However, at the same time, “the expert organs” of these authorities were “conservators appointed by the Minister of Religious Affairs and Public Enlightenment.” They were part of the “personnel composition of the provincial conservator office,” whereas their rights and obligations were defined by the abovementioned Minister in consultation with the Minister of the Interior (Article 6). Conservation authority of the second instance was the Minister of Religious Affairs and Public Enlightenment (Article 5).

Evaluating the importance of these provisions, it can be said that after ten years of the decree of 1918 discussed above being in force the situation changed, and it was possible to adopt a rule that legal protection of “immovable or movable object” begins from presenting an interested party with a certificate formally recognising this object as a monument. However, there was also an exception to this rule, namely in the case of a threat to an object which could be recognised as a monument, but has not been recognised yet, the conservation authority had the right to stop activities posing such a threat and, for example, impose a ban on the sale of this object (Article 12). In addition, the regulation included extended provisions on the expropriation of monuments and introduced a right of pre-emption of the Treasury (Article 20). Penal provisions have also been extended.

At the end of the discussion of the state of law before the outbreak of World War II, I should also mention the Act of 1 March 1933 on the protection of public museums (DU 1933, item 279). It was a short act whose Article 1 defined the concept of public

museums as “any collection in the field of art, culture and nature, with the exception of libraries, organised to protect the scientific, artistic or commemorative value, owned by: a) the State, b) local authorities and other public-legal institutions and corporations, c) associations and private persons, provided that these collections are available to the public.” Article 2 provided that “care of and supervision over” museums understood like this “in scientific, artistic, technical and organisational terms” will be provided and exercised by the Minister of Religious Affairs and Public Enlightenment. The Minister also gave an authorisation for the establishment of public museums and approved their statutes.

The outlined provisions were only formally in force after the outbreak of World War II and during the German and Russian occupation of 1939-1945 since the occupation administrations did not show any respect for the Polish cultural heritage. That is not all; special occupation provisions were introduced in order to legally justify the organised looting of cultural goods. Just to mention one of such acts, although there were more of them, namely the Regulation of the General-Governor for the occupied Polish areas of 16 December 1939 on the “protection” of works of art in the General Government. The title of this document suggests implementation of the “protection” of works of art, but in practical terms it was a legal basis for their confiscation. And so, on the basis of section 3 of this document, each holder of a private or church work of art was obliged to report it to a special representative of occupational administration who decided on its confiscation at his own discretion. Failure to comply with this order was punishable by imprisonment. There was separate legislation with a similar objective in relation to the assets of the Polish State and Jewish property. Even though these provisions were certainly *ipso jure* invalid as contrary to the principles of International Law of War, they were applied in the occupied Poland and in practice opened way to irreparable damage.

The pre-war provisions discussed earlier “regained” their power after the end of war and were in force for almost 20 years, when a new uniform act on the protection of cultural property and on museums was adopted in 1962.<sup>20</sup>

19 *Regulation of the President of the Republic of Poland of 6 March 1928 on the guardianship of monuments*, DU 1928, No. 29, item 265.

20 *The Act of 15 February 1962 on the protection of cultural property and on museums*, DU 192, No. 10, item 48, hereinafter referred to as: “Act of 1962.”



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# THE EVOLUTION OF HERITAGE LEGISLATION IN FINLAND

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MATLEENA HAAPALA

The article gives an overview of the evolution of heritage legislation in Finland from 17<sup>th</sup> century till nowadays.

## The Heritage Legislation before the 20<sup>th</sup> Century

The heritage legislation in Finland has its starting point in the early 17<sup>th</sup> century, same as in Sweden. The reason for this is simple – Finland was a part of Swedish Kingdom. After the Finnish War in 1809 Finland became an autonomous Grand Duchy under the Russian Empire yet maintaining the old statutes, including the Royal Placat of 1666. In spite of the implementation of heritage legislation, heritage research continued to be mainly a hobby of some private persons, such as priests. However, the ethnological research in the 19<sup>th</sup> century increased the interest in collecting and conservation antiquities. In the 1870s the research began to orient towards antiquarian art history. At the same time the Society for Antiquities, later the Archaeological Committee, was founded.

The Decree on Protection and Classifying Ancient Monuments was issued in 1883. It observed strictly the Swedish Act of 1867. The interference in private ownership by preventing profitable activity was minimal. The objects under protection were specified by substantial catalogues. For example, all old fortresses, fortifications, castles, churches, chapels and “other remarkable ruins of public buildings” were mentioned. The Decree provided protection also for burial sites, memorial stones, stones with runic writing and other monuments that were too old to be considered anyone’s property. The Archaeological Committee interpreted the purview of the Decree widely and included even such old buildings, like castles and churches, which were not in their original use anymore.

It was prohibited to remove, destroy or alter the protected monuments. However, the prohibition was not absolute since the Archaeological Committee could grant permission to take actions on monuments. If the permission was denied, the owner was entitled to the compensation or the state could reclaim the object. Where redemption was not considered necessary, the owner was free to use his property after the Committee had been given an opportunity to research the monument. When an unknown

piece of antiquity was found during large public construction work it did not prevent the construction work. The interest of construction works was considered more significant than the historical interest.

Nevertheless, the Decree of 1883 imposed penalties to enhance the protection of ancient monuments. A perpetrator had the duty to restore the damaged monument or it could be restored at his expense.

## The Early Legislation of the Sovereign State

The first few decades after the declaration of independence in 1917 were turbulent times and there was a lot of legislative work to do. The Antiquities Act (295/1963) was enacted after a long preparation period in 1963 and it replaced the Decree of 1883, except the part that concerned buildings. In the Antiquities Act, which still stands today, the objects are divided in three categories: immovable ancient monuments, movable antiquities, ships and vessels. Immovable monuments are protected as memories of Finland’s ancient settlements and history. As in the previous legislation, the monuments are protected by the law with no need for separate decisions. Any

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exception requires permission. Whereas monuments are only referred to as “ancient”, both movable antiquities and wrecks of ships and other vessels have to be at least hundred years old to be covered by the Act.

Specific legislation concerning the built heritage was also being prepared in the 1950s and it came into force in 1964. Buildings that were significant because of their building history or use could be protected under the Act on the Protection of Historical Buildings (572/1964). A building could also be protected on the grounds that it was linked to a historic event or represented a significant phenomenon or a period. It has been considered that the criteria were too narrow as they made rustic and working class buildings almost unsuitable for protection. The Act of 1964 also established the principle that buildings owned by the state or the Evangelical-Lutheran Church were to be regulated separately.

The criteria set in the Act of 1964 influenced on inventories of built heritage which became basis for decision making. Inventories were made by authorities at all levels. For example, inventories made by Regional Councils listed the most significant built environments and contained individual buildings only when they were especially significant, such as all the medieval stone churches, 17<sup>th</sup> century wooden churches and fortifications.

Land use planning was regulated by the Building Act (370/1958) which enabled the protection of historically valuable areas by a land use plan. Both Building Act and the Act on the Protection of Historical Buildings were based on the principle that the protection of built heritage should not have unreasonable consequences to the owner.

### The Reform of 1985

A major legislative reform concerning the protection of built heritage took place in 1985. Firstly, the Act of 1964 was replaced by a new Act on the Protection of Buildings (60/1985). Secondly, new provisions concerning the protection of built heritage by means of detailed land use plans were introduced into the Building Act of 1958.

Generally, it was stipulated that in areas, where a detailed land use plan was needed, it should be the preferential means of protecting built heritage. Thus, the Act on the Protection of Buildings should only be applied where detailed land use planning was not in place or under specific circumstances, such as the protection of indoors or buildings with special national significance. However, the criteria by which the values of all buildings are to be judged are provided for in the Act on the Protection of Buildings. With only minor amendments, this connecting factor rule still stands today.

The reform of 1985 introduced some key elements into the protection of built heritage. Firstly, built areas, groups of buildings as well as planted areas were recognized

as potential objects of protection. Secondly, particular preservation orders were introduced as a new instrument to govern the preservation of each individual building. From now on it was also possible to impose even unreasonable restrictions because the owner may claim compensation. Last but not least, the state started to grant financial subsidies to contribute to the repair of private built heritage in the 1980s.

Like before, state-owned buildings were covered by specific regulation, namely the Decree on the Protection of State-Owned Buildings (480/1985). The separate nature of ecclesiastical buildings of the Evangelical-Lutheran and Greek Orthodox Churches was underlined too. The Church Act (1054/1993) provides that Evangelical-Lutheran churches, which date back to the time before 1917, are protected by the law itself, while younger ecclesiastical buildings may be protected by separate decision. The protection of an ecclesiastical building always covers fixtures, paintings and works of art, as well as the immediate surroundings of the building. Similar provisions were adopted for Greek Orthodox churches and prayer houses by the Act on the Orthodox Church (985/2006). In 2013 the Evangelical-Lutheran Church decided to revise the provisions concerning the protection of its ecclesiastical built heritage. While the buildings taken into use after 1917 still need an individual decision to be protected, the revised Church Act, nevertheless, obligates parishes to consult the National Board of Antiquities before substantial changes to all ecclesiastical buildings older than 50 years.

### Into the Age of Modern Constitutional Rights

The Constitution of Finland went through a comprehensive reform in the 1990s. First the Chapter of Fundamental Rights and Liberties was revised in line with international human rights standards in 1995. Along with other modern rights the Responsibility for the Environment became part of the Constitution whose Section 20 reads as follows: *Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavor to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.*

The next big step was the reform of land use and construction legislation by the Land Use and Building Act (132/1999). The objective of the Act is to ensure that the use of land and water areas and the building activities create preconditions for a favorable living environment and promote ecologically, economically, socially and culturally sustainable development. The Act also aims to ensure everyone's right to participate in the preparation process, the high quality and interactive nature of planning, comprehensive expertise and open provision of information on matters in the pipeline. The protection of the beauty of the built environment and of cultural values is one of the objectives to be pursued at every level of land use planning. The instrument for



monument protection is, as already in 1985, specific preservation orders given especially in detailed plans.

Pursuant to the new Act the Council of State gave in 2000 National Land Use Guidelines which were amended in substance matters in 2008. On cultural heritage the National Guidelines state as follows: *Land use should safeguard the preservation of the nationally important cultural environment and natural heritage. The national inventories made by the authorities should be taken into account as starting points in land use planning. Nationally important cultural environments and landscape areas are to be indicated in regional land use planning. Land use in these areas should be adapted to their historical context.* The national inventories refer to inventories of nationally important cultural landscapes, built cultural environments and archaeological sites. A major reform of the National Land Use Guidelines is under way and due to be completed in 2017.

The Land Use and Building Act of 2000 also introduced a new method to foster and improve urban areas: National Urban Parks. A National Urban Park is established by the Ministry of Environment on application by a municipality. Natural areas important for the preservation of urban biodiversity, buildings and cultural environments of historic importance as well as parks and green areas with scenic or aesthetic significance may receive the status of National Urban Park if at the same time they are protected by the land use plans adopted in the municipality.

Ten years later the specific legislation on the built heritage was revised when the Act of 1985 was replaced by the Act on the Protection of Built Heritage (498/2010). The purpose of the Act is to safeguard the temporal and regional diversity of the built heritage, to maintain its characteristics and special features, and to promote its culturally sustainable management and use. In matters regarding the protection of the built heritage, the interested parties shall be given the opportunity to participate in the preparation of the matter in question. To enhance the clarity of legislation the prerequisites for protection are now described comprehensively and the potential objects of protection, especially fixtures, defined as precisely as possible.

The management of the state's real property had been under reorganization from the 1990s. The state had started to sell redundant property and the management of the remaining property was transferred from state authorities to public utilities. Therefore, specific provisions for the protection of state-owned built heritage were considered to no purpose, which means that old decisions are being revised pursuant to the Act of 2010 at the latest upon sale of the protected buildings.

### The Strategic Approach and Other Recent Developments

The Finnish Government adopted a Strategy for Built Heritage already in 2001, and since then the strategic approach to heritage has gained more and more ground. The

first comprehensive National Strategy for Cultural Environment was adopted in 2014. The key point is that a well-managed and vital cultural environment enhances the well-being of people and has an important role in developing business activities and creating an attractive living environment. Therefore, the strategy is aimed at deepening people's appreciation of their local environment and inspiring them to actively contribute to making it better.

Just a year later, in 2015, the National World Heritage Strategy saw the light of day. According to the vision presented in the strategy, Finland wants to foster the world heritage as well as protect, manage and present the world heritage sites situated on its territory and empower the locals by transmitting the living heritage.

At the same time the Finnish Government is preparing a large reform of regional administration. By 2020 the country is going to have a new democratic level of administration between the state and the communities, namely regional governments or counties. While the primus motor of the reform is the need to reorganize social and health services, even environmental services among others will be subject to reorganization. On the whole, the state is constricting its role in local and regional land use. The new counties are also going to have a central role in promoting cultural environments.

Further relevant legislative measures in the pipeline are a comprehensive reform of the Antiquities Act of 1963, as well as some procedural and other necessary amendments to the Act on the Protection of Built Heritage of 2010. Even a reform of the Land Use and Building Act of 2000 is going to be started in the next few years.

### Conclusion

The heritage legislation in Finland has remained well anchored in the Swedish tradition through different historical periods. Characteristic to the Finnish material heritage is its relatively short preserved or documented history and therefore the age has never played a too dominant role in the protection of monuments. Especially a large part of the built heritage does not date farther back than the 20<sup>th</sup> century. It has also been vital to recognise the significance of peasant and ethnological heritage, especially as the symbols of government and glory are rather few.

The legislative measures in the 1960s brought about a division into the archaeological heritage in one hand and the built heritage in the other hand. Since then the built heritage has gone through several legislative revisions, whereas the protection of the archaeological heritage has been more stable. In the last decades the interest has been more into comprehensive analysis and protection of culturally and historically valuable environments. This approach is already visible in the land use planning, strategies and management – perhaps in the future also in the specific heritage legislation.



# EVOLUTION OF NATIONAL LEGISLATION ON MONUMENTS PROTECTION IN SLOVENIA

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The paper gives an overview on the history of the protection system on the Slovenian territory. Until 1918, the nowadays Slovenia was under the Austro-Hungarian rule and the aspects of the Austro-Hungarian organisation of monument protection relevant for our country are discussed. In the period between two world wars, Slovenia belonged to the Kingdom of Yugoslavia. The question of legal protection of monuments and sites was never resolved due to political negligence. Only after 1945, in the socialist regime a series of protection acts were adopted, but the system suffered from ideological short sights and considerable inefficiencies. After the independence, Slovenia adopted two heritage protection acts, the newer one in 2008. The paper gives a short presentation of the main features of this act.

## Some basic facts about Slovenia and its heritage

Slovenia is an EU country and is located in the Central Europe bordering Italy at the West, Austria at the North, Hungary at the East and Croatia at the South. Slovenia is also a Mediterranean country though our Mediterranean coast is quite short. The majority of our surface (60%) is covered with forest. Geographically, one part of Slovenia belongs to the Alps, the other to the Pannonia plane. In between, there is the so-called Karst which is basically a limestone plateau which gives this type of landscape a characteristic topography and hydrology with many lakes, underground waters, caves, etc. Slovenia has two million inhabitants and approximately twenty thousand square kilometres.

Our country is rich in heritage, there are thirty thousand registered (immovable) heritage properties and statistically, there is one and a half heritage property on each square kilometre. Of course, because of prevalent forested and alpine landscape, the actual density of heritage in populated areas, especially in towns and villages is much higher. Half of the immovable heritage properties are secular buildings, 25% are religious buildings, 15 % are protected areas such as historic towns or villages and cultural or historic landscape, and 10 % are archaeological sites of different size and periods.

## Development until 1918

From the Middle Ages on, the provinces with Slovenian population were ruled by the Austrian Monarchy (from 1867 to 1918 by the Austro-Hungarian Monarchy). Monument protection on the Slovenian territory started in the middle of the nineteenth century. At that time, the word "heritage" was not used in the modern sense, the term "monument" was used instead. In the period of 1850 to 1911, monument preservation was organised in the so called Central Monuments Commission<sup>1</sup> in Vienna while the fieldwork was provided by honorary conservators and correspondents. Just before the outbreak of the Great War, The Central Commission was re-organised and Provincial Monument Protection Offices established. In 1913, such an office was established in Ljubljana, the then capital of the province Carniola which covered the main part of the nowadays Slovenia. Other parts were covered by the Provincial Offices in Graz (now in Austria) and Pula (now in Croatia).

Between 1890 ties and 1916, a series of proposals for legal protection were formulated.<sup>2</sup> The person with the greatest merits in this regard was Joseph Alexander von Helfert who served as Central Commission President from 1863 to 1910.<sup>3</sup> The Minis-

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<sup>1</sup> Between 1850-1873, the complete title of the Commission read: *Imperial and Royal Central Commission for Researching and Safeguarding Built Monuments*. Between 1873 and 1911 it was given a wider remit and consequently the title slightly changed into *Imperial and Royal Central Commission for Researching and Safeguarding Art and Historic Monuments* and with the 1911 reform the name *Imperial and Royal Central Commission for Monument Protection* was introduced.



try responsible for monuments protection did not succeed to push the Monument Protection Act in the legislature although the draft act had a specific support of the Habsburg Imperial House. It is a well-known fact that Prince Franc Ferdinand, the Heir Apparent to the throne was nominated official protector of the Commission in 1911. Even prior to this, in 1903 Helfert engaged Alois Riegl, a well-known professor at the Vienna University, to serve as a general conservator attached to the Commission. In a short period of two years Riegl produced the theoretical basis which has been ever since praised as a fundamental contribution to the modern heritage protection – *Moderne Denkmalkultus*. He also prepared an amended version of Monument Protection Act together with the instructions for the reorganisation of monument protection service.<sup>4</sup> He suddenly passed away in 1905. A series of proposals for the monument protection act were drafted by Helfert and even after Helfert's death<sup>5</sup> under Franz Ferdinand's auspice but the Austrian Parliament still hesitated to adopt it. In the end, it was finally adopted (with some accommodations) after the Great War in 1923 by the Parliament of the Republic of Austria. Obviously, this act was not valid for Slovenia which came under the so-called Kingdom of Serbs, Croats and Slovenians in Autumn 1918.

There are two points that need to be elaborated more in detail: firstly, the prehistory of legal protection in Austria, and secondly, the individual development in monuments protection in Slovenia before 1918.

As already mentioned, during the Austrian period immovable monuments were not safeguarded by a special act. On the other hand, some administrative measures were put in place in order to deal with the movable heritage protection. Already in 1776, the emperor Joseph II approved the regulation concerning the obligatory requisition of all antique coins for the imperial coin cabinet.<sup>6</sup> The ruling was re-issued in 1812 enlarging the scope of items subject to the requisition to other antique objects from statuettes to weapons and tombstones. The revised ruling stated that the finder should be awarded a modest compensation.<sup>7</sup> Five years later, in 1818, the export of antiquities was prohibited and the prohibition covered mostly the same type of movables as the ruling from 1812 adding paintings, engravings, manuscripts, prints and "other art- and literary objects significant for the fame and embellishment of the state..." The illegal export was severely fined.<sup>8</sup> Government decree from 1846 regulated the treasure trove and dividing the property of such finds between the finder and the owner of the ground. Public collections had the pre-emption right in purchasing significant art objects and archaeological finds.<sup>9</sup> The rulings proved that the state succeeded to regulate ownership rights for movable heritage and that the protection of such movables met the standards of protection of other European countries in the nineteenth century.

As far as the protection of immovable properties was concerned, the task seemed to be much harder. In order to enable at least some organised care for immovable heritage, the Central Commission was established by the imperial order in 1850, its remit was defined by the Statute from 1853, and the Commission began to work a year later. Besides the Statute, the ministerial instructions were prepared to define the professional procedures employed. In addition, the ministry responsible for monument protection (from 1850 to 1859 the Ministry of Trade and Industry and afterwards, the Ministry of Cult and Education)<sup>10</sup> dispatched instructions to lower authorities in provinces, districts and counties ordering them how to cooperate with the Central Commission and its conservators and how to give them the support they should need. In the first place, the regional and local building administration was of utmost importance. One should know that Central Commission did not constitute a part of governmental administration; it was an advisory body composed of officials from three ministries (on top of two already mentioned also the Ministry of Interior which covered the field of construction)<sup>11</sup> and some experts from academia.<sup>12</sup> The field workers of the Commission, the conservators and correspondents were not officials but volunteers nominated by the Commission for collecting data on important buildings, archaeological remains and the like, informing the Commission about the monuments they "detected" and collaborating with owners on one hand and provincial and other authorities as well as museums and associations on the other. With its reorganisation in 1873, the Commission also got some funds from the state budget not only to cover the travel expenses and other direct costs of the conservators but also for giving subsidies to owners when restoration work was necessary.<sup>13</sup> The conservators needed to send to the Commission their reports on individual cases together with estimates of the restoration cost and the Commission had the right to grant a subsidy in some cases. In the event of provincial and/or municipal funds allocated, the commission was more willing to participate financially. These arrangements show that the monument protection even in absence of protection act existed to some degree. Of course, the positive outcome was almost guaranteed if a monument was in public ownership while the success of maintaining monument in church or private ownership depended solely on the negotiation skills of conservators and the willingness of owners to comply with non-binding proposals.

The second point I want to present in more detail is the development in monuments protection in Slovenia before 1918. In fact, I will refer only to the development in the province Carniola which, as already mentioned, constituted the main (but not the entire) part of nowadays Slovenia. The fact that there was no legal protection provided by the central government urged provincial conservators to work closely with church authorities and with provincial government. The result of such a co-operation was a series of episcopal orders on church buildings and movables. The orders were ad-

2 See the detailed account of the legislative procedures in Brückler, *Vom Konsilium zum Imperium*, 163-172.

3 Brückler, 2009, 158.

4 Riegl, *Denkmalschutzgesetz und Bestimmungen zur Durchführung des Denkmalschutzgesetzes*.

5 Helfert passed away in 1910 nevertheless the legislative project went on. The last Helfert's draft act was published by Holeý in 1911.

6 Frodl, 183.

7 *Instruction*, 41-42.

8 *Instruction*, 42-43. The ruling was valid for Italian part of the monarchy, for Milano, Venice and Dalmatia probably because of the abundance of art treasures and antiquities in these provinces.

9 *Instruction*, 43-45.

10 Ministerium für Kultus und Unterricht, Frodl, 168.

11 Helfert, 18.

12 Helfert, 18.

13 Frodl-Kraft, xxiii-xxix.



ressed at clergy responsible for management of parish properties. The first order was issued in 1882 and dealt with safeguarding and restoration of religious artefacts. The second one from 1906 pronounced strict prohibition of selling such artefacts without specific episcopal approval. The third order was issued a year later (in 1907) and dealt more in detail with the instructions on building new churches, maintenance and restoration of old ones and, more specifically, with old and new church fixtures and fittings and religious ritual objects. For all major works, detailed instructions should have been obtained from the episcopal authorities.<sup>14</sup> The question remains whether the episcopal order were fully implemented.

In the field of archaeological excavations, the situation was even more urgent. Without legal provisions, looting of archaeological sites was quite widespread. On top of this, the disputes arose between groups of excavators: one group was financially supported by the Imperial Natural Science Museum in Vienna and the finds were consequently sent to the capital. The other group was selling its finds to the provincial museum in Ljubljana which had no matching funds for competing Vienna. So, the provincial museum (which was established by the provincial authorities in 1821) urged Carniolan Provincial Council to adopt a provincial act giving the pre-emption right to the provincial museum. Unfortunately, each piece of provincial legislation needed the approval from central government. When the draft was sent to Vienna in 1893, it lasted seven long years before it was finally rejected by the Ministry of Cult and Education with the explanation that the matter was to be settled soon by the Austrian Monument Protection Act. In 1900, the Provincial Council drafted a new act which faced the same rejection.<sup>15</sup> Archaeological excavations were partially regulated by Provincial Government Circular published in 1913<sup>16</sup> which could not be fully implemented due to outburst of war.

### Period between 1919 and 1945

During the interwar period the majority of Slovenian territory came under the Belgrade rule. In 1931, the Kingdom of Serbs, Croats and Slovenians was re-named Kingdom of Yugoslavia. There were several attempts from the museum and academic cycles for the legal protection of monuments and sites. They were addressing draft acts to the Belgrade authorities and these drafts mainly followed the model of Austrian Monument Protection Act. Unfortunately, political powers in the Yugoslav capital blocked every effort for adopting a protection act.<sup>17</sup> The last attempt to get at least a minimal legal protection was made by France Stelè, the first Slovenian conservator.<sup>18</sup>

From the organisational point of view, Slovenia and Croatia kept monument protection service established during the Austrian-Hungarian rule but these provincial

offices needed to operate without any legal powers, only through negotiation and expertise delivered to the monument owners. Conservators followed professional standards from Imperial Central Commission *Bestimmungen* discussed earlier. They also tried to enforce some control over archaeological digs referring to the 1913 circular. In 1923 Slovenian provincial government adopted a decree stipulating export licences for works of art.<sup>19</sup>

Some relief came when two sectoral acts regulating management of forest and construction were adopted in 1929 and respectively in 1930. Consequently, monuments located in forests could come under the protection of the Forestry Act and in historic centres under the protection of the Construction Act. But, the protection could not be enforced unless the provincial governments in the case of forests and municipalities in the case of historic centres had adopted implementation decrees defining protective measures. Historical data show that only two municipalities took this opportunity. The first was Ljubljana municipality council that adopted an interim decree that defined the historic centre protected area and a list of properties (architectural monuments and archaeological sites) under protection in 1933.<sup>20</sup> The decree gave the provincial monument protection office the right to decide whether specific works affecting these properties should be allowed or not. All works affecting archaeological sites had to be notified in advance at the National museum and they had to be carried out under its supervision.<sup>21</sup> The interim decree was never replaced by another, regular one and was finally repealed in 1944.<sup>22</sup> In 1935, the Maribor municipal council passed a decree for the protection of historic city centre which covered only a shortlist of architectural monuments together with the stipulation that “the sense of visual and formal connection between buildings and their surroundings should be preserved”.<sup>23</sup> There is no evidence that the decree ever entered into force.

All in all, the interwar period was a kind of prolongation of the Austro-Hungarian period in the sense that central authorities obstructed the introduction of a comprehensive legal protection and in this vacuum the protection authorities could rely only on their ability of giving reasonable and timely advice to owners of heritage properties.

### Period between 1945 and 1991

It was only in 1945 when the first Monument Protection Act came into force – it was adopted at the federal level and shortly replaced by another act in 1946.<sup>24</sup> Strikingly, legal provisions of the latter are quite similar to the 1935 draft act prepared by France Stelè while the scope of protection was extended to ethnographical monuments and natural beauties.<sup>25</sup> The act also enabled tax deduction for owners that clearly showed how the heritage policy at that time followed the Central European tradition.

14 *Odredbes škofijstva*.

15 Dular 2003, 65–66.

16 Circular from December 1913 no. 5241/pr is mentioned in Stelè 1935, 64.

17 Krstić, 56–57 published official version for the denial which stated that the Ministry of Finance had not provided estimation of funds necessary for the implementation of legal provisions. From informal sources it was clear that the Orthodox church opposed strongly to state interventions in the management of church properties.

18 A part of his draft act composed of 14 articles was published in Stelè 1936, 94–95.

19 *Official Gazette* I. III., no. 64, June 14, 1921.

20 Information-documentation centre of the Ministry of culture, archival file 49/1934.

21 Stelè 1936, 70.

22 Information-documentation centre of the Ministry of culture, archival file 187/1944.

23 *Jutro*, no. 139, 18. 1. 1935, 2.

24 *Cultural Monuments and Natural Beauties Protection Act*, Official Gazette of Democratic Federative Republic of Yugoslavia, no. 54/45; and no. 576/46.

25 Jogan, 55.



Further development proved to take another direction. Following the socialist doctrine, a massive confiscation and expropriation of agricultural domains, land and forests, industrial and commercial firms, church property and urban developed land resulted in the situation where the owners of castles, manors, monasteries, industrial, urban heritage and the like, lost their property rights. The 1953 constitutional reform introduced concepts of socialist self-government and communal ownership which meant that not the state but the non-defined community got ownership rights over the state and municipal properties. In the fifties and sixties, the legal framework of monument protection was changed in order to accommodate to these concepts. Usually, a federal act gave general directions and individual federal entities (later called socialist republics) followed them in more detail. For example, the federal Monument Protection Act from 1959 replaced the term “owner” with term “holder” and republic act from 1961 did the same.<sup>26</sup> Another constitutional reform from 1973 gave some degree of autonomy to the lower political level and culture together with monument protection came under the responsibility of federal entities, in our case to the Socialist Republic of Slovenia. The last piece of socialist legislation following 1973 constitution was adopted in 1981.<sup>27</sup> It introduced some positive ideas in our protection practice, for instance the terminology of 1972 UNESCO World Heritage Convention, namely “cultural and natural heritage”. It prescribed legal basis for the organisation of immovable protection service: central institute for the protection of natural and cultural heritage was defined as a governmental body and regional institutes established by associations of local communities were given the operational tasks. On the other hand, the act brought about development with some negative consequences. First of all, due to the lack of coherent coordination between national and regional institutes each one developed its own conservation practice (and that became quite annoying) and also blocked the creation of an aggregated heritage inventory. Another difficulty resulted in the definition of cultural heritage categories which followed the division of humanistic sciences interested in heritage research. So, cultural heritage was divided into art historical- and architectural heritage, ethnographical heritage, historical heritage, archaeological heritage, landscape-architectural heritage and technical heritage. The division not only created ambiguities in border-cases where it was hard to define which science has the major interest in dealing with a specific heritage property. What was even worse, it inhibited the development of an interdisciplinary team work and consequently, the emergence of a modern heritage profession.

### Period after 1991

Immediately after Slovenia became independent in 1991, serious work started on the elaboration of new heritage protection act. Unfortunately, political development prevented the efforts to be completed in the following years. Instead, with the Government

re-organisation in 1995, the nature conservation service came under the responsibility of the Ministry of Spatial Planning which practically brought about the separation of the protection of natural and cultural heritage. In this vein, the Parliament adopted two separate pieces of legislation, the Nature Conservation Act and the Cultural Heritage Protection Act in 1999.<sup>28</sup> The only positive side of latter was the merger of regional heritage protection institutes into one uniform organisation, the nowadays Institute for the Protection of Cultural Heritage of Slovenia - IPCHS, while the former central heritage protection organisation came under the Ministry of culture as one of its administrative units (now Directorate for Cultural Heritage). The major deficiency of the 1999 act was that it failed to define provisions for the implementation of already ratified European Convention on the Protection of Archaeological Heritage (revised). In the following years, Slovenia ratified all other international heritage conventions which needed to be integrated into our legal system.

In 2005 the work on a new heritage protection act started with broad consultation activities and, in its final stage, hard negotiation with relevant ministries and parties interested in heritage issues. A lot of compromises needed to be negotiated and some proposals were finally totally overruled (in the first place, the proposal for the introduction of a special financial scheme intended to complement state and municipal restoration subsidies). But on the whole, the Heritage Protection Act (2008) provides a relatively stable basis for the implementation of an up-to-date heritage protection in our country.<sup>29</sup> In the following years, it underwent several smaller revisions which were on one hand necessary from the point of view of solving practical implementation concerns and on the other hand, also deriving from the fact that due to general budgetary restrictions the scope of some financial measures for heritage owners had to be limited.

The intention to overcome the division of heritage into “scientific” categories led to the solution where only basic heritage categories have been defined in the 2008 act. In defining these categories, international conventions are followed to the maximal possible degree bearing in mind that particular conventions do not define heritage categories in a coherent way (which is understandable from the point of view of the period when a convention was elaborated, specific needs and scopes of the convention and the like). Slovenian definition of cultural heritage categories is as follows: “immovable heritage” are immovable properties or their parts with the value of heritage, entered in the heritage register; “movable heritage” are movable properties or collections of such properties with the heritage value; and “intangible heritage” are practices, representations, expressions, knowledge, skills, and movable properties and cultural spaces associated therewith (where such heritage is presented or expressed). The act also regulates in detail dealing with some special categories of

<sup>26</sup> Articles 5 of *Cultural Monuments Protection General Act*, Official Gazette of Federal People's Republic of Yugoslavia, no. 7/58, and *Cultural Monuments Protection Act*, Official Gazette of People's Republic of Slovenia, no. 26/61.

<sup>27</sup> *Cultural and Natural Heritage Act*, Official Gazette of Socialist Republic of Slovenia, no. 1/81.

<sup>28</sup> *Nature Conservation Act*, Official Gazette of Republic of Slovenia, no. 56/99; *Cultural Heritage Protection Act*, Official Gazette of Republic of Slovenia, no. 7/99.

<sup>29</sup> *Cultural Heritage Protection Act*, Official Gazette of Republic of Slovenia, no. 16/08, 123/08, 90/12, 111/13 and 32/16, English translation accessible on the webpage [http://www.arhiv.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min\\_eng/legislation/CHPA.pdf](http://www.arhiv.mk.gov.si/fileadmin/mk.gov.si/pageuploads/min_eng/legislation/CHPA.pdf). See also Pirkovič, Šantej for more details about the scope and legal provisions embedded into 2008 *Heritage Protection Act*.



immovable heritage, namely settlement areas, cultural landscape, archaeological sites. Architectural and industrial heritage are not mentioned per se although there are some special provisions which are tailored to the protection of these sub-categories, for example regulation of maintenance works in cases not covered by building permits or the obligation of documenting technical devices, fixtures, tools, products, and technical plans and sketches older than 50 years when recovery and restructuring programmes of companies financed from public funds take place. The scope of this paper does not allow for an in-depth presentation of main legal provisions stipulated by the act. The more detailed subdivision of heritage categories was left to be defined by a ministerial regulation which appeared in 2009.

There are three “grades” of cultural heritage already defined in 1981 and 1999 acts and kept in 2008 act: monuments of national importance, monuments of local importance and cultural heritage (without monument status). Temporary designation gives space and time for a consented dialogue with local authorities in question, for a possible revision or completion of the designation dossier, and if it turns out that the heritage property merits national designation, for the consultation within the Government. Cultural heritage which is not designated monument is protected through spatial planning measures. When a strategic assessment of environmental impact is prepared, it should cover assessment of planned activities on heritage as well. A strategic impact assessment on heritage is also mandatory for interventions in areas without heritage if such interventions could have a direct or indirect impact on nearby heritage properties.

The right to use heritage as a source of information and knowledge, to enjoy its values and to contribute towards its enhancement as specified by the Cultural Heritage Protection Act constitutes the starting point for legal provisions pertaining to collecting and disseminating heritage information. In Slovenia, the basic platform for gathering and managing heritage information is the so-called Heritage Register. The act defines the register as an “...information support to the implementation of heritage protection. The purpose of the register shall also be presentations, research, education, and fostering public awareness of heritage.” Introducing a property in the Heritage Register has no legal consequences for its owner or for other stakeholders. Legal consequences arise only later when an immovable heritage property is integrated into a spatial plan or is designated a monument by a designation decree adopted by the Government or the competent local authority.

The work on the Register started in 1991. The main idea about the register was to create a computerized information system built around core data on heritage constituting a kind of heritage identity card. A pilot version of the Register became available in

1995. The register has been regularly up-graded and the main upgrading was the introduction of GIS supported information in 1997 which was at that time an important novelty at European level. In 2002, a web portal was created so that all the information is available online.<sup>30</sup> Recently, an application was put online facilitating the public’s access to digital heritage content.<sup>31</sup>

In short, the main contribution of Slovenian heritage legislation after 1991 can be characterized by three features: the legal basis of the Cultural Heritage Register, the definition of the framework enabling inclusion of heritage in spatial development and the legal basis for the organisation of the preventive archaeology.

### In conclusion

The first period of our monument protection, roughly between 1850 and 1945, can be characterised as a period of multinational states (Austrian Empire and the Kingdom of Yugoslavia) when the conditions were quite unfavourable for the creation and implementation of legal protection. The lesson for today could roughly be that even though being a part of EU family and a state party to all international heritage conventions, Slovenia needs to rely on the national legal system and adapts it in a way that suits our heritage as efficiently as possible.

During the socialist period, heritage was formally covered by a series of Yugoslav and Slovenian acts, however the negative impact of confiscation, expropriation and ideological battle against symbols of past class enemies – church, nobility, middle class and larger farmers – put our heritage in a very vulnerable condition. The long-term impacts of such a development can be traced even today in the fact that people often hesitate to identify themselves with their heritage, that heritage management is not regarded as one of the essential tools for revitalising our heritage, and that public service often communicates with owners and heritage communities mainly in the administrative language of ordering what heritage is and how it should be protected.

Taking into account the triple challenge mentioned above, the upgrading our heritage legislation to a new level could be directed towards strengthening: a) the social role of heritage by empowering heritage communities, b) the economic role of heritage at regional and local levels by introducing tax incentives for rehabilitation projects, and c) its knowledge role by defining suitable legal framework for a wider digital re-use of heritage resources and for achieving a greater synergy among the public, institutional and private actors concerned.

30 There are three portals enabling the access to data collected in the register, namely <http://rkd.situla.org>, <http://giskd6s.situla.org/giskd/>, and <http://giskd6s.situla.org/evrd/>. The first one gives the information about heritage “identity cards”, the second presents all the information on an interactive GIS platform, and the last with data on protection guidelines and legal regimes of protection.

31 <http://www.eheritage.si/apl/>. Pirkovič, 2016, 80.



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# A HISTORICAL OVERVIEW OF THE DEVELOPMENT OF THE SYSTEM OF CULTURAL HERITAGE CONSERVATION IN BULGARIA

SVETOSLAV GEORGIEV

The article is dedicated to the development of the legislative and administrative system of heritage protection in Bulgaria since the end of 19th century with the emphasis on immovable heritage.

Three periods could be distinguished in development of the system of conservation of cultural heritage:

- ⌘ from 1888 to the early 1950s
- ⌘ from 1950s to 1989
- ⌘ from 1989 to the present day

The first legislative initiatives on the cultural heritage protection were taken shortly after the Russo-Turkish War in 1878. *Temporary rules for the scientific and literary enterprises* is the first legal act adopted in 1888 which regulates the responsibilities of state and local governments regarding the conservation of antiquities in Bulgarian lands. In 1890 the *Law on the search for antiquities and on the support of scientific and literary enterprises* entered into force which reproduced the same texts from the preceding document, relating to the immovable monuments. An exhaustive definition of antiquities was given for the first time with the adoption of the *Law for Antiquities* in 1911. The Law related matters relating to the conservation of immovable monuments threatened by the demolition in new construction and relations between the state and individuals who have acquired ownership of architectural monuments as a result of restitution. A registration system was introduced in 1927 and the Commission of Antiquities at the Ministry of the Enlightenment published the *List of National Antiquities* in the State Gazette. In 1936, because of the need to preserve architectural ensembles from the Renaissance period and to integrate the new construction and regulation plans, the Decree-law of conservation of old buildings in the settlements was issued. It provides incentives for owners of architectural monuments – tax exemption for building costs and municipal fees, funding for conservation of these buildings from the municipalities. Decree-Law introduces coordination procedures for building new buildings near the monuments. This first period of construction of the system for the protection of cultural heritage ends with the bill for a new law on antiquities from 1939, which unfortunately was not enforced. Its provisions sound modern even amid

the current conditions. For example, Art. 1, which gives the Ministry of Education supreme supervision over all movable and immovable monuments has been extended as are included and ... “all ancient churches and museums, which are under the authority of the Bulgarian Orthodox Church.” The bill provides registration system of antiquities owned by individuals and by introducing rules for their movement. It regulates the law of the “first buyer within three months” when the owner decided to sell antiquity. The bill provides different ownership - state, municipal, church and private, as specified and respective responsibilities for the preservation of monuments and the cost of maintenance. When the owner does not take enough care of a monument, the Ministry of Education has the right, on a proposal by Commission for old age, to expropriate the monument and take care of its protection and preservation.

By the early 1950s the large-scale construction works began, which required the adoption of legal acts to regulate the protection of cultural heritage. A typical feature for the beginning of this period is the use of the executive acts.

In 1951 the *Ministerial Decree No. 1608* was adopted that protected all the monuments located in the Republic of Bulgaria on state level. *The Council for Protection of Cultural Monuments* was created at the *Committee for Science, Art and Culture* to carry out a direct control over the monuments.

*Instruction for maintenance, registration and preservation of cultural monuments* was published in 1952 (Izvestija (in Bulgarian), No 79, 1952), which examines in detail the fundamental principles of the *Decree No. 1608* of the Council of Ministers.

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*Ministerial Decree No. 165* for the preservation of monuments and development of museums was adopted in 1958, and in 1959 the regulations for its implementation. The decree established the obligation of every owner of a monument to provide funds for conservation in their annual budget.

Until 1969, when the *Law on Cultural Monuments and Museums* was adopted, a number of enactments concerning various aspects of the preservation of cultural heritage were developed and issued: *Instruction for the State Registration of Museum Collections; Rules for the Use and Protection of Cultural Monuments and Historical Sites*; Decree No 49 for *Purchase of Items of Archaeological, Historical and Ethnographic Importance, Archival Materials, Antique Books, Artwork, Properties, etc. by Individuals*; *Ordinance for Rental of Premises In Buildings, Cultural Monuments*; *Instructions to Protect from Melting the Objects and Coins of Precious and Non-Ferrous Metal*; *Protection of Archival Documents of Historical and Artistic Value*; *Rules for National, Special and Commemorative Museums*; *Rules for Removal and Preservation of Underwater Monuments and Landmarks of Aquatic Flora and Fauna*.

The protection system was already fully outlined in this second period and reflects so the socio-economic and political conditions in which Bulgaria developed. Mainly the State, but also the municipalities are the two main group of owners of monuments of higher category. Research, registration, archiving, investment and implementation are carried out by the *National Institute for Cultural Monuments* (NICM) set up in 1957 and subordinate to one single department: *the Committee of Culture* (predecessor of today's *Ministry of Culture*). The supervision on activities on monuments is carried out by local authorities: the Municipal Councils, through their cultural offices as well as the local museums (207 nationwide, mostly archaeological and historical museums). In the established system of the *Committee of Culture* there are administrative bodies on regional and municipal level – departments (later councils) for Culture, entrusted with the functions of research, preservation and partly (according to the size and importance of the monument) restoration of monuments. The entire activity of these units is controlled by the *NICM*, which centralizes all activities and specialists. The negative effect of this system lies in this centralization:

- ⌘ The concentration of the preservation functions just in one department (*the Committee of Culture*) does not allow regulated coordination and interlinking with state policy on town planning and ecology.
- ⌘ As the single entity in conservation activities, *NICM* is usually unable to control all immovable monuments.
- ⌘ Investment facility suffers from the disadvantages of excessive centralism.

At the end of the 1980s the Ministry of Finance suspended the targeted financing of heritage preservation and included these funds in the total budget of municipalities.

Thus the *Ministry of Culture* and the *NICM* lost its controlling function as the municipalities did not coordinate their budgets and too often ignored the needs of monuments and diverted the funds for other priorities. This became an institutional battle and as municipalities preferred to transfer all responsibilities (including financial) to the *Ministry of Culture*, it consolidated even further the centralization of the system.

- ⌘ Owners of monuments, in the absence of economic incentives to favour active involvement, usually rely on the State help.

Despite numerous disadvantages, the concentration accumulates the positive effect of qualified professional staff following international standards. In the period from 1969 to 1988, the conservation and restoration activities were carried out on 9230 monuments with the total cost of 255 million BGN. In many cases, only professional intervention of the *NICM* saved endangered monuments, but this was achieved at the cost of conflicts with central and local authorities.

Some negative impact on the conservation of immovable monuments has been favoured by the legal classification of the monuments according to their scientific, historical, architectural, urban and artistic value. The monuments are divided into four categories:

- ⌘ World Heritage Sites (natural or cultural) included in UNESCO World Heritage List;
- ⌘ Monuments of national importance;
- ⌘ Monuments of local importance;
- ⌘ Monuments for information.

This classification system in a stagnating cultural policy system prioritises the resources primarily to the first two categories. The prestige and propaganda considerations, combined with a monopoly in the management of culture, has essentially began to work against initial essence of heritage, leaving in particular the immovable monuments to the background. Regardless of the modern definition of the monument in Bulgarian law, the state authorities have ignored this statute and definitions as well as the recommendations of international organizations. Reconstruction or even the destruction of monuments – mainly in urban centers or urban landscapes is often done without respect to the already existing legal norms. In combination with the lack of concepts and ideas for the new function of the monuments, it is clear that the cultural policy of the country during the totalitarian period has lacked the perspective and a clear understanding in the issues of heritage protection.

The period after 1989 is characterized by total crisis that engulfed the country and in particular cultural areas. The concentration of control grew. The *Ministry of Culture* has not established a regulated relationship with other departments. To this should



be added the concentration of the investment policy into its hands. In an effort to protect the financial resources from other priorities the Ministers channelled them to a single investor. At the same time all the ministerial structures at regional level are destroyed. Thus between the *Ministry of Culture*, on the one hand, and immovable monuments, on the other, there were practically no intermediate bodies to conduct the state cultural policy. The role of local authorities in the conservation system has decreased dramatically. Specialized *Cultural Heritage Directorates* at the former regional centers were closed down and the preservation activities were redirected to municipal administrations. In the current administrative division, it appears that in a number of municipalities with small territorial scope and without any skills and investment opportunities in the field of conservation, there are concentrated a large number of significant monuments. As a result of these processes the supervision of the monuments has decreased.

The division of the *NICM* into four specialized state companies and a government institute had not led to the increase in volume of work on the monuments. Furthermore, the restitution of the property, that started after 1989, has activated the owners of cultural monuments, but practically all actions undertaken by them have been illegitimate in terms of existing legislation.

In terms of overall socio-economic crisis, government funds for conservation have reduced sharply, criminal activities have increased and penalties remained inadequate. There is no public-policy interest for the problems of cultural heritage. It is clear that the field of culture cannot be a priority when funds for health, education and social security are minimized.

The heritage in Bulgaria is regulated by three categories of laws. The first one is related to the conservation of heritage, the second category is referred to territorial development and urban planning, and the third group covers environmental protection. Although Bulgaria has logically coherent regulatory framework, the system of regulations is largely obsolete in the context of rapidly changing conditions. The three regulatory categories are neither related nor united. The concept of the preservation subject does not comply with the new ideas of heritage including industrial heritage, cultural landscapes or entire urban areas. It provides extreme centralization of functions, without clarifying the role of local authorities.

The current legislation for the most part is obsolete. Some of its provisions are no longer applied, although they are not formally repealed. Different terms are used in the various acts.

Some of the old regulations are inapplicable and the use of different notions in individual legal acts questions the adequacy of the legal framework for the protection of movable heritage.

Following the entry into force of the *Cultural Heritage Act* in April 2009 the changing of the bylaws started.

The national system of cultural heritage system is regulated primarily by the *Cultural Heritage Act*. This law aims to create conditions for the preservation of cultural heritage, sustainable conservation policy and ensure equal access of the citizens to the cultural properties. State policy for cultural heritage protection is determined by the *Minister of Culture* in cooperation with the competent state and municipal authorities, the *Holy Synod of the Bulgarian Orthodox Church* and the central directorate of other registered religions, and with the assistance of civil society.

Main subject in the distribution of the functions of management, control, financial policy, keeping and promotion of cultural heritage is *Ministry of Culture*. Currently Ministers apparatus is overwrought with responsibilities and activities that it is better to entrust based on external contracts or to give to other contractors.

This process means the rejection of the authority, but the long-term goal is to achieve greater efficiency than could be achieved with centralized funds. But if the tasks of the *Ministry of Culture* are decentralize, also the way of allocating resources must be decentralized.

At the regional level there are no specialized bodies to implement the state policy in the field of cultural heritage. The regional governor, as a sole executive authority in the field appointed by the Prime Minister, is responsible for the preservation and protection of monuments in state ownership located in the region. In practice, however, he has no ability to exercise such powers as there is no appropriate administrative structure.

The same contradiction – discrepancy between assigned competencies and work opportunities – is observed at the municipal level. The cultural heritage preservation functions are performed by different organizational units of specialized directorates, without anyone to coordinate their activities. The problems of local authorities are aggravated by their duty to ensure the financing of activities for the conservation of heritage. Due to lower revenues in their budgets and the inability to determine their own levels of local taxes and fees the municipalities in most cases are unable to fulfil their responsibilities.

By the adoption of the new *Cultural Heritage Act* in 2009 it was introduced for the first time the obligation of the state to organize the protection of cultural heritage in the case of natural disasters and armed conflicts.

Following the initiative of the Bulgarian National Committee of ICOMOS, the legislation regulates a new category of cultural property with two sub-categories according to the level of endangerment:





1. Heritage at risk –there is a potential danger of damage or destruction because of:

- ⌘ location in earthquake zones, zones of large-scale construction projects, in the vicinity of areas with high risk of flooding or progressive changes of geological, climatic and other natural factors;
- ⌘ the risk of an outbreak of armed conflict and terrorist attacks;

2. Endangered heritage –there is a real danger of damage, vandalism, destruction or serious violation of their integrity, as:

- ⌘ fast decay of the original substance, leading to a major change in the structure;
- ⌘ fast deterioration of the environment;
- ⌘ visible loss of its authentic look.

Unfortunately, the idea to create a special register of “endangered cultural values” and “cultural values at risk” and to define the criteria according to which an object of cultural heritage can be entered in either of these lists as well as decision-making procedures for the registration was not accepted.

The shortage of specialists in the conservation at the local level and the absence of a licensing regime for professionals who are entitled to carry out activities related to conservation, have also had a negative impact on endangered cultural monuments.

In this situation the positive prospects for the development of activities for heritage preservation are related to the following important steps:

- ⌘ Improvement of the management system in terms of the modern idea of conservation as a collective process with many stakeholders – partners; for optimal deconcentration and decentralization;
- ⌘ Establishment of mechanisms for the state and municipalities to acquire ownership of immovable cultural monuments, to purchase them as the “first buyer” or alienate them forcibly with equivalent compensation or confiscation.
- ⌘ Ensure the participation of civil society in decision-making process in the issues of cultural heritage policy development;
- ⌘ Update the administrative penalties in accordance with the new socio-economic realities by giving priority to the imposition of higher fines, in accordance with the value and category tampered;
- ⌘ Enhancement of the role of public and expert councils as advisory bodies for cultural heritage protection.

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# WHAT'S OLD IS NEW AGAIN: CHARLES XI'S 1666 CONSERVATION ACT VIEWED FROM 21<sup>ST</sup> CENTURY AMERICA

JAMES K. REAP

In 1666 King Charles XI of Sweden issued an order titled "His Royal Majesty's Placat and Decree Regarding Old Monuments and Antiquities." This document declared that sites of historical character should be preserved. The Placat described specific types of qualifying resources and issued a general call for people to report such resources to the proper authorities.

Although this Placat is not a direct ancestor of our contemporary understanding or approach to cultural resource conservation in the United States, it does represent a unique, early example of such a framework. Notwithstanding its remote origins, the Placat's approach bears intriguing similarities with our current framework. This paper seeks to explore how contemporary American law protects similar resources to those identified in the Placat.

## Royal Placat of 1666

The exact origin of The Royal Placat of 1666 (the Placat) is unclear, but two individuals appear to have been instrumental in its creation and promulgation: Magnus Gabriel De la Gardie, Chancellor of Realm and also Chancellor of Uppsala University, and Johan Hadorph, a young secretary to the University. In early 1666 Hadorph, had submitted a proposal to De la Gardie calling for the protection of antiquities against destruction. De la Gardie's interest in heritage had already been demonstrated through his instigation of a book of illustrations of new and old buildings, *Svecia Antiqua et Hodierno*. After the issuance of the Placat by the young King Charles XI, a set of instructions on the implementation of the Placat were circulated to clergy and governors of the realm along with an "extract" edited by Hadorph which actually elaborated on objects to be protected. These actions certainly imply that these two individuals were closely involved in the development and implementation of the Placat.<sup>1</sup>

The issuance of this legal instrument was a groundbreaking attempt to protect cultural heritage properties such as ancient monuments, castles, strongholds, cairns, stones with runic inscriptions, tombs and burial sites. Charles XI and many of his court apparently saw the destruction and degradation of historic resources as a tragedy, even though they were not connected directly to the current political regime or religion of the country.

- ⌘ Public purpose served by preservation: "to the immortal Glory of our Ancestors and our entire Realm."<sup>2</sup> [To honor and give glory to ancestors and glory to realm would give rise to patriotism, generally considered an important public purpose.]
- ⌘ Preservation theory: "[N]or should he in any way waste Standing Stones or Stones with runic inscriptions, but should leave them altogether unscathed in their right former places, the same applying to all big amassed Mounds of Earth and Burial Sites, where many Kings and other Worthies have established their Tombs and resting Places." [This is the equivalent of a modern approach to preservation.]

The Placat protects historic resources through a fairly simple regulatory scheme. It established a sweeping prohibition of the unlawful "handling" or destruction of historic resources as defined by the Placat. While there appears to be certain limitations regarding lands or resources held by nobles, the thrust of the Placat is to protect identified resources under threat of repercussions.

- ⌘ General prohibition: "We have decided henceforth to protect and manage against unlawful Handling, by ordering... firstly that no-one whoever he may be from this Day forward shall in any manner make asunder or destroy [these resources]...

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<sup>1</sup> Quotations of the Placat provisions from Adlercreutz, Thomas, "The Royal Placat of 1666. Briefly about Background and further Importance," an essay included in this collection.

<sup>2</sup> His Royal Majesty's Placat and Decree regarding Old Monuments and Antiquities, translated by Thomas Adlercreutz, ICOMOS Sweden, <http://www.icomos.se/wp-content/uploads/2013/05/1666-Placat-Eng.pdf>.



regardless of how small these Remains may be..." [All resources are protected; no "de minimus" exception.]

- ⌘ "Taking" of resources: "...as We all such [sic] old Monuments on Our Land or on Land pertaining to the Crown, be it Our Property or taxable Property, regardless of whether it is now Our property or has been in the past and now surrendered, protect against all willful Injury as if it were Our private Property, and take it into Our Royal Custody and Trust." [Could this be compared to protections granted to resources on federal property in the United States?]
- ⌘ Regardless of "Lands of Tenure" exception, certain resources appear to be absolutely protected: "Thereafter We declare that no-one, of high or lowly Status, Cleric or Secular, pertaining to any Estate or Class, is permitted to plunder or rob tombs of Royals, Princes or other Nobles, which may be found in ruined or still standing Churches or Monasteries, much less to use them for own interment or in any way cause their old and rightful Proprietors any Damage or Infringement."
- ⌘ Scope/limitation/jurisdiction: "Turning to Our faithful Subjects of the House of Nobility, if there are any such Antiquities in their Lands of Tenure from Time immemorial, requesting them to care for their Conservation, in the vein of this Our Intention, the Importance of the Matter at hand, and as their own Honour would prescribe." [It appears that "confiscation" does not apply to "Lands of Tenure" owned by nobles, but rather appeals to their honor.]
- ⌘ Churches/holy objects: "As it is Our will that all Churches and Monasteries and all their Inventory, Gear, Decorations on Walls and Windows, Paintings or any Kind of mindfully created interior, as well as Tombs and Burial places of the dead inside Churches or outside in Churchyards, be shown the Care, Peace and Safety as befits their Christian Customs, Practice and Exercise, so that conclusively all Elements, no matter how small they may meet the Eye, may serve as Confirmation and Remembrance of a Historic Deed, Person, Place or Family, should carefully be respected and cared for, and that no permit should be given to waste or destroy even the slightest Part thereof."
- ⌘ Punishment: "And if anyone should presume to do anything against or else contravene Our Commandment, then it is Our will that he should suffer as anyone who disregards Our Decree, but also be subjected to Our High Disgrace." [This would imply not only the usual legal sanctions, but perhaps banishment from the royal court.]
- ⌘ Remedy: "Should there be any Abuse, Disorder or Damage done to any of the Objectives mentioned in this Placat, then We commanded earnestly that any such Act be corrected, and restituted to its former Condition." [The requirement of res-

titution or payment for the cost of restitution is included in a number of modern laws.]

- ⌘ Scope of responsibility to promulgate and carry out the provisions: "For this reason We command not just Our General Stateholder in Stockholm, Governors General, Governors, Provincial Governors, Stateholders, Mayors and Councils in the Cities, Provincial and Town Constables in the Countryside to watch over this Placat in full and careful Earnest, but also the Archbishop, Bishops, Superintendents, Provosts and Vicars all over Our Realm, that they each in his Place publically proclaim and also watch over the Objects which may be found in their Dioceses, Deaneries and Parishes and which are of the abovementioned Kind,"
- ⌘ Duty to report/disclose the existence of protected property. "...We also order every Person who may know of such Things, or who may possess old Scripture, Books, Letters, Coins or Seals, that they report to their Vicars or Our Constables, so that We through them may be able to communicate."

### United States Law - Background

In the United States, there are three principal levels of government: federal, state, and local. At the national level, the Constitution serves as the foundation of the federal government. The Tenth Amendment of the Constitution sets out the principles of federalism and states' rights by providing that the federal government may exercise only those powers delegated to it by the Constitution with any remaining powers reserved to the states or the people. Generally, federal statutes and regulations govern issues nationwide and may preempt any conflicting state or local laws. The regulation of real and personal property, including cultural resources, is generally the purview of the states, which delegate many of their responsibilities in this area to local governments. The federal government typically supports cultural resource conservation by establishing standards and providing incentives (such as grants or tax incentives) to encourage compliance with the standards.

The regulatory approaches of both federal and state governments include both the protection of cultural resources *from government action* (generally requiring only a process of public disclosure and comment and balancing preservation concerns with other governmental objectives) and protection of cultural resources *from private action* (generally seeking to regulate actions that could destroy or impair significant features of the resource.)

Outside of the aforementioned regulatory schemes are some laws that do not fit neatly into either general category of resource protection laws. These laws are designed to address specific types of actions governing specific types of resources. Native American cultural resource laws and laws protecting historic shipwrecks fall into this category.



Other legal methodologies for protecting historic resources utilize economic incentives. For example, the National Endowment for the Arts and Humanities awards grants, which are often utilized for the study of traditional cultural practices. Private individuals may take cultural resource protection into their own hands by creating easements and covenants. Easements can protect private parcels of land or specific areas or objects on a parcel of land by restricting particular types of land uses. If the restrictions lower the property value, the owner may receive income and property tax benefits.

Interestingly, the United States protects many of the same historic resources that the Placat sought to protect. This paper looks at these analogous resources and lays out some American legal strategies for protecting them.

#### Key federal laws:

- ⌘ NHPA. 54 U.S.C. §§ 300101 - 307108
- ⌘ National Environmental Policy Act-42 U.S.C. §§ 4321-4370m-12
- ⌘ Antiquities Act-54 U.S.C. § 320301
- ⌘ Archeological Resources Protection Act-16 U.S.C. §§ 470aa-470mm
- ⌘ Native American Graves Protection and Repatriation Act-25 U.S.C. §§ 3001-
- ⌘ Religious Land Use and Institutionalized Persons Act-42 U.S.C. §§ 2000cc-2000cc-5
- ⌘ Religious Freedom Restoration Act- 42 U.S.C. §§ 2000bb-2000bb-4
- ⌘ Abandoned Shipwreck Act- 43 U.S.C. §§ 2101-2106
- ⌘ Convention on Cultural Property Implementation Act- 19 U.S.C. §§ 2601-2613
- ⌘ Paleontological Resources Preservation Act- 16 U.S.C. §§ 470aaa-470aaa-11
- ⌘ 1st amendment- U.S. Const., amend. I.
- ⌘ Executive Order 13007- Exec. Order no. 13,007, 61 Fed. Reg. 26771 (May 29, 1996)
- ⌘ American Indian Religious Freedom Act- 42 U.S.C. § 1996
- ⌘ Executive Order 12898- Exec. Order No. 12,898, 59 Fed. Reg. 7629 (February 16, 1994).

#### Protected Resources

##### 1. Graves

Graves are one of the most highly protected of the resources identified in the Placat. Not only are they subject to the general prohibition against “handling” or destroying historic resources, but the graves of royals, princes, and other nobles are protected against plunder, robbery, or reuse regardless of whether they are located on “Lands of Tenure.”

United States law protects graves at the federal, state, and local level. On the state and local level there are cemetery protection laws and abandoned cemetery acts. On both the state and federal level there are archeology laws which protect both known and unknown archeological sites.

Of particular note is the federal Native American Graves Protection and Repatriation Act.<sup>3</sup>

⌘ Policy: “Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and...identify the geographical and cultural affiliation of such item.” § 3003(a)

#### ⌘ Requirements

⌘ “The inventories and identifications required under...[this Act]...shall be completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders.” § 3003(b)(1)(A)

⌘ “Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section.” § 3003(b)(2)

<sup>3</sup> 25 U.S.C. §§ 3001-3013.

<sup>4</sup> All illustration not specifically attributed have been taken from Wikipedia.



Stone Cist Graves, Northern Estonia<sup>4</sup>



St. Louis Cemetery, New Orleans, Louisiana



## Notification

- ⌘ "If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined...the Federal agency or museum concerned shall...notify the affected Indian tribes or Native Hawaiian organizations." § 3003(d)(1)



Bonaventure Cemetery, Savannah, Georgia.



A stone box grave with the body in flexed position from the Mississippian Culture.

## 2. Runestones and Petroglyphs

Another resource protected by the Placat which is unique to its cultural origins are runestones. Surprisingly, there is one claim that runestones managed to make their way to America. The Kensington Runestone (illustrated below) was allegedly found by a Swedish immigrant in Minnesota in 1898. However, the authenticity of the find and the artifact is the subject of speculation and controversy. A more applicable parallel

in America would be the petroglyphs of the American Southwest. On the state level, archeological protection laws and parks serve to protect numerous of these types of resources.

On the federal level are two particularly relevant statutes: the Antiquities Act and Archeological Resources Protection Act (ARPA).<sup>5</sup> The Antiquities Act allows the President to declare "historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest" on federal land as national monuments.<sup>6</sup>

- ⌘ Regardless of the nature of the national monument—whether it be a landmark, structure, or object—the President can reserve land as part of that national monument. § 320301(b). While the act specifies that the "limits of the parcels shall be confined to the smallest are compatible with the proper care and management of the objects to be protected," historically this power has been interpreted broadly and is often used to set aside large tracts of land. Id.

- ⌘ Outside of the designation and setting aside of land, the Antiquities Act grants authority to the Secretary of Agriculture or the Secretary of the Army to grant permits for the "examination of ruins, the excavation of archeological sites, and the gathering of objects of antiquity on land under their respective jurisdictions." § 320302(a)

- ⌘ "... to an institution that the Secretary concerned considers properly qualified to conduct the examination, excavation, or gathering, subject to such regulations as the Secretary concerned may prescribe." § 320302(a)

- ⌘ A permit may be granted only if...the examination, excavation, or gathering is undertaken for the benefit of a reputable museum, university, college, or other recognized scientific or educational institution, with a view to increasing the knowledge of the objects; and...the gathering shall be made for permanent preservation in a public museum. § 320302(b)(1-2).

The Archeological Resources Protection Act (ARPA) protects petroglyphs by prohibiting the unauthorized "excavation, removal, damage, alteration, or defacement of archaeological resources."<sup>7</sup>

- ⌘ The prohibition in ARPA is actually quite similar to the approach taken in the Placat. ARPA states, "No person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit" § 470ee(a)

- ⌘ ARPA also prohibits trafficking in archeological resources. It states that "No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or ex-

5 54 U.S.C. § 320301 and 16 U.S.C. §§ 470aa-470mm, respectively.

6 54 U.S.C. § 320301(a).

7 16 U.S.C. §§ 470ee(a).



change any archaeological resource if such resource was excavated or removed from public lands or Indian lands..." § 470ee(b)

- ⌘ "Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate [this Act] ... shall, upon conviction, be fined not more than \$10,000 or imprisoned not more than one year, or both." § 470ee(d)]



Rök Runestone Ostergotland, Sweden  
Photo attribution: Bengt Olof Åradsson

The Kensington Runestone, Minnesota

Petroglyph National Monument, New Mexico  
Photo attribution: National Park Service

### 3. Fortifications

Although settled by Western powers only from sixteenth century, the United States contains many historic fortifications on federal, state, and private land. Like other historic resources, designation under local, state, and federal historic preservation laws is one way the United States, provides protections to these sites. Two of these fortifications have also been inscribed in the World Heritage List. The fortifications erected to protect San Juan, Puerto Rico, dating from the Spanish and subsequent periods are

listed as the La Fortaleza and San Juan National Historic Site. The Alamo, originally the Mission San Antonio de Valero, was converted to military use by the Spanish and became an important battle site in 1836 as Texans sought independence from Mexico. The Alamo is protected by a wide variety of legal instruments: federal laws and designations, Texas State laws and designations, City of San Antonio ordinances, and cooperative agreements, easements, and deed restrictions. The Castillo de San Marcos in St. Augustine, Florida (illustrated below) is the oldest

masonry fort in the Continental United States. It is designated as a National Monument and is administered by the National Park Service.



La Fortaleza and San Juan Nacional Historic Site in Puerto Rico  
Photo from <http://whc.unesco.org/en/list/266>



Castillo de San Marcos National Monument, St. Augustine, Florida



The Alamo, San Antonio, Texas  
Photo attribution: Daniel Schwen

### 4. Castles

Given its age as a nation and its development history, the United States is not viewed as a country having historic castles. Nevertheless, there are resources that are arguable comparable.

Wealthy industrialists and businesspersons, rather than a landed nobility have constructed large estates that were inspired by the castles and palaces of Europe. As such, sites like Biltmore Estate near Asheville, North Carolina and Hearst Castle on the



The Walls of Tallinn, Estonia  
Photograph by Lars Plougmann



central coast of California have become America's "castles". Although Biltmore Estate remains in private ownership, many sites of this nature such as, Hearst Castle are now owned or managed by local or state governments or non-governmental organizations. Hearst castle, a National Historic Landmark and California Historical Landmark is operated as a California State Park.



Örebro (Oerebro) Castle, Örebro, Närke, Sweden.  
Photo from castlesandmanorhouses.com



Biltmore Estate, Asheville, NC.  
Photo from www.Biltmore.com

As with most historic resources in the United States, these "castles" are often protected via designation and the protections that often accompany formal designation. Because they are often individually significant through their associations with significant people or architectural movements, they often warrant designation by some level of government. Listing in the National Register of Historic Places provides some protection from arbitrary federal actions or actions which are federally assisted.<sup>8</sup> According to the NHPA, "The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking...shall take into account the effect of the undertaking on any historic property."<sup>9</sup> While this protection is only procedural, the public disclosure of potential effects on historic properties may lead to protection of a properties character defining features.

Tax incentives can also be used to help maintain and rehabilitate these complex structures. A particularly important program is the Federal Historic Rehabilitation Tax Credit which was first introduced in 1976. Administered by the National Park Service, the program has resulted in tens of thousands of rehabilitation projects having been approved.<sup>10</sup> This program grants a 20 percent tax credit for rehabilitation of historic income-producing properties. Although the federal incentive does not extend to owner occupied residences, a variety of state and local tax incentives do address this type of property.

Another way "castles" in America may be protected are through conservation easements which can be created by private or institutional owners of the property and also may result in significant tax savings.

A more fanciful example of an American "castle" is the Sleeping Beauty Castle in Disneyland, California. Based on Neuschwanstein Castle in Bavaria, the structure was designed to illustrate a fairy tale to amusement park visitors. Although the Disney Corporation which owns the property would not likely seek listing or legal protection, the structure could potentially qualify for listing in the National Register of Historic



Hearst Castle, California



Sleeping Beauty Castle, Disneyland, California

Places because of its age and status as a nationally or internationally significance icon of popular culture.

## 5. Stone Ruins

Stone ruins exist in different parts of the United States and originate from various periods eras of American history. These places can be important archeological sites and are protected by the same laws as other archaeological sites. If on federal land, the Antiquities Act or the Archeological Resources Protection Act (both described above) may be applied. Exceptional sites like Mesa Verde have been designated as National Parks and some have been added to the World Heritage List.

While individual archaeological sites can be protected by specific legislation or designation, it is also possible to protect a larger cultural landscape containing many such sites. In 2009, Congress passed the National Landscape Conservation System Act, which created the first new congressionally authorized public lands system in decades. It consolidating ten different federal conservation designations administered by the Federal Bureau of Land management. One example of a property in the system is the Canyons of the Ancients National Monument in Southwest Colorado, which consists of numerous archeological sites and stone ruins.<sup>11</sup>

<sup>8</sup> 54 U.S.C. § 306108.

<sup>9</sup> Ibid.

<sup>10</sup> *A Guide to the Federal Historic Preservation Tax Incentives*, National Park Service (archived from the original on August 4, 2011) [https://web.archive.org/web/20110804040657/http://www.nps.gov:80/hps/tps/tax/incentives/essentials\\_1.htm](https://web.archive.org/web/20110804040657/http://www.nps.gov:80/hps/tps/tax/incentives/essentials_1.htm).

<sup>11</sup> 16 U.S.C. §§ 7201-7203.



In addition to federal protection, state archeological protection laws can offer another layer of protection for those properties on state or private land.



Cliff Palace, Mesa Verde National Park  
Photo attribution: Jackson Beck



Stone tower and pueblo at Canyons of the Ancients National Monument  
Photo attribution: Jackson Beck

## 6. Battlefields

Battlefields across the United States have been preserved by federal and state governments, which set them aside as parks to commemorate significant battles and honor the dead. One example is Chickamauga & Chattanooga National Military Park.

Specific programs also exist for the preservation of battlefields. One such is the American Battlefield Protection Program, administered by the National Park Service. It was established to encourage cooperation between the various levels of government and educational and nonprofit institutions.<sup>12</sup> Through this program, the National Park Service can work with various entities in “identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a national, State, and local level.”<sup>13</sup>

§ 308102.

(a) Using the established national historic preservation program to the extent practicable, the Secretary shall encourage, support, assist, recognize, and work in partnership with citizens, Federal, State, local, and tribal governments, other public entities, educational institutions, and private nonprofit organizations in identifying, researching, evaluating, interpreting, and protecting historic battlefields and associated sites on a national, State, and local level.

(b) Financial assistance: To carry out subsection (a), the Secretary may use a cooperative agreement, grant, contract, or other generally adopted means of providing financial assistance.

(c) Authorization of Appropriations: There is authorized to be appropriated to carry out this section \$3,000,000 for each fiscal year, to remain available until expended.

Many nonprofits work to help preserve historic battlefields. The Civil War Trust is one such organization that focuses primarily on battlefields related to the Civil War, but also includes those of the Revolutionary War and War of 1812. They work to inform the public by developing educational programming at the battlefields. According to their website, “[The Civil War Trust] sees these battlefields as outdoor classrooms, teaching young and old alike about the sacrifices made during our nation’s turbulent first century to secure the precious freedoms we enjoy today. They are the places where crucial chapters of the American story were written, where ordinary citizens — farmers, merchants and laborers — displayed extraordinary valor fighting for independence and freedom. Incredibly, the vast majority of these hallowed battlegrounds remain unprotected.”<sup>14</sup>



Memorial to Col. John T. Wilder at Chickamauga and Chattanooga National Military Park, Georgia and Tennessee

## 7. Graves & Paintings in Churches

Graves, paintings, and other historical objects in churches pose a unique challenge in America. The First Amendment of the United States Constitution states, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof ....”<sup>15</sup> As a result, there are limitations on the power of government to control religiously affiliated resources.

The Religious Freedom Restoration Act (RFRA) further limited the government’s power over these properties.<sup>16</sup> It established that the government “shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability.”<sup>17</sup> The government may only surmount this prohibition if there is a “compelling governmental interest” and it uses the “least restrictive means of furthering that compelling governmental interest.”<sup>18</sup>

Similarly, the Religious Land Use and Institutionalized Persons Act (RLUIPA) created the general rule that “No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution.”<sup>19</sup> Once again, the government may only break this rule when there is a “compelling governmental interest” and it uses the “least restrictive means of furthering that compelling governmental interest.”<sup>20</sup>

A number of states have enacted state-level religious freedom statutes that limit state and local control of religious organizations and their properties. On the other hand, a

12 54 U.S.C. §§ 308101 – 308103.

13 54 U.S.C. § 308102.

14 Civil War Trust, “About the Civil War Trust: Our Mission & Guiding Principles,” accessed January 27, 2018, <https://www.civilwar.org/about>.

15 U.S. Const., amend. I.

16 42 U.S.C. §§ 2000bb-2000bb-4.

17 42 U.S.C. § 2000bb-1(a).

18 42 U.S.C. § 2000bb-1(b)(1)-(2).

19 42 U.S.C. §§ 2000cc-2000cc-5; § 2000cc(a)(1).

20 42 U.S.C. § 2000cc(a)(1)(A)(B).





Painting in Church in Rada, Sweden



St. Louis Cathedral, New Orleans, Louisiana

number of state constitutions prohibit or restrict using state funds in a way that would benefit churches or religious organizations. In effect, the protection of graves, paintings and other objects in churches is solely up to the church or religious organization.

One court opinion on an attempt by a city to regulate the interior of a church to protect it clearly significant architectural features stated: "The configuration of the church interior is so freighted with religious meaning that it must be considered part and parcel of the Jesuits' religious worship. We conclude, therefore, that [provisions of the state constitution] protects the right freely to design interior spaces for religious worship, thus barring the government from regulating changes in such places, provided that no public safety question is presented."<sup>21</sup>


Strängnäs Cathedral, Sweden  
Photo from sweden-tourist.com

President Woodrow Wilson Tomb,  
National Cathedral, Washington, DC

## 8. Sacred Forests

Sacred forests and areas present yet another interesting resource covered by preservation laws. The NHPA recognizes the concept of a "Traditional Cultural Property" (TCP). According to the NHPA, a TCP "is a property that is eligible for inclusion in the National Register of Historic Places (NRHP) based on its associations with the cultural practices, traditions, beliefs, lifeways, arts, crafts, or social institutions of a living community. TCPs are rooted in a traditional community's history and are important in maintaining the continuing cultural identity for the community."<sup>22</sup>

Since sacred sites in the United States are commonly associated with Native American Tribes, the Federal government has entered into the Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites. This MOU is intended to improve site protections and to afford Native Americans greater access to the sites.

Actions: each agency will do the following:<sup>23</sup>

1. create a training program to educate staff about the sites, their access/treatment, and collaboration with tribes
2. develop guidance for management and treatment of sites
3. create a website with information about sites with contact info for agencies and tribes
4. develop and implement an outreach plan for sites
5. analyze current confidentiality requirements and develop recommendations for confidentiality issues regarding the sites
6. establish management practices that participating agencies could adopt
7. identify potential impediments to protection and recommendations to address them
8. develop mechanisms to obtain and share subject matter experts among agencies about sites
9. develop outreach to non-Federal partners to provide info about sites
10. mechanisms for full tribal participation in identifying, evaluating and protecting sites
11. establish group of staff from agencies to implement this MOU

Each agency will use its own funds to implement the terms of the MOU.

The American Indian Religious Freedom Act was passed in 1978 and repealed many prohibitions of various Native American religious practices.<sup>24</sup> The Act states, "[I]t shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian...including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites."<sup>25</sup>

In 1996, the President issues an executive order which directed federal agencies to accommodate sacred sites.<sup>26</sup> Its key provisions included:

21 The Society of Jesus of New England v. Boston Landmark Commission, 409 Mass. 38 (1990).

22 "Quick Guide for Preserving Native American Cultural Resources National Register of Historic Places - Traditional Cultural Properties Draft 2012" in National Register of Historic Places - Traditional Cultural Properties (TCPs): A Quick Guide for Preserving Native American Cultural Resources, U.S. Department of the Interior, National Park Service, American Indian Liason [sic] Office. Pg. 1.

23 Memorandum of Understanding (MOU) Regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites (effective December 4, 2012), [http://www.achp.gov/docs/SacredSites-MOU\\_121205.pdf](http://www.achp.gov/docs/SacredSites-MOU_121205.pdf).

24 42 U.S.C. § 1996.

25 Ibid.

26 Executive Order 13007- Exec. Order No. 13,007, 61 Fed. Reg. 26771 (May 29, 1996).



⌘ *Section 1. Accommodation of Sacred Sites.* (a) In managing Federal lands, each executive branch agency...shall...(1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

⌘ (b) For purposes of this order:

⌘ “Sacred site” means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.



Sacred Forest Hill, Paluküla, Estonia  
Photo from [sacrednaturalsites.org](http://sacrednaturalsites.org)



San Francisco Sacred Peaks, Arizona

While terminology of ICH is not widely used, the idea is approximated in the legal understanding of “American folklife.” The American Folklife Preservation Act defines “American folklife” as “the traditional expressive culture shared within the various groups in the United States: familial, ethnic, occupational, religious, regional; expressive culture includes a wide range of creative and symbolic forms such as custom, belief, technical skill, language, literature, art, architecture, music, play, dance, drama, ritual, pageantry, handicraft; these expressions are mainly learned orally, by imitation, or in performance, and are generally maintained without benefit of formal instruction or institutional direction.”<sup>27</sup>

Another governmental effort to protect ICH was the passage of the National Foundation on the Arts and the Humanities Act (NFAHA).<sup>28</sup> The purpose of the NFAHA is to “encourage and support...national progress and scholarship in the humanities and the arts...”<sup>29</sup> The act sets up the National Endowment for the Arts (NEA) and the National Endowment for the Humanities (NEH) in order to carry out its purpose. As defined by the NFAHA (emphasis added), “the arts” includes, but is not limited to, music (instrumental and vocal), dance, drama, *folk art*, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and *craft arts*, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution, and exhibition of such major art forms.<sup>30</sup>



Sami Shaman with a Drum, Finland



Smithsonian Folkways Recording

27 20 U.S.C. §§ 2101 et seq.; 20 U.S.C. § 2102(1).  
28 20 U.S.C. §§ 951 et seq.  
29 20 U.S.C. § 951(2).  
30 20 U.S.C. § 952(b).

## 9. Intangible Cultural Heritage: Songs & Stories

The protection and promotion of intangible cultural heritage (ICH) in the U.S. is highly decentralized. It is primarily the purview of museums, non-governmental cultural organizations, and a multitude of state and local agencies. At the federal government level, the most important actor is the Smithsonian Institution, particularly the Center for Folklife and Cultural Heritage (CFCH). The primary function of the CFCH is to promote understanding of the cultures which make up the United States. The center administers activities like the Folklife Festival.



## Conclusion

The Royal Placat of 1666 was an early recognition by governmental authorities that cultural resources are significant and should be conserved for public benefit. While it took several more centuries for most nations to develop comprehensive legislative frameworks for cultural resource protection, the Placat remains an important milestone in the development of modern protective legislation. Although today we recognize and protect many more types of cultural resources through many more regulatory mechanisms, it is notable that we still value and strive to conserve the same resources identified in the Placat. For that reason, Charles XI's remains an important historical touchstone.

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# HISTORIC PERSPECTIVE OF THE CULTURAL HERITAGE LEGISLATION IN MEXICO

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The article gives an overview of the development of cultural heritage legislation in Mexico from 19th century till nowadays pointing out the most important changes in legal documents as well as administrative institutions.

## Historical Evolution

We can divide the history of the cultural heritage legislation in Mexico in the following stages:

- ✂ From national independence in 1821, through the nineteenth century and until early twentieth century, the main concern of the authorities related to the cultural heritage, was to establish a legislation to protect archaeological monuments from looting and illicit export. In the late 19<sup>th</sup> century, the position of Inspector General of Monuments -which was assigned to an individual- was initially created. In the early 20<sup>th</sup> century, the creation of a governmental office called the Fine Arts Office dedicated to the protection of monuments in Mexico was approved. This was an example of the institutionalization of cultural heritage in the governmental sector.
- ✂ In 1920s and 1930s, Mexican cultural authorities promoted and supported a nationalist policy. Protection of cultural heritage (mainly archaeological and historical monuments and heritage of indigenous peoples) were the main target of protection as they contributed to the formation of a “national identity”. In this period the most important institutions in the field of cultural heritage were established: National Institute of Anthropology and History (INAH) in charge of archaeological and historical monuments and areas and the National Institute of Fine Arts (INBA) for the protection of artistic monuments and areas.
- ✂ In 1972, the Mexican government issued the Federal Law on Archaeological, Artistic and Historic Monuments and Areas,<sup>1</sup> which is still in force. In the late 20<sup>th</sup> century and early 21<sup>st</sup> century, the cultural heritage protection in

Mexico incorporates the following aspects:

- ✂ the recognition and legal protection of certain artefacts of paleontological heritage,
- ✂ the recognition and legal protection of the underwater cultural heritage,
- ✂ the improvement of the regulations related to the declarations of monuments to ensure compliance with the right to be heard in this process,
- ✂ the amount of fines for violations of the law were updated, as in the past, those sanctions did not exceed over USD 4,
- ✂ provisions were established to regulate the import of cultural goods from other countries.

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<sup>1</sup> “Federal Law on Archaeological, Artistic and Historic Monuments and Areas,” accessed August 9, 2017, [http://www.unesco.org/culture/natlaws/media/pdf/mexico/mexique\\_legislative\\_text\\_1972\\_engl\\_tno.pdf](http://www.unesco.org/culture/natlaws/media/pdf/mexico/mexique_legislative_text_1972_engl_tno.pdf).



- ⌘ On April 30, 2009 an amendment of the Federal Constitution of Mexico was issued that included the recognition of the cultural rights in Mexican law.
- ⌘ Finally, an amendment to the Law of the Federal Public Administration was approved on December 17, 2015, creating the Ministry of Culture.

We will now analyze these changes and reforms.

### Constitutional Changes

For many years, the protection of cultural heritage was considered in accordance with the idea of a cultural nationalism. The Federal Government had complete freedom to make the most important decisions regarding a property that contributed to the strengthening of national identity. The participation of society was not considered as an important issue.

In a process of a major change made from the point of collective and social rights, the Federal Constitution was amended in 2009 to recognize the right to access and enjoy culture as follows:

#### Article 4.

*... Every person has the right to access culture and enjoy the goods and services thereof provided by the State, as well as exercising their cultural rights. The State shall promote the means to spread and develop culture, taking into account the cultural diversity in all its manifestations and expressions, with consideration for creativity. The law shall set forth mechanisms to access and participate in every cultural manifestation.<sup>2</sup>*

This has been an important step in strengthening many cultural expressions, especially regarding intangible heritage. However, it is important to note that the Constitution does not mention the protection of cultural heritage.

### Changes in Legislation of Cultural Heritage

The Act that specifically protects the cultural heritage in Mexico is the Federal Law on Archaeological, Artistic and Historic Monuments and Areas which was issued in 1972.

However, in recent years, this law has been reviewed to improve the legal protection of monuments and sites in our country. Let us mention the most important changes:

- ⌘ On January 13, 1986 an amendment was published in the Federal Official Gazette. Article 28-Bis was added to the law, in order to recognize the paleontological heritage, which had no legal protection before.

- ⌘ Subsequently, the Law on Monuments was amended to include a new article 28-Ter. This article recognizes the obligation to preserve underwater cultural heritage, which did not have legal protection before.

- ⌘ For many years, declarations of monuments and protected areas had legal problems: there was no clear regulation of the procedure for issuing these declarations. The main problem was that law did not provide a procedure to ensure owners -whose property could be declared monuments- the right to defend themselves against such a declaration as an act of authority. That was an infringement of the right to be heard that is established in our Constitution. The consequence was that the law was declared unconstitutional and therefore any declaration issued in accordance to that law were at risk of being declared invalid. On June 13, 2014 some amendments were published to the Law on Monuments. One of these reforms was to establish a clear regulation of the procedure for declaring a monument or protected area. In such regulation, the exercise of the right to be heard of any person who could feel affected by a possible declaration was guaranteed. The consequence of this reform for the benefit of cultural heritage is that if the authorities follow the procedure established by the law, the risk of invalidity of a declaration of monuments is substantially reduced.

- ⌘ For many years the fixed amounts of the fines that the government charged for the violation of the Federal Law on Monuments stayed unchanged. Given inflation and devaluations that Mexico has suffered in previous decades, the amounts of the fines became very low. At its worst moment, the maximum fine set by the most serious violation of the Law on Monuments was less than 4 US Dollars. Therefore, the fines were not a real mechanism to obstruct or punish those who violated the law.

On June 13, 2014 an amendment to the Law on Monuments updated the parameters to determine the amounts of the fines based on the minimum wage of workers. Currently the maximum fine for the most serious violation of the Monuments Law is approximately 18,000 US dollars. However, this amount will be updated annually at least. We believe that this already represents a severe punishment for those who try to break the law.

- ⌘ On the same date June 13, 2014 it was added the Article 53-Bis to the Federal Law on Monuments considering as a felony the import, export or transfer of ownership of cultural property in violation to legal provisions adopted by the country of origin of such property.

### Changes in Cultural Institutions

For nearly 50 years, the governmental structure for the protection of Cultural Heritage Mexico consists of two institutions:

<sup>2</sup> "Political Constitution of the United Mexican States," accessed October 31, 2017, <http://www.wipo.int/edocs/lexdocs/laws/en/mx/mx047en.pdf>.



- ⌘ National Institute of Anthropology and History (INAH), which is responsible for the protection of archaeological and historical monuments and areas.
- ⌘ National Institute of Fine Arts (INBA), which is responsible for the protection of artistic monuments and zones

Both institutions report directly to the Secretary of Public Education.

On December 6, 1988, the President of the Republic created by a decree in the Federal Official Gazette the National Council for Culture and Fine Arts (CONACULTA). An agency under the Ministry of Education was in charge of directing states cultural policy and coordinating the actions of the cultural institutions, including the INAH and INBA.

A new decree was issued on December 17, 2015, in the Federal Official Gazette, creating the Ministry of Culture which replaced CONACULTA. All cultural policy and cultural institutions (including the INAH and INBA) are authorized by Ministry.

Up till now, the legislation to regulate more precisely how this Ministry will operate and the scope of its direct involvement in the protection of the Mexican Cultural Heritage has not been issued yet. It is waiting for the issuance of the first General Law on Culture for the whole country, but this project is still pending.

## Conclusions

As conclusions of this document, we can say the following:

- ⌘ The most important and transcendent changes in the legislation of cultural heritage in Mexico have occurred in the last decade. For almost 40 years, there were no significant changes in our legislation and many updates and discussions on the role of Cultural Heritage are still pending.
- ⌘ As an important issue, cultural rights were finally recognized in our Federal Constitution and this is important first step to improve the cultural legislation.
- ⌘ The upgrading of the institutional framework of cultural heritage in the Federal Government is still pending and the final structure in this governmental sector and the issuance of the General Law of Culture is not clear.
- ⌘ The Federal Law on Monuments has recognized new categories of protection: paleontological and underwater heritage. There are still other categories to be protected, such as the industrial heritage, intangible heritage, etc.
- ⌘ Federal Law on Monuments has been modified to provide better protection tool. However, this law still needs to be revised and updated to meet its goals more clearly.

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# DEVELOPMENT OF THE LEGISLATION OF THE PROTECTION OF CULTURAL HERITAGE IN CHILE

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The article gives an overview of acts and decrees as well as the terminology that concern heritage protection in Chile.

## Heritage legislation

- ✂ 1925 Decree Law no. 651 creates the Council of National Monuments, a state agency in charge of the protection of the cultural heritage. About 50 properties were declared national monuments.
- ✂ 1970 The legislation is reformulated and the *Law of National Monuments and Related Norms* (Ley MN no. 17.288) establishes the basis on which all future laws and patrimonial norms in Chile will be built, regarding the protection of immovable heritage, landscapes, as well as furniture, artefacts of cultural value and intangible heritage.
- ✂ 1990 *The Law of Donations for Cultural Purposes* was enacted (no. 18.985, Art 8). This law has been a fundamental document in the protection and conservation of the national heritage.

## Development

Starting with Act no. 17,288, a substantial increase in the nomination of national monuments began. Sites and works that were not previously reported, began to be considered and protected in a new level.

- ✂ 1990 Regulation of the Ley MN (Supreme Decree, DS no. 484 of the Ministry of Education) regulates the excavations and/or archaeological, anthropological and paleontological research.
- ✂ 2005 Law no. 20.021 / 20.033 was added, enacting criminal punishment in case of the damage to and appropriation of a national monument.

There are now hundreds of properties and typical zones protected by the Law.

## Law no. 17.288 of National Monuments of 1970

By Law no. 17.288 the National Monuments Council (CMN), a technical and collegial body under the Ministry of Education, was authorised as a responsible institution in the protection of national monuments. This body is responsible for proposing nominations of national monuments. The Council is autonomous and follows its own criteria, however the declaration of something as national monument is made by the Ministry through a Supreme Decree.

The Law divides the Cultural Heritage as follows:

- ✂ Historical Monuments: sites, ruins, constructions and objects that have historical, artistic or age value and are of public (state) or municipal property. They are declared national monuments by a supreme decree, dictated upon request and by agreement of the CMN.
- ✂ Public Monuments: are under the protection of the National Monuments Council. This category includes the statues, columns, water sources, pyramids, plates, crowns, inscriptions and, in general, all the objects placed or that are placed for perpetuate memory in fields, streets, squares, walks and public places.
- ✂ Archaeological Monuments: archaeological monuments owned by the State of Chile, sites, ruins, deposits, anthropo- archaeological pieces that exist on or under the surface of the national territory, including water.
- ✂ Nature Sanctuaries: all terrestrial or marine sites that offer special possibilities for geological, paleontological, zoological, botanical or ecological research, or that have natural formations, whose conservation is of interest to the science or the State.

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The Law also defines the conservation of environmental characteristics, typical zones and interchange and loan of artefacts between museums.

Considerations on MN Law:

- ⌘ The legal processes do not necessarily consider the formal consultation or notification with the owner or community; nor the possibility for reconsiderations or appeals to a superior body if one does not agree with the proposed statement.
- ⌘ The Law also establishes that both historical monuments and real estate located in a typical zone cannot be demolished, and only modifications or repairs are allowed, which must be previously approved by the National Monuments Council.
- ⌘ In terms of financing, in Chile the declarations of historical monuments and typical zones are not accompanied by economic resources of the state to support the owner in the restoration and/or maintenance of heritage, except for the exemption of real estate taxes. Although the latter only applies to the historical monuments and typical zones that are not in commercial use.

Economic and cultural changes in Chile require a new reflection on what constitutes heritage and what is the best way to preserve it. This creates:

- ⌘ conflict with the 1980 Constitution on the subject of private property
- ⌘ does not reflect the positive effect of the patrimony to the society and therefore it does not foresee funds to preserve it.
- ⌘ Declarations of historic monuments and typical zones are not accompanied by economic resources that support the owner in the restoration or maintenance of the property.

#### **Supreme Decree no. 484 related to Archaeological, Anthropological and Paleontological Excavation and Research**

- ⌘ Actions on private or public lands are governed by the rules of the National Monuments Council
- ⌘ The objects and artefacts found are in the ownership of the State of Chile

#### **Legal norms related to national monuments**

Political constitution of the Republic of Chile:

The Constitution Chapter III Art 19: assures all people:

- ⌘ No. 8: ... the right to live in a pollution-free environment ...  
The law may establish specific restrictions on certain rights or freedoms to protect the natural environment;
- ⌘ No. 24: the right of property in its various categories related to all kind of tangible

or intangible goods. Only the law can establish the acquisition ways to the property, and the ways to use enjoy and dispose it and the limitations and obligations that derive from its social function .....

Organic Constitutional Law on Government and Regional Administration.

DSN no. 291 of 1993

Chapter II: Functions and Departments of the Regional Government.

- ⌘ Art no. 19 f): to promote cultural expressions, to safeguard the historical, artistic and cultural heritage of the region, including national monuments, ...

Indigenous Law. LAW no. 19,253, of 1993 created the National Corporation of Indigenous Development

Title IV. Recognition, respect and protection of Indigenous cultures.

- ⌘ Art no. 39 f): CONADI is the agency in charge of the preservation and dissemination of the archaeological, historical and cultural heritage of the ethnic groups and to promote related studies and research.

General Bases of Law of Environment. LAW no. 19,300 of 1994.

This law has had an important development in recent years, and currently is applicable to any intervention in immovable heritage. It develops the concepts of Environmental Heritage and Conservation of Environment.

- ⌘ Conservation of environmental heritage
- ⌘ Environmental damages
- ⌘ Environmental impact
- ⌘ Environment
- ⌘ Areas of Influence: in the Rules of this Law
- ⌘ Minimum content of the Environmental Impact Studies: in the Rules of this Law

Urbanism and Construction General Ordinances. Ds no. 47, 1992, issued by the Ministry of Housing and Urbanism. (LGUC)

Art. 60 It assigns attributes to establish Historic Conservation Zones with Municipality Master Plans. It does not establish financial support for the owners for the conservation of properties or typical zones.

Art 1.1.2: Definitions:

- ⌘ Historic Conservation properties: a building that has cultural value to be protected, demolition of such building generates an urbanistic impairment, or that its architecture is a milestone of urban significance;
- ⌘ Historic Conservation Areas: urban areas whose urban expression represents lo-



cal cultural values, the demolition of any single building generates an impairment to the zone, or that is an area that is related to one or more National Monuments on the Category of Historic Monument or Typical Zone.

The Law also defines:

- ⌘ National Monument
- ⌘ Preliminary project
- ⌘ Draft project
- ⌘ Building for Historic Conservation
- ⌘ Historic Conservation Zone
- ⌘ Territorial Planning Instruments
- ⌘ Maintenance works
- ⌘ New constructions
- ⌘ Building Reconstruction
- ⌘ Remodeling a property
- ⌘ Alteration
- ⌘ Extension
- ⌘ Repair
- ⌘ Building Restoration
- ⌘ Harmonic Set
- ⌘ Demolition Permit

Law of Donations for Cultural Purposes. Law N ° 18.985, Art 8<sup>th</sup>, 1990.

This law gave an important impulse to the protection, conservation and restoration of national monuments in all their categories. It is especially used by corporations, foundations and non-profit NGOs. It regulates the good use of donations of legal entities that enables tax benefits and extends them to other social and public purposes. The law of Cultural Donations, is a legal mechanism that stimulates private intervention (companies or individuals) in the financing of artistic and cultural projects. It establishes the following definitions for its action:

- ⌘ Beneficiaries
- ⌘ Donors
- ⌘ Private Donor Qualification Committee
- ⌘ Requirements for Beneficiaries and Donors
- ⌘ Project
- ⌘ Regulation
- ⌘ Tax Benefits
- ⌘ Terms and conditions for tax benefits.

EASTER LAW. LAW no. 16.441 of 1966 of the Ministry of the Interior.

Article no. 43: Exclusively only the President of the Republic may authorize with decree the excavations of parts of buildings or historical ruins, burials or cemeteries of aborigines, artistic objects or pieces, archaeological or natural formations that exist under or over the surface and whose conservation is of interest to science, history or art, and are outside of the national territory.

Territorial Tax Exemption for Monuments Without Commercial Purposes. Law no. 20.033

This law permits that the real estate declared as historic or public monuments certified by the National Monuments Council and not dedicated to commercial activities can be exempted the territorial tax. Unfortunately, this restrictive rule has hindered the development and maintenance of many properties since it does not allow them to generate commercial activities, which makes it difficult to preserve the property.

Law of the National Council of Culture and Arts. Law no. 19.881 of 2003.

The purpose of the Council is to support the development of the arts and the cultural dissemination; to contribute the conservation, increase and make the cultural heritage available for the people and to promote the social participation in the cultural life of the country.

The Council has a National Fund for Development of Culture and Arts, which is divided into:

- ⌘ Arts Promotion Fund
- ⌘ Regional Cultural Development Fund
- ⌘ Cultural Heritage Conservation and Dissemination Fund
- ⌘ Indigenous Cultures Development Fund
- ⌘ Cultural Infrastructure Development Fund
- ⌘ Scholarships and Internships Fund

Currently, this law is under revision and possible amendment.

### **Public programs after 27f.**

- ⌘ MINVU: National Housing Reconstruction Program "United Chile Reconstructs Better" Ministry of Housing and Urbanism.
- ⌘ Municipalities: own programs and regulatory plans.
- ⌘ CNCA: "Immovable Heritage Funds" program for restoration projects.
- ⌘ Regional governments (intendencias): approve these programs and execute construction projects.



# PROCESSES AND NEEDS OF REFORMING THE LEGISLATION IN THE FEDERAL REPUBLIC OF GERMANY

WOLFGANG KARL GÖHNER

The article gives a thorough overview of the heritage protection system and a systematic comparison between different regulative measures in German "Länder".

## Preamble

The EU is currently facing multifaceted changes. The global environment is rapidly changing, starting from the instabilities in the Near East and North Africa, the refugee crisis and terrorist threats and attacks, to the emerging (economic) powers in Asia and the development of a multi-polar world of global stakeholders. On the other hand, the EU is facing some major challenges from the inside, such as a crisis of confidence among its citizens, growing populism and Euroscepticism, a lack of solidarity among its member states and calls for multi-speed Europe and "exits" from the Union.

However, this is not the first time the EU has faced multiple crisis. Over the years, we had intense debates about the need to reform the European Community and to face the declining popularity of the European vision, and in the end the Single European Act and an even stronger Union emerged.

Some of the fundamental values of our European project, like ever-lasting peace, freedom of the Europeans, the free movement for example or the single currency, are as well endangered as the European prism as a whole. All member states need to invest themselves fully in what they subscribed to, because that has been the problem for a while now. We have seen over-promising and under-delivering in many things including the migration crisis. So, if the member states put their minds and their hearts behind the common solutions we clearly want, the project will be a success for everyone.

The whole concept of the EU is that we are a family of nations, that we are all equals among equals. The fundamental premise is that we are all equals in the same boat with the same responsibilities and of course the same rights. The best way to ensure that our EU remains a family of equals is for a first step, to strengthen the European idea and its implementation in the brains and hearts of the Europeans!

Europe's Cultural Heritage is an essential part of our common European as well as local identity. Its preservation and promotion is our permanent task. Following the slogan "Sharing heritage", all Europeans are invited within the upcoming «European Cultural Heritage Year (ECHY) 2018»<sup>1</sup>, just proposed by the European Commission to discover Europe's Cultural Heritage and to experience their own cultural background.<sup>2</sup> The ECHY 2018 will include all forms of Cultural Heritage. Archaeological and built heritage can serve as a starting-point, since it offers a unique opportunity for children and young people in particular to experience history and culture and other tangible and intangible Cultural Heritage directly and as part of their daily lives. The aim of the year is to raise awareness of the European dimension of Cultural Heritage.

Let us be aware, that our common Europe with its national characteristics and State sovereignties is indispensable for the peace and prosperity on the continent, but also for the values that constitute Europe. These are reflected at best in our various local, regional, national and European buildings, monuments and archaeological sites. With ECHY 2018 and sharing our Cultural Heritage, we want

- ✂ to regain us as Europeans,
- ✂ actively promote ourselves to understand us better,
- ✂ to understand "the others",
- ✂ to feel comfortable again and
- ✂ finally, **to feel well at home.**

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<sup>1</sup> "European Cultural Heritage Year 2018," Deutsches Nationalkomitee für Denkmalschutz, accessed November 17, 2017, [http://www.dnk.de/\\_uploads/media/2007\\_2016-06-01\\_EN\\_ECHY-Status%20Report.pdf](http://www.dnk.de/_uploads/media/2007_2016-06-01_EN_ECHY-Status%20Report.pdf).

<sup>2</sup> "European Year of Cultural Heritage proposed for 2018," Culture, European Commission, accessed November 18, 2017, [https://ec.europa.eu/culture/news/20160830-commission-proposal-cultural-heritage-2018\\_en](https://ec.europa.eu/culture/news/20160830-commission-proposal-cultural-heritage-2018_en).



“Patria est, ubicumque est bene”<sup>3</sup>

So far, it did not succeed fully, to develop resp. to create an identity and a sense of community sufficiently beyond the borders of nations. In preparation for and during the ECHY 2018, decades of failure can be rescheduled to make sure that deeper European identities might evolve - without losing our previous roots and identities in this approach. Identity is based less on ethnic or religious categories, rather on the loyalty of each individual to our European values, especially our very similar constitutional principles, the fundamental principles of democracy, the respect for the dignity of each individual, the tolerance, as well as our European immanent self-understanding as cultural experienced people and cultural nation(s).

In preparation, during the ECHY 2018 and naturally afterwards, we Europeans must and will burn – at least more than before – for our (built and archaeological) Cultural Heritage, to be European, for our Europe and for the peace, the security, the freedom and the prosperity, which was given to us. Let us stay together on the basis of our European Cultural Heritage as our common fundament and fourth pillar of European sustainable development, of our EEA- Member States’ and the EU’s sustainability approach, complementing their economic, social and environmental dimensions.

## 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 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. Otherwise, legally there is a main and rather complete responsibility of the “Länder”, esp. for Culture and Cultural Heritage. The Constitutions of most of the sixteen German “Länder” emphasise the protection and active care of historic buildings and sites as state objectives. Currently, sixteen German conservation laws (DSchG)<sup>4</sup> are existing, which have been emerged, recast or updated in four waves in the periods from 1971 to 1978, 1991-1993, 2001-2010 and once again from 2011 until today.<sup>5</sup>

In the former German Democratic Republic (DDR) and the eleven “old” German States in Germany there were created Cultural Heritage Protection laws during the first wave, accompanying the European and world wide discussion about Cultural Heritage in the sixties and seventies of the last Century. The new Cultural Heritage Protection laws of the so-called “new countries” in Germany (second wave) based on their partner countries of the former Federal Republic of Germany (“old countries”), but they had the chance to react on what one could “learn” over fifteen to twenty years of Cultural heritage administration. During the third wave the German States were looking for solutions balancing the confrontation of new use requirements on the monuments, for example like energy efficiency, climate protection, energy transformation, accessibility. Nowadays, during the second decade of the 21<sup>st</sup> Century, I have the impression, that there are no major systematical changes, but some reaction on democratic developments like the necessity of much more participation of the citizens inside the protection system.

The comparative analysis shows owed to the federalism in Germany partly considerable differences, but much more conformity, esp. as regards the monument-professional principles. Although, the regional diversity of Conservation and Preservation in Germany is quite unusual, there is, however, a widespread consensus amongst the State Conservation Offices on the definition and assessment of monuments, historic buildings and sites, the principles of their conservation and restoration, and the interpretation of the Conservation work to the public. Therefore, the differences in monument concept, system of protected status, relative to permits are significant according to different laws (of the sixteen “Länder”), responsibilities, duties and treasure shelves (i.e. the official law of treasure finds). At least during the “third wave” one could recognize some ideas and trends towards the abolition of the lower monument protection authorities and their inclusion in the construction management, but also towards the abolition of the State Conservation Offices in some German “Länder”. In particular, a change is increasingly to determine concerning the legal status of the owner, to a partially comprehensive “Inducer principle” and on the compatibility of the monument.

The following analyses and comparisons refer to all German monument protection laws and are designed to provide an overview of the legal situation.<sup>6 and 7</sup>

## Tasks and definitions:

### Monument Conservation and Preservation

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). 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

3 Cicero, in: “Tusculanae disputationes” 5, 108, <http://www.thelatinlibrary.com/cicero/tusc5.shtml#108>, accessed 17.11.2017.

4 <http://media.w-goehner.de/1.252%20-%20Denkmalschutzgesetz%20-%20Deutschland%20-%20Normtexte%20-%20aktuell%20-%20Stand%2006.07.2017.pdf>, accessed 18.11.2017.

5 Hesse (2011 and an ongoing legislative procedure for a new law), Lower Saxony (2011), Hamburg (2013), North Rhine-Westphalia (2013), Baden-Württemberg (2014), Saxony (2014), Schleswig-Holstein (2014).

6 See: Wolfgang Karl Göhner, „The German Conservation Laws by Dieter J. Martin (2006), revised and updated by Wolfgang Karl Göhner (2011)”, in Achim Hubel (ed.) / Sabine Bock / Rainer Drevello / Johannes Geisenhof / Wolfgang Karl Göhner / Dieter J. Martin / Manfred Schuller, *Preservation. History, issues, tasks. An introduction*, Reclam non-fiction. Reclam Universal-Bibliothek No. 18813, Philipp Reclam jun. (Stuttgart: GmbH & Co. KG, 2nd Edition 2011), 352-378. ISBN 978-3-15-018813-2.

7 See: Wolfgang Karl Göhner, „INDUMAP Handbook on dealing with the industrial monument, Chapter 2.1: Obtaining and Maintaining Monument status – Monument Law: Basic terminology and principles”, in *INDUMAP (industrial monument action planning) Action plan for the sustainable management of industrial monuments*,



Republic of Germany, so-called “Basic Law”) 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”. 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.<sup>8</sup> “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”. 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 protection to the law of public safety and order (so-called “police law”) is included in § 6 para. 1 DSchG Berlin and § 16 para. 4 DSchG Brandenburg. § 20 para. 3 sentence 2 DSchG North Rhine-Westphalia added: “As such, the tasks assigned to them under this Act apply as emergency response”.

### The term of the monument

There is not a uniform and binding legal term what is meant by “monument” in Germany and the German States. The humanities and in particular the art-historical remarks to the term “monument” is barely manageable. The names of famous conservators like Dehio, Riegl, Dvorák, Breuer, Mörsch, Sauerland, Lipp, Hubel, Petzet and many others are witness for this purpose. Attempts, to define the term “Monument” in more uniform and precise way for the application of Protection law have hardly subsided despite the long-present legal definitions, the faculty literature and extensive case law. The efforts for a legal monument protection within the framework of international and German standards, that date far back, have designed foundations though for a general term of “Monument”, but they each assumed self-defined protection goods. A uniform legal term did not originate out of this.<sup>9</sup>

Monument and Cultural Monument are synonyms and so-called indeterminate legal terms that require an interpretation that is subject to judicial review in its entirety. Scale is the knowledge and opinions of a wide circle of experts. Otherwise, the monument protection legislation in Germany does not use the terms “monument ability” and “worthiness of the monument”. They have been worked out by the case-law. “Monument ability” includes the property of the object, in case the monument, and the subsumption under the various categories for “monument importance”, which

are given by the Protection law of each “Land”. “Monument worthiness” rewrites the interest required by the laws as a legal condition of the object to be qualified as a “Monument”<sup>10</sup> “The definition of general public interest is an expression of the constantly changing cultural self-image of society. So, the inventory work was subject to constant change since its early beginning about 200 years ago”.<sup>11</sup>

### The monument types

With the exception of Baden-Württemberg all Protection Laws of the “Länder” make differences at least between constructions (constructive Monuments), archaeological sites and movable monuments (including such as part of monuments or of archaeological sites). Hamburg, Hesse, Schleswig-Holstein and Thuringia do not particularly highlight the architectural monuments, but make differences usually between immovable and movable monuments and mention separately the archaeological or archaeological monuments. The legal regulations in Bavaria, so far composed in the first wave, will focus on the (architectural) monuments.

Built Monuments are structural systems or parts thereof or “constructions” (e. g., Rhineland-Palatinate, Saxony), in addition, multitudes of structural systems (see, f. e. Bavaria, Berlin, Brandenburg, Mecklenburg-Western Pomerania, Lower Saxony, North Rhine-Westphalia, Thuringia). This term is partly associated explicitly with the respective building regulations of each “Land”, whereby structural systems are firmly connected with the ground and made out of construction materials. In Baden-Württemberg, Hesse, Schleswig-Holstein and Thuringia built monuments are not mentioned separately; they refer to the generic terms “Monument” or “Cultural Monument”.

Archaeological monuments are movable or immovable objects that are in the ground or were found there (see, f. e. art. 1 para. 4 DSchG Bavaria<sup>12</sup>). Almost all conservation laws (with the exception of Baden-Württemberg and Rhineland-Palatinate) define and treat the immovable and movable (finds) archaeological monuments in separate regulations. While some States made the requirement that archaeological monuments and sites must be created by man (see, Bavaria, to a limited extent also Saxony) or must be evidence of human life (Hamburg, Lower Saxony, Saxony-Anhalt), in other legislations products of animal and plant life and even paleontological monuments are included too.<sup>13</sup>

The term “green site” is not used directly in the German conservation laws. »A garden monument is a park, a garden or park area, a cemetery, an avenue or other certificate of garden and landscape design. Its accessories and its facilities belong to the “garden monument” insofar since they are forming a unit with it (see § 2 para. 4 DSchG Berlin). In a broader sense, also landscapes can be regarded as such “green sites”.<sup>14</sup>

In detail not stationary, that means movable monuments are described very clearly in § 2 para. 2 no. 5 DSchG Saxony-Anhalt: “Cultural monuments in the meaning of

[http://www.indumap.de/sites/default/files/hanbuch/dateien/1.253\\_-\\_indumap\\_-\\_aktionsplan\\_fuer\\_den\\_umgang\\_mit\\_industriedenkmalern\\_-\\_kapitel\\_2.1.pdf](http://www.indumap.de/sites/default/files/hanbuch/dateien/1.253_-_indumap_-_aktionsplan_fuer_den_umgang_mit_industriedenkmalern_-_kapitel_2.1.pdf), accessed 18.11.2017.

<sup>8</sup> Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. B II, 4.

<sup>9</sup> Felix Hammer, in Dieter Martin / Michael Krautzberger (ed.) *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. A II.

<sup>10</sup> Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C I, lit. J.

<sup>11</sup> Association of the State Monument Conservators in the Federal Republic of Germany (VDL) 2005, 1, <http://www.vdl-denkmalfle.de/fileadmin/dateien/Arbeitsblätter/Nr24.pdf>, accessed 18.11.2017.

<sup>12</sup> Margaret Thomas Will / Wolfgang Karl Göhner, *Bavarian Law for the Protection and Preservation of Monuments (Monument Protection Law) from 25th June 1973 (BayRS 2242-1-K)*, last revised 27th July 2009. (GVBl. p. 385, 390 f.) (aktualisierte Ergänzung zu Margaret Thomas Wills Übersetzung vom Oktober 1996).

<sup>13</sup> Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. J I.



this law are ... movable cultural monuments and archaeological finds as individual objects and collections, such as tools, equipment, furniture, vessels, weapons, jewelry, costume stock share, clothing, cut objects, objects of art and the arts and crafts, coins and medals, means of transport, machines and technical units, parts of constructions, skeletal remains of humans and animals, plant residues and other legacies".<sup>15</sup>

All conservation laws define also aggregates of monuments of all kinds as monuments. Majorities of structures with historical value are defined in most of the German Conservation laws as its own kind of monument and refer to them synonymous as area, site, ensemble or material entity. In the ensemble of structural system the monument characteristic can overlap several times: A single monument can be in a street ensemble, which is in turn located in a town ensemble. Structural systems in the ensemble are by definitions monuments itself. There are no legal gaps in the ensemble, all components are part of the "monument", some in a constitutional way, some not.<sup>16</sup> The vicinity, which is protected in some German Conservation Laws, or environment is not allowed to be expressed in meters, but both include the effect context or scope ("aura") of the monument. Some monument protection laws describe the environment even as a monument and as a legal part of the monument.

Further, some conservation laws protect majorities of movable property (like archives, collections and museums).<sup>17</sup>

Material entities of archaeological monuments can both be majorities of immovable monuments as well as majorities of finds (movable monuments). Uniform complexes of finds, both as excavation context or as grave fields in situ, are mostly treated as unified archaeological monuments. The German conservation laws do not make any arrangements for the context of finds and their sites. Protected excavation areas and archaeological reserves don't indicate a material entity of archaeological monuments, but as areas, where archaeological monuments can or could be found.<sup>18</sup>

Monuments can not only be whole objects, but also parts of an object with historical value such as the façade of a house or a so-called "House Madonna". Also movable or immovable accessories and movable or immovable equipment can be part of a monument in this legally understanding. Insofar, the civil law terms and concepts are not decisive.<sup>19</sup>

### Protected status

In common parlance, protection means any official act in which an object is recognised as or placed under monument protection. The German Conservation Laws differ between the so-called constitutive and declaratory (informational) system of the protected status. Several "Länder" mix elements of both systems. Brandenburg

switched in 2004, Hamburg in 2013 to the declaratory system. Indeed, the conservation laws differ significantly in the question of legal acts and the legal consequences of the protected status.<sup>20</sup> As far as the monument lists have only declaratory meaning and an informational importance, often only very short texts were (are) formulated, that make the monument identifiable (example: only eight volumes were sufficient in 1973 to present the Bavarian monument list with all listed built monuments and archaeological monuments!). Otherwise, higher requirements are demanded for protected status in the constitutive system. If systems are not effectively protected, tax benefits are eliminated. The Federal Building Code – other than the German Federal tax law – does not refer to the Conservation Laws of the "Länder" and their monument terms. In the framework of urban land use planning, all built and archaeological monuments have to be considered without respect of their proper registration or determination.

### Authorities

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, added in art. 83 combined with art. 3 para. 2 of the Bavarian Constitution 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.

14 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C IV (preservation); D VIII (handing).

15 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. B I, II; J I, III 7.

16 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C III (to the very difficult legal situation); F III (to the urban monument).

17 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C III (to the very difficult legal situation); F III (to the urban monument).

18 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. J III.

19 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C II.

20 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. C VI; J III.



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.<sup>21</sup>

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 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.<sup>22</sup>

### The Legal Conservation Procedures

Not only Monument Protection laws have to be observed when dealing with monuments. Mostly, they are included in the rule of law, as the scheme “System of monument Protection Law” shows.<sup>23</sup> The Monument Protection laws provide for the adoption of standards such as regulations, statutes or regulations, as well as the norm-setting of the municipalities through development plans, design rules, conservation and renovation statutes for different areas.

The conservation laws use the synonymous term permission, approval and exemption for necessary exceptions or permissions. In general, any kind of monument may be changed, completely or partially removed or destroyed, removed from its site or place of storage, repair set, restored or changed in its use only with permission. Most conservation laws contain additional licensing requirements for archaeological monuments.

For the procedure, almost all conservation laws have adopted special and individual measures. Usually, a distinction is made between the tasks of providing expert opinion of the competent Monument Conservation authorities and the implementation of the tasks of the monument protection authorities.<sup>24</sup> The distribution between the different authorities prompted most legislators to include regulations relating to the internal procedures of these authorities directly in the Monument Protection laws, although internal administrative regulations would in principle be sufficient. For several years the nationwide tendency is that only behavior of the competent Monument Conservation Office is necessary instead of consensus, which was implemented into the German Conservation laws during the “first wave”; insofar, Brandenburg provides “collective opinions” (§ 19 para. 4 DSchG Brandenburg).<sup>25</sup>

Only in some “Länder” (such as Baden-Württemberg) fees are charged for official acts according to the conservation laws. Otherwise, almost all countries charge fees for

the issuance of tax certificates and building regulatory decisions of deviation. Some “Länder” determine the reimbursement of expenses for archaeological investigations of the competent authorities. Further, for substitute performance resp. direct implementation of Monument Preservation actions the authorities can impose and collect fees on the basis of administrative enforcement law.

### The Monument Compatibility

The German Conservation Laws do not directly use the term of monument compatibility. In environmental law the parallel concept of “environmental compatibility” exists and even an environmental impact assessment (EIA) for certain projects was explicitly introduced. Monument compatibility meanwhile belongs to the fixed components of the terminology of monument protection and preservation. With this term corresponds to the legally binding overall objective of the preservation laws, to preserve the inherited substance of the monuments in case of all kinds of interventions absolutely or at least in an optimized way. This overall objective is expressed in following formulations of the approvability of measures under the monument protection laws such as “there are important reasons favor the unaltered preservation of the existing condition” (Bavaria, Mecklenburg-Western Pomerania, Thuringia), “if reasons of monument protection are not opposed to it”, “Interventions should be kept to a necessary minimum” (Saxony-Anhalt). In addition, the monument protection laws are largely limited themselves to determine definitions, bids, bans and administrative procedures. To the substantive principles of monument protection and preservation only the approaches in the above formulations are abstract and generalized as in many other areas of regulation, so that they require the completion and interpretation according to the belonging to a single species of monuments, according to the conditions of the concrete monument, and according to the individual situation.

The interpretation and concretization of Monument Protection laws with regard to the details of monument compatibility is provided by the principles of conservation and protection of monuments, developed over decades of practice, and laid down in international agreements (e. g. Charters of Venice, Lausanne, Washington, Florence, La Valletta) and in various policy papers such as of the Association of State Conservators in Germany, of the German National Committee for Cultural Heritage and the Alps-Adriatic Working Community, and meanwhile finally confirmed in numerous judgements.<sup>26</sup>

### The owners

All Monument Conservation laws are in general aimed at the owner as first and most important addressees. Completely unsystematically, also other persons than the owner are held liable in the Cultural Heritage obligation by the Conservation Laws of the “Länder” such as e. g. heritage building legitimate (Lower Saxony), usufruct-authorized

21 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E I 3.

22 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. S I 4.

23 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. B I.

24 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E IV 1.

25 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E IV.

26 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. D II; JV (in detail).

27 Bundesverfassungsgericht (BVerfG), decision of March 2<sup>nd</sup>, 1999, case-no.: 1 BvL 7/91, *Decisions to Monument law*, edited by Wolfgang Eberl [u. a.], loose-leaf edition, (Stuttgart: 1997 et seq.), 1.1, no. 7.



persons (Lower Saxony), “responsible persons”, “possessors” (such as Baden-Württemberg, Rhineland-Palatinate), “persons otherwise having legal responsibility for the disposition of real property” (Bavaria, also others Brandenburg, Berlin, Bremen), “inkind or mandatories having legal responsibility” (art. 5 sentence 2 DSchG Bavaria), “beneficial owners” (e. g. § 7 DSchG North Rhine- Westphalia, § 7 para. 1 DSchG Saarland), “Responsible persons for the maintenance” (such as Hesse, Mecklenburg-Western Pomerania), “inducer” (e.g. Berlin, Thuringia), “seller” and “purchaser” (Hesse, Mecklenburg-Western Pomerania) and “Explorer” or “Finder” (all Conservation laws of the “Länder”). Also, these other people cannot arbitrarily be held responsible by laws and authorities; also, they can rely in particular on the fundamental right of property, the principle of proportionality and the principle of equality.

The owners often see themselves as the stepchildren of monument protection. The formulation of the conservation laws, according to an originally more authoritarian, State-oriented thinking, is treating the owners as responsible and to be controlled subjects. The idea of applying the service to the authorities to assist the owners in meeting their often harsh duties, only gain weight since the mid-1990s. In this sense, the jurisdiction developed a now also potentially existing entitlement for Monument Protection and Conservation of the area character.

The property rights of the Grundgesetz (the Federal basic law) is mentioned – but only by the respective law and its enforcement as restricted fundamental rights – in several Monument Conservation laws of the “Länder”. At least since the radical decision of the Federal Constitutional Court of March 2<sup>nd</sup>, 1999<sup>27</sup>, subjective public rights of the persons emerge. But, direct financial support however is subject to the budgetary situation or the provision of funds. However, there is a legal right to the grant of the tax certificate if the legal requirements are met.

Of course exemplary behavior is expected from the institutions of the public sector. Mostly, obligations in the performance of public functions, in particular planning, public measures and the preparation of development plans are stressed. Usually, special rules are applied for churches and confessional organisations on their concerns.<sup>28</sup>

The civil and legal rights situation to ownership in case of treasure finds are regulated in § 984 Federal Civil Code (BGB), which rules, that explorers and land owner each become co-owner of the half. This legal situation is nowadays only valid in Bavaria. In derogation of this, the fifteen other German “Länder” meanwhile wanted to introduce a treasure shelf.<sup>29</sup>

### Maintenance Obligations

The owners and other designated persons of cultural monuments are obliged to maintain, to repair and protect them from dangers according to conservation prin-

ciples within the framework of feasibility, similar to this the laws describe the legally binding duty of conservation for all types of monuments. Contrary to the obligation of authorization the obligation of conservation is not a procedural obligation, but a substantive legal obligation. In the laws owners, persons otherwise having legal responsibility for the disposition of real property, beneficial owners, responsible persons for the maintenance, heritage building legitimate and usufruct- authorized persons are named as responsible persons with rare variety. In practice the differences can have different affects, in particular if the owner is poor, but the tenant is rich, or if the owner is rich and the heritage building legitimate is poor, etc. The range of the maintenance obligation arises from the context of the statutory provisions.<sup>30</sup>

Feasibility: The monument right is characterized by the principle of feasibility as limit to monument duties due to constitutional provisions. This applies for example for the matters of maintenance obligations, very limited for the suitability for approval, the benefits and the right to compensation. The laws themselves contain more and more details of feasibility which can be understood in part as general principles of law and discharge of the constitutional principle of proportionality. Behavior is conceived by the monument preservation laws as feasible, when after consideration of all relevant individual aspects, taking account of the objective situation and taking account of the constitutional principle of restricting the property rights (art. 14 para. 2 sentence 1 GG) comes to the conclusion, that from a monument protection open-minded owner (so BVerfG, decision of 2 March 1999, loc. cit.)<sup>31</sup> such conduct in cases of this kind may reasonably be required.<sup>32</sup>

Obligation to cost bearing, inducer principle: In case of interference into a cultural monument, the responsible person has to bear all the costs incurred for the preservation and proper repair, salvage and documentation of the cultural monument. (Mecklenburg-Western Pomerania and Thuringia). The possible costs of interventions will arise for the builders as the initiator even without explicit statement and not for the monument authorities. This also applies to all activities of the public sector. As far as countries at all mention the duty of cost bearing, their provisions are selective, i.e. they apply to special kinds of monuments or to individual cost factors.<sup>33</sup>

Other duties: Use obligations, prohibition of the use and the lack of use belong to the main problems of the practice of monument protection. Almost all laws made arrangements for at least one of these problems. Comprehensively and exemplary in the context of the constitutional requirements for architectural monuments the formulation of art. 5 DSchG Bavaria says:

“Article 5 Use of Built Monuments:<sup>34</sup> Built monuments should be used for their original purpose, to the extent that this is possible. If built monuments are not used according to their original purpose, the owner or those otherwise having legal responsibility over the use should strive for a use which is similar or equivalent. If this is not possible, a use which ensures the long-term preservation of the

28 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G 18; D VII 2 (dealing with ecclesiastical monuments).

29 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. J VII.

30 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G IV.

31 Bundesverfassungsgericht (BVerfG), decision of March 2<sup>nd</sup>, 1999, case-no.: 1 BvL 7/91, *Decisions to Monument law*, edited by Wolfgang Eberl [u. a.], loose-leaf edition, (Stuttgart: 1997 et seq.), 1.1, no. 7.

32 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G II 3.

33 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. D III 4 (with details on the substantive responsibilities); H III.

34 Margaret Thomas Will / Wolfgang Karl Göhner, *Bavarian Law for the Protection and Preservation of Monuments (Monument Protection Law) from 25th June 1973 (BayRS 2242-1-K)*, last revised 27th July 2009 (GVBl. p. 385, 390 f.) (aktualisierte Ergänzung zu Margaret Thomas Wills Übersetzung vom Oktober 1996).



monument's historic fabric should be chosen. If various uses are possible, that use which has the least adverse effect on the built monument and its appurtenances should be chosen. The state, the local governments and other bodies should support owners and occupants. If the conditions of Article 4 Paragraph 2 are fulfilled, the owner and those parties otherwise having legal responsibility over the use can be obligated to implement a certain type of use; insofar as they are not obligated to implement this use, they can be obligated to allow certain types of use."<sup>35</sup>

**Procedure obligations:** The authorizations and permits according to monument protection laws are administrative acts which require participation within the meaning of administrative procedural law; for the beginning of proceedings an application is needed according to the respective requirements of the administrative procedural law of the countries. Exemplary art. 15 DSchG Saxony-Anhalt formulated the obligations:

"(1) The application for approval has to be made in written form .... All documents required for processing are to be attached. The Supreme monument protection authority is empowered to lay down rules about the scope, content and form of the documents which have to be added through regulation. (2) The applicant is responsible for ensuring that the initiated measure is compatible with monument law...."

This formulation contains several principles that apply in other countries without expressed wording.

Information should be provided by owners, entitled persons for disposal and use as well as by initiators. The statutory formulations are regularly very general in nature and relate to the information required to carry out the tasks of the authorities.

Toleration obligations are provided for entering houses or apartments, as well as partly for public access, for the elimination of deficiencies of monuments by the authorities, for the implementation of official excavations, for the leaving of places of recovery, for the recovery and securing of finds to varying degrees of intensity and range. Similarly, the transfer obligation of finds is handled.<sup>36</sup>

Reporting obligations follow different motives. They serve the notification of defects, of sales, of monument suspicion, change of locations, repairs and excavation work (Rhineland- Palatinate) as well as finds.

### Government orders, measures and sanctions

The aim of enforcement of monument protection laws is to ensure care and preservation of the substance of the monuments as well as the meaningful use of built mon-

uments, then always ensuring the monument compatibility from acts and omissions in particular cases (to the special features of archaeological monuments which are regularly destroyed in case of excavation and which - despite the obligations arising from the Charter of La Valletta, and the German Federal law for that purpose by October 9<sup>th</sup>, 2002<sup>37</sup> - remain only in finds and documentation<sup>38</sup>). Formally, monument compatibility is ensured by permission and approval procedures. The principles of monument compatibility are legally implemented by appropriate requirements in authorizations and permissions. The applicant and the executing companies such as architects, restorers, craftsmen, excavators and other conservators etc. are materially responsible for observing monument compatibility. If an authorization is granted, the initiator in all areas of law has to take responsibility for compliance with its content and incidental provisions.<sup>39</sup>

Regulations for conservation, maintenance, repair, etc.: If necessary, the authorities may adopt arrangements for the enforcement of maintenance obligations. art. 4 para 2 DSchG Bavaria:

"The persons named in Paragraph 1 can be obligated to carry out certain preservation measures, in whole or in part, insofar as this can be reasonably demanded, giving due consideration to their other responsibilities and obligations. Insofar as they cannot carry out these measures themselves, they can be obligated to allow measures to be carried out by others."<sup>40</sup>

In part, the laws contain general authority standards for emergency response for monuments, which can prohibit certain harmful uses and initiate specific uses.<sup>41</sup> Some countries have general authority standards for so-called direct measures of the monument authorities.

**Right of first refusal:** More than half of Germany's monument protection laws contain public rights of first refusal mostly in favor of the public sector for sales of monuments. The legal structures of individual "Länder" are characterized by an extraordinary fragmentation.

**Sanctions:** Some monument protection laws explicitly stipulate that unapproved or implemented measures divergent from the authorization are ceased, i. e. can be prevented (Bavaria, Berlin, Mecklenburg-Western Pomerania, Saxony-Anhalt). In some countries there can be resorted to general legal authority standards on monument protection law, construction law or security law.

The most important problems of enforcement of monument protection laws contain issues of compensation of initiators and recovery of damages done to monuments; in practice legal options are seldom exploited. Legal basis of a recovery request may be such as art. 15 para. 3 DSchG Bavaria<sup>42</sup>:

35 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. D V.

36 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G IV.

37 *Federal Law Gazette II*, 2709 et seq., [http://www.blfd.bayern.de/medien/dsg\\_konvent\\_la\\_valetta.pdf](http://www.blfd.bayern.de/medien/dsg_konvent_la_valetta.pdf)

38 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. J V.

39 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. D III 4.

40 Margaret Thomas Will / Wolfgang Karl Göhner, *Bavarian Law for the Protection and Preservation of Monuments (Monument Protection Law) from 25th June 1973 (BayRS 2242-1-K), last revised 27th July 2009 (GVBl. p. 385, 390 f.)* (aktualisierte Ergänzung zu Margaret Thomas Wills Übersetzung vom Oktober 1996).

41 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E VII (for details of orders).

42 Margaret Thomas Will / Wolfgang Karl Göhner, *Bavarian Law for the Protection and Preservation of Monuments (Monument Protection Law) from 25th*



"If actions according to Articles 6, 7, 8 Paragraph 2 or Article 10 Paragraph 1 are carried out without the required permission, building permit or exploitation permit, the Local Monument Protection Authority can require restitution of the original condition, insofar as this is possible; or the restoration in some other fashion of built monuments, archaeological monuments and listed movable monuments can be required."<sup>43</sup>

The so-called "golden reins" of the competent authorities are the withdrawal of subsidies and the denial of tax certificates.

Misdemeanors are acts which realize the facts of a law that allows for the punishment with a fine. They have to be distinguished from criminal offences and offences of the Criminal Code (StGB), who are threatened with imprisonment or monetary penalty. In art. 21 DSchG Saxony-Anhalt a criminal offence is formulated:

"A person who intentionally destroys a cultural monument or a substantial part of a cultural monument or impairs the monument characteristics without the required authorization according to art. 14 para.1 and 2 is punished with imprisonment up to two years or with a fine."

According to the in part extensive catalogues of laws (such as art. 33 DSchG Rhineland-Palatinate) a person acts disorderly, who i. e. does not grant information, file a complaint, destroys monuments or decomposes them, changes its existence, affects not only temporarily its appearance, removes them, or pieces of equipment from its location, builds installations near a monument without permission, does not show finds, does not receive it, provides unapproved research, does not announce construction or performs hazardous works in protected excavation areas.<sup>44</sup>

All monument protection laws provide legal bases for expropriation. Usually, the classic form of the deprivation of property is intended. Some countries allow also the compulsory burden of ownership such as with an easement. The fundamental fact of expropriation for the rescue of monuments is concisely formulated in art. 17 para. 1 DSchG Berlin:

"Can danger for the stock, the character or appearance of a monument not be repelled in other ways, the expropriation in favor of the state of Berlin is allowed."<sup>45</sup>

### Costs, financing

The cost and financing of measures for monuments are the main problem of conservation in our time. In general, it is a matter of private and public owners and building owners, to define their project, to prepare, to plan, to determine the costs, to ensure the financing and perform the actions as compatible with monument status as possible. The public sector contributes with grants and tax benefits; occasionally, there is entitlement to compensation.<sup>46</sup>

Donations in the form of grants, and occasionally in the form of loans (such as Berlin, North Rhine-Westphalia) are providing in all monument protection laws. The formulations are characterized by the non-binding nature of the assistance ("within the framework of the budgetary position"). In detail see the specific of the monument and other benefits which can benefit also monuments and places like about the urban development promotion and the renovation of villages.<sup>47</sup>

The tax benefits granted in federal law promote measures for the conservation of monuments. They are significant in scope because they are relevant for financial relief and for the ascertainment of conservation requirements with regard to feasibility.<sup>48 and 49</sup>

The much-disputed decisions of the Federal Constitutional High Court to the so-called "Waterbased extraction" and specially from March 2<sup>nd</sup>, 1999<sup>50</sup> to the former Rhineland-Palatinate Heritage Act show that the monument protection laws are not or at least not to the full extent were compliant with the latest case law, so far as the requirements for compensation and a compensation claim for ownership restrictions based on the right of the monument are concerned.<sup>51</sup> This resulted in numerous lawsuits to the alleged illegality of regulatory shortcomings in case of refusal of demolition of monuments by the authorities; the currently predominant problem is not based on fundamental questions, but emerges from the effective determination of constitutional social binding limits when demolition requests or other requests for change in each individual case as well as actions and procedural obligations of the persons are concerned.

### Peculiarities and idiosyncrasies of individual countries

Only a few "Länder" have regulated following special features:

- ⌘ Historic preservation plan: Two different legal institutions are meant by this term: Brandenburg, North Rhine-Westphalia and Thuringia allow the preparation of conservation plans of the municipalities. The lineup is discharge of the constitutional planning authority of municipalities, art. 28 para. 2 GG. This differ to historic preservation plan according to § 8 para. 3 DSchG Berlin, which can be enforced from the owner for his monument.
- ⌘ Servitude: On basis of the exemplary § 7 para. 5 sentence 2 DSchG Saarland in the sale of architectural monuments public authorities may require the registration of a limited personal easement after § 1090 Federal Civil Code (BGB). This seems appropriate without a specific statutory authorization yet, to enforce conservation measures by buyers of monuments and sites with monuments conservation regardless of feasibility and to secure this permanently and effectively.
- ⌘ Title deeds: Hesse, the Saarland and Saxony allow the registration of a use restriction in the land registry for the protection of monuments.

June 1973 (BayRS 2242-1-K), last revised 27th July 2009 (GVBl. p. 385, 390 f.)" (aktualisierte Ergänzung zu Margaret Thomas Wills Übersetzung vom Oktober 1996) - nowadays art. 15 para. 4 DSchG Bavaria (see note 4).

43 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E III, VII.

44 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. E VI.

45 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G II 2; E V.

46 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. H (detailed costs and funding).

47 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. H IV; V.

48 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. H VI; VII (overview of monument-specific and non-specific monument tax benefits).

49 Reinhold Leins / Gerhard Bruckmeier, "Monuments in private property - tax relief assistance," *DNK-Publication series* vol. 59 (Berlin / Bonn),



- ⌘ Disasters: A special provision is foreseen in the Monument Protection laws of North Rhine-Westphalia, Rhineland-Palatinate, Saarland and Saxony. Important instructions are given in the “Recommendations of the Council of Europe for the protection of the architectural heritage against natural disasters” of November 23<sup>rd</sup>, 1993.<sup>52</sup>
- ⌘ Marking: F. e. Brandenburg, Mecklenburg-Western Pomerania, Saxony-Anhalt, Saxony provide an identification of the monuments and a corresponding duty of tolerance; selected monuments should get provided with the blue and white flag due to art. 6 and 16 of the “Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention” (“Hague Convention”, 1954).<sup>53</sup>
- ⌘ Transfer claim and takeover law: § 22 DSchG Hamburg evidences a transfer interest of the country if the compensation would exceed a certain threshold. Vice versa, in North Rhine-Westphalia (§ 31 DSchG North Rhine-Westphalia) and in the Saarland (§ 17 para. 3 DSchG Saarland) there is a claim of the owner for a takeover against the “Land” under certain circumstances.
- ⌘ Compensation: In North Rhine-Westphalia, the owners have to pay compensation for value increases caused by public contributions (see, § 35 para. 5 DSchG North Rhine-Westphalia).
- ⌘ Objective: A kind of a historic preservation plan in the sense of a forward-looking planning for monuments represents the target relationship proven in practice. According to § 7 para. 3 No. 1 DSchG Mecklenburg-Western Pomerania it has to be set up by the owner and to be confirmed by the competent Conservation authority. This kind of submission may be required also in Thuringia to supplement the application (see, § 14 para. 1 sentence 5 DSchG Thuringia).

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51 Dieter Martin / Michael Krautzberger (ed.), *Handbook of conservation and preservation*. 3<sup>rd</sup> edition (Munich: 2010), lit. G II; G III 8.

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# CURUCHET HOUSE: LE CORBUSIER PROJECT WORLD HERITAGE NOMINATION

MARÍA MARTA RAE

The article gives a thorough overview of the process of listing the home of Dr. Pedro Curutchet in World Heritage List within the serial nomination of the Architectural Works of Le Corbusier. The process included the assessment of history of the house, its owner, design process as well as urban environment.

## Description of the property

The house designed by Charles Édouard Jeanneret-Gris, Le Corbusier, belonged to Dr. Pedro Curutchet. It is located in the "21a" parcel, the block 298, that lies between 1<sup>st</sup> Avenue and 2<sup>nd</sup> Street, 53<sup>rd</sup> Avenue and 54<sup>th</sup> Street of La Plata City. It is an attached house on the monumental axis of the city. The block is located on the right edge of the urban profile, located near the access to "the forest". Both the building plot and the heritage environment are SE oriented.

The property is a rectangular base trapeze. Its measures are 8.75 m at the back of the building, which is connected by a door in the dividing wall with Architecture Professional Council, former Ocampo house. On 53<sup>rd</sup> Avenue, it is 10.37 m long. On the longer side of the trapeze touching the Soprano house, it is 23.51 m long and on the shorter side touching the house designed by Andrés Bernal Kanlay it is 17.10 m long.

## Background. The owner, Dr. Pedro Curutchet and his relationship with Le Corbusier

Dr. Pedro Curutchet, Argentine surgeon, an extraordinary inventor of surgical instruments, was widely recognized in different countries (Pesci, 1980).

He was from Lobería, province of Buenos Aires, and he wanted to live in La Plata, capital of the same province. He chose an environmentally excellent place, against a wide and green avenue and a square linked to the "forest" of the city of La Plata. In 1948 he wrote to Le Corbusier entrusting him the project of his private home.

Dr. Curutchet's requirements for were 300 m<sup>2</sup> were very difficult to fulfill in the small batch of 8.66 x 20 meters (Pesci, 1980). The house for the doctor, his wife and their two daughters included living-dining room, kitchen, two bedrooms, two bathrooms, guest room, study or spare room, a room for the maid, garage and laundry. For the

clinic the waiting room, consulting room and a room for patients under observation was needed. After signing the agreement, the preparation of the project began in February 1949.

## Le Corbusier: author of the project

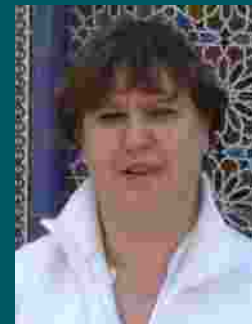
Le Corbusier was born in Switzerland in 1887 and he was one of the leading architects of the Modern Movement and founder of CIAM (International Congress of Modern Architecture) (Posík, 2000). He was a painter, sculptor, urbanist, architect and designer. Le Corbusier contributed more than anyone to the development of the architecture of the twentieth century and several generations of architects worldwide were influenced by the didactic nature of his vast work (Posík, 2000).

In October 1929 Le Corbusier visited Argentina during his trip to South America. At that tour he lectured and sketched his architectural ideas. He formulated the master plan for the city of Buenos Aires (1929); which he developed further in cooperation with J. Kurchan and J. Ferrari Hardoy in 1938.

Of all the projects undertaken during the period 1947-1949, only the one in La Plata "Curutchet House" was realized. It is the only project accomplished in Argentina.

The Curutchet house is one of the few built in a consolidated urban structure. This situation is not common in the construction of his "villas" in free spaces.

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At the same time of the execution of the plans for the Curutchet house, he made the sketch of the Saint-Baume set. When he finished the Curutchet House he began the Roq and Rob hotel in Cap-Martin. Two years later he received the offer to design and direct Ronchamp, Chandizard and Ahmedabab.

He died in Cap-Martin, French Riviera located in the Mediterranean.

### Curutchet House. Study of the project

Time: September 7<sup>th</sup>, 1948

Dossier:

- Sketch of the land
- Photographs of the place
- Program of the doctor's needs
- Letters and graphic documentation

Conclusions:

Le Corbusier is interested in the subject: A doctor's home, combination of professional and social demands. He accepted the limitations – a very small plot in a consolidated city.

Condition:

His project should be faithfully respected in the execution of the works. In addition, he gave Dr. Curutchet the layout graphic documentation dossier and technical specifications of the project (De Simone, 1996).

### Application of the project

Once the project design was finished Le Corbusier explained Dr. Curutchet in a letter how to locate the project on the ground. The five architectural principles that identified Le Corbusier were maintained: piles, open floor plan, sliding windows, terrace garden and brise-soleil.

The postscript said: "The whole project was set by the "modulor" (Mr. Amancio Williams could tell you). It is a harmonic system we have created here more than seven years ago and that we apply in our construction, particularly in the great undertaking of the "Housing Unit" in Marseille. It is the use of "modulor" (harmonic spectrum) which has allowed us too, on the one hand, get a considerable volume economy and secondly, achieve a harmony that would have been impossible without it." (De Simone, 1996).

### Construction of the building called "Curutchet House"

#### Beginning of the work with Amancio Williams as Construction Manager

At the end of 1949 the work under the technical guidance of the Argentinian architect Amancio Williams started. He had been suggested among others by Le Corbusier.

During the project, Williams proposed some modifications to Le Corbusier, and he accepted them, such as reversing the direction of the stairs and elimination of the section of the hall. Williams managed and obtained the approval of the Municipality of La Plata to use the dimensions emerged in the modulor as exception to the Building Code that approved only maximum height of 2.26 m. Amancio Williams used the reinforced concrete as the main structure (Liemur and Aliata, 2004).

Observing the house, there are two details that at first glance do not match with Le Corbusier project. These are: 1) a difference in height between the baldachin slab on the terrace and the cornice of the neighboring house to the west; and 2) a difference between the edge of the facade corresponding to the housing body and the edge of the start of the neighboring façade house to the east (equally matched in the original). Williams was not strict with the measures, which can be checked in the comparison of the levels sent by Le Corbusier and the levels of the building.

It is evident that one of the reasons for Le Corbusier to accept the work was to give Argentina an example of his architecture, but also to relate the new with the old architecture. Therefore, one of the principles was hooking his project to neighboring houses respecting the environment.

### Second stage of the construction and completion of the work

During the course of the work the relationship between Dr. Curutchet and architect Amancio Williams worsened. So, in September 1951 the latter resigned and architect Simon Ungar assumed the technical direction with the collaboration of architect Alberto Le Pera (Lienur and Aliata, 2004).

Ungar's mission was to remedy the unfortunate task of Amancio Williams. Besides, he had to fulfill the order of Dr. Curutchet on the draft mobile enclosure of the master bedroom on the double height and the final form of the two bathrooms next to it. Ungar fixed all technical problems.

In the end architect Jose Alberto Le Pera took charge of the works, according to Lienur and Aliata it was finished in 1955. But there is another version attributing the completion of the house to engineer Alberto Valdes, but there is no evidence of it.

### Heritage Valorization: Series Category. Background of Curutchet house project

The design of Curutchet house is a manifestation of the five principles of Le Corbusier uniting experiences: 1914 - Dom-Ino House; 1920-1922 – Citrohan House, Ville Stein, Garche and Savoye. (Asencio, 1929).



## Previous studies and subsequent impact

“Villa Garches” is the example of proportions, the full/empty relation, the relation of the height to the length (De Simone, 1996). The result derived from a mathematical order based on the “golden ratio”. Thus, harmony is achieved in all its parts in an arithmetical ratio of 1, 2, 4, between horizontal bands and perpendicular diagonals.

The project of Curutchet house was made within six months after taking the job (Asencio, 1929). At the same time that he designed Curutchet house he made the following works in France: Housing unit in Marseilles and Duval factory for manufacturing in Saint-Die.

## Heritage assessment methods to determine the immediate and mediate environmental relations

The first method to determine the extent of the heritage environment was through observation of the object from different focal points, as designed through a site survey on maps. The connecting relations between the object and its environment were determined by the closeness and remoteness, marking the total visual area of influence, in this case of 103,867.5 m<sup>2</sup>.

The second method was to determine which elements were in the immediate and mediate environment. From the object and its relation to the imaginary lines, it arose to center and circumscribes it with spaced concentric rings between them every 50.00 m.

The closest shape to the object is a semicircle. It was generated by the relationship between the object and the environment as a view, and it was 147.58 m<sup>2</sup>. But the environment was also the one located on the building of the heritage piece. It was determined through the completion of the concentric rings. Besides, the relationships were divided in adjoining, immediate and mediate; and subdivided into natural and cultural.

The adjoining cultural relations were with the Bernal family house, the family Soprano house and the headquarters of the Provincial Professional Council of Architecture. Immediate relationship in the cultural aspect was the 53<sup>rd</sup> avenue and mediate relationships were the foundational Police Headquarters building, “The Forest Palace”, the brick building in 53<sup>rd</sup> Ave and 2<sup>nd</sup> Street and the access to the forest, which is circumscribed by 1<sup>st</sup> Avenue (ex-royal road to Pereyra Iraola farm), and the civic axis (between 51<sup>st</sup> and 53<sup>rd</sup> Avenues).

The relations based on the natural aspects were boundary, immediate and mediate. The first contained the Lebanon Boulevard, the second 53<sup>rd</sup> boulevard and Rivadavia Square, and the third, the access to the forest and Brown Square.

The surroundings from where the Curutchet house is not seen will be called “front against” and they begin at 1<sup>st</sup> Avenue and continue on the streets 54<sup>th</sup> and 2<sup>nd</sup>, respectively.

The surroundings were determined by the same methods and mapped. The area was described through the Municipal Decree N°0094/2016 as a buffer zone. A detailed analysis of the items involved was carried out. First the general framework of the city of La Plata was emphasized and then referred to the reference sector.

## Decree 1579/2006 local jurisdiction. Urban Description

Municipality of La Plata established the zones of heritage preservation (zpp)<sup>1</sup> of the city of La Plata to protect the urban structure of the historic center. The areas zpp 4.1; 4.2; 4.3; 4.4; 4.5; 4.6; and 4.7 were determined as zones of heritage preservation by the Municipal Decree N° 1579/2006 Article 5 that marks the protection area in question within subsection 1, also in subsections 4 and 4.1, detailed below:

Subsection 1. Area Paseo del Bosque, University and Racetrack areas. According to the recommendation of the Commission Site (CODESI), this area should be object of public space preservation, conservation and renewal of the forest heritage, conservation and restoration of architectural and sculptural heritage, conservation and renewal of street furniture and signaling.

In subsection 4.1 the maximum proposed height is 18 meters.

Components of the emplacement area:

Urban areas: zone of the founding axis (U/C 1a). The scope of centrality which promotes the preservation of environmental and cultural significant features has administrative commercial and residential uses. The axis is determined through the occupation and parceling of the area.

The Case Study: Curutchet house is situated in one of these areas called zpp.4.1. The area is included in a bigger protection area of 29,363.316 m<sup>2</sup>.

## Heritage Environment

The study is inserted in the city of La Plata. It is within a larger system called Capital Region that includes the political administrative division of La Plata, Berisso and Ensenada districts.

## Heritage valuation of the environment. Description of the “Historical Center” composed of drawing and urban structure

La Plata is a wonderful example of a planned city, built on a square base plan crossed by diagonals, with wide boulevards, which are linked to the ring marking the perime-

<sup>1</sup> zpp: zona de preservación patrimonial (zones of heritage preservation)



ter of the old city. The predominant urban landscape is constructions of two to three levels, sometimes they coexist with high-rise buildings up to 16 levels.

This historic center was carefully planned. The building structure was formed over the years and according to the regulations that governed the territory. The case study, Curutchet house, and its heritage environment are emplaced within the foundational axis and are in the area of "Paseo del Bosque".

In the legal declaration, National Decree N° 1308, dated Nov. 11<sup>th</sup> 1999, the historic town center of the old town of La Plata was declared as value of historical interest. This is a commercial, administrative, recreational and cultural center, with a splendid architecture expressed in its foundational and modern buildings, squares, avenues and boulevards.

### Heritage assessment of the environment according to historical and territorial aspects

#### Trace genesis of the city of La Plata

A commission was appointed to achieve a comparative study of the regions where the new capital of the province would settle and it says in Article 6 "... the facility of doing essential works of art for the new capital should verify the topographic and hydrographic conditions as the source of water supply. Lomas de Ensenada were chosen for their consistent high ground for the construction works" (Buenos Aires Province, 1956).

Interestingly, the demarcation was held on the existing royal road to Magdalena, 1<sup>st</sup> Avenue.

The old town was expected to be surrounded by a dual ring road flanking a linear park of 90 meters wide. This beltway was largely preserved and it was designed to also house railways between their edges.

The design of the city was resolved in a spacious, monumental, balanced and symmetrical enclosure, integrating European and American urban traditions with the new Hygienism concepts of 1882.

Among the applied criteria, extensive networks of roadways and green spaces for public use were foreseen, highlighting the incorporation of the "Paseo del Bosque" in the existing eucalyptus forest planted by Don Martin Iraola, former owner of the land.

The planned design of La Plata was an advanced pattern for its time. It had significant elements of application: monumental axes, squares and evenly distributed parks, public buildings surrounded by gardens, houses and private buildings that were

grouped in compact blocks. All this set the building structure embedded within the trace. This trace was designed, in addition to blocks, with avenues, streets, sidewalks, network infrastructure services- all in an orderly and hierarchical system.

The design scheme was based on a modular square of 36 blocks, each one of 120 meters of side, rotated half course (NE to SW), six avenues of 30 meters wide with NW to SE direction and five avenues of equal dimensions, as advocated by hygienists respond to better climatic conditions.

The city was subdivided into blocks by a network of 18 meters wide streets, in the orientation mentioned above. Besides, every six blocks in both directions, there were avenues conceived as boulevards, defining neighborhoods of 36 blocks each. The avenues had sidewalks, dual carriageways and boulevards known as "ramblas".

There was a diagonal grid to shorten distances and generate visual prospects in the whole area of the city. All sidewalks were designed with the same measures, six meters wide.

The central axis had a special characteristic, generated by the altering of the dominant regularity. The blocks of the central strip decreased progressively as they approached the axis of symmetrical development, in order to visually increase the scale of public buildings lined on it. This was called "monumental axis". To reinforce this idea, avenues 51<sup>st</sup> and 53<sup>rd</sup> completed this system, framed and defined the public tour, culminating in the Paseo del Bosque.

This monumental axis was perpendicularly cut by two long avenues, 7<sup>th</sup> and 13<sup>th</sup>, in which public buildings were also located.

#### Block and parcel design

The block design had its origin in the square block of colonial tradition. In the area of the central axis the blocks gradually varied until a rectangular shape (ratio big side - small side 2:1). Moreover, the introduction of diagonals generated the appearance of triangular blocks of different proportions. There was also a small number of irregular blocks generated by transition curves of the belt ring or boulevards, such as those found in the access to the forest, where the Curutchet house was placed.

The history of the subdivision of blocks was a research in itself and cannot be addressed here but superficially. For the block that contained Curutchet house and the environment, the type of parceling was in the form of an "X" without the left upper arm incorporating two horizontal arms located in the center. In conclusion, looking from 1<sup>st</sup> avenue the symbol would be ¥.



### Heritage assessment of the environment according to urban and natural aspects

The National Decree 1308 (November 11<sup>th</sup>, 1999) declared the city of La Plata as a property of historical interest with historic center typology. This fact was mentioned in the basis of the norm of September 20<sup>th</sup>, 1880, where the federalization of the city of Buenos Aires and the nationalization of the port were proposed. Then, Dr. Dardo Rocha, Governor of Buenos Aires province, propelled the proposal to have a city as the seat of provincial authorities. To achieve this goal, Dr. Dardo Rocha called the Department of Engineers of Buenos Aires province, under Engineer Pedro Benoit, to develop the project of location and build the new seat of the provincial government.

To choose the appropriate site various variants should be analyzed for the city planning: the geographical, geological, weather and environmental situation; existing communications; the strategic level from the political and economic spheres; design and its application in the territory and especially the consensus of the population to inhabit the city.

Finally, on March 14<sup>th</sup>, 1882, Governor Dr. Dardo Rocha in his message to the legislature, informed his election of the place called “Lomas de la Ensenada de Barragán” to be the main port of the country and compete with that of Buenos Aires. The proposal was accepted; the law being sanctioned on May 1<sup>st</sup> of the same year. The municipality of Ensenada was declared capital of the province and authorized the Executive to create a city that would be called La Plata. On November 19<sup>th</sup> 1882 its foundation stone was placed in Plaza Moreno.

### The natural ecosystem influenced the history of the urban project of the city of La Plata.

Project leaders of the city of La Plata were the supporters of this thought, so they anticipated a lot of green spaces harmoniously and symmetrically distributed. They followed the 18<sup>th</sup> century principles of England and France when they included new green spaces in cities with the purpose of improving the preservation of physical and mental health of the population.

When the city of La Plata was founded, there was only an eucalyptus forest and a small group of oaks planted in 1857, at the current intersection of 1<sup>st</sup> and 54<sup>th</sup> streets. On August 14<sup>th</sup>, 1882 the first expropriation in favor of the provincial government took place. It corresponded to the property of Martin Iraola (De Paula, 1982).

On June 5<sup>th</sup> 1882, the Government of the province of Buenos Aires approved the project presented by the Department of Engineers, which assigned an area of 866.00 m<sup>2</sup> to the squares of the city. At the same time, they proposed that the existing park of eucalyptus should be exempted from division and subdivision. They also projected

measures to make a public walkway. In 1885 the Buenos Aires Park was created in the Forest of the old Iraola farm.

After founding the city, the forestation with native palms from Misiones Forest began. In 1887 the first municipal commissioner Marcellino Aravena, issued an ordinance providing the planting of shade trees in all avenues and diagonals, which was carried out by a commercial company hired by the Executive. It also stipulated that the payment of the plants was in charge of the owners and the inspection on behalf of the Municipality.

In 1901 the first constitutional Mayor, Marcos Lavalle, planted many trees on the avenues and squares. In the same year during the administration of Mayor Monsalve, many trees were also planted in Rivadavia Square or “police square” and Paseo del Bosque.

In 1908 the Mayor Luis Maria Doyhenard decided to increase the forestation and public adornment; at that time existing “plátanos” were moved to avenues 51<sup>st</sup> and 53<sup>rd</sup>.

In 1938 according to the inventory conducted by the Municipality, there were a total of 31,070 trees with a predominance of maple trees, “plátanos” and linden trees.

In years 1964 and 1982 a forest census was conducted. Only the sector of the main entrance to the Paseo del Bosque, which also included the square commemorating the “Los Pozos” naval battle fought by Admiral Guillermo Brown, the Republic of Lebanon small square, Rivadavia square and boulevard of 53<sup>rd</sup> avenue were taken into account. This was the natural context of Curutchet house and its heritage architectural environment.

### Paseo del Bosque

The Paseo del Bosque (Lerange, 1982), called “El Bosque” had its origin in the eucalyptus forest planted in Mr. Martin Iraola farm, that occupied a rectangle bounded roughly by current 40<sup>th</sup>, 60<sup>th</sup>, 122<sup>nd</sup> and 3<sup>rd</sup> streets and it is nowadays delimited by avenues 1<sup>st</sup>, 60<sup>th</sup>, 122<sup>nd</sup> and 50<sup>th</sup> street.

This beautiful ride, where the dominant species is the eucalyptus also has a botanical richness. The main access to “Paseo del Bosque” is across the square where the Memorial monument to Admiral Guillermo Brown is placed.

### Square commemorating “Los Pozos” naval battle fought by Admiral Guillermo Brown

Brown Square (Lerange, 1982) was named after the memorial monument placed there. It was inaugurated on June 11<sup>th</sup> 1955 (the anniversary of the Naval Battle fought in the harbor of the port of Buenos Aires).



The shape of this square is a semicircle and the monument is placed in the centre. The author and director of the monument was Nicasio Fernández Mar. It consists of a circular column of red granite. The stone of this column (one piece) was entirely extracted from Tandil, what made it unique in South America.

The top of the column is of the same material and is crowned by the figure of Admiral Brown, cast in bronze. The thick column, 1.70 m diameter and 8.30 m high emerges from a circular red granite source, which supplies water from 8 faucets installed in the base of the column. Above the water level, the column has a circular bronze projection, 2.50 m in diameter and 3 m high, representing the political and economic forces surrounding the figure of the homeland. Admiral Brown image is 4 m high. The total height of the monument is 20 m. The whole monument is 0.60 m above the sidewalk, surrounded by trees such as oaks and other species of the forest.

Plaza Rivadavia is just in front, crossing 1<sup>st</sup> Avenue.

### Bernardino Rivadavia Square

This square is located between 1<sup>st</sup> Avenue, 2<sup>nd</sup> Street, 51<sup>st</sup> Avenue and 53<sup>rd</sup> Avenue and covers an area of 1.74 hectares. It is located in front of the Police Headquarters of Buenos Aires Province and it was formerly called "Plaza de la Policía".

This square has a sculptural monument in the center evoking Mr. Bernardino Rivadavia and another that reminds the policemen killed in service.

Bernardino Rivadavia monument was commissioned by the Government of Buenos Aires province (Decree of July 28<sup>th</sup>, 1886). The statue should have been placed in the "Plaza Primera Junta" (nowadays San Martin Square) according to the law of December 16<sup>th</sup>, 1885. But the monument of the First Board was separated and each hero who constituted this group of sculptures was placed in different squares, always located in the center of them. (LeGrange, 1982).

In the period 1902-1906 Monsalve's administration decided to fix Rivadavia Square as it is now. The marble statue by sculptor Pietro Costa was placed on a higher base on April 18<sup>th</sup>, 1909. The monument is a cement sculpture with bronze allegories and it evokes "Los caídos", the author was Carlos Butin (De Paula, 1982).

The property has two sectors for recreation, one where fast food is sold and an area with children's games.

Next to this square in 1<sup>st</sup> and 53<sup>rd</sup> avenues the Lebanon Republic Small Square is placed.

### Lebanon Republic Small Square

Lebanon Republic Small Square (LeGrange, 1982), is irregularly shaped because it is the lacking part of the land to complete along with its respective road or Lebanon Boulevard, which corresponds to block number 298. This sector is integrated with the heritage landscape together with 53<sup>rd</sup> Avenue boulevard, both belonging to the access to the "Paseo del Bosque" and besides they are directly part of the visual connection on the architectural complex consisting of Curuchet House, the house designed by Andrés Kanlay and the founding house.

This small square has a memorial to the country, Republic of Lebanon, located parallel to 1<sup>st</sup> Avenue and framed by vegetation. It is made of metal and sitting upon a base of H°A°. The director of the work was Architect Héctor Tomas and the sculptor and plastic Dalmiro Sirabo. Mr. Vicente Sagasti and all members of Tomas' study also intervened in the execution.

### Asset valuation of the environment. Urban Structure

#### The historical process of the styles in Argentina that were transferred to the city of La Plata

Alan Garnier (1992) described the architectural styles in Argentina saying that "colonial rootedness came to the bourgeois houses and palaces of two or three yards. After year 1816 the architectural style was called *postcolonial*. From 1825 to 1853, the French academic architecture began to stand out. From 1853 to 1880 the Italian neo-Renaissance current entered the country. Its influence was not limited to public monuments and/or prestige architecture of but also introduced new forms of popular housing, like the *casa chorizo*".

The liberal period extended from 1880 to 1930. The architectural eclecticism spread and generalized in Buenos Aires. The French, Italian, German and English styles mixed, overlapped and were interpreted in an architectural unit. The immigration of European architects who immersed themselves in academic positions was united as well as the engineers who acquired a prestigious place for the construction of public buildings.

The British built the railway stations, the Germans the factories, the French and Italian stood out in the civil architecture. It is the time when the city of La Plata was built. The public buildings had German influence because they were awarded by competition especially to this school.

A modest and parallel to the academic current emerged in this time period. It was a romantic architecture used mainly in residences outside the city. The influence of Art' Nouveau, was modest and mostly limited to the facade architecture.



At the beginning of the 20<sup>th</sup> century emerged a new nationalist movement. Ricardo Rojas spoke about the nationalist restoration style. He tried to look for the roots of Argentina identity, not only in architecture but in all domains of culture. Then, the neocolonial current was reborn extending from 1920 to 1940.

In 1929 Le Corbusier was invited to lecture in Argentina and he influenced the nascent modern movement, although in this period the school was traditional academic.

Modern architecture developed in Argentina from 1935. The German current influenced the young generation of architects. The works of Bauhaus were widely read (Mies, Gropius, Le Corbusier and Wright in a lesser extent). In 1940 the modern movement began in Argentina. Until then the academicism led as an official doctrine.

The modern movement was initially represented in modest buildings – single family houses. Later this movement multiplied in high-rise buildings in cities, inspired by rationalism.

Until 1935 in La Plata, the houses were of the *casa chorizo* type. Then, the model underwent a change to transform it into the box type housing inspired by rationalism.

Two dominant currents coexisted in the period 1916-1943. The first one, of nationalistic character, represented the academic monumental architecture, used mainly for public buildings. The second one of international character was represented in private architecture preferably by the modern movement, which would not multiply until the 1950s. This architecture was called white architecture, unadorned. But after a time ornaments were incorporated following the French inspiration. In these years and reacting to the European and American modernism the architecture returned to its colonial sources.

In the 1960s the formal pluralism dispersed and diluted the architectural expression modes. The two key features of Argentina architecture were eclecticism and discontinuity.

### Beginning of the constructive historical process in the city of La Plata

The urban structure consists of all types of real estate or architectural pieces that are in the city of La Plata, which have several variants within the same style that have occurred over time.

The beginning of the historical constructive process was from 1882-1884. First the public buildings were constructed after an international competition to provide the city with a representative and significant architecture of the first order. Those provin-

cial and municipal administration buildings were planned for The Museum of Natural Sciences, temples, hospitals, nursing homes, theaters, etc.

To perform the building enterprise with the intended speed, thousands of Italian workers were called. They were engaged in Europe and were provided the tickets for them and their families who formed the main group of inhabitants of the city (Office of the President, 1999).

### The historical process of the housing types in the city of La Plata

This study is based on data published by Alberto de Paula (1982) in his work *The city of La Plata, land and architecture*. He stated that at the beginning the Governor, Dr. Dardo Rocha, appealed to a direct discretion to establish the “Commission for the purchase of houses for La Plata” by decree of October 20<sup>th</sup>, 1883. The Commission was part of a larger project with the following stages, but only one is highlighted: [...] Act of October 16<sup>th</sup>, 1883, authorized to build in wood or iron and fixed a five-year extension on the obligation to build in masonry.

At the beginning there were also few buildings in straw and other materials. But the widespread preference was for the masonry building, considered more durable than wood in the humid climate of the *pampa ondulada*. The construction associated with the municipal rules that perpetuated the limit of the domains after the influence of Italian stylistic guidelines. The urban image was Renaissance and Mediterranean. The type of house was with a yard and a backyard, which was also part of the *tradición criolla* from the Spanish period. The founding urban image was the ocher color, flat roofs with balustrades, grilles and doors of different designs. This is what is observed in the Soprano house located in the heritage context of the Curuchet house, though the color has been changed.

Since the foundation, the urban landscape of the city of La Plata has been modified in some sectors and some architectural pieces have been replaced by others. The stylistic typology included Art Nouveau facade and also the French Academicism especially from the 20<sup>th</sup> century.

From the 1920s the Art Decó period and also the Neo-Colonial, Tudor and other *pin-toresquistas* styles began. Later, in the 1940s, the design was white and geometric houses. Alberto de Paula considered Curuchet house as the ultimate expression of rationalism.

In public buildings such as palaces and temples the styles varied from Neoclassicism, Academicism, Neo-Medieval and Louis XVI. In the architecture of the late 20<sup>th</sup> century, international style and Postmodern architecture was combined.



## Public Building: Police Palace

Location:	Block bounded by 2 <sup>nd</sup> , 3 <sup>rd</sup> streets and 51 <sup>st</sup> and 53 <sup>rd</sup> Avenues
Date:	1883
Designer and Work Director:	Engineer Pedro Benoit
Builder:	Mr. José Rodrigo Botet, until 1884 and then, José Porret
Style:	Italian Neo-Renaissance, Roman Doric order

Originally the building had only two floors, the central body and lateral square areas without corners. On the facade the walls ended in battlements, according to the character and significance of the building.

In subsequent amendments, between 1912 and 1914, mezzanine floors and two upper floors were introduced on the ground floor, damaging the harmony of proportions characteristic of the original project (Cedeira et al., 1984).

## Atypical blocks for public and private buildings.

Alan Garnier (1999) described the organization of La Plata space and he said: “public buildings escaped quite naturally all norm regarding its implementation; it was not the case with private buildings”. However, the regulations in force at the time of the founding of La Plata city were relatively faint and little limiting. Thus, in Decree of November 24<sup>th</sup>, 1882 (Art. 11 and 12) it was foreseen, for example, that all buildings in the same block had to have the same height, and for buildings that faced a square, the facades had to show a uniform image. All this was controlled by the Department of Engineers. The owners should place their buildings on the municipal line.

The peculiarities of the layout of La Plata (diagonals, squares, blocks on the axis, etc.) had a variety of atypical blocks. These are of regular and irregular shapes. The block 298 is a rectangular divided in a trapeze and a triangle. The hypotenuse also contains a small curve, generated to help the urban circulation of motorcars.

The blocks situated on both sides of the monumental axis are gradually reduced in width in a ratio of 120 to 60 m. Their maximum parcels belonged to the same owner

(10 x 60 m) and they offered the possibility to implement a construction with two facades and an inner courtyard. These blocks, next to the monumental axis had an additional value highly esteemed by the local bourgeoisie of the late nineteenth century. Most of the petit-hotels of the wealthy were built in those closer blocks. This is the case of the Petit-Hotel projected by Andrés Kanlay next to Curuchet House, and built in 1936-1940. The Curuchet House was not raised as a petit-hotel.

## World Heritage

On July 16th 2016, unanimously, UNESCO decided to declare the 17 projects in the category of series of Le Corbusier works presented jointly by Germany, France, Switzerland, Japan, Belgium, India and Argentina as World Heritage Sites. The house, due to its unique characteristics, received the maximum heritage protection criterion alongside with the 16 other works of the architect in 6 different countries.

Today Curuchet House is maintained as a museum by the Council of Architecture of the Province of Buenos Aires and operates without any state grant.

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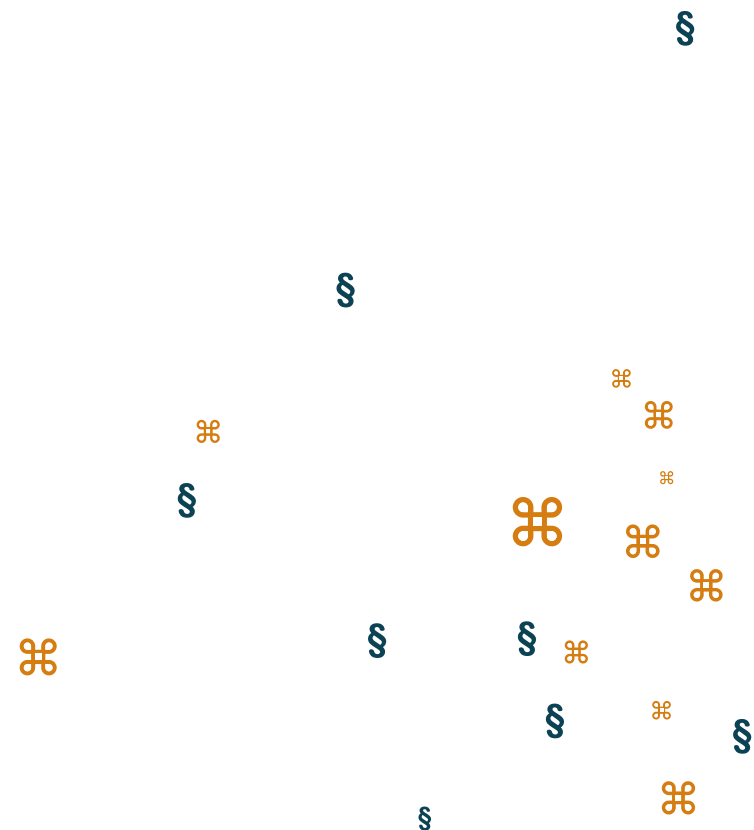
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# THE PARTICIPATION OF PRIVATE SUBJECTS IN THE PROTECTION AND VALORIZATION OF CULTURAL HERITAGE: EXAMPLES UNDER ITALIAN LAW

LUIGIA BERSANI

The article analyses rules and case law which constitute examples of ways of participation of private subjects in the protection and valorization of cultural heritage under Italian law. The article underlines how the Italian law is strengthening and integrating private and public system for such protection and valorization of cultural heritage. Within this system the public administration is a subject to the respect of principles of economy, efficacy, impartiality, equality of treatment and proportionality, and has to be against any illogical or arbitrary decision, and must take into consideration the identity values of cultural heritage under protection.

## Overview

In the last few years the Italian system of protection and valorization of cultural heritage is paying increasing attention to the integration of private and public resources. Such collaboration of the two sectors is compliant with the Constitutional Article 9, pursuant to which the Republic promotes development of culture, scientific and technical research, and protection of environment and historic and artistic heritage of the nation. It is also compliant with the Constitutional Article 118, paragraph 4, according to which the state, the metropolises, the provinces and the municipalities promote autonomous initiatives of single or associated citizen to execute activities of public interest, on the basis of the subsidiary principle.

Certain examples of collaboration between private and public sectors may be found in the provisions described below.

## Certain legislative provisions on the participation of private subjects in the protection and valorization of cultural heritage

After several legislative measures on the matter of sponsorship of cultural activities in 1990s (for example Law n. 23 of 6 August 1990 was particularly related to

the sponsorships in the radio-television sector), this system has been introduced in 2004 in the Italian Code of Cultural Assets (Legislative Decree 42/2004). In 2008, (with Legislative Decree 62/2008) such discipline was better identified with the specifications of the cultural activities that may be the object of the sponsorship, with the extension of the possibility to be a sponsor also to public entities and with the introduction of the provision on the verification by the Ministry of cultural assets, cultural activities and tourism (MIBACT) of the compatibility of the initiatives which are the object of a sponsorship agreement with the exigencies of protection of cultural assets.

Such discipline is mainly based on Article 120 of the Italian Code of Cultural Assets. According to which any contribution, even in form of goods or services (so-called technical sponsorship<sup>1</sup>), issued for the planning or the execution of initiatives related to the protection or valorization of cultural heritage, with the purpose of promoting the name, the trademark, the image, the activity or the products of the contributing subject (the sponsor), is considered as a sponsorship of cultural as-

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<sup>1</sup> Ministry Decree of 19 dicembre 2012, *Norme tecniche e linee guida in materia di sponsorizzazione di beni culturali*, Attachment I, paragraph I.1.1.



sets. The object of the sponsorship may be initiative taken by the MIBACT, regions, other public territorial entities, as well as other public subjects or non-profit private entities, or initiative of private subjects on cultural properties that they own. As mentioned above, the verification of the compatibility of such initiatives with the exigencies of protection is made by the MIBACT.

The promotion is made by associating the name, the trademark, the image, the activity or the products of the sponsor to the initiative which is the object of the contribution, in forms, established with the sponsorship agreement, that are compatible with the artistic and historic features, aspect and decorum of the cultural asset to be protected and valorized. With the sponsorship agreement also the way of providing the contribution and also the forms of control by the sponsor on the realization of the initiatives, to which the contribution is referred, are defined.

Since the sponsor may have a huge image benefit from the sponsorship activity, the choice of sponsors must be selected by following the principles of economy, efficacy, impartiality, equality of treatment and proportionality that are generally set out for public contracts, according to the specific rules provided in the New Italian Code for Public Works (Legislative Decree 18 April 2016, n. 50, entered into force on 19 April 2016 and made as execution of European Directives 2014/23/UE, 2014/24/UE and 2014/25/UE). This New Code for Public Works specifically defines the procedure for the negotiation of sponsorship agreements in favor of the cultural heritage that must be an online process with the aim to make the sponsors' research public.

Article 19 of such Code states that the commitment of sponsorship agreements for works, services or furniture that exceeds an amount of 40.000 Euro, is a subject to the publication on the website of the contracting party, for at least 30 days, with a specific notification. With such notification the sponsors' research for specific interventions is made public, or the receipt of any proposal of sponsorship is published and the relevant content of the proposed agreement is indicated. The above-mentioned provisions have the purpose of assuring the respect of the principles of economy, efficacy, impartiality, equality of treatment and proportionality. After such term of publication of the notification, the agreement may be liberally negotiated, anticipating that the principles of impartiality and equality of treatment between the subjects that have manifested their interest is respected, and in compliance with Article 80 of the same Code regarding the reasons of exclusions of certain subjects to public contracts.

In case the sponsor wishes to make works or to provide services and/or furniture directly under its charge and expenses, it is necessary to verify the requirements of the executors. Moreover, the administrator of the asset to whom the sponsorship is granted gives the needed indications on the planning and execution of the work and/or on the furniture as well as on the direction and inspection of works.

Article 151 of the Code for Public Works specifically states that the above-mentioned discipline applies to the sponsorship agreements for works, services or furniture related to cultural assets, as well as to sponsorship agreements aimed to support cultural institutes or places (i.e. museums, libraries, archives, archeological areas, archeological parks, and monumental centers), lyric foundations and traditional theatres. This article specifies again that the administration performed to the protection of the specific cultural assets gives the needed provisions on the planning and execution of the work and/or on the furniture and on the direction and inspection of works.

Moreover, Article 151 provides that in order to ensure the enjoyment of national cultural heritage and also to promote the scientific research applied to the protection, the MIBACT may activate special forms of partnership with public entities and private subjects. These are directed to allow the recovery, the refurbishment, the planned conservation, the management, the opening to the public enjoyment and the valorization of non-movable cultural assets through simplified procedures of individualization of the private partner equal or additional than those explained above. The latter provision should represent an "open rule" that may be filled with specific contents on the basis of the experience and best practices that may be carried out or experimented, as indicated in the note dated on 9 June of the Legislative Office of MIBACT<sup>2</sup>.

Another provision of the Italian Code of Cultural Assets on the participation of private subjects in the valorization of cultural heritage is represented by Article 115 which provides, *inter alia*, that the activities of valorization of cultural assets held by public entities may be managed through direct or indirect forms. The indirect forms of management are made with the concession to third parties, by the administrations which hold the assets, of the activities of valorizations, also in a joint or integrated form, through a public procedure on the basis of the comparative evaluation of specific projects. Such indirect management is made by the state, the regions or other territorial public entities for the purpose of assuring a better level of valorization of the cultural assets. The choice between direct or indirect forms of management is made through a comparative evaluation of the efficacy and of the financial-economic sustainability of the management on the basis of previously defined objectives, and for the indirect form of management on the basis of established minimum parameters.

Therefore, in case of the valorization of cultural assets, which is a concurrent competence of the state and the regions, in accordance to Article 117 of the Italian Constitution - while the protection of cultural assets is an exclusive competence of the state pursuant to the same constitutional Article - the management of the related activities is mainly decided in accordance to the subsidiary principle, pursuant to which the activities of valorization of cultural assets may be assigned to different subjects, included private subjects, on the basis of a general efficiency parameter.

<sup>2</sup> Franco Milella, "Le regole di un nuovo gioco possibile," in *Il Giornale delle Fondazioni*, September 7 2016, [www.ilgiornaledellefondazioni.com](http://www.ilgiornaledellefondazioni.com).



The above-mentioned provisions represent important instruments for the implementation of good practices through the multiplicity of ideas of individual people applied to cultural assets with the final purposes of their valorization through their vitalization.<sup>3</sup> Such provisions, in addition to their capacity of simplifying the finding of financial and managerial resources, are also aimed to improve the business capacity of the private sector producing a general benefit for the collective.<sup>4</sup>

### A specific case: the decision of the Administrative Supreme Court on the sponsorship for works on Coliseum

The above-mentioned discipline seems to involve certain issues analyzed in the decision of the Administrative Supreme Court (*Consiglio di Stato*) in the case related to the sponsorship of the works for the refurbishment of Coliseum (Decision Consiglio di Stato n. 4034/2013). This case involves the issues of the need to follow a specific procedure for the choice of the sponsor and the possibility for the public administration, after the compliance with such procedure, to liberally negotiate the content of the sponsorship agreements under the principles of impartiality and equality of treatment between the subjects that have manifested their interest to be a sponsor.

In the case of the refurbishment of Coliseum, the association for the protection of consumers and environment, CODACONS, claimed, *inter alia*, that the sponsorship agreement, entered into force between the Officer, delegated for the refurbishment of Coliseum (*Commissario delegato per la realizzazione degli interventi urgenti nelle aree archeologiche di Roma e Ostia Antica*), and the company TOD's, was not made in accordance to appropriate selection procedure. CODACONS also claimed that the agreed amount (in relation to the agreed services) for the sponsorship was not appropriate considering the possible amount and the better services that the public administration could have obtained. The opinion of the plaintiff was that this circumstance would have caused a damage for the collective represented by CODACONS as a loss of chances to obtain better sponsorship conditions, and therefore, better results on commercial and touristic aspects.

After such decision, the Court - always remembering the necessity to apply, in the field of sponsorship agreements, the principles of economy, efficacy, impartiality, equality of treatment and proportionality for the choice of the sponsor - rejected the claims of CODACONS, stating, *inter alia*, that the receipt of financing, the refurbishment project, and the equilibrium of interests, accepted by the public administration in relation to the sponsor, may be arguable only within the limits generally recognized over discretionary acts. Therefore, the Court specified, *inter alia*, that in the analyzed sector, it was possible to consider that there would have been a damage only if an illegitimate weighting of interests, illogical or arbitrary, was carried out. The Court considers that the hypothesized damages for the collective were not a real nor a concrete circum-

stance in the analyzed case, as the administration had duly evaluated the equilibrium of the sponsorship agreement.

In this Decision it is underlined, therefore, that the decisional powers on the content of sponsorship agreements for the protection and valorization of cultural heritage are mainly and widely granted to the public administration, that, in any case, as a guarantee of the rights of private subjects as well as of the collective, must respect the principles of economy, efficacy, impartiality, equality of treatment and proportionality in the choice of sponsors, and also with the reference to the content of such agreements, may not take illogical or arbitrary decisions.

### Protection of "ethical" and "visual" image of cultural assets: the identity values of cultural heritage

It is worth noting that the fact that the above-mentioned Article 120 specifically provides that the promotion of the sponsor, made in forms that are compatible with the artistic and historic features, aspect and decorum of the cultural asset which is the object of the sponsorship agreement, is connected with the circumstance that the protection and valorization of cultural assets are issues of public interest, and therefore the decision on the use of their images - also considered in an identity meaning for the value that certain cultural assets have for people - may be subtracted to private discretion. This subtraction seems to be justifiable considering that the sponsor images, associated to activities of the protection or valorization of cultural properties, may have a strong impact on such properties, both "ethical", if attention is paid to the content of the sponsor activities, and "visual", considering also the environmental aspects. Such necessity of control of the public administration on the use of the "images", in broader sense, including also the use for commercial purposes, of cultural assets, both for economic benefit of the administration but also for the protection of the values that certain cultural assets represent, is consistent with other provisions of the Italian Code of Cultural Assets. For example, in accordance to Article 26 of the Italian Code of Cultural Assets, the public administration must evaluate the impact that certain works may have on cultural heritage. Moreover, a control of the public administration is also requested for the use or the reproduction of cultural assets for commercial purposes. Indeed, Article 107 of the Code states, *inter alia*, that MIBACT, regions and other territorial public entities may allow the reproduction, as well as the ancillary and temporary use of cultural assets that they administer. Article 108 of the same Code provides, *inter alia*, that such entities determine the relevant fees for the use, taking into account the type of activity for which the authorization of the use of cultural assets is released, the means and ways of execution of the reproduction, the type and the duration of the use of spaces and of assets, the use and the destination of the reproduction, as well as the economic benefit that may arise for the user. No authorizations are requested for non-profit reproductions of cultural assets (or for

3 For example, on the matter of valorization and regeneration of abandoned or not used immovable assets, please see Ugo Bacchella, Alessandro Bollo, Franco Milella, "Ri-uso e trasformazioni degli spazi a vocazione culturale e creativa: un driver per lo sviluppo, ma a quali condizioni?" in *Il Giornale delle Fondazioni*, July 15 2015, [www.ilgiornaledellefondazioni.com](http://www.ilgiornaledellefondazioni.com).

4 On this matter, please see Alessio Re, "Processi di Valorizzazione e Governance del patrimonio culturale," in *L'Italia della qualità e della bellezza sfida la crisi*, Fondazione Symbola, Unioncamere, *Io sono Cultura*, Rapporto 2016, 207.



dissemination of their images, provided that it is not for profit purposes, not even indirectly) when they are for the purpose of study, research, creative expression, free manifestation of thoughts and promotion of the knowledge of cultural heritage.

Moreover, this issue of the control of the public administration of the use of cultural assets and of their “image” is also relevant on the matter of the exercise of commercial activities in areas with cultural value and in traditional historical stores. In this regard, Article 52 of the Italian Code of Cultural Assets provides that municipalities, having heard the MIBACT (in particular the specific superintendence entities), must identify public areas with archeological, historical and environmental values in which it is necessary to prohibit or subject to particular conditions the exercise of commercial activities. The same Article also provides, under the paragraph 1-bis, introduced by Law 112/2013, that municipalities, always having heard the MIBACT (in particular the specific superintendence entities), must also identify the stores, owned by whoever, in which are carried out traditional artisanal activities and other traditional commercial activities, which are recognized as expressions of the collective cultural identity pursuant to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. This is for the purpose of assuring appropriate forms of promotion and protection by respecting freedom of the economic initiative in accordance to Article 41 of the Italian Constitution. The same Law 112/2013 introduced also the paragraph 1-ter of Article 52, subsequently modified by Law 106/2014 and 125/2015, which provides, briefly, that for the purpose of assuring the decorum of monumental complexes and of the other immovable assets of public property, which are of the interest to particularly relevant touristic flows, as well as of the surrounding areas, the relevant territorial offices of MIBACT, together with regions and municipalities, adopt appropriate determinations aimed to prohibit the uses to be considered non complaint with the specific exigencies of protection and valorization<sup>5</sup>.

An example in this sense is represented by the recent Regulation<sup>6</sup> of the Municipality of Florence which prohibits certain commercial activities in the city center, included in the UNESCO List of Human Heritage, with the purpose to protect it through a general battle of degradation against the elements and activities which damage general interests, *inter alia*, the urban decorum, the historical urban environment, as well as the image and the historical-architectural identity of the city<sup>7</sup>.

The provisions above underline that, as a matter of public interest, the public administration has high decisional powers on the authorization of the use by private subjects of cultural assets and of their “image”, intended in its wide meaning. This is justifiable by the purpose of the protection of the identity value of cultural assets (that may include also the environmental aspects), in addition to the economic benefit for the collective that will be achieved by fees that private subjects must pay to the public administration for such use.

Such evaluation that is requested to be carried out by the public administration of the impact that private activities may have on the images and on the related values of cultural assets, implicitly imposes to the same public administration to investigate the identity meaning of such assets taking into consideration the point of views and the ways of life of people to whom they are historically and traditionally associated. This seems to be consistent with the opinion of the United Nations Special Rapporteur for Cultural Rights which has considered that the protection of cultural heritage is a matter of involving the protection of human rights, which may include the protection of identity values<sup>8</sup>.

### Participation of private subjects in the protection of the cultural heritage through the “patronage” (*mecenatismo*) system

Another form of participation of private subjects in the protection of the cultural heritage is represented by the “patronage” (*mecenatismo*) system which, usually, is promoted through rules of fiscal allowances. One recent news on the matter is represented by the “Art Bonus” system.

The Art Bonus system has been introduced by Law Decree n. 83 of 31 May 2014, converted into law by Law n. 106 of 29 July 2014. Such Decree states that a tax credit is allowed for the liberal issuance of sums made after 31 December 2013 for intervention of maintenance, protection and refurbishment of public cultural assets, for the support of public cultural institutions and places, lyrical foundations and traditional theatres, and for the realization of new public structures; refurbishment and the strengthening of those already existing that, without profit purposes, carry out exclusive activities in the show business. Such tax credit is for the amount of 65% of the provided sums (within the limit of the 15% of the taxable income (*reddito imponibile*) for the physical persons and entities that do not carry out business activity and of 5% of the annual revenue (*ricavo annuo*) for subjects that carry out business activities).

The beneficiaries of the sums, including the assignee of public cultural assets as beneficiary of the liberal issuance of sums aimed to the realization of interventions of maintenance, protection and refurbishment of such assets, must communicate each month to the MIBACT the amount of such sums. They must also publicly communicate such amount, as well as the destination and the use of the sums, through their website on a specific page to be easily found and on a specific website, administered by the MIBACT. On such web pages all the information related to the conservation status of the assets, to any refurbishment or requalification interventions, to any public fund assigned for the year, to the responsible entity of the asset, as well as all the information related to the enjoyment of the asset, must be indicated.

Tax allowances are provided also for private investments in the cinema sector in the specific form of tax credit or tax shelter. This is mainly based on Law n. 244 of 24 De-

5 With reference to such paragraphs 1-bis and 1-ter, the Italian Constitutional Court, with Decision n. 140 of 9 July 2015, has declared the illegitimacy of the articles which have introduced such paragraphs where they do not provide the agreement between the State and the Regions on the matters described therein.

6 Resolution n. 4 of 18.1.2016, “Regolamento: Misure per la tutela ed il decoro del patrimonio culturale del centro storico”.

7 On this matter, please see Marco Bini, Carolina Capitanio, Carlo Francini, “UNESCO World Heritage Site “Historic Centre of Florence”: Management and Qualitative Aspects of the Urban Image,” in *Heritage and Landscapes as Human Values* (Edizioni Scientifiche Italiane, Napoli: 2015), 278 – 283. Moreover, on the identity value of cultural heritage, please see Marc Laenen, “From Heritage conservation towards its “Social Fruition” for Society and Humanity: the multifaceted interpretation and presentation of the “cultural or landscape biography” of living environments for intercultural dialogue”, in *Heritage and Landscapes as Human Values* (Edizioni Scientifiche Italiane, Napoli: 2015), pag. 116 – 123.

8 A/HRC/31/59, United Nations Human Rights Council, *Report of the Special Rapporteur for Cultural Rights*, of February 3, 2016. Paragraph 47 of such report states “Cultural heritage is significant in the present, both as a



ember 2007 and, recently, on Law Decree n. 91/2013, converted by Law n.112 of 7 October 2013.

## Conclusions

The discipline indicated above is aimed to promote private support in protection and valorization of the Italian cultural heritage for the benefit of both the collective and the private subjects. Indeed, such discipline is structured in a way that not only the collective may have benefits as the protection and valorization cultural heritage is a matter of public interest, but also private subjects that participate in such protection and valorization may have benefits, in particular, economic benefits in terms of tax allowances or visibility of the name of products.

It has been noted that the legal instruments described above are important both as instruments for finding financial resources for works and activities related to the protection and valorization of cultural assets, and for the re-discovery of the collective role of the cultural heritage, which becomes inclusive through the active participation of people by creating an important approach between the cultural heritage and the forces of society, including the creativity potentialities<sup>9</sup>.

Therefore, the Italian system is strengthening an integrating private and public system for the protection and valorization of cultural heritage, whose relevant decisional and control powers are mainly granted to the public administration, always respecting the principles of economy, efficacy, impartiality, equality of treatment and proportionality, against any illogical or arbitrary decision, and always considering inevitable the identity values of cultural heritage under protection.

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message from the past and as a pathway to the future. Viewed from a human rights perspective, it is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and groups and their identity and development processes (see A/HRC/17/38 and Corr.1, para. 77). Cultural heritage is to be understood as the resources enabling the cultural identification and development processes of individuals and groups, which they, implicitly or explicitly, wish to transmit to future generations (*ibid.*, paras. 4-5)". On the human rights discipline applied on cultural heritage matters please see Maurizio Di Stefano, "Prefazione," in *Heritage and Landscapes as Human Values* (Napoli: Edizioni Scientifiche Italiane, 2015), 21-24; Federica Mucci, *La diversità del patrimonio e delle espressioni culturali nell'ordinamento internazionale* (Napoli: Editoriale Scientifica, 2012), 126-129; Luigia Bersani, "La dimensione umana del patrimonio culturale nel diritto internazionale: identità e diritti culturali," in *La Comunità Internazionale* Vol. 70, no. 1/2015, 37-58.

<sup>9</sup> Ermete Realacci, Ivan Lo Bello, "Premessa," in *L'Italia della qualità e della bellezza sfida la crisi, Fondazione Symbola, Unioncamere, Io sono Cultura, Rapporto 2016*, 9.



# A HISTORICAL PERSPECTIVE ON THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT: FROM THE HAGUE 1907 CONVENTION AND THE ROERICH PACT, TO THE 2003 UNESCO DECLARATION CONCERNING THE INTERNATIONAL DESTRUCTION OF CULTURAL HERITAGE

ETIENNE CLEMENT

Taking a historical perspective, the author shares some of his experience on the implementation of international instruments for the protection of cultural property in the event of armed conflict. Based on his past responsibility as a UNESCO staff in charge of the implementation the 1954 Hague Convention for the Protection of Cultural Property in the event of Armed Conflict from 1987 to 1998, he covers broadly the period from 1971 until the adoption of Protocol II to the Convention in 1999. He also briefly refers to latest normative developments, as a result of more recent destruction of cultural heritage in Afghanistan, in the Middle East and in Mali.

## **Towards the Hague 1954 Convention for the Protection of Cultural Property in the event of Armed Conflict and its two Protocols**

Destruction of cultural and religious monuments, thefts of national treasures and other damages to the heritage have long been considered as “spoils of war” and occurred from centuries. It is only from the beginning of the 20<sup>th</sup> Century that the Law of War, as codified in various international conventions adopted at The Hague, considered illegal the destruction and removal of cultural property in time of armed conflict or occupation.

Provision was made for the special protection of cultural property in Article 27 of the Hague Regulations of 1899 and 1907 and Article 5 of the Hague Convention (IX) concerning Bombardment by Naval Forces in Time of War of 1907. These provisions make it the duty to indicate cultural property by distinctive signs. Further provisions were included in the Hague Rules of Air Warfare of 1922/23, especially in Articles 25 and 26.

Following a suggestion made by Professor Nicholas Roerich, a Russian painter, philosopher and public figure, a draft treaty for the protection of cultural property in

the event of armed conflict was prepared at the request of the Roerich Museum of New York by Mr. Georges Chklaver of the Institut des Hautes Etudes Internationales of Paris. The draft was discussed by the International Museums Office of the League of Nations and at several conferences in Bruges (1931 and 1932) and in Washington (1933). In 1933, the Seventh International Conference of American States recommended the signature of the Roerich Pact. The treaty was drawn up by the Governing Board of the Pan-American Union and signed on 15 April 1935. It became the Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments or “Roerich Pact”. It is still in force for its 10 States Parties: Brazil, Chile, Colombia, Cuba, Dominican Republic, El Salvador, Guatemala, Mexico, the United States of America and Venezuela. It recognizes that the defense of cultural property is more important than their use or destruction for military purposes and that their protection has precedence over military necessity. To be noted that The Hague 1954 Convention for the Protection of

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Cultural Property in the event of Armed Conflict, in its Article 36, paragraph 2, specifies that it is supplementary to the Roerich Pact in the relations between States which are bound by these two treaties. Furthermore, the distinctive flag under Article III of the Pact is replaced by the distinctive sign in Article 16 of the Convention of 1954.

Gradually these rules were integrated into the International Humanitarian Law as codified in the Geneva Conventions and their Protocols. The Geneva Convention (1949) contains certain provisions that specifically forbid intentional or gratuitous damage to undefended cultural heritage by invading or occupying forces. It is supplemented by two further Protocols (1977) which contain important provisions relating specifically to protection of cultural property.

The first and main international agreement dealing exclusively with the protection of cultural heritage in case of war is The Hague 1954 Convention for the Protection of Cultural Property in the event of Armed Conflict and its two Protocols (the First Protocol of 1954 and the Second Protocol of 1999).

The Convention was adopted at The Hague (Netherlands) in 1954, as a consequence to the massive destruction of the cultural heritage in the Second World War. The Convention was adopted together with a Protocol (the First Protocol or Protocol I) in order to prevent the export of cultural property from occupied territory, requiring the return of such property to the territory of the State from which it was removed. The States that are party to the Convention benefit from the mutual commitment of 127 States (104

for Protocol I) mainly with a view to sparing cultural heritage from consequences of possible armed conflicts through implementation measures.

The destruction of cultural property in the course of the conflicts that took place at the end of the 1980s and the beginning of the 1990s highlighted the necessity for a number of improvements to be addressed in the implementation of The Hague

Convention. A review of the Convention was initiated in 1991, resulting in the adoption of a Second Protocol to The Hague Convention in March 1999 (Protocol II).

The present paper gives a brief overview of the contents of the Convention and its two Protocols. It also recalls some of the milestones in the history of their implementation in time of peace and during military operations as well as occupation. Examples will be taken from the Middle East, Cambodia, former Yugoslavia and from more recent conflicts in Afghanistan, the Middle East and Mali.

## The main provisions of The Hague 1954 Convention

In brief, the Convention contains several categories of rules covering the following areas:

- ⌘ the “Safeguard” of cultural property in time of peace, on a country’s own territory, such as the provision on the distinctive emblem of the Convention, “Special Protection”, or preventive measures of military and legal characters
- ⌘ the “Respect” (Art. 4) of cultural property during armed conflict and occupation, on a country’s own territory and on the territory of the enemy. It is important to stress that the obligation of “Respect” also applies for conflict not of an international character.
- ⌘ the “Occupation” (Art. 5), under which an “occupying power” shall support the competent national authorities of the occupied country in safeguarding and preserving its cultural property
- ⌘ the Mechanism of Control for its execution, including “Protecting Powers” and “Commissioners-General” (as elaborated under the “Regulations for the execution of the Convention”)
- ⌘ the issues of responsibilities and sanctions (Art. 28): *States Parties are required to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who committed or ordered to commit a breach of the convention.*

The “Respect” for cultural property (art 4) is an obligation to be respected within the own territory of the State Party to the Convention and within the territory of other States Parties, by refraining from any use of a cultural property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict. In other words, cultural property cannot be used for military purposes and/or be a “military objective”. This is applied by refraining from any act of hostility directed against such property. However, this obligation may be waived in case of “military necessity”. As the Convention does not give any definition of military necessity, this concept is left to interpretations. The principle of “Respect” also implies that no reprisals can be made against cultural property.

## Some milestones of the implementation of the 1954 Convention and its First Protocol until the review of these instruments

A number examples of implementation of the Convention took place during the period from 1967 to 1992: in Jerusalem from 1967, in Cambodia from 1970 to 1989, during the war between Iran and Iraq from 1980, during and after the Iraq-Kuwait conflict in 1990 and in the former Yugoslavia (Croatia, Bosnia and Herzegovina, as well as Serbia) from 1990.





## The use of the distinctive emblem of the Convention

The use of the distinctive emblem of the Convention is optional. It is widely used in several European countries. This was already the case in former Yugoslavia before the war (which started in the Nineties) and also in a few countries outside Europe, such as Cambodia and Lebanon. But the emblem is compulsory for specific cultural property which have been placed under the so-called “Special Protection” and therefore benefit from a higher level of protection under The Hague Convention. It can also be used by the personnel in charge of the protection of cultural heritage, such as on their identity cards, armlets or other equipment.



In Cambodia from 1970 to 1972, the emblem was placed on Angkor monuments, museums, on the wall of store-rooms in the two province towns of Siem reap and Battambang, as well as on the uniform of the personnel in charge of their protection. It was also placed at the National Museum in Phnom Penh and at the Museum in Battambang.



In former Yugoslavia in the 1990s, the emblem was also used before and during the war, in particular in the old city of Dubrovnik, a World Heritage Site.

However, during the shelling of Dubrovnik in 1990, observers reported that the monuments bearing the emblem were not spared and would have even been targeted intentionally by the enemy.



Drawing the lessons of what happened in Dubrovnik, the experts who in 1990 started to review The 1954 Hague Convention recommended that the emblem be always accompanied by other measures, as its use does not necessarily leads to the respect of the cultural property. Indeed, in a number of recent armed conflicts, the cultural heritage has been targeted intentionally, as part of a strategy to affect enemy's morale. In this context, the emblem might have the reverse effect of attracting the attention to the most precious cultural property which can become a target.

## Other preventive measures in time of peace

Article 23 of the Convention foresees that UNESCO can provide assistance for the adoption of preventive measures. This was the case in Cambodia from 1970 to 1972, through marking with the emblem, but also through training and equipment for monuments and museums staff. Moreover a large-scale operation of transportation of hundreds of cultural objects from the monumental complex of Angkor was organized under the supervision of UNESCO to presumably safer places such as the National Museum in Phnom Penh. The protection of the staff was a complete failure, as all of them were assassinated during the genocide perpetrated by the Khmer Rouge after they controlled the Angkor area. But a large number of cultural objects packed in protected boxes with the emblem were retrieved intact after the hostilities, in the basement of the Phnom Penh museum where they had been carefully stored in 1971. This was not the case, unfortunately, at the Battambang Museum where, despite the emblem, most cultural objects were stolen. Only a few, deeply buried around the museum, were recovered after the conflict.

## Special Protection

The above-mentioned status of cultural property under “Special Protection” has also been largely a failure, despite a few properties registered as such by UNESCO, essentially refuges in a few European countries and the City of Vatican. In 1972 Cambodia requested the inclusion of several monumental complexes, namely Angkor. However four of the other States Parties lodged an objection on the ground that they did not recognized the legitimacy of the Cambodian authorities submitting the request. Consequently they were not placed under Special Protection.

## The “Respect” during armed conflict

Article 4 of the Convention on the “Respect” of cultural property during an armed conflict has had a very uneven implementation throughout history. To improve its compliance during armed conflicts the Director-General of UNESCO and its Secretariat have played a role much larger than what is included in the Convention. At the occasion of a number of conflicts, the Director-General has reminded various Governments of States Parties of their obligation of Respect: during the conflict between India and Pakistan in 1971, in Cyprus in 1974, between Iran and Iraq in 1980, during the occupation of Kuwait by Iraq in 1990 and in former Yugoslavia in 1991 to name only a few. His initiatives included the sending of official letters, the issuing of public messages, face-to face meetings with military commanders or the dispatch of special envoys to meet the belligerents. UNESCO Secretariat offered its services to the parties in conflict in Iraq and Iran in 1980, in Tyre (Lebanon) in 1982 and again in Yugoslavia in 1991. In a few cases, the Director-General sent longer-term technical cooperation missions. In the case of Dubrovnik, UNESCO used all these initiatives together. For



instance, several special envoys were sent to the capital cities of the conflicting parties and later to Dubrovnik in order to work with cultural and museum personnel. In Dubrovnik, the UNESCO envoys deployed the UN flag on the walls of the old city and alerted the UNESCO DG, the UN Secretary-General and the international press agencies when the city was again targeted. As a result, one can say that although the old City of Dubrovnik was significantly damaged by the shelling, it was not destroyed as it was unfortunately the case for Vukovar or the Mostar Bridge.

### Control of the execution of the Convention

Under the 1954 Convention, the control for its execution is left to a complex mechanism involving “Protective Powers” and the designation of “Commissioners-Generals” by the Parties in conflict. It was applied in the conflict in the Middle-East from 1967 to 1977. Despite several attempts to apply it at the occasion of other conflict in the Eighties, this mechanism was considered by States Parties and by UNESCO as too complex to implement and was therefore abandoned.

### Implementation of the First Protocol

The First Protocol (or Protocol I) prohibits the export of cultural property from occupied territory. In case it was nevertheless exported against this prohibition, the Protocol requires the return of such property to the territory of the State from which it was removed.

One of the most significant examples of implementation of the First Protocol was after the occupation of Kuwait by Iraq in 1990. During this occupation, Iraqi officials removed precious cultural objects from the museums of Kuwait and transported them to the Baghdad Museum, in the capital city of Iraq. In this case, UNESCO called for the respect of the First Protocol by Iraq which requires that cultural property exported illegally during an occupation be returned to the country of origin after the end of hostilities. It was followed by a UN General Assembly Resolution calling for the return of these cultural objects to Kuwait. This return finally took place after the conflict in 1991 under the supervision of the UN on the basis of the provisions of Protocol I by which both Iraq and Kuwait were bound.

### The review of the 1954 Convention during the 1990s, leading to the Second Protocol.

Based on the successes and failure of this implementation, a review of the Convention, by its States Parties and by UNESCO, was undertaken from 1992, examining the impact and constraints of the two instruments. This review involved cultural and museum professionals, including a large number of ICOMOS members, as well as military and UN Peace-Keeping forces. The history of the implementation of the Convention clearly demonstrated that the efficiency of the Convention remained a challenging issue: for instance, the distinctive emblem has had sometimes a reverse effect by trans-

forming a protected cultural property into a target, only a very small number of sites were put under “Special Protection”, the mechanism of control involving the designation of Commissioners-Generals appeared to be too heavy when emergency requires flexibility and rapid reaction. The text of the Convention also remained silent on the definitions of “military necessity” and of “conflicts not of an international character”. It was also felt by a number of commentators of the Convention that it relied too much on States’ commitments and on the initiatives of UNESCO, an Organization with limited resources and leeway during armed conflict. Finally, criminal acts committed against cultural property in the course of the many conflicts that took place at the end of the 1980s and the beginning of the 1990s highlighted a number of deficiencies in the implementation of the Convention. The review was initiated in 1991 to draw up a new agreement to improve the Convention taking account of the experience gained from recent conflicts and the development of international humanitarian and cultural property protection law since 1954. Consequently, a Second Protocol to The Hague Convention was adopted at a Diplomatic Conference held at The Hague in March 1999. It includes a number of innovations. But the important distinction between the two principles of “Safeguard” (in peace time) and “Respect” (during armed conflicts) remains entirely valid under the new Protocol.

The Second Protocol of 1999 supplements the 1954 Convention. It does not replace it. It reflects new developments in international law, clarifies and strengthens the concepts of “Safeguard” and “Respect” by providing with clear definitions as to when waivers on the basis of imperative military necessity may or may not be applied. It also creates a new category of “Enhanced Protection”, clarifies and strengthen the criminal responsibility and sanctions, expands the protection of cultural property in situation of non-international armed conflicts and establishes a Committee for the Protection of Cultural Property in the event of Armed Conflict.

### Brief overview of developments after 1999

#### *The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage*

Following the destruction of the Buddhas of Bamiyan, Afghanistan, subsequent widespread calls for improved protection of cultural heritage led to several discussions at UNESCO Governing bodies and the adoption in 2003 by the General Conference of UNESCO of the Declaration concerning the Intentional Destruction of Cultural Heritage. The Declaration is a soft-law text and is not intended to modify ex-





isting obligations of States under international agreements in force for the protection of cultural heritage. Its main purpose is threefold: (i) to state basic principles for the protection of cultural heritage specifically against intentional destruction in peacetime and wartime; (ii) to raise awareness of the growing phenomenon of intentional destruction of this heritage; and (iii) to encourage indirectly the participation of States not yet party to the 1954 Hague Convention, its two Protocols, the Geneva 1977 Additional Protocols and other agreements protecting cultural heritage.

### UN Security Council Resolutions

Two Resolutions of the UN Security Council constitute significant developments in the legal protection of cultural property in the event of armed conflict. In 2012, The UN Security Council adopted its resolution 2085 on the situation in Mali. It condemned the destruction of cultural and religious sites and reaffirmed that they are war crime as regards to the Statutes of the International Criminal Court. Later, in 2015, it adopted its Resolution 2199 by which it condemns the destruction of the cultural heritage in Iraq and Syria, in particular that perpetrated by the Islamic State in Iraq and the Levant (ISIL, also known as Daesh, whether this destruction is incidental or deliberate. It also decides that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people.

### The International Criminal Court (ICC)

Another most significant development took place on 27 September 2016 when the International Criminal Court (ICC) has recognized Ahmed Al-Faqi Al-Mahdi guilty of war crime and has sentenced him to 9 years in prison for his responsibility in the deliberate destruction in 2012 of nine mausoleums and the secret gate of the Sidi Yahia mosque in UNESCO's World Heritage site of Timbuktu (Mali). This sanction marks a key moment for justice and reflects the wider value of culture and of all the principles contained in the international instruments for the protection of cultural heritage.

### Conclusion

For centuries the cultural heritage had much suffered from armed conflicts and occupation, in various parts of the world. To some extents the international agreements adopted since the early 20<sup>th</sup> Century have contributed to reduce its exposure to irreversible damages. In this respect the 1954 Convention for the Protection of Cultural Property in the event of Armed Conflict and its First Protocol were major milestones. Later on, its Second Protocol of 1999 brought considerable added value to Conven-

tion. Although UNESCO offers its services to the States Parties and encourages its Member States join the Second Protocol, the successful implementation of these instruments resides very much on the commitments from Governments and from the Military. It is indeed essential that the Military be made aware of the importance of the protection of cultural heritage and engage practically in its protection. This can be achieved through information and training of military of various levels, preferably in collaboration with monuments and museums professionals. In this respect, ICOMOS, a founder of the "Blue Shield", and its members could play a more important role to promote and sustain collaboration between heritage professionals and military personnel. As such awareness and training also cover legal issues, I also believe that it is an area where the ICLAFI and its members are well positioned and prepared to contribute.

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# “PROPERTY OF THE SWEDISH PEOPLE” - THE BASIS AND CHANGE OF THE SWEDISH EXPORT CONTROL IN RELATION TO CURRENT CULTURAL POLICY OBJECTIVES

SUSANNA CARLSTEN

Heritage legislation in general has a long tradition in Sweden. When it comes to export control of cultural goods the tradition is a bit shorter. A temporary proclamation in 1927 came to work as the first export control in the country. Since then the legislation has been updated several times. New threats, goals and cultural policy have all had an influence on what objects to protect and what the outspoken motives for the export legislation has been. But the changes have always been built on top of the same foundation and structure. This foundation was built in and affected by an ideologically nationalistic era. Today cultural heritage policy has a new approach including objectives relating to pluralism and diversity. The article aims to question and challenge the Swedish export control by asking: how does current cultural policy objectives relate to the foundation? Are there still ideological nationalistic ideas and structures left in the export control?

## Introduction and background

In order to address the questions, the study looks back at the formative moments and change of the export control regulations from the 1920s until today. The motives for export control and the type of objects protected through the ages are analyzed and compared qualitatively in order to shed light on what we say we want to protect in opposition to what we do protect. The source material primarily consists of legal documents, state government investigations and government bills. Besides today, the study shows four periods of increased activity. The same chronology is being used in this article.

During the late 1800s and early 1900s society in Sweden came to be more and more modernized regarding communication and industrialization. Rural parts of the country were being drained of people moving in to the cities as well as emigrating to The United States in search for a better life. At the same time tourism came to rise more and more. Major changes had occurred in a relatively short period of time and the modernization both revealed and threatened the old and traditional.<sup>1</sup> The interest in cultural history increased in the same period, it became a time of building public and private museum and collections.<sup>2</sup> Ancient monuments, old artefacts and buildings

were connected with national identity. The collections of The Nordic Museum in Stockholm were for instance described as “property of the Swedish people”, an expression which this article has borrowed its title from. Warnings that antique traders and tourists were draining Sweden of cultural objects were issued frequently.<sup>3</sup>

## 1920-1930: The initial work

In 1922 a state government investigation was released with a law draft (including a proposed export control on cultural goods) as well as a suggestion for a modern organization of conservation. A broadened view of what was valuable to protect was introduced. All memorials that could tell something about past time was valuable according to this mind setting. Specific interest to profane artefacts of a more recent date was expressed. According to the authors, it was not possible to group the objects so that certain groups could automatically be considered cultural-historical valuable. Therefore, separate assessments were proposed along with a public register. The register was supposed to prevent illegal export as well as actions of mismanage that threatened to destroy valuable artefacts.<sup>4</sup>

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1 Anthony Giddens, *The Consequences of Modernity*, 17-18. Kerstin Arcadius, “Museum på svenska: läns-museerna och kulturhistorien” (Stockholm: Nordiska museet, Diss. Lund: Univ., 1997), 14, 28, 53.

2 Arcadius, 34, 42-53.

3 Magdalena Hillström, *Ansvar för kulturarvet: studier i det kulturhistoriska museiväsendets formering med särskild inriktning på Nordiska museets etablering 1872-1919*, Linköping University, Department of Culture Studies, Diss. (Linköping: Linköpings universitet, 2006), 226.



One result of the investigation in 1922 was the first export control, introduced in a proclamation 1927. The proclamation worked as an urgent and prompt answer to the previous pronounced threat of a “systematic transit trade” of antiques. Therefore it was both independent and intended to be temporary until it could be incorporated in the existing heritage legislation. Because of its urgent and temporary character the proclamation was very brief and meant a significant departure from the proposals in the 1922 investigation. Furniture and utensils in wood, clocks, buildings and building parts produced before 1860 was included. The focus was clearly on objects of peasant culture produced in the era of the Swedish guild system. The objects were only protected against illegal export, not mismanage. The fixed year of 1860 was also a departure from the investigation that had suggested a continuous limit of 50 years (meaning that more and more objects would be included as time passed).<sup>5</sup>

As early as 1928 a new bill was proposed to increase the protection. The author was clearly concerned about the export and the risk of drainage of cultural goods in Sweden. Objects belonging to entailed estates and collections of art were especially threatened, according to the author that saw the temporary proclamation as “a sieve through which holes even the most valuable treasures helplessly could flow out”.<sup>6</sup>

The proposal resulted in yet one more state government investigation in 1930. The investigation gave several similar suggestions as in 1922. More object categories, an export fee and an opportunity for the state to redeem valuable artefacts were suggested. No distinction was made between foreign or Swedish artefacts, just as long as they had been in the country for 60 years. The investigation referred to the objects as having both a national and public value but that the content lacked national limits and had “pure human values”. At the same time clear nationalistic values were being expressed in the text. The investigation looked back at the previous period of antique trading as being “violent” and “acute”. Clear anti-Semitic values were pronounced in the description of antique trading;<sup>7</sup>

*From Avesta it is mentioned that ‘the area is not visited as often as before by Jews. The reason for this cannot be said. But if this people of trading no longer can sell their goods where they get most paid, then it’s a logical necessity that the desire to acquire old objects will eventually disappear.’<sup>8</sup>*

The investigation never lead to a new protection of movable objects. Instead the temporary proclamation from 1922 became used for almost 60 years.

### 1964-1965: A new threat

During the 1960s a new threat emerged which brought the question of an updated export control back to the fore. The threat, which had previously been noted, was

the winding up of entailed estates that by this time had been made statutory. Thus a new state government investigation was presented 1964. The proclamation from 1927 was stated to mainly protect peasant artefacts and not the upper-class objects usually found within an entailed estate. A functional and economic moderate protection with a limited quality protection of different arts and crafts categories was proposed. Hence, the idea of a public register and a mass protection was left behind. A continuous age limit of 100 years as well as the artefact being in the country for at least 50 years was put forward. New were the introduced economic limits. The idea of an opportunity for the state to redeem artefacts was yet again introduced.<sup>9</sup>

In the investigation cultural exchange and people’s experience of travelling over nation borders were being described as active. The spirit of the time is clear since international conventions were discussed. UNESCO’s proposal to issue recommendations aimed at counteracting illegal trade was a motive for revising the Swedish legislation. Nevertheless, the suggestions presented in 1964 didn’t become statutory since the design wasn’t considered good enough. Instead a temporary grant, which could be used by the state to buy items threatened by export, was votes for in 1965.<sup>10</sup>

### 1979-1987: A broadened view – cultural policy

In the 1970’s and 1980’s cultural policy goals were introduced as an important way to influence all work that had to do with culture, including heritage legislation. The will of protecting society’s cultural heritage, even the less exclusive was clear. Ambivalence could be seen in the fact that goals and desire to cultural exchanges as well as a more restrictive export control were being discussed at the same time. Several investigations, bills and propositions replaced each other and the level of protection, especially age and value limits, were changing back and forth during the period. All investigations seemed to agree that more categories of artefacts should be introduced in a new export control.<sup>11</sup> In a report 1979 Sami objects, together with furniture and other artefacts from the 17<sup>th</sup> and 18<sup>th</sup> century was pointed out as being especially vulnerable. The report thus suggested to include more categories but with different age limits and no economic value limits.<sup>12</sup> This led to a new, although quite different, government bill in 1981. The bill included very detailed categories such as smoking accessories. So called foreign objects or artefacts produced by Swedes in a foreign country were excluded from the suggested legislation.<sup>13</sup> The bill was heavily criticized and for that reason never voted for. Instead, after some adjustments, a new bill was presented in 1984/85. Foreign objects were once more introduced and the categories as well as age and economic values were adjusted. Swedish faience and scientific instruments were examples of suggested categories.<sup>14</sup>

And so finally in 1985, after almost 60 years and several reports and bills, a new Swedish export control was voted for. It was based on the latest government bill and fol-

4 *SOU* 1922: 11, 2, *SOU* 1922: 12, 1-4. Frank G. Flechner, “The Fundamental Aims of Cultural Property Law,” in *International Journal of Cultural Property* Volume 7, Issue 02 (January 1998).

5 *Kungörelsen* (1927: 129) angående förbud mot utförsel från riket av vissa äldre kulturföremål. Prop. 1927: 249.

6 *SOU* 1930: 3, 163-165.

7 *SOU* 1930: 3, 7-9, 32, 100-112.

8 *SOU* 1930: 3, 108. Quotation translated from Swedish to English by the author of this article.

9 *SOU* 1964: 22, 11, 66-67.

10 *SOU* 1964: 22, 39, 60. Rapport från kulturrådet 1979: 5, 34, 52.

11 E.g. Rapport från kulturrådet 1979: 5 or Om åtgärder mot utförsel av kulturföremål. Motion 1975: 112.

12 Rapport från kulturrådet 1979: 5, 9-12, 72, 77-78.

13 Prop. 1981/82: 82, 2, 10-16.

14 Prop. 1984/85: 179, 15-19.



lowed it in almost every aspect.<sup>15</sup> Two years after, a new bill that suggested a collected heritage act with separate chapters for regulations of export control, archeological finds etc. was proposed. A joint introductory provision, based on the idea of cultural heritage as a national interest and a shared public responsibility, was put forward.<sup>16</sup> In 1988 the new Heritage Conservation Act, based on existing legislation, was realized. The export control, with no major changes, was placed in chapter 5.<sup>17</sup>

### 2000-2014: From object to environment, diversity and inclusiveness

In 1995 Sweden entered the European Union, something that made a new overview of the export control necessary. The overview showed that there wasn't any problem in keeping the Swedish export control parallel to using the EU regulations on export of cultural goods. The main effect of entering the EU was instead weaker border controls.<sup>18</sup>

In 2000 the export control came to change when it was decided that the different categories would increase in number and detail. Different age and value limits were being mixed within and between categories, making it more difficult to interpret. Continuous age limits as well as fixed years were being used, sometimes differently within a category depending on if the object was foreign or Swedish. To illustrate the new approach: Foreign furniture was protected as long as they were 100 years old in opposition to Swedish furniture that needed to be from the year 1860 or older (a fixed limit kept from the 1927 proclamation). While the Swedish furniture was protected no matter the economic value, foreign furniture needed a value of at least 50.000 SEK to fall into the legislation. New categories like "portraits that represent Swedes and other people in working in Sweden" were incorporated together with the old ones. The Sami objects were kept as one category but clearly separated from the rest in an own paragraph (and in 2011 separated from the enclosure).<sup>19</sup>

"Diversity is the future" was the name of a state government investigation, made in 2007, that came to form a base for a new cultural heritage investigation in 2012. The goals and legislation for cultural heritage were suggested to be modernized so that it would follow the same ideas. The modernization also included aims to make the legislation clearer, more predictable and linguistically up to date. A will to move from an object oriented legislation as well as goals for a wider approach dealing with environment, development, sustainability, diversity and inclusiveness was pronounced. A proposed name change to the Historic Environment Act was one idea following that direction. The introductory provision also suggested to be changed regarding the phrase describing cultural heritage as a national interest since it could be perceived as excluding. The investigation didn't suggest chapter 5 to be changed despite the fact that phrases regarding cultural heritage as a national interest occurred here as well. Also despite the fact that several referral bodies proposed changed age and economic value limits as well as category updates. Objects from the interwar period were for instance pointed out as lacking protection.<sup>20</sup>

In 2013 a government bill based on the investigation from 2012 was up for vote in the Swedish Parliament. The bill didn't follow the investigations suggestion to remove the national interest phrase but did include the wording "ensuring current and future generations access to a diversified cultural heritage" in the introductory provision. The bill suggested that the National Heritage Board should work on updating chapter 5.<sup>21</sup> And so, in 2014, an updated version of the Heritage Conservation Act based on the bill came into force. Since chapter 5 wasn't updated at the same time a discrepancy was obvious when for instance distinctions between so called Swedish and foreign artefacts were kept.<sup>22</sup>

### Today: Cultural heritage policy

Since this research was carried out The National Heritage board did come to give the export control an overhaul in a report published in 2015, just as the bill in 2013 proposed. The criticized distinction between foreign and Swedish artefacts was suggested to be removed, except from some specific categories like woodcuts and books. Several economic value limits was according to the report to be adjusted upwards. The long lived fixed age limit of 1860 on furniture and mirrors was suggested to be replaced by a continuous limit of 75 years. The same age limit was proposed for a number of other categories as well. To make chapter 5 more predictable and transparent a couple of criteria for judgement was according to the investigation to be incorporated. The criterions included if an object had a connection to a historic environment, collection or person as well as if it was unique or of importance for research. Some categories were suggested to be renamed in order to incorporate a wider range of objects. Also, new categories including objects like photographs and toys were presented along with the idea to investigate the possibility to establish a national register for all objects turned down for export.<sup>23</sup>

An explanation to what the term "national interest" meant was described in a long section of the report. To interpret the law as ethnic nationalistic was argued as wrong. This was based on what objects that actually had been rejected export permission and the fact that the law also was able to protect objects of foreign origin. Instead the report demonstrated that the phrase should be construed in the way that artefacts of national interest was supposed to reflect an era, event, site, person or group that could help us to understand culture and history in a particularly well way. How the cultural policy goals of diversity permeated this specific chapter was not really explained.<sup>24</sup> A governmental bill on cultural heritage policy was voted for in 2017. The export control was at the same time updated according to the proposal by the Swedish National Heritage Board.<sup>25</sup>

### Discussion

So to recapitulate, today the Swedish export control protects several categories of objects with different age and value limits. The objects must be of great importance

15 *Lag* (1985: 1104) om skydd mot utförsel av vissa äldre kulturföremål.

16 *Prop.* 1987/88: 104, 1-3, 68.

17 *Lagen* (1988: 950) om kulturminnen m.m.

18 Hanna Sofia Johansson and Lars Korsell, *Förebygga illegal utförsel av kulturföremål. Rapport 2012: 10 Brottsförebyggande rådet (Västerås: Edita, 2012), 19-20.*

19 *Förordning om ändring i förordningen* (1988: 1188) om kulturminnen m.m.

20 *SOU* 2012: 37, 23, 119, 152, 256.

21 *Proposition* 2012/13: 96, 31-39, 72, 82.

22 *Kulturmiljölag* (1988: 950).

23 *Rapport från Riksan tikvarieämbetet: Översyn av regelverket om kulturföremål. Ku2013/1344/KA, 2015, 34-52.*

24 *Ibid.*, 13-15.

25 *Kulturarvspolitik. Proposition* 2016/17: 116.



for cultural heritage, not necessarily national heritage. The objects need to have been in the country for more than 75 years, no distinctions are made between Swedish or foreign objects except for a few categories. Five criteria for assessments (uniqueness for instance) are integrated.

One important thing to consider whilst discussing the issue of an export regulation is the question; *what is not regulated when it comes to moveable objects?* To move an object from an original historic interior or collection within the country is not forbidden, something that of course could be of much more damage than to move an object over the Swedish border. The new criterions from 2017 could be seen as a help to avoid this but in the end the law can't forbid objects moving within the borders of Sweden. The law doesn't regulate accessibility or state pre-emptive rights. No part of the law protects valuable objects from being mismanaged, distorted or even destructed. In other words, within the borders of Sweden you can do what you want with moveable objects (except for artefacts owned by the Swedish church or archaeological finds), a one-sided right of possession for the Swedish people.<sup>26</sup> Within these facts lies one of the biggest problems; to consider the nation as a safe place is not correct. In fact, many artefacts are being neglected and mismanaged within the borders. In some ways we tend to speak and think about cultural objects as almost being alive (e.g. sick glass) and also being part of a nation's life therefore having a "natural habitat" within specific borders. Something that is easy to forget discussing issues of export is the fact that objects are not harmed by crossing borders, it's us people that are affected.<sup>27</sup>

Different motives for an export regulation have been identified. Depletion of the national patrimony and the risk of Sweden being harmed as a nation by too much export are probably the most important ones. The idea of the protected objects as contributing to the knowledge of Swedish history and connection to the past and the country are other ones.<sup>28</sup> To suppress or reduce market forces is a motive that sometimes could be identified, a motive closely connected to what artefacts that for the time is trendy and therefor desirable for many people. Trends can also be a reason for distortion of valuable objects. To look at the moveable objects as an asset and cultural capital is another motive of more recent origin. More diffuse motives like the objects contributing to inclusiveness and cultural availability in Sweden are also identified. However, the absence of other protection than export control for moveable object pinpoints national protectionism as an important but not outspoken motive.

Looking at what objects and categories that over the years been protected the legislation goes from a both narrow and generous definition to more complex and detailed categories. Archeological finds, artefacts belonging to the church, rural and upper-class culture has since the early 1900s been pointed out as highly valuable from a national perspective in the different investigations and bills. Just recently the long lived age limit of 1860 was removed. 1860 and forward defines an era of more and more industrial manufactured and imported products where new materials and styles appeared within the borders. As from 2017 more of these materials are incor-

porated since many categories were widened in definition, although the new higher monetary value limits exclude a lot of artefacts that could be of big importance. Plastic objects are still left out. What could be argued is that the chosen age and monetary limits in some ways are creating hierarchies between the different categories, something that differs from the modern museum approach of collecting and displaying.

The distinction between Swedish and foreign objects introduced in the 1980s is since 2017 no longer in question for most categories. This shows a modernized way of looking at cultural heritage since cultural exchange always has been a part of Swedish history. From immigrating craftsmen, to imported pattern models and war-trophies, international influences have played an important role for cultural heritage in Sweden. Borders are a construction made by people and borders change. Parts of Sweden were Danish until the 1600s and Finland was Swedish until the early 1800s. The law logically only regulates export from within the present border, but the "nationality of objects" could be questioned when it for example comes to furniture from the 18<sup>th</sup> century produced in the part of Sweden that today is Finland.<sup>29</sup> Sweden has five national minorities; the Sami people, Swedish Finns, Roma, Jews and the Torne Valley Descendants. Only Sami artefacts have an own category in the legislation. Separating these objects from the rest could both be seen as though they are highly (or more) valued as well as singled out from the rest. That has a risk of counteracting diversity in the way that it accentuates a "we" and a "them".<sup>30</sup> When it comes to minorities, the question of borders also becomes problematic. The Sami people are for instance spread across the north parts of Sweden, Norway, Finland and Russia. Regarding minorities and export legislation, the history shows that antisemitism was present in the 1930s when describing antique trading.

The redrafting of the opening section in 2014 was problematic as chapter 5 wasn't updated at the same time, thus a discrepancy became noticeable in some details. Adding complex goals like diversity without changing the content of the law isn't really a way of reaching that goal.<sup>31</sup> Since the original research for this paper was made the export control has been updated in many of the identified problem areas. That in itself shows on a will to progress and modernize, a will that can be identified during all of the long history of chapter 5. One problem is that these types of changes always seem to be realized with a bit of a lag, sometimes a too long lag.

Most of us are willing to agree on modern cultural policy objectives to include and protect a diversity of heritage. At the same time we have a long tradition of heritage protection that pass on values and hierarchies. This long tradition can be seen as a steady foundation that is hard to move.<sup>32</sup> We can build new things on top of the foundation but our modern view isn't always compatible with it. Sometimes we try to polish over the skewed joints with modern rhetoric so that the surface will look more modern. By scraping the plaster and make the underlying structure and foundation visible, this research has tried to question and challenge conservation norms and principals.

26 Ernest, *Stat, nation, nationalism* (Nora: Nya Doxa, 1997), 12.

27 Benedict Anderson, *Den föreställda gemenskapen: reflexioner kring nationalismens ursprung och spridning* (Göteborg: Daidalos, 1993), 192-193.

28 James Clifford, "Objects and others," in *Objects and others: essays on museums and material culture*, edited by George W. Stocking (Madison, Wis.: Univ. of Wisconsin Press, 1985), 238.

29 E. J. Hobsbawm, *Nationer och nationalism* (Stockholm: Ordfront, 1994), 21 and 25. Anderson, 21.

30 Helene Egeland, "Mångfaldsdoktrinen – et tema i den svenske kulturpolitik," in *Kulturen i kunskapssamhället: om kultursektorns tillväxt och kulturpolitikens utmaningar*, edited by Sverker Sörlin (Stockholm: Swedish Institute for Studies in Education and Research (Institutet för studier av utbildning och forskning) (SISTER), 2003), 80-83.

31 *SOU 2007: 50*, 71.

32 Similar observations has been made in: Tobias Harding, "Nationalising culture: the reorganisation of national culture in Swedish cultural policy 1970-2002" 1. uppl., Department for Studies of Social Change and Culture, Linköping University, Diss. (Linköping: Linköpings universitet 2007).



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# STRANDED IDEAS. UNREALIZED CONSTRUCTION PLANS IN TALLINN OLD TOWN IN SOVIET PERIOD

HENRY KUNINGAS

The following article examines the capital of Estonia Tallinn's Old Town building projects following Second World War and the Soviet occupation, which for various reasons were left unrealized. The paper also provides a short overview of the points of contact and of the controversies between the contemporary architecture and the heritage conservation movement institutionalizing in this period.

Out of several unrealized projects I will focus on certain, most important or characteristic cases between 1945 to 1991, the first year being the end of WWII and second the regaining of independence of Estonia.

The subsequent provocative quotation will offer a context to comprehend several projects presented in decades following the end of WWII:

*„Fine architecture, whether individual buildings or groups of buildings, should be protected from demolition.*

*The grounds for the preservation of buildings should be that they express an earlier culture and that their retention is in the public interest. But their preservation should not entail that people are obliged to live in insalubrious conditions.*

*If their present location obstructs development, radical measures may be called for, such as altering major circulation routes or even shifting existing central districts - something usually considered impossible.*

*The demolition of slums surrounding historic monuments provides an opportunity to create new open spaces.”<sup>1</sup>*

The quote originates from Athens Charter, the principles set by CIAM, the avant-garde of modern architecture (*Congrès internationaux d'architecture moderne*) and Le Corbusier in 1933. This monumental program for architects and city planners was extremely influential all over the world, promising a better life according to entirely new principles. The concept of CIAM Athens Charter became even more prominent after the war. The historical, dense cityscape and narrow streets of the old towns no longer

fitted in this equation. World War II caused unprecedented destruction in both eastern and western sides of the Iron Curtain, creating a sharp demand for premises - and modern architecture and city planning started to build a new city of the future. In case of Soviet Union, including Estonia, the classicist doctrine prevailed until the mid 1950's.

An important aspect affecting the Old Town was the abolition of private property by the Soviet Union. It had several negative effects on Old Town, the most important being that new housing ignored the borders of historic properties and street structure, making the construction of oversized buildings, stretching several former land plots, possible.

## The post-war restoration in the epoch of Stalin

Immediately after the war, the reconstruction of the building damaged in the 1944 bomb attack started. As a preliminary, somewhat hastily conducted reconstruction, multiple buildings were restored to their pre-war volume, although the architecture can be described as a “cost-effective”. Actually, the reconstruction of Old Town buildings continued well into the 1980s as a vigorous alternative or parallel discourse to Venice Charter requiring the use of contrast principles when adding new substance to historic fabric. Today, the reconstructed buildings are not distinctive in the overall street view and these buildings are “historic” Old Town to the eyes of the general public.

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<sup>1</sup> [http://www.getty.edu/conservation/publications\\_resources/research\\_resources/charters/charter04.html](http://www.getty.edu/conservation/publications_resources/research_resources/charters/charter04.html), accessed May 14, 2017.



Some buildings, however, were never restored for various reasons, some of them pragmatic, ideological or bureaucratic.

One of these example concerns housing on Vana-Posti street in the southern part of the Old Town, which was also damaged during the air attack, however the outer walls remained intact.

In 1947 the Leningrad architectural bureau “Lenpromstroiprojekt” put forward a reconstruction proposal, which takes advantage of the preserved walls, having just put in an attic of the building, and even restoring the historical functions of store and office.<sup>2</sup> Then, however, the victorious Red Army intervened, occupying at the time a prominent downtown location comprising several earlier plots.

With the constructing of the movie theatre “Sõprus”, ignoring historic plot and street structure, a small square also emerged providing a suitable scenery for pompous architecture. So in early 1953, with the last breath of the triumphant Stalinist architecture, a Leningrad-based naval design bureau called “Voenmorprojekt” compiled a blueprints for a bombastic Navy General Staff building, significantly exceeding previous buildings volume.<sup>3</sup>

The aforementioned reconstruction case also illustrates a wider trend of the period, demonstrating the forced implementation of classicist Stalinism starting from 1949. One of the gentle methods to implant alien architectural ideas was to employ architects from Soviet Russia.

Neighbouring to Vana-Posti street one of the most devastated areas during the WWII was the quarter surrounding the St. Nicholas church. Only few houses and the swedish St. Michael church survived the bombing leaving the St. Nicholas church in ruins.

**Harju Street park project from 1948** offered four variants to the enhancement of the quarter severely damaged by bombing, proposed by a little-known architect Maks Kaiv.<sup>4</sup> Versions of the quarter ranged from a partial restoration of the buildings to create only park on the area. Unconventional, novel idea suggested by architect, was to build archway alongside the reconstructed buildings. However, none of his proposals to restore even some of the buildings were accepted and all the walls still standing were pulled down and only public garden was created.

The park established at the end of the 1940s on the ruins of the demolished buildings certainly correlates with stalinist urban planning ideology, but it is also relevant that the reconstruction of the buildings in the post-war years in the Harju street was also hindered by a lack of resources. In the time of fierce atheism St Nicholas church barely escaped demolition. Nevertheless, in the 1980s one of the arguments, unthinkable during the Stalin rule, against rebuilding the structures of Harju street relied on the view of St. Nicholas from the Harju street.

Since the reconstruction of St. Nicholas church quarter housing issue has been controversial topic until today, which is why I'll return to this subject later.

### Kohtuotsa viewing platform lift 1951

An unconventional, landscape- driven sketch was drawn up in 1951 to connect downtown and Toompea hill. The planned building by architect Enn Kaar was essentially a 23 meter high elevator shaft, hidden behind a massive wall, and formulated as a kind of neobaroque tower. The idea itself was apt - to connect Toompea with the lower part of old town in a place, which remains along one of the central pedestrian routes of the old town. The idea probably arouse simultaneously with a plan to demolish two buildings of fairly good condition by the medieval city wall tower. Although the project was approved, the idea was apparently due to the lack of funds never carried out.

The ongoing general obligation of mechanization and ardour of motorisation in the society, echoes as well in this project. In fact, the project follows the same logic as the wave of rationalization of the early 1960s, like ideas to construct a new highway through or tunnel beneath the old town. Such proposal's broader background is the modernization of the historic core of the city, and to link more closely the city's old town to a modern transport network, characterized by wide, straight roads and faster connections.

### Viru 13/15 sewing factory project 1953

One of the most famous construction sites in the Old Town during the Soviet era were the historic corner plots on the Viru and Müürivahe streets. The housing, including one of the most renowned pre-war cinemas, was also severely damaged in the 1944 air attack and the development to house these empty plots began in the 1950s. Quite surprising was the decision to erect a completely new industrial sewing factory in the old town, but one must take into account that the old city was despite the war damages and the narrow circumstances in the post-war years still the city's heart. Since the soviet government, the “dictatorship of workers”, practised until 1960s to build factories in the city centre, often along the most important arteries, it perhaps explains the placement of sewing factory in Viru street.

The preliminary design of the factory was conceived by architect Kornelia Plaks of the design bureau „Tööstusprojekt” (*Industrial Design*) in 1953. The sketch exploited extensively classicist vocabulary. The building disregarded the historic building line, while the main façade was placed behind trees line-up unfamiliar of downtown of old town. Also, the volume of the building, which spread over a number of historical properties, surpassed the volume of the historical buildings of Viru street. The Stalinist “industrial palace” was never built probably due to the death of Stalin, followed by a quick and awaited change in architectural policy of Soviet Union. The very next year,

2 The Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection, n 6, s 325.

3 *Ibid.*

4 The Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection, n 6, s 513.



designed by architects Voldemar Herkel and Kalju Veldre the design of the building completely transformed, abandoning almost all elaborate decor. Since after the completion of the factory a big void still remained between the street line and a factory building, we will tackle with this place further on.

### **The formation of Old Town protection area 1966. Institutionalization of heritage protection**

After 1953 occurred radical changes in the Union-wide architecture policy that influenced also the Old Town. It also acknowledged the need to engage in the restoration and protection of cultural heritage in a systematic manner. So far, the restoration mainly focused on outstanding individual objects. Under the management of architect Rein Zobel and art historian Helmi Üprus the exhaustive “proposals for the regeneration of the Old Town” were compiled from the beginning of the 1960s. The heritage activities culminated in 1966 with the Old Town conservation area formation and subsequent creation of new institutions. The institutionalization of Old Town resulted in the rules of engagement to become considerably severe.

One of the incentives for the formation of the Old Town conservation area, albeit unintentionally, was an article from 1963 by architect Paul Härmson in which it was proposed to cut new straight and wide road through the old town, to unite the Baltic railway station and central department store. The article caused surprising and rapid response among the public. One could argue, that from the perspective of CIAM Athens Charter, the narrow and winding streets of the Old Town structure were hopelessly outmoded and the idea therefore in correlation to the modern town planning canons.

At the international level, the adoption of the Venice Charter in 1964 proved for following decades to be a fundamental guideline to professionals dealing with historic built fabric. The *a priori* prohibition of reconstruction and the application of a *anastylosis*-method were interpreted to stand not only to single edifices but to historic city nucleus altogether. These principles were debated by postmodern architecture in the 1980s.

### **Harju Street Art Gallery architectural competition 1969, designs in 1986, 1988**

I will now return to Harju street issues. In 1969 an architectural competition was announced to construct an Art Gallery on the park area of Harju street, which in addition to new buildings would also include Swedish St. Michael's church at the Rütli street to be converted to the old master's art museum. However, the jury did not accept any of the entries to be a suitable basis for the erection of museum, but the prizes were distributed. First place was awarded to architect Henno Sepman's project that was truly modern solution, but did not respond to a fairly stringent guidelines of construc-

tion specified by Rein Zobel and Helmi Üprus, aforementioned „parents“ of Old Town protection area. Architectural trends of the time included the fact that both the first and two second prize runners outlined along the Harju street for the entire first floor to step backward under a massive mute monolithic bulk. One of the models for Henno Sepman's project might be the Museum of Contemporary Art in Vilnius Old Town, completed in 1969 by Vytautas Čekanauskas.

In 1986 architect Andres Alver and shortly afterwards, architects Rein Kersten and Peep Jänes presented new proposals to erect an art gallery along the Harju street. Special conditions drawn up by the National Heritage prescribed the observance of historic building line and building volume, furthermore exact reconstruction of several facades of pre-war housing.

Behind the copy facades the Ministry of Culture, however, wanted to place in addition to the art gallery, a hotel, restaurants and other tourist-oriented businesses. 1969 entry was modern purism structure compared to the 1986 and 1988 quoting postmodern proposals. The deep contradiction between mimicry facades and modern space program did not bother the postmodern doctrine at all, but rather is characterized as required diverse tension of architecture. As a result of breakdown of Soviet Union and the financial difficulties the projects were never carried out.

### **Viru 11/13/15 designs 1967, 1979, 1988**

I will now return to Viru street. The first attempt to fill previously discussed empty plot in front of the sewing factory on the Viru street was made in 1967. Architects Eva Hirvesoo and Peeter Tarvas presented a draft, representing popular trend of the 1960s to articulate façade division with horizontal masses, being in stark contrast to the surrounding urban fabric. According to the plan the new two and a half storey annex was to house “Lembitu” sewing factory's shop. As in the preceding year the protection zone of the Old Town was established, because of the opposition of the heritage conservation authorities the building was halted.

The next attempt to get the project to construct a new building for the sewing factory premises on the empty patch took place in the 1979 by arranging architectural competition. The winning design by architects Ain Padrik and Vilen Künnapu of the Tallinn School movement was clearly postmodern, in compliance with the key concepts of environmentalism and complexity. According to the idea of Padrik and Künnapu there was to be built a four-storey building, where the volume of the principal facades followed exactly the historic street line and pre-war structures, courtyard facades, however, were spiced up by *art nouveau*-inspired terraces and curving stairways. But the construction of a new edifice was tangled for several years in a debate about the appropriateness of the design and eventually abandoned.



However, in 1988, in the eve of the collapse of the Soviet Union, another venture to fulfil an empty plot in the very same place was made. As the command economy was drawing its last breath and sewing factory no more required extension the empty place was in 1988 designated for the theatre “Vanalinnastudio” (*Old Town Studio*). A new design by the same authors, Padrik and Künnapu, already distanced from post-modern literacy and highlighted the play of abstract forms of architecture. Due to the fall of soviet economic and social system this idea was also abandoned.

### Perestroika and glasnost in the Old Town - Youth Theatre's 1984-86 expansion project

The National Youth Theatre extension plan on the Lai street was one of the most scandalous projects ever conducted for the erection of new buildings in the Old Town. This project, designed by architect Kalle Rõõmus and art historian Juhan Maiste, stands out from several others projects drawn up and implemented in the 1980s both from architectural and ideological aspect. The main difference from the projects mentioned before – Harju, Viru street – was that the historic plots on the Lai street were already covered with layers of historic substance, dating back to the 14. century.

The volume of the planned extension exceeded noticeably the historic merchants' houses and storehouses of the quarter and although according to prevailing post-modern principles extension design was cut up to resemble the structure of Old Town housing, the addition was still an elephant in the living room. Besides professionals usually involved in such disputes, also other people concerned with the cultural policy interfered, thus converting the debate about architecture and heritage protection to a clash about cultural policy in general. Perestroika and glasnost gave unexpected freedom of expression in public. In spite of the heated discussion and strong opposition two Polish renovation companies were hired to realize the project. They managed to demolish one historic building in the middle of the quarter and dig a large foundation pit, but due to the economic decay of the Soviet Union the building stopped. Although another attempt to add extension to the theater – now called Tallinn City Theater - was made in the first half of the 2000s, the pit remains.

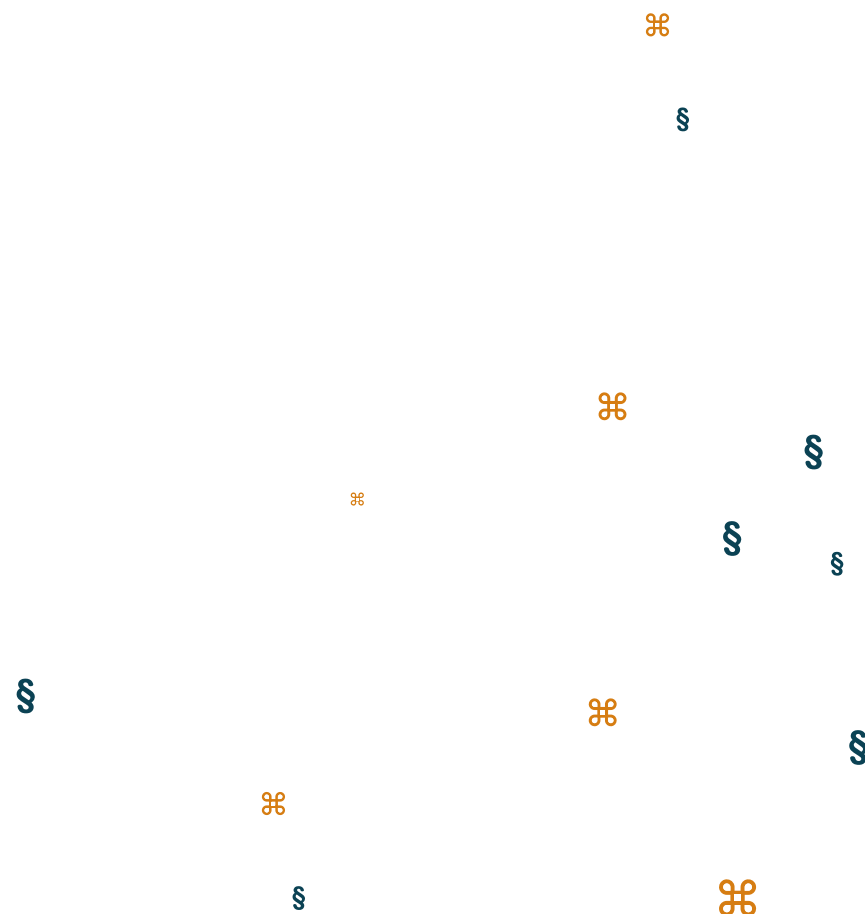
The previous overview dealt with only a few examples of the paper architecture of the soviet era in Old Town. As a conclusion one could observe the paradox that the winning designs of architectural competitions in Old Town tend to be left unrealized. Hopefully this is only temporary coincidence. Also, there are still several plots in Old Town left from the bombing of 1944. How many more paper architecture will be produced to fill these plots -and according to which principles - will be interesting to see in the future.

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The Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection, n 6, s 325.

The Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection, n 6, s 513.





# TREASURE HUNTERS WITH METAL DETECTORS AND ARCHAEOLOGICAL HERITAGE - FRIENDS OR FOES?

NELE KANGERT

The article concentrates on the regulation of searching for underground objects with metal detectors. Estonia has chosen a more open approach to this world-wide problem and started licensing the searchers. Years of focused trainings has led to reasonable cooperation. The article was first published in Estonian Cultural Heritage. Preservation and Conservation. Vol. 2, 2013-2017. National Heritage Board 2017.

Searching for underground objects with metal detectors, i.e. detectorism, is a popular global hobby, and it has attracted hundreds of active enthusiasts over the last decade in Estonia. The excitement of finding something and an interest in history are among the frequent reasons given for spending long hours in a field with special tools, hoping to stumble on a treasure. Several detectorist clubs operate in Estonia, and various web platforms for those interested in detectorism have been set up. From the point of view of heritage protection and archaeology, however, detectorism has two sides. Although thanks to hobby searchers who cooperate with archaeologists and the National Heritage Board new information has been acquired about new monuments, occasional finds and treasures, irresponsible or mass detectorism endangers the survival of archaeological heritage. Ill-intentioned or thoughtless searching for and excavating of objects can permanently damage archaeological information sources. An archaeological site with holes dug in it, where finds have been taken out and the cultural layer turned upside down, resembles a book with torn pages: difficult to read and mistakenly interpreted.

Since 2011, the search with specialised equipment for culturally valuable finds, including ancient finds in Estonia, has been regulated by the Heritage Conservation Act. This enables enthusiasts to legally engage in their hobby, and at the same time guarantees that when some- thing is discovered, all archaeological information reaches archaeologists. All finds with cultural value, i.e. owner- less movables with cultural, historical, natural or artistic value, by law belong to the state and are from the moment of discovery under temporary protection: they must by no means be damaged or removed from the find spot. It is forbidden to use the searching device on an archaeological monument and in its buffer zone. People who wish to use searching devices to find culturally valuable objects must take a special training course, which provides the necessary knowledge about underground objects and monuments, laws related to

archaeological heritage and detectorism, the detectorist's rights and duties, and the basic skills needed to handle finds. Those who finish the course can apply for a permit from the National Heritage Board, issued for one calendar year and renewed at the end of the year after a report is submitted.

In order to establish the cultural value of finds handed over to the state, the Heritage Board compiles an expert assessment, which determines the future preservation of the object and a reward for the finder. The Heritage Conservation Act grants the finder a reward depending on the cultural value of the find and the circumstances of its discovery. The aims of the reward are primarily to give credit to honest finders and motivate people to act lawfully.

How well does the act actually work? In 2012 the Heritage Board issued 91 permits providing the right to search for culturally valuable objects with detecting devices, whereas in 2016 the number of permits increased to 459. On average, five or six courses are organised each year for those wishing to apply for permits, including courses in Russian. Keen interest in the courses and the high percentage of submitted annual reports indicate that the permit system has by and large been accepted and the permit holders consider renewing the permits necessary. The reporting of finds has also significantly increased. In 2011–2012, the Heritage Board was informed about just 50 finds or assemblages, whereas in 2016 stray finds or find collections were handed over to the state on 121 occasions. The finds mainly consisted of Iron Age and medieval jewellery and jewellery fragments, weapons and weapon fragments, details of

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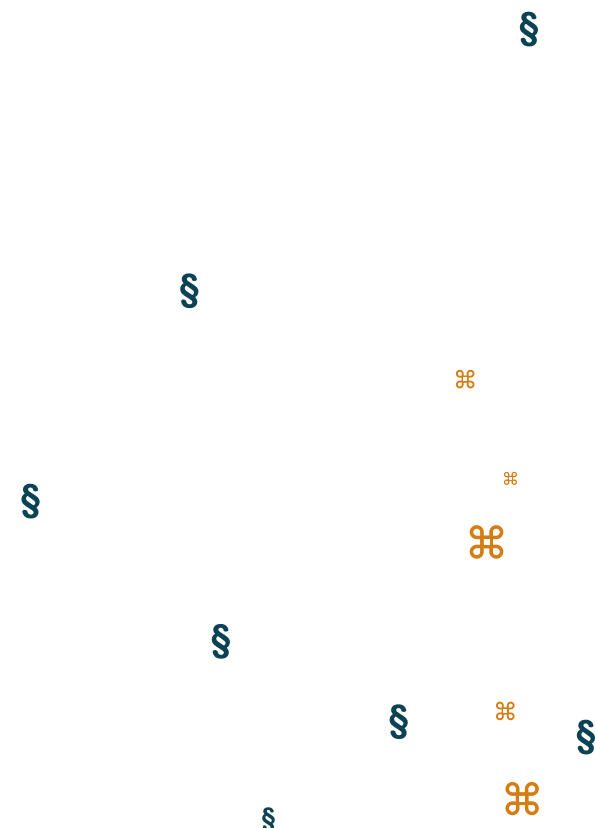
clothes, coins and treasures, etc. The large number of finds has also increased the finders' rewards. In 2016 the Heritage Board paid out rewards totalling 100 475 euros.

The biggest contribution of detectorists to archaeology is tracking down new monuments and finding sites. People with metal detectors typically lead archaeologists to Iron Age settlement sites, burial places, historical roads, industry-related locations and treasure trove sites. The advantage of detectorists is that they move around in places that, on the basis of landscape logic and archaeological sources, archaeologists would not necessarily explore. In 2013, for example, a hobby detectorist discovered a sacrificial site in a field in Kohtla-Vanaküla in eastern Estonia which contained over 700 archaeological items. He immediately informed the Heritage Board and thus archaeologists, in cooperation with the members of the local detectorist club Kamerad, managed to establish most finds in their original contexts. Items offered as sacrifices on the former water meadow mainly consisted of different types of weapons and tools: spearheads, axes, sickles and scythes. The majority of the finds had been in the ground since the 5<sup>th</sup> – 6<sup>th</sup> centuries. This is the largest hoard in Estonia of this period. At the Heritage Board's annual event, the finder was duly recognised and the sacrificial site of Kohtla was nominated as the end of the year in 2013.

Detectorists have opened up a totally new historical view of the Kõue region in northern Estonia. Between 2013 and 2016, seven Viking-era hoards were discovered there within an area of one to two kilometres. According to the archaeologist Mauri Kiudsoo, they were left in the ground around the year 1100, probably as a result of one event. The latest so far, i.e. the seventh Kõue hoard, was found in spring 2016. When the find, collected as a monolith was being cleaned in a lab, the remains of two birch bark granary boxes, one inside the other, were identified. There were also numerous remains of copper spiral and ring ornaments for clothes. The spirals indicated that the ornaments could have partly been attached to clothes. Unfortunately, the cloth had not survived and a great part of the spiral pattern had been scattered because of ploughing in the site. The hoard also contained pieces of bronze jewellery, various types of glass beads, tin beads, pendant coins and tin pendants. The latter are the most valuable components of the hoard: two pendants imitated Yaroslav the Wise silver coins, of which fewer than 10 samples are known in the world.

Although the changes in the law have greatly improved the relations between hobby detectorists and the heritage conservation people, and the state has received more information about finds than ever before, it should be kept in mind that the permit itself does not automatically make a person law-abiding: most crucial are his value criteria. The state has no clear knowledge of the number of people who actually work fields with metal detectors. There are still regions where discovered finds turn up on the black market rather than reaching archaeologists. The major hoards and numerous stray finds handed over to the state have posed a challenge to archaeologists, conservators and the existing system, revealing areas and practices that need further

development and regulation. There is a need for more efficient monitoring, which would involve closer cooperation with the Police and Border Guard. Hobby detectorists' reporting and information system should be made digital and more accessible to all parties. In sum, we have to admit that law-regulated hobby detectorism continues to develop and its full impact on archaeological heritage will be seen only in years to come.





## REUSE AND DONORSHIP IN TALLINN OLD TOWN

KAAREL TRUU

Medieval buildings in Tallinn have been rebuilt numerous times. Reuse of earlier constructions and materials has been an intrinsic part of the building tradition in Tallinn. Reuse was favoured by revival styles in the 19th and early 20th century. The Soviet system with the absence of private owners combined with a central restoration organization supercharged that phenomenon.

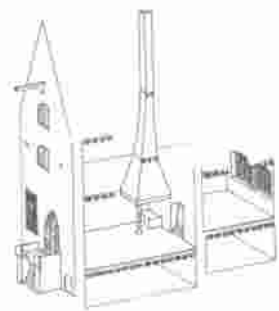
The following text is about reuse and afterlife of medieval architecture in Tallinn. It will give an overview of general tendencies and describe some cases to further illustrate the topic.

Reuse will appear in two main contexts. I will speak of reuse that occurred already during the middle ages and the following centuries and is an intrinsic part of the development of the town and its buildings. And I will speak of reuse in context of restoration, where it was often used so as to correct "errors" that had occurred during centuries of uncontrolled evolution.

In the widest sense using the same buildings for centuries is reuse in itself. Parts of the earliest 13<sup>th</sup> century stone buildings have preserved as parts of basements while wooden parts of the same edifices have been replaced by masonry walls.

Earliest type of stone dwellings in Tallinn (and many other cities in vicinity of the Baltic sea)<sup>1</sup> is one with a single room, a square shaped plan standing in the depth of the lot. Such a house might have had wooden buildings attached to it that were facing the street. The wooden or partly wooden buildings were rebuilt when their owners could afford it or in some cases following the regulations of the magistrate to lessen the danger of fires. When rebuilt almost all traces of them were lost and very little is known about such buildings because the foundations of new masonry walls reached deeper than the ones of timber constructions. The early stone buildings however are known to have been integrated into the modernized houses.

A medieval house of a wealthy citizen had two main rooms on the ground floor. Facing the street was the diele – working and living room, with an open kitchen in the corner of it. The back room or sleeping room was called dornse. Upper floors were used as storage space. The cellars were used as storage space, rooms facing the street were often used as shops by the owner or rented.



Conceptual drawing of a 15<sup>th</sup> century dwelling house

During the 15<sup>th</sup> century the center of Tallinn evolved into what it is today. The city had filled the area surrounded by the city wall, the street network and many of the buildings existed in their present form. Due to the relative poverty and dense medieval city fabric the reconstructions and modernizations in the following centuries were minimal and sustainable by today's standards.

Bound by medieval lot proportions and bearing walls the floor plans generally preserved. Parts of the building with distinctive decorative features: pillars, panels also sometimes remained in their original places and since they were out of fashion were covered with plaster or masonry.

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<sup>1</sup> Hans-Günther Griep, Das Bürgerhaus der baltischen Städte. Husum Druck- und Verlagsgesellschaft, 2009.



It is worth mentioning, that these pillars that have been found have been left in to the walls for only structural purposes. There were no conservationist ideas involved, they were not left there to be rediscovered. A proof of that are the salient parts of bases and capitals, that have been chopped off so it would be easier fitting them inside the walls.<sup>2</sup>



Photo of a brick-covered pillar opened during field research.  
Photo: National Heritage Board

In many cases this has led to awkward results where for example the new (neo-classical) facades featuring straight rows of windows which were placed and proportioned according to architectural theories did not suit the heights of the medieval floors behind it.

Medieval technical solutions were so deeply integrated into the buildings, that mere innovation could not make them disappear. Implementation of new technologies, tiled stoves for example, only meant adding new features and details to the building, while keeping the old. Some mantel chimneys are partly in use still today. This appears clearly on floorplans of buildings.

Standard heating system in a medieval dwelling house and public spaces was heat storage furnace. The device

was located under the heated room and consisted of an arched firebox with a pile of loose stones on top of it. The heat accumulated in the stones and was let into the heated room as needed. These furnaces were replaced with cleaner (more flexible) and efficient tile stoves during the 16-17 century. Since the furnaces (outer) construction was rather massive and it carried the load of a part of the ceiling it was easier left untouched.



These illustrations shows rooms requiring good ventilation – kitchens and bathrooms gathered around a medieval chimney. In some cases the massive chimney has been divided with floors and wide lower parts of it are used as pantries.

The masonry bodies of neglected furnaces have had different fates. More than 90 of these have preserved all mutilated and modified in some way.<sup>3</sup> Usually the interiors of

furnaces have been demolished and the space is used as storage room.

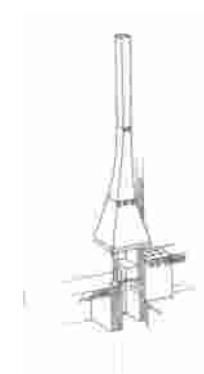
Two of the preserved heat storage furnaces have been rebuilt in a similar manner into what is believed to be a bread oven. Both feature a cupola like brick ceiling and both were found out of use. The original smoke channels inside the walls could have been used for the operation of these ovens. This rebuild is thought to have taken place shortly after the changing of the heating system probably during the 17<sup>th</sup> century.

With new building materials, such as steel and concrete becoming available and common rebuilding became more destructive during the 2<sup>nd</sup> half of the 19<sup>th</sup> century. Meanwhile interest in antiquities was on the rise: the more artistic or odd pieces of carved stone that were left over from demolition works were taken into collections of museums and societies which also were founded at that time. Some of the old stones ended up on the facades as decorative elements. For example an early 20<sup>th</sup> century neo-gothic bank building Suur-Karja tn 1 // Vana turg 2 is bearing the portal of the medieval merchants dwelling it replaced.

During the renovation of the houses of the Blackheads several carved limestone pillars where donated to the guild from private collections. These details were used in the interiors and on the facade. Pious conservation and thorough research were carried out on the site and the responsible architect was well acquainted with the historical situation.<sup>4</sup> Reused material that did not originate from the site was handled with considerably more fantasy and freedom. A pillar was used on the façade



Photos on left: a pillar in its original position in a building on Pagari street. Right: the pair of pillars used to frame an entrance. Photos from the Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection



Conceptual scheme of a medieval heating system



Suur-Karja tn 1 // Vana turg 2 bank building with a medieval portal.  
Author's photo

2 The Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection, n 9, s 7431. Pikk 60 välüuringute vahearuanne, AS Restor 2011.

3 Truu, Kaarel. Magistritöö: Keskaegsed kerishüpokaustid Tallinna vanalinnas. Eesti Kunstiakadeemia 2014.

4 Tallinn City Archives TLA 87.1.665 Kühnert, Ernst: "Die Baugeschichte des St. Olai-Gildenhauses zu Reval mit einem Rekonstruktionsplan."



that had originally been an interior detail in a building demolished more than a decade earlier. A copy was made of one of the donated pillars and the pair was used to frame an entrance to a hall.

The Blackheads (traditionally a union of wealthy unmarried merchants) were conscious and proud of their heritage. The change of the social position of the Baltic Germans after the WWI made them even more respectful towards their past. The works in the Blackheads house can be seen as attempt to demonstrate and emphasize the medieval origin of the building and - even more so - the organization.

The Baltic-German architect Ernst Kühnert was responsible for the Blackheads project and reconstructions of many other medieval buildings. When designing an apartment building (P. Süda tn 2a) on his family's property not far from the old town he mixed early modern material with modernism, which is an unexpected combination. The fashionable functionalist aesthetic was complemented with yet another pillar, similar to those used in the Blackheads house.



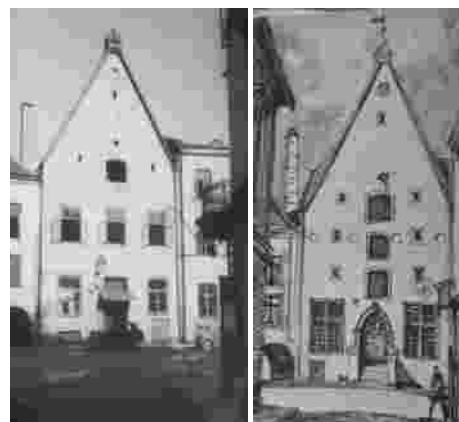
A decorative stone reused as a grave marker in Ilumäe cemetery.  
Photo: National Heritage Board

Some salvaged stones were moved outside the town walls to be used as masonry material. Intricately decorated pieces were treated with more representative functions. Medieval buildings had massive stoops in front of them with stone slabs decorated with property marks and different symbols. These stairs and other salient details (like buttresses) were removed to make way for increasing traffic already in the 18<sup>th</sup> century. Some of these details were used as tombstones on suburban graveyards<sup>5</sup> and some ended up more than 100km from Tallinn.

Modest resources and aforementioned habits in rebuilding have made it possible for modern researchers to discover new medieval details like decorated ceilings and pillars in their original places yearly.

One case that combines many possible aspects of this topic is Lai str 23. It is a medieval building, that has kept its form for the most part. Some characteristic features had of course gone missing. The building was repeatedly modified during centuries. The last tenant before restoration works in the 1960s was a light industrial company manufacturing clothes.

The aim of the restoration works was to create conditions for a theatre and to emphasize the medieval origin of the building. That meant removing many of the traces and



Left: pre-restoration situation of Lai 23 house. Right: architect's vision of the medieval appearance of the building. Photos from the Archive of Tallinn City Government Urban Planning Department Division of Heritage Protection

able at that time. Meanwhile field research revealed that more than half of the original portal stones had been used on the site as wall material. So the portal was restored using the original pieces and the Velise stones were left over.

The aforementioned pillar in the diele was also (repeatedly) recycled. First it was reused in a non-glamorous position on the backside of one 19<sup>th</sup> century building. The pillar had been placed there when building the house and it probably belonged to the medieval house that was demolished during the process. Since the detail was missing from Lai 23, it was decided to move it and use it in its original function.

Reuse seems to be intrinsic to the building tradition of Tallinn. The Soviet system with the absence of private owners combined with a central restoration organization supercharged that phenomenon.

additions made since the 16<sup>th</sup> century. Field research proved, that many medieval elements were missing. A rather simple neo-classical main door had replaced the entrance portal. The pillar supporting the ceiling in diele was missing.

Donors for parts were searched. There is a neo-gothic burial chapel located in Velise (appx 80km from Tallinn) built by and for the Maydell family in the 1880s. It had a gothic portal that had been moved there from a building somewhere in Tallinn old town. In 1965 the portal was removed and returned to Tallinn with the theatre project in mind.<sup>6</sup> This might seem a bit barbaric, but neo-styles (neo-gothic included) were not seen as anything valu-



Left: late 19<sup>th</sup> century chapel with a medieval portal. Right: the same view after the portal was removed in 1960s. Photos: National Heritage Board

5 ERA.T-76.1.325 Tallinna vanalinn. Elamuarkitektuuri juurde kuuluvad raidkivid Tallinna Linnamuuseumis. Etikukivid. H. Üprus. P-346.

6 ERA.T-76.1.584 Lai tn 23; Lai tn 29. Portaali paigaldamine. H. Üprus. P-639.



Conference **HISTORICAL PERSPECTIVE ON HERITAGE LEGISLATION.**  
**BALANCE BETWEEN LAWS AND VALUES**

Tallinn, Niguliste museum

**October 12th 2016 EVOLUTION OF HERITAGE LEGISLATION AND ITS PRINCIPLES**

9.00-9.30	<b>Registration</b>	
9.30	Taavi Aas, Deputy Mayor of Tallinn Siim Raie, Director of National Heritage Board Boris Dubovik, Head of the Division of Heritage Protection, Tallinn Urban Planning Department	Welcoming address
9.50-10.20	<b>Toshiyuki Kono</b> ICOMOS Japan President of ICLAFI	LEGISLATION AND HERITAGE VALUES
10.20-10.50	<b>Anneli Randla</b> , PhD ICOMOS Estonia Estonian Academy of Arts	1666 AND ALL THAT
10.50-11.20	<b>Thomas Adlercreutz</b> ICOMOS Sweden ICLAFI	THE ROYAL PLACAT OF 1666. BRIEFLY ABOUT BACKGROUND AND FURTHER IMPORTANCE
11.20-11.40	<b>Coffee break</b>	
11.40-12.10	<b>Marianne Knutsen</b> ICOMOS Norway, President	THE ROYAL ACT AND DEVELOPMENTS IN NORWAY
12.10-12.40	<b>James K. Reap</b> , JD ICOMOS USA ICLAFI University of Georgia College of Environment & Design	WHAT'S OLD IS NEW AGAIN: CHARLES XI'S 1666 CONSERVATION ACT VIEWED FROM 21 <sup>ST</sup> CENTURY AMERICA
12.40-13.10	<b>Andris Šnē</b> , Dr. hist. Faculty of History and Philosophy, University of Latvia	FROM RESEARCH SOCIETIES TO THE BOARD OF MONUMENTS: LEGAL NORMS AND PRACTICAL EXPERIENCES IN THE HERITAGE MANAGEMENT IN LATVIA (19th CENTURY - 1920s)
13.10-14.00	<b>Lunch</b>	



14.00-14.30	<b>Mona O'Rourke</b> ICOMOS Ireland Conservation and Heritage Consultant	THE EVOLUTION OF A LEGISLATIVE FRAMEWORK FOR THE PROTECTION OF CULTURAL HERITAGE IN IRELAND.
14.30-15.00	<b>Vilte Janusauskaite</b> Conservation architect/PhD candidate ICOMOS Lithuania	LITHUANIA - THE STANDARD SETTER FOR THE URBAN HERITAGE PROTECTION IN THE FORMER USSR?
15.00-15.20	Coffee break	
15.20-15.50	<b>Etienne Clement</b> ICOMOS Belgium Chargé d'enseignement (visiting lecturer), Institut d'Etudes Politiques (IEP)-Science Po, Lille, France	FROM THE HAGUE 1907 CONVENTION AND THE 1935 ROERICH PACT, TO THE 2003 UNESCO DECLARATION CONCERNING THE INTENTIONAL DESTRUCTION OF CULTURAL HERITAGE
15.50-16.20	<b>Bénédicte Gaillard</b> , Dr. Consultant & Researcher BG Consulting in World Heritage Conflict Management	HISTORICAL PERSPECTIVE ON THE TRANSPOSITION OF THE 1972 UNESCO WORLD HERITAGE CONVENTION IN THE NATIONAL LEGISLATIONS OF ITS STATES PARTIES
16.20-16.50	<b>Wojciech Kowalski</b> ICOMOS Poland University of Silesia in Katowice	HISTORICAL ASPECTS OF THE LEGAL PROTECTION OF CULTURAL HERITAGE IN POLAND

## October 13th 2016 CONTRADICTIONS, CONFLICTING INTERESTS AND BEST PRACTICES

9.00-9.40	Registration	
9.40-10.10	<b>Arlette Verkruyssen</b> ICOMOS Belgium ICLAFI BDU-BSO-BDU	HERITAGE LEGISLATION IN BRUSSELS: INTEGRATED CONSERVATION AND URBAN DEVELOPMENT
10.10-10.40	<b>Jack Tsen-Ta Lee</b> ICOMOS Singapore ICLAFI Singapore Management University School of Law	SENSE OF PLACE: THE INTERSECTION BETWEEN BUILT HERITAGE AND INTANGIBLE CULTURAL HERITAGE IN SINGAPORE
10.40-11.10	<b>Christopher Young</b> ICOMOS UK ICLAFI	HERITAGE PROTECTION IN EUROPE - INSIGHTS FROM THE EUROPEAN PERIODIC REPORT
11.10-11.30	Coffee break	

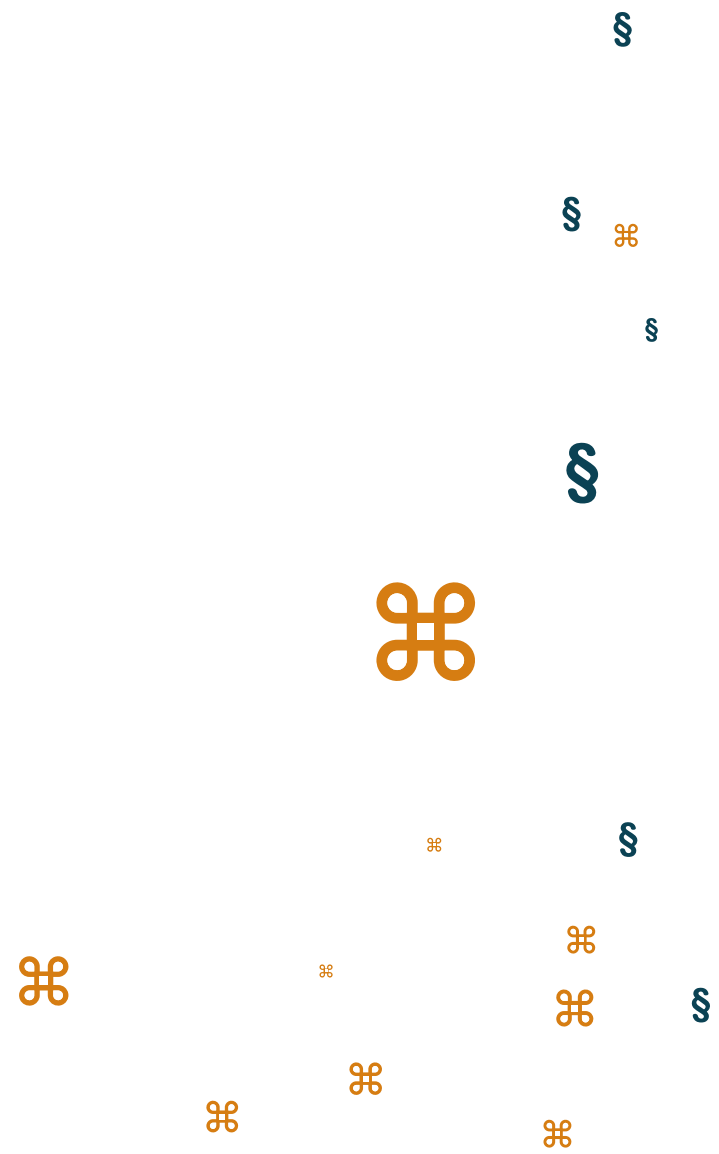


11.30-12.00	<b>Anne Mie Draye</b> , Em. prof. dr. ICOMOS Belgium ICLAFI Universiteit Hasselt	LEGISLATION AND COMMON VALUES: A REPORT FROM BELGIUM
12.00-12.30	<b>Andrew S. Potts</b> ICOMOS USA ICLAFI	THE USE OF TAXATION LAWS TO PROMOTE THE CONSERVATION OF CULTURAL HERITAGE
12.30-13.00	<b>Sara Byström</b> ICOMOS France ICLAFI Cabinet BYSTRÖM	PARIS LOCAL URBANISME & THE PARIS FACADES: THE SAMARITAINE CASE
13.00-14.00	Lunch	
14.00-14.30	<b>Maria Marta Rae</b> ICOMOS Argentina ICLAFI	CURUTCHET HOUSE: LE CORBUSIER PROJECT
14.30-15.00	<b>Susanna Carlsten</b> Uppsala University Campus Gotland	ABSTRACT PROPERTY OF THE SWEDISH PEOPLE - THE BASIS AND CHANGE OF THE EXPORT CONTROL IN RELATION TO CURRENT CULTURAL POLICY OBJECTIVES
15.00-15.20	Coffee break	
15.20-15.50	<b>Nele Kangert</b> Estonian National Heritage Board	NEW METHODS IN REGULATING ARCHAEOLOGY
15.50-16.20	<b>Kaarel Truu</b> Estonian National Heritage Board	REUSE AND DONORSHIP IN TALLINN OLD TOWN
16.20-16.50	<b>Henry Kuningas</b> ICOMOS Estonia TICCIH Division of Heritage Protection, Tallinn Urban Planning Department	UNREALIZED CONSTRUCTION PLANS IN TALLINN OLD TOWN IN SOVIET PERIOD





MUINSUSKAITSE SEADUSED OMAS AJAS.  
ÕIGUSE JA VÄÄRTUSE VAHEKORD





## MUINSUSKAITSE SEADUSED OMAS AJAS. ÕIGUSE JA VÄÄRTUSE VAHEKORD

Rootsi kuninga Karl XI muinsuskaitse seaduse 350. ja Tallinna vanalinna muinsuskaitseala loomise 50. aastapäevale pühendatud rahvusvaheline konverents Tallinnas Niguliste kirikus 12.-13. oktoobril 2016.

2016. aasta oktoobris tähistati kahe muinsuskaitse olulise teetähise – Rootsi kuninga Karl XI muinsuskaitse seaduse 350. ja Tallinna vanalinna muinsuskaitseala loomise 50. aastapäeva rahvusvahelise konverentsiga, mis keskendus õiguse ja väärtuse vahekorrale ning õigusaktide mõjule pärandi kaitsele nii praegu kui ka ajaloos. Mõlemad tähtpäevad väärtsid tähistamist, sest neil oli oluline mõju nii muinsuskaitse tegevusele kui ka muinsuskaitse mõtte arengule, samuti ühiskonna päranditeadlikkusele laiemalt.

Konverentsile kogunesid pärandi, selle halduse ja õigusruumi eksperdid üle maailma, enam kui 40le väliskülalisele lisandus kaugelt üle saja Eesti eksperdi, tudengi ja huvilise. Konverentsi korraldas ICOMOS Eesti, ICOMOSi Rahvusvaheline Muinsuskaitse Seadusandluse, Administreerimise ja Rahastamise Teaduskomitee ICLAFI, Põhjamaade ja Baltimaade ICOMOSid. Konverents korraldati koostöös Tallinna Linnaplaneerimise Ameti muinsuskaitse osakonna, Muinsuskaitseameti ja Eesti Kunstiakadeemiaga. Konverentsi eripära oli valdkondade ülene lähenemine – kõnelejate hulgas olid nii ajaloolased, arhitektid, restauraatorid, arheoloogid, ennekõike aga juristid.

Õigusaktide eesmärk on alati olnud inimeste tegevuse reguleerimine. Sama hästi kui õigusaktid reguleerivad ühiskonna väärtusi, nad ka loovad neid. Seadused peegeldavad seetõttu oma aja probleeme, ideede ja poliitiliste kaalutluste arengut.

Alljärgnev on ainulaadne kogum artiklitest, mis kirjeldavad muinsuskaitse seaduste kujunemist üle maailma. Lisaks konverentsi ettekannetele leiab siit ka mitmete ICLAFI

liikmete asjakohased artiklid. Leiab siit artiklid pärandi kaitse reguleerimise ajaloost Rootsis, Saksamaal, Iirimaa, Leedus, Belgias, Türgis, Poolas, Soomes, Sloveenias, Bulgaarias, Mehhikos, Tšiilis ja Eestis. Artiklid, mis saadeti Singapurist, Taist, Rootsist, Itaaliast, Prantsusmaalt ja Argentiinast kirjeldavad nii rahvusvahelist õigusruumi kui ka globaalseid tendentse, õigus(t)e ja väärtuste vahekordi.

Loodame, et lugeja jaoks on käesolev kogumik hea võimalus mõista muinsuskaitse missiooni. Erineva taustaga autorite panus võimaldab omavahel võrrelda nii arenguid erinevates riikides kui ka rahvusvahelisel tasandil.

Kogumiku artiklid on inglise keeles, kogumiku lõpust leiab ka konverentsiks tõlgitud eesti keelsed lühikokkuvõtted.



Dr Riin Alatalu

ICOMOS Eesti esimees  
ICLAFI aseesimees



## Kuningliku Majesteedi plakat ja käsk vanade mälestusmärkide ja muinsuste kohta



Tõlkis Ivar Rüütli

Meie, Karl, Jumala armust rootslaste, gootide ja vendide kuningas ja pärusvürst, Soome suurvürst, Skåne, Eestimaa, Liivimaa, Karjala, Breemeni, Verdeni, Stettin-Pommeri, Kašuubia ja Wendeni hertsog, Rügeni vürst, Ingerimaa ja Wismari isand;

samuti ka Reini-äärse Beieri pfalzkravh, Jülichi, Kleve ja Bergi hertsog, etc.

teeme teatavaks, et kuna oleme suure pahameelega kuulnud, kuidas mitte ainult iidsete muinsuste, jäänuste ja säilmetega, mida endiste rootsi ja gooti kuningate ning teiste nende suursuguste meeste ja alamate mehiste tegudest on paganlikust ajast saati järele jäänud, [ja] mida varem üle kogu meie riigi, nii suurtes linnustes, kantsides ja kivikangrutes, kui postidel ja teistel ruunikirjadega kividel, kui ka nende haudades ja sugukonnakalmetes, mida üpriski palju alles on olnud, säärase hooletuse ja lubamatu omavoliga ümber käiakse, et neid iga päevaga üha enam ära rikutakse ja hävitatakse; vaid ka mälestusmärgid, mida nii kuningad, kuningannad ja vürstid ning teised suursugused rüütliid ja vaimulikud meie kristlikesse kirikutesse enda auks ja mälestuseks on jätnud, täiesti lagunevad, ja mida teised teadlikult üle võtavad ja rikuvad, mida tuleb pal-

ju enam pahaks panna ja mitte lubada, kuna sääraseid mälestusmärgid tuleb hinnata asjade hulka, mis on nii iseenesest kui seastusest priid ja kaitstud kõige halva kuulsuse ja pühaduseteotuse eest, [ja] teenivad mälestusväärselt ka meie esiisade ja kogu meie riigi surematut kuulsust;

peame erilisest hoolitsusest, mida meil oma esiisade, Rootsi kuningate pärast kõige selle vastu õigusega tuleb näidata, samuti selleks, et avalikult väljendada oma rahulolematust, mida me säärase ülal kirjeldatud korralageduse üle tunname, nii nagu ka selleks, et siit peale kaitsta ja hoida kõiki sääraseid asju edasise lubamatu ümberkäimise eest, õigeks ja vajalikuks käskida kõiki meie ustavaid alamaid, kes sellesse mingil moel puutuda võivad, käesolevaga ja meie avaliku plakati jõul, esiteks, et mitte keegi, kes ta ka ei oleks, ei lubaks enesele alates tänasest linnuste, mõisate, kivikindluste, kantside või kivikangrute purustamist või hävitamist, mida veel siin ja seal alles võib olla, kui tühised nende jäänused ka ei oleks, ega ka mingil moel postide või kivide rikkumist, millele võib olla joonistatud mõni ruunikiri, vaid jätaks nad täiesti puutumatuks oma õigele vanale kohale, samamoodi kõikide suurte kokkukantud mullaküngaste ja sugukonnakalmetega, kus paljud kuningad ja teised suursugused inimesed on sisse seadnud oma hauad ja puhkepaigad, kuna me kõik säärase vanad mälestusmärgid, mis asuvad kusagil meie ja kroonu maal, [olgu see meie] oma või [talupoegade] maksumaa, mis kas kuuluvad veel meile või on varem kuulunud, ja on nüüd mingil moel ära võetud, kõigest omavolilisest kahjutegemisest, **isegi kui see oleks ainult meie eraomand, täielikult vabastame ja oma kuningliku kaitse alla võtame;**

lootes ülejäänus meie ustavatelt alamatelt rüütelkonna ja aadli seas, et kui mõned säära-  
test muinsustest nende põlisel aadlimaal asuma peaksid, et nad meie tahtmise, asja täht-  
suse ja nende endi au kohaselt samamoodi nende säilitamise eest hoolt kannaksid.

Siis käsime me ka seda, et mitte kellelgi ei kõrgest ega madalast soost, vaimulikul ega ilmalikul, millisest seisusest või ametist ta ka ei oleks, pole õigust ega voli röövida või rüüstata kuninglike, vürstlike või teiste suursuguste inimeste hauakambreid, mida võib kas mahajäetud või veel püstiseisvates kirikutes ja kloostrites veel alles olla, veel vähem neid omaenda haudadeks muuta, või mingil muul moel nende vanale ja õigele valdusele mingit kahju teha;

Kuna me sealjuures tahame, et kõikidele kirikutele ja kloostritele ning nende asjadele, riistadele, kaunistustele seintel ja akendel, maalingutele või kõiksugu sisustusele, mis võib sisaldada midagi mälestusväärselt, samamoodi kõigi surnute ja lahkunute haudadele ja hauakohtadele kirikutes või kirikuaedades tagataks selline hoolitsus, rahu ja kaitse, mis on nende kristlikule seastusele, kombele ja tavale kohane, nii et lõpuks kõik asjad, mis on kas silmaga vaadates nii väikesed või võivad kinnitada või mälestada mõnda ajaloolist tegu, inimest, paika või sugukonda, hoolika tähelepanu ja hoolitsuse alla võetaks ega lubataks kellelgi vähimatki neist rikkuda või hävitada;



Ja kui keegi suvatseb selle vastu midagi teha ja meie käsust üle astuda, tahame me, et seesama ei kannaks karistust mitte ainult meie käsu rikkumise ja [nende asjade] isevaldse kahjustamise eest, vaid langeks ka meie kõrge ebasoosingu alla;

Ja kui keegi peaks enne seda olema neid asju, mida selles Meie plakatis meelde tule-  
tatakse, kuritarvitanud, rikkunud või neile kahju teinud, käsime me tõsiselt, et kõik säärane  
tuleb vajalikul moel ja olenemata isikust korda teha ja endisesse olukorda viia.

Mistõttu me ei käsi mitte ainult meie Stockholmi ülemasehaldurit, kindralkubernere, ku-  
bernere, maapealikke, asehaldureid, bürgermeistreid ja linnade raade, asemikke, nimis-  
mehi, neljandiku- ja kuusmehi maal, et nad sellel meie plakatil hoolega ja tõsiselt silma  
peal hoiaks; vaid ka peapiiskoppi, piiskoppe, superintendente, praoste ja kirikuõpetajaid  
üle kogu meie riigi, et igaüks oma paigas seda kõigile kuulutaks, ja samuti jälgiks neid  
asju, mida nende piiskopkondades, praostkondades ja kogudustes leidub ja mis on ülal  
toodud laadi, millisel eesmärgil käsime ka kõike, kes neist asjadest midagi teavad, või kelle  
käes on juhtumisi vanu kirjutisi, raamatuid, kirju, münte või pitsereid, et nad teataksid  
sellest oma kirikuõpetajatele või meie asemikele, et saaksime nende kaudu sellest teada  
anda, [ja] hoolitseks ka sellest teatamise eest.

Sellest peavad kõik, ja eriti need, kes asja puutuvad, kuulekalt juhinduma. Lisaks lasime  
me selle [plakati] kinnitada meie kuningliku pitsati ja meie kõrgestiaustatud armastatud  
kalli proua ema, ning teiste Meie ja Meie Riigi eestkostjate ja valitsuse allkirjaga.

Antud Stockholmis 28. novembril Anno 1666.

(Pitsati koht)		Hedvig Eleonora
Sewedh Bååt, Riigidrotsi asemel	Gustaff Baner, Riigimarssali asemel	Gustaf Otto Steenbock, Riigiadmiral
Magnus Gabriel de la Gardie Riigikantsler	Gustavus Soop Riigi maksumeistri asemel	





## ARTIKLITE LÜHIKOKKUVÕTTED

### KUNINGLIK MÄÄRUS AASTAST 1666. TAUSTAST JA TÄHTSUSEST

THOMAS ADLERCREUTZ, Rootsi

Kuninglikku “Plakatit”, mille andis aastal 1666 välja alaealise kuninga Karl XI eestkostevalitsus, on mõnel pool nimetatud maailma vanimaks muinsuskaitse-seaduseks. Irooniliselt väljendab see arvamus 17. sajandi akadeemikute, eriti Uppsala Ülikooli omade veendumust, et toonane Rootsi oligi tsivilisatsiooni keskpunkt. Seda suurelist veendumust toetas Rootsi sõjaline edu Kolmekümneaastases sõjas ja Vana Testamendi julge seostamine Rootsi kohanimedega.

Artiklis on avaldatud mõningaid seaduse katkeid. Artiklis käsitletakse ja võrreldakse mitmeid varasemaid seadusandlike tekste ning avatakse dokumendi koostamise konteksti Rootsis. Nii viib näiteks üks huvitav seos Rooma, kus resideerus troonist loobuma sunnitud Rootsi kuninganna Christina, kellel püsisid sidemed Rootsi trooni pärinud tädi poja lese, nende poja Karl XI ja tema eestkostevalitsusega. Autor käsitleb seaduse tähtsust ning annab kokkuvõtte sellele järgnenust.

### MUINSUSKAITSE SEADUSTE JA MUINSUSKAITSE KORRALDUSE AJALOOST EESTIS

RIIN ALATALU, Eesti

Eesti muinsuskaitse seaduste ajalugu ulatub aastasse 1666, aega kui Eesti kuulus Rootsi kuningriigi koosseisu. Seaduse rakendamisest Eestis on siiski vähe andmeid. Artikkel keskendub ennekõike muinsuskaitse seaduste ajaloole 20. sajandil, mälestiste kaitse korraldusele Eesti Vabariigis, okupeeritud Eestis ning olulisematele probleemidele uue muinsuskaitsekorralduse üles ehitamisel pärast iseseisvuse taastamist.

### KULTUURIMÄLESTISTE KAITSE ÕIGUSRUUMI KUJUNEMINE SAKSAMAAAL

WERNER VON TRÜTZSCHLER, Saksamaa

Artikkel annab ülevaate Saksamaa muinsuskaitse õigusruumi kujunemisest alates 17. sajandist tänapäevani.

### IIRIMAA KULTUURIPÄRANDI KAITSE ÕIGUSRUUMI KUJUNEMISLUGU

MONA O'ROURKE, Iirimaa

Ettekanne keskendub muinsuskaitse regulatsioonide arengule Iirimaa 19. sajandi keskpaigast kuni tänase, 1930. aastal kehtestatud süsteemini. Muinsuskaitse korraldus algas mälestiste täpse ja ühtlase kaardistamisega. Selle eesmärk oli koguda kohanimesid ja infot ajalooliste objektide kohta, et neid edaspidi põhjalikumalt uurida. Kaardistus avaldati 1837. aastal ning see käivitas esimese tõsise arutelu ajalooliste mälestiste säilitamiseks vajalike vahendite üle. Suure panuse andsid ka vabatahtlikud organisatsioonid ja inimesed, kes olid mälestiste registreerimise ja kaitse korraldamise eestkõnelejad. Olulistemana tuleb nimetada Kuninglikku Iiri Akadeemiat ja Kuninglikku Antiikvaaride Seltsi, mis andsid suure panuse kultuuripärandi rolli tähtsustamisel. Tänu sellele anti välja ka valdkondlikud õigusaktid, mis panid aluse mälestiste hooldamisele. Iiri tänane muinsuskaitse seadus põhineb nendel varastel õigusaktidel.

### LEEDU – LINNAKESKKONNA KAITSE KORRALDUSE KUJUNDAJA ENDISE NSV LIIDUS

VILTE JANUSAUSKAITE, Leedu

Sõjajärgset aega käsitletakse mälestiste kaitstes väga mitmetähenduslikuna. Olukord NSV Liidu vallutatud Baltimaades oli eriti keeruline. Vanad pealinnad olid mitte ainult kunagise iseseisvuse sümbolid, vaid need ei vastanud ka ühelegi modernse sotsialistliku linna planeerimise standardile.

Alles 1956. aastal, pärast mitmete spetsialistide kriitikat vanalinnas toimunud lammutamistele, alustati Vilniuses esimeste restaureerimistöödega. Esimene, suurt osa vanalinna hõlmav rekonstrueerimisprojekt valmis 1959. aastal ja seda peetakse Leedu historiograafias esimeseks omalaadseks, sellest kujunes ühtlasi mudel teistele taastamisprojektidele terves NSV Liidus. 30 aastat hiljem, käsikäes Leedu Rahvusliku Iseseisvuse liikumisega, muutus kuuldavaks kriitika Nõukogude aegse muinsuskaitse tegevuse suhtes ning rahva huvi muinsuskaitse vastu kasvas. Linnapärandist ja selle kaitsest küll räägiti, ometi ei astutud samme selle kaitseks. Pärast 1990. aastat muutus kaitse ebaühtlaseks kõikudes rangetest piirangutest liberaalse *laissez-faire* ni jättes erinevaid jälgi nii seadusandlusele, planeeringutele kui ka vanalinnadele endile.



## ÕIGUSRUUM JA ÜHISED VÄÄRTUSED: BELGIA/ FLAAMI PIIRKOND

ANNE MIE DRAYE, Belgia

1835. aastal, üsna kohe pärast Belgia Kuningriigi "loomist", loodi kuningliku dekreediga Kuninglik Mälestiste Komisjon, mille ülesanne oli nõustada Belgia valitsust mälestiste kaitse küsimustes.

Nii varast huvi ajalooliste hoonete säilitamise vastu on sageli seostatud noore rahvuse sooviga kinnitada oma identiteeti kunagise võiduka mineviku abil, samuti paljude mälestiste halva seisukorraga Prantsuse Revolutsiooni järel.

Kuningliku Komisjoni pingutustest hoolimata, kehtestati esimene mälestiste kaitse seadus alles 1931. aastal. Esimene Belgia muinsuskaitse seadus võimaldas kaitsta rahvuslikult huvipakkuvaid objekte, millel oli ajalooline, kunstiline või teaduslik väärtus. Selleks, et säilitada neid "ühiseid väärtusi" tulevaste põlvete jaoks, nende omanike õigusi piirati: hoonete välisilmet ei tohtinud muuta ilma Komisjoni ja kohalike ametkondade loata.

Selliseid piiranguid, avalikke servituute, ei kompenseeritud omanikele. Samas, juhul kui oli vaja teha restaureerimistöid, oli vastavalt eelarvele võimalik saada toetust.

Mälestiste säilitamise soov võimaldas esimeses seaduses ette näha ka sundvõrandamise võimaluse juhul, kui objekti ohustas rikkumine või häving omaniku omandusse jäämise korral.

Alates 1970. aastatest muudeti Belgia föderatsiooniks. 01.01.1989 anti kinnismälestiste kaitse korralduse pädevus regioonidele. Kolm regiooni, hiljem ka Saksa Kogukond, võtsid vastu erinevad määrused ja regulatsioonid mälestiste, linnade, külade, maastike ja arheoloogiapärandi kaitseks. Mitmed 1931. aasta seaduse põhimõtted võeti uutes regulatsioonides üle.

Väärtuseid, mida on võimalik seadustega kaitsta, laiendati nendes õiguslikes tekstides. Näiteks Flaami Kinnismälestiste määrusega 12.07.2013 (kehtib alates 01.01.2015), saab mälestisena kaitse alla võtta kultuurimaastikud, linna – ja maamälestised ja arheoloogiamälestised, millele kohaldub avalik huvi, kuna neil on *arheoloogia, arhitektuuri, kunsti, kultuuri, esteetiline, ajaloo, tööstus, linnaplaneerimise, sotsiaalne, folkloorne või teaduslik* väärtus. Täpsemalt siis ühe või mitme sellise väärtuse olemasolu määrab ära asja tähenduse oleviku või tuleviku jaoks....

## KULTUURIPÄRANDI RESTAUREERIMINE TÜRGIS: SEADUSTE JA AMETKONDADE KUJUNEMINE

TAMER GÖK, Türgi

Artikkel annab ülevaate Türgi muinsuskaitse seaduste ja kaitset korraldavate institutsioonide kujunemisest alates 19. sajandi algusest tänapäevani. Türgi muinsuskaitset iseloomustavad erinevad regulatsioonid erinevate ajastute pärandile.

## KOHAVAIM: EHITATUD PÄRANDI JA VAIMSE PÄRANDI SUHE. SINGAPURI NÄIDE

JACK TSEN-TA LEE, Singapur

Singapuri ehituspärandit kaitstakse kahe õigusliku süsteemi alusel, muinsuskaitse seadus käsitleb riiklike kultuurimälestisi, planeerimisseadus kaitsealasid. Samas ei ole ühtegi seadust, mis käsitleks vaimset kultuuripärandit. Artikkel käsitleb Singapuri kalmistute hauakivide tekste ning surnute austamise rituaale ning näitab, kuidas on võimalik paremini kaitsta ja väärtustada ehitatud pärandit kui nii riiklikus kui ka rahvusvahelises seadusandluses asetada suuremat rõhku sellega seotud vaimsele pärandile.

## KULTUURIPÄRANDI ÕIGUSAKTID BRÜSSELIS. RESTAUREERIMISE JA LINNAPLANEERIMISE INTEGREERIMINE

ARLETTE VERKRUYSSEN, Belgia

Alates 20. sajandi keskpaigast on Belgia kultuuripärandi kaitse seadusi mitu korda muudetud. Selles protsessis on olnud olulised mõjutajad Veneetsia harta (1964), Arhitektuuripärandi aasta (1975) ja Euroopa muinsuskaitsepäevad (alates 1991) ning mitmete Euroopa ja rahvusvaheliste konventsioonide ratifitseerimine.

Lisaks sellele on seadusloomet mõjutanud Belgia kujunemine ühtsest riigist föderaalseks riigiks. Detsentraliseerimise käigus killustati senine kaitse süsteem mitmete uute, föderaalsete avaliku võimu institutsioonide vahel.

Iga föderaalne üksus sai õiguse arendada oma juriidilist süsteemi vastavalt oma eripäradele.

Ajaloomälestiste ja maastike kaitseks on kohaldatud integreeritud konserveerimise doktriin ja Brüsseli Pealinna Piirkonnas on see toetanud pärandi tähtsustamist linnaruumi haldamisel.

## UNESCO MAAILMAPÄRANDI KONVENTSIOONI SIDUMINE LIIKMESRIIKIDE RAHVUSLIKU ÕIGUSRUUMIGA

BÉNÉDICTE GAILLARD, Prantsusmaa

Aprill 2016 seisuga on UNESCO 1972. aasta Maailmapärandi konventsiooni ratifitseerinud 192 riiki ja seda võib käsitleda ühe maailma kõige universaalsema kokkuleppena. Konventsiooni eesmärk on kaitsta inimkonna kultuuri- ja looduspärandit rahvusvahelisel tasandil. Selleks, et seda teha, valib neljaks aastaks valitud 21 liikmesriigist koosnev Maailmapärandi Komitee igal aastal uusi paiku maailmapärandi nimekirja. Maailmapärandi Komitee tegeleb ka seirereportitega paikades, mida ohustavad relvakonfliktid, loodusjõud, arendusprojektid jne. Komitee võib arvata paiku ohustatud pärandi nimekirja või ka paiga nimekirjast välja arvata, juhul kui see on kaota-



nud oma silmapaistva ülemaailmse väärtuse, autentsuse ja terviklikkuse, mille alusel see algselt nimekirja kanti. Riiklikul tasandil kaasnevad maailmapärandi konventsiooniga nii õigused kui ka kohustused. Küsimus on, kuidas kajastub maailma pärandi konventsioon riiklikus õigusruumis. Millised on otsesed ja kaudsed õiguslikud mõjud? Kas see erineb keskvalitsusega riikides ja föderaalsetes riikides? Artikkel keskendub konventsiooni senisele tõlgendamisele liikmesriikide seadustes ning analüüsib riikide õigusi, kohustusi ja vastutust maailmapärandi konventsiooni ees. Erinevaid poliitilisi süsteeme ja geograafilisi piirkondi esindavate näidete abil saab näitlikustada liikmesriikide praktikate erinevusi ja sarnasusi. Kokkuvõtvalt saab nende näidete abil hinnata Maailmapärandi konventsiooni rakendamise tulevikuperspektiive.

## POOLA KULTUURIPÄRANDI KAITSE ÕIGUSRUUMI AJALOO LINE KUJUNEMINE

WOJCIEH KOWALSKI, Poola

Artikkel keskendub pärandi kaitse ajaloolisele arengule Poolas, sh mälestiste kaitsele 19. sajandil Austria, Preisi ja Vene õigusruumis, 1918. aastal taastatud Poola riigis, õigusruumile aastatel 1945–1991 ja hetkeolukorrale.

Olulised teetähised ulatuvad 16. sajandisse. 1553. aastal kirjutas õigusteadlane Jakub Przymusi „*Leges seu Statuta ac privilegia Regni Poloniae Omnia*” rõhutades, et sõjas tuleb kaitsta mitte ainult usurelikuviaid, vaid ka silmapaistvad kirjandus- ja kunstiteosed peavad sõjas säilima. Ta lisas, et lahingutes peavad sõdurid kaitsma nende isikute elu, kes “on kuulsad oma oskuste ja annete tõttu”. See oli lausa revolutsiooniline avaldus, sest toonased klassikalised õigusteadlased nagu Alberico Gentili või Hugo Grotius, pidasid kunstiteoseid vähetahtsaks. Przymusi vaimus nõudmised sisalduvad nii varasemates kui ka hilisemates rahulepingutes, mille Poola sõlmis näiteks 1510. aastal Krzemienecis Moldovaga ja 1660. aastal Oliwas Rootsiga. Riikidevahelisi suhteid käsitlevad lepingud sisaldasid ka ajaloolise pärandi kaitse nõuet. 1621. aasta resolutsiooniga paluti koguduse preestreid hoolitseda kirikute maalide ja muude mälestiste eest. Varaste restaureerimistöde näitena võib nimetada 1684. aastal maalikunstnik Jan Trektolt tellitud Waweli kuningalossi maalide restaureerimist. Muinsuskaitse seadusandluse aktiivne täiendamine algas alles pärast Poola ametlikult jagamist Preisi, Venemaa ja Austria vahel 1792. aastal. Preisimaal loodi 1843. aastal spetsiaalne teenistus, riigiantikvaari amet, mis vastutas mälestiste kaitse ja hoolduse eest. Esimene riigiantikvaar oli Ferdinand von Quast. Poola territooriumil loodi mitmeid valgustatud seltse, mis tegelesid nii Poola kui ka teiste rahvaste rahvusliku pärandi säilitamisega. Mitmed seltsid konkureerisid omavahel. Näiteks Toruńis oli nii Toruńi Poola Õpetatud Selts kui ka Saksa Kopernikuse Ühing. Ühtegi mälestiste kaitse regulatsiooni siiski vastu ei võetud ja huvi pärandi vastu pigem vähenes. Arheoloogiamälestiste väärtustamiseks loodi 1859. aastal keiserlik arheoloogia komisjon, mis aga ei tegelenud Poola mälestistega. Erandina võib märkida 1903. ja 1914. aastal Lublini lossi õiguseu kabeli seinamaalingute uurimist.

1827. aastal alustati Poola mälestiste inventeerimist. Paari aastaga kirjeldati 386 kohta, sh 250 kirikut ja 80 lossi. Rahvuslikud ühingud üritasid omal käel korraldada mälestiste restaureerimist, nende hulgas ka 1800. aastal loodud Hariduse Sõprade Selts, mis pärast 1832. aasta novembri ülestõusu likvideeriti ja taaselustati alles 1907. aastal. Siis asutati ka mälestiste kaitseühing, mis tegutseb tänaseni.

Austria territooriumile jäänud Poola aladel oli Poola kultuuripärandi kaitse olukord kõige soodsam, kuna 1850. aastal loodi imperaatori määrusega Viinis Kuninglik arhitektuurimälestiste uurimise ja kaitse keskus. 1853 kehtestati selle põhikiri ja loodi Habsburgi impeeriumi erinevate piirkondadega tegelevad üksused. 1856. aastal määrati Poola territooriumil ametisse kaks esimest antikvaari – Paweł Popiel Krakowis ja Franciszek Stroński Lwivis. Nende tegevust toetasid erinevad seltsid ja ühingud. Üks aktiivsemaid oli Krakowi teadusliku ühingu kunsti- ja arheoloogia osakond, mis loodi juba 1848. aastal. 1914. aastal loodi Krakowis Tadeusz Szydlowski juhitud riiklik muinsuskaitseamet. Koos poola restitutsiooniga 1918. aastal loodi uus muinsuskaitse administratsioon. Algas aktiivne kultuurimälestiste nimekirja koostamine. Mälestiste vanusepiir oli 50 aastat. Keelatud oli hävitada hooneid ja esemeid «mis esindavad mineviku ajastuid ja kultuure». Poola territooriumil ei olnud lubatud hävitada, muuta, rekonstrueerida jne mälestisi ilma piirkonna antikvaari loata, tal oli ka õigus kontrollida loa alusel tehtud töid, sh arheoloogilisi uuringuid. Määrati erinevad piirangud ja keelud mälestiste müügil, samuti tingimused riigile, omavalitsustele, kogudustele jt omanikele vallasmälestiste ja kogude kaitseks. Samuti kontrolliti «kommunide, linnade, koguduste ja avalike asutuste valduses olevate mälestiste müüki, vahetamist, pantimist või annetamist», kõik sellised tehingud oleks *ipso jure* kehtetuks tunnistatud. Keelati vallasmälestiste väljavedu ja võimaldati mälestiste sundvõõrandamine konkreetse ohu korral. Määrus nägi ette ka võimaluse konfiskeerida vallasmälestisi «salajase ekspordi korral».

Reeglite täitmata jätmise eest võis karistada nii vangistuse kui ka trahvidega. Sellised piirangud ja reeglid aitasid väärtustada ja säilitada Poola mälestisi.

## SOOME KULTUURIPÄRANDI KAITSE ARENG

SATU-KAARINA VIRTALA ja MATLEENA HAAPALA, Soome

Varaseimad Soome kultuuripärandit reguleerivad õigusaktid pärinevad 17. sajandist kui Soome oli Rootsi kuningriigi osa. Nende mõju jätkus ka pärast liitumist Venemaa Soome Suurvürstiriigina. Regulatsioonide olemasolust sõltumata tegelesid muististe uurimisega siiski vaid üksikisikud, ennekõike kirikuõpetajad. 19. sajandi etnoloogilised uuringud, antiikesemete kogumine ja konserveerimine suurendasid inimeste huvi antiigi vastu. 19. sajandil asutati ka Muististe Ühing ja Arheoloogia Nõukogu. 1883 anti välja Muinsuste kaitse ja mälestiste klassifitseerimise määrus mis põhines Rootsi 1867. aasta seadusel. Muinsuskaitse all olid näiteks kindlused, lossid,



kirikud, kalmistud, kabelid ja “teised märkimisväärsed ühiskondlikud ehitised”. Samuti hauad, mälestuskivid, ruunikivid jne. Vahelesegamine eraomandi kaitsel oli mini-maalne, isegi kui objekt vajas kohest konserveerimistööd. Oli keelatud lammutada või muuta muinsuskaitse all olevaid mälestisi. Aga see keeld ei olnud absoluutne, sest Arheoloogia Nõukogu võis anda eriloa omanikule mälestise muutmiseks objekti uurimise eesmärgil. Määrus nägi ette karistuse mälestise rikkumise eest. Süüdlane pidi mälestise restaureerimise kinni maksma.

Kui Soome kuulutati 1917. aastal iseseisvaks, oli seadusandluse muutmine suur väljakutse. Uus, 1883. aasta seadust asendav muinsuskaitseseadus võeti vastu 1963. aastal ja see kehtib väikeste muudatustega tänapäevani. Kõik objektid on jagatud kolmeks grupiks: kinnismälestised, vallasmälestised, laevad ja vrakid. Vallasmälestised ja vrakid peavad olema vähemalt 100 aastat vanad. Ehitismälestiste kaitseks võeti 1964. aastal vastu eraldi seadus. Hoonete puhul ei ole vanuse nõuet, kaitse all võivad olla ka uuemad, mingi sündmuse või kultuurinähtusega seotud hooned. Kõik kirikud, mis on ehitatud varem kui 1917 on automaatselt kaitse all kirikuseadusega, nooremaid kirikuid võib kaitse alla võtta eraldi otsusega. Kirik on alati kaitse all tervikuna st koos kogu sisustuse ja inventariga.

1990. aastal muudeti Soome Põhiseadust ning koos sellega ka Planeerimisseadust. Viimase eesmärk on tagada, et keskkonna kasutamine ja arendamine looks eeltingimused soodsa elukeskkonna jaoks ning edendaks ökoloogilist, majanduslikku, sotsiaalset ja kultuurilist arengut. Ehitatud keskkonna ja kultuuriväärtuste kaitset tuleb järgida maakasutuse planeerimise igal tasandil. Kultuuripärandi puhul on sätestatud, et maakasutus peab tagama riiklikult olulise kultuurikeskkonna ja looduspärandi säilimise. Piirkondliku maakasutuse planeerimisel tuleb märkida riiklikult olulised kultuurikeskkonnad ja maastikualad ning maakasutus tuleb seal kohandada ajaloolise kontekstiga.

Soome kultuuripärandi õigusruum on läbi erinevate ajaperioodide järginud Rootsi traditsioone. Soome materiaalsele pärandile on iseloomulike suhteliselt lühike dokumenteeritud ajalugu, mistõttu ei ole vanusel kunagi olnud mälestiste kaitsel suurt rolli. Suur osa ehitatud pärandist ei pärine ka varasemast ajast kui 20. sajand.

Pärast 1960. aastate seaduste vastuvõtmist jaotati pärand arheoloogiliseks pärandiks ja ehitatud pärandiks. Sellest ajast peale on ehitatud pärandi kaitse seadusi mitu korda muudetud, arheoloogilise pärandi kaitse on olnud stabiilsem. Viimastel aastakümnetel on tegeletud pigem kultuuriliselt ja ajalooliselt väärtusliku keskkonna analüüsi ja kaitsega. See lähenemisviis on tajutav maakasutuse planeerimisel.

## SLOVEENIA KULTUURIMÄLESTISTE KAITSE KORRALDUSE ARENG

JELKA PIRKOVIČ, Sloveenia

Artikkel annab ülevaate Sloveenia kultuuripärandi kaitse korralduse ajaloost alates 19. sajandist tänapäevani.

## BULGAARIA MUINSUSKAITSE SÜSTEEMI KUJUNEMISE AJALOOLINE ÜLEVAADE

SVETOSLAV GEORGIEV, Bulgaaria

Artikkel keskendub Bulgaaria kultuurimälestiste kaitse ajaloole. Bulgaarias on pärandi kaitse seotud ennekõike kolme tasandiga – mälestiste konserveerimine, linnaplaneerimine ja keskkonnakaitse. Kõige nõrgemalt on reguleeritud vallasmälestiste kaitse.

## MEHHIKO MUINSUSKAITSE ÕIGUSRUUMI KUJUNEMISE AJALOOLINE ÜLEVAADE

ERNESTO BECERRIL MIRÓ ja ROBERTO NÚÑEZ ARRATIA, Mehhiko

Artikkel annab põhjaliku ülevaate Mehhiko kultuuripärandi kaitset reguleeriva õigusruumi kujunemisest ja olulisematest muudatustest õigusaktides.

## KULTUURIPÄRANDI ÕIGUSRUUMI KUJUNEMINE TŠIIIS

AMAYA IRARRÁZVAL ZEGERS, Tšiili

Artikkel annab ülevaate Tšiili kultuuripärandi kaitset reguleeriva õigusruumi kujunemisest ja olulisematest mõistetest ja põhimõtetest.

## CURUCHET MAJA: LE CORBUSIER PROJEKTI NOMINATSIOON UNESCO MAAILMAPÄRANDI NIMEKIRJA

MARÍA MARTA RAE, Argentiina

Juhtumiuuring: Le Corbusier projekteeritud ja Argentiina *Modern Movementi* koolkonna arhitektide ehitatud Dr Curuchet maja. Artikkel käsitleb Curuchet maja kaitse põhimõtete ja korralduse väljatöötamist ning maailmapärandi nominatsiooni ettevalmistamist. Metoodiline akadeemiline uurimus hõlmab nii suulise pärimuse kogumist Dr. Curuchet ja Le Corbusier kohtumistest, hoone ehituse protsesside, aga ka piirkonna ajaloo, geograafia ja urbanistlike protsesside uurimist.



## ROOTSI RAHVA VARA – KULTUURIVÄÄRTUSTE VÄLJAVEO KONTROLL JA SELLE SEOS KAASAEGSE KULTUURIPOLIITIKA EESMÄRKIDEGA

SUSANNA CARLSTEN, Rootsi

Artikkel kuulub kriitilise pärandiuurimuse valdkonda ja keskendub Rootsi vallasvara väljaveo kontrolli probleemidele. Uurimuse käivitas muinsuskaitseaduse avaparagrahvi avamine muutmiseks 2014. aastal kui sinna esmakordselt lisati kultuurilise mitmekesisuse teema. Väljaveo kontrolli puudutavat paragrahvi (§5) samal ajal ei muudetud, ent see on kavas läbi töötada. Kuna §5 põhineb vananenud rahvuslikust rõhutavatel väärtustel, on tekkinud vastuolu kaasaegsel mitmekesisusprintsibi ning iganenud püüete vahel jagada vallasvara hierarhilistesse ning väärtuspõhistesse kategooriatesse. Probleemi analüüsimiseks on uuritud kultuuripärandi väljaveoga seotud õigusakte ja nende muudatusi alates 1920. aastatest. Väljaveo kontroll ja kaitsealuste esemete kategooriad on läbitöötatud lähtudes kvalitatiivsest metoodikast. Allikateks on õigusaktid, ametkondade tellitud uuringud ja valitsuse määrused.

Uurimusest järeldub, et vallasvara kaitse on järkjärgult laienenud hõlmates aina laiemat objektide ning väärtuste spektrit. Väljaveo seadused käsitlevad nii mälestiste vanust, väärtust kui ka päritolu. Kaitstavate objektide kategoriseerimine ning kategooriate defineerimine on tekitanud probleemi, millisele pärandile rakenduvad regulatsioonid ja millisele mitte. Hästi turvatud ajalooliste objektide kõrval leidub esemeid, mille väärtus on ammu päevakorda tõusnud, kuid sobiva kategooria puudumisel on endiselt kaitseta. Kaasaegne käsitus, kus väärtustatakse pärandi mitmekesisust, jätkusuutlikkust ja keskkonda, ei kajastu seadustes. Selle asemel on tekitatud ilmselged majanduslikud, kultuurilised, etnilised ja vanuselised hierarhiad. Väljaveo kontrolli seadus ignoreerib asjaolu, et rootsi päritolu eseme kõrvaldamine oma algkeskkonnast riigi piires võib tekitada suuremat kahju kui mõne välismaist päritolu objekti toimetamine üle piiri. Selle asemel eeldab seadus, et mõned esemed kuuluvad rootsi rahvale ning nende turvaline, algupärane ja „loomulik“ keskkond ongi Rootsi olgugi, et ajalugu kinnitab vastupidist.

## HÜLJATUD KAVATSUSED. REALISEERIMATA EHITUSPLAANID TALLINNA VANALINNAS NÕUKOGUDE AJAL

HENRY KUNINGAS, Eesti

Kuigi Tallinna vanalinn on tänapäeval hästisäilinud keskaegse hansalinnana lülitatud maailma kultuuripärandi nimekirja, paljastab lähem uurimine vanalinna koes jälgi ja meenutusi traumadest.

Mitmed teooriad ja rahvusvahelised juhtnöörid on suunanud ajalooliste hoonete restaureerimist ning uute ehitamist. CIAMi 1933. aastal koostatud Ateena harta, millel oli suur mõju Teise maailmasõja järgsele linnaplaneerimisele, mõjutas linnaplaneeri-

mist ka Nõukogude Eestis ja ühtlasi rekonstrueerimist Tallinna vanalinnas. Vanalinna seisukohalt oli veelgi mõjukam 1964 heakskiidetud Veneetsia harta, millele peatselt järgnes Tallinna vanalinna kaitsetsooni moodustamine 1966. aastal.

Ajavahemikus 1945–1991 ehitati Tallinna vanalinnas kümneid uusi hooneid. Samal perioodil aga koostati ka mitmeid uute ehitiste projekte, mis ei saanud kunagi teoks. Need ideed esitavad läbilõike arhitektuuri ja linnaplaneerimise alaste doktriinide sügavatest murrangutest stalinistlikust klassitsismist postmodernistlike tõekspidamisteni. Nõukogudeaegne vanalinna „paberarhitektuur“ osutab nii kaasaegse arhitektuuri heitlikule suhtele ajaloolise struktuuriga kui ka aeg-ajalt esilekerkivatele erimeelsustele muinsuskaitse institutsioonidega.

## DETEKTORISTID JA ARHEOLOOGIAPÄRANDI KAITSE EESTIS

NELE KANGERT, Eesti

Kultuuriväärtuste otsimine otsinguseadmetega, muististe rüüstamine ning kultuuriväärtuste illegaalne väljavedu on ühed teravamad ja globaalsemad probleemid arheoloogiapärandi kaitstes. Metallidetektorism on populaarne hobi üle maailma ning Eesti ei ole selles osas erand. Harrastajate arv on viimase 10 aasta jooksul kiiresti kasvanud tänu otsinguseadmete kättesaadavusele ning internetipõhiste suhtlus- ja ostukeskkondadele. Arheoloogid ja muinsuskaitsejad on seetõttu sunnitud otsima võimalusi, kuidas muutunud oludes kaitsta muistiseid ning toetada vastutustundliku ja pärandisõbralikku otsinguvahendite kasutust. Eestis alustati lahenduste otsimist 2000ndate aastate keskpaigas. Alates 2011. aastast on otsinguvahendite kasutamine reguleeritud Muinsuskaitseadusega. Seaduse kohaselt võib kultuuriväärtusega asju otsinguvahendiga otsida vaid Muinsuskaitseameti väljastatud otsinguloo alusel. Otsinguloo taotlejal tuleb eelnevalt läbida koostöö ja kõigist leidudest ja otsingutest esitada Muinsuskaitseametile aruanne. Igasugune otsimine on keelatud mälestistel ja selle kaitsevööndis. Viis aastat seaduse praktikat osutab, et regulatsioonil on olnud positiivne mõju nii arheoloogiateaduse kui pärandihoiu seisukohast. Ühtlasi võib nimetada otsingulubade süsteemi Eesti suurimaks avaliku arheoloogia projektiks.



