

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

ICOMOS – CROATIA

INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

*THE ECONOMIC IMPACT OF  
FINANCING CONSERVATION AND  
RESTORATION*

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**Bulgaria**

**Hristina Staneva and**

**Risitza Staneva**

**ECONOMIC IMPACT OF FINANCING  
CONSERVATION AND RESTORATION IN  
REPUBLIC OF BULGARIA**

**INCIDENCES ECONOMIQUES EN MATIERE  
DE FINANCEMENT DE LA CONSERVATION  
ET DE LA RESTAURATION DU  
PATRIMOINE CULTUREL EN REPUBLIQUE  
DE BULGARIE**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## **ECONOMIC IMPACT OF FINANCING CONSERVATION AND RESTORATION IN REPUBLIC OF BULGARIA**

**Hristina Staneva**

DEAR MR. CHAIMAN,

DEAR GUESTS, DEAR COLLEGES,

The cultural values in the Republic of Bulgaria and their role for preservation of the national cultural identity are essential factor in the endeavor of the sustainable development of the country. They are also undeniable evidence for our affiliation to the European and World Heritage.

The economic impact of financing not only in the field of conservation and restoration, but also in the process of investigation, research, preservation and popularization of the monuments of culture and the museums is a basic premise for the realization of all the above mentioned activities. According to our legislation this matter is solved by:

- The Law for Protection and Development of Culture ( Official Journal, No50/99)
- The Law for the Monuments of Culture and the Museums (Official Journal, No 29/ 69 and the last amendment -Official Journal ,No 50/99)
- The Laws for the State Budget of Republic of Bulgaria, which are adopted regularly each year in the Parliament.

The national legislation makes provision for financial and tax concessions for the protection of the cultural heritage, including the restoration and conservation. This financial and tax concessions are regulated by:

- The Law for the Local Taxation<sup>n</sup> (Official Journal, No 117/97, alterations in No 71,83, 153/98)
- The law for the Corporate Profits (Official Journal, No115/97, alterations in No 21/98 , 153/98, 12/99, 50/99, 51/99, 64/99, 81/99)
- The Law for the Profits of Physical Entity. (Official Journal, No 118/97,72/98, 153/98.

This report contains two sections. The first part concentrats on the Economic Impact on Financing Conservation and Restoration. The second informs you about the tax provisions aimed at reducing the financial burden, related with the preservation of our cultural heritage, including the conservation and restoration of our Monuments of Culture.

### **1. Economic Impact of Financing Conservation and Restaration**

The development of the relatively new law for Development and Protection of the Culture was inspired by the contradictive circumstances related with Bulgaria's transition to market economy, which tend to create disproportion and instability of the advancement of our national culture. The law was created in accordance with the cultural legislation in Sweden, France, Poland, Russia, Slovakia, etc., as well as with the advice of experts from the European Council. In Chapter V of the law, called "Financial Support to Culture", Section 24 establishes a National Fund, called "Culture", which is to be treated as a legal entity. The fund's purpose is to aid the advancement of the culture through appropriation, control, and allocation of funds necessary for the conduct of national politics related to culture. The Fund has the right to possess real property only through donation or inheritance. The Ministry of Culture is obligated to secure conditions necessary for the operation of the Fund. The Fund has a body, which contains: Administrative Council; Managerial Council; and Executive Director. The funds needed for the operation of the Fund are collected from 14 sources, listed in the law. I will name only a few: portion from the income from rents received by Trade Associations with State Participation; taxes and fines according to the Law for Monuments of Culture and the Museums; fines for violation of the Law for Protection and Development of Culture; other sources defined by different Laws; and etc. Defined are the ways to allocate the collected funds, with one portion going to "programs and research, preservation and popularization of the cultural and historical heritage".

Prospects exist for creation of Municipal Funds for cultural activities. This way additional resources will be accumulated, with the purpose of financial support of various cultural activities. Listed in detail are ways to collect and allocate the resources from these Funds.

The financing of the Conservation and Restoration is carried out through the annual passing of a Law for the State Budget, which provides for a subsidiary to the Ministry of the Culture specifically for the purpose of Conservation and Restoration. The sums, which the State releases are defined based on careful consideration and outlined request submitted by the National Institute for the Monuments of Culture (NIMC). NIMS prepares the request based on the requests by designated units, which deal with the problems of culture on a regional level, namely the municipal administrations. The Ministry of the Culture annually defends and motivates its requests before the Ministry of the Finance, considering the needs for preservation of the cultural heritage throughout the entire country. The Ministry of the Finance designates the necessary means in the Projected State Budget on an annual basis.

Another law, which addresses the preservation of the cultural heritage, is the Law for the Monuments of Culture and the Museums (Official Journal, No 29/69, including the last addition -Official Journal No50/99). Although the Law has been modified and expanded 14 times since its creation, it remains insufficient and inadequate to our changed environment. It does not contain mechanisms and modern standards for the preservation of the cultural heritage, conditions and incentives for the acceleration of the private initiative in this field, as well as principles assuring

the accord with the European Legislature. The Parliament accepted, from the first vote, a Bill, concerning the museums, which provides for a more sophisticated and contemporary ways of preserving the cultural heritage, including the Conservation and Restoration of the works, specifies conditions improvement of the museums as a public, cultural, and scientific organizations, whose function is to preserve and to guarantee the access of the public to the national exponents of culture. The Bill for the museums is consistent with the fundamental requirements of International Council of Museums (ICOM), the recommendation of the General Conference of UNESCO about the Preservation of the Mobile Exponents of Culture, Maltese Conference about the Protection of Archeological Heritage (1992), the Code of Professional Ethics (ICOM, April 11, 1986) Conservator; Restorer - Definition of the profession (Committee for Restoration, ICOM, 1985) . The Bill logically continues and enriches the Bulgarian legislative tradition in the field of protection and preservation of the exponents of culture and the museums, which is among the oldest in Europe.

Presently a new Bill is expected to be submitted to the Parliament, concerning the Monuments of Culture. With the acceptance of these two laws the currently active Law for the Monuments of Culture and the Museums will be removed, which as I previously noted is not in accordance with the changed environment in Bulgaria. Therefore we will avoid explaining in detail about the Economic Impact on Financing Conservation and Restoration, concerning the existing Law for the Monuments of Culture and the Museums, since to this day the Law is outdated. We hope, and strongly believe, that the two new Bills, submitted by the Government will be an existing fact shortly, and Bulgaria will have a modern legislation in this field.

2. Now we are moving towards the second section of the presentation:

- **In relation with the Laws for the Local Taxation**

> No tax is imposed on immovable property, which belongs to the Public, to the State, or to a Municipality. Here we would like to clarify that usually the immovable Monuments of Culture, as well as the archeological and natural landmarks, are Public and State property. When the Monuments are not owned by the State, but rather by physical or legal entities, the tax due for the property of the Monuments is yielded to the owners of the property under the condition that the means will be used to maintain the Monuments.

> No tax is imposed also on the immovable property, owned by museums, galleries and libraries.

A tax-break is provided in relation to a second type of tax, namely **the inheritance tax**. The inheritance tax is forgiven in relation to libraries, musical instruments, objects of art, in case the author is the legator himself, some of his heirs or his/her relatives. If it is a lineal inheritance there are no limitations, but for the lateral branch -only to fourth stock.

A tax-break is provided in relation to a third type of tax, namely any tax related to the acquisition of property by cultural or scientific organizations supported by the State Budget, or non-profit legal entity when **receiving donations** in relation to the purpose of their organization, or donations to community centers, or contributions to the capital of a non-profit organizations.

• **In relation to the Law for Corporate Profits.**

This law deals with the matter of taxing the profits of local and foreign legal entities, including organizations supported by the State Budget. This Law provides for a reduction of the financial burden before donations were issued which donations were for the benefit of scientific research organizations or cultural organizations, as well as donations for restoration and protection of historical and cultural objects. These donations have to be within 5% (five percent) of the before-tax profit.

• **In relation to the Law for the Profit of Physical Entities.**

It deals with the matter of the profits of physical entities, sole proprietors, and some business establishments, which are specifically listed in the Law. According to this Law the profits incurred during the fiscal year are subject to tax, when the amount of the donations within 5% of the profit is deducted.

Our country is going through a difficult transition to market economy. It is no secret that the financial resources are not abundant due to reduced manufacturing power and the restructuring of our economy. The insufficient financial resources reflect in the ability of the Government to outsource means for protection of our cultural heritage. We sincerely hope that along with strengthening of our economy and our acceptance in the European Union our cultural heritage will be protected and preserved with dignity, which will guarantee the reuniting of the society and the Individual with the cultural and historical memory of our nation, and will safeguard our nation's identity.

Arch.Hristina Staneva  
Jurist Rositza Staneva

INCIDENCES ECONOMIQUES EN MATIERE DE FINANCEMENT DE LA  
CONSERVATION ET DE LA RESTAURATION DU PATRIMOINE CULTUREL  
EN REPUBLIQUE DE BULGARIE

Monsieur le Président,

Chers invités, chers confrères,

Le patrimoine culturel national, facteur de préservation de l'identité culturelle nationale est un atout majeur dans les efforts de notre pays pour un développement durable. Les valeurs culturelles bulgares sont en même temps des preuves incontournables de notre appartenance au patrimoine culturel européen et mondial.

Les incidences économiques dans le financement de la conservation et de la restauration sont, tout comme en muséologie la recherche, l'étude, la préservation et la vulgarisation des paramètres culturels, une condition essentielle de réalisation et d'avancement dans ce domaine. Cette matière est régie par la législation nationale notamment par :

- La Loi sur la protection et le développement de la culture (Journal officiel No 50/99)
- La Loi sur les monuments de la culture ( J.O. No 29/69, amendée et complétée en dernier J.O. No 50/90)
- Les lois sur le budget national de la République de Bulgarie adoptée chaque année par l'Assemblée nationale

La législation nationale prévoit des allègements fiscaux en faveur de la préservation, la conservation et la restauration du patrimoine culturel ainsi que pour la diffusion de sa connaissance. Il s'agit de :

- La Loi sur les taxes et impôts locaux ( J.O. No 117/97, amendée J.O. Nos 71, 83, 153 /98
- La Loi sur l'impôt corporatif sur le revenu (J.O. No 115/97, amendée No 21 et 153/98, Nos 12, 51,59, 64 et 81/99)
- La Loi sur l'impôt sur le revenu des personnes physiques (J.O. No 118/97, Nos 151 et 153/98)

Dans cet exposé je m'arrêterai successivement sur les deux aspects du problème, à savoir les incidences économiques en matière de financement de la conservation et de la restauration et puis les allégements fiscaux garantis par l'Etat au profit du patrimoine culturel, y compris pour sa conservation et restauration.

#### 1. Effets et incidences économiques

La Loi relativement récente sur le développement et la protection de la culture a dû être adoptée pour répondre à la situation complexe et contradictoire résultant de la transition à l'économie de marché, source d'instabilité et de disproportions dans le développement de la culture nationale. Cette loi, s'inspirant des législations suédoise, française, polonaise, russe et slovaque prend en considération également les recommandations des experts du Conseil de l'Europe. L'art. 24 de son chapitre V intitulé *Aide financière à la culture* prévoit la mise en place d'un Fonds national de la culture doté de la personnalité morale. Il a pour objectif d'encourager le développement de la culture en collectant, gérant et distribuant des ressources destinées à la mise en oeuvre de la politique nationale en matière de culture. Il ne peut acquérir des biens immeubles que par donation ou testament. C'est le Ministère de la culture qui doit assurer le financement de ses activités. Ses organes sont le conseil d'administration, le conseil de surveillance et le directeur exécutif. Le financement vient de 14 sources expressément nommées par la loi. J'en citerai quelques uns à titre d'exemple : une part des revenus résultat de prêts obtenus par des sociétés commerciales à participation publique, taxes et amendes perçues au titre de la Loi sur les monuments de la culture, recettes provenant de sanctions imposées aux auteurs d'infractions à la Loi sur le développement et la protection de la culture, autres sources définies par une loi autre que la loi précitée, etc. Les procédures relatives à l'allocation et l'utilisation de ces ressources sont réglementées, à savoir : programmes et études, préservation et vulgarisation du patrimoine national historique et culturel. La possibilité existe aussi de constituer des fonds de la culture au niveau des communautés locales. L'objectif en est l'accumulation de ressources complémentaires en aide du financement des diverses manifestations culturelles. En ce qui concerne ces fonds aussi le mode de collecte et d'utilisation des ressources est défini en détail.

Le financement de la conservation et de la restauration est réalisé essentiellement dans le cadre de la loi de finances adoptée chaque année. Le budget national dans sa partie se référant au Ministère de la culture attribue une subvention à la conservation et la restauration. Les montants ainsi prévus au budget national sont définis sur base d'une demande motivée présentée par l'Institut national des monuments de la culture après études minutieuses. L'avis de cet Institut prend en compte les demandes des structures spécialisées responsables des problèmes de la culture au niveau régional et faisant partie des administrations locales. Chaque année le Ministère de la culture défend auprès du Ministère des finances ses demandes motivées en matière de conservation compte tenu des besoins de l'ensemble du pays. De son côté le Ministère des finances prévoit dans le projet de loi de finances de chaque année les ressources estimées nécessaires.

La Loi sur les monuments de la culture et les musées ( J.O. No 29/69, dernier amendement et complément J.O.50/99) est une autre loi régissant la protection du patrimoine culturel. Bien qu'elle ait subi depuis son adoption quatorze amendements et compléments cette loi assure un règlement insuffisant et inadéquat aux changements intervenus dans l'espace public. Elle n'offre ni les mécanismes et normes nécessaires actuellement à la protection du patrimoine, ni les conditions et stimuli propres à activer l'initiative privée dans ce domaine, ni les principes permettant l'harmonisation avec la législation européenne. L'Assemblée nationale a adopté en première lecture un projet de loi relatif aux musées qui réorganise la réglementation en matière de protection du patrimoine, ce qui inclue la conservation et la restauration des objets de musée, les conditions nécessaires au développement et à l'amélioration des musées en tant qu'organismes publiques culturels et scientifiques dont la mission consiste non seulement à préserver les valeurs culturelles nationales, mais à en garantir également l'accès. Le projet de loi sur les musées a été mis en conformité avec les principes fondamentaux du Conseil International des musées (ICOM), la Recommandation de la Conférence générale de l'UNESCO sur la préservation des valeurs culturelles corporelles, celle de la Conférence de Malte sur la protection du patrimoine archéologique (1992) et avec le Code d'éthique professionnelle (ICOM, 04.11 .1986). Ce projet de loi constitue une

suite logique et un enrichissement de la tradition en droit bulgare favorisant la préservation des valeurs culturelles et des musées, une tradition de dimensions européennes.

Un nouveau projet de loi sur les monuments de la culture sera prochainement soumis pour examen et adoption à l'Assemblée nationale. L'adoption de ces deux projets de lois cessera les effets de l'actuelle Loi sur les monuments de la culture et les musées qui ne répond plus aux nouveaux rapports de société en Bulgarie. C'est la raison pour laquelle je vous épargne les détails de la réglementation juridique existante et ses incidences économiques sur le financement de la conservation et la restauration puisqu'elle n'est plus d'actualité. J'ai bon espoir que les deux projets de loi soumis à l'Assemblée par le Conseil des ministres seront bientôt votés et que la Bulgarie disposera sans trop tarder d'une législation moderne dans ce domaine.

Je passe donc à la deuxième partie de mon exposé, c.à.d . aux allègements fiscaux.

La loi sur les taxes et impôts locaux prévoit une exemption de l'impôt foncier pour les biens propriété de l'Etat ou des communes. Il convient de rappeler ici que généralement les monuments et les sites archéologiques et naturels sont propriété publique de l'Etat. Dans les cas où des monuments de la culture ne sont pas propriété de l'Etat, mais appartiennent à des personnes physiques ou morales, le propriétaire en est exempté de l'impôt foncier correspondant au monument contre l'obligation d'utiliser ce montant pour des travaux d'entretien et de restauration.

Les musées, galeries et bibliothèques sont également exemptés d'impôt foncier.

Sont exemptés d'un deuxième type d'impôt - l'impôt sur l'héritage - les bibliothèques personnelles, instruments de musique et objets d'art dont le *de cuius* est l'auteur, l'un des héritiers, aucun des héritiers ou l'un de leurs parents en ligne directe sans limitation ou en ligne collatérale jusqu'au quatrième degré.

Sont exemptés d'un troisième type d'impôt, l'impôt sur l'acquisition à titre onéreux ou par donation, les organisations culturelles ou scientifiques budgétaires, les personnes morales, organisations à but non lucratif recevant des donations liées à leur objectif statutaire, les donations aux foyers populaires de la culture, les apports non pécuniaires au capital d'une société commerciale, une coopérative ou une personne morale, organisation à but non lucratif.

Quant à la Loi sur l'impôt corporatif sur le revenu qui régit l'imposition des bénéficiaires et revenus des personnes morales de nationalité bulgare ou étrangère, y compris des organismes budgétaires, elle prévoit une possibilité de réduction du résultat financier avant la transformation fiscale incluant les donations faites au profit d'organismes de recherche scientifique et d'organisations culturelles, ainsi que celles destinées à la restauration et la préservation de monuments historiques et culturels. Lesdites donations ne doivent pas être supérieures à 5 pour cent du résultat financier positif avant la transformation fiscale.

La loi sur l'imposition des revenus des personnes physiques couvre aussi l'impôt sur le revenu des sociétés commerciales unipersonnelles, celui de certaines entreprises, personnes morales expressément visées par la loi. Cette loi impose le revenu réalisé au cours de l'année fiscale, déduction faite d'un pourcentage de 5 % au plus des donations effectuées.

La Bulgarie traverse une période difficile de transition à l'économie de marché. Nul n'ignore la pénurie des ressources financières due au non fonctionnement d'une bonne partie de la production et à la restructuration de l'économie. L'insuffisance des ressources financières limite les possibilités des pouvoirs publics de financer la préservation du patrimoine culturel. Notre espoir est sincère qu'avec la stabilisation de notre économie et l'adhésion de la Bulgarie à l'Union Européenne le patrimoine culturel sera dignement préservé et conservé, ce qui sera une garantie que la société autant que les individus se sentiront davantage solidaires de la mémoire culturelle et historique de la nation et de la préservation de son identité.

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**France**

**Pierre Laurent Frier**

**FINANCING HERITAGE PROTECTION  
AND ENHANCEMENT IN FRANCE**

**LE FINANCEMENT DE LA  
PROTECTION ET DE LA MISE EN  
VALEUR DU PATRIMOINE EN FRANCE**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
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# FINANCING HERITAGE PROTECTION AND ENHANCEMENT IN FRANCE

P.L.Frier

French law, unlike that of Spain or Italy for example, does not have one all-encompassing text which covers the whole range of heritage matters. There is in fact a multitude of texts whose bringing together into a single heritage code is being considered. Some of the texts relate to protection mechanisms, the effects of such protection, and to the principles of heritage enhancement. But the main provisions relating to financing which are specific to heritage issues and which derogate from common law, are independent, and stem from specific texts, many of which form part of the General Tax Code.

Because of this accumulation of legal provisions, it is important to distinguish between "individual" historic monuments, ancient districts, and the archaeological heritage.

## I HISTORIC MONUMENTS

French legislation (Law of 31 December 1913) draws a distinction between **classified** monuments and **registered** monuments.

Monuments in the first category are in principle classified by the decision of the Minister of Culture. Classified monuments (of which there are some 14,000 in all) belong in two-thirds of cases to public bodies; they include a large number of religious buildings (more than half of the total), which are in general the property of the commune, except for cathedrals which are state property. All restoration work must be specially authorised by the ministerial department. If the conservation of the property is seriously threatened by a lack of maintenance or repair, the ministerial department may issue the owner with formal notice to have the works carried out within a fixed period, with at least half the cost of the works being compulsorily met by the state. If no agreement is reached, the decision is taken by the administrative court, which determines the proportion each party must finance, with the share of the state not falling below 50% (Articles 9-1 and 10 of the Law of 1913). Classification is therefore a costly method of protection, as shown also by the mode of realisation of works (see below).

Monuments registered on the supplementary inventory of historical monuments are included as a result of a decision of the prefect of the region. There are around 40,000 such registered monuments (60% of which are privately owned), and in theory the only obligation incumbent on the owner is the declaration of any works to be performed 4 months in advance, while the only way of opposing the

works open to the Ministry of Culture is to classify the property. However, a demolition permit is required for such registered monuments, and the permit can only be granted with the approval of the Department of Historical Monuments. In practice, works carried out on registered monuments are controlled quite effectively by the Ministry.

The financing of the maintenance and restoration of these monuments is based on two mechanisms which may be used to complement each other.

### ***1 Financing by public subsidies***

There is a very important difference in law between classified monuments and registered monuments. Works on **registered monuments** (Decree of 16 February 1969) are financed by their owner, with state aid of up to 40%. On average, state aid amounts to around 20% of the cost of the works. The local authorities also provide financial support.

Maintenance and repair works on **state-owned classified monuments** are paid for directly by the Architecture & Heritage division of the Ministry of Culture as regards the buildings placed under its responsibility (cathedrals and national palaces in particular). In 1999, this represented maintenance credits of FF63m (9.6 million euros) and restoration credits of FF880m (134 million euros), with works on cathedrals accounting for a large proportion of this budget. In the case of monuments allocated to other ministries, or to other divisions of the Ministry of Culture, the amount corresponding to the restoration work performed under the control of the Historical Monuments Department is paid out of the repair and maintenance credits of the ministry or division in question.

In the case of **classified monuments belonging to private individuals or public authorities** (communes, departments, regions, public institutions), maintenance and repair works may be performed directly by the owner with no state intervention other than the authorisation and control of works. In this case, no subsidy is given, although in the case of private individuals, some tax breaks may be used (see below).

In most cases however, the mechanism is as follows: the work is carried out with the state as the contracting authority (the Regional Conservancy of Historical Monuments, a state department, is in charge of the administrative and financial setting up of the operation, and awards the contracts, etc.); the works supervisor is, in the case of restoration works, the chief architect of the Historic Monuments Department (a civil servant architect, even though mainly remunerated by the owners who pay him a percentage of the amount corresponding to the works for which he holds the monopoly) or, in the case of maintenance works, the architect of the Buildings of France Department, a civil servant. In this case, the State may meet up to 80% of the cost (Decree of 17 March 1970), but in practice its financing is limited to 50% with part of the cost of the works being met by the local authorities (which is often the case for church restoration in small communes). In 1999, the state thus spent FF69m (10

million euros) for maintenance works and FF650m (99 million euros) for the restoration of classified monuments which were not state property.

The budget of the state (1999) for the maintenance and restoration of protected monuments (excluding operations paid for by state ministries other than the Ministry of Culture) is thus in the order of FF1650m (251 million euros), with the spending of local authorities being around two-thirds of this amount (FF1bn, 152 million euros), although no precise statistical data are available on this point. In total therefore a public budget in the order of FF3bn is allocated to operations of this type in France.

## **2 Fiscal mechanisms.**

In the cases of both classified and registered monuments, the regime under French law is identical as regards exceptional and derogatory tax mechanisms.

**Personal income tax** (General Code of Taxes, Articles 156, I, 3° and 156 II 1er ter, Articles 41 E to 41 J annex III).

The main mechanism concerns personal income tax, and thus applies to private owners.

This special tax regime is applicable in the same conditions to **both classified and registered historical monuments**.

Property-related expenses paid by the owner, after deduction of any subsidies granted by the Culture Ministry, are deductible from income. The expenses consist of the following:

- **maintenance costs** (e.g. heating expenses necessary for the conservation of wood panelling) and expenses incurred for the **repair or improvement of the monument**,
- guarding costs, local taxes, interest expense on loans, etc.

The following are excluded and are thus non-deductible: the cost of works which could be designated as construction, reconstruction or extension, such as the reconstruction of items which no longer exist, or the modification of the structures or carcass, etc. This solution obviously raises difficulties in that in some cases the restoration of the monument may involve conversions which return the building to its original state, or to a state deemed to be satisfactory from the viewpoint of art history, within the limits set by the Charter of Venice.

The tax advantages instituted by the General Code of Taxes are variable, depending on whether or not the property generates rental income for its owner.

A basic distinction should be drawn between two cases.

**If the owner rents out his property**, or if the property generates other property-related revenue (entrance fees), the cost of all works carried out with the agreement of the Historic Monuments Department may be deducted from the owner's property-related or rental income (which is the same solution as applies in common law for ordinary property). But the owner of the monument may also,

if a deficit is made (the cost of works is greater than the rental income), deduct this deficit from his other income (which is not normally possible in the case of ordinary property). Total taxable income is thus reduced by the amount of the works performed and of the costs borne.

It is in cases in which the **property is occupied by its owner, and generates no property-related or rental income** that the tax advantage is the greatest. In common law, an owner may not (other than within very small limits) deduct from his taxable income the expenses relating to works on properties which he occupies. In this case, on the contrary, he may deduct from his total taxable income all or part of the costs arising from the property in question:

- the net sums paid by the owner (excluding subsidies) for maintenance and repair works (subject to the proviso indicated above) carried out or subsidised by the cultural affairs administration may be deducted in full. The same applies to costs arising from visits (furthermore, amounts received as entrance fees may be exempted from value-added tax, which is not however always the most advantageous solution).

The other property-related costs (unsubsidised works, guarding costs, interest on loans, etc.) are fully deductible from total revenue if the property is open to the public (50 days a year, including 25 legal holidays, from April to September, or for 40 days a year between the beginning of July and the end of September). If the monument is not open to the public, only half of the expenses incurred may be deducted from taxable income.

The total reduction in tax receipts resulting from the special regimes applying to the different cases is estimated at about FF150m (23 million euros) a year. This mechanism has been criticised as it only benefits owners who pay income tax (half of the French population), and its effect is proportionately greater if the owner's income is large. On the other hand, it enables a remarkable level of involvement on the part of owners, and means that public authorities do not have to bear alone the costs of protecting the heritage.

**Corporation tax** (Art. 39-4 General Code of Taxes, derived from the Law of 23 July 1983 concerning cultural patronage)

The legislation on historic monuments also includes some tax advantages for companies which are entitled by the law to include in their costs (thereby correspondingly reducing their taxable income for corporation tax purposes) expenses relating to "operational needs and resulting from the purchase, rental, or maintenance of historical residences which are classified or registered (...)". Thus a company can restore or rent historic buildings in order to use them as offices, for customer reception, or for the organisation of seminars or congresses.

**Estate duties.**

Article 795 A of the General Code of Taxes (derived from the "Loi-programme" relating to the monumental heritage of 5 January 1988, completed by Decree no. 88-389 of 21 April 1988) stipulates that the owners of what are essentially classified or registered properties and of the personal goods which forms their historic or artistic complement are exempted from estate duties. The heirs must subscribe together with the Ministers of Culture and Finance to an agreement of unlimited validity which stipulates the maintenance inside the property of the exempted personal goods and the conditions of access of the public, maintenance and presentation of the personal goods. Thus, in the case of the most important chateaux, this mechanism prevents the **sale of monuments, the dispersion of collections and the dismantling of decoration**, which would otherwise have been necessary to meet very substantial estate duties. This is therefore another important fiscal derogation.

At present the number of agreements concluded is 38.

## II PROTECTED ANCIENT DISTRICTS

The protection of historic districts is mainly based on two laws. Articles L.313-1 et seq. of the Town Planning Code (derived from a Law of 4 August 1962) thus enable the state to delimit **protected sectors** in the ancient districts with the richest heritage. In this case, the policy applied is a combination of protection and enhancement. For it is not only a matter of protecting properties but also of restoring these districts so that the inhabitants can live there in satisfactory conditions, while respecting the value of the district in heritage terms. To this end, the state, after recommendation by the commune, draws up a protection and enhancement plan which specifies the properties to be conserved (thus also enabling the checking of works carried out inside the buildings) and sets out the general conditions for the evolution of the sector (protected properties and the applicable rules of restoration, which may even stipulate the demolition of certain parts to reconstitute gardens which no longer exist, or the lowering of roofs to return them to the original form, the organisation of public spaces, traffic and parking, etc.). Furthermore, provision is made for specific financing mechanisms.

The protected sectors, of which there are 102 covering over 6000 hectares in 1999, consist of the historic centres of the main cities of France (Nantes, Rennes, Lyons, Strasbourg, Lille, etc.) and smaller towns which have a particularly rich heritage (Vézelay, Pézenas, etc.)

Provision for **Architectural, Urban and Landscape Heritage Protection Zones (ZPPAUP)** was made by a Law of 7 January 1983. The original feature here is that the zones are set up by a joint decision by the state and by the commune: the two partners must reach an agreement on this point. For these Heritage Protection Zones, the state and the commune agree to adopt a graphic document which

sets out the main evolution zones, and in this case also a set of regulations specify the constructional and aesthetic rules (for the external part of the properties only), and the organisation of space, in a manner complementary to the development plan established by the local authority. The Heritage Protection Zone concept is not principally associated with restoration operations, although there have been some recent developments in this direction.

There are around 300 such zones (in 1999), most of them in smaller towns whose heritage is less rich than in the protected sectors, although some communes prefer to adopt this mechanism, as it is less complex than the sector approach.

The financing operates as follows:

### **1 Subsidies**

State subsidies for one-off operations (refacing, partial restoration of a property not forming part of an OPAH programme, see below) are very limited (FF19m in 2000, i.e. about 3m euros). On the other hand, local authorities - communes, or even departments or regions - often give aid (though no precise statistics are available) for works such as the restoration of facades, allowing for the extra costs made necessary by architectural considerations.

### **2 Fiscal mechanisms**

The mechanism here is similar to that which applies to historic monuments. According to Article 156-I of the General Code of Taxes, as drafted in accordance with the Law of 30 December 1994, an owner who rents out a property for a minimum period of 6 years (owner-occupiers are therefore not concerned) can deduct from his taxable income the property-related deficit resulting from a property restoration operation which he carries out (alone or as a group constituted with other co-owners) or which he entrusts to specialist organisations. The property-related deficits correspond to the difference between the cost of the works carried out - which in this case may go beyond repair: demolition works which are compulsory or authorised and subsequent reconstitution, such as the rebuilding of a roof at a lower level, as required by the protection plan or the declaration of public utility (see below), together with the other costs incurred in renting out the property, on the one hand, and the rental payments collected on the other hand.

Once this common base is established, there are differences in the mechanisms applied.

**In protected sectors, once the protection plan has been made public (and is opposable to third parties) the owner may deduct from his taxable income, after obtaining a special authorisation issued by the state and distinct from the building permit which is normally issued by the commune, all the**

works carried out on his property, provided that they form part of the property's complete restoration and comply with the protection plan.

**In Heritage Protection Zones (ZPPAUP) and in protected sectors, during the period from the delimitation of the sector up to the publication of the plan, the only costs which may be deducted are those for works which have been specially authorised and comply with the detailed programme of works declared to be of public utility by the state, after the delimitation of a "property restoration perimeter". This declaration sets out, property by property, the complete set of restoration operations which must be carried out.**

These fiscal mechanisms therefore benefit only those owners who rent out a property, and their efficiency is all the greater if the owners have a large income. This approach has led to criticism for two reasons: should the mechanisms not be extended to include owner-occupants (often of modest means and elderly, who are unable despite certain aids to restore their dwelling), and should not other fiscal mechanisms be found, as around half of the French population does not pay any income tax?

However this mechanism (which can only operate in towns where the market for rented property enables the renting out of apartments at prices high enough to make this a profitable proposition for private investors) does play a major role: remarkably effective schemes have been carried out in Bayonne, and a major rehabilitation of ancient districts of Marseilles is now under way. The cost of the loss in tax revenue has been variously estimated at between FF200m and FF500m (i.e. between 30m and 78m euros).

### ***3 Habitat Improvement Programmes (OPAH)***

Programmes of this type (Art. L. 301-1, Code of Construction, derived from the Law of 13 July 1991) are set up by a tripartite agreement between the State, the commune and a public institution (the ANAH - National Agency for Housing Improvement, which is mainly funded by a tax on rental payments). This agreement, which is in fact an incentive scheme, defines a perimeter of operation (a district or a complete historic centre), the amounts of aids and subsidies which may be granted to property owners by the various bodies involved for the rehabilitation of their properties, and supporting measures relating to quality of life, social diversity and public infrastructure. The agreement covers owners who rent out their property (and in this case subsidies may vary depending on the effort made in terms of rent amounts, so as to encourage social housing) and those who occupy their properties. The owners commit themselves to carrying out works in accordance with certain standards - which in protected sectors and ZPPAUP may be very detailed - which leads to an increase in the rate of aid provided to allow for the extra costs arising from architectural considerations. There are complex variations in the subsidies granted to owner-lessors depending on circumstances: for example, if the property is to be used for social housing for the greatly disadvantaged, the rate of

subsidy may be as high as 70%. If the properties are insanitary, the aid for works may be increased, and can be added to subsidies for extra costs incurred for architectural reasons. The OPAH programmes are not specific to protected ancient districts (Protected Sectors and Heritage Protection Zones/ZPPAUP), but many are set up in such places, and have become, alongside "fiscal-mechanism" restoration, an essential solution for the rehabilitation of these districts, particularly when the scale of the works and the low level of income of the inhabitants makes a substantial intervention necessary, financed largely out of public funds. Only owner-occupiers of very modest means are granted aid, and the aid itself is of a very modest amount.

From 1980 to 1997 inclusive, there were 162 OPAH programmes in Protected or associated sectors. Although some sectors had no OPAH programmes whatever, most benefitted from 2 or 3 OPAH programmes. The subsidies paid by the ANAH over the same period were around FF1bn (FF660m were actually paid; the payment of another FF390m was projected, but the corresponding definitive realisations do not appear in the statistics). On average therefore FF60m of subsidies were paid a year (or around 10% of total OPAH programme subsidies, as many OPAH programmes do not concern these protected districts).

If the state and ANAH subsidies are added to the cost of the fiscal aid procedures, without taking into account the contribution of local authorities, around FF300m a year is allocated for the restoration of ancient districts.

### III THE ARCHAEOLOGICAL HERITAGE

In France, archaeological excavations are financed essentially by two processes.

**Programmed archaeology, within the framework of the Law of 27 September 1941,** enables public bodies (Ministry of Culture, universities, and the CNRS - National Centre of Scientific Research) to carry out scientific research in a given sector, based on a programme devised at national level. The sums allocated by the Culture Ministry and the CNRS, in investment credits (excluding the salaries of public employees, etc.) was FF38m in 1998 (5.8m euros).

**Preventive archaeology, on the other hand forms part of a development or town planning process.** The aim is, in accordance with Article 6 of the Malta Convention of the Council of Europe (1992), to carry out the studies and excavations necessary to ensure that knowledge of the "archives of the ground" is obtained before works begin. The problem of financing preventive archaeological research is of course a delicate issue. In France, apart from a few limited state subsidies (FF19m in 1998, i.e. 3.5m euros), they are based essentially on financing by the public or private developer. The developer, if the building site zone is likely to contain archaeological vestiges, concludes an agreement with the state and with a state-controlled association (AFAN - National Archaeological Excavations

Association). The state thus determines the investigations to be carried out, which almost invariably are performed by AFAN staff. Although sometimes the state may grant some limited subsidies, the developer pays the cost of the archaeological operations to the association. In 1999, FF378m was thus paid to AFAN by developers (57m euros). Of this total, only 35% come from purely private funds (quarrying companies and property developers). The remaining 65% was paid by the Ministry of Infrastructure, motorway companies, local authorities, or by French Railways (SNCF) for the construction of TGV high speed train lines. Over FF100m or 15m euros was paid for the construction of the Mediterranean TGV line, for example.

The sums thus paid are quite logically considered as costs for the company, and reduce taxable income and thus the amount paid in corporation tax (Art. 236 ter, General Code of Taxes, Law of 30 December 1995).

This mechanism, embodying a principle also found in other European countries (financing by the developer) is founded on fragile legal bases in France. For this reason a bill was put before the French Parliament last year setting out clear rules: under the terms of the bill, a special licence fee, whose method of calculation is fixed by legislation, would be paid to a public archaeological research institution intended to replace AFAN.

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# LE FINANCEMENT DE LA PROTECTION ET DE LA MISE EN VALEUR DU PATRIMOINE EN FRANCE

P.L.Frier

Le droit français ne connaît pas, contrairement à la législation espagnole ou italienne par exemple, un texte unique relatif à l'ensemble des questions de patrimoine. Il y a une multitude de textes qu'il est envisagé de réunir dans un code unique du patrimoine. Certains portent sur les mécanismes de protection, les effets de ces protections, voire sur les principes de mise en valeur du patrimoine. Mais les principales dispositions en matière de financement, propres au patrimoine et dérogoratoire au droit commun, sont indépendantes et relèvent de textes particuliers, notamment du code général des impôts. En raison de cette accumulation de dispositions juridiques, il faut distinguer les monuments historiques " individuels ", les quartiers anciens et le patrimoine archéologique.

## I LES MONUMENTS HISTORIQUES

La législation française (Loi du 31 décembre 1913) distingue les monuments classés et les monuments inscrits.

Les premiers sont classés en principe par décision du ministre de la Culture. Ces monuments classés (14 000 environ) appartiennent aux deux tiers à des personnes publiques, et concernent un nombre important d'édifices religieux (plus de la moitié), en général propriété des communes sauf les cathédrales qui sont propriété de l'Etat. Tout travail de restauration doit être autorisé spécialement par les services du ministère. Et celui-ci peut, au cas où la conservation de l'immeuble est gravement compromise par l'absence d'entretien ou de réparation, mettre en demeure le propriétaire d'exécuter ces travaux, dont l'Etat prend obligatoirement au moins la moitié à sa charge. Faute d'accord, la décision relève du tribunal administratif qui fixe la part que chacun doit financer, celle de l'Etat en pouvant descendre en-dessous des 50 %. (article 9-1 et 10 de la loi de 1913). Le classement constitue donc une protection lourde, comme le montre par ailleurs la mode réalisation des travaux (voir infra).

Les monuments inscrits à l'inventaire supplémentaire des monuments historiques sont, eux, inscrits par décision du préfet de région. Au nombre d'environ 40 000 (dont 60 % propriété privée), en théorie, la seule obligation qui s'impose pour propriétaire est de déclarer 4 mois à l'avance les travaux à effectuer, le ministère de la culture ne pouvant s'y opposer qu'en classant l'immeuble; cependant ces monuments sont soumis à un permis de démolir, qui doit recueillir l'accord du service des monuments

historiques . En pratique, les travaux sur les monuments inscrits sont contrôlés, de façon assez efficace, par le ministère.

Le financement de l'entretien et de la restauration de ces monuments repose sur deux mécanismes qui peuvent se compléter.

### **1 Financement par subventions publiques**

La législation fait une différence très importante, ici, entre monuments classés et monuments inscrits. Les travaux sur les **monuments inscrits** (Décret 16 février 1969) sont financés par leur propriétaire, avec une aide de l'Etat qui peut aller jusqu'à 40 % . Elle est, en moyenne, de l'ordre de 20 % du coût des travaux. Les collectivités locales apportent aussi leur concours financier .

Les travaux d'entretien et de réparation sur les **monuments d'Etat classés** sont pris en charge directement par la direction de l'architecture et du patrimoine du ministère de la culture pour les bâtiments qui lui sont affectés ( cathédrales, palais nationaux notamment ) , ce qui a représenté en 1999 63 MF de crédits d'entretien (9.6 Millions d'euros) et 880 Millions FF pour la restauration (134 Millions d'euros), les travaux sur les cathédrales représentant une part importante de ce budget. Pour les monuments affectés aux autres ministères, ou aux autres directions du ministère de la culture, le montant de la restauration ,effectuée sous le contrôle du service des monuments historiques relève de leurs crédits propres de réparation et d'entretien.

Sur les **monuments classés appartenant à des personnes privées ou à des collectivités publiques** (Communes, départements, régions, établissements publics) , les travaux d'entretien et de réparation peuvent être réalisés directement par leur propriétaire sans autre intervention de l'Etat que l'autorisation et le contrôle des travaux. En ce cas, aucune subvention n'est donnée, même si, pour les personnes privées, certains avantages fiscaux peuvent être utilisés(V. infra) .

Le plus souvent ,cependant , le mécanisme est le suivant : les travaux sont effectués sous la maîtrise d'ouvrage de l'Etat ( la conservation régionale des monuments historiques, service d'Etat , assure le montage administratif et financier de l'opération , passe les marchés, etc. ) et la maîtrise d'œuvre, pour les travaux de restauration, de l'architecte en chef des monuments historiques, architecte fonctionnaire même s'il est rémunéré essentiellement par les propriétaires qui lui verse un pourcentage du montant des travaux dont il a le monopole , ou, pour ceux d'entretien, de l'architecte des bâtiments de France, fonctionnaire d'Etat. En cette hypothèse, l'Etat peut prendre à sa charge jusqu'à 80 % du coût (décret 17 mars 1970) , mais en pratique son financement se limite à 50 %, quitte à ce que les collectivités locales prennent à leur tout en charge une partie du montant des travaux ( ce qui est souvent le cas pour les restaurations sur les églises des petites communes). En 1999, l'Etat a ainsi dépensé de 69 MF (10 millions d'euros) pour les travaux d'entretien et 650 MF (99 millions d'euros) pour la restauration des monuments classés ne lui appartenant pas.

Le budget de l'Etat (1999) pour l'entretien et la restauration des monuments protégés ( en dehors des opérations prises en charge par les ministères d'Etat autres que la culture) est donc de l'ordre d'1650 M FF ( 251 M euros), les dépenses des collectivités locales étant environ des deux tiers (1 milliard FF, 152 Millions euros) , même s'il l'on n'a pas sur ce point de statistiques précises. C'est donc au total un budget public de l'ordre de 3 Milliards de FF (533 Millions euros) consacré, en France, à ces opérations.

## **2 Les mécanismes fiscaux.**

Pour les monument classés comme inscrits, le droit français connaît un régime identique de mécanismes fiscaux exceptionnels et dérogatoires.

**Impôt sur le revenu des personnes physiques** (Code général des impôts article 156, I, 3° et 156 II 1er ter, articles 41 E à 41 J annexe III )

Le principal mécanisme porte sur l'impôt sur le revenu des personnes physiques et concerne donc les propriétaires privés .

Ce régime fiscal particulier est applicable, dans les mêmes conditions, aux **monuments historiques classés ou inscrits**.

Sont déductibles du revenu les charges immobilières payées par le propriétaire, après déduction des éventuelles subventions accordées par le ministère de la culture. Il s'agit des :

- frais d'entretien (par exemple frais de chauffage nécessaires pour la conservation de boiseries) et des dépenses de **réparation ou d'amélioration du monument** ,
- frais de gardiennage, impositions locales , frais financiers liés aux emprunts, etc.

Sont dès lors exclues, comme non-déductibles, les charges correspondant à des travaux qui pourraient être qualifiés de construction, de reconstruction ou d'agrandissement, comme des reconstructions d'éléments disparus ou de modification des structures ou du gros œuvre, etc. Cette solution soulève évidemment des difficultés dans la mesure où, parfois , la restauration du monument peut supposer des transformations pour retrouver l'état d'origine ou un état jugé satisfaisant du point de vue l'histoire de l'art, dans les limites fixées par la Charte de Venise.

Les avantages fiscaux institués par le code général des impôts varient selon que l'immeuble procure ou non des revenus locatifs à son propriétaire.

Deux cas de figure, pour l'essentiel, doivent être distingués.

**Lorsque le propriétaire loue son immeuble**, ou lorsque cet immeuble procure d'autres revenus fonciers ( droits de visite) tous les travaux effectués avec l'accord du service des monuments historiques peuvent être déduits de ses revenus fonciers ou locatifs, ( ce qui est la solution applicable en droit commun pour les immeubles ordinaires). Mais le propriétaire peut aussi, quand il en résulte

un déficit ( travaux supérieurs aux recettes foncières ) imputer ce déficit sur ses autres revenus ( ce qui n'est pas possible, en principe, pour les immeubles ordinaires). Le revenu imposable global sera donc réduit à hauteur des travaux effectués et charges supportées .

C'est lorsque **l'immeuble est occupé par son propriétaire et ne procure pas de revenus fonciers ou locatifs** , que l'avantage fiscal est le plus important. En droit commun, un propriétaire ne peut, sauf dans des limites très réduites, déduire de son revenu imposable les dépenses correspondant à des travaux effectués sur les propriétés qu'il occupe. Ici, au contraire, il peut déduire de l'ensemble de son revenu global tout ou partie du montant des charges lié à cet immeuble :

- peuvent être intégralement déduites les sommes nettes (hors subventions) payées par le propriétaire pour les travaux d'entretien ou de réparation (sous la réserve indiquée supra) exécutés ou subventionnés par l'administration des affaires culturelles. Il en va de même pour les frais liés à la visite (de plus les sommes encaissées pour les droits d'entrée peuvent être exonérés de la Taxe à la valeur ajoutée -TVA, ce qui n'est pas toujours d'ailleurs la solution la plus avantageuse ) .

Les autres charges foncières (travaux non subventionnés, frais de gardiennage, intérêts d'emprunt etc.) sont déductibles, dans leur totalité, du revenu global si l'immeuble est ouvert au public (cinquante jours par an, dont vingt-cinq fériés, d'avril en septembre, ou quarante jours entre début juillet et fin septembre). Si le monument n'est pas ouvert au public, elles ne peuvent être déduites du revenu que pour la moitié des dépenses faites.

Le montant des moins-values d'impôt, dues à ces régimes spécifiques, dans ces différents cas de figure, est estimé, à environ 150 MF (23 M euros) par an. Ce mécanisme a été critiqué car il ne bénéficie qu'aux propriétaires payant l'impôt sur le revenu (la moitié des Français), et son effet est d'autant plus fort que les revenus sont importants. Mais il permet une remarquable implication des propriétaires et évite aux collectivités publiques d'assumer seules la charge du patrimoine.

**Impôt sur les sociétés** (art. 39-4 CG Impôts issu de la loi du 23 juillet 1987 relatif au mécénat culturel )

La législation sur les monuments historiques comportent aussi quelques avantages fiscaux pour les entreprises qui peuvent, ainsi, dans le cadre de la loi inclure dans leurs charges (ce qui réduit d'autant leur bénéfice imposable au titre de l'impôt sur la sociétés) les dépenses relatives " pour les besoins de l'exploitation et résultant de l'achat, de la location, ou de l'entretien de demeures historiques classées, inscrites(...) ". Ainsi une entreprise peut restaurer ou louer des immeubles historiques afin de les utiliser pour des bureaux, l'accueil des clients, ou organiser des séminaires ou de congrès.

**Droits de succession.**

L'article 795 A du CGI (issus de la loi programme relative au patrimoine monumental du 5 janvier 1988, complétée par le décret n°88-389 du 21 avril 1988) prévoit que sont exonérés de droits de succession les propriétaires d'immeubles classés ou inscrits, pour l'essentiel, ainsi que les biens meubles qui en constituent le complément historique ou artistique. Les héritiers doivent souscrire avec les ministres chargés de la Culture et des Finances une convention à durée indéterminée qui prévoit le maintien dans l'immeuble des meubles exonérés ainsi que les conditions d'accès du public, d'entretien, de présentation, de ces meubles. Ce mécanisme évite ainsi, pour les châteaux les plus importants, la **vente des monuments, et la dispersion des collections et le démontage des décors**, qui auraient été nécessaires pour acquitter de lourds droits de succession. Il y a donc là encore une importante dérogation fiscale.

Actuellement le nombre de conventions passées s'élève à 38.

## **II LES QUARTIERS ANCIENS PROTEGES**

La protection des quartiers historiques passe essentiellement par deux législations. Les articles L. 313-1 et suiv. code de l'urbanisme (issu d'une loi du 4 août 1962) permettent ainsi à l'Etat de délimiter des **secteurs sauvegardés** dans les quartiers anciens les plus riches sur le plan patrimonial. En ce cas, la politique menée combine protection et mise en valeur. Car il ne s'agit pas simplement de sauvegarder des immeubles mais aussi de restaurer ces quartiers pour permettre aux habitants d'y vivre dans de bonnes conditions, tout en respectant leurs dimensions patrimoniales. Pour ce faire, l'Etat, après avis de la commune, élabore un plan de sauvegarde et de mise en valeur qui précise les immeubles à conserver - ce qui permet de contrôler aussi les travaux effectués à l'intérieur des édifices - et fixe les conditions générales de l'évolution du secteur (immeubles protégés et règles de restauration applicables, ce qui peut aller jusqu'à prévoir la démolition de certaines parties pour reconstituer les jardins disparus ou écrêter les toits pour retrouver le gabarit d'origine, organisation des espaces publics, circulation et stationnement, etc). Par ailleurs, des mécanismes spécifiques de financement sont prévus.

Ces secteurs sauvegardés, au nombre de 102 et couvrant plus de 6000 hectares en 1999, correspondent aux centres historiques des principales villes du pays (Nantes, Rennes, Lyon, Strasbourg, Lille, etc.) ou à des cités plus petites mais au très riche patrimoine (Vézelay, Pézenas, etc.)

**Les Zones de protection du patrimoine architectural, urbain et paysager (ZPPAUP)** sont, elles, prévues par une loi du 7 janvier 1983. Elles présentent l'originalité d'être instituées par une décision

conjointe de l'Etat et de la commune : les deux partenaires doivent être d'accord sur ce point. Dans ces zones , l'Etat et la commune adoptent un document graphique qui fixe les principales zones d'évolution et un règlement précis , là encore, les règles applicables en matière de construction et d'esthétique pour la seule partie extérieure des immeubles, d'organisation de l'espace, en complément du plan d'urbanisme élaboré par la collectivité locale. La ZPPAUP n'est pas, elle, principalement liée à des opérations de restaurations, même si des évolutions récentes ont eu lieu de ce point de vue.

Il y en a, en 1999, environ 300 qui correspondent en général à des villes plus petites et au patrimoine moins riche que celles des secteurs sauvegardés, même si certaines communes tendent à préférer ce mécanisme moins lourd que celui de ces secteurs .

Le financement s'opère de la façon suivante :

### **1 Subventions**

Les subventions étatiques, pour les opérations ponctuelles (ravalement, restauration partielle d'un immeuble hors OPAH, voir infra ) sont très réduites ( 19 millions de francs en 2000 , environ 3 millions d'euros ). A l'inverse, les collectivités locales ( communes, voire départements et régions) sans que l'on ait de statistiques précises, accordent souvent des aides, par exemple pour la restauration des façades, en tenant compte des surcoûts architecturaux.

### **2 Mécanismes fiscaux**

On retrouve, ici, un mécanisme semblable à celui des monuments historiques. Selon l'article 156-I du Code général des impôts, dans sa rédaction issue de la loi du 30 décembre 1994, le propriétaire qui loue un immeuble pour une durée minimale de 6 ans (le propriétaire occupant n'est donc pas concerné) peut déduire de l'ensemble de son revenu les déficits fonciers qui découlent d'une opération de restauration immobilière réalisée par lui - seul ou regroupé avec d'autres copropriétaires - ou confiée à des organismes spécialisés . Les déficits fonciers résultent de la différence entre les travaux effectués - qui , ici, peuvent aller au-delà de la réparation : travaux de démolition imposés ou autorisés et travaux subséquents de reconstitution (*non !*) telles que la reconstitution d'une toiture après écrêtements , imposée par le plan de sauvegarde ou la déclaration d'utilité publique (voir infra) sont pris en compte - et les autres charges liées à la location d'une part, et les loyers encaissés d'autre part

Sur cette base commune, les mécanismes diffèrent .

**Dans les secteurs sauvegardés, une fois le plan de sauvegarde rendu public (opposable aux tiers)** le propriétaire peut déduire de son revenu, après obtention d'une autorisation spéciale donnée par l'Etat et distincte du permis de construire qui est délivré en principe par la commune, tous les travaux

effectués sur son immeuble, à la condition qu'ils portent sur la restauration complète de celui-ci et soient conformes au plan de sauvegarde .

**Dans les ZPPAUP ou dans les secteurs sauvegardés, dans la période qui va de la délimitation du secteur jusqu'à la publication du plan , seuls peuvent être déduits les travaux qui, autorisés spécialement, sont conformes au programme précis de travaux déclarés d'utilité publique par l'Etat, après délimitation d' " un périmètre de restauration immobilière ". Cette déclaration fixe, immeuble par immeuble, les opérations de restauration immobilière complète qui doivent être faites.**

Ces mécanismes fiscaux profitent donc aux seuls propriétaires qui louent un immeuble, et sont d'autant plus efficaces que ces propriétaires ont un revenu élevé. Ceci a pu être critiqué pour cette double raison : ne faudrait-il pas les étendre aux propriétaires occupants (personnes modestes et âgées assez souvent, qui ne peuvent, malgré certaines aides, restaurer leur habitation), et ne devrait-on pas recourir à d'autres mécanismes fiscaux puisqu' environ la moitié des Français ne paye pas d'impôt sur le revenu ?

Pourtant, ce mécanisme, qui ne peut fonctionner que dans les villes où le marché locatif permet de louer des appartements à des prix suffisamment élevés pour que les investisseurs privés puissent intervenir de façon rentable, joue un rôle majeur : ainsi des opérations remarquables ,ont été conduites à Bayonne, ou une importante revalorisation de quartiers anciens de Marseille est en cours. Le coût de la moins-value fiscale fait l'objet d'estimation variables (entre 200 et 500 MF ; entre 30 et 78 Millions euros) .

### **3 Opérations programmées d'amélioration de l'Habitat (OPAH)**

Ces opérations (art. L. 301-1 code de la Construction issu de la loi du 13 juill. 1991) sont mises en place par une convention tripartite entre l'Etat, la commune et un établissement public (Agence nationale pour l'amélioration de l'Habitat , l'ANAH, financé pour l'essentiel par une taxe sur les loyers). Cette convention, à caractère incitatif, définit un périmètre d'opération (un quartier ou tout un centre ancien) , le montant des aides et subventions dont les propriétaires peuvent bénéficier de la part de l'ensemble des acteurs pour réhabiliter leurs immeubles, les actions d'accompagnement en matière de cadre de vie, de diversité sociale et d'équipements publics. Elle concerne les propriétaires qui louent leur immeuble (et dans ce cas, les subventions peuvent varier en fonction de l'effort fait sur le montant des loyers afin de favoriser l'habitat social) comme ceux qui l'occupent. Les propriétaires s'engagent à réaliser les travaux selon certaines normes, qui, dans les secteurs sauvegardés et les ZPPAUP , peuvent être très précises, ce qui conduit à augmenter le taux des aides pour tenir compte des surcoûts architecturaux. Les subventions accordées aux propriétaires bailleurs varient dans des conditions complexes : par exemple, pour un immeuble destiné à un logement très social, le taux de subvention peut aller jusqu'à 70 % . Si les immeubles sont insalubres l'aide aux travaux peut être

augmentée et peut se cumuler avec les subventions pour surcoûts architecturaux . Ces OPAH ne sont pas spécifiques aux quartiers anciens protégés (Secteurs sauvegardés et ZPPAUP) mais elles sont nombreuses en ces lieux et sont devenues, à côté de la restauration liée au mécanisme fiscal , une solution essentielle pour la réhabilitation de ces quartiers, notamment quand l'importance des travaux et la faiblesse des revenus des habitants exige une intervention lourde financée largement sur fonds publics . Seuls les propriétaires occupants aux ressources très modestes bénéficient d'une aide, elle-même d'un montant très modeste.

*De 1980 à 1997 (inclus ) il y a eu 162 OPAH en secteur sauvegardé ou lié à celui-ci. Si certains secteurs n'en ont connu aucune, les plus nombreux ont bénéficié de 2 ou 3 OPAH . Les subventions versées par l'ANAH ont été d'environ 1 milliards de francs sur toute cette période ( 660 millions effectivement versées , 390 millions dont le versement était projeté sans qu'apparaissent dans les statistiques les réalisations définitives). C'est donc en moyenne 60 millions de francs de subventions qui ont été versées ( soit environ 10 % des subventions totales en OPAH , de nombreuses OPAH ne concernant pas ces quartiers protégés) .*

*En ajoutant subventions de l'Etat et de l'ANAH , et le coût des procédures d'aides fiscales, mais sans tenir compte des concours des collectivités locales, ce sont donc environ 300 millions de francs par an qui sont affectés à la restauration des quartiers anciens.*

### III LE PATRIMOINE ARCHEOLOGIQUE

En France, le financement des fouilles archéologiques se fait essentiellement par deux procédés.

**L'archéologie programmée, dans le cadre de la loi du 27 septembre 1941,** permet à des organismes publics (ministère de la culture, universités, Centre National à la recherche scientifique) de faire des recherches scientifiques dans un secteur donné, sur la base d'un programme élaboré sur le plan national . Les sommes consacrées par le ministère de la culture et le CNRS, en crédits d'investissements (hors salaires des agents, etc.) a été de 38 MF en 1998 (5,80 millions d'euros) .

**L'archéologie préventive** , elle , s'insère dans un processus d'aménagement ou d'urbanisme. Il s'agit, conformément, à l'article 6 de la convention de Malte du conseil de l'Europe de 1992, de faire les études et les fouilles nécessaires pour qu'avant la réalisation des travaux la connaissance des archives du sol soit assurée. Le problème du financement de ces recherches archéologiques préventives est évidemment délicat. En France, à côté de quelques faibles subventions d'Etat (19 MF en 1998 , soit 3.5 Millions d'euros) elles reposent essentiellement sur un financement par l'aménageur public ou privé. Celui-ci, lorsque la zone en chantier est susceptible de contenir des vestiges archéologiques, passe une convention avec l'Etat et une association contrôlée par ce dernier (Association des fouilles archéologiques nationales AFAN ). L'Etat détermine ainsi les recherches à

faire qui seront effectuées , dans la quasi -totalité des cas par le personnel de l'AFAN. Même si , parfois, l'Etat peut attribuer quelques faibles subventions, l'aménageur paye à celle-ci le coût de ces opérations archéologiques. Ont ainsi été versé à l'AFAN, par les aménageurs, 378 MF en 1999 (57 Millions d'euros). Sur ce total seuls 35 % proviennent de fonds purement privés (carriers et promoteurs immobiliers). Les autres ( 65 %) ont été payés par le ministère de l'équipement, les sociétés d'autoroutes, les collectivités locales ou de la SNCF (pour la construction des lignes de TGV - plus de 100 MF -15 Millions d'euros - lors de la construction du TGV Méditerranée) notamment .

Les sommes ainsi payées entrent, ce qui est logique, dans le cadre des frais de l'entreprise, et viennent donc réduire le bénéfice imposable et par voie de conséquence le montant de l'impôt sur les sociétés ( art. 236 ter CGI, Loi du 30 décembre 1995)

Ce mécanisme que l'on retrouve dans son principe dans d'autres pays d'Europe ( financement par l'aménageur ) repose en France sur des bases juridiques fragiles. C'est pourquoi un projet de loi, déposé l'an dernier sur le bureau du Parlement, prévoit des règles claires : une redevance spéciale dont le calcul est fixé par la législation serait versé à un établissement public de recherche archéologique destiné à remplacer l'AFAN.

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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

**Germany**

**Dr. Werner Trützshler**

**FINANCING CONSERVATION AND  
RESTORATION IN GERMANY**

**FINANCEMENT DES TRAVAUX DE  
CONSERVATION ET DE  
RESTAURATION EN ALLEMAGNE**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

Dr. Werner von Trützschler

## Financing Conservation and Restoration in Germany

### I. The legal system of heritage protection

According to its constitution Germany has a federal structure. Besides the federal government (Bundesregierung) controlled by the Federal Parliament (Bundestag), there are 16 states (Länder) each having its own government with a prime minister at the top and its own parliament. Legal competences are divided between the Federation and the states. The area of culture, and thus heritage matters, falls under the responsibility of the federal states. Whereas the federal states participate in federal legislation through the Federal Council (Bundesrat) the Federation is not involved in state legislation.

Consequently, there are 16 different heritage laws in Germany, which however contain basically the same provisions. They all give a definition of a monument and regulate the procedures for identifying a monument and then entering it in a list of monuments or a "book of monuments", as the list is called in some states. Again, there are 16 different monument lists, as each state keeps its own list according to its own law. In some German states listing is a pre-condition for application of the appropriate provisions for protection; in other words, listing has a constitutive character as to the monument quality. In other German states listing has only a declaratory nature, meaning that the monument quality derives directly from the definition laid down in the law. In both cases the listing is proof of the monumental quality of a building and as such is accepted by the different authorities. Unlike the protection systems in other countries, France being the classic example, there are no legal categories of monuments. From a legal point of view all German monuments are equal. Especially in the practice of direct financing however, to say it as George Orwell, some monuments are more equal than others.

Besides individual monuments like historic buildings, the 16 German protection laws of course also contain regulations on archaeological monuments and on monument areas (ensembles) like historic districts. Monument areas usually contain a number of individual monuments of which both the exterior and interior are protected, as with all individual monuments, and further buildings which have no monument quality themselves but for which the exterior is protected as a part of the historic area. This differentiation is important for the extent of direct or indirect financial help given.

## II. Direct financial aid

Direct financial subsidies in the form of non-repayable or repayable grants are given for the restoration of monuments by the federal government, by the Länder and by district and local authorities, and of course also by the European Union, which runs a grant programme named Raphael concentrating on a different priority each year.

The federal government only gives grants for the restoration of monuments of national importance, a classification which does not exist by law. However, the largest amount of subsidies is given by the federal states. Grants may be given to private owners as well as to all other owners such as churches and local governments. The common feature of all funding schemes is that financial help is usually only given for additional expenditures resulting from compliance with restoration and conservation regulations, and not for the cost of normal upkeep such as incurs with any building. Usually, in order to receive a grant a consultant report is needed from the responsible authority, generally the State Conservation Office which exists in every federal state. All subsidies granted are voluntary financial contributions by the different authorities; in other words, no monument owner is entitled to claim financial help.

The sums handed out as subventions are about 500 million DEM (about 250 million Euro) annually given by the states and about 35 million DEM (about 17.5 million Euro) given by federal government. There are no figures on the amount spent by local authorities. Taking into account that there are over one million protected monuments in Germany the figures are not as big as they may seem. On the other hand the impact of the aid given is substantial as the annual turnover in the restoration business including the building part of it is estimated at 12 billion DEM (about 6 billion Euro).

Apart from these subsidies which are reserved for listed monuments or buildings which form part of a monument area, there are other schemes co-financed by the federal government, the federal states and local authorities, aimed at financing urban renewal and village modernisation. The legal instruments to define urban or village renewal areas are laid down in the Federal Building Act (Baugesetzbuch). The restoration of monuments is just one aspect of urban renewal. Accordingly, the funds spent on urban renewal are not primarily aimed at monuments, but monuments which are part of an urban renewal area may profit from these funds. However in eastern Germany within urban renewal a major effort was made after German unification to restore protected historic towns. For this purpose the federation, the states and the local authorities made a total of 3.27 billion DEM (about 1.635 billion Euro) in public funds between 1991 and 1997 available.

## II. Indirect financial aid through tax concessions

German tax law is federal law. However the revenues from most taxes are split between the federal government, the federal states and the local authorities, as is the case with the two most important taxes, namely turnover tax and income tax. Other taxes are due in full either to the federal government or to the federal states. Basically,

Accelerated depreciation  
(Amortization)

there is a different law for each tax and one law regulating taxation procedures (Abgabenordnung).

### 1. Income tax

The complete costs of rehabilitating a historic building of monumental character (Herstellungskosten - building costs) can be deducted from taxes over a period of ten years. This is an advantage in comparison to non-protected or new buildings because normally building costs can be deducted at a rate of only two or 2 ½% per year, depending on the age of the building, over a period of 40 or 50 years compared to the ten-year deduction period for the rehabilitation costs of a monument. This tax concession is dependent on the following conditions:

- \* the building has to have monumental character,
- \* the building costs have to be necessary for preservation of the building or for its future use, which has to be suitable to the character of the historic building, and
- \* these conditions have to be certified by the relevant conservation authority of the federal state in which the building is situated, which is normally the State Conservation Office.

In practice, this means that there has to be proof of all the costs and they have to be controlled and attested to by the competent authority.

These deductions apply to rented property. They are not restricted to the income which is produced by the property, but are also relevant for the total taxable income. Or in other words, if the income from the historic property is negative the possible deductions reduce the other taxable income of the owner (§ 7 i Einkommenssteuergesetz).

Same  
as  
France

The same ten-year deduction is also applicable on monumental property which is not rented but occupied by its owner (§ 10 f Einkommenssteuergesetz). This is a double privilege for owner-used property because under German tax law, with a few small exceptions, an owner may not deduct expenses arising from the house he lives in. The second advantage of course is the extent of the deduction.

Finally, the ten-year deduction period for rehabilitation costs also applies to historic buildings with monumental character which are neither rented nor used by their owners for living purposes if these buildings are opened to the public (for example a historic castle used as a museum) (§ 10 g Einkommenssteuergesetz). The conditions for the application of these tax concessions are the same as in the case of a monument producing rental income.

The provisions cited also apply to buildings which do not by themselves possess monumental character but which form part of a monument area, if the building costs are necessary for preservation of the general appearance of the ensemble; in practice this generally means the costs of work on the façade and the roof of a building.

maintenance costs are  
deductible.

Maintenance costs incurred for a rented building, which are difficult to differentiate from rehabilitation or building costs and which usually mean smaller repairs, can be deducted from income tax in a period between two and five years instead of the normal deduction within one year (§ 11 b Einkommensteuergesetz). Maintenance costs occurring with owner-used buildings can be deducted in the same way as rehabilitation costs within a period of ten years.

Costs which are covered by non-repayable grants can, of course, not be deducted from taxes.

The loss of income tax due to these tax reliefs was estimated by federal government in 1996 to amount to 175 million DEM (about 82.5 million Euro).

## 2. Other taxes

If the annual costs of a monument will regularly exceed the annual income from the property both real estate tax and inheritance tax can be reduced.

A complete exception from real estate tax is to be granted if costs exceed income consistently. Real estate tax is to be reduced if the income from the property is substantially lower than from a property with a building which is not protected (§ 32 Grundsteuergesetz).

Monuments are exempt from inheritance and donation tax if they have been within the owner's family for at least 20 years, if (again) the annual costs are higher than the income and if they are accessible to the public or, at least, to the scientific public for research. A tax reduction of 60% is granted for property which fulfills these conditions except for the 20 years of family ownership. These tax concessions are cancelled later with retroactive effect if the property is sold within 10 years after the date of inheritance or donation (§ 13 Erbschaftssteuer- und Schenkungssteuergesetz).

There used to be similar tax exceptions and reductions with property tax, as long as property tax was valid in Germany, which is no longer the case, although there is a political discussion of re-introducing property tax. With turnover tax there are no special regulations concerning monuments.

To conclude, let me say that I have given you the basics of the German tax regulations concerning monuments. I have omitted many details of these provisions, which make it complicated for an average tax payer to complete his tax return correctly. However, this system especially of income tax relief has proved very effective for the conservation and preservation of monuments, and it has been costly for the ministers of finance who regularly, that is within periods of 8 to 10 years, try to abolish these concessions.

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Dr. Werner von Trützscher

## **Financement des travaux de Conservation et de Restauration en Allemagne**

### **I. Le système juridique de protection du Patrimoine**

D'après sa constitution l'Allemagne a une structure fédérale. A part du Gouvernement Fédéral (Bundesregierung) contrôlé par le Parlement Fédéral (Bundestag), il y a 16 Etats (Länder) dont chacun a son parlement et son gouvernement à lui avec un Premier ministre à sa tête. Les pouvoirs législatifs sont partagés entre la Fédération et les Etats. Chaque Etat Fédéral est directement responsable de son domaine de la culture et du Patrimoine. Bien qu'un Etat Fédéral puisse participer à la législation Fédérale dans le Conseil Fédéral (Bundesrat), la Fédération n'est pas impliquée dans la législation des Etats.

C'est à dire qu'en Allemagne il y a 16 lois différentes de gestion du Patrimoine, dont les dispositions basiques sont cependant très similaires. Elles toutes donnent la définition d'un monument et réglementent la procédure d'identification d'un monument et de son enregistrement dans la liste de monuments ou dans le livre de monuments, comme on l'appelle dans certains Etats. Il y a alors 16 différentes listes de monuments, comme chaque Etat possède sa propre liste de monuments conformément à sa loi. Dans certains Etats allemands être porté sur la liste est une condition sine qua non pour l'application des dispositions de protection appropriées. En d'autres termes, le listing a une importance primordiale pour qu'un monument soit qualifié en tant que tel. Dans d'autres Etats allemands le listing n'est qu'une simple déclaration du fait que les qualités du monument sont directement définies dans la loi appropriée. Dans les deux cas c'est le listing qui fait preuve de la qualité monumentale d'un bâtiment et est accepté en tant que tel par de différentes autorités. Dans d'autres pays, dont la France est un exemple classique, le système de protection connaît les catégories légales de monuments. Du point de vue légal tous les monuments en Allemagne sont égaux. Mais pratiquement, surtout dans les cas de financement direct, nous pouvons dire après George Orwell, que *bien que tous les monuments soient égaux, certains monuments sont plus égaux que les autres.*

A part des monuments dans le sens strict du mot, comme des bâtiments historiques, les 16 lois de protection allemandes comportent bien évidemment les régulations concernant les monuments archéologiques aussi bien qu'ensembles monumentaux comme par exemple les quartiers ou districts historiques. Les ensembles monumentaux contiennent normalement un certain nombre de monuments à part, dont l'extérieur aussi bien que l'intérieur sont à protéger, mais dans plusieurs cas, ils comportent d'autres bâtiments qui ne sont pas protégés entièrement mais dont l'extérieur seulement est sous protection. Cette différence est importante pour définir le montant de l'aide financière (directe ou indirecte) accordée.

## II. Aide financière directe

Le financement direct sous formes de l'aide remboursable ou non remboursable qui est accordé pour la restauration des monuments par le Gouvernement Fédéral, par les Etats aussi bien que par les districts et les pouvoirs locaux. L'Union Européenne participe-t-elle aussi avec son programme d'aide nommé Raphael qui se concentre chaque année sur d'autres priorités.

Le Gouvernement Fédéral apporte son aide rien que pour la restauration des monuments de l'importance nationale, ce qui n'est d'ailleurs pas une classification légale. Tout de même les plus gros montants sont accordés par les Etats. Ces subventions peuvent être données aux propriétaires particuliers aussi bien qu'à tout autre propriétaire dont les églises et communes. Le trait particulier de tous ces schémas de financement est que les allocations ne sont habituellement données que pour compenser les dépenses supplémentaires résultant des travaux de restauration et conservation, mais pas pour payer le prix d'entretien normal qui doit se faire pour n'importe quel bâtiment. Une expertise par les autorités (telles que l'Office d'état de Conservation qui existe dans chaque Etat Fédéral) est nécessaire pour avoir une telle subvention. Toute subvention financière de ce genre est une contribution volontaire des différentes autorités ou, en d'autres termes, aucun propriétaire d'un monument n'a le droit de réclamer cette aide financière.

Les montants des subventions sont à peu près 500 millions DEM (environ 250 millions Euros) donnés par les Etats et 35 millions DEM (environ 17.5 millions Euros) par le Gouvernement Fédéral. Considérant que le nombre des monuments protégés surpasse un million les sommes ne semblent pas très grandes. D'autre part l'impact est considérable puisque le chiffre d'affaires pour la restauration des immeubles historiques est estimée à 12 milliards DEM (environ 6 milliards Euros).

A part ces subventions qui sont réservées pour les monuments « listés » ou des bâtiments faisant partie des ensembles monumentaux, il y a d'autres schémas cofinancés par le Gouvernement Fédéral, les Etats Fédéraux et les pouvoirs locaux, qui visent le financement de la rénovation urbaine et la modernisation des villages. Les instruments légaux de définir les besoins de la rénovation des quartiers urbains ou ruraux sont fixés dans l'Acte Fédéral de la Construction (Baugesetzbuch). La

restauration des monuments n'est qu'un aspect de cette rénovation. C'est à dire, les ressources de la rénovation urbaine ne sont pas destinées pour les monuments, mais les monuments en tant que part des quartiers sous rénovation peuvent s'en profiter. Cependant en ce contexte en Allemagne de l'est une programme sur la restauration des villes historiques protégées était commencée après unification de l'Allemagne dans laquelle 3.27 milliards DEM (environ 1.635 milliards Euros) étaient dépensées entre 1991 et 1997.

### **III. Aide financière indirecte par l'exonération des impôts**

La loi fiscale allemande est une loi fédérale. Tout de même le revenu provenant de la plupart des impôts est partagé parmi le Gouvernement Fédéral, les Etats Fédéraux et les autorités locales, comme en cas des deux impôts les plus importants : taxe sur la valeur ajoutée (TVA) et impôt sur le revenu. Tous les autres impôts sont payés intégralement soit au Gouvernement Fédéral soit aux Etats Fédéraux. En fait, il y a une loi spéciale pour chaque impôt et une loi de plus qui régit la procédure de taxation (Abgabenordnung).

#### **1. Impôt sur le revenu**

Le coût total de restauration d'un bâtiment à caractère monumental (Herstellungskosten) peut être déduit des taxes pendant une période de 10 ans. C'est un avantage par rapport à des bâtiments neufs ou non-protégés dont il est déduit à raison des 2% ou 2,5% par an seulement (fonction de l'âge du bâtiment), ce qui est d'habitude une période de 40 à 50 ans. Cette exonération dépend:

- \* du caractère monumental du bâtiment,
- \* du fait que le coût de restauration du bâtiment couvre les travaux indispensables pour la préservation du bâtiment ou pour son usage dans l'avenir et qu'ils n'altèrent pas le caractère historique du bâtiment et
- \* les conditions ci-dessus sont certifiées par une autorité de l'Etat ou le bâtiment se trouve (et qui est normalement l'Office d'état de Conservation).

Dans la pratique cela veut dire que toute dépense doit être contrôlée et approuvée par une autorité compétente.

Ces déductions sont applicables aussi bien sur la propriété en location et ne portent pas seulement sur le revenu qui est produit par la propriété, mais sur le revenu total imposé. Ou, autrement dit, si le revenu d'une propriété historique est négatif, la déduction peut réduire d'autres recettes imposables du propriétaire (§ 7 i Einkommenssteuergesetz).

La même déduction en 10 années est applicable sur une propriété monumentale qui n'est pas louée mais occupée par son propriétaire (§ 10 f Einkommenssteuergesetz), ce qui est un double privilège pour le propriétaire - parce que normalement selon la loi

Allemande (sauf quelques exceptions) le propriétaire ne peut pas déduire des taxes les montants dépensés sur la maison qu'il habite. Et le montant même de cette déduction est le second avantage.

Enfin, la déduction en 10 années est aussi applicable aux bâtiments historiques à caractère monumental qui ne sont pas loués ni habités par leurs propriétaires mais ouverts au publique par exemple un château historique utilisé comme un musée) (§ 10 g Einkommensteuergesetz). Les conditions pour l'application de cette exonération sont les mêmes comme dans le cas de revenu du bail d'un monument.

Ces provisions s'appliquent aussi aux bâtiments qui n'ont pas de traits monumentaux eux-mêmes mais qui par contre font partie des ensembles ou quartiers monumentaux, tant que le coût d'entretien du bâtiment comprend les travaux nécessaires pour la préservation de l'apparence générale de l'ensemble, et dans la plupart des cas ce sont des travaux sur la façade et le toit du bâtiment.

Les coûts d'entretien d'un bâtiment en location, qui sont difficiles à distinguer des coûts des travaux de réhabilitation et qui sont normalement des réparations mineures peuvent être déduits de l'impôt sur le revenu dans la période entre deux et cinq ans tandis que la déduction normale se fait en une année (§ 11 b Einkommensteuergesetz). Les coûts d'entretien d'un bâtiment utilisé par son propriétaire se déduisent comme les coûts de réhabilitation dans la période de 10 ans.

Les coûts qui sont couverts par un aide non-remboursable ne peuvent bien évidemment pas être déduits des impôts.

La perte en impôts de revenu à cause de ces soulagements était estimée à 175 million DEM (environ 87.5 millions Euros) en 1996.

## 2. Autres impôts

En cas où les coûts annuels d'un monument dépassent régulièrement le revenu annuel de la propriété, l'impôt immobilier et l'impôt héréditaire peuvent être réduits.

En cas où les coûts d'un monument dépassent de trop le revenu, une propriété peut être exonérée totalement de l'impôt immobilier. L'impôt immobilier peut être réduit en cas où le revenu d'une propriété est essentiellement plus bas que d'une propriété bâtiment qui n'est pas protégé (§ 32 Grundsteuergesetz).

Les monuments sont exonérés de l'impôt héréditaire et donataire s'ils appartiennent à la famille du propriétaire pour au moins 20 ans, et si (toujours) les coûts annuels sont plus hauts que le revenu, et si ces monuments sont accessibles au publique, au moins, aux savants pour leurs recherches. Une réduction d'impôt de 60% est accordée aux propriétés qui remplissent toutes ces conditions sauf celle de l'appartenance à la famille au cours de 20 ans. Cette exonération est supprimée d'une façon rétroactive si la

propriété est vendue dans les 10 années suivantes la date de l'héritage ou de donation (§ 13 Erbschaftssteuer- und Schenkungssteuergesetz).

C'était pareil pour l'impôt sur la propriété, tant qu'il en existait un en Allemagne, ce qui n'est plus le cas. De larges discussions politiques se mènent, quand même, autour de la re-introduction de l'impôt sur la propriété. Il n'y a pas de régulations spéciales concernant la taxe sur la valeur ajoutée (TVA).

En conclusion, permettez-moi de vous dire que je viens de vous donner l'aperçu général des régulations fiscales allemandes concernant les monuments historiques. J'ai omis plusieurs détails de ces provisions, qui compliquent le paiement correct des impôts pour un sujet imposable moyen. Tout de même, ce système surtout en ce qui concerne les franchises de l'impôt sur le revenu a fait preuve de son efficacité pour la conservation et préservation de monuments bien qu'il était couteux pour le ministre des finances qui tentent chaque 8 ou 10 années de supprimer ces exonérations.

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INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

ICOMOS – CROATIA

INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

**Hungary**

**Adam Arnuth**

**PRESERVATION AND DEVELOPMENT**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

FOR JADRAN ANĐLOVIĆ FROM ADAM ARNÓTH, BUDAPEST

## PRESERVATION AND DEVELOPMENT

### CASE STUDY: Tokaj, Wine Region (Brijuni, 2000)

Tokaj Wine Region is located in North-Eastern Hungary, in Borsod-Abaúj-Zemplén county, by the foot of the Zemplén mountains where the great Hungarian Plain begins.

In spite of its former fame this region had been neglected for 50 years after World War II. During this so called socialist period the local possibilities and traditions were not considered. Mass production industry and agriculture were favored everywhere. For this purpose the western part of the county was much more suitable than the Tokaj region with its rich natural beauty, cultural traditions and famous historic wine.

Tokaj Hegyalja has been a wine region since the middle ages. However, its golden age started in the 16th century when the Turks occupied the so far most important wine region of Hungary called Szerémség. Tokaj, then, took over this leading role.

The high sugar content and acidity of the Tokaj wine does not only give its unique favor but also makes its transportation easy. It was transported mainly towards the North-East. The Russian czar even had his own wine trading agency in Tokaj in the 18th century. However, the wine was famous in Western-Europe as well. It reached the tables of the Vatican, and several royal palaces. It was praised by Voltaire, Schubert even wrote a song about it. As Louis the 14th said, "Tokaj wine is the wine of the kings and the king of the wines."

The Tokaj region was always open for emigrants. Italians and French settled here in the middle ages who supposedly started cultivating vine. In the 17th century the Greek fleeing from the Turks became active in wine trading. Later in the 18th century the Jews coming from the North-West and East took over this role. The decay started at the end of the 19th century with a wine disease called filoxera. Later, after the Second World War the poor economy and low-quality market demand determined the fate of the Tokaj wine.

Beside wine, the Tokaj region is famous for its rich cultural traditions. Already in the middle ages a new form of settlement, the agricultural town became characteristic of the region. This so called 'oppidum' is a transition between the village and the town. Fortunately, much was preserved from the middle age architectural heritage since this area was not under Turkish occupation. It belonged to Historic Royal Hungary, but most of the land belonged to the princes of the independent Transylvania. The heritage of the local provincial renaissance can also be found here.

The region played an important role during the age of reformation. The first Protestant school was founded in Sarospatak in 1531 and the Bible was first published in Hungarian here in 1590.

In later centuries development followed the same track. It seems logical that the present development should also be based on these local possibilities and traditions. A few years ago an electric battery factory highly endangering the environment was proposed to be built in one of the villages. Fortunately, thanks to mass demonstrations by the local wine-growers and media campaign this plan was dropped. This event has become the symbol of choice of career of the region. For this industrially underdeveloped region wine growing, culture and tourism naturally offers the possibility for an outbreak.

This is the point where the National Board for Protection is able to help. If the local development is based on traditions, we can give grant for restoration, help to find the new function of old buildings and give advice in how to present the traditions.

Our institute was founded in 1957. Its main tasks have been listing, researching, design, restoring and giving consents to works. Before the political changes restorations of historic buildings were of very high quality, but their number was unfortunately not significant. Most of the work was done on church buildings and museums which gave no possibility for integration into the new economy. Monument protection and economy used to be two independent fields. Economy did not give support to historic buildings and monument protection did not take part in the economy. Since the political changes the number of restorations done with state support has unfortunately declined, however, at the same time two areas of new partnership have been built between monument protection and the economy, namely wine growing and tourism.

In order to regain the former fame of the Hungarian wine relatively large investments were needed. To have capital for these the former state-owned giant wine company was privatized. It was bought in large part by foreign wine companies. These new owners see wine production in its large framework, wine growing together with wine production and the cellar together with the historic house. The house rooms administrative offices and plays a very important role in representation and tourism. The image of the house - the chateau - can be used as a beautiful logo, for instance. A French company restored the Dessewffy house in Tokaj, and an other one the Patay wine house in Disznókő. A Spanish firm is restoring the Körtvélyessy mansion, an American firm is renewing the Royal yard in Tarcsl. A synagogue was bought by a Finnish cutlery producing firm and it was turned to be a studio and gallery.

National monuments play an important role as infrastructure for tourism. Important historic buildings in Tallya and Tarcsl were renewed by the local governments to become hotels. The Castle Inn in Szerencs was renewed as well. A baroque style historic building in Sárospatak was turned into a restaurant. The same firm started restoring a bastion to room a small hotel. Wine tasting in most places is in renewed several hundred-year-old cellars. The number of points of interest for tourists keeps increasing by newly restored historic buildings.

The Music Days in Zemplén is one of the most important music festivals of the country. Concerts are held in renewed national monuments, churches, palaces and castle yards.

Since 1990 the museums have been facing a lot of hardship. Only those able to enlarge their exhibition and extend their profile could retain their significance. Such is, for example, the Rákóczi castle in Sárospatak, which is the scene of numerous important concerts.

Historic researches proved that a kitchen had operated in one of the bastions of the Sárospatak castle since the 16<sup>th</sup> century. This gave the idea of organizing historic renaissance feasts in the renewed castle.

These examples show that the political and economic changes have not even left monument protection untouched. Some of the national monuments were able to get integrated into the new economy. The future of these is solved, however, professional supervision by the National Monument Preservation Office is constantly needed here as well. In the case of 'non-commercial' historic monuments not only professional but also financial state support is necessary.

*And*

(THE PRESENTATION WILL BE ILLUSTRATED BY SEVERAL SLIDES)

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

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Brijuni, May 3 – 6, 2000

**Israel**

**Gideon Koren**

**THE ECONOMIC IMPACT OF FINANCING  
CONSERVATION AND RESTORATION  
– THE ISRAELI CASE**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## The Economic Impact of Financing Conservation and Restoration

(the Israeli Situation)

by Gideon Koren, advocate<sup>1</sup>

### A) Introduction

The State of Israel is barely 50 years old. However, the land of Israel has a heritage dating back centuries. The history of the country stretches over a period of some five thousand years. During this time the land of Israel was governed by many different nations, each one leaving its influence on the legal system.

Due to this extraordinary history, the legal situation in Israel, in any field, is difficult to understand without describing, at least in brief, the "background" of the origins of the legal system. This is especially true when discussing real property laws.

Between the years 1516 to 1917, the land of Israel was part of the Ottoman Empire. The Ottomans legislated the main real property law in 1858. Its main effect was to divide real property into 5 categories, each one subject to different rules. Such a system was suitable for the primitive agriculture society that was governed by the feudal Ottoman structure of that time.

This law was amended and totally changed in Turkey years ago. It is a historical curiosity that today, the only recognizable remains of this law are within the Israeli legal system. The main reason for this is the legal system that existed in Palestine under the British mandate, between the years 1917 - 1948. The mandatory legislator left the Ottoman laws "as they were" until and unless changed by new statutes. In some fields new ordinances were legislated, introducing into the legal system "norms" based on the common law tradition. In 1922, a new ordinance established that any "gap" (lacuna) in the local law would be "filled" by a referral to the English legal system. Due to this fact the Ottoman legislation was "injected" into the legal system as a result of this ordinance.

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In 1948 the State of Israel was declared and the war of independence broke out immediately. The new government had to deal with fending off the attacks on the fledgling country and had little time for legislating. The government did pass one main ordinance. It stated that all the mandatory statutes would stay in effect as long as they did not contradict future Israeli statutes. Therefore, the 1922 mandatory ordinance remained influential on the Israeli legal system for more than 30 years, until the Israeli Parliament decided to abolish it, in 1980. Even then, the new statute declared that the "gaps" filled in accordance with the 1922 ordinance, *i.e.*, be referral to English Law, would remain so filled.

At the same time, the Israeli Parliament was very active in legislating new statutes in all fields. Some of the new statutes enacted were modeled after continental laws. Others followed the common law traditions, while others still were based upon American concepts. In some cases, it is fair to say that the legislator referred to no source other than his own creativity (or imagination).

Thus, finding an answer to a simple question, or describing the legal situation regarding a specific issue can be rather complicated. Sometimes this may seem to be very "unofficial" to those accustomed to a more "mature" and comprehensive legal system.

In Israel a very clear distinction must be made between the activities of formal state authorities and the incentives given to private people and organizations. Therefore, in this article we shall deal separately with these two issues, although they share two similar characteristics. Primarily, the economic impact of financing conservation and restoration will be quite the same in both cases. Secondly, since the incentives are also drawn from the public budget, and the country still has other financial priorities, there never seems to be sufficient allocation of funds for these important goals.

#### B) Public Authorities

The building culture in the land of Israel of ancient times is anchored in the "Law of Antiquities". Under this law an antiquity is defined as any asset which was manmade before 1700 A.C. Under this law a special Antiquities Authority was created. Any antiquity found in Israel is immediately and automatically owned by the state. The

land in which it was found or excavated will also become automatically state owned and the antiquities authority is entitled to the possession of such antiquity or land. The only duty of the state is to pay expropriation damages to the owner of the land once the land is expropriated from him under this law.

Any antiquity is protected from any destruction and any physical change, unless the Antiquities Authority allows the owner to take minor steps which shall not damage the site. Thus the antiquity sites are relatively protected, but since they are in the hands of a government authority, the level and quality of the preservation will be based on the financial ability of the authority to preserve these antiquities. Since Israel is so rich with antiquity sites the definition of antiquities is a technical one, and the budget allocated to the antiquities authority is limited. The result is that some antiquity sites are well preserved, while others do not enjoy the same quality of preservation.

In 1963 another law was accepted by the Israeli Parliament - the law of national parks, nature reservations and national sites. This law formed a new government authority, which was vested with the task of being in charge of all national parks. A national park or site is declared as such by the minister of Interior and many of the antiquities sites have indeed been declared as national parks. In such a park the National Parks Authority is entitled to take any steps to gain possession of the land and is vested with the task of maintaining the park and the antiquities in it.

Many of the buildings and sites dating later than 1700 A.C. remained without any legal protection.

It is regrettable that Israel was not successful in creating such protection for the material heritage built up in recent centuries, as it did for the built up heritage of earlier times. A public awakening to the importance of preserving these buildings made itself felt only following the destruction of historic sites over a period of several decades, and yet, no public authority was vested with the responsibility for the preservation of such sites.

It should also be noted, that local authorities in Israel, such as municipalities and regional councils, have no legal obligation to preserve buildings or sites within their geographical jurisdiction. The decision whether to promote preservation in any municipality, even as important as Jerusalem, lies solely at the discretion of the local municipality. On the other hand, the municipality is obligated by other laws to be responsible for the education, health, street lighting and maintenance and many other duties, to which it must allocate sufficient funding. Since preservation is costly and the authorities always seem to lack sufficient funds, preservation is found, if at all, at the bottom of the municipalities "priority list".

The result of this situation was very frustrating to everyone concerned with the preservation of the physical heritage in Israel. Many sites owned by private individuals could be and have been destroyed in many ways. Sometimes the owners themselves altered the buildings and even replaced them with new modern buildings. In other cases, the land was sold to entrepreneurs. The result was the same. Several decades passed by before a public awareness forced the Israeli Parliament to deal with this issue and to create new mechanisms to preserve these buildings and sites. The steps taken included a few legal amendments which will not be dealt with within the scope of this article. I will deal only with the amendments that created some financial incentives contributing to preservation. Here-under we shall present the different incentives that exist in Israel.

### C) Tax incentives

Naturally, the various tax ordinances in Israel do not relate directly to preservation. The basic principle in tax law is usually, that tax is imposed on all of a tax payer's income. On the other hand, all expenses wholly and exclusively incurred in the production of the income, may be deducted from it. This principle applies to private people, companies, and other forms of conducting business alike.

In general, "spending" money on preservation of sites or conservation of heritage cannot be deducted from income, since there is no direct connection between the expense and the producing of income, but there are a few exceptions:

First, if the preservation is that of a building owned by the same legal entity which advances the money for preservation, the expense will, in general, be tax deductible.

Second, a business legal entity, such as a company, may gain some publicity or "image improvement" in the eyes of the public, as a result of investing efforts in preservation. In general, any amount spent on advertising the company can be tax deductible. Thus, a company may claim that its involvement in preservation improved the public attitude towards the company and should, therefore, be recognized as advertising. Since the company will still have to prove the existence of a direct connection between the expense and its income, it may find itself, at the end of the day, with an expense not recognized by the tax authorities. Therefore, a company, or any other legal form of business, will probably prefer to invest in a different area of public benefit, such as the sponsorship of sports or cultural activities, where the expense is more likely to be tax deductible.

Unlike many other countries, Property tax and Inheritance tax do not exist in Israel. Therefore, no incentives connected to these taxes can be made.

#### D) Non-profit Organization

Israel is very unique in the legal form for recognizing the existence of a legal entity for the purpose of non-profit activities. It does not have the legal form of a "charity" known in many countries. In Israel, the legal entity for no-profit organizations is called "amuta" and is not equivalent to the legal forms known in many countries as "trust, "public endowment", "association" or "foundation".

One of the objectives of an "amuta" is the furtherance of a public purpose. The term "public" is to be contrasted with "personal". The meaning of the word public is that the beneficiary from the activities of such a legal entity is not a particular person or institution. As a whole it can also refer to a specific group of persons with a particular characteristic, for example, a group of persons interested in preserving a certain building or site, or in the preservation of a certain cultural heritage, such as language, style of music, dance etc. It must be noted that Israeli society is comprised of people belonging to a large variety of religions: many are secular, coming from different countries in the Jewish Diaspora. Each group maintains different forms of cultural and religious customs and traditions. Therefore, the mere definition of "heritage" in Israel is a very difficult task. However, many sectors of the population maintain their own heritage under under such "amuta"s.

Under Israeli law, the government may decide to allocate a part of its budget for the purpose of supporting public organizations and "amuta"s. Within the scope of this article, we cannot go into the complex bureaucracy connected with such financial support. Nevertheless, it should be noted that in Israel it is almost impossible to get any financial support, from government or municipal authorities, unless the application is submitted to the authority by a non-profit organization. Creating the legal form of an "Amuta" is basically the only way to get such government or municipal grants.

In addition, one of the major advantages of an "amuta" is that it is entitled to operate, tax-wise, as a non-profit organization. Under Israeli tax law, one of the major advantages of being a non-profit organization is that private people and commercial legal entities (such as companies, partnerships and co-operative societies) are entitled to contribute funds to such endowments and declare the contribution as tax deductible. Thus, whenever funds are needed for the preservation of a certain building or site, the financing of the conservation or the restoration of heritage, an "amuta" may be created and its existence may encourage financial contributions from those interested in it.

A few conditions limit this option:

- 1) The non-profit organization must be a separate legal entity. In relation to some buildings and sites which need preservation, such a legal entity does not necessarily exist.
- 2) The legal entity, known as "Amuta", must be formed by private individuals, interested in promoting the preservation of a site or the conservation and restoration of heritage, and in creating the legal entity to which money can be donated. There is no incentive for establishing such a legal entity, and no way to enforce the existence of one.
- 3) If the entity is established, it has to be recognized by the tax authorities as a non-profit organization. There are a few conditions the entity has to fulfill to get such recognition, some of which limit the scope of activities such an entity may engage in.

- 4) The amount one can contribute to a non-profit organization is limited, both by the total amount and by the percentage of the contributor's income it represents, which may be tax deductible. These conditions vary from one legal form of the contributor to another, but in any case an unlimited contribution is not possible and the amounts are very limited especially with relation to the high costs of renovation and preservation.
- 5) The non-profit organization may not be involved in any business activity. If it conducts any activity which is undertaken by business entities as well (such as selling products, tickets, etc.), it may forfeit its recognition. This creates a lot of difficulties for groups interested in forms of cultural heritage.

Thus, an "amuta" may be utilized as a legal form for a variety of interests, including preservation. Nevertheless, the problems mentioned above apply to many other "amuta"s as well, making this legal form not easily applicable for encouraging private participation in preservation.

#### E) Planning and Building Law

This law became the "host" for dealing with the legal needs of physical preservation of buildings and sites. This law's main thrust is to establish a network of national, regional, local and detailed planning schemes and to ensure that all building and development will take place within the framework of an approved building plan. Any proposal for the preservation of a building or a site has to be approved under the legal mechanisms governed by this law. Funding problems connected with proposals for the preservation of sites are dealt with very carefully in this law. There are four categories of funding problems connected with the preservation of sites, according to this law:

##### *(1) Monetary Damages Awarded By Law*

By law, there is a right to compensation for devaluation of property as a result of the approval of a scheme. Property is not considered devalued should the proposal contain certain conditions, such as restrictions on changes to regions and the use of land within them, and restrictions on changes to uses of buildings. No compensation is paid if the infringement is not unreasonable in the specific circumstances and it would be unjustified to award compensation.

The courts in Israel have concluded that there is a difference between compensation due for devaluation of property and compensation due for expropriation of property. Since the ultimate decision as to the entitlement to compensation rests with the courts, and since such a procedure may take many years, a local authority may not estimate correctly the cost of awarding compensation. Consequently, the local authority may decide that the cost of preservation is unjustified and therefore may, at any time, withdraw the proposal or cancel the scheme.

(2) *Betterment Tax*

The levy of betterment tax serves local councils as a source of funding for preservation activities and as a source for compensating owners of properties for which proposals for preservation have been withdrawn. It does not have an influence on the private participation in the preservation of sites.

(3) *Maintenance and Renovation Expenses*

The preservation of sites committees have the authority to interfere with the property rights of land-owners and possessors. They must be aware that conditions warranting the intervention of the committee for preservation exist. The first condition is that an engineer of the local council give his or her opinion with respect to the state of the property stating that there is a real danger to the preservation of the site. Then, the preservation committee will decide if there is in effect a danger to the preservation of that site. Should the committee decide that such a danger exists, it may require the owners to undertake maintenance work within a prescribed period of time. Should the owners fail to do so, and there is a danger that the site may be destroyed, the committee may undertake such work as is necessary in order to prevent the destruction of the site. The committee can then, at its discretion, bill the cost of such work to the owners.

*(4) Expropriations*

The most serious infringement upon property rights is expropriation. Expropriation is mandated only in cases where the owners or possessors of property have failed to undertake maintenance works necessary for the preservation of a site or the prevention of its destruction. Another pre-condition for expropriation is that a real danger exists that the site will be damaged in such a way as to endanger the goal of preservation. Expropriation may be made to all or part of a site.

Since expropriation is such a drastic action taken against owners or possessors of property, it may be carried out only with the permission of the local authority.

Under Israeli law, once a land has been expropriated, the local authority may sell it or lease it, on condition that the preservation of the site is guaranteed by the buyer or tenant. For a period of 60 days, the previous owners or tenants of the site have the exclusive right to purchase or lease the site, as the case may be. Of course such right is conditional to the same guarantee of preservation mentioned above. It can be assumed that if the previous owners or possessors did not undertake the actions necessary for the preservation of the site upon being requested to do so originally, a strong guarantee will be requested of them should they wish to exercise their exclusive right to re-purchase or re-lease the property.

**F) Practical Example**

One of the most famous examples in Israel for the economic impact of financing conservation and restoration is the case of the "Nahlat Shivah" quarter in Jerusalem. This neighborhood was one of the first to be built and inhabited outside the old city walls in the late 19<sup>th</sup> century. The buildings were mainly two floors high and are to this day located in the center of Jerusalem's urban life. During the 1950s, Jerusalem expanded to the west, and the majority of the population resided in more modern neighborhoods. As a result, the historic quarter was inhabited by families of the lowest socio-economic class, resulting in the deterioration of the area to one of crime and neglect. Consequently, the historic buildings were on the brink of ruin, the families having no adequate financial resources, even for the treatment of a leaking roof and certainly not for any conservation or restoration.

The obvious destiny of the buildings was prevented thanks to the initiative taken by some preservation minded organizations and the municipality of Jerusalem. Financial resources have been devoted to restore all the significant buildings on the basis of a few principles. First, the municipality, assisted by the Israeli government, allocated funds to the preservation and restoration of the majority of buildings in the neighborhood. Simultaneously, according to a mutual agreement between the municipality and the tenants, the latter agreed to waive their rights to live in the ground floor of each building set off against their duty to participate in the payment for the preservation works. This could be imposed on them by a special law enabling the local municipality to force restoration of a building provided that the municipality will participate in 50% of the expenses. Furthermore, according to the same agreement, the area was declared a commercial zone instead of a residential one. This agreement enabled many ventures to enter the quarter, opening shops, restaurants, arts and crafts workshops, art galleries, coffee shops, pubs etc. to occupy the ground floor of the buildings. As a result, a lot of businesses pay full municipality taxes for commercial activity to the Jerusalem municipality, which was reimbursed for the funds devoted to the restoration of the quarter and after a period of 8 years it even started making a "profit" as a result of this decision.

Since then, this method was adopted in a few other cases.

#### G) Future Options

It is clear that the situation in Israel regarding the possibilities to encourage preservation of sites and conservation and restoration of heritage is not satisfactory. Any amount of money devoted to these important goals will be at the expense of public resources. From a financial point of view, the government officials see the allocation of money to the government authorities dealing with these goals as equal to giving up any taxes due to them. Therefore, it all focuses eventually on one basic question - how much money is the government willing to devote to the preservation of sites and the conservation of heritage.

Nevertheless, it is the belief of those concerned with these important goals that it is important to create new mechanisms to support and encourage financial participation in the preservation of buildings and sites and the conservation and restoration of heritage. Among the suggestions being discussed are the granting of exemptions from municipal taxes, reducing betterment taxes, recognition of expenses connected with preservation for the purposes of deduction from land appreciation taxes levied on the sale of a property and finally the earmaking of building license fees collected for creating a special budget for preservation.

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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
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Brijuni, May 3 – 6, 2000

**Japan**

**Toshiyuki Kono**

**THE ECONOMIC IMPACT OF  
FINANCING CONSERVATION AND  
RESTORATION IN JAPAN**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

To Mr Jadran Antolovic Fax 385-1-4611805

12 pages

## THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND RESTORATION IN JAPAN

Prof. Toshiyuki KONO (ICOMOS JAPAN)

- I Introduction
- II Tools for financing conservation and restoration in Japan
  - 1. Subvention
  - 2. Tax exemptions
  - 3. Special low interest rate loans
- III Other tools?

### I. INTRODUCTION

In contrast, to federal states such as Germany or the United States, Japanese policies on the preservation of cultural heritage are determined by central government. The Agency for Cultural Affairs as a division of the Ministry of Education is in charge of these policies. The primary legal instrument is the Law for the Protection of Cultural Properties. This law covers tangible cultural properties which include designated Important Cultural Properties and Registered Tangible Cultural Properties, intangible cultural properties, folk-cultural properties, buried cultural properties, historic sites, places of scenic beauty, natural monuments, preservation districts for groups of historic buildings, and protection of traditional techniques for conservation of cultural properties. Financial support for the preservation of these cultural properties is offered by the state.

However, it would be wrong to assume that local government plays no role in this area. After all, many cultural properties are important, precisely because they exist in a local context. Within the framework of "local self-governance" each municipality may therefore take initiatives to preserve cultural properties, i.e. each municipality can designate by ordinance the cultural properties which are located in its area as locally

important cultural properties, but which are ~~not~~ covered by the Law for the Protection of Cultural Properties. The financial measures offered to these local cultural properties are also based on local ordinances.

## II. TOOLS FOR FINANCING CONSERVATION AND RESTORATION IN JAPAN

### I. SUBVENTIONS

The State subvention system for cultural properties was started in 1897 under the Law for the Protection of Temples and Shrines. Initially, it was 0.05% of the national general accounts budget. Temples and shrines were at that time financially exhausted due to the western culture oriented social trend in the period after the Meiji Restoration.

In 1920, the Law for the Protection of Historic Sites, Places of Scenic Beauty and Natural Monuments was enacted. This law covered gardens in temples and shrines. In 1929, the Law for the Preservation of National Treasures extended cover to cultural properties owned by private persons.

After WWII, the Law for the Protection of Cultural Properties replaced the above mentioned laws and now stipulates all subventions for cultural properties.

A. At a State level, subventions can be classified according to the following underlying conservation policies:

#### (1) Conservation

The objectives of this policy are mainly to designate important cultural properties including national treasures. There are three categories of subvention for this policy:

- (a) Support for the conservation of buildings and other treasures. This includes payment of subsidies for the conservation costs of nationally-owned cultural properties, and payment to the owners of cultural properties, or their appointed custodial bodies, of subsidies for their conservation and for the installation of disaster-prevention systems and other facilities required for their protection.

(b) Purchases of national treasures, important cultural properties and other items of cultural value, which means special purchases by the national Government to prevent national treasures, important cultural properties and other items of cultural value from being scattered and lost or exported overseas.

(c) Support for the establishment of cultural property preservation facilities in local communities, which cover the payment of subsidies to owners, their appointed custodial bodies or local governments, for establishing cultural property preservation facilities and archaeological centers.

The budget for the preservation of national treasures and important cultural properties in the fiscal year 1999 was ca. 12 billion Yen, ca. 15% of the entire budget of the Agency for Cultural Affairs.

## (2) Improvement and utilization

This covers historic sites and buried cultural properties and consists of the following three strategies:

(a) Support for the public ownership of historic sites, which means payment of subsidies to local government for the purchase of historic sites and other sites in order to protect them from land development projects and to promote their utilization.

(b) Support for the improvement and utilization of historic sites and other items, which includes payment of subsidies for local programs for conservation and for the installation of disaster-prevention systems and other facilities required for their protection, with special emphasis on the promotion of their utilization and payment of the costs necessary for conservation of the nationally-owned sites of Heijokyo and Asuka-Fujiwarakyo, ancient capitals of Japan.

(c) Support for the archaeological investigation of buried cultural properties, which covers payment of subsidies for excavation projects undertaken by local government during the course of construction by individuals, with the aim of striking a balance between the protection of buried cultural properties and land development activities.

This budget for maintenance and use of historic sites in the fiscal year 1999 was ca. 25 billion Yen, 31.2% of the entire budget of the Agency for Cultural Affairs.

(3) Opening expenses for national museums and related facilities, which include expenses for conducting research concerning the preservation and restoration of cultural properties.

The budget for this in the fiscal year 1999 was ca. 9 billion Yen, 11% of the entire budget of the Agency for Cultural Affairs, although this figure also includes the budget for opening museums.

(4) Subventions for the repair of houses listed on the National Register of Tangible Cultural Properties. When these houses must be repaired to preserve or to utilize them, half of the design expense is paid for by the State.

B. For each category of cultural properties, there are regulations with subtle differences concerning subvention. I will briefly describe the regulations for two types of cultural properties.

#### (1) Tangible Designated Cultural Properties

The owner or the custodial body should make the repair of these cultural properties (Art. 34-2). In cases where the owner of an important cultural property or its custodial body is unable to bear the large expenses required for the custody or repair of such a property, or where there exist any other special circumstances, the Government may grant a subsidy to the said owner or custodial body so as to cover part of such expenses (Art. 35). The reason of this restricted attitude of the Law concerning financial aid is that the owner can enjoy the increase of value of the cultural property after the repairs. In practice however, almost of all repair projects have been subsidized by the State.

In case any person intends to alter the existing state of an important cultural property or to do an act affecting its preservation, he/she must obtain the permission of the Commissioner of the Agency for Cultural Affairs. The State shall impose an indemnity

on any person or persons who have suffered a loss from the fact that they failed to obtain the permission (Art. 43).

The Commissioner may, when he/she deems it necessary for the preservation of an important cultural property, restrict or prohibit certain kinds of acts or order the provision of necessary facilities, within an area designated by him/her. The State shall indemnify person or persons who have suffered a loss from this (Art.45). This provision has rarely been applied.

Any person who desires to assign an important cultural property for consideration shall beforehand file in writing with the Commissioner an offer of sale of the said property to the State (Art. 46). The capital gain from the sale to the State or the municipality is not taxable.

Opening to the public of the important cultural property shall be undertaken by its owner or by the custodial body. The custodial body may collect admission fees from the visitors (Art. 47-2).

## (2) Historic Sites and Buried Cultural Properties

(a) In case any person intends to do an act altering the existing state of a historic site, place of scenic beauty and/or natural monument or an act affecting the preservation thereof, he/she must obtain the permission of the Commissioner. The State shall indemnify a person who has suffered a loss owing to the fact that he/he failed to receive permission. (Art. 80). This provision for compensation is of more importance than the equivalent provision (Art. 43) for important cultural properties, since lands designated as historic sites, places of scenic beauty or natural monuments may lose economic value due to the restriction of changes, while the economic value of tangible cultural properties increase after being designated as important cultural properties. In practice, before the introduction of this provision into the Law, the State purchased the lands that should be designated as historic sites, places of scenic beauty or natural monuments.

In case a local public body or other juridical person that is a custodial body deems it positively necessary to purchase the land or buildings or other fixtures to land involved in the designation as an historic site, a place of scenic beauty and/or natural monuments,

its custody, the State may grant a subsidy to cover part of the expenses required for the purchase. The percentage of this subsidy has remained constant at around 80%. By 1996, the municipalities purchased 2,502 ha., 12% of the land designated as an historic site.

(b) In the last 25 years, the number of discovered buried cultural properties such as shell mounts, swelling sites, ancient tombs and so on, has drastically increased. By 1975, 2,800 properties had been found. By 1986 this number had risen to 18,000, and in 1996 stood at 41,800. Most of them were found in areas, which are known as areas where cultural properties may be found (there are aprox. 300,000 areas). However some properties have been found largely by coincidence in areas where such discovery was not expected.

When any cultural property has been discovered through the excavation carried out by the Commissioner, or when an unearthed object has been presented to the Commissioner, the ownership thereof shall revert to the National Treasury, unless the owner of the cultural property is traceable. In this case the Commissioner shall so inform the finder of the said cultural property and the owner of the land where it was found, and shall pay them compensation corresponding to the value of the object. When the finder and the owner of the land are different persons, the compensation shall be given to them half and half. Unless it is necessary for the State to retain for itself the cultural property reverted to the National Treasury for the purpose of its preservation or in view of its utility, the Government may transfer the said property to the finder thereof or to the owner of the land where it was found, within the limits of the value corresponding to the amount of the compensation to be received by the said person. Unless it is necessary for the State to retain for itself the cultural property reverted to the National Treasury, the Government may transfer the said property without consideration or to assign it at a price lower than the current price to the local public body, which has jurisdiction over the land where the said cultural property was found. Between 1950 and 1996 only 206 cultural properties have been retained by the State.

Concerning buried cultural properties, one important aspect is not regulated by the Law, i.e. who bears the costs of excavation. However, there is a judgment on this issue and some consideration of this case will highlight the problem.

The facts were as follows: the plaintiff planned to construct a three-story building. Since

discovered, the Board of Education of the city A, which has jurisdiction over the protection of cultural properties in city A, requested to temporarily stop the construction. The plaintiff stopped the construction and made a report of excavation. The Board of Education made an "administrative guidance" to do excavation, and the plaintiff concluded a contract with the Association for Excavation whose president was the mayor of the city A and commissioned the excavation and paid one million yen (approx. \$10,000). The plaintiff filed a lawsuit against city A for the return of the paid money and the recovery of damages reasoning that administrative guidance is not lawful, since it forces the projector to do excavation at his or her own expense.

The plaintiff failed in both the first and second instances and the judgment of the Tokyo High Court became final. The High Court argued that "the appellant (plaintiff) agreed to

utilization are extremely important for the development and advancement of local culture. For these reasons, the ultimate responsibility for the protection of cultural properties within a given area rests with the local government.

Many local governments have passed regulations to protect the cultural assets within their jurisdiction that have not been designated as cultural properties by the national Government. Under these regulations, the local governments designate items that are of value to the community and devise measures to preserve and utilize them. In many cases they provide subsidies for projects related with the custody, repair and public display of cultural properties undertaken by owners and others entrusted with their care. They also facilitate public exhibitions of cultural properties by establishing art galleries, museums and historical and ethnological archives; conduct research of cultural properties; execute archaeological excavations of buried cultural properties and promote educational programs, projects to nurture an appreciation of cultural properties and a wide range of other activities aimed at furthering interest and awareness among the general public.

In addition, local government make preliminary studies of cultural properties that are being considered for designation by the national Government and assist and supervise local groups responsible for protecting intangible folk-cultural assets that have been designated by the national Government.

Projects for the protection of local cultural properties are usually subsidized by the state or by the prefecture or by the both. Compared with the regular subvention from the State, which is usually one third of the expense, the ratio of the subvention for the cultural properties is higher, i.e. usually 50%, especially for the purchase of sites up to 85%. This high ratio of the latter means that the purchase plays a role as an alternative to compensation for the control of the change of status quo.

## (2) TAX EXEMPTIONS

Tax incentives related to cultural properties are as follows:

- (a) Exemption on taxable gains. No tax is imposed when a movable property or building designated as important cultural property is transferred by an individual

to the national or a local government. In this case, the income tax both by the national Government and that by the local Government is exempt.

A 50% tax reduction is applicable when a cultural property, which is the equivalent of an important cultural property such as an item of important tangible folk-cultural property, is transferred to the national Government.

(b) Special reduction on capital gains. A special reduction or a claim of capital loss of up to 20 million Yen applicable when land designated as an important cultural property, historic site, place of scenic beauty or natural monument is transferred by an individual or an organization to the national or local Government: A special tax deduction of up to 20 million Yen (income tax) and capital loss of up to 20 million Yen (corporate tax).

(c) Reduction in inheritance tax. In the case of the inheritance of a private house designated as an important cultural property and its land, the estimated value of the inheritance is reduced by 60%.

(d) Exemption of fixed assets tax, special land holding tax and city planning tax. No fixed assets tax, special land holding tax, or city planning tax is imposed on a house or its land which has been designated as an important cultural property, important tangible folk-cultural property, historic site, place of scenic beauty or natural monument.

No fixed assets tax or city planning tax is imposed on listed historic buildings or other structures which are within an important preservation district for groups of historic buildings (except those used for entertainment activities) and for which public notice has been issued by the Minister of Education, Science, Sports and Culture.

The fixed assets tax for land on which are located listed historic buildings or structures that are within an important preservation district for group of historic buildings is reduced to within one half of the property's taxable value; the actual amount of reduction varies in accordance with the particular conditions within municipalities. The fixed assets tax for land for buildings and structures other than listed historic buildings or structures is also reduced in accordance with the

particular conditions within the municipalities.

Fixed assets tax for houses listed on the National Register of Tangible Cultural Properties is reduced to within one half of the property's taxable value; the actual amount of reduction varies in accordance with the particular conditions within municipalities.

### **3. SPECIAL LOW INTEREST RATE LOANS**

If the owner of a house listed on the National Register of Tangible Cultural Properties needs financial support to repair their house, they can use a loan with special low interest rates offered by Governmental banks, such as the Japan Development Bank, the Public Fund for Development of Hokkaido and Tohoku, and the Public Fund for the Promotion and the Development of Okinawa.

Besides the National Register, many municipalities including Tokyo introduced ordinances to preserve historic buildings that are not registered under the national law. The owner of these locally registered houses may be able obtain advantages in accordance with the policy of each municipality.

### **III. OTHER TOOLS?**

As we have seen, subvention and tax incentives are the two major tools. They are directly connected with the state and local government. Besides these, in my view, non-profit organizations have a lot of potential. To give more incentives to these organizations may be very effective for the preservation of cultural properties. It would be the next logical step.

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

ICOMOS – CROATIA

INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

## **Macedonia**

**Kira Petkovska**

**STATE OF ART AND PROBLEMS OF THE  
ECONOMIC IMPACT OF FINANCING  
CONSERVATION AND RESTORATION OF  
CULTURAL PROPERTY IN THE REPUBLIC  
OF MACEDONIA**

**Ljubica Risteska**

**PROPOSALS FOR IMPROVEMENT OF  
THE ECONOMIC IMPACT OF FINANCING  
CONSERVATION AND RESTORATION OF  
CULTURAL PROPERTY IN THE REPUBLIC  
OF MACEDONIA**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

**STATE OF THE ART AND PROBLEMS OF THE ECONOMIC IMPACT OF FINANCING  
CONSERVATION AND RESTORATION OF CULTURAL PROPERTY THE IN THE  
REPUBLIC OF  
MACEDONIA**

**By**

**Kira PETKOVSKA  
The Republic of Macedonia**

The territory of the R. Macedonia is abundant with huge cultural goods. So, there has been a present care and support by the legislator in sense of development and sophistication of the system of protection of cultural goods, conservation and restoration, with which their importance would be shown totally, as well as its goal that has to be achieved through protection of this kind. As a material of special interest for the Republic, culture is ranged in constitutional category; with special decree, where it is said that cultural goods is property of common interest which enjoy special and guaranteed protection.

With this constitutional decree we should understand once more the importance and seriousness in the access of protection not only as an interesting but also as a complex field. The constitutional terms enjoy special protection and they guarantee protection of cultural goods; we enter in the sphere of economic finance of conservation and restoration with a relaxing feeling for better life and existence of cultural monuments. Still, in conditions of complete social and political changes, as well as in the economic system, the conditions in the protection are becoming alarming, especially because of the financial component, no matter how much the legislator wanted to give it a special priority, following the law.

The protection of the cultural monuments has been financed by the state budget through the Ministry of culture, which receives 2,34 % from the total budget means. Up to 1991 from the total budget means intended for financing cultural activities, one third was separated for the protection of the cultural of monuments. Although we have already declared that the protection of the cultural monuments has been of special interest for our country, in conditions when a gross domestic product in 1999 was \$ 1825 per inhabitant, the country separates \$ 800.000 or 13 % from the intended means for protection of the cultural monuments.

As a result of this, the protection in the material sphere is on a lower level, and in the period from 1992 to 1996 it was reduced to a critical point of its functioning. This dued not only to little means that was approved, but also because of the fact that the means from the protection of the cultural monuments were intended for other activities from cultural field.

The justifications about this start from the fact that the protection should also bear the consequences from the common social crisis, i.e. reform, and at the same time neglecting the specific states of conservation and restoration of the cultural monuments, which will never compensate the lost continuity.

The bringing down of the protection to a normative without any financial component, places the same one in a position of unproductive consumer with which the whole picture of this becomes disastrous.

In order the protection, conservation and restoration to provide autonomy in its work, it is necessary the same one to be separated from the Ministry of culture as well as to be removed from the daily politics, social and economic situation. Despite the previous efforts for changing this situation, it is well known that its releasment stays in a closed circle. The use of the law for protection of cultural monuments which exists for more than thirty years also talks about this problem.

With this law there have been determined: the financing of the owners of the cultural monuments, the owner of the goods, obliged to keep the monument carefully, to maintain it and to undertake on time the regulated technological- protective and other measures, necessary for maintenance and protection of the cultural monuments.

All these expenses are submitted by the owner if they do not surpass the incomes from the monument. If the owner of the cultural monument does not do the regulated measure whose costs surpass the incomes and other uses, the responsible institute will determine him/ her a period of time in which he/she is obliged to fulfil that measure; on the contrary, the measure will be made on his cost, i.e. the responsible institute will do that on the cost of the owner.

But with all these law decrees, the difficulties about self-financing the owners of cultural goods, start. The problem about keeping the objects, their conservation and restoration dues to several moments.

One of them is psychological one ,i.e. the protections and necessity of the same one, haven't entered into the individual subconsciousness, and on the other hand, the individual does not see an interest which with different stimulations would be allowed by the Government itself

And at the end, as an important factor is the investment in money that the one himself is supposed to invest, and in common financial crisis without any replacement by the Government, the owner simply loses the interest and brings the whole thing to repair goods for daily needs.

In practice there is a clash between normative-legal regulative and individuals, owners of cultural goods. That is where all the daily happenings with cultural monuments come from. A large number of these objects have been ruined irretrievably and lose their characteristics of cultural monuments, and all this is because of financial problems, uncare, dropping the existing law norms, and above all this, not respecting the already authorized institutions.

In another group of owners of cultural monuments belong the Macedonian Ortodox church, religious communities and groups. As owners of a large number of sacral objects with a significant importance for R. Macedonia the same ones are obliged to keep and maintain them. The deposit is based on different basis, but most frequently by performing their religious services, from which it can be noticed that there has been a lack of financial means. In a state like this one, the whole work in sense of professional opinions, work on projects, supervision and doing conservation and restoration has been done by the Republic of Macedonia and municipal institutes for protection of cultural monuments.

In most cases the state appears as an owner of cultural monuments mostly of archeological localities. The financing conservation and restoration of these monuments was done by the Ministry of culture,, up to the passing the law of culture .When the law of citizen association and foundations was passed, and the Law of culture, a chance has been given, the protection of the cultural monuments to be financed through cultural monuments to be financed through cultural funds and concessions.

The dynamic chances in the state enabled passing a law of culture in 1998. In the common decrees of this law the way and conditions of financing culture have been

established, and at the same time- protection of cultural monuments. An individual, local and national interest of culture, and at the same time, financing these interests, have been determined with this law. The local and national interests of cultural monuments are important for us.

With the law of local self-management a chance has been given of financing the development of culture in common frames, but there has been no obligation of financing protection and keeping the cultural monuments. With this kind of decree, problems appear in those units of local self-management, which are financially weak, so there has been no chance to separate the necessary means for conservation and restoration of cultural monuments. This can be especially expressed after passing the national program that will determine which institutions are going to represent the national interest of culture.

Although the law of culture was passed in 1998 with a duty the National program to be passed in a period of six months, that hasn't been done up to now, but we hope that the total protection of the cultural monuments as an activity will be a national interest and the state will provide conditions for permanent protection realization.

From the already mentioned sources for financing, conservation and restoration, the most reliable has been the means from the Budget of R. Macedonian. We hope that in near future, the bad economic situation will have improved, and this will also have happened to the cultural monuments, existing not only as an individual, but also as an inseparable part of the world cultural heritage.

## **PROJECTION OF ECONOMIC EFFECT ON FINANCING OF CONSERVATION AND RESTORATION IN REPUBLIC OF MACEDONIA**

**by**  
**Ljubica RISTESKA**  
**Institute and Museum – Prilep**  
**The Republic of Macedonia**

Different legislation systems, tradition and unequal economy of countries result in differences in financing of conservation and restoration of cultural heritage in those countries.

The cultural heritage, in its full splendor, or conserved and restored cultural heritage, is the mirror and reflection of the economic power of each country.

It is for a longer period of time that Macedonia has been undergoing a heavy economic crisis caused by the changes that took place in its legislation and economic system. Faced with huge internal and external debts, dead economy, enormous rate of unemployment and other problems, Macedonia is economically unable to conserve, restore and thoroughly present, in its full splendor, its valuable cultural heritage.

The solving of problems present in the sphere of culture within the frames of the limited economic possibilities of Republic of Macedonia means complete normative regulation of the relations in culture and hence in conservation and restoration and within that context - clear definition of the national interest in culture and definition of subjects who shall realize it. This shall lead to an efficient way of its financing through programmes, projects, etc., as well as establishment of criteria for financing and corresponding mechanisms for controlling the use of the resources allocated to users.

This is part of the reasons for the passing of the Law on Culture, which represents a projection of economy in culture as a whole, affecting also the financing in conservation and restoration of cultural heritage.

Republic of Macedonia does not lack legislative norms for design of economy related to financing of conservation and restoration of cultural heritage, but these are not conceptualized according to the principle of integral regulations.

In this presentation, I would like to focus your attention, first of all, on the projection of economy and financing of culture as a whole which also means conservation and restoration of cultural heritage in compliance with the new Law on Culture <sup>1</sup>.

According to this project, the culture in Macedonia is associated with the work of: artists, independent artists, institutions, foundations for culture, other legislative persons (associations of cities, foundations for culture, etc.), other physical persons (students, scientists, etc.), with either profitable or non-profitable purposes.

Culture can be realized by individual, local and national interests.

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<sup>1</sup> Official Gazette of RM no. 31/98

Individual interest in culture is culture realized by artists, institutions and other legal and physical persons based on their own decisions and resources.

Local interest in culture is culture, which is of importance for the citizens of the local self-government units and is financed by an Act passed by the local self-government unit in accordance with the Law.

National interest in culture is culture, which is of mutual interest for the citizens of the Republic and needs to be permanently realized and available to all citizens under equal conditions.

The national interest is realized by national institutions and other subjects defined by the national programme.

To realize the national interest in culture, the Assembly of Republic of Macedonia passes a national programme on culture for a period of five years.

With an annual programme, the Minister of Culture defines the annual scope of the national interest in culture within the framework of the resources allocated from the Budget of the Republic.

The resources for realization of the national interest in culture are provided from the Republic Budget via the Ministry of Culture and are distributed in accordance with the Law on Culture.

For realization of the national interest in accordance with the national programme, the Minister of Culture announces a call for projects.

In accordance with the opinion of the Council for Culture, the Minister of Culture gives a proposal for the annual programme, which is the basis for determination of the resources for culture in the Budget of the Republic.

Within the annual programme, 90% (at the most) of the allocated resources from the Republic Budget are distributed, whereas the remaining resources are a reserve and their distribution is independently decided by the Minister.

In compliance with the annual programme, the Minister of Culture signs individual contracts and issues decisions for the utilization of the resources to individual users.

The agreements on utilization of the resources are governed by the contractual regulations.

From the above, it is evident that this law regulates the mode and the procedure of financing of culture by the state.

## **FINANCING OF CONSERVATION AND RESTORATION IN REPUBLIC OF MACEDONIA**

Conservation and restoration of cultural heritage in Republic of Macedonia is governed by a special Law on Protection of Cultural Monuments<sup>2</sup>.

Conservation and restoration of cultural heritage in Republic of Macedonia is done by the institutes for protection of cultural monuments that are financed in accordance with the Law on Culture as national institutions.

In my further presentation I shall try to present the different sources of financing of conservation and restoration despite the difficulties in finding a way to realistically present it in conditions of thoroughly non-defined and non-realized in practice institutions and provisions of the new Law on Culture.

The resources for the financing and restoration of cultural heritage of Republic of Macedonia are provided from:

- The Budget of the Republic;
- Local self-government units;
- City of Skopje;
- Funds for Culture;
- Foundations for Culture;
- Associations of citizens;
- Associations of foreigners;
- Foreign and international non-governmental organizations;
- Owners of cultural monuments;
- Concession;
- Other resources.

### **Financing from the Budget of the Republic**

The resources for realization of the national interest in culture which involves also conservation and restoration of cultural heritage are provided from the Budget of the Republic<sup>3</sup> via the Ministry for Culture, and are distributed according to the Law on Culture.

The revenues of the Budget of the Republic are provided from:

#### **a) taxes**

- Profit tax;
- Personal income tax;
- Tax on turnover of goods, services and stock;
- Other taxes determined by Law.

<sup>2</sup> Official Gazette of SRM no. 24/73, 42/76, 25/77, 12/93, 31/98, 18/99

<sup>3</sup> Law on Budgets, Official Gazette of RM 79/93, 3/94, 71/96 and 15/99

- b) Duties and other contributions (taxes within international exchange and transactions)
- c) Fees
  - Administrative fees,
  - Court fees
- d) Revenue from sources other than taxes
  - Income from dividends from the enterprises;
  - Fines
  - Income from interest on deposited resources
  - Income based on surplus from the expenditures of the National Bank of Republic of Macedonia, and
  - Other public fees defined by a law.
- e) Revenue from donations from the home country and abroad (in goods and money)
- f) Other revenue of the Budget of the Republic obtained on different bases and in compliance with the laws.

The Budget of the Republic also has a revenue based on taking loans from the country and abroad, by which the Budget deficit is financed.

The revenues in a defined amount which are stated as per main purposes in the Balance of Revenues and Expenditures of the Budget each year, are distributed per holders, users and closer purposes in a separate part of the Budget of Republic of Macedonia for each year<sup>4</sup>.

### **Financing from the Local Self-Government Units**

Within the frames defined by the Constitution<sup>5</sup> and Law<sup>6</sup>, the local self-government units<sup>7</sup> have the right to carry out works and take activities of local importance, which are not under the competence of the state authorities, also in the sphere of culture.

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<sup>4</sup> 78.000,00 denars are planned for protection of cultural monuments, i.e., conservation and restoration in the Budget of Republic of Macedonia for the year of 2000, Official Gazette of RM 86/99. If we take into account that 50.000,00 denars were allocated for the same activities from the Budget for 1999 and 49.000,002 denars from the budget of 1998, it may be concluded that the financial structure referring to conservation and restoration has been considerably improved.

<sup>5</sup> Official Gazette of RM no. 52/91.

<sup>6</sup> Official Gazette of RM no 79/93, 3/94, 71/96, 15/99.

<sup>7</sup> Law on Local Self-Government, Official Gazette of R.M. 52/91, 52/95, 60/95, 8/98, 5/99.

In performing the activities pertaining to their competence, the local self-government units are financed by own sources of income defined by the Law.

In performing the activities of their original competence, these units are financed from revenues determined by the Law as well as additional resources from the Republic.

The local self-government units are financed from:

a) Taxes

- Part of the tax on turnover of goods and services defined by the Law;
- Property tax, heritage tax, gift tax, tax on turnover of real assets and rights;

b) Land tax, public service tax and income from services;

c) Income from own property;

d) Income from donations from the Republic and abroad (goods and money);

e) Income from public enterprises and public services founded by the local self-government unit;

f) Part of the profit realized by public enterprises that have branch units in the local self-government, defined by the Law.

g) Revenue from penalties for disregard of the regulations passed by the local government unit.

h) Other revenues from the budget of the local self-government units on diverse bases, in compliance with the Law.

In exceptional cases, the original revenue of the local government units is provided in percentage, according to their participation in the total number of inhabitants at the level of the municipalities to which they refer.

The local self-government units are financed also from additional revenues from the Budget of the Republic.

Apart from original revenues, the local self-government units are also financed by taking loans from the Budget of the Republic by which the budget deficit is financed, state resources for entrusted activities and other resources allocated by interested judicial and physical persons.

The local self-government units may take loans to issue bonds.

The local self-government units may gain revenue also from performance of economic or other profitable activities.

The income and the expenditures of the local self government units are defined by a Budget <sup>8</sup>.

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<sup>8</sup> *Most of the local self-government units in Republic of Macedonia are facing existential problems, problems with their survival. Those that do not have problems of this kind are facing numerous financial problems and are still unable to plan resources for conservation and restoration in their Budget so that the stated provisions are still only declarative.*

## **Financing from the City of Skopje**

The City of Skopje <sup>9</sup> as a separate local self-government unit has the right, within the frames defined by the Constitution and the Law, to carry out works and take activities which are of importance for the city of Skopje also in the field of culture, which means also in conservation and restoration of cultural heritage.

The City of Skopje is financed by own sources of revenue defined by the Law and from the sources of the Republic.

The City of Skopje is financed from the same sources of revenue as those for the local self-government units.

In exceptional cases, the funds of the City of Skopje as a separate local self government unit are provided to the amount of 38,5% of the income from taxes and fees realized within the city area.

The sources of revenue of the local self-government units in the area of the City of Skopje are defined based on their participation in the total number of inhabitants at the level of municipalities to which they refer.

The revenues and expenditures of the City of Skopje are also defined by a Budget

<sup>10</sup>

## **Financing from Funds for Culture**

For the purpose of financing certain complex and ample works from the national programme, funds for culture could be established as national institutions according to the provisions for national institutions <sup>11</sup>.

## **Financing from Foundations for Culture**

Foundations <sup>12</sup> for culture can be established by a single or a number of physical or judicial persons as non-profitable and non-governmental organizations in the capacity of a legal person for the purpose of financing of individual interests in culture.

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<sup>9</sup> Regulations on the City of Skopje, Official Gazette of R.M. no. 52/9149/96, 71/96, 10/99.

<sup>10</sup> Since the Budget of the City of Skopje is small, the City is mostly financed from the Budget of the Republic, various donations from states and governments, non-governmental organizations, foundations, etc.

<sup>11</sup> Law on Culture, Official Gazette of R.M. no. 31/98.

<sup>12</sup> Immediately after the passing of the Law on Culture, the first Macedonian Foundation for Culture was established (the resources from this foundation are certainly welcomed).

The foundations for Culture are established in compliance with the regulations on foundations <sup>13</sup>.

### **Financing from Associations of Citizens**

The citizens of Republic of Macedonia may freely associate in associations of citizens <sup>14</sup> for the purpose of exercising and protecting the rights pertaining to culture and other rights, interests and beliefs in compliance with the Constitution and the Law.

The associations of citizens<sup>15</sup> are non-profitable organizations. The associations of citizens may gain: objects, money and rights to property <sup>16</sup>.

The resources are acquired from membership fees, contributions, donations, and alike.

The associations of citizens may acquire revenue also from the profit gained from business partnerships that they have founded with resources from the association and with other resources.

The associations may receive resources from the Budget of the Republic, the Budget of the City of Skopje and the Budget of the local self-government units based on a previously prepared programme (project) that is to be approved.

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<sup>13</sup> Law on Association of Citizens and Foundations, Official Gazette of R.M. no. 31/98

<sup>14</sup> Law on Association of Citizens and Foundations, Official Gazette of R.M. no. 31/98

<sup>15</sup> Founded in R. Macedonia are a large number of associations of citizens in the sphere of culture. Noteworthy among the registered associations are:

- Association of Citizens - Macedonian National Committee for Monuments and Sites (ICOMOS) with a seat in Skopje, Evlija Celebija Str. bb, represented by Lazar Sumanov;

- Association of Citizens - Centre for Archaeological Studies "CAI" with a seat on Mavrovska Str. no. 21 in Skopje, represented by Viktor Ilcic;

- Association of Citizens - Steering Committee for Realization and Opening of the "KNEZINSKI MONASTERY" in the municipality of Kicevo. The seat of the Association is in Kicevo, Boris Kidric Str. no. 1 and it is represented by Dusan Risteski.

- Association of Wood-carvers of Macedonia with a seat in Bitola.

The numerous associations of citizens founded in R. Macedonia are aimed at giving their own contribution toward development of culture in different fields.

The obtaining of resources from donations from the home country and abroad is easier for these associations of citizens, as non-governmental and non-profitable organizations provided that they have serious projects.

<sup>16</sup> Article 61 of the Law on Association of Citizens and Foundations, Official Gazette of R.M. no. 31/98.

## Financing from Associations of Foreigners

Foreigners with permanent or temporary residence, residing for more than a year in the territory of Republic of Macedonia, may found associations of foreigners under the conditions determined by the Law <sup>17</sup>.

Foundation of association of foreigners may, inter alia, be approved also only for the purpose of scientific, cultural and other progress.

## Financing from Foreign and International Non-Governmental Organizations

Foreign and international non-profitable non-governmental organizations, foundations <sup>18</sup>, unions and their branches can also be founded and can act in the territory of Republic of Macedonia.

Other organizations that are exclusively financed from bilateral and multilateral agreements for their involvement in development projects of R. Macedonia <sup>19</sup> can also be founded and can act in the territory of Republic of Macedonia.

The activities of foreign organizations must comply with the Constitution, the Laws and the international agreements of Republic of Macedonia.

The associations of citizens and foundations can be joined into unions for the purpose of improvement of their activities and can also become members or associated with international organizations provided that such an association and membership is compliant to the Constitution and the Laws of Republic of Macedonia.

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<sup>17</sup> Law on Associations of Citizens and Foundations, Official Gazette of R.M. no. 31/98.

<sup>18</sup> It is for a longer period of time that the George Soros' "OPEN SOCIETY" foundation has been active in Republic of Macedonia. It was founded in New York in 1979.

The foundation "Institute - Open Society - Macedonia" - Skopje with a seat in Skopje, Ruzveltova Str. no. 34 represented by Vladimir Milcin is within the network of foundations operating in a large number of countries in Central and East Europe, former Soviet Union, Asia, Africa and USA with the purpose of constructing and maintaining the infrastructure of the institutions of open society.

<sup>19</sup> The resources from the financial assistance of the European Union which is being realized through the PHARE programme are paid to a separate account of the Ministry of Development - Compensation Fund PHARE. In addition to the support to the programmes for re-structuring the economy of Republic of Macedonia, the European Commission allocated 164.000 Euro from the PHARE programme on culture for 16 projects related to culture. For the year of 2000, 200.000 Euro are planned to be approved from the PHARE programme on culture. Part of this resources is expected to be allocated for conservation and restoration of cultural heritage.

## Financing from Owners of Cultural Monuments

The owner<sup>20</sup> of a cultural monument is obliged to personally keep the monument in good conditions and take the prescribed technical protective measures and other measures for its maintenance on time.

The expenditures related to the maintenance of the monument are borne by the owner if these do not exceed the revenue that he acquires from the monument.

If an owner of a cultural monument neglects the prescribed measures whose cost does not exceed the income and other benefits from the monument, the authorized institution shall define a period in which he himself shall perform this duty, or the institution shall carry out the necessary measures on his expense.

If the owner of the monument does not take the prescribed measures, the authorized institution shall perform it at his expense.

If a necessity of taking conservation and restoration works on a cultural monument arises during performance of public or private works by judicial or physical persons, the financial resources for this purpose shall be provided by the Investor<sup>21</sup>.

Religious groups<sup>22</sup> are also owners of cultural monuments in Republic of Macedonia.

Religious groups may acquire resources from : donations for religious and humanitarian purposes. Official and other persons that do religious service (family feasts for patron saints, marriage, baptizing, circumcision, blessings, etc.) and other religious services are entitled to compensation, i.e., reward for the services done by the citizens.

Within their sphere of work, religious groups can publish books, journals, calendars and other materials.

Religious groups as owners of a large number of sacral structures of enormous importance for Republic of Macedonia are also obliged to take care and maintain these structures.

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<sup>20</sup> Articles 14 and 15 of the Law on Protection of Cultural Monuments, Official Gazette of R.M. no. 24/73, 42/76, 25/77, 12/93, 31/98, 18/99.

<sup>21</sup> Law on Construction of Investment Structures, Official Gazette of R.M. no. 15/90, 11/91, 11/94, 18/99, 25/99 and Law on Protection of Cultural Monuments.

<sup>22</sup> Law on Religious Groups, Official Gazette of R.M. no. 35/97, 64/98.

## **Financing by Concession**

Concession <sup>23</sup> can be awarded to domestic or foreign judicial or physical person (concessionaire) in accordance with a Concession Act.

The Concession Act is the Law defining the mode and the conditions of utilization of a certain property of common interest for the Republic, i.e., approving performance of activities or works related to the property which are of a common interest for the Republic.

The Concession Act particularly defines:

- The property of common interest which is granted for utilization or the activity or the work whose performance is approved;
- The mode and conditions of utilization of the property or performance of the approved work;
- The conditions for the concessionaire;
- Beginning of concession and breaching of the agreement prematurely;
- Amount and mode of payment of compensation;
- Area of conceding;
- Mode in which one can be granted a concession;
- Supervision, and
- Conditions for protection of human environment

Concession is granted by Republic of Macedonia. On behalf of the Republic, the concession is granted by the Government of Republic of Macedonia. Concession is granted for compensation and the resources gained in this way represent revenue of the Republic.

The concession can be transferred thoroughly or partially.

The concession cannot withstand the Law and the international agreements ratified by Republic of Macedonia

The state is the one to decide whether concession can be applied in conservation and restoration of cultural monuments, i.e., cultural heritage of Macedonia.

## **Other Sources of Financing**

Apart from the Budget account, the institutes for protection of cultural monuments have also their own account for the revenues from own sources. The own sources of resources of these institutes are:

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<sup>23</sup> Law on Concession, Official Gazette of R.M. no. 42/93, 40/99.

- resources from leasing structures;
- resources from selling of books, journals, catalogues, copies, etc.
- resources from admission charges;
- various donations <sup>24</sup> etc.

From all the stated sources of resources for financing of culture and hence conservation and restoration of cultural heritage, although modest, the most certain is the Budget of Republic of Macedonia. The remaining sources of resources are either only declarative, or are used for financing of other activities in culture requiring lesser finances, or are such that never function.

Republic of Macedonia is in a period of undergoing complete re-structuring not only in economy but in the entire mode of living, for which it requires a huge amount of resources.

The International Community are watchfully monitoring the conditions in Macedonia. There are a large number of countries in Europe and the world that offer their readiness to help Macedonia to accelerate its re-structuring. The assistance is manifold, ranging from money, technology, apparatus, various kinds of credits with low interest or without interest, loans, donations, exchange and advanced training of professional staff in different fields, etc. However, it is still very early and ungrateful to predict and comment the results gained from the resources that have already arrived or are announced to arrive from different countries.

Finally, I would like to present also the numerous exemptions from payment of fees, taxes, duties and other deductions for owners of cultural monuments pursuant to individual laws.

The property tax is not paid for: <sup>25</sup>

Buildings and land used for cultural purposes, except for the buildings, which serve for economic purposes or are leased.

The buildings and the land owned by the Macedonian Orthodox Church and other religious groups that serve for religious service or for living of church officials, with the exception of those used for economic purposes.

The tax on turnover of real estates and rights is not paid for immovable cultural monuments that are expropriated <sup>26</sup>.

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<sup>24</sup> An example of various possible donations is the donation by the American firm- corporation "Philip Morris" to Action for Skopje. The donation was intended for reconstruction of the Kale fortress and amounted to 24.000 DEM.

<sup>25</sup> Article 6 of the Law on Property Taxes, Official Gazette of R.M. no. 80/93, 3/94, 71/96.

<sup>26</sup> Article 26 of the same law.

Administrative taxes are not paid for documents and actions related to protection of cultural monuments <sup>27</sup>.

Exempted from payment of duty are: museums, art galleries, objects which are directly intended for activities pertaining to culture and are not produced in Republic of Macedonia, provided that the holder of the right is registered for performance of non-profitable cultural activities <sup>28</sup>.

The tax to be paid by the taxpayers is deducted for the amount of the profit invested in the objects and structures of particular cultural and historic importance for the Republic <sup>29</sup>.

Tax exemptions in the country without the right to deduction of the previous tax <sup>30</sup>. Exempted from payment of VAT are: the turnover of cultural institutions in their dealing with creation, publishing and protection of cultural artistic works and other tax payers who perform activities pertaining to culture, subject to the opinion of the Ministry for Culture.

Tax exemptions upon import <sup>31</sup>.

The goods whose turnover is exempted from payment of VAT or the previously stated taxes are exempted from payment of VAT upon their importation.

The Law on VAT shall start to be applied this year, or from April 1, 2000 and the results shall be seen in the period to come.

The stated tax, duty and other exemptions for the institutions dealing with culture are too modest and require long administrative procedures wherefore these have not been sufficiently practiced.

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<sup>27</sup> Law on Administrative Taxes, Official Gazette of R.M. no. 17/93, 20/96, 7/98.

<sup>28</sup> Article 182 of the Law on Duties, Official Gazette of R.M. no. 21/98, 26/98, 63/98, 56/99, 86/99.

<sup>29</sup> Law on Profit Tax, Official Gazette of R.M. no. 80/93, 33/95, 43/95, 71/96, 5/97, 28/98.

<sup>30</sup> Article 23 of the Law on VAT, Official Gazette of R.M. 44/99, 59/99.

<sup>31</sup> Article 27 of the Law on VAT

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

**Mexico**

**Roberto Nuñez Arratia**

**ECONOMICAL IMPACT OF FINANCING  
CONSERVATION AND RESTORATION  
OF HERITAGE – SITUATION IN MEXICO**

**IMPACTO ECONOMICO DEL  
FINANCIAMIENTO EN LA  
CONSERVACION Y RESTAURACION  
DEL PATRIMONIO**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## **ECONOMICAL IMPACT OF FINANCING CONSERVATION AND RESTORATION OF HERITAGE.**

### **SITUATION IN MEXICO**

Financial support, tax stimulation, public investment, promotion to obtain resources for conservation and restoration of cultural heritage, were proposed in Mexico in agreements and decrees, in development plans and in revitalization programs in the 80's.

Mexico City's historical center, declared by presidential decree "Historical Monuments Zone" (D.O. May 1<sup>st</sup>, 1980) and Human Heritage (December 18<sup>th</sup>, 1987) suffered at the end of the 80's a great process of deterioration, in spite of the law and institutional protection that had been decreeted.

Within the program of revitalization of this historical center were established among other measures, the **System of Transference of Development Potentiality** (D.O. July 19<sup>th</sup>, 1988). This system consists in recognizing the intensity of construction resulting in excess in buildings located in the historic center, starting from the constructed area until acquiring six times the size of the land and authorize its transference toward other zones and real property on which the same can be constructed in addition to the one authorized in the urban development program, in order to destine the transference value in economic resources to rescue, conservation and restoration of the historical monuments.

The **National Development Plan**, 1989-1994, points out as a primary goal of the cultural politic of the federal government, the protection and dissemination of the archaeological, artistic and historical heritage. The **National Council for Culture and Arts** is created (D.O. December 7<sup>th</sup>, 1988), as well as the **National Commission for Preserving the Cultural Heritage** (D.O. June 28<sup>th</sup>, 1989) that has among its objectives to promote the safeguard and conservation of the archaeological, artistic and historical monuments and zones, propitiate community participation, **promote to obtain resources** and support inventory formulation.

It is also established the **National Archaeological Fund**, that has as principal duty to coordinate the diverse government office collaboration, administer and control the assigned resources for the research program, rescue and restoration of 14 archaeological zones, as: **Teotihuacan, Palenque, Monte Alban and Xochicalco**.

The 1972 Federal Law of Archaeological, Artistic and Historical Monuments and Zones, in force until now, does not encompass the financial aspect in conservation of the cultural heritage, and concerning about measures, incentives and support, it only establishes the real estate tax exemption to owners of the historic or artistic monuments that have been either conserved or restored (art. 11).

Local laws as the ones proclaimed in Mexico City (Financial Code December 31, 1999) and in Guadalajara, Jalisco (Regulation of the Historical Center and Traditional Districts January 8<sup>th</sup>, 1997) establish reductions in the real estate tax, in the sales tax and on different rights related to the construction and restoration. These measures also apply to the state laws, of Jalisco (December 18<sup>th</sup>, 1997) and Baja California Norte (August 3<sup>rd</sup>, 1995).

In Mexico City since 1991(D.O. March 11<sup>th</sup>, 1991) where conferred financial measures and stimulations established in agreements that are dictated annually, in which they support works of restoration, revitalization and rehabilitation in the historic center.

According to the last agreement (December 30<sup>th</sup>, 1999) are conferred tax and right reductions to the following people:

1. - The owners and purchasers of historical or artistic monuments that have been catalogued or declared so will be submitted to a restoration or revitalization, will have a reduction equivalent to 100% of the following contributions:

- Real Estate Tax. -The subsidy will only be during the restoration and the reduction will not exceed 33% of the investment, who's cost will be more than \$300,000 pesos (\$31,600 dlls).
- Sales Tax.
- Building Permit Rights.
- Hydraulic Installation Right.

2. - The owners and purchasers, who live in a catalogued or declared monument, will have a reduction of 50% of the real estate tax.

3. -The person who invest in new real estate projects in the historical center will have a reduction of 80% of the real estate tax and rights concerning new constructions and restorations.

According to the **National Development Plan** issued by the President of the country at the beginning of his 6 year period, the Federal Government assigns a budget for the protection and preservation of heritage through the **National Council of Culture and Arts**, the **National Fine Arts Institute (INBA)** and the **National Anthropology and History Institute (INAH)**. A budget of \$1,086,000 million pesos (115,000,000 dlls) was assigned to this last institute, and from this budget \$285,000 million pesos (30,000,000 dlls) were assigned to the conservation of archaeological zones and monuments.

The state and local governments also assign budgets to their respective jurisdictions for the protection and conservation of historical and artistic monuments and zones.

The heritage of the **National Anthropology and History Institute** in order of its organic law (D.O. February 3<sup>rd</sup>, 1939 -- reformed on January 13<sup>th</sup>, 1996) is formed by the incomes assigned by the Federal Budget Law and also the apportions conferred by public and private national and international institutions and enterprises, as well as incomes coming from selling texts, publications, recordings, films, photographs, reproductions, posters, and also funds, products and royalties.

The decree that establishes the Federal Budget Law defines the subsidies as the assigned resources of the state, to promote the development of highest priority activities.

Nowadays, the new projects and specified programs for restoration and revitalization of archaeological and historical monuments and zones, are executed with the joint participation of:

- Federal Government Resources
- State and Local Government Resources
- Contributions of private, national and international institutions and enterprises. The contributions that are granted to the cultural institutions are 100% tax deductible and in several cases the **National Fund for the Culture and Arts** intervenes as a promoter.

This "Collective Projects" are significant cases:

The rescue of the Exconvent of Santo Domingo in Oaxaca, who's construction started in 1575, the restoration process lasted four years (1994-1998) now shelters the Culture Museum of Oaxaca, library, a temporary exposition space, diverse service areas and a ethnic-botanical garden.

The price of the project was of \$118,000,000 pesos (\$12,420,000 dlls)

Resource contributions:

- Federal Government	\$ 6,260,000 dlls	50.00%
- Government of Oaxaca	\$ 2,477,000 dlls	20.00%
- Banamex Social Promotion	\$ 2,771,000 dlls	23.30%
- Pro-Oaxaca Welfare Trust	\$ 70,000 dlls	0.60%
- Secretariat of Social Development	\$ 840,000 dlls	6.70%
- Private Donation	\$ 2,000 dlls	0.40%
	\$12,420,000 dlls	100.00%

The restoration of altarpieces and the Mision de San Francisco Javier in Loreto, Baja California Sur, was realized by the National Coordination of Restoration and by the **National Anthropology and History Institute**.

Resource contributions:

- The Government of Baja California Sur 50%
- The Universal Catholic Community
- The Sacred Art Commission \$ 10,000 dlls.
- The "Adopt a Work of Art" Welfare Trust
- The National Fund of Tourist Development
- Municipal Authorities
- Citizenship
- The United States' City Brothers:

Hermosa Beach and Cerritos that were part of the High California.

The price of such project was of \$2,230,890 pesos (\$235,000 dlls).

Regarding the compensation investment of a restoration or conservation work, in order to the different uses that can be given to the monuments, it is to mention that, in Mexico the use of regulated heritage is restricted according to the law (Agreement October 16<sup>th</sup>, 1972).

The archaeological and historical monuments, the national and state museums, depending on the **National Anthropology and History Institute**, cannot be used with purposes other than its nature and object except for relevant cultural and civic acts.

The Federal Law about monuments also establishes that in order to change the monument destiny, it is necessary to have the Federal Executive authorization.

The compensation for the use of declared heritage depends on the nature of the monument, to what it is destined and whether it belongs to a federation or private.

In previous years (1960-1980) the norm was to destine restored monuments only to museums and cultural centers. Of the 60 museums in Mexico City, 27 of them are installed in historical monuments and 8 in artistic monuments.

At present times, the given use to the declared heritage has varied:

Offices, hotels, commerce, clubs or centers for social, academic, cultural, business and recreational activities.

There are financial institutions that have acquired historical and artistic monuments for their offices, restoring and conserving them like the Bank of Mexico: the Antiguo Edificio de Ferrocarriles; the Edificio Condesa; the Antiguo Hospital de Betlemitas; and the National Bank of Mexico (Banamex): the Palacio de los Condes de San Mateo de Valparaiso in Mexico City; the Casa del Diezmo in Morelia, Michoacan; the Casa de Montejo in Merida, Yucatan; the Palacio de Canal in San Miguel de Allende, Guanajuato and the Casa de los Condes del Valle de Suchill in Durango, Durango.

There are historical monuments that have been converted to hotels, like the Exconvent of Santa Catarina in Oaxaca and the Convent of the Concepcion in Puebla; others have been used for different purposes like the Antiguo Colegio de Niñas de Nuestra Señora de la Caridad, restored and adapted as the Bankers Club.

The 1972 Federal Law of Monuments, which I have referred to, is actually in force. It is now insufficient due to the cultural, social, economical and political development that is why it is necessary to have in Mexico a new National Cultural Heritage Law.

In which would be need to consider and review its object, the concept of heritage, the definition of monument, site and zone, the conservation and protection of the environment and of the intangible heritage, the coordination and participation of the three levels of government establishing thereby appropriate institutions and legal instruments, considerate participation of the civil society, such as persons and civil organizations, private enterprises, religious associations and cultural, academic and research institutions, that establish the coordination with other laws and regulations related to ecology, urban development, financing, taxes, government budgets and planning.

It is necessary the private participation in Mexico, due to the quantity and dimension of the archaeological, artistic and historical monument wealth in the country. This surpasses the material possibilities and economical resources of the public administration.

## Comments and Recommendations

It is to consider nowadays, for historical centers, quarters and groups of monuments and sites conservation, that laws are not sufficient. We also need to improve the planning board to safeguard and accelerate its value, giving to the inhabitants resources, financial and technical measures that stimulates them to preserve and restore them.

In that case, with the civic participation, it is important to consider the positive image of the collective effort, to incentive enterprises to sponsor conservation. This could be done when the active civic participation acquires market value, decisive in sponsor harness, being in this case really important the roll of the media.

It is necessary to increase the public and private participation as well as the civic society, individuals and enterprises, with measures, campaigns and programs, as could be the constant incentive by the government or local organizations, so that they could restore historic buildings, with attractive systems such as the Transference of Potential, or the Easement and Facade Easement Rights or long-term loans with accessible interest. With this, the property value would increase, obtaining great productivity, zone improvement, inhabitant higher life style, tourism attraction and new investment, so the government would acquire better taxes to maintain and improve infrastructure, urban image, public services and subsequently would be recovered the given subsidy. Counting on this a chain reaction can propitiate a successful result and most of all the program continuity.

Social participation must be stimulated by resolutions that operate with transparence, with truthful and attractive tax reductions or exemptions, with simple and fast procedures and with support and facilities, that we have seen can be granted in a high or low degree, being also essential the political will, the authority sensibility to obtain the balance point between the monumental heritage conservation and the integral, social and economical development of the quarters and historical centers, to be preserved.

## **IMPACTO ECONOMICO DEL FINANCIAMIENTO EN LA CONSERVACION Y RESTAURACION DEL PATRIMONIO.**

### **SITUACION EN MEXICO**

EL APOYO FINANCIERO, LOS ESTIMULOS FISCALES, LA INVERSION PUBLICA, LA PROMOCION PARA OBTENER RECURSOS PARA LA CONSERVACION Y RESTAURACION DEL PATRIMONIO CULTURAL APARECEN PROPUESTOS EN MEXICO EN ACUERDOS Y DECRETOS, EN PLANES DE DESARROLLO Y EN PROGRAMAS DE REVITALIZACION EN LA DECADA DE LOS OCHENTAS.

EL CENTRO HISTORICO DE LA CIUDAD DE MEXICO DECLARADO POR DECRETO PRESIDENCIAL "ZONA DE MONUMENTOS HISTORICOS" (D.O. 1º. MAYO 1980) Y "PATRIMONIO DE LA HUMANIDAD" (18 DICIEMBRE 1987) SUFRIA A FINES DE LOS AÑOS OCHENTAS UN GRAVE PROCESO DE DETERIORO NO OBSTANTE LA PROTECCION JURIDICA E INSTITUCIONAL QUE SE HABIA DECRETADO.

DENTRO DEL PROGRAMA DE REVITALIZACION DE DICHO CENTRO HISTORICO SE ESTABLECIO ENTRE OTRAS MEDIDAS EL SISTEMA DE TRANSFERENCIA DE POTENCIALIDAD DE DESARROLLO (D.O. 19 JULIO 1988), CONSISTENTE EN RECONOCER EL POTENCIAL DE CONSTRUCCION QUE RESULTE EXCEDENTE DE LOS INMUEBLES UBICADOS EN EL CENTRO HISTORICO, CONTADA A PARTIR DE SU AREA YA CONSTRUIDA HASTA LLEGAR A SEIS VECES EL AREA DEL TERRENO DE QUE SE TRATE Y AUTORIZAR SU TRANSFERENCIA HACIA OTRAS ZONAS Y PREDIOS EN LOS CUALES SE PODRA CONSTRUIR LA MISMA EN FORMA ADICIONAL A LA SEÑALADA POR LOS PROGRAMAS DE DESARROLLO URBANO, CON LA FINALIDAD DE TRANSFORMAR EL VALOR DE LA TRANSFERENCIA EN RECURSOS ECONOMICOS QUE SE DESTINARAN PARA EL RESCATE, CONSERVACION Y RESTAURACION DE MONUMENTOS HISTORICOS.

SOMETIDOS A UNA REMODELACION O RESTAURACION, TENDRAN UNA REDUCCION EQUIVALENTE AL 100% DE LAS CONTRIBUCIONES QUE SE INDICAN A CONTINUACION:

- IMPUESTO PREDIAL.- EL SUBSIDIO SOLO SERA DURANTE LA RESTAURACION Y NO PODRA EXCEDER DE LA TERCERA PARTE DE LA INVERSION REALIZADA, LA CUAL DEBERA SER SUPERIOR A \$ 300,000.00 (31,600.00 DLLS)
  - IMPUESTO SOBRE ADQUISICION DE INMUEBLES.
  - DERECHOS DE LICENCIA DE CONSTRUCCION
  - DERECHOS POR SERVICIO DE INSTALACION HIDRAULICA
2. LOS PROPIETARIOS O ADQUIRENTES DE MONUMENTOS CATALOGADOS O DECLARADOS QUE LOS HABITEN TENDRAN DERECHO A UNA REDUCCION DEL 50% DEL IMPUESTO PREDIAL.
  3. LAS PERSONAS QUE INVIERTAN EN NUEVOS PROYECTOS INMOBILIARIOS EN EL CENTRO HISTORICO TENDRAN UNA REDUCCION DEL 80% DEL IMPUESTO PREDIAL Y DE LOS DERECHOS RELATIVOS A NUEVAS CONSTRUCCIONES Y RESTAURACIONES.

DE ACUERDO CON EL PLAN NACIONAL DE DESARROLLO QUE EL PRESIDENTE DE LA REPUBLICA EMITE AL PRINCIPIO DE SU PERIODO DE 6 AÑOS, EL GOBIERNO FEDERAL ASIGNA UN PRESUPUESTO PARA LA PROTECCION Y CONSERVACION DEL PATRIMONIO A TRAVES DEL CONSEJO NACIONAL PARA LA CULTURA Y LAS ARTES, EL INSTITUTO NACIONAL DE BELLAS ARTES (I.N.B.A.) Y EL INSTITUTO NACIONAL DE ANTROPOLOGIA E HISTORIA (I.N.A.H.) A ESTE ULTIMO INSTITUTO LE FUE ASIGNADO UN PRESUPUESTO DE MIL OCHENTA Y NUEVE MILLONES DE PESOS (CIENTO QUINCE MILLONES DE DOLARES) Y DE ESTE PRESUPUESTO DOSCIENTOS OCHENTA Y CINCO MILLONES DE PESOS (TREINTA MILLONES DE DOLARES) FUERON ASIGNADOS A LA CONSERVACION DE MONUMENTOS Y ZONAS ARQUEOLOGICAS.

LOS GOBIERNOS ESTATALES Y LOCALES TAMBIEN ASIGNAN PRESUPUESTOS EN SUS RESPECTIVAS JURISDICCIONES PARA LA PROTECCION Y CONSERVACION DE MONUMENTOS Y ZONAS HISTORICOS Y ARTISTICOS.

EL PATRIMONIO DEL INSTITUTO NACIONAL DE ANTROPOLOGIA E HISTORIA DE ACUERDO CON SU LEY ORGANICA (D.O. 03 FEBRERO 1939.- REFORMADA 13 ENERO 1986) SE FORMA POR LAS CANTIDADES QUE ASIGNA EL PRESUPUESTO DE EGRESOS DE LA FEDERACION Y ADEMAS POR APORTACIONES QUE OTORGAN ENTIDADES PUBLICAS Y PRIVADAS NACIONALES E INTERNACIONALES ASI COMO POR INGRESOS PROVENIENTES DE VENTA DE

-GOBIERNO DE OAXACA.-	2,477,000 DLS.	-	20.00%
-FOMENTO SOCIAL BANAMEX	2,771,000 DLS.	-	22.30%
-FIDEICOMISO PRO-OAX.-	70,000 DLS.	-	0.60%
-SECRETARIA DE DESARROLLO SOCIAL	840,000 DLS.	-	6.70%
-DONATIVO PARTICULAR.-	2,000 DLS.	-	0.40%
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	12,420,000 DLS.	-	100.00%

LA RESTAURACION DE LOS RETABLOS Y LA MISION DE SAN FRANCISCO JAVIER EN LORETO, BAJA CALIFORNIA SUR, PROYECTO REALIZADO POR LA COORDINACION NACIONAL DEL PATRIMONIO CULTURAL DEL INSTITUTO NACIONAL DE ANTROPOLOGIA E HISTORIA.

RECURSOS APORTADOS:

- GOBIERNO BAJA CALIFORNIA SUR 50%
- COMUNIDAD CATOLICA UNIVERSAL
- COMISION DE ARTE SACRO 10,000.00 DLLS.
- PROGRAMA "ADOpte UNA OBRA DE ARTE"
- FONDO NACIONAL DEL FOMENTO AL TURISMO
- AUTORIDADES MUNICIPALES
- COMUNIDAD DEL MUNICIPIO DE LORETO
- CIUDADES HERMANAS DE ESTADOS UNIDOS:  
HERMOSA BEACH Y CERRITOS QUE FORMARON ANTIGUAMENTE PARTE DE LA ALTA CALIFORNIA.

EL COSTO DE DICHO PROYECTO FUE LA CANTIDAD DE \$ 2,230,890.00 (235,000.00 DLLS.).

EN CUANTO A LA COMPENSACION DE LA INVERSION POR OBRAS DE RESTAURACION Y CONSERVACION EN ORDEN A LOS DIFERENTES USOS PRODUCTIVOS QUE SE LE PUEDAN DAR A LOS MONUMENTOS CABE HACER NOTAR QUE EN MEXICO EL USO DEL PATRIMONIO DECLARADO, ESTA CONTROLADO POR LA LEY (ACUERDO 16 OCTUBRE 1977); LOS MONUMENTOS ARQUEOLOGICOS E HISTORICOS Y LOS MUSEOS NACIONALES Y REGIONALES DEPENDIENTES DEL INSTITUTO NACIONAL DE ANTROPOLOGIA E HISTORIA NO PODRAN SER UTILIZADOS CON FINES AJENOS A SU OBJETO O NATURALEZA SALVO PARA ACTOS CULTURALES O CIVICOS RELEVANTES.

ORGANIZACIONES CIVILES, DE LA INICIATIVA PRIVADA, DE ASOCIACIONES RELIGIOSAS E INSTITUCIONES CULTURALES, ACADEMICAS Y DE INVESTIGACION Y QUE ESTABLEZCA LA COORDINACION CON OTRAS LEYES Y REGLAMENTOS COMO PODRIAN SER LAS REFERENTES A ECOLOGIA, DESARROLLO URBANO, FINANCIAMIENTO.

ES INDISPENSABLE LA PARTICIPACION PRIVADA EN MEXICO, LA VASTEDAD Y PLURALIDAD DEL PATRIMONIO CULTURAL, DEBIDAS A LA CANTIDAD Y DIMENSION DEL ACERVO DE MONUMENTOS ARQUEOLOGICOS, HISTORICOS Y ARTISTICOS QUE HAY EN EL PAIS, SOBREPASAN LAS POSIBILIDADES MATERIALES Y RECURSOS ECONOMICOS DE LA ADMINISTRACION PUBLICA.

#### CONCLUSIONES Y COMENTARIOS:

SE CONSIDERA QUE ACTUALMENTE PARA CONSERVAR LOS CENTROS Y BARRIOS HISTORICOS, LOS CONJUNTOS DE MONUMENTOS Y SITIOS, NO SON SUFICIENTES LAS LEYES, SE NECESITA ADEMAS MEJORAR LOS CUADROS DE PLANEACION PARA SALVAGUARDAR Y ACRECENTAR SU VALOR, FACILITANDO A LOS HABITANTES RECURSOS Y MECANISMOS FINANCIEROS Y TECNICOS QUE LOS ESTIMULEN PARA PRESERVARLOS Y RESTAURARLOS.

DE LLEGAR A DARSE LA PARTICIPACION SOCIAL ES IMPORTANTE CONSOLIDAR LA IMAGEN POSITIVA DEL ESFUERZO COLECTIVO PARA INCENTIVAR A LAS EMPRESAS PARA QUE LES SEA ATRACTIVO EL PATROCINAR LA CONSERVACION Y ESTO PODRIA SER FACTIBLE CUANDO LA PARTICIPACION ACTIVA DE LA CIUDADANIA ADQUIERA VALOR DE MERCADO, DECISIVO EN LA CAPTACION DE PATROCINIOS, JUGANDO EN ESTO UN PAPEL MUY IMPORTANTE LOS MEDIOS DE COMUNICACION.

ES NECESARIO FOMENTAR LA COLABORACION DE LOS SECTORES PUBLICO Y PRIVADO ASI COMO MOTIVAR A LA SOCIEDAD CIVIL, A LOS INDIVIDUOS, A LAS EMPRESAS, CON MECANISMOS, CAMPAÑAS Y PROGRAMAS COMO PODRIA SER LA CONSISTENTE EN INCENTIVOS POR PARTE DE GOBIERNOS U ORGANIZACIONES LOCALES PARA QUE RESTAUREN EDIFICIOS HISTORICOS, CON SISTEMAS ATRACTIVOS TALES COMO LOS DE TRANSFERENCIA DE POTENCIALIDAD O DE DERECHOS DE SERVIDUMBRE "EASEMENTS" Y "FACADE EASEMENTS" O PRESTAMOS A LARGO PLAZO Y CON INTERESES ACCESIBLES, CON ESTO SE INCREMENTARIA EL VALOR DE LA PROPIEDAD, SE OBTENDRIA MAYOR PRODUCTIVIDAD, MEJORIA EN LA ZONA, ELEVACION DEL NIVEL DE VIDA DE SUS HABITANTES, ATRACCION AL TURISMO Y NUEVAS INVERSIONES Y EL GOBIERNO OBTENDRIA MAYORES IMPUESTO PARA MANTENER Y MEJORAR LA INFRAESTRUCTURA, LA IMAGEN URBANA, LOS SERVICIOS PUBLICOS Y POSTERIORMENTE SE RECUPERARIA EL SUBSIDIO OTORGADO EN SU CASO, CON LO QUE OPERA UNA REACCION EN CADENA QUE PUEDE PROPICIAR UN RESULTADO EXITOSO Y SOBRE TODO LA CONTINUIDAD DEL PROGRAMA.

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INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

ICOMOS – CROATIA

INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

**Spain**

**Maria Rosa Suárez-Inclan Ducassi**

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**REPERCUSION ECONOMICA DE LA  
FINANCIACIÓN EN MATERIA DE  
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*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## ECONOMIC IMPACT OF INVESTMENTS IN HERITAGE CONSERVATION AND RESTORATION

*María Rosa Suárez-Inclán Ducassi*

### GENERAL CONSIDERATIONS

Heritage is comprised of non-renewable properties which are generally fragile and scarce. These characteristics contribute to the high value attached to it under the law of supply and demand, this being particularly true in the case of the rapidly expanding area of cultural tourism. Also, although to a lesser degree, the prestige attached to possession or enjoyment of certain cultural properties by some public and private institutions and sectors of society should be taken into account.

When regulations, policies, the degree of cultural development and available resources allow heritage to be adequately conserved and restored, there can be no doubt that it represents a source of socioeconomic wealth capable of improving the standard of living and quality of life. Unfortunately, there are not many countries where these circumstances concur. But, the neglect of heritage resulting from a lack of financial resources may sometimes be less destructive than certain interventions that alter its original value. In some cases, a poorly designed policy of investment in heritage can lead not only to a poor economic outcome but also to such irreversible effects as the loss of the cultural values that make the properties attractive. And, obviously, cultural tourism can also become a threat to heritage if it is not accompanied by the necessary controls and planning.

Historic monuments may be initially divided into the most important buildings of unique value, i.e., those which are very well known, and those of secondary importance. Recovery of the former may be profitable for their contemplation by visitors. The latter often require a change to a different use (e.g. as government or large corporation headquarters, hotels, cultural centers, etc.). The advantages both in terms of cultural values and public image from these operations involving a change in function are unquestionable if they are carried out with due respect for heritage. The financial profitability of these operations should be considered over the long term and by looking back as well as forward into the future. The current construction cost of these buildings and the services they are capable of providing over time through multiple uses should also be taken into account. In this way, the investments made for their restoration and conservation can be regarded as operations aimed at maintenance of a large number of historic buildings that continue to be useful.

A different problem is raised when it comes to analyzing the profitability of investments in traditional dwellings or lodgings located in rural areas or the historic centers of towns and cities.

Traditional lodgings represent a cumulative cultural, social and economic capital. But the genuine characteristics of popular and traditional lodging architecture—except, as said before, those elements possessing outstanding value—must struggle against the dichotomy between the recent full recognition of their value (since only a few decades

ago) and the philosophy favoring the replacement of buildings and their elements. The latter perspective is shared by many public administrations, sectors of the building industry and a considerable number of architects and urban planners<sup>i</sup>.

In general, isolated traditional dwellings in rural areas are given little attention and protection. Fortunately, European Union programs have been set in motion which are intended to rehabilitate this type of buildings for what is termed rural tourism. There are examples of the recovery of these dwellings, some even with notable success, where they have provided income and created jobs in many depressed zones. But it cannot be said that there has been a generalized recovery.

In urban centers rehabilitation of historic buildings used for lodging (e.g., nineteenth century and early twentieth century apartment buildings) is provided for through protective measures<sup>ii</sup> and other incentives<sup>iii</sup>. But rehabilitation tends to be expensive, among other reasons because of its exceptional nature in relation to the construction of new buildings. Another factor impacting on cost is the fact that most architects and construction workers lack the knowledge and training to work with traditional building techniques, structure and materials. Their usual tools of the trade are concrete, steel and glass, which also contributes to the much higher cost of the use of traditional materials. In addition, traditional materials are difficult to combine with new building materials. Overall, 85% of investments are for new construction and only 15% for rehabilitation of older buildings. Added to this is the fact that urban planning approaches do not always support conservation of this type of architecture<sup>iv</sup>. As a result of the above, a considerable number of traditional dwellings both in rural areas and historic city centers continue to be lost.

It should also be taken into account that the concept of heritage has been expanded to the point that it now goes beyond any boundaries of content, style or chronology. This has been a conceptual victory for heritage, but it has also led to an inflation of the term making the value of its contents more relative.

Conservation of architectural heritage built over the last sixty years is beginning to require an investment which is very often more costly than that needed for older historic buildings. On the other hand, the techniques and materials needed for conservation are usually less expensive. The functionality of these buildings and their rate of aging, i.e., their durability, should be given serious consideration and the necessary parallelism established with traditional historic buildings. We are now at the beginning of a problem that needs to be approached and planned in economic terms and considering its medium and long term profitability.

#### PUBLIC AND PRIVATE INVESTMENTS. ECONOMIC IMPACT

With regard to public and private resources and investments, and incentives to encourage the latter, both in the responses to the questionnaire<sup>v</sup> sent to us by Mr. Antolovic a few months ago, and in the Seminars of this ICOMOS International Committee held in Toledo (1999) and Weimar (1997)<sup>vi</sup>, I have referred extensively to the situation in Spain.

Figures that could provide an overall, reliable estimation of the economic impact of investing resources in heritage conservation are difficult to provide due to the fact that statistics specifically for this area are not available. The current annual number of foreign tourists visiting Spain is 50 million. In other words, 125% of the total population. Of course, not all visitors take part in cultural tourism, although nowadays most do so as either a secondary or occasional activity, and there is a strong upwards trend in the demand for this type of tourism. Income from cultural tourism is difficult to assess as part of total income from tourism activities. Since we received notification of this Seminar we have started to make inquiries at several public administrations. However, given the scope of this phenomenon, there has been insufficient time since then to prepare a good statistical report. We will continue to work on this effort and hope to be able to provide the report in the future. In this Brijuni Seminar we will present some illustrative examples.

### CULTURAL TOURISM. THE NECESSARY SUSTAINABILITY

Cultural tourism is undoubtedly one of the principal sources of wealth derived from investments in heritage conservation and restoration. But it also involves considerable risks. These are often not taken into account by the public authorities responsible for heritage or by many citizens and professionals who remain unaware of its irreplaceable spiritual and economic value.

- Among other benefits that can be generated by cultural tourism, the following can be highlighted:

- Enhancement and recovery of heritage
- Cultural exchange and dialogue
- Increased knowledge and broadened perspectives
- Incorporation of values from other cultures
- Learning about the history of human civilization
- Improved understanding between different peoples
- Economic growth with the consequent enhancement of underutilized resources
- Generation of economic resources for the community visited (local, regional or national), both in the private and public sectors.
- Direct and indirect job creation (experts consider that each directly created job generates 1.2 indirect and 1.5 induced jobs)
- Attraction of capital and other resources from other areas within the country or abroad, as well as public and private investments
- Improved infrastructures and local access
- Potential reinvestment of part of the resources generated from heritage conservation for new rehabilitation projects providing subsequent economic benefits.
- Etc.

*(Some illustrative examples: the Road to Santiago, "The Ages of Man" Exhibits, etc)*

- Among the risks and disadvantages, the following can be mentioned:

Increased problems of access and movement within historic centers and sites if measures are not taken to accommodate them to the flow of tourists

Potential conflicts of functionality in the everyday life and usual activities of local inhabitants

Noise and other inconveniences caused by the behavior of certain visitors, as well as an excessive influx of tourists in the streets and other public areas. Occasional street disorders.

The local population may also be affected by pressure resulting from harassment or disrespect for the traditions, customs and lifestyles that make up their particular idiosyncrasy

Speculative pressure from the tourist industry which, especially when combined with the above circumstances, can lead to forceful displacement of local residents from historic centers.

When dependence on tourist activities is excessive or exclusive, it may entail the risk of a decline in tourism causing a collapse of economic activity.

Another risk is the possibility of demand exceeding supply. Tourism development should therefore be restricted to the number of visitors and degree of exploitation that the site is actual capable of bearing, and should be tailored so that it is in harmony with the functional needs of the local residents.

Inflation from a rise in the price of land, construction and everyday consumer services and products is another challenge. In other words, an excessive increase in the cost of living may threaten the economic stability and well being of the local population over the medium and long term.

Another factor that should not be forgotten is the need for appropriate planning of dependence on, and particularly permissiveness regarding outside companies from the tourist trade, as these may end up absorbing an excessively large proportion of the resources generated. This may sometimes lead to the local population benefiting only marginally from tourism activities in comparison to tour operators who set up in the same locality and have their own staff and services.

*(Some illustrative examples: Granada, Altamira, Mallorca, Toledo, Béjar, Salamanca, etc. Some natural sites and certain archeological ruins of outstanding value in places with a high density of tourists.)*

Before planning actions and deciding on the specific use that heritage designated for cultural tourism is to have, it is necessary to ask what the tourist and particularly the

quality tourist is seeking. Among the things a tourist seeks when visiting historic places, the following can be listed:

- Uniqueness (what he/she cannot find elsewhere)
- Authenticity
- Integrity
- Novel experiences (atmospheres different from the tourist's usual environment and different ways of viewing life, etc.)
- Quality of services
- Environmental quality
- Quality of its characteristic atmosphere
- Etc.

Often these wishes are not taken into consideration and the genuine elements and atmosphere of the historic place are destroyed to offer tourists what they can find in their own living environment. As previously indicated, in the long run quality tourism will withdraw, and the tourist will look for other places that fulfil his or her expectations. This results in a loss of income for the community involved and may also lead to economic decline in some cases.

*(Examples: Plasencia, Antigua)*

Regarding historic properties included in the World Heritage List, public administrations in many countries sometimes distort the concept of heritage, confusing it with an instrument for obtaining economic resources through cultural tourism on a massive scale. Once this is achieved, management of the historic property and conservation of its values becomes subordinated to economic exploitation at any price.

*(Some illustrative examples: Machu Picchu, etc.)*

Investments in and management of heritage properties intended for cultural tourism must respect their integrity, nature and meaning. The objectives of the International Charter of Cultural Tourism adopted by ICOMOS in its 12<sup>th</sup> General Assembly (October 1999) are to promote the tourist industry while ensuring sustainable development, but always on the basis of respect and enhancement of heritage, given its significance and fragile nature; Long-term protection and conservation should be an essential component of plans for social, economic, legislative, cultural and tourism development, and the adverse impact of tourism projects on heritage must be minimized; Management plans to develop a heritage resource should guarantee beforehand that its natural and cultural values will be preserved and establish acceptable limits; Tourism planning should include measures to prevent negative impact on significant features or ecological characteristics; Promotion and management of places of cultural and historic value should protect their authenticity; Tourism planning needs to be focussed on enhancing the intrinsic attraction of the historic place and facilitating its appropriate understanding and enjoyment by the visitor, and uses despoiling or diminishing its nature or function should be avoided.

Planning of the use of cultural properties should include an evaluation of environment impacts and of those factors that could diminish their genuine attraction, and the economic cost of such impacts estimated. A strategy designed to optimize these

exceptional resources should include a study on the possibility of diversifying the offer to encompass surrounding areas, including possible cultural routes covering a wider area. In this context, it would be appropriate to carry out a study on a local and regional level, with more detailed information on the heritage property and its nearest surroundings. This could be used as an important tool for integrated planning and on a long-term basis for conservation, development of trade and industry, planning improvements to infrastructures and the ideal location of local accesses and tourism development activities. This would also encourage the desired rational planning that combines public resources and private initiatives within a framework of information available to the public. Among other advantages, it would allow tourism planning to take advantage of all the possibilities offered by the historic place and its surroundings, and allow a suitable relationship between maintenance costs and the operating income to be established. Among other possibilities, offers encompassing transportation services –including long distance transport– entrance tickets, accommodation, gastronomy, folklore, parking areas, guided tours, sale of craftwork, etc., through different cultural routes can be considered. In addition, visitors should be informed so they are aware of the type of experience that awaits them. Information should be provided not only when tourists reach their destination, but also prior to their arrival. It is also important that information centers be available to help tourist achieve a better and more accurate understanding of the heritage place.

Visits to historic monuments or cities sometimes take place over the course of a single day, as tourists are usually lodged in other nearby towns or cities. In these cases, it is not always easy to attract tourists to stay overnight, but integrated planning combining the different resources can help to promote both historic areas. In other words, a diversification of the offer, especially if this is done through the previously mentioned cultural routes, may provide direct and indirect benefits for different geographical areas and even distant regions.

Income from cultural tourism may also facilitate functional regeneration in other areas. Measures to prevent the tourism sector from becoming the only source of wealth will help to ensure economic balance in the event of a possible crisis in demand. Among other objectives, it is important to regenerate the historic center in a way that ensures that local inhabitants will continue to reside there. Investing part of the income from tourism for improvements in community facilities and infrastructures as well as the optimum use of traditional buildings as dwellings will help to encourage long term continuity of historic centers.

There are no general rules that may be directly extrapolated to every historic place. It is advisable to study other experiences and to take into account general principles both of an ideological and empirical nature. But approaches based on extreme conceptual viewpoints or on the importing of foreign experiences “as is” are contrary to the analysis required by the diversity and widely different circumstances involved in each particular case. Each place has its own “genius loci”, its own charm and cultural personality, and this should be respected in all interventions. Tourism development in historic places should not be at the mercy of trends in the tourism industry, but rather be directed in a planned way and adapted to the particular attractions of the historic place.

*(Some examples: Madrid, Andalucía, etc.)*

Planning of cultural tourism development should be guided by the principle of sustainability and should include investments designed to conserve and generate income from heritage. In each specific case, it is necessary to carry out an analysis of the profitability curve by combining costs and profits. Cultural tourism planning should be comprehensive and take into account the necessary balance between the economy, the environment, heritage and the quality of life of the population. Fortunately, this principle is now a subject of concern for different experts and for the European Union. We hope that this concern can also be transferred to the administrations responsible for heritage and to the private sector.

#### TRADITIONAL AND CURRENT VALUES. THE NECESSARY BALANCE BETWEEN FUNCTION AND CULTURE

Considering that they are highly illustrative on this subject, we refer the reader to some of the conclusions of the "*Symposium on the Restoration and Conservation of Historic Heritage. Urban Integration and Development*" (Guadix, Granada, 24-26 May 1999)<sup>vii</sup>. These conclusions were written by ICOMOS experts from many countries and various continents who took part in the meeting.

#### ECONOMIC AND OTHER VALUES OF HERITAGE. THE NECESSARY RESPECT

- As is clearly pointed out in the Charter of Amsterdam of 1975 when referring to architectural heritage, cultural properties involve values necessary for the balance of mankind that are not solely economic in nature.
- A mercantilist approach dominated by economic interests cannot be applied to heritage. It is appropriate to ensure that its use generates resources, but it should not be regarded as just another utilitarian object. Uses that irreversibly destroy or alter its cultural value end up by destroying its economic profitability as well, i.e., they are equivalent to killing "the goose that lays the golden eggs". Attempts to obtain profits from heritage often end up by destroying the "goldmine" capable of providing them.
- Heritage is not a business. It is not something that can be the object of speculation. Cultural values should have precedence in the management of heritage and any use or income derived from it should be compatible with the safeguarding of these values.
- The desire to make heritage profitable at any price sometimes leads to an excessive distortion of the traditional view of heritage. In these cases, what in the past was primarily an object of contemplation, study and enjoyment is transformed first and foremost into an object of exploitation. Its unique cultural and historic values are viewed and treated as a mere lure for tourism or used to heighten the prestige of certain public organizations or privileged entities. The use and functionality of heritage are obviously desirable qualities, but only as long as they do not alter its essence and meaning. For this reason, both the care of heritage and its adaptation to new uses should be entrusted to specialists. Plans, programs and projects that impact on heritage should be prepared by integrated teams of professionals from all the disciplines required by each particular case.

- It is also necessary to involve the general public. This requires that educational programs for adults and children of school age, information campaigns to spread knowledge about heritage, measures to encourage the creation of cultural associations (on a national, regional and local level), etc. be implemented, so that the public's opinions can be taken into account by the public authorities responsible for decision-making.

## PUBLIC AND PRIVATE SECTORS. THE NECESSARY COOPERATION

- Conservation and enhancement of cultural goods is a joint task of public authorities and private organizations<sup>viii</sup>. Coercive and financial measures, as well as investments by public organizations have little effectiveness over the long term if they are not accompanied by public awareness of the intrinsic values of heritage.
- Cultural property owners should fulfill their obligation to society to conserve and adequately maintain historic properties of cultural interest<sup>ix</sup>. In exchange, public authorities should compensate owners through tax incentives and other financial measures that balance the restriction of their rights in a free market<sup>x</sup>.
- Heritage is not resource over which there are absolute rights of ownership, but rather a resource belonging to society as a whole. Neither public authorities, property owners nor certain professions can consider themselves to have exclusive rights over cultural properties or that they can use them as they see fit. Their destruction or irreversible deterioration for the purpose of obtaining profit cannot be allowed. Because of this, the usefulness of heritage should not be seen only in terms of its economic or individual benefits, but rather in a way that generates benefits for society by improving quality of life in many respects<sup>xi</sup>.

<sup>i</sup> *Despite the Law of the Spanish Historical Heritage (LPHE) of 1985, in certain cases the permissiveness regarding the replacement of characteristic elements by modern buildings lays the foundation for the destruction of characteristic parts of historic cities. Town council members responsible for urban planning, speculation, the interests of building firms, and quite a considerable number of architects foster this practice, which results in an irreparable loss of unique and characteristic heritage. (Suárez-Inclán, 1999)*

### <sup>ii</sup> **Protection of Cultural Goods. Legal Framework:**

1. - *Law of the Spanish Historical Heritage (LPHE) 16/1985 of June 25<sup>th</sup> (Official State Gazette of June 29<sup>th</sup>, 1985).*
2. - *The Spanish Constitution of 27 December 1978 (Arts. 9, 44, 46, 48, 50, 148 and 149)*
3. - *Law 7/1985 of 2 April, regulating the Legal System for Local Entities (articles 2 and 25)*
4. - *Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said LPHE, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>)*
5. - *Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>)*
6. - *Royal Decree 1/1992 of 26 June approved the Revised Text of the Law on Land Regulations and Urban Planning.*

7. – Several Laws on the protection and conservation of cultural goods, as well as on foundations and on land regulations and urban planning, have come into force in different Autonomous Communities of Spain since the above-mentioned Laws were promulgated.

ii **Financial regulations** related to the protection and preservation of heritage, both in terms of its useful benefit and in terms of stimulating measures and financial exemptions

“Steps for Development” contemplated in Section VIII of the Law on Spanish Historical Heritage of 1985 (LPHE) are developed in the following provisions:

Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>). They are even more developed and updated in the Law 30/1994 of November 24<sup>th</sup> of Foundations and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

Also, Income Tax and Corporation Tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax reductions foreseen by the former. For instance, Income Tax Law 18/1991 of June 6<sup>th</sup>, which in Art. 78.4 (c) and (d) reduced deductions on investments made in the acquisition, conservation, etc., of assets declared to be of cultural interest by five percentage points.

Likewise, the General Budgetary Law of the State for each year may establish a list of preferential Patronage activities or programs, for which there may be a five-percentage increase in deduction percentages and in the percentage amount of the maximum levels of deduction. Regarding Corporation Tax, this may alter the levy rate on the tax base (fixed at 10% by the Law of Foundations and Tax Incentives), as well as altering the amount foreseen in order to reduce the liquid quota if a Foundation or Association of public utility were to exclusively carry out free services (Art. 55 and Fourth Final Provision of the said Law).

Apart from the above-mentioned Law 30/1994 of November 24<sup>th</sup> of Foundations and Tax Incentives to Private Contributions in Activities of General Interest, there are other provisions in Spain, which complement and develop it, like the following:

Royal Decree 765/1995, of May 5<sup>th</sup>, which regulates certain matters relating to the System of Tax incentives for private participation in activities of general interest in accordance with the Final Provision 5<sup>th</sup> of the said Law of Foundations.

Royal Decree 3167/1995, of February 23<sup>rd</sup>, which regulates the State Sphere's Foundations.

Royal Decree 589/1984, of February 8<sup>th</sup>, regarding Religious Foundations of the Catholic Church.

The provisions of the Law of Foundations apply notwithstanding whatever may be established by Agreements with the Catholic Church, Cooperation Agreements and Conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to Foundations created or developed by the same.

iv With respect to historic towns article 20 of the Law of the Spanish Historical Heritage (LPHE) of 1985 puts the protection of historic cities under the control of urban measures based on the Laws on Land Regulations and Urban Planning. In article 21 it states that urban planning will include the classification of all buildings, interior and exterior areas, other significant structures and natural components, as well as the definition of the types of intervention possible. Full protection will be provided for those items classified as having outstanding value, while planning instruments will set the level of protection for the rest. Remodeling is allowed on an exceptional basis provided that it represents “an improvement in the relations with the urban environment of the area” and “avoids degrading uses”. In any case, the existing land divisions must be maintained. Replacements are allowed exceptionally if they contribute to “conservation of the character” of the complex as a whole.

Under the LPHE, protection of the heritage of historic centers is implemented through what are termed the Special Plan for Protection, the General Plan, and the Subsidiary Regulations, which are

based in the Laws on Land Regulations and Urban Planning. Despite the provisions of the LPHE, quite often these plans fail to guarantee in practice an equitable distribution of obligations and benefits. Sometimes they also fail to take into account the financial measures necessary for future administration of the plans or not enough consideration is given for future difficulties in obtaining new public resources for the maintenance of the protected properties. According to the LPHE each declaration of a historic city as a historic complex implies the inclusion of a large number of protected buildings. But another problem is that, as it has been said, the Law on Historic Heritage places protection of these buildings under the control of urban regulations that do not correspond to a conservationist philosophy of consolidated urban planning. Thus, in practice the urban inventories of protected items tend to include an insufficient number of buildings belonging to cultural heritage.

<sup>v</sup> The total amount of public spending specifically for the protection, conservation, study and rehabilitation of historic heritage both by the State and Autonomous Communities as well as Local Corporations accounts for 15 to 16% of public spending on culture, amounting to approximately 0.2% of total public spending.

Of this total amount, approximately 31.35% is provided by the State; 44.56% by Autonomous Communities; 6.13% by Province and Island Councils; 6.54% by City Councils of more than 50,000 inhabitants; and 11.42% by City Councils of less than 50,000 inhabitants.

Aside from these public funds, the Church contributes from its own resources a slightly lower amount than Autonomous Communities. To this amount, the investments made by entities such as Banks, Savings Banks and Foundations should be added. Adding together these and the previous contributions, the approximate percentages of each of the above mentioned investment sources are as follows: State, 22.30%; Autonomous Communities, 31.70%; Regional and Island Councils, 4.36%; City Councils of more than 50,000 inhabitants, 4.65%; City Councils of less than 50,000 inhabitants, 8.13%; Church, 26.78%; Banks, Saving Banks and Foundations, 2.8%.

Financial contributions by private individuals must also be taken into account, these being particularly difficult to assess because their primary purpose is for ordinary maintenance. Many restoration, conservation or rehabilitation works of cultural properties are taken on by private individuals. They obtain government subsidies covering a varying percentage of the total cost of the required investment (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

<sup>vi</sup> The following are the most important stimulating measures:

- 1) Relating constructors and firms involved in public works, as well as restorers, owners and holders, the Law establishes preferential access to official credit for funding, public works, conservation, upkeep and rehabilitation, as well as archaeological prospectuses and excavations carried out in areas declared to be of cultural interest. In order to do this, the Public Administrations may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
- 2) As regards public works built and development by private persons by virtue of State dispensation without financial contribution from the State, 1 per cent of the overall budget shall be applied to funding conservation or enrichment works for the Spanish Historical Heritage, preference being given to the works themselves or they immediate surroundings. An exception is made in the case of public works with an overall budget under 100 millions pesetas, with affects State Security and the security of public services. The Ministry of Education and Culture drafts a yearly Plan for Conservation and Enrichment debited to the said funds. In order to execute the projects and programs one must request cooperation from the Administration.
- 3) Debt payment in different taxes: Succession and Gift Tax, Capital Gains Tax, Income Tax and Corporation Tax may be paid by handing over assets belonging to the Spanish Historical Heritage which are registered at the General Registry of Assets of Cultural Interest or included in the General Inventory. In such case, the said assets shall be

appraised, for this purpose, by the Board of Classification, Appraisal and Export of Assets belonging to the Spanish Historical Heritage.

- 4) *Exemptions and other benefits: Assets belonging to the Spanish Historical Heritage registered in the above Registry and Inventory are exempt from Income Tax. These assets may be reappraised for tax purposes up to their market value, being exempted from increased capital tax, unless they are part of the holder's floating assets. Likewise, the following are exempt from Local Real State Tax:*
- *Monuments and gardens each declared to be assets belonging to the Spanish Historical Heritage;*
  - *Those classified as "specially protected" by the urban development plan for archaeological areas;*
  - *When included in classified Historical Sites, those at least 50 years old which receive complete urban protection;*

*There is an exemption from other local taxes on property or its use and conveyancing when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation works on Real State declared to be of cultural interest.*

*These exemptions shall be applied in the terms established by respective municipal regulations.*

- 5) *Tax deductions for natural persons concern the amount of Income Tax: 20% of investments carried out in the acquisition of assets registered at the General Registry of Assets of Cultural Interest, if the asset remains available, to the purchaser for at least three years and notice of the conveyance is given to the said Registry.*

*In any case, this deduction shall not exceed 30% of the tax base.*

- 6) *Tax deductions for legal persons concern the deduction in the liquid quota of the corporation tax:*
- *15% of amounts assigned to the acquisition of assets registered at the General Registry of Assets of Cultural Interest, with the requirement established for natural persons.*
  - *15% of amounts used for conserving, repairing, restoring, promoting and exhibiting assets registered at the above Registry with the same requirements as for natural persons.*

- 7) *Tax incentives for private contribution in activities of general interest:*

*The Spanish legal system regulates private financial contribution for the conservation and restoration of Monuments through the State, other public entities, establishments, institutions, foundations or associations, including temporary "de facto" associations for the administration of funds classified as or declared to be charitable or of public utility by the relevant administrative authority. Contributions of this matter may be made directly by natural or legal persons which in most cases do not bear the importance of foundation, both in the quantitative and qualitative terms, and are currently governed by the same legal text regulating foundations as a legal figure.*

*Further more, large financial companies, to name an example, do not assign assets directly for these purposes but instead, in the case of an activity which is beneficial, both in social and tax terms, with a more or less continuous nature, set up a Cultural Foundation to adequately invest the said capital, e.g. BBV Argentaria Foundation and Banesto Foundation, as well as Saving Bank Foundation, etc. As may be seen, in nearly every case, behind a large Bank there exists a Foundation with the same name.*

The tax system for foundations registered at the Foundation Registry and associations declared to be of public utility has two important aspects:

- 1) *Corporation tax: The above-mentioned entities shall be exempted regarding the results obtained in activities which represent their company purpose or specific aim, as well as capital increases derived both from acquisition including those from non-gratuitous transfer, as long as either are obtained or carried out when fulfilling their purpose or specific aim. They are also exempt from tax on issues such as membership fees, grants, subsidies and cooperation agreements. Furthermore, Art. 50 of the Law on Foundations points out how the tax base is adjusted according to certain items stated therein, since they may carry out other economical activities not related with their specific aim.*
- 2) *Local taxes: These entities are exempted from Real Estate Tax regarding the state they hold. They are also exempt from Tax on Commercial and Professional Activities regarding the activities representing their company purpose or specific aim.*

Concerning the tax system for contributions made to non-profit entities, we have to distinguish the donators between natural and legal persons:

*If natural persons make the contribution, a deduction in the amount of Income Tax corresponds to the following:*

- *20% in pure and simple gifts of assets belonging to the Spanish Historical Heritage (registered at the General Registry of Assets of Cultural Interest, or included in the General Inventory) or gifts of works of art with quality guaranteed in favor of entities with the aim, amongst other ends, of developing and promoting artistic heritage and which apply the said works to public exhibition. The amount of 20% shall be applied to the value of the assets bestowed according to official appraisal carried out by the Board of Classification, Appraisal and Export.*
- *20% in pure and simple gifts of assets which must be part of the bestowing entity's material assets and which contribute to fulfilling activities according to their purposes. Any increase or decrease in capital, which may arise in the event of gifts of Assets belonging to the Spanish Historical Heritage and Works of Art, shall not be taxable.*
- *20% in amounts bestowed for fulfilling activities or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage which are registered at the Registry of Assets of Cultural Interest or are included in the General Inventory. Membership dues are included under this heading as long as they do not involve services offered to members.*

*In all cases, the above deductions shall not exceed 30% of the tax base.*

*If contributions to non-profit entities are made by legal persons, deductions in the Tax bases of Companies Tax are the following:*

- *Up to 30% of the taxes, or 3 per 1,000 of the annual volume of sales in the case of gifts of assets belonging to the Spanish Historical Heritage and Works of Art, with the same conditions and requirements as for natural persons.*
- *Up to 10% of the tax base, or 1 per 1,000 of the annual volume of sales in gifts to material assets of the bestowing entity, the fulfillment of activities according to its purposes, or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage with the same requirements as for natural persons.*

*The treatment given to increases or decreases in capital ensuing for a gift of assets belonging to the Spanish Historical Heritage, Works of Art and assets of material capital for the bestowing entity, is similar to that stated above regarding natural persons. In some cases as in others, the deduction may be increased by 5% (both regarding deduction percentages and the deductible limit of the tax base) if the gift is made for any of the preferential Patronage activities or programs pointed out by the General Budgetary Law of the State of that year.*

*The tax system for other business cooperation activities is as follows:*

*Acquisition of works of Art to be bestowed on the State and other Public Entities, as well as foundations and associations of public utility may give rise to deductions, both on Corporation and Income Tax (the latter in the case of entrepreneurs and professionals subject to direct tax evaluation) as long as a series of requirements are fulfilled, such as:*

*An undertaking to convey the asset in 5 years; once the offer is accepted it becomes irrevocable; the offer must be made the following month after purchasing the asset; until it is conveyed it may be publicly exhibited and investigated; the Administration shall decide of the value of appraisal which shall prevail over the value of acquisition if the latter is higher; the deduction shall be carried out yearly by equal amounts during the period between the undertaking of the offer and the actual conveyance, with a maximum limit per operation. In the case of entrepreneurs and professionals, the said limit shall refer to the share of the tax base regarding net income derived from the relevant business or professional activity.*

vii 1. - *If we are to succeed in restoring the dignity of historic centers within their urban setting and we are to achieve their conservation, it is necessary that both the design and subsequent application of development policies and regulations show an awareness of the need to avoid extremes. WE CANNOT transform our historic centers into museums, into static and untouchable structures, as this, forced by modern development, would mean their abandonment and subsequent destruction. NEITHER CAN WE ALLOW aggressive interventions insensitive to the value of heritage, which are the result of ignorance, incompetence and individual economic interests, to destroy the values we have inherited and their environment.*

2. - *Change is inevitable in society, as it is in our way of understanding the different ways of living and dwelling, and of relating to our environment. Conservation of historic centers needs not at odds with comfort, adequate sanitation, the provision of infrastructures, socioeconomic development, functionality and the conveniences brought by modern advances. It should be tempered by the needs of contemporary living, while seeking to bring together and respect all the cultural, psychological, affective and spiritual values accumulated by civilization in the past and present. For this reason, intervention in historic centers should not be seen as an attempt to preserve heritage from change at any cost, but rather should be respectful of the traditional legacy that is part of the culture of each community and which belongs to both present and future generations.*

3. - *We must become aware of the fact that popular or vernacular architecture and the architecture of traditional lodging buildings possess a unique richness and are genuinely adapted to a specific environment, the result of knowledge accumulated over many generations.*

4. - *Replacements have occurred in historic centers throughout history, but the ease and pace at which they are now occurring is unprecedented. Societies worldwide are placing increasing value on the urban and architectural manifestations of cultures that were historically subdued and superseded by later cultures, as well as on the elements from all past times that have come down to us. Because of this, and within the natural dynamic process of society, interventions in historic centers require that a thorough knowledge of the heritage we have inherited, and the ability to value and respect it, to act cautiously and to seek to harmoniously integrate the past and the present.*

5. - *Heritage is a scarce, extremely fragile and non-renewable resource that is capable of generating wealth and employment. It should not be regarded as an isolated resource, but rather from a perspective encompassing the various sectors involved that coordinates the divergent resources (cultural, landscape, industrial, tourism, infrastructures, etc) and directs efforts toward a goal of enduring regional development, serving to improve the quality of life. The usefulness of heritage should not be measured solely in terms of profitability and over the short term, since its value lies not just in its material worth but also in its spiritual value and the atmosphere it lends, which are necessary for the integral development of human beings. Heritage must first be saved and then used, but inadequate or degrading uses leading to its abuse or destruction must be avoided at all times.*

6. - *Conservation of historic and natural heritage is a race against time. While we are here, reflecting on the conservation of heritage, others are making plans and designing projects aimed at its destruction. The best investment in conservation, rehabilitation, enhancement and dissemination of heritage is to arm the general public with the weapons of education and an awareness of the value of historic and natural heritage. The best way to control heritage and urban planning in our cities and the natural environment*

is through the participation of citizens in all areas of public life. As citizens, we have great power in the areas where we live and work if, both as consumers and in our general attitude, we demand a good quality of life for all, and if we criticize and denounce all the violations that we know of. Let's use this daily vote.

7. - Society needs to be reeducated in the value of the privately-owned historic dwellings, not only through isolated actions but by considering heritage in historic centers as a whole, as the sum of diverse elements even though not all the individual elements have great value on their own.

8. - Current land speculation and the construction of buildings that cause the displacement of the population to outlying districts, leading to the emptying and destruction of city centers, must be prevented.

9. - The administration must intervene by providing rehabilitation programs and promoting the public use of buildings in historic centers.

10. - It is important to promote an awareness of the need for heritage conservation among the younger generations.

11. - Greater incentives than those currently existing regarding tax benefits for rehabilitation (exemption from licenses, grants contributing to the gratuity or a considerable reduction in the cost of technical documents, etc.) need to be introduced.

12. - Adequate management instruments are needed, since general urban planning schemes should not be mere development tools, but cover the integral management of urban centers. Moreover, interdisciplinary actions need to be undertaken that consider not only the value of the buildings, but also the spaces, sociological characteristics, mobility, social demands aimed at improving the quality of life and atmosphere of the historic complex, the physical and psychological needs of the population, production relations that are generated in the area, etc. On the other hand, management instruments such as the "Special Plans" should allow for greater participation of citizens in their design and management.

13. - Urban planning should establish the overall guidelines for intervention, but should avoid two current errors:

- Overregulation, i.e., attempting to cover all eventualities and leaving no room for flexible interventions.
- Excessive bureaucracy, i.e., requiring the owner of historic properties to pass through an interminable series of administrative filters, whose criteria (issued by different local or provincial administrations, etc., concurring in the area) are not identical and may even have divergent aims. In this way, the owner of the heritage property realizes that nothing can be done to prevent its disappearance and desists in his endeavor, completely disillusioned.

14. - Knowledge of traditional materials and building techniques, as well as the procedures and criteria for restoration, should be made a compulsory part of technical university courses. It is also necessary to promote a political awareness of the need to reappraise the value of heritage properties. It is, to conclude, necessary to carry out integral studies of historic centers, in which the value of all landscape and urban aspects, typologies, textures and colors are taken into consideration, instead of a mere listing or classification of historic complexes.

15. - It is necessary to:

- a. - Educate all agents (economic, political, social, etc.) who play a decisive role in conservation, rehabilitation and the transformation of the city,
- b. - Establish a standardized terminology for the concepts of heritage protection.

<sup>viii</sup> Private heritage must be mainly supported by private funds, but it is also convenient to continue to strengthen cooperation between public and private organizations. Within this scope the contribution of public resources becomes necessary, especially within the framework of housing rehabilitation as it is specified under article 2 of the Royal Decree of 14 May 1993. (Suárez-Inclán, 1999).

<sup>ix</sup> It would also be necessary for owners to comply more widely with the social function intrinsic to cultural properties. It should also be emphasized that town or city councils often do not take subsidiary

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action allowing them to execute the required works and pass on the cost to the property, and very rarely do they resort to compulsory expropriation. This fact, together with the possibility of technical ruin introduced by the Law on Historic Heritage of 1985 (in accordance with the Granada Convention of the same year) and article 21 of this law results in some buildings being declared ruins even in protected cities and neighborhoods, with their consequent demolition. (Suárez-Inclán, 1999).

<sup>x</sup> The measures concerning deductions in the amount of both Income and Companies Tax contemplated in the Law on Foundations and Tax Incentives of 1994 (even though it may be considered an advanced and positive instrument) do not seem to be sufficiently attractive in practice to encourage enough participation. It is so indicated by the fact that many owners of cultural properties are continually urging the authorities to extend benefits beyond the usual limits (both regarding deduction percentages and the deductible limit on the tax base) (Suárez-Inclán, 1999). Government subsidies (see v).

<sup>xi</sup> It is obvious that Heritage cannot be contemplated as an isolated item but inside the global scope of sustainable development as a nonrenewable resource of transcendent importance in many areas, including the economic. Therefore, it is not only necessary to consider heritage in both its material and spiritual dimensions, covering simultaneously cultural and natural values. It is also required to deal with worldwide long-term management by coordinating all the resources and converging needs, in a context of national and international ecological management serving quality of life. Thus, the different legal provisions and policies dealing with cultural and natural heritage, tourism, public works, industry, social welfare, etc should be combined so that they may be applied in a coordinated way. (Suárez-Inclán, 1999).

## REPERCUSION ECONOMICA DE LA FINANCIACIÓN EN MATERIA DE CONSERVACIÓN Y RESTAURACION DEL PATRIMONIO

*María Rosa Suárez-Inclán Ducassi*

### CONSIDERACIONES GENERALES

El Patrimonio está constituido por bienes no renovables y, generalmente, frágiles y escasos. Estas características contribuyen a situarlo en un alto "ranking" dentro de la ley de la oferta y la demanda. Sobre todo, con vistas al Turismo Cultural que crece a un ritmo vertiginoso. También, aunque en menor medida, hay que tener en cuenta el prestigio que la posesión o el disfrute de determinados bienes culturales supone para determinadas instituciones públicas y privadas, así como para ciertos sectores sociales.

Cuando las normas, la política y el grado de desarrollo cultural, así como los recursos disponibles, permiten conservar y rehabilitar adecuadamente el Patrimonio, no cabe duda de que éste constituye una fuente de riqueza socioeconómica que puede hacer aumentar el nivel y la calidad de vida. Desgraciadamente, estas circunstancias no se dan en numerosos países. Pero, a veces, el abandono que acompaña a la penuria económica es menos destructivo que ciertas actuaciones que lo desvirtúan. En ocasiones, una mala política de inversiones en el patrimonio puede llevar a un resultado económico adverso y tan irreversible como la pérdida de los valores culturales que le prestan su atractivo. Y, evidentemente, el turismo también puede llegar a representar una amenaza para el Patrimonio si no va acompañado del necesario control y planificación.

En una primera aproximación cabría distinguir entre los monumentos singulares de primera importancia, es decir, los muy conocidos, y los de segundo orden. La recuperación de los primeros puede resultar rentable para destinarlos a su contemplación por parte de los visitantes. Los segundos requieren, con frecuencia, dedicarlos a un uso distinto (sedes oficiales o de grandes empresas, hoteles, centros culturales, etc.) Las ventajas culturales y de imagen de estas operaciones funcionales suelen ser incuestionables si se realizan con el debido respeto al Patrimonio. En cuanto a la rentabilidad económica debe ser considerada a largo plazo y mirando también hacia atrás y hacia el futuro. No hay que perder de vista el coste que representaría su actual construcción, y los servicios que son susceptibles de prestar, a lo largo del tiempo, a través de múltiples utilidades. De esta forma, las inversiones realizadas para su restauración y conservación pueden considerarse también como operaciones destinadas al mantenimiento de un importante parque inmobiliario que sigue siendo útil.

Un problema diferente se plantea cuando se trata de analizar la rentabilidad de las inversiones en arquitectura habitacional, tanto en el área rural como en los centros históricos de ciudades y pueblos.

El parque inmobiliario tradicional representa un capital acumulado, cultural, social y económico. Pero las características genuinas de la arquitectura popular y doméstica - salvo, como hemos dicho, los elementos que poseen valores o condiciones sobresalientes - se debaten en una dicotomía entre su reciente reconocimiento pleno (desde hace apenas unas décadas) y la filosofía favorecedora de las sustituciones de

inmuebles y elementos. Esta última es compartida por muchas Administraciones públicas, sectores de la construcción, y un buen número de arquitectos y urbanistas<sup>i</sup>.

En general, en el área rural se concede poca atención y protección a los inmuebles tradicionales aislados. Afortunadamente, se han puesto en marcha programas de la Unión Europea destinados a rehabilitar edificios de este tipo para el denominado Turismo Rural. Existen ejemplos, incluso notables, de recuperación que proporcionan ingresos y generan empleo en muchas zonas deprimidas. Pero tampoco puede hablarse de una recuperación generalizada.

En los centros urbanos la rehabilitación de edificios históricos de carácter doméstico para el uso habitacional (por ejemplo, casas de pisos del siglo XIX y primera parte del XX) está contemplada a través de medidas protectoras<sup>ii</sup> y de fomento<sup>iii</sup>. Pero la rehabilitación resulta normalmente cara, entre otras razones, debido a su carácter excepcional con relación a la construcción de nueva planta. También incide en ello el hecho de que la mayoría de los arquitectos y de la mano de obra carecen de conocimientos y preparación para trabajar con las técnicas, estructuras y materiales tradicionales de construcción. Sus herramientas habituales son el hormigón, el acero y el cristal, lo cual contribuye a encarecer mucho el uso de materiales tradicionales. Además, resulta difícil ensamblar estos últimos con los nuevos. En términos generales, se invierte un 85% en nueva construcción y sólo un 15% en rehabilitaciones. Por otra parte, los planteamientos urbanísticos no siempre favorecen la conservación de este tipo de arquitectura<sup>iv</sup>. El resultado de todo ello es que se sigue perdiendo un considerable número de inmuebles de carácter tradicional, tanto en el área rural como en los núcleos urbanos históricos.

También hay que tener en cuenta que el concepto de Patrimonio se ha ampliado hasta traspasar todas las fronteras de contenido, estilísticas y cronológicas. Ello nos introduce en una victoria conceptual que, como contrapartida, supone una inflación del término Patrimonio y confiere un valor relativo a sus contenidos.

La conservación del patrimonio arquitectónico de los últimos sesenta años está empezando a requerir una inversión que, muchas veces, resulta más costosa que la del patrimonio más antiguo. Por otra parte, las técnicas y materiales para su conservación son normalmente más asequibles. La funcionalidad de estos edificios y su velocidad de envejecimiento, es decir, su durabilidad, deben ser seriamente consideradas, estableciendo el necesario paralelismo con el parque inmobiliario tradicional. Nos encontramos ante el inicio de un problema que requiere ser planteado y planificado en términos económicos y de rentabilidad a medio y largo plazo.

## INVERSIONES PÚBLICAS Y PRIVADAS. EFECTO ECONÓMICO

Respecto a los recursos e inversiones públicas y privadas, y al fomento de éstas últimas, tanto en las respuestas al cuestionario<sup>v</sup> que nos envió el Sr. Antolovic hace unos meses, como en los Seminarios de este Comité de ICOMOS celebrados en Toledo (1999) y en Weimar (1997)<sup>vi</sup>, me he referido ampliamente a la situación en España.

En cuanto a las cifras que puedan reflejar de forma global y fidedigna el impacto económico de invertir recursos en la conservación del patrimonio, es muy difícil dar una

idea general y definitiva, ya que no se dispone de estadísticas específicas en esta materia. Actualmente, la cifra anual de turistas extranjeros en España es de 50 millones de personas. Es decir, un 125% respecto a su población total. Naturalmente, no todos ellos hacen turismo cultural, si bien hoy en día la mayoría lo hace al menos de forma secundaria u ocasional, y se observa una fuerte tendencia ascendente en este tipo de demanda. Los ingresos provenientes del turismo cultural son difíciles de evaluar dentro del conjunto. Desde que recibimos la convocatoria de este Seminario hemos iniciado consultas con distintas Administraciones. Pero, dada la envergadura del fenómeno, un buen informe estadístico requiere un tiempo superior al transcurrido desde entonces. Proseguimos en este esfuerzo, y esperamos que podremos proporcionarlo en el futuro. En este Seminario de Brijuni procuraremos presentar algunos ejemplos ilustrativos.

#### EL TURISMO CULTURAL. LA NECESARIA SOSTENIBILIDAD

El Turismo Cultural es, indudablemente, una de las principales fuentes de riqueza derivada de las inversiones en conservación y restauración del Patrimonio. Pero también entraña considerables riesgos. Con frecuencia, estos últimos no son tenidos en cuenta por las autoridades públicas responsables en materia de Patrimonio, así como tampoco por muchos ciudadanos y profesionales que aún no han tomado conciencia de su valor insustituible, tanto espiritual como económico.

- Entre otras ventajas susceptibles de ser generadas por el Turismo Cultural pueden destacarse las siguientes:

- Puesta en valor y recuperación del Patrimonio
- Intercambio y diálogo cultural
- Ampliación de conocimientos y puntos de vista
- Incorporación de valores de otras culturas
- Aprendizaje de la historia de la civilización humana
- Factor de comprensión entre distintos pueblos
- Dinamización de la economía con la consiguiente puesta en valor de recursos infrutilizados
- Generación de recursos económicos para la comunidad visitada (local, regional o nacional), tanto en el sector privado como en el público.
- Creación de empleo directo e indirecto (Los expertos consideran que cada empleo directo genera 1,2 indirectos y 1,5 inducidos)
- Atracción de capitales foráneos y otros recursos e inversiones públicas y privadas.
- Mejora de infraestructuras y accesos
- Posibilidad de reinvertir parte de los recursos generados en conservación del patrimonio y nuevas rehabilitaciones que proporcionen sucesivos beneficios económicos.
- Etc.

*(Algunos ejemplos ilustrativos: Camino de Santiago, Exposiciones "Las Edades del Hombre", etc)*

- Entre los riesgos y desventajas, cabe citar los siguientes:

- Incremento de problemas de accesibilidad y movilidad si no se adoptan medidas para acomodar los lugares o centros históricos al flujo turístico

Posibles conflictos de funcionalidad en el desarrollo de la vida y las tareas habituales de los habitantes locales

Ruidos y otras molestias derivadas del comportamiento de ciertos visitantes, así como de la afluencia excesiva de turistas en calles y otros espacios públicos. A veces, desórdenes callejeros

La población local puede verse afectada también por una presión que se traduzca en un acoso o falta de respeto a las tradiciones, costumbres y formas de vida que constituyen su peculiar idiosincrasia

Presión especulativa del sector de servicios turísticos lo que, especialmente cuando se une a las circunstancias antedichas, puede dar lugar a un forzado desplazamiento de los habitantes de los centros históricos.

Cuando la dependencia de la actividad turística es excesiva o excluyente puede entrañar el riesgo de que la disminución del turismo genere un colapso de la actividad económica.

Otro riesgo es que la demanda supere a la oferta, por lo que el desarrollo turístico debe ceñirse a la capacidad real de acogida y explotación, así como adecuarse armónicamente a las necesidades funcionales de la población residente.

La inflación proveniente del encarecimiento del suelo, la construcción, los servicios y los productos de consumo ordinario, representa otro reto. Es decir, un excesivo encarecimiento del coste de vida puede hacer peligrar la estabilidad económica y el bienestar de la población a medio y largo plazo.

Tampoco hay que perder de vista la necesidad de planificar adecuadamente la dependencia y, sobre todo, la permisividad respecto a empresas foráneas del sector turístico, las cuales pueden terminar acaparando una proporción excesivamente elevada de los recursos generados. Así, a veces, la población local se ve beneficiada sólo de forma marginal o residual con relación a los turoperadores que se establecen en la propia localidad y cuentan con su propio personal y sus propios servicios.

*(Algunos ejemplos ilustrativos: Granada, Altamira, Mallorca, Toledo, Béjar, Salamanca, etc. Algunos elementos naturales y ciertas ruinas arqueológicas de singular valor en lugares con alta densidad turística.)*

Antes de planificar actuaciones y decidir el uso concreto que queremos dar al Patrimonio destinado al turismo, es preciso preguntarse qué busca el turista, especialmente el de calidad. Entre esas aspiraciones figuran las siguientes:

Singularidad (lo que no puede encontrar en todas partes)

Autenticidad  
 Integridad  
 Experiencias novedosas (atmósferas distintas a las habituales y formas diversas de concebir la vida, etc.)  
 Calidad de servicios  
 Calidad ambiental  
 Etc.

Muchas veces no se tienen en cuenta estos deseos y se destruyen los elementos y ambientes genuinos para ofrecer al turista lo que puede encontrar en su propio ámbito vital. A la larga, como se ha indicado, el turismo de calidad se retrae, y el turista busca otros lugares que satisfagan sus aspiraciones. Ello representa la consiguiente pérdida de beneficios para la comunidad afectada y, en algunos casos, puede conducir al retraimiento económico.

*(Ej. Plasencia, Antigua)*

Por lo que se refiere a los bienes inscritos en la Lista del Patrimonio Mundial, en ocasiones, las Administraciones Públicas de muchos países desvirtúan este concepto confundiéndolo con un instrumento para conseguir recursos económicos mediante el Turismo Cultural masivo. Una vez conseguido éste, el tratamiento del bien y la conservación de sus valores quedan supeditados a la explotación económica a cualquier precio.

*(Algún ejemplo ilustrativo. Ej. Machu Picchu, etc.)*

La inversión y gestión de bienes culturales dedicados al Turismo cultural deben respetar su integridad, naturaleza y significado. Los objetivos de la Carta Internacional de Turismo Cultural de ICOMOS aprobada en su XIIª Asamblea General (Octubre, 1999) buscan favorecer la industria turística procurando un desarrollo sostenible, pero siempre sobre la base de respetar y realzar el patrimonio, dada su importancia y su fragilidad; La protección y conservación a largo plazo deben constituir un componente esencial de los planes de desarrollo social, económico, legislativo, cultural y turístico, y el impacto adverso de los proyectos turísticos en el patrimonio debe minimizarse al máximo; Los planes de gestión encaminados al desarrollo de un recurso patrimonial deben garantizar previamente sus valores naturales y culturales, fijando los límites admisibles; La planificación turística debe incluir los medios para impedir un impacto negativo sobre los rasgos significativos y las características ecológicas; La promoción y gestión de lugares de valor cultural e histórico debe proteger su autenticidad; Es necesario que la planificación turística vaya enfocada a resaltar el atractivo intrínseco del bien y a facilitar su correcta comprensión y disfrute por el visitante, por lo que han de evitarse los usos que adulteran o disminuyen esta lectura al desvirtuar su naturaleza y función.

Al planificar la utilización de los bienes culturales deben valorarse los impactos ambientales así como los que puedan menoscabar su atractivo genuino, y calcular el coste económico que ello acarrearía. Una estrategia dirigida a optimizar estos extraordinarios recursos debería englobarse en un estudio que contemple una diversificación de la oferta en los alrededores, incluyendo posibles itinerarios culturales más amplios. En ese contexto, resultaría adecuado establecer un estudio de la comarca o región, con mayor información específica sobre el bien y sus alrededores más próximos.

Ello puede constituir un importante instrumento para la planificación integrada y a largo plazo, la conservación, el desarrollo comercial e industrial, la previsión de mejoras de infraestructura y la idónea ubicación de accesos, así como para la localización de actividades turísticas de desarrollo. Todo ello favorece también una deseable y racional planificación combinada de los recursos públicos y las iniciativas privadas, dentro de un marco de información accesible al público. Entre otras ventajas, permite también planificar un aprovechamiento turístico que se beneficie del conjunto y que permita establecer una adecuada relación entre los costes de su mantenimiento y los beneficios de su explotación. Entre otras posibilidades, cabe estudiar ofertas que engloben servicios de transporte –incluso de larga distancia– entradas, alojamiento, gastronomía, folclore, aparcamientos, visitas guiadas, venta de artesanías, etc., a través de diversas rutas culturales. Por otra parte, los visitantes deben ser informados para asumir conscientemente el tipo de experiencia que les aguarda. Pero no sólo a su llegada, sino de antemano. También es importante que los lugares cuenten con centros interpretativos de información que faciliten la mejor y más correcta comprensión de los mismos.

En ocasiones, las visitas a los monumentos o ciudades históricas se producen sólo en el transcurso de un día, ya que los turistas se alojan en otros núcleos más o menos próximos a aquellos. En esos casos, no siempre es fácil atraerlos para pernoctar, pero una planificación integral y combinada de los diferentes recursos puede contribuir a potenciar ambos espacios. Es decir, la diversificación de la oferta, especialmente si se potencia a través de los citados itinerarios culturales o turísticos, puede beneficiar, tanto directa como indirectamente, a comarcas y regiones diversas.

Los ingresos provenientes del turismo cultural pueden facilitar una regeneración funcional en otros ámbitos. Procurar que el sector turístico no se convierta en la única fuente de riqueza contribuye a garantizar el equilibrio ante una posible crisis de la demanda. Entre otros objetivos, es importante regenerar el centro histórico para fijar en él la población residente. Favorecer sus equipamientos e infraestructuras, así como un óptimo uso habitacional, a través de las inversiones provenientes del turismo, facilita su continuidad a largo plazo.

No existen reglas generales directamente extrapolables. Es sensato estudiar experiencias ajenas y tener en cuenta los principios generales, tanto de carácter doctrinal como empírico. Pero el extremismo conceptual, así como la importación sin matices de experiencias foráneas, está reñido con el análisis que requiere la variada casuística y sus infinitos supuestos. Cada lugar posee su propio “genius loci”, su encanto y su personalidad cultural, y todo ello debe respetarse en las intervenciones. Los lugares históricos no deben dejar las riendas de su desarrollo a merced del devenir turístico, sino encauzar éste de forma planificada y adaptada a sus peculiares atractivos.

*(Algunos ejemplos como Madrid, Andalucía, etc.)*

El principio de sostenibilidad en el desarrollo del turismo cultural debe guiar su planificación, y dentro de ella, las inversiones dirigidas a conservar y rentabilizar el patrimonio. Es necesario realizar, en cada caso específico, un análisis de la curva de rentabilidad poniendo en combinación los costes y los beneficios. La planificación del Turismo Cultural debe ser integral, teniendo en cuenta el necesario equilibrio entre la economía, el medio ambiente, el patrimonio y la calidad de vida de la población. Afortunadamente, hoy en día, dicho principio es objeto de preocupación por parte de

distintos expertos, así como de la Unión Europea. Esperemos que esa preocupación se traslade igualmente a las Administraciones responsables del Patrimonio y al sector privado.

#### VALORES TRADICIONALES Y ACTUALES. EL NECESARIO EQUILIBRIO FUNCIONAL Y CULTURAL

Por considerar que resultan muy ilustrativos en este tema, remitimos a la lectura de algunas conclusiones de las *"Jornadas sobre Restauración y Conservación del Patrimonio Histórico. Integración Urbanística y Desarrollo"* (Guadix, Granada, 24 - 26 de mayo, 1999)<sup>vii</sup>. Dichas conclusiones fueron redactadas por expertos de ICOMOS de numerosos países y de diversos continentes que tomaron parte en dicho encuentro.

#### VALORES ECONÓMICOS Y OTROS VALORES DEL PATRIMONIO. EL NECESARIO RESPETO.

- Como bien señaló la carta de Amsterdam de 1975 al referirse al patrimonio arquitectónico, los bienes culturales entrañan unos valores necesarios para el equilibrio del hombre que no son sólo económicos.
- No se puede aplicar una óptica mercantilista al Patrimonio. Está bien procurar que su utilización genere recursos, pero no puede ser considerado como un objeto utilitario cualquiera. Los usos que destruyen o alteran irreversiblemente sus valores culturales terminan por destruir también su rentabilidad económica; es decir, equivalen a matar "la gallina de los huevos de oro". Por sacar algún rendimiento al Patrimonio, muchas veces se acaba destruyendo la "mina" susceptible de proporcionarlos.
- El Patrimonio no es un negocio. No se puede hacer almoneda con el mismo. En su tratamiento deben primar los valores culturales, y cualquier uso o rentabilidad deben ser compatibles con la salvaguarda de aquellos.
- En ocasiones, el afán de rentabilizar el Patrimonio a cualquier precio desvirtúa excesivamente el punto de vista tradicional. En esos casos, lo que antes constituía primordialmente un objeto de contemplación, estudio y deleite, pasa a convertirse prioritariamente en un objeto de explotación. Sus valores singulares, históricos y culturales se consideran y se tratan como un mero reclamo para el turismo o para acentuar el prestigio de ciertos organismos públicos o entidades privilegiadas. El uso y la funcionalidad son, naturalmente, deseables, pero siempre que no alteren su esencia y significado. Por eso, tanto el cuidado del Patrimonio como su adaptación a nuevos usos debe ser encomendado a especialistas. Los planes, programas y proyectos que incidan sobre el mismo deben realizarse por equipos integrados por profesionales de todas aquellas disciplinas que requiera cada caso concreto.
- Es igualmente necesario involucrar a la población. Para ello es preciso contar con programas de formación para escolares y adultos, campañas de divulgación, estímulo de asociaciones culturales (nacionales, regionales y locales), etc. cuya opinión pueda ser tenida en cuenta en los órganos administrativos de decisión.

## SECTOR PÚBLICO Y SECTOR PRIVADO. LA NECESARIA COLABORACIÓN.

- La conservación y puesta en valor de los bienes culturales es una tarea conjunta de los poderes públicos y los entes privados<sup>viii</sup>. Las medidas coercitivas y financieras, así como las inversiones de los primeros resultan poco eficaces a la larga si no van acompañadas de una toma de conciencia social sobre los valores intrínsecos del patrimonio.
- Los propietarios de bienes culturales deben cumplir con la carga social que supone la conservación y el adecuado mantenimiento de los bienes patrimoniales de interés cultural<sup>ix</sup>. En contrapartida, los poderes públicos deben compensar a sus propietarios con medidas fiscales y económicas que equilibren la limitación de sus derechos en el libre mercado<sup>x</sup>.
- El patrimonio no es un bien de propiedad absoluta. Es un bien de carácter social. Ni los poderes públicos, ni sus propietarios, ni determinadas profesiones, pueden considerar que tienen derechos exclusivos sobre los bienes culturales o que pueden servirse de ellos a su antojo. Ni destruirlos o deteriorarlos irreversiblemente para obtener con ello unos beneficios. Por eso, la utilidad del patrimonio debe ser entendida no sólo en términos económicos o individualistas, sino de forma que genere una rentabilidad social mejorando la calidad de vida de la sociedad en múltiples aspectos<sup>xi</sup>.

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<sup>i</sup> *Despite the Law of the Spanish Historical Heritage (LPHE) of 1985, in certain cases the permissiveness regarding the replacement of characteristic elements by modern buildings lays the foundation for the destruction of characteristic parts of the historic cities. Town council members responsible for urban planning, speculation, the interests of building firms, and quite a considerable number of architects foster this practice, which results in an irreparable loss of unique and characteristic heritage. (Suárez-Inclán, 1999)*

<sup>ii</sup> **Protection of Cultural Goods. Legal Framework:**

1. - *Law of the Spanish Historical Heritage (LPHE) 16/1985 of June 25<sup>th</sup> (Official State Gazette of June 29<sup>th</sup>, 1985).*
2. - *The Spanish Constitution of 27 December 1978 (Arts. 9, 44, 46, 48, 50, 148 and 149)*
3. - *Law 7/1985 of 2 April, regulating the Legal System for Local Entities (articles 2 and 25)*
4. - *Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said LPHE, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>)*
5. - *Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>)*
6. - *Royal Decree 1/1992 of 26 June approved the Revised Text of the Law on Land Regulations and Urban Planning.*
7. - *Several Laws on the protection and conservation of cultural goods, as well as on foundations and on land regulations and urban planning, have come into force in different Autonomous Communities of Spain since the above-mentioned Laws were promulgated.*

ii *Financial regulations related to the protection and preservation of heritage, both in terms of its useful benefit and in terms of stimulating measures and financial exemptions*

"Steps for Development" contemplated in Section VIII of the Law on Spanish Historical Heritage of 1985 (LPHE) are developed in the following provisions:

Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>). They are even more developed and updated in the Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

Also, Income Tax and Corporation Tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax reductions foreseen by the former. For instance, Income Tax Law 18/1991 of June 6<sup>th</sup>, which in Art. 78.4 (c) and (d) reduced deductions on investments made in the acquisition, conservation, etc., of assets declared to be of cultural interest by five percentage points.

Likewise, the General Budgetary Law of the State for each year may establish a list of preferential Patronage activities or programs, for which there may be a five-percentage increase in deduction percentages and in the percentage amount of the maximum levels of deduction. Regarding Corporation Tax, this may alter the levy rate on the tax base (fixed at 10% by the Law of Foundations and Tax Incentives), as well as altering the amount foreseen in order to reduce the liquid quota if a Foundation or Association of public utility were to exclusively carry out free services (Art. 55 and Fourth Final Provision of the said Law).

Apart from the above-mentioned Law 30/1994 of November 24<sup>th</sup> of Foundations and Tax Incentives to Private Contributions in Activities of General Interest, there are other provisions in Spain, which complement and develop it, like the following:

Royal Decree 765/1995, of May 5<sup>th</sup>, which regulates certain matters relating to the System of Tax incentives for private participation in activities of general interest in accordance with the Final Provision 5<sup>th</sup> of the said Law of Foundations.

Royal Decree 3167/1995, of February 23<sup>rd</sup>, which regulates the State Sphere's Foundations.

Royal Decree 589/1984, of February 8<sup>th</sup>, regarding Religious Foundations of the Catholic Church.

The provisions of the Law of Foundations apply notwithstanding whatever may be established by Agreements with the Catholic Church, Cooperation Agreements and Conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to Foundations created or developed by the same.

<sup>iv</sup> With respect to historic towns article 20 of the Law of the Spanish Historical Heritage (LPHE) of 1985 puts the protection of historic cities under the control of urban measures based on the Laws on Land Regulations and Urban Planning. In article 21 it states that urban planning will include the classification of all buildings, interior and exterior areas, other significant structures and natural components, as well as the definition of the types of intervention possible. Full protection will be provided for those items classified as having outstanding value, while planning instruments will set the level of protection for the rest. Remodeling is allowed on an exceptional basis provided that it represents "an improvement in the relations with the urban environment of the area" and "avoids degrading uses". In any case, the existing land divisions must be maintained. Replacements are allowed exceptionally if they contribute to "conservation of the character" of the complex as a whole.

Under the LPHE, protection of the heritage of historic centers is implemented through what are termed the Special Plan for Protection, the General Plan, and the Subsidiary Regulations, which are based in the Laws on Land Regulations and Urban Planning. Despite the provisions of the LPHE, quite often these plans fail to guarantee in practice an equitable distribution of obligations and benefits. Sometimes they also fail to take into account the financial measures necessary for future administration of the plans or not enough consideration is given for future difficulties in obtaining new public resources

for the maintenance of the protected properties. According to the LPHE each declaration of a historic city as a historic complex implies the inclusion of a large number of protected buildings. But another problem is that, as it has been said, the Law on Historic Heritage places protection of these buildings under the control of urban regulations that do not correspond to a conservationist philosophy of consolidated urban planning. Thus, in practice the urban inventories of protected items tend to include an insufficient number of buildings belonging to cultural heritage.

<sup>v</sup> The total amount of **public spending specifically for the protection, conservation, study and rehabilitation of historic heritage** both by the State and Autonomous Communities as well as Local Corporations accounts for 15 to 16% of public spending on culture, amounting to approximately 0.2% of total public spending.

Of this total amount, approximately 31.35% is provided by the State; 44.56% by Autonomous Communities; 6.13% by Province and Island Councils; 6.54% by City Councils of more than 50,000 inhabitants; and 11.42% by City Councils of less than 50,000 inhabitants.

Aside from these public funds, the Church contributes from its own resources a slightly lower amount than Autonomous Communities. To this amount, the investments made by entities such as Banks, Savings Banks and Foundations should be added. Adding together these and the previous contributions, the approximate percentages of each of the above mentioned investment sources are as follows: State, 22.30%; Autonomous Communities, 31.70%; Regional and Island Councils, 4.36%; City Councils of more than 50,000 inhabitants, 4.65%; City Councils of less than 50,000 inhabitants, 8.13%; Church, 26.78%; Banks, Saving Banks and Foundations, 2.8%.

**Financial contributions by private individuals** must also be taken into account, these being particularly difficult to assess because their primary purpose is for ordinary maintenance. Many restoration, conservation or rehabilitation works of cultural properties are taken on by private individuals. They obtain **government subsidies** covering a varying percentage of the total cost of the required investment (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

<sup>vi</sup> The following are the most important **stimulating measures**:

- 1) Relating constructors and firms involved in public works, as well as restorers, owners and holders, the Law establishes preferential access to official credit for funding, public works, conservation, upkeep and rehabilitation, as well as archaeological prospectuses and excavations carried out in areas declared to be of cultural interest. In order to do this, the Public Administrations may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
- 2) As regards public works built and development by private persons by virtue of State dispensation without financial contribution from the State, 1 per cent of the overall budget shall be applied to funding conservation or enrichment works for the Spanish Historical Heritage, preference being given to the works themselves or they immediate surroundings. An exception is made in the case of public works with an overall budget under 100 millions pesetas, with affects State Security and the security of public services. The Ministry of Education and Culture drafts a yearly Plan for Conservation and Enrichment debited to the said funds. In order to execute the projects and programs one must request cooperation from the Administration.
- 3) Debt payment in different taxes: Succession and Gift Tax, Capital Gains Tax, Income Tax and Corporation Tax may be paid by handing over assets belonging to the Spanish Historical Heritage which are registered at the General Registry of Assets of Cultural Interest or included in the General Inventory. In such case, the said assets shall be appraised, for this purpose, by the Board of Classification, Appraisal and Export of Assets belonging to the Spanish Historical Heritage.

4) *Exemptions and other benefits: Assets belonging to the Spanish Historical Heritage registered in the above Registry and Inventory are exempt from Income Tax. These assets may be reappraised for tax purposes up to their market value, being exempted from increased capital tax, unless they are part of the holder's floating assets. Likewise, the following are exempt from Local Real State Tax:*

- *Monuments and gardens each declared to be assets belonging to the Spanish Historical Heritage;*
- *Those classified as "specially protected" by the urban development plan for archaeological areas;*
- *When included in classified Historical Sites, those at least 50 years old which receive complete urban protection;*

*There is an exemption from other local taxes on property or its use and conveyancing when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation works on Real State declared to be of cultural interest.*

*These exemptions shall be applied in the terms established by respective municipal regulations.*

5) *Tax deductions for natural persons concern the amount of Income Tax: 20% of investments carried out in the acquisition of assets registered at the General Registry of Assets of Cultural Interest, if the asset remains available, to the purchaser for at least three years and notice of the conveyance is given to the said Registry.*

*In any case, this deduction shall not exceed 30% of the tax base.*

6) *Tax deductions for legal persons concern the deduction in the liquid quota of the corporation tax:*

- *15% of amounts assigned to the acquisition of assets registered at the General Registry of Assets of Cultural Interest, with the requirement established for natural persons.*
- *15% of amounts used for conserving, repairing, restoring, promoting and exhibiting assets registered at the above Registry with the same requirements as for natural persons.*

7) *Tax incentives for private contribution in activities of general interest:*

*The Spanish legal system regulates private financial contribution for the conservation and restoration of Monuments through the State, other public entities, establishments, institutions, foundations or associations, including temporary "de facto" associations for the administration of funds classified as or declared to be charitable or of public utility by the relevant administrative authority. Contributions of this matter may be made directly by natural or legal persons which in most cases do not bear the importance of foundation, both in the quantitative and qualitative terms, and are currently governed by the same legal text regulating foundations as a legal figure.*

*Further more, large financial companies, to name an example, do not assign assets directly for these purposes but instead, in the case of an activity which is beneficial, both in social and tax terms, with a more or less continuous nature, set up a Cultural Foundation to adequately invest the said capital, e.g. BBV Argentaria Foundation and Banesto Foundation, as well as Saving Bank Foundation, etc. As may be seen, in nearly every case, behind a large Bank there exists a Foundation with the same name.*

The tax system for foundations registered at the Foundation Registry and associations declared to be of public utility has two important aspects:

- 1) *Corporation tax: The above-mentioned entities shall be exempted regarding the results obtained in activities which represent their company purpose or specific aim, as well as capital increases derived both from acquisition including those from non-gratuitous transfer, as long as either are obtained or carried out when fulfilling their purpose or specific aim. They are also exempt from tax on issues such as membership fees, grants, subsidies and cooperation agreements. Furthermore, Art. 50 of the Law on Foundations points out how the tax base is adjusted according to certain items stated therein, since they may carry out other economical activities not related with their specific aim.*
- 2) *Local taxes: These entities are exempted from Real Estate Tax regarding the state they hold. They are also exempt from Tax on Commercial and Professional Activities regarding the activities representing their company purpose or specific aim.*

Concerning the tax system for contributions made to non-profit entities, we have to distinguish the donators between natural and legal persons:

*If natural persons make the contribution, a deduction in the amount of Income Tax corresponds to the following:*

- *20% in pure and simple gifts of assets belonging to the Spanish Historical Heritage (registered at the General Registry of Assets of Cultural Interest, or included in the General Inventory) or gifts of works of art with quality guaranteed in favor of entities with the aim, amongst other ends, of developing and promoting artistic heritage and which apply the said works to public exhibition. The amount of 20% shall be applied to the value of the assets bestowed according to official appraisal carried out by the Board of Classification, Appraisal and Export.*
- *20% in pure and simple gifts of assets which must be part of the bestowing entity's material assets and which contribute to fulfilling activities according to their purposes. Any increase or decrease in capital, which may arise in the event of gifts of Assets belonging to the Spanish Historical Heritage and Works of Art, shall not be taxable.*
- *20% in amounts bestowed for fulfilling activities or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage which are registered at the Registry of Assets of Cultural Interest or are included in the General Inventory. Membership dues are included under this heading as long as they do not involve services offered to members.*

*In all cases, the above deductions shall not exceed 30% of the tax base.*

*If contributions to non-profit entities are made by legal persons, deductions in the Tax bases of Companies Tax are the following:*

- *Up to 30% of the taxes, or 3 per 1,000 of the annual volume of sales in the case of gifts of assets belonging to the Spanish Historical Heritage and Works of Art, with the same conditions and requirements as for natural persons.*
- *Up to 10% of the tax base, or 1 per 1,000 of the annual volume of sales in gifts to material assets of the bestowing entity, the fulfillment of activities according to its purposes, or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage with the same requirements as for natural persons.*

*The treatment given to increases or decreases in capital ensuing for a gift of assets belonging to the Spanish Historical Heritage, Works of Art and assets of material capital for the bestowing entity, is similar to that stated above regarding natural persons. In some cases as in others, the deduction may be increased by 5% (both regarding deduction percentages and the deductible limit of the tax base) if the gift is made for any of the preferential Patronage activities or programs pointed put by the General Budgetary Law of the State of that year.*

*The tax system for other business cooperation activities is as follows:*

*Acquisition of works of Art to be bestowed on the State and other Public Entities, as well as foundations and associations of public utility may give rise to deductions, both on Corporation and Income Tax (the latter in the case of entrepreneurs and professionals subject to direct tax evaluation) as long as a series of requirements are fulfilled, such as:*

*An undertaking to convey the asset in 5 years; once the offer is accepted it becomes irrevocable; the offer must be made the following month after purchasing the asset; until it is conveyed it may be publicly exhibited and investigated; the Administration shall decide of the value of appraisal which shall prevail over the value of acquisition if the latter is higher; the deduction shall be carried out yearly by equal amounts during the period between the undertaking of the offer and the actual conveyance, with a maximum limit per operation. In the case of entrepreneurs and professionals, the said limit shall refer to the share of the tax base regarding net income derived from the relevant business or professional activity.*

vii 1. - *If we are to succeed in restoring the dignity of historic centers within their urban setting and we are to achieve their conservation, it is necessary that both the design and subsequent application of development policies and regulations show an awareness of the need to avoid extremes. WE CANNOT transform our historic centers into museums, into static and untouchable structures, as this, forced by modern development, would mean their abandonment and subsequent destruction. NEITHER CAN WE ALLOW aggressive interventions insensitive to the value of heritage, which are the result of ignorance, incompetence and individual economic interests, to destroy the values we have inherited and their environment.*

2. - *Change is inevitable in society, as it is in our way of understanding the different ways of living and dwelling, and of relating to our environment. Conservation of historic centers needs not at odds with comfort, adequate sanitation, the provision of infrastructures, socioeconomic development, functionality and the conveniences brought by modern advances. It should be tempered by the needs of contemporary living, while seeking to bring together and respect all the cultural, psychological, affective and spiritual values accumulated by civilization in the past and present. For this reason, intervention in historic centers should not be seen as an attempt to preserve heritage from change at any cost, but rather should be respectful of the traditional legacy that is part of the culture of each community and which belongs to both present and future generations.*

3. - *We must become aware of the fact that popular or vernacular architecture and the architecture of traditional lodging buildings possess a unique richness and are genuinely adapted to a specific environment, the result of knowledge accumulated over many generations.*

4. - *Replacements have occurred in historic centers throughout history, but the ease and pace at which they are now occurring is unprecedented. Societies worldwide are placing increasing value on the urban and architectural manifestations of cultures that were historically subdued and superseded by later cultures, as well as on the elements from all past times that have come down to us. Because of this, and within the natural dynamic process of society, interventions in historic centers require that a thorough knowledge of the heritage we have inherited, and the ability to value and respect it, to act cautiously and to seek to harmoniously integrate the past and the present.*

5. - *Heritage is a scarce, extremely fragile and non-renewable resource that is capable of generating wealth and employment. It should not be regarded as an isolated resource, but rather from a perspective encompassing the various sectors involved that coordinates the divergent resources (cultural, landscape, industrial, tourism, infrastructures, etc) and directs efforts toward a goal of enduring regional development, serving to improve the quality of life. The usefulness of heritage should not be measured solely in terms of profitability and over the short term, since its value lies not just in its material worth but also in its spiritual value and the atmosphere it lends, which are necessary for the integral development of human beings. Heritage must first be saved and then used, but inadequate or degrading uses leading to its abuse or destruction must be avoided at all times.*

6- *Conservation of historic and natural heritage is a race against time. While we are here, reflecting on the conservation of heritage, others are making plans and designing projects aimed at its destruction. The best investment in conservation, rehabilitation, enhancement and dissemination of heritage is to arm the*

general public with the weapons of education and an awareness of the value of historic and natural heritage. The best way to control heritage and urban planning in our cities and the natural environment is through the participation of citizens in all areas of public life. As citizens, we have great power in the areas where we live and work if, both as consumers and in our general attitude, we demand a good quality of life for all, and if we criticize and denounce all the violations that we know of. Let's use this daily vote.

7. - Society needs to be reeducated in the value of the privately-owned historic dwellings, not only through isolated actions but by considering heritage in historic centers as a whole, as the sum of diverse elements even though not all the individual elements have great value on their own.

8. - Current land speculation and the construction of buildings that cause the displacement of the population to outlying districts, leading to the emptying and destruction of city centers, must be prevented.

9. - The administration must intervene by providing rehabilitation programs and promoting the public use of buildings in historic centers.

10. - It is important to promote an awareness of the need for heritage conservation among the younger generations.

11. - Greater incentives than those currently existing regarding tax benefits for rehabilitation (exemption from licenses, grants contributing to the gratuity or a considerable reduction in the cost of technical documents, etc.) need to be introduced.

12. - Adequate management instruments are needed, since general urban planning schemes should not be mere development tools, but cover the integral management of urban centers. Moreover, interdisciplinary actions need to be undertaken that consider not only the value of the buildings, but also the spaces, sociological characteristics, mobility, social demands aimed at improving the quality of life and atmosphere of the historic complex, the physical and psychological needs of the population, production relations that are generated in the area, etc. On the other hand, management instruments such as the "Special Plans" should allow for greater participation of citizens in their design and management.

13. - Urban planning should establish the overall guidelines for intervention, but should avoid two current errors:

- Overregulation, i.e., attempting to cover all eventualities and leaving no room for flexible interventions.
- Excessive bureaucracy, i.e., requiring the owner of historic properties to pass through an interminable series of administrative filters, whose criteria (issued by different local or provincial administrations, etc., concurring in the area) are not identical and may even have divergent aims. In this way, the owner of the heritage property realizes that nothing can be done to prevent its disappearance and desists in his endeavor, completely disillusioned.

14. - Knowledge of traditional materials and building techniques, as well as the procedures and criteria for restoration, should be made a compulsory part of technical university courses. It is also necessary to promote a political awareness of the need to reappraise the value of heritage properties. It is, to conclude, necessary to carry out integral studies of historic centers, in which the value of all landscape and urban aspects, typologies, textures and colors are taken into consideration, instead of a mere listing or classification of historic complexes.

15. - It is necessary to:

- a. - Educate all agents (economic, political, social, etc.) who play a decisive role in conservation, rehabilitation and the transformation of the city,
- b. - Establish a standardized terminology for the concepts of heritage protection.

<sup>viii</sup> Private heritage must be mainly supported by private funds, but it is also convenient to continue to strengthen cooperation between public and private organizations. Within this scope the contribution of public resources becomes necessary, especially within the framework of housing rehabilitation as it is specified under article 2 of the Royal Decree of 14 May 1993. (Suárez-Inclán, 1999).

<sup>ix</sup> It would also be necessary for owners to comply more widely with the social function intrinsic to cultural properties. It should also be emphasized that town or city councils often do not take subsidiary action allowing them to execute the required works and pass on the cost to the property, and very rarely do they resort to compulsory expropriation. This fact, together with the possibility of technical ruin introduced by the Law on Historic Heritage of 1985 (in accordance with the Granada Convention of the same year) and article 21 of this law results in some buildings being declared ruins even in protected cities and neighborhoods, with their consequent demolition. (Suárez-Inclán, 1999).

<sup>x</sup> The measures concerning deductions in the amount of both Income and Companies Tax contemplated in the Law on Foundations and Tax Incentives of 1994 (even though it may be considered an advanced and positive instrument) do not seem to be sufficiently attractive in practice to encourage enough participation. It is so indicated by the fact that many owners of cultural properties are continually urging the authorities to extend benefits beyond the usual limits (both regarding deduction percentages and the deductible limit on the tax base) (Suárez-Inclán, 1999). Government subsidies (see v).

<sup>xi</sup> It is obvious that Heritage cannot be contemplated as an isolated item but inside the global scope of sustainable development as a nonrenewable resource of transcendent importance in many areas, including the economic. Therefore, it is not only necessary to consider heritage in both its material and spiritual dimensions, covering simultaneously cultural and natural values. It is also required to deal with worldwide long-term management by coordinating all the resources and converging needs, in a context of national and international ecological management serving quality of life. Thus, the different legal provisions and policies dealing with cultural and natural heritage, tourism, public works, industry, social welfare, etc should be combined so that they may be applied in a coordinated way. (Suárez-Inclán, 1999).

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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

**Sweden**

**Thomas Adlercreutz**

**CONSERVATION COSTS – A BURDEN  
OR AN ASSET? A SWEDISH POINT OF  
VIEW**

**COÛTS CONSERVATRICES – DE  
FARDEAU OU DES RESSOURCES? UN  
POINT DE VUE SUÉDOIS**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## ***Conservation Costs – A Burden or an Asset? A Swedish Point of View***

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*A paper for the meeting in Croatia, 3-6 May, 2000, with the ICOMOS Committee on Legal, Administrative and Financial Issues*

Anyone who is familiar with accounting knows that whenever you have credited the accounts with an expense, you also have to enter the corresponding amount to your debit side. Now, if your expense does not add value to your business operation, then a cost account should be debited and the economic effect will show at the end of the accounting year in your profit and loss statement. However, if your money has bought an asset, then a corresponding account should be debited and this asset should be brought forward in your balance sheet to coming years. As the case often is, this asset decreases in value and should be depreciated by a certain percentage annually.

When you have incurred expenses for the upkeep of a historic building you stand before the same choice. If you have just added a coat of paint, usually you have not added anything to the value of the building. If, however, you have solidified the foundation of the building you most probably have added a value. But there are also stages in between, where your expenses perhaps in part will have to be written off immediately, and to the remaining part should be balanced on.

In conservation work specialists teach us it is always better to do as little as possible in the way of replacing. Appearing to be the cheapest method, one would think it could be universally recommended, but there are, of course, other considerations. Sometimes the saving on material will rapidly be eaten up by time consuming labour costs or by the burden of an annual maintenance problem. How the reckoning should be done in the multitude of options facing anyone responsible for the maintenance is a question, which has no easy answer and I shall certainly not venture to solve it here. I raise the point merely to call attention to the fact that one should reason in a sophisticated way about expenses that augment value and expenses that merely keep it (Not to speak of misguided expenses that destroy value). Value added is, of course, the key issue when it comes to financing expenses, as anyone operating on an open market will know. Added value may to a degree finance itself.

The word cultural resources is often used when the cultural heritage is being referred to. It sounds like an economic concept, but there is also a ring of persuasion to it. Anyone who possesses a resource would do well to take good care of it. Certain items of the cultural heritage may be viable economic resources, with few financial difficulties. Others – and perhaps the majority – are in economic trouble. If you refer to something as a cultural resource, then you often mean to say that maintaining that piece of property has a value beyond what may be figured out by Economic Man. When there is too great a gap between cultural and market value, then the question arises: how should the void be filled? Either the job of keeping the property does not get done. Alternatively, someone with economic muscle and an altruistic mind steps in and takes the classic role of *Mecaenas*. Today, *Mecaenas* may also go under the trademark of National Trust in some of our countries or have a corresponding independent status. But failing a *Mecaenas* or his modern counterpart it is often expected that the State or some public body should step in and take care of - or at least alleviate - the financial problems of keeping the heritage well and alive. It is certainly within the concept of what a modern State should do to promote good conditions for maintaining

cultural property. However, the State will seldom provide means sufficient in relation to the need, and the extent to which the State actually can step in varies from one country to another and from one time to another.

There are several ways for the State to take – or share - financial responsibility for cultural property. The most complete approach is, of course, buying the property, either by voluntary agreement, or failing that, through expropriation. Once the property has accrued to the State it would fall under that State's regime for cultural property. Are we always very satisfied with how our governments manage to take care of its own?

Another way would be financial support through a grant system. Grants may be given on conditions and could be reclaimed if these are not met. Alternatively, loans may be offered on favourable terms, and these could over time be partly or wholly written off.

A third method may be by way of tax subventions. These could, of course, be of a multitude of kinds. Real property tax or wealth tax could be waived or reduced for cultural property. Value added tax could be set at lower rates for goods and services to cultural property. Maintenance costs and/or interest rates may be made deductible from taxable income.

So far I have been treating financial steering methods and incentives used by the State to promote goods standards in a nation's cultural heritage. There is, however, also another side of the coin, so to speak. If the State intervenes under protective legislation in a way that is burdensome to the owner of cultural property, then the question may also be raised: should the State not be obliged to compensate financially the owner for his troubles or infringements on his proprietary rights? Such a compensatory duty exists under several jurisdictions, and is, in the case of my own country, also inscribed in the constitution. Now, if the State, in order to be active in the field of conservation, has to encounter many claims for compensation, then another financial question pops up: how does the State find the means and how may it calculate the outcome of such claims?

Let me now turn in some more detail to my own country, Sweden, in order to relate how problems of financing the cultural heritage have been tackled and how financial issues are related to the protective legislation.

The statutory framework for protection of heritage values consists of several acts of Parliament, supplemented by government regulations. The main statutory instrument is the *Cultural Monuments (etc.) Act* (SFS 1988:950). This act covers archaeological monuments and sites, listed historical buildings, ecclesiastical heritage, and cultural objects (export/restitution).

This act has grant-in-aid programme attached, details given in a government Regulation on Grants for the Management of the Cultural Heritage (SFS 1993:379)

The *Environmental Code* (SFS 1998:808) - in force as of 1 January 1999 - proclaims as one its aims the protection and care of a valuable natural and cultural environment. It provides *inter alia* for the establishment of cultural reserves. Cultural Heritage grants can be administered for cultural reserves.

The *Planning and Building Act* (SFS 1987:10) provides legal tools for primarily the local governments - there are 289 local government districts in Sweden - in looking after cultural

values. This act contains rules as to how the cultural heritage should be identified and safeguarded in planning procedures and in the screening of planning applications. No grants are available directly under this act.

***Grants related to the Cultural Monuments Act***

The act's introductory provision holds that protecting and caring for Sweden's cultural environment is a responsibility to be shared by everyone. The County Administrations monitor this task within their respective regions, and surveillance at the national level is entrusted to the National Heritage Board.

*Archaeological monuments and sites* are protected directly by law. No administrative order is necessary. The extent of protection is determined in the act by a list of protected categories of archaeological remains. Based upon this list, inventories have led to the setting up of a register kept by the National Heritage Board, and most monuments in the register have been entered onto official maps. Anyone with the intention of using land where archaeological remains may be affected must consult the County Administration as to extent and importance of protected remains. All physical interference with protected remains needs permission by the County Administration, and if permission is given, it is generally on condition that the applicant pays for archaeological investigations and documentation. This does not apply if the protected remains were entirely unknown at the start of the operation. In such a case the State bears responsibility for archaeological costs. An applicant may appeal refusals to grant permission to the Government, and may contest decisions regarding archaeological costs in a court of law (real property court).

It could be pointed out that the Cultural Monuments Act, while restricting use of property where there are protected archaeological remains, still does not oblige owners of that property to maintain and care for these remains. Such measures may be decided upon by the County Administrations, but at the State's own expense.

The Government Grant Regulation allows for grants in two different situations, where archaeological remains are concerned. The first situation occurs when important housing development cannot be carried out without interference with archaeological remains and the remains are not visible above ground. Then grants may cover the costs for archaeological investigation and documentation. Conditions regarding the design of the development scheme may be stipulated.

The second situation occurs when someone is forced, by binding orders of the authorities or under similar circumstances, to conduct works of limited scope, which will affect archaeological remains. Grants may be awarded for archaeological investigations and documentation necessitated by the works in question. Grants may also cover conservation of archaeological finds. A typical situation, in which grants under this heading are effective, is when someone has to dig into archaeological remains in order to replace a faulty sewage system.

*Ancient finds* are objects, which have no owner when found, and which 1) are discovered in or near an archaeological monument or site and are connected with it, or 2) are found in other circumstances and are presumably at least one hundred years old. The former accrue to the State when found; the latter to the finder. However, the finder, is duty bound to invite the State to acquire any find, which consists either 1) wholly or partially of gold, silver, copper, bronze or other copper alloy, or 2) of two or several objects, which may be presumed to have

been deposited together. The State, represented by the National Heritage Board, will then take a decision whether to acquire and also determine the price (to be paid out of the Board's annual government grant). Compensation must be reasonable and cover at least the value of the metal plus one-eighth of that value, *i.e.* 112.5 percent. In practice, the Board will take note of the market value and try to approach it. The Board's decision may be appealed in an administrative court of law.

Under the Cultural Monuments Act *historic buildings* may be protected by listing, done by the County Administrations (the concept legally includes parks and gardens and structures other than buildings). Protective orders will specify what restrictions apply to a listed building with regard to demolition, alteration and upkeep.

Only an 'elite' of culturally important buildings etc. should be protected under the Cultural Monuments Act. Other buildings of cultural eminence can be protected under the Planning and Building Act. (The Cultural Monuments Act is not applicable to buildings owned by the State. Such buildings and other structures may be protected on order of the Government. The National Heritage Board is responsible for the monitoring of a special regulation (SFS 1988:1229) issued by the Government.)

If necessary, the protective order may cover an area adjoining the building to ensure that this area be kept in such a condition that the appearance and the character of the building will not be jeopardised.

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

Non-consenting property holders may claim *compensation* for adverse effects of listing, but there is a threshold of economic damage that must be passed before owners become eligible for indemnification. The right of compensation is inscribed in the Swedish Constitution (the Instrument of Government) and is supported also by the European Convention on Human Rights. In Chapter 2 Article 18 of the Instrument of Government as amended in 1994, it is stated that no citizen must be forced to give up property to the public administration or to any individual through expropriation or similar dispossession. Nor must a citizen endure that the public administration restricts use of land or building, except when it is needed to meet vital public interests. Furthermore, anyone who is deprived of property by expropriation or similar dispossession shall be entitled to compensation.

Compensation shall also be afforded to anyone for whom the public administration restricts use of land or building in such a way as to impede substantially the continuing use of the land on the property concerned or cause damage, which is considerable in relation to the concerned property. Compensation shall be determined according to provisions laid down by statute.

The provisions on compensation in the Cultural Monuments Act are rather complex. If the protective order contains a prohibition on demolition of the building, the State has to compensate the owner, provided the economic damage is considerable in relation to the part of the property affected by this restriction. Considerable damage is thought to have arisen when the damage exceeds 15 - 20 percent of the value of that affected part. If there is other economic damage, e.g. if the protective order compels the owner to maintain the building by more expensive methods than normal, then the owner is eligible for compensation if his

continued use of the affected part is substantially impaired. The threshold expressed in those words is thought to be at 5 - 10 % of the value.

If a prohibition on demolition is to be compensated, remuneration will be subtracted by the amount below the threshold – a kind of excess. In other cases compensation will be given for the entire damage. It should perhaps be underlined that the extent of damage is assessed *per* the time of the listing, not - as is the case in some other jurisdictions - when the owner at a later stage is refused permission to alter a building and then finds that his economic interests are suffering.

Particularly serious restrictions to the use of property, caused by the listing a building, gives the owner the right to hand the property over to the State. He will then receive compensation for its market value, and will also have costs for litigation in a real property court covered by the State.

The rules on compensation for listing of historic buildings have never been applied fully in a court of law (a few cases have been settled voluntarily in chambers). There have, however, been several cases where compensation has been negotiated. Very rarely have contested matters of compensation concerned private property. The typical situation seems to be that the State through its County Administration takes a rather more activist stand on preservation than a local government has done. Preservation battles between the County and the local authorities have often concerned rather big structures, such as theatre buildings, hospitals, prisons, and warehouses. The local governments, using their planning prerogatives, have found these space-consuming structures to stand in the way of modernisation and have then refused to consent to listing. A few of these situations have been resolved when the State has offered financial compensation to the aggrieved local government.

All in all, it could be stated that compensation is not a heavy burden on the State budget for cultural affairs. Most issues of listing, even if contested from then start, have in the end been settled amicably, often with recourse to the grant-in-aid programme.

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

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

Thus the costs for maintaining a listed building as a rule have to be borne by the owner (unlike what applies to archaeological remains). The grant regulation, however, provides for covering costs, which exceed the level of normal maintenance. For residential buildings grants may be awarded both for construction works and for the use of experts in the planning or carrying out of such works. Reinforcement of foundations is specially mentioned. Buildings for other purposes than residential may also be assisted.

Grants may cover up to 90 percent of works to listed historic buildings, and up to 50 percent of works to other buildings with heritage values. Dispensation in single cases to exceed the maximum allowances may be given by the National Heritage Board.

*The ecclesiastical heritage* is regulated in the Cultural Monuments Act insofar as it belongs to the Church of Sweden. The act is applicable to 1) church buildings and church sites built or laid out before 1940 or later, if listed by the National Heritage Board, 2) cemeteries laid out before 1940 or later, if listed, and 3) furnishings of historic value of a church or a cemetery, regardless of age. The concept of a cemetery includes secular cemeteries and cemeteries of other denominations than the Church of Sweden. It also includes buildings on a cemetery and other immovables or movables. Protection is *ipso lege* and no further administrative action need be taken.

No church building or church site may be changed in any considerable way without the County Administration's permission. Normal or urgent repair may, however, be carried out without approval. The act states that materials and methods should be chosen with regard to the cultural values in question. Furnishings must be kept safe and in good repair. Every parish has to keep a list of all furnishings with cultural value. If an object belongs to, or is kept by somebody else, it shall be noted in the list. A listed item – items belonging to private individuals excluded - must not be disposed of, deleted from the inventory, repaired or altered, or removed from the place to which it has since long belonged without the County Administration's permission. The County Administration is also authorised to inspect furnishings and add them to the list. It could also take furnishings into custody in order to protect them.

Until the turn of the millennium the Church of Sweden was an established Church, under a large degree of government control. A part of that system was a grant-in-aid programme for the maintenance of church buildings. In the process of disestablishing the Church, the State has undertaken to continue its financial support. This programme commences in 2002 with a fixed sum *per annum*, which is to be augmented in the following years under a schedule approved by Parliament. A long-term agreement as to how these means should be used is to be entered between the Church of Sweden and the State, represented by the National Heritage Board.

#### ***Grants related to the Environmental Code***

This code encompasses provisions for all kinds of activities, which may affect the environment. It lays down general rules of consideration, which have to be respected by authorities and individuals. With regard to the cultural environment the code is instrumental in two ways.

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

The effect of these provisions is that not just individuals, but also public authorities, must refrain from taking damaging measures areas of national importance. For example the Public Road Administration when laying out a new road, or a local government in applying its planning powers have to avoid measures, which are detrimental to cultural values of national importance. Decisions that do not satisfy the requirements could be cancelled. It should be noted, however, that to an area with nationally important cultural values there might also be other claims of national importance. The code does not in one formula solve conflicts of national interests (apart from the fact that national defence is to have priority over other national interests).

Second, the Environmental Code introduces a concept parallel to natural reserves: the *cultural reserves*. These can be set aside by the County Administrations or - subject to delegation - by local governments in order to protect landscapes which are valuable due to cultural influence. Use restrictions necessary to ensure the purpose of the reserve may be issued, such as prohibitions to erecting buildings, fences, storage etc., or against digging, mining, felling etc. A property holder may also have to endure the construction of roads, parking facilities, public footpaths, sanitary installations etc. within the reserve.

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

Property holders whose current use of land are affected by a cultural reserve are entitled to compensation from the State or local government, provided their rights are considerably impeded thereby. Compensation will, however, not cover the excess that is expressed in those words. If restrictions are severe, an owner could also call for expropriation at market value of the property. Unresolved questions regarding compensation can be tried by a real property court.

The above-mentioned Regulation on Grants for the Management of the Cultural Heritage (SFS 1993:379) holds provision that are applicable in relation to the Environmental Code. In cultural heritage areas of national importance grants may cover up to 90 percent of maintenance costs. Grants may also be given – without percentage restrictions – to measures with regard to cultural landscapes – thus also cultural reserves – such as fencing, clearing and felling of trees and conservation of ruins.

It could be pointed out that so far very few cultural reserves have been installed.

#### ***Tax rules related to the cultural heritage***

In an international perspective taxes on capital in Sweden seem rather comprehensive. The system includes wealth tax, real property tax and capital gains tax. There is very little in the way of tax relief to cultural property.

Wealth tax and real property tax are levied on values determined in an assessment procedure, regulated by law. Certain properties are exempt, not, however, for reasons of importance to the cultural heritage, but because these properties - schools, assembly halls, sports halls etc - serve public purposes. Among exempted properties are also museum buildings and churches, buildings that often possess cultural significance *per se*.

Furthermore, in the assessment procedure due consideration should be given to special circumstances which might affect the market value, such as a prohibition to demolish

buildings on the property, or extraordinary costs for maintaining a listed historic building. The effect of such consideration might be a decrease of the assessed value, a decrease that will in turn lower property tax and wealth tax.

With regard to income tax Swedish tax law distinguishes between private and commercial housing. For commercial residential buildings all costs of repair and maintenance are deductible from taxable income, whereas for private houses only capital costs, such as interest rates and long-term rentcharges, may be deducted. One exception, however, might serve as relief to owners of buildings with cultural values. Owners of residences on agricultural estates have the option of having their residential buildings treated under tax rules for commercial housing. They may then deduct maintenance costs, but will also have to declare as income an assessed rental value for the house in question. The prerequisite is that the building was erected before 1930 and that the residential area of the building comprises at least 400 square meters. This rule may be advantageous for keeping larger rural manor houses in a good state of maintenance.

### *Concluding remarks*

In Sweden, as in most other countries, the upkeep of the cultural heritage rests primarily on private owners. A not too negativistic approach should be taken as to how maintenance costs could be financed within the private sector.

Local governments are important owners of the cultural heritage and may also regulate the use of private property through the planning and building legislation. The State is primarily responsible for archaeological remains, the ecclesiastical heritage and an 'elite' of culturally significant buildings.

A system of checks and balances exists in the way of rules on compensation on the one hand, and a grant-in-aid programme on the other. Basically, the system rests on encouraging private owners to keep culturally significant property in a good state of repair, and the grant system seems to work fairly well in that respect. There is also a property rights guarantee allowing owners with heavy use restrictions imposed on them to seek indemnification. Public means, however, have almost never been spent on compensation. There is little contest and practically no litigation in the running of preservation affairs. This is not to say that all is well, and all matters of financing the heritage are being solved.

One avenue still to be explored in Sweden is heritage tax subventions. The precious few heritage-related tax rules that exist have little practical application. Whether there is a future for more creative tax rules in order to encourage owners of cultural property in Sweden is doubtful. Tax politics are highly controversial, and changes to tax rules are difficult to evaluate and control.

*29 February, 2000, revised 10 March 2000*

## *Coûts conservatrices – de fardeau ou des ressources? Un point de vue suédois*

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*Un papier pour la réunion en Croatie, 3-6 mai, 2000, avec le comité d'Icomos des questions légales, administratives et financières*

N'importe qui qui est au courant de la comptabilité sait que toutes les fois que vous avez crédité vos comptes, vous devez également écrire la quantité correspondante au côté de débit. Si la dépense n'a pas ajouté de la valeur à votre entreprise, alors un compte de dépense doit être débité et le résultat économique va se montrer à la fin d'exercice dans le compte de profits et pertes. Cependant, si votre argent a acheté des capitaux, alors un compte correspondant devrait être débité et des capitaux devraient être apportés à votre bilan à l'année prochaine. Souvent des diminutions en valeur de ces capitaux devraient être dépréciées par un certain pourcentage annuellement.

Quand vous avez eu des frais pour l'entretien d'un bâtiment historique vous vous tenez avant le même choix. Si vous avez ajouté seulement un manteau de peinture, habituellement vous n'avez ajouté rien à la valeur du bâtiment. Si, cependant, vous avez solidifié la fondation du bâtiment vous y avez ajouté une valeur. Mais il y a aussi des situations intermédiaires, où vos dépenses peut-être en partie devront être amorties immédiatement, et à la partie restent pour le bilan.

Dans le travail conservatrice les spécialistes nous enseignent qu'il vaut toujours mieux substituer le moins possible. Semblant être la méthode la meilleur marché, on pourrait croire qu'elle se laisse universellement recommander, mais il y a, naturellement, d'autres considérations. Parfois l'économie sur le matériel rapidement sera mangée par des coûts de la main-d'oeuvre ou par le fardeau d'un problème annuel d'entretien. Comment le compte devrait être fait dans la multitude d'options faisant face à n'importe qui responsable de l'entretien est une question, qui n'a aucune réponse facile et je n'essayerai certainement pas la résoudre ici. Je soulève le point simplement pour attirer l'attention au fait qu'on devrait raisonner d'une voie sophistiquée au sujet des dépenses qui augmentent la valeur, et les dépenses qui simplement la gardent (pour ne pas parler des dépenses mal orientées qui la détruisent). La valeur ajoutée est, naturellement, la question clé en ce qui concerne le financement de dépenses conservatrices, comme sait chacun fonctionnant sur un marché libre. La valeur ajoutée peut de degré se financier elle-même.

«Les ressources culturelles» est un concept souvent utilisé quand on parle de patrimoine culturel. Cela ressemble à un concept économique, mais il y a également un sens de persuasion la dedans. N'importe qui possède une ressource ferait bien à prendre grand soin de lui. Certains éléments d'acquis culturel peuvent être des ressources économiques viables, avec peu de difficultés financières. D'autres - et peut-être la majorité - sont dans l'ennui économique. Si vous vous référez à quelque chose comme ressource culturelle, alors vous voulez souvent dire que ce morceau de propriété a une valeur au delà de ce qui peut être figuré par l'Homme économique. Quand il y a un intervalle trop grand entre valeur culturelle et valeur marchande, alors la question se pose: comment le vide devrait-il être rempli? Soit le travail de garder la propriété n'obtient pas, soit quelqu'un avec des muscles économiques et d'un esprit altruiste prit le rôle classique de Mecaenas. Aujourd'hui, Mecaenas peut également aller sous la marque déposée de «National Trust» dans certains de nos pays ou avoir un rôle correspondant et indépendant. Mais échouant le contre-partie moderne de Maecenas on s'attend souvent que l'état ou un certain organisme public devrait intervenir et prendre bien

soin du patrimoine - ou alléger au moins les problèmes financiers de le garder. Il est certainement accepté que l'état moderne devrait stimuler de bonnes conditions pour l'entretien des biens culturels. Cependant, l'état fournira rarement des moyens suffisamment par rapport au besoin, et le point auquel l'état réellement peut intervenir change d'un pays à l'autre et d'un temps à l'autre.

Il y a plusieurs voies pour l'état à prendre - ou partager - la responsabilité financière patrimoniale. L'approche la plus complète, naturellement, est l'achat de propriété, par accord volontaire, ou échoue cela, par l'expropriation. Une fois que la propriété s'est accrue à l'état elle tomberait sous le régime de cet état pour son propre patrimoine. Sommes-nous toujours très satisfaits avec la façon dont nos gouvernements parviennent à prendre soin de ses propres?

Une autre voie serait aide financière par un système de subventions publiques. Des subventions peuvent être données sur des conditions et pourraient être reprises si ceux-ci ne sont pas rencontrés.

Alternativement, des prêts peuvent être offerts aux conditions favorables, et ceux-ci pourraient être successivement amortis en partie ou complètement.

Une troisième méthode peut être par des subventions d'impôts. Celles-ci pourraient, naturellement, être d'une multitude de sortes. L'impôt de propriété immobilière ou l'impôt sur des grandes fortunes peut être écarté ou réduit pour des propriétés culturelles. La taxe à la valeur ajoutée peut être placée aux cadences inférieures pour des marchandises et services aux propriétés culturelles. Des coûts d'entretien et/ou les taux d'intérêt peuvent être rendus déductibles du revenu imposable.

Jusqu'ici j'avais traité des méthodes financières et des incitations employées par l'état pour favoriser un bon standard en l'entretien du patrimoine culturel d'une nation. Il y a, cependant, aussi un autre côté de la pièce de monnaie. Si l'état intervient sous la législation protectrice dans une manière onéreuse aux propriétaires, alors la question peut également être soulevée: l'état ne devrait-il pas être obligé à compenser financièrement les propriétaires ses ennuis ou infractions en leurs droits? Un devoir compensatoire existe sous plusieurs juridictions, et est, dans le cas de mon propre pays, également inscrit en la constitution. Maintenant, si l'état, afin de promouvoir des activités conservatrices, sera soumis à beaucoup de réclamations pour la compensation, alors une autre question financière saute: comment l'état trouve-t-il les moyens et comment peut-il calculer les résultats de tels réclamations?

Laissez-moi maintenant tourner à mon propre pays, Suède, afin de décrire comment les problèmes financiers ont été abordés et comment les questions sont - ou ne sont pas - liées à la législation protectrice.

Le cadre statutaire pour la protection des valeurs d'héritage se compose de plusieurs lois, complétées par des règlements de gouvernement. L'instrument statutaire principal est la loi des monuments historiques (SFS 1988:950). Cette loi couvre les monuments et les sites archéologiques, bâtiments historiques, héritage ecclésiastique et les biens culturels mobiliers (export/restitution).

La loi est complétée d'un programme de subvention, les détails étant donnés dans un règlement de gouvernement sur les subventions visées à la gestion du patrimoine culturel (SFS 1993:379).

En outre, le code environnemental (SFS 1998:808) - en vigueur le 1 janvier 1999 - proclame comme objectif la protection et le soin d'un environnement naturel et culturel. Il prévoit entre autres l'établissement des réserves culturelles. Des subventions culturelles peuvent être gérées à ces réserves.

La loi de planification et bâtiment (SFS 1987:10) fournit les outils légaux pour principalement les communes - il y en a 289 en Suède - pour surveiller les valeurs culturelles. Cette loi contient des règles quant à la façon dont l'acquis culturel devrait être identifié et sauvegardé, quant aux procédures de planification, et quant à l'examen des applications. Aucune subvention n'est disponible directement sous cette loi.

### *Subventions relié a la loi des monuments historiques*

La disposition préliminaire de la loi soutient que la protection et l'entretien de l'environnement culturel de la Suède est une responsabilité partagée par chacun. Les gestions du comté surveillent cette tâche dans leurs régions respectives, et la surveillance au niveau national est confiée à l'office national d'héritage.

Des monuments et les sites archéologiques sont protégés directement par loi. Aucune commande administrative n'est nécessaire. L'ampleur de la protection est déterminée par une liste de catégories protégées des vestiges archéologiques. Basé sur cette liste, les inventaires ont mené à l'établissement d'un registre gardé par l'office national d'héritage et la plupart des monuments dans le registre ont été entrés sur des cartes officielles. N'importe qui avec l'intention d'utiliser la terre où des vestiges archéologiques peuvent être affectés, doit consulter la gestion du comté quant à l'ampleur et l'importance des vestiges protégés. Toute interférence physique en ces vestiges a besoin de la permission de la gestion du comté, et si la permission est donnée, il est généralement à condition que le demandeur paye les investigations et la documentation archéologiques. Un demandeur peut faire des refus appel au gouvernement, et peut contester des décisions concernant des coûts archéologiques dans une cour (cour de propriété immobilière).

Il doit être précisé que la loi n'oblige toujours pas des propriétaires à entretenir des vestiges archéologiques. Telles mesures peuvent être décidées par les gestions du comté, mais aux propres frais de l'état. Le règlement de gouvernement des subventions tient compte de deux situations différentes, où des vestiges archéologiques sont concernés. La première situation se produit quand le développement important de logement ne peut pas être effectué sans interférence avec des vestiges archéologiques et les vestiges ne sont pas visibles au-dessus de la terre. Alors les subventions peuvent couvrir les coûts pour la recherche et la documentation archéologiques. Des conditions concernant la conception de l'arrangement de développement peuvent être stipulées.

La deuxième situation se produit quand quelqu'un est obligé, en liant des commandes des autorités ou en circonstances semblables, à conduire les travaux de la portée limitée, qui affecteront des vestiges archéologiques. Les subventions peuvent être attribuées pour les investigations archéologiques et la documentation rendues nécessaire par les travaux en question. Les subventions peuvent également couvrir la conservation des trouvailles

archéologiques. Une situation typique, dans laquelle accorde sous cette rubrique est pertinente, est quand quelqu'un doit creuser dans des vestiges archéologiques afin de substituer un système défectueux d'eaux d'égout.

Les trouvailles antiques sont des objets, qui n'ont aucun propriétaire une fois trouvés, et que 1) sont découverts dans ou proche d'un monument ou site archéologique et sont reliés à lui, ou 2) sont trouvés en d'autres circonstances et ont vraisemblablement au moins cent ans. Le premier groupe de trouvailles antiques s'accroissent à l'état; le dernier au détecteur. Cependant, en ce cas le détecteur est contraint à inviter l'état à racheter n'importe quelle trouvaille, qui consiste 1) complètement ou partiellement de l'or, de l'argent, du cuivre, du bronze ou de tout autre alliage de cuivre, ou 2) de deux ou plusieurs objets, qui peuvent être présumés pour avoir été déposés ensemble. L'état, représenté par l'office national d'héritage, prendra alors une décision de rachat et déterminera également le prix (être payé hors de la concession annuelle du gouvernement). La compensation doit être raisonnable et couvrir au moins la valeur du métal plus un huitième de cette valeur (112,5 pourcent). En pratique, l'office notera la valeur marchande et essaiera de l'approcher. La décision du conseil peut être appelée dans une cour administrative.

Sous la loi des monuments culturels les bâtiments historiques peuvent être protégés par classification, faite par les gestions du comté (le concept bâtiment inclut légalement des parcs et des jardins et des structures autres que des bâtiments). Les commandes protectrices portées en la classification indiqueront des restrictions en ce qui concerne la démolition, le changement et l'entretien du bâtiment.

Seulement une 'élite' des bâtiments culturellement importants etc. devrait être protégée sous la loi de monuments historiques. Des autres bâtiments d'éminence culturelle peuvent être protégés sous la loi sur la planification et le bâtiment (La loi des monuments historique n'est pas applicable aux bâtiments possédés par l'état. Tels bâtiments et d'autres structures peuvent être protégés sur commande du gouvernement. L'office national d'héritage est responsable de la surveillance d'un règlement spécial (SFS 1988:1229) émis par le gouvernement.)

Au besoin, la commande protectrice peut couvrir un domaine touchant le bâtiment pour s'assurer que cette zone soit maintenue dans une telle condition que l'aspect et le caractère du bâtiment ne seront pas compromis.

En attendant la liste, la gestion du comté peut interdire temporairement toutes les mesures qui pourraient diminuer la valeur culturelle d'un bâtiment; le plus notamment elle peut arrêter une démolition imminente.

Un propriétaire qui n'est pas en accord avec la classification peut réclamer la compensation pour des effets nuisibles, Il y a, cependant, un seuil des dommages économiques qui doit être passé avant qu'un propriétaire devient habilité à l'indemnification. La droite à la compensation est inscrite dans la constitution suédoise (l'instrument du gouvernement) et est supportée également par la convention européenne sur des droits de l'homme. En article 18 du chapitre 2 de l'instrument du gouvernement, comme modifié en 1994, on affirme qu'aucun citoyen ne doit être forcé de renoncer à la propriété à la gestion publique ou à l'individu par l'expropriation ou la dispossesion semblable. Ni doit un citoyen supporter que la gestion publique limite l'utilisation de la terre ou du bâtiment, excepté quand elle est nécessaire pour satisfaire des intérêts publics essentiels. En outre, n'importe qui qui est privé de la propriété par l'expropriation ou la dispossesion semblable aura droit à la compensation.

Les dispositions sur la compensation en la loi des monuments historiques sont plutôt complexes. Si la commande protectrice contient une prohibition sur la démolition du bâtiment, l'état doit compenser le propriétaire, si les dommages économiques sont considérables par rapport à la partie de la propriété affectée par cette restriction. On pense des dommages considérables quand ils excèdent 15 - 20 pour cent. De la compensation sera également eue à n'importe qui pour qui la gestion publique limite l'utilisation de la terre ou du bâtiment de façon à empêcher sensiblement l'utilisation actuelle de la terre sur la propriété concernée ou causer des dommages, qui sont considérables par rapport à la propriété intéressée.

Si une prohibition sur la démolition doit être compensée, la rémunération sera soustraite par la quantité au-dessous du seuil -un genre d'excès. En d'autres cas, la compensation sera donnée pour les dommages entiers. On pourrait peut-être souligner que l'ampleur de dommage doit être évalué à le temps de la classification, non - comme est le cas en quelques autres juridictions - quand le propriétaire ultérieurement soit refus la permission à modifier un bâtiment et - à ce temps là - trouve son intérêt économique souffrant.

En particulier les restrictions sérieuses à l'utilisation de la propriété, provoquée par la classification d'un bâtiment, donne au propriétaire le droit de remettre la propriété à l'état. Il recevra alors la compensation pour sa valeur marchande, et aura également des coûts pour le litige dans une cour de propriété immobilière couverte par l'état.

Les règles sur la compensation pour la liste des bâtiments historiques jamais n'ont été appliquées entièrement dans une cour (quelques cas ont été arrangés volontairement dans les chambres). Il y a cependant eu plusieurs cas où la compensation a été négociée. Très rarement ont contesté des classifications de propriété privée. La situation typique semble être que l'état par son gestion du comté a pris une attitude un peu plus activiste que a fait une commune. Les batailles de conservation entre le comté et les autorités locales ont souvent concernées les structures plutôt grandes, telles que des bâtiments de théâtre, les hôpitaux, les prisons, et les entrepôts. Les communes, en utilisant leurs prérogatives de planification, ont trouvé ces structures trop spacieux pour commodier la modernisation et pour avoir puis refusé de consentir à la classification. Quelques unes de cette situations ont été résolues quand l'état a offert la compensation financière à la commune chagriné.

Au total, on pourrait affirmer que la compensation n'est pas un fardeau lourd sur le budget d'état pour des affaires culturelles. La plupart des issues de la classification, même si contesté au commencement, ont été arrangées amicalement à la fin, souvent avec le recours au programme de subvention.

Une fois qu'un bâtiment a été classé la commande protectrice est censée pour régir l'entretien et le soin continu du bâtiment. Cependant, il est possible que le propriétaire s'applique pour la permission par la gestion du comté de rendre des changements au bâtiment contraires à la commande protectrice, s' il peut réclamer des raisons spéciales. On peut accorder la permission à condition que le changement est fait selon des directions spécifiques et que lepropriétaire enregistre l'état du bâtiment avant et pendant le travail qui le changera.

Si la classification cause un obstacle, un dérangement ou des coûts hors de la proportion avec l'importance du bâtiment, la gestion du comté peut changer la commande protectrice ou retirer la protection tout à fait.

Ainsi les coûts pour mettre à jour un bâtiment classé doivent en règle générale être à la charge du propriétaire (à la différence de ce qui s'applique aux vestiges archéologiques). Le règlement de subventions, cependant, prévoit des coûts, qui excèdent le niveau de l'entretien normal. Pour les bâtiments résidentiels des subventions peuvent être attribuées pour des travaux de construction et pour l'usage des experts en matière de planification ou la mise en oeuvre de tels travaux. Le renfort des fondations est particulièrement mentionné. Des bâtiments pour d'autres buts que résidentiels peuvent également être aidés.

Les subventions peuvent couvrir jusqu'à 90 pour cent de travaux aux bâtiments classés, et jusqu'à 50 pour cent des travaux à d'autres bâtiments de valeurs d'héritage. La dispense dans des cas particuliers pour excéder les allocations maximum peut être donnée par l'office national d'héritage.

L'héritage ecclésiastique est réglé en la loi des monuments historiques en tant que il appartient à l'église de la Suède. La loi est applicable 1) aux bâtiments d'église et aux sites d'église construits ou présentés avant 1940 ou plus tard, si classés par l'office national d'héritage, 2) les cimetières présentés avant 1940 ou plus tard, si classés, et 3) l'ameublement de valeur historique d'une église ou d'un cimetière, indépendamment de l'âge. Le concept d'un cimetière inclut les cimetières séculaires et les cimetières d'autres dénominations que l'église de la Suède. Il inclut également des bâtiments sur un cimetière et d'autres biens immeubles ou mobiliers amovibles. La protection est *ipso lege* et aucune autre mesure administrative ne doit être prise.

Aucun bâtiment d'église ou site d'église ne peut être changé en aucune manière considérable sans permission de la gestion du comté. La réparation normale ou pressante peut, cependant, être effectuée sans approbation. La loi déclare que des matériaux et des méthodes aptes aux valeurs culturelles devraient être choisis. L'ameublement doit être bien gardé et en bonne condition. Chaque paroisse doit tenir un inventaire de tout ameublement de valeur culturelle. Si un meuble appartient à, ou est gardé par quelqu'un autre, on le notera dans l'inventaire. Un meuble ainsi noté – des objets appartenant aux particuliers exclus - ne doit pas être rejeté, effacé de l'inventaire, réparé ou modifié, ou retiré de l'endroit auquel il a depuis longtemps appartenu, sans permission de la gestion du comté. La gestion du comté est également autorisée à examiner l'ameublement et à ajouter des objets à l'inventaire. Elle pourrait également prendre l'ameublement en garde afin de le protéger.

Jusqu' au tour du millénium l'église de la Suède était une église officielle, sous un grand degré de commande de gouvernement. Une partie de ce système était un programme de subvention pour l'entretien des bâtiments d'église. En cours de désengager l'église, l'état s'est engagé à continuer sa aide financière. Ce programme commencera en 2002 avec une somme fixe par an, qui doit être augmentée en années suivantes sous un programme approuvé par le Parlement. Un accord à long terme quant à la façon dont ces moyens devraient être utilisés doit être entré entre l'église de la Suède et de l'état, représentée par l'office national d'héritage.

### ***Subventions reliées au code environnemental***

Le code environnemental contient des dispositions pour toutes sortes d'activités, qui peuvent affecter l'environnement. Il établit des règles générales en ce qui doit être respecté par des autorités et des individus. En ce qui concerne l'environnement culturel le code est instrumental en deux voies.

D'abord, le code catalogue des conditions fondamentales pour l'utilisation des zones de la terre et de l'eau. Des zones, qui sont d'importance dû aux valeurs naturelles ou culturelles ou à la récréation extérieure, seront aussi loin que possible protégées contre des mesures qui peuvent être essentiellement préjudiciables à ces valeurs. Si une zone héberge des valeurs d'importance nationale, la provision est plus stricte: alors la zone sera protégée, sans condition. En outre, le code contient certaines délimitations géographiques de grandes régions, particulièrement le long du littoral et autour des lacs et des fleuves, où les valeurs naturelles et culturelles sont définies pour être d'importance nationale.

L'effet de ces dispositions est que non seulement les individus, mais également les services publics, doivent s'abstenir à prendre des mesures préjudiciables aux intérêts nationaux. Par exemple la gestion publique routier en présentant une nouvelle route, ou un gouvernement local en mettant ses planification doivent éviter les mesures, qui sont nuisibles aux valeurs culturelles d'importance nationale. Des décisions qui ne répondent pas aux exigences pourraient être annulées. Il devrait noter, cependant, qu'à une zone avec des valeurs culturelles nationalement importantes il y pourrait également avoir d'autres réclamations d'importance nationale. Le code ne résout pas des conflits d'intérêts nationaux (indépendamment du fait que la défense nationale doit avoir la priorité au-dessus d'autres intérêts nationaux).

En second lieu, le code environnemental présente un concept parallèle aux réserves naturelles: les réserves culturelles. Celles-ci peuvent être installées par les gestions du comté ou- sujet à la délégation - par des communes afin de protéger des paysages qui ont valeur due à l'influence culturelle. Des restrictions d'utilisation nécessaires pour assurer le but de la réserve peuvent être émises, comme des prohibitions à ériger des bâtiments, des barrières, des entrepôts etc., ou contre creusement, fonçage, abattage etc. Un propriétaire peut également y devoir supporter la construction des routes, des équipements, des sentiers piétons publics, des installations sanitaires etc.

Les décisions à installer des réserves culturelles peuvent être appelées, soit à une gestion du comté, soit au gouvernement.

Les propriétaires dont l'utilisation de la terre actuelle sont affectées par une réserve culturelle ont droit à la compensation de l'état ou du gouvernement local, si leurs droits sont considérablement empêchées de ce fait. La compensation, cependant, ne couvrira pas l'excès qui est exprimé en ces mots. Si les restrictions sont graves, un propriétaire pourrait également nécessiter l'expropriation à la valeur marchande de la propriété. Des questions concernant la compensation peuvent être résolues par une cour de propriété immobilière.

Le règlement mentionné ci-dessus sur les subventions pour la gestion du acquis culturel (SFS 1993:379) contient les dispositions applicables par rapport au code environnemental. Dans des zones d'intérêt nationales les subventions peuvent couvrir jusqu'à 90 pour cent de coûts d'entretien. Des concessions peuvent également être données - sans restrictions de pourcentage -aux mesures qui concerne des paysages culturels - ainsi aussi aux réserves culturelles - telles que des enclos l'abattage des arbres et la conservation des ruines.

Il pourrait préciser que jusqu'ici très peu de réserves culturelles ont été installées.

### *Provisions fiscales reliées au patrimoine culturel*

Les impôts sur le capital en Suède semblent d'une perspective internationale d'être plutôt complètes. Le système inclut l'impôt sur les fortunes personnelles, l'impôt de propriété immobilière et le tax à valeur ajoutée. Il y a très peu de l'allégement fiscal lié aux impôts sur la propriété culturelle.

L'impôt sur les fortunes personnelles et l'impôt sur la propriété immobilière sont prélevés sur des valeurs déterminées d'un procédé d'évaluation, réglé par loi. Certaines propriétés sont exemptes, pas, cependant, pour des raisons d'importance culturel, mais parce que ces propriétés - écoles, halls d'assemblage, salles de gymnastique etc.. - atteignent des objectifs publics. Parmi les propriétés exemptées sont également des bâtiments de musée et des églises, bâtiments qui possèdent souvent intrinsèquement une valeur patrimoniale.

En outre, en le procédé d'évaluation l'attention devrait être accordée aux circonstances spéciales qui pourraient affecter la valeur marchande, telle qu'une prohibition à démolir des bâtiments sur la propriété, ou aux coûts extraordinaires pour mettre à jour un bâtiment classé. L'effet d'une telle considération pourrait être une diminution de la valeur évaluée, une diminution qui abaissera à leur tour l'impôt sur propriété immobilière et l'impôt sur des fortunes personnelles.

En ce qui concerne l'impôt sur le revenu la loi suédoise distingue des logements privés et commerciaux. Pour des bâtiments résidentiels commerciaux tous les coûts de réparation et d'entretien sont déductibles du revenu imposable, tandis que pour des maisons privés seulement des frais financiers, tels que des taux d'intérêt et des bails emphytéotique peut être déduit. Une exception, cependant, pourrait servir de soulagement aux propriétaires des bâtiments avec des valeurs culturelles. Des propriétaires des résidences sur des domaines agricoles ont l'option de faire traiter leurs bâtiments résidentiels selon les règles fiscales visées aux logements commerciaux. Ils peuvent alors déduire des coûts d'entretien, mais devront également déclarer comme revenu une valeur locative évaluée pour la maison en question. Chose nécessaire est que le bâtiment a été érigé avant 1930 et que la zone résidentielle du bâtiment comporte au moins 400 mètres carrés. Cette règle peut être avantageuse pour maintenir les plus grands manoirs ruraux dans un bon état d'entretien.

### *Conclusion*

En Suède, comme dans la plupart des autres pays, l'entretien de l'acquis culturel pèse principalement sur les propriétaires privés. Une approche pas trop négative devrait être adoptée quant à la façon dont des coûts d'entretien pourraient être financés dans le secteur privé.

Les communes sont des propriétaires importants de l'acquis culturel et peuvent également régler l'utilisation de la propriété privée par la planification et la législation de bâtiment. L'état est principalement responsable des vestiges archéologiques, de l'héritage ecclésiastique et d'une 'élite' des bâtiments significatifs.

Il y a système des contrôles et des équilibres se composant d'une part des règles sur compensation, et de l'autre d'un programme des subventions. Fondamentalement, le système se repose sur l'encouragement aux propriétaires privés à maintenir leurs propriétés dans un bon état de réparation. Le système de subventions semble fonctionner assez bien à cet égard. S'il ne fonctionne pas une garantie de droits de propriété permet des propriétaires avec des restrictions lourdes d'utilisation imposées à elles à rechercher l'indemnification. Des moyens publics, cependant, n'ont été presque jamais dépensés sur la compensation. Il y a peu

d'antagonisme et pratiquement aucun litige dans le fonctionnement des affaires de conservation. Cela ne veut pas dire que tout est bien, et toutes questions financières en ce qui concerne la conservation patrimoniale sont résolus.

Une voie toujours à explorer en Suède est des subventions d'impôts. Les rares règles fiscales qui pourraient avoir une signification patrimoniale ont peu d'application pratique. S'il y a un futur pour des lois fiscales plus créatrices afin d'encourager les propriétaires du patrimoine en Suède est douteux. La politique d'impôts est fortement controversée, et il est difficile à évaluer et contrôler des changements aux lois fiscales.

Le 29 février, 2000, révisé le 10 mars 2000, en français le 23 mars 2000

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

ICOMOS – CROATIA

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Brijuni, May 3 – 6, 2000

**USA**

**James Reap**

**PRESERVATION ECONOMICS IN THE  
UNITED STATES OF AMERICA**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## Preservation Economics in the United States of America

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This paper will provide a brief overview of preservation economics in the United States. The primary emphasis is on the legal mechanisms used to provide economic incentives for preservation activities, but it touches briefly on the economic benefits produced both directly and indirectly by the conservation of historic buildings and sites.

To understand preservation in the United States, one must recognize that Americans tend to view real estate, including historic buildings and sites, as marketable commodities whose purpose is to increase the wealth of the owner.<sup>2</sup> Most historic properties are in private hands, and there are not enough public or charitable resources available to save all historic properties that merit preservation.<sup>3</sup> Even if public and charitable resources were available, widespread public ownership is not seen as feasible or wise, since that would reduce the tax base, burden the budget with costs for acquisition and maintenance, and crowd out economically productive activities.<sup>4</sup>

In a market economy, historic properties compete for private investment not only with other real estate, but also with stocks, bonds, art, precious metals, and many other investment opportunities. The preservation or restoration of older buildings must compare favorably with these other choices in order to attract private capital. For many historic properties, the cost of preservation or restoration can exceed the value to the owner or potential investor. It is in this context that economic incentives can be effective in bridging the gap between cost and value and encouraging the influx of private capital for historic preservation.<sup>5</sup>

There are a wide variety of possible incentives to encourage the preservation of historic properties. Donovan Rypkema, an American expert on preservation economics, classifies specific incentives into five broad categories:<sup>6</sup>

- **Income tax incentives**, which include both tax deductions and tax credits. A deduction reduces the amount of income subject to taxation, whereas a credit is a reduction in that actual amount of tax owed.

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<sup>2</sup> Robert E. Stipe, *Historic Preservation: The Process and the Actors*, in THE AMERICAN MOSAIC at 5-6 (Robert Stipe and Antoinette J. Lee, eds., 1987).

<sup>3</sup> Donovan D. Rypkema, *Financial Incentives in Urban Conservation*, PROCEEDINGS OF THE 4<sup>TH</sup> INTERNATIONAL SYMPOSIUM OF THE WORLD HERITAGE CITIES, at 112 (1997).

<sup>4</sup> Penn Central Transportation Co. v. City of New York, 238 U.S. 104, at 110, Note 6 (1978).

<sup>5</sup> Rypkema, *supra* note 3, at 113.

<sup>6</sup> *Id.* At 113-114.

- **Cost reducing incentives**, which include direct grants, reductions or waiving government-imposed fees, providing technical assistance such as engineering analyses or architectural services, and selling a property below cost with stipulations on its rehabilitation.
- **Financing incentives**, which involve programs for either making money available at an interest rate below what would otherwise be secured on the open market or by offering a loan guarantee on behalf of the borrower who would not be able to obtain the loan needed.
- **Operational incentives**, which focus on increasing income or reducing costs. Public occupancy and rent subsidies have both been used to increase income. Tax abatements have proved to be a powerful tool to reduce costs.
- **Policy incentives**, which are administrative procedures or public initiatives that encourage private investment. Public infrastructure improvements, construction of public buildings, building codes with less stringent requirements for historic buildings and other regulatory flexibility, and the enactment of protective ordinances all come under this category.

Some of these incentives are explored in more detail below:

### *Income Tax Incentives*

*Deductions* - A good example of employing an income tax deduction for preservation purposes is the tax recognition of preservation easement donation. A preservation easement is a voluntary legal agreement in which the owner relinquishes part of his or her property rights in perpetuity to a governmental agency or non-profit organization. Preservation easements generally require the current or future owners to obtain permission from the easement holder prior to making changes in the property. The value of the easement is based on the difference between the appraised fair market value of the property prior to conveying an easement and its value with the easement restrictions in place. The more the easement restricts the property's development potential, the more valuable it is. The Internal Revenue Service guidelines suggest that a façade easement can be appraised at 10-15 percent of the value of the property. In most cases, the easement donor can take a one-time deduction of the value of the easement from his adjusted gross income for federal taxes.<sup>7</sup> Many states also have provisions that will allow individuals to similarly reduce their state income taxes.<sup>8</sup>

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<sup>7</sup> Federal estate taxes may also be reduced when a property subject to an easement passes by inheritance because the fair market value of the property has been reduced by the easement restrictions.

<sup>8</sup> National Park Service, *Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits* (accessed April 4, 2000) <<http://www2.cr.nps.gov/TPS/tax/easement.htm>>, see also Mark Primoli, Internal Revenue Service, *Façade Easement Contributions* (last modified Jan. 20, 2000) <<http://www2.cr.nps.gov/tps/tax/IRSFacade.htm>>.

*Credits* - Income tax credits for preservation activities are available under the federal Tax Reform Act of 1986.<sup>9</sup> The act provides for a 20 percent tax credit for the substantial rehabilitation of historic buildings for commercial, industrial and residential rental purposes.<sup>10</sup> To qualify, both the building and rehabilitation must be certified by the U.S. Secretary of the Interior. First, the building must be a certified historic structure -- one that is listed in the National Register of Historic Places, located in a National Register historic district, or contained within a district designated by local government that meets certain federal requirements. Second, the rehabilitation activity itself must also qualify. It must be substantial -- costing \$5,000 or the adjusted basis of the building, whichever is greater.<sup>11</sup> The work done on the building also must be consistent with the historic character of the property and, where applicable, the district in which it is located. *The Secretary of the Interior's Standards for Rehabilitation* serve as guidelines for determining whether the work is in character. Property owners must complete and submit applications in accordance with federal regulations in order to receive the credit, and in most cases pay a fee for certification. To avoid repaying all or part of the credit, the owner must retain the property for five years. Since 1976, federal historic preservation tax incentives have resulted in more than 27,000 historic properties saved and rehabilitated, private rehabilitation of over \$18 billion, more than 149,000 housing units rehabilitated, and over 75,000 housing units created. A significant proposal, not yet enacted into law, would extend the federal income tax credits to the rehabilitation of owner-occupied residential dwellings.<sup>12</sup> This change could greatly increase the use of federal tax credits.

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<sup>9</sup> PL 99-514; Internal Revenue Code Section 47 [formerly Section 48(g).], *see also* National Park Service, *Federal Historic Preservation Tax Benefits* (last modified March 6, 1999) <[http://www2.cr.nps.gov/TPS/tax/tax\\_t.htm](http://www2.cr.nps.gov/TPS/tax/tax_t.htm)>.

<sup>10</sup> Prior federal tax laws: The tax reform Act of 1976 provided: 5-year amortization of qualified expenditures incurred in the rehabilitation of certified historic structures, or alternatively, accelerated depreciation of substantially rehabilitated historic structures; denial of deduction for costs of demolishing certified historic structure; restriction to straight-line depreciation of buildings constructed on the site of a demolished or substantially altered certified historic structure. The Revenue Act of 1978 provided; a 10% tax credit for qualified expenditures incurred in the rehabilitation of a building that had been in use for a period of at least 20 years before the commencement of the rehabilitation. The Economic Recovery Tax Act of 1981 provided: a 25% tax credit for certified rehabilitation of certified historic structures, a 15% credit for rehabilitation of structures over 40 years old, and a 10% tax credit for rehabilitation of structures 30-39 years old combined with 15-year straight line depreciation. The Tax Equity and Fiscal Responsibility Act of 1982 required: reduction in the depreciable basis of buildings rehabilitated utilizing the 25% tax credit by one-half the amount of the credit. The Tax Reform Act of 1984 provided: lengthened depreciation periods of 18 years, subsequently 19 years; denial of tax credits to rehabilitation of tax-exempt use property, permanent requirements that cost of demolition of all buildings be added to basis of land where building was located before demolition.

<sup>11</sup> Adjusted basis is in the simplest terms the cost of the property minus the value of the land, plus the costs of any improvements, minus any depreciation already taken.

<sup>12</sup> Different versions have been introduced into both houses of Congress: H.R. 1172 and S. 664. Both bills would extend the 20% tax credit to owner-occupied dwellings. Homeowners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage interest rate reduction from their lender. The lender then takes the credit against its taxes. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing. The Senate version would limit the credit to \$20,000 and restrict it to historic districts where median income is less than two times state median income.

A number of states have enacted state income tax incentives to further encourage preservation. The attractiveness of this incentive to property owners is directly related to the tax rate. It is a much more effective incentive in states with high income taxes. States employing income tax incentives include Colorado, Connecticut, Indiana, Maine, Maryland, Michigan, Missouri, New Mexico, North Carolina, Rhode Island, Utah, Vermont, West Virginia, and Wisconsin. Amounts are generally in the 20-25 percent range, but are as low as 5 percent and as high as 50 percent. Unlike the federal government, state preservation tax credits are often available for owner-occupied residential properties as well as income producing properties. Minimum expenditure requirements and rehabilitation standards are usually key parts of these programs.<sup>13</sup>

### *Cost-reducing Incentives*

*Grants* - Direct grants from the government are one way of reducing rehabilitation costs. Grants can be superior to tax incentives in a number of ways. They can be more closely targeted to certain types of historic properties and particular program users. They are not limited to those with high tax liabilities, but can focus on properties of low and moderate income owners. Grants also tend to provide better control over the quality of work. While the impact of grants on state and federal budgets is more predictable than incentive programs, grants depend on yearly appropriations and are more subject to reductions or elimination.<sup>14</sup>

The National Historic Preservation Act of 1966, as amended,<sup>15</sup> provides for federal grants to the states, which may be passed through to local governments or individuals. In practice, however, the limited appropriations by Congress have been used primarily to support the administrative infrastructure on the federal and state levels. Since 1980, only a relatively small amount has been awarded in grants, and these primarily to governmental entities.

The federal government also provides grants for other purposes to states and local governments that may be used for historic preservation. The Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21) and its predecessor, the Intermodal Surface Transportation Act of 1991, authorized substantial grants for an "enhancements" program which has proven to be a major source of funding for preservation projects.<sup>16</sup> States are required to set aside 10 percent of their federal surface transportation funds for projects historic preservation, landscaping, beautification and other projects related by function, proximity or impact to a transportation facility or intermodal system.<sup>17</sup> A number of significant

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<sup>13</sup> BEAUMONT, CONSTANCE. SMART STATES, BETTER COMMUNITIES 92 (1996).

<sup>14</sup> James A. Sewell. *State Income Tax Incentives Versus Grants: Which Are Better?* in BEAUMONT, *id.*, at 109.

<sup>15</sup> 16 U.S.C. § 470 *et. seq.* For more information on the program of the Department of Housing and Urban Development, see their question and answers web page at (accessed April 2, 2000) <<http://www.hud.gov/qaintro.html>>.

<sup>16</sup> JULIA H. MILLER, NATIONAL TRUST FOR HISTORIC PRESERVATION, A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW 32 (1997), *see also* the Internet site maintained by the Surface Transportation Policy Project (accessed April 2, 2000) <<http://www.istea.org/>>.

<sup>17</sup> "Intermodal" refers to the connections between various transportation modes such as rail and bus.

grant programs for state and local governments are funded under the Department of Housing and Urban Development (HUD) Act.<sup>18</sup> Community Development Block Grants (CDBG) have been used extensively to help communities with economic development, job opportunities and housing rehabilitation. Funds under this program have been used not only for infrastructure improvements, but for direct rehabilitation grants for low income home owners.

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

In addition to general appropriations and bond issues, state governments have raised funds for preservation activities through lotteries, taxes on something else -- real estate, mortgage fees, gambling, cigarettes, hotels/motels, and limited partnership -- license plate revenues, and litigation proceeds<sup>19</sup>. In addition to programs directed specifically toward historic preservation, states offer a wide variety of local development programs whose resources can often be directed toward preservation activities.<sup>20</sup>

*Waiver of Fees* - Governments can also reduce the costs of development by waiving certain fees, which can be significant in some jurisdictions. Development fees are often based on the additional costs local governments will incur to support new development -- roads, utilities, school, police and fire services. Where historic structures are reused, there is little additional infrastructure cost for government and those fees may be waived with little impact on the government, but a major benefit to the property owner.

### ***Financing Incentives***

Since most rehabilitation is financed with borrowed money, opportunities exist to provide financing incentives for preservation projects. One approach is to provide loans at a lower rate of interest than could generally be obtained from conventional financing arrangements. Subsidized loans were authorized by the 1980 amendments to the National Historic Preservation Act<sup>21</sup>, but Congress has not funded the program. However, under the proposed Homeowner Tax Credit, owners with insufficient tax liability could convert the credit to a mortgage credit certificate to obtain a mortgage

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<sup>18</sup> 24 U.S.C. § 3532, *et. seq.*

<sup>19</sup> BEAUMONT, *supra* note 13, at 71-76.

<sup>20</sup> One example is Georgia's Local Development Fund, administered by the Georgia Department of Community Affairs, which provides matching grants to communities for downtown development projects, historic preservation projects such as improvements to historic courthouses and city halls, tourism activities, and community facilities such as museums and community centers. See the Department's web page (accessed April 2, 2000) <<http://www.dca.state.ga.us/grants/developmentfund.html>>.

<sup>21</sup> 16 U.S.C. § 470 *et seq.*

interest rate reduction from their lender. In distressed areas, buyers could use the value of the credit toward down payment costs at the time of closing<sup>22</sup>.

An example of a state preservation loan program can be found in New Mexico. A self-sustaining revolving loan fund<sup>23</sup> was established "to provide owners of registered cultural properties in New Mexico with low-cost financial assistance in the restoration, rehabilitation and repair of properties listed in the state register of cultural places. . . ." The Office of Cultural Affairs makes or subsidizes loans jointly with lending institutions such as commercial banks, savings and loans, and credit unions. Receipts from the repayment of loans are re-deposited in the loan fund for future projects. Similar programs have been established on the local level. King County, Washington has established a revolving loan fund in partnership with the Washington Mutual Bank to help private property owners and non-profit organizations secure low-interest financing for the restorations and preservation of historic landmarks.<sup>24</sup>

### *Operational Incentives*

*Tax Abatements* - Property tax is one of the largest single expenses for building owners. Properties are taxed on value of the underlying land as well as the improvements such as buildings. The value of the land is tied to its potential for development, the so-called "highest and best use." This can often lead the owner to tear down an existing historic structure and replace it with a more intensive use. On the other hand, when buildings are rehabilitated or restored, their assessed value increases, thus increasing their taxes. This can discourage owners from maintaining or improving their properties.

Many state legislatures have addressed these problems by creating abatement programs, where the assessed value of a building is frozen at its pre-rehabilitation level for a certain number of years. Tax abatement programs have been discouraged in some states by constitutional provisions that require all real estate to be treated equally, with no disproportionate benefits for individual taxpayers. Constitutional amendments have been passed in several states, such as Florida, Georgia, and Texas, which specifically allow tax abatement for historic properties.

Although the details such as the type of properties that qualify, minimum investments requirements, and the length of the abatement period vary from state to state, the overall approach adopted in Georgia is typical<sup>25</sup>. To qualify for the abatement, a property must be eligible for listing in the Georgia Register of Historic Places and undergo substantial rehabilitation. Substantial rehabilitation is defined as an increase in the fair market value of the building or structure by 55 percent for owner occupied residential property, 100 percent for income-producing properties, and 75 percent for income-producing property

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<sup>22</sup> See *supra* note 12.

<sup>23</sup> Historic Preservation Loan Act, NMSA §§ 18-6-18 to 18-6-23 (1978), also Historic Preservation Loan Fund rule, 4 NMAC 10.2.

<sup>24</sup> See the King County web site (accessed April 4, 2000)

<<http://www.metrokc.gov/exec/culture/heritage/loanfund.htm>>.

<sup>25</sup> Rehabilitated Historic Property Act of 1989, O.C.G.A. Section 48-5-7.2.

used primarily as residential property. Finally, the work must meet the rehabilitation standards promulgated by the Georgia Department of Natural Resources. Once the administrative process for certification is complete, the owner presents the certificate to county board of tax assessors and the assessed value of the property upon which taxes are based is frozen for eight consecutive years. In the ninth year, the assessment is adjusted to a point halfway between the frozen value and the current fair market value. In the tenth year, the assessment is placed at fair market value. Should the property lose the historic or architectural features that made it eligible during the period of the abatement, the amount of the taxes which have been abated, along with interest, become due as a penalty.<sup>26</sup>

In most areas of the country, property taxes are significantly higher than state income taxes. In such states, a property tax incentive is more useful than the state income tax incentive. A few states, such as Maryland and North Carolina, offer both approaches<sup>27</sup>.

*Easements* - Not only can easement donation bring economic benefits through a one-time income tax deduction, it can provide continuing property tax relief for the owner of the property subject to the preservation easement or development restriction. Georgia's Uniform Conservation Easement Act is typical. It provides that when a owner records the easement in the county land records, he is entitled to a revaluation of the property so as to reflect the existence of the encumbrance.<sup>28</sup> A lower evaluation will result in reduced taxes in subsequent years.

*Rent Subsidies* - The Department of Housing and Urban Development and its state partner agencies, in addition to the direct grant programs mentioned above, also provide subsidized housing certificates or vouchers for low income households through its Section 8 program. Rent subsidies are used to pay owners the difference between what these tenants can pay and contract rents. Developers who rehabilitate older buildings in historic neighborhoods can obtain a return on their investment with structures which are fully occupied after completion at competitive rates.<sup>29</sup>

### *Policy Incentives*

*Tax Increment Financing* - Tax increment financing (TIF) is a mechanism used by local governments in many states to encourage redevelopment by making the targeted area more appealing to private investment through publicly financed improvements. Property values are assessed and the sum of the assessed values in the TIF district becomes the baseline for further calculations. Public improvements are made in the area using funds derived from taxes or from the issuance of bonds. These expenditures are used as incentives to encourage private investment in the area. As public and private investments cause the value of property to rise, the additional taxes resulting from higher assessments

<sup>26</sup> Robert L. Zoeckler. "The Tax Abatement Program for Historic Properties in Georgia." 28 GEORGIA STATE BAR JOURNAL 129 (1992).

<sup>27</sup> BEAUMONT, *supra* note 13, at 93.

<sup>28</sup> O.C.G.A. § 44-10-1 *et seq.*

<sup>29</sup> Note 17, above and the HUD web site (accessed April 2, 2000) <<http://www.hud.gov/qaintro.html>>.

are either put back into further improvements on a pay-as-you-go basis or used to pay off the bonds which generated funds for the initial public investment.<sup>30</sup>

*Building Codes* - To protect the public from unsafe conditions, most jurisdictions have adopted codes and standards that specify how buildings are to be constructed and used. These codes focus on new construction and require up-to-date materials and construction techniques. The cost of fully complying with these codes when renovating historic properties can be significant, to the point of making their rehabilitation economically unfeasible. Similar rehabilitation projects in different jurisdictions can vary in cost by as much as a million dollars because of building code differences. To address this problem, professional associations of building code officials<sup>31</sup> and state governments have developed new code provisions which provide more flexibility in design, materials and construction systems that enable historic buildings to meet standards without reducing the overall level of safety.<sup>32</sup> States with representative legislation in this area include California, Massachusetts, Wisconsin and Georgia.<sup>33</sup> In New Jersey, rehabilitation of old buildings increased by 60% following the adoption of a new rehabilitation building code.<sup>34</sup>

*Location of Public Buildings in Historic Districts* - By simply locating public agencies in historic buildings and districts, governmental entities can provide economic incentives for preservation. In 1976, Congress passed the Public Buildings Cooperative Use Act to encourage the General Services Administration (GSA) to "acquire and utilize space in suitable buildings of historical, architectural or cultural significance unless such space would not prove feasible and prudent".<sup>35</sup> The act, which proved to be less than effective, was supplemented by Executive Order 13006, issued by President Clinton in 1996. This order directs federal agencies to give first consideration to locating facilities in historic structures within historic districts, and requires that any rehabilitation or new construction

<sup>30</sup> BEAUMONT, *supra* note 13, at 80. For a Internet site which describes tax increment financing in the City of Chicago, see <<http://www.ci.chi.il.us/Planning/Programs/TaxIncrementFinancing.html>> (accessed February 26, 2000) and CITY OF CHICAGO DEPARTMENT OF PLANNING & DEVELOPMENT, REVIEW OF TAX INCREMENT FINANCING IN THE CITY OF CHICAGO (July, 1998). See also, William G. Seline, "Tax Increment Financing: A Key Preservation Tool", ECONOMIC BENEFITS OF PRESERVING OLD BUILDINGS 49 (Preservation Press, 1976).

<sup>31</sup> The Uniform Building code, published by the International Conference of Building Officials (ICBO); the Standard Building Code, published by the southern Building Code Congress (SBCG); the National Building code, published by the Building Officials and Code Administrators; and the Life Safety Code, published by the National Fire Protection Association.

<sup>32</sup> BEAUMONT, *supra* note 13, at 141-143. This approach has been called a "performance code", in contrast to a "prescriptive code" which requires the use of specific materials and methods, leaving little room for professional judgment.

<sup>33</sup> The Georgia legislation is found at O.C.G.A. § 8-2-200, *et seq.*; see also MARILYN E. KAPLAN, BUILDING CODES AND HISTORIC BUILDINGS (National Trust for Historic Preservation, 1996).

<sup>34</sup> National Trust for Historic Preservation, *New Jersey's Building Code Spurs Preservation*, 17 PRESERVATION ADVOCATE NEWS December 15, 1999.

<sup>35</sup> 40 U.S.C. § 601-616 (1976). Regulations implementing the Public Buildings Cooperative Use Act are set forth at 41 C.F.R. §§ 19.000 *et seq.*, and §§ 105-51.001 *et seq.* In 1978, Executive Order 12072 directed federal agencies to give first consideration to centralized community business areas. See 61 *Fed. Reg.* 9110 (Mar. 7, 1996) for the General Services Administration's interim regulations reaffirming the order's policies and goals.

be "architecturally compatible with the character of the surrounding historic district or properties."<sup>36</sup> Several governors have issued executive orders directing state agencies to do the same. At least six states -- Texas, Florida, New York, Arizona, Minnesota, and Connecticut -- have enacted laws requiring state agencies to first consider historic buildings when seeking new office space. While these state laws and executive orders have not proven effective on a large scale, actions of individual federal, state and local agencies have made a significant difference to specific historic buildings and districts around the country.<sup>37</sup>

*Protective Ordinances* - It is a popular myth in the United States that land use regulation always reduces the value of individual properties. In fact, the absence of regulation may lower property values. Developers of new housing subdivisions and commercial properties recognize this fact and often impose rules on the use of property that are much stricter than government land-use regulations. Tightly regulated properties are frequently among the highest priced and highest tax-producing areas in America. The reason is that regulation -- imposed either by private developers or by government -- increases the property owner's certainty that his investment will not be destroyed by inappropriate or obtrusive development next door.<sup>38</sup> Studies from a number of states have shown that historic listing programs and local protective ordinances tend to enhance property values. Four Georgia cities provide good examples: In Tifton, property values grew on average by almost 11 percent between 1983 and 1996 compared to over 9 percent for non-designated neighborhoods. In Rome, designated properties increased in value by 10 percent more than non-designated properties over a sixteen-year period. In Athens, between 1976 and 1996, average values in designated districts increased by 48 percent, while the values in non-designated districts lagged at 34 percent. Finally in Savannah, an historic neighborhood which was not included in the National Register listed Savannah Historic District saw an increase in property values of only 15 percent between 1974 and 1997 compared to increases of 603 percent and 279 percent in two similar neighborhoods which were listed<sup>39</sup>. The experience of Fredericksburg, Virginia has been similar. Between 1971 and 1990, residential properties in historic districts increased by an average of 674 percent, while the increase was only 410 percent for residential properties elsewhere in the city. There was also a difference for commercial properties: 480 percent increase within historic districts, 281 percent outside historic districts.<sup>40</sup>

*National Main Street Program* - In 1980, the National Trust for Historic Preservation established the National Main Street Center to address the decline many downtown areas experienced in the 1960s and 1970s as regional malls drew away economic activity. It is a comprehensive development program focusing on organization, economic structuring, promotion and design which encourages downtowns to retain their unique characteristics,

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<sup>36</sup> 61 *Fed. Reg.* 26,071 (1996).

<sup>37</sup> BEAUMONT, *supra* note 13, at 155-159.

<sup>38</sup> The government similarly adds value to property through provision of roads, water and power systems, subways, schools and other services.

<sup>39</sup> JONI L. LEITH AND PATRICIA TIGUE. PROFITING FROM THE PAST: THE ECONOMIC IMPACT OF HISTORIC PRESERVATION IN GEORGIA 8-9 (1999).

<sup>40</sup> DONOVAN D. RYPKEMA, THE ECONOMICS OF HISTORIC PRESERVATION: A COMMUNITY LEADER'S GUIDE 43 (National Trust for Historic Preservation, 1994).

including their historic buildings. State and local governments have together implemented the program in over 1,400 utilizing the overall framework provided by the National Center. The total public and private reinvestment in Main Street communities is \$10.9 billion, with an average investment per community of over \$5 million. Some 47,000 businesses have been generated, creating 174,000 jobs. Nearly 70,000 buildings have been rehabilitated. On average, \$35.43 have been reinvested for every \$1 spent on the program.<sup>41</sup>

Recent studies from throughout the United States have shown that the economic impact from a wide variety of preservation activity is impressive. In Georgia during the period 1992-1996, construction activity to rehabilitate historic projects generated \$559 million in total economic activity including the creation of 7,500 jobs in the construction industry and other sectors of the state's economy and \$201 million in earnings, including wages for workers and profits for businesses.<sup>42</sup> In New Jersey, \$123 million of rehabilitation was done on designated historic buildings. The total economic impact was 4,607 new jobs, \$156 million in personal income, \$207 million in gross domestic product, and \$65 million in federal, state and local taxes. The state garnered about half of these benefits, some \$93 million, while the rest is distributed outside the state. The New Jersey study showed that the ration of job creation for historic rehabilitation was slightly higher than that produced for the same investment in highway infrastructure or new construction.<sup>43</sup> In Texas, rehabilitation of historic properties created 4,200 jobs in 1997 in diverse areas such as construction, manufacturing, transportation, utilities, retail and services. \$192 million in historic rehabilitation was spent that year, -- \$102 million in non-residential work, \$70 million in residential work, and another \$20 million in historic public building rehabilitation projects.<sup>44</sup>

Historic resources are important generators of heritage tourism, an important component of many communities' economies. In Rhode Island, half of the state's \$1.2 billion annual tourist industry is driven focused on cultural and historic attractions.<sup>45</sup> Texas characterizes only 11 percent of all travelers as heritage travelers. However, they spend about \$1.43 billion annually -- approximately \$1.2 billion resulting from overnight stays and about \$230 million from day trips. The numbers of both travelers and trips are continuing to grow.<sup>46</sup> For every \$1 million expended by heritage travelers in Texas, 22 jobs are created in the state, \$480,000 of income is generated, \$49,000 in state taxes are generated, \$43,000 in local taxes are generated, and the Gross State Product is increased by \$825,000.<sup>47</sup> The impact from even a single significant landmark can be impressive. Visitors to the Frank Lloyd Wright Home and Studio generate \$5.5 million in annual

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<sup>41</sup> See BEAUMONT, *supra* note 13, at 191-200, and the web site for the National Main Street Center (accessed April 2, 2000) <<http://www.mainst.org>>.

<sup>42</sup> LEITHE AND TIGUE, *supra* note 39, at 7.

<sup>43</sup> Harriette C. Hawkins, *Preservation Pays: Measuring the Economic Benefits of Historic Preservation in New Jersey*, ECONOMY OF CONSERVATION 53 (Proceedings of the XII Assembly ICOMOS, Mexico, 1999).

<sup>44</sup> THE TEXAS HISTORICAL COMMISSION, ET AL, "HISTORIC PRESERVATION AT WORK FOR THE TEXAS ECONOMY 8 (1999).

<sup>45</sup> RYPKEMA, *supra* note 40, at 79.

<sup>46</sup> *Id.* at 3.

<sup>47</sup> *Id.*, at 12.

economic activity for the city of Oak Park and a total of \$26 million in the greater Chicago area.<sup>48</sup>

All of these studies have shown that preservation activity is good for the economy, and the incentives provided by public programs have worked. The Mayor of Philadelphia has described how even the revenue "lost" from expanded rehabilitation tax credits more than pays for itself:

*While a \$1 million rehabilitation expenditure would cost the Treasury \$200,000 in lost tax revenues, it would at the same time generate an estimated \$779,478 in wages. Taxed at 28 percent, the investment would produce \$218,254 in federal tax revenue. Corporate income, capital gains, and real estate taxes would further complement gains in household income tax. Thus. . . these offsetting factors make the historic rehabilitation tax credit a largely self-funding program. Best of all it would provide cities with much-needed private investment capital for redevelopment and housing.*<sup>49</sup> Philadelphia Mayor Edward Rendell

A similar scenario can be posed for other preservation incentives. Given the recent success of preservation as an economic generator and incentives as important catalysts, the future of incentives appears bright.

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<sup>48</sup> RYPKEMA, *supra* note 40, at 83.

<sup>49</sup> *Id.*, at 32.

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**LA DEGRADACION DEL PATRIMONIO  
CULTURAL A PARTIR DE SU  
CONSERVACION**

*THE ECONOMIC IMPACT OF FINANCING CONSERVATION AND  
RESTORATION*

## LA DEGRADACION DEL PATRIMONIO CULTURAL A PARTIR DE SU CONSERVACION

### INTRODUCCION:

Cuando se decide conservar un "bien cultural" los argumentos sobre los cuales se fundamentan parten del valor histórico/documental/cultural tiene este bien, para el país o para una determinada comunidad. El análisis de cual será el impacto económico que tendrá una declaratoria sobre este bien muy rara vez se toma en consideración a la hora de determinar la viabilidad de implementar algún instrumento de protección. El aspecto económico entra solo en discusión cuando el "bien cultural" es de propiedad privada y la declaratoria perjudica de una u otra manera a sus propietarios. En este momento, la declaratoria se convierte en el objeto de una disputa jurídica entre el Gobierno y el propietario. Este conflicto desvirtúa el objeto inicial de la protección, polarizándose los intereses entre lo público y lo privado, convirtiendo un instrumento que inicialmente era de protección en una disputa, perjudicando finalmente al Patrimonio Cultural. Esto se ha convertido en un patrón que se repite siempre que se realiza alguna declaratoria sobre bienes de propiedad privada ocasionando un verdadero conflicto entre los intereses públicos y privados. Pretendemos presentar un caso real y reciente, sobre este tema y esbozar una breve reflexión acerca las de acciones previas que debe asumir el Estado en el ámbito local, regional y nacional. Estas acciones preventivas las podríamos denominar también **promotoras de la conservación**. Las mismas deberían incluirse de manera permanente en las políticas de conservación del patrimonio cultural y aplicarse a TODOS los bienes culturales, estén protegidos o no, para ello se requiere del trabajo interinstitucional e intersectorial.

### 1.- ACERCA DE LOS INSTRUMENTOS DE CONSERVACION:

Es importante hacer un breve repaso acerca de cuales son los instrumentos jurídicos previstos por la ley para salvaguardar el Patrimonio Cultural de una nación. Normalmente solo se consideran dentro de estos parámetros aquellos que son aplicados por los Institutos encargados de velar por el patrimonio cultural o natural tales como declaratorias de monumentos, bienes de interés cultural, catalogaciones y otras. Es muy importante recordar que existen otras instancias competentes que también actúan y son normalmente excluidos de los planes de conservación del patrimonio cultural, nos referimos a los planes de ordenamiento de territorio o los planes de ordenamiento de ámbito municipal. Estos instrumentos dirigen el desarrollo urbanístico, sin embargo, normalmente no se realizan diagnósticos ni planes en conjunto.

Las declaratorias como Monumento o Bien de Interés Cultural, pertenecen al más alto rango, estas bien pueden ser de carácter local, regional, nacional y mundial. Cada una de ellas se instrumentan de acuerdo a una legislación específica. Suelen ser las más lentas de tramitar debido a la cantidad de requisitos técnicos y legales. Las mismas son las encargadas de proteger los bienes culturales, por mandato de la Ley que lo rige, puede haber variantes en cuanto a su interés, como de interés cultural, de interés turístico, de interés documental, ambiental u otro.

Las catalogaciones son instrumentos de corte básicamente técnico, son elaboradas por la instancia gubernamental Institutos Autónomos u dependencias directas de algún Ministerio; en la mayoría de los casos de Educación, Turismo, Ambiente o Cultura. La catalogación es bastante rápida y efectiva, sin embargo, presenta el inconveniente que es de acceso muy limitado. Esta información normalmente se encuentra en los archivos organismo encargado de proteger el Bien Cultural, rara vez son publicados y los usuarios no tienen fácil acceso a esta información.

Existen también las normas derivadas de los planes de ordenación de territorio, bien sean locales, regionales o nacionales. Normalmente las elaboran los Ministerios de infraestructura o urbanismo en el ámbito nacional y las instancias planificadoras en los municipios. Estas normas se elaboran sin tener en cuenta las declaratorias o protecciones existentes, en la mayoría de los casos hay superposición de atribuciones o intereses. Estas normas son las que finalmente dictan cual será el uso que se le dará a determinado sector de la ciudad y el uso que se le dará a una parcela. El puede proteger y conservar o decretar su destrucción. Es en este nivel donde se presentan las contradicciones más significativas, es aquí donde se evidencia la falta de coordinación interinstitucional. El lugar al que acude el propietario de una parcela para presentar un proyecto y obtener la permisología requerida. En cambio encuentra contradicciones y superposiciones de atribuciones entre organismos competentes que impiden el desarrollo de cualquier proyecto.

## 2.- IMPACTO NEGATIVO DE LA CONSERVACION:

Observamos con preocupación que la aplicación de estos instrumentos de conservación se han convertido, en su gran mayoría en un elemento de impacto negativo sobre el bien cultural y su entorno. Una declaratoria o la aplicación de algún instrumento de protección convierte a un inmueble en un objeto que pierde automáticamente su valor en el mercado. Al estar limitadas las acciones que se puedan realizar sobre el bien y su entorno pierden el interés en la realización de proyectos de envergadura. Esto es causa una desventaja competitiva en el entorno inmobiliario, además de detener las inversiones que estarían previstas realizarse para su mantenimiento ordinario. Todo ello empieza a generar un ambiente de degradación que afecta al inmueble y su entorno. Tenemos hoy día en Venezuela, que la mayor parte de los bienes declarados se encuentran muy deteriorados o tienen un entorno absolutamente degradado, zonas de alta inseguridad, barrios no consolidados y sin servicios. También se ha evidenciado la existencia de una confusión acerca de lo que realmente significa una declaratoria se confunde una declaratoria con una expropiación. Una declaratoria no implica la adquisición por parte del Estado del bien, implica la aplicación de ciertas restricciones, muchas veces imprecisas, en cuanto al alcance de la intervención del bien cultural. Esta confusión ha afectado de manera importante los procesos de conservación llegando a conflictos tan complejos como puede ser uno con la iglesia católica, la cual es en Venezuela una de las mayores propietarias de bienes culturales.

## 3.- APLICACIÓN A UN CASO DE ESTUDIO: Hotel Avila

Presentamos un caso, en el que un empresario privado contrata los servicios de una especialista en conservación para estudiar su situación y le proponga elementos de negociación que satisfaga a ambas partes.

Esta acción incluye elementos novedosos para el área en estudio: el análisis desde una nueva perspectiva, la del propietario que tiene derecho a usufructuar su bien y evitar su deterioro y como una declaratoria de interés turístico afecta también otras áreas de interés. Este último elemento hizo que se involucraran además del Ministerio de Turismo, Fundapatrimonio (ámbito local) y el Instituto Nacional del Patrimonio (ámbito Nacional). En este momento, se está llevando a cabo la última parte de la negociación, en que se espera una decisión favorable, si se logran resguardar los principales elementos que consideramos tienen valor y deben ser protegidos a generaciones futuras.

❖ Características generales del inmueble

Hotel construido en 1942, para convertirse en alojamiento de personal de las 3 principales petroleras que realizaban negocios en Venezuela en ese momento. Caracas tenía en ese momento 3000.000 habitantes. Realizaron un estudio previo en el arrojó que se necesitarían aproximadamente 154 habitaciones, incluyendo 20 habitaciones tipo residencia. El hotel está conformado por un cuerpo central y dos alas, una crujía de habitaciones, Todas las habitaciones tienen vista al jardín y tienen pequeños balcones con barandas de madera.

El Hotel se convirtió durante 20 años en el centro social más importante de la ciudad, siendo testigo del desarrollo de una ciudad desde 300.000 habitantes hasta convertirse en una metrópolis de 5 millones.

❖ Diagnóstico:

El Hotel mantiene su tipología; sin embargo, el mismo luce hoy día desactualizado e incapaz de competir con los nuevos desarrollos hoteleros de la ciudad. En el diagnóstico se determinó la baja calidad de los materiales utilizados en el momento de su construcción, los cuales hoy día se encuentran en estado de alto deterioro. Existen, además otros elementos que precipitaron este desgaste: el crecimiento desmesurado de la ciudad, cambio de contexto urbano, los deterioros propios de los materiales de construcción y la imposibilidad de la modernización en los servicios que se ofrecen. Este deterioro en su infraestructura física conlleva a su vez a la baja de sus ingresos brutos al disminuir la demanda de sus servicios al no poder competir en relación precio-calidad en el mercado. Las limitaciones físicas para su actualización se deben específicamente: remodelación de servicios básicos, agua, luz, teléfono, ventilación artificial.; la imposibilidad de actualización en los servicios de telecomunicaciones como televisión por cable, servicios de voz y data, y la relación del número de camas que se ofrecen al público con su proporción en calidad - precio.

❖ Consulta a organismos gubernamentales

El inmueble tiene una declaratoria como bien de interés Turístico en 1980; además, aparece en la Oficina de Planificación con la zonificación de Uso Especiales. En 1984 El Municipio otorgó una autorización para la construcción de 650 habitaciones.

Ministerio de Turismo solicita opinión y consulta a Ingeniería Municipal (Oficina de consulta y planificación urbana en el ámbito Municipal)

Ingeniería Municipal solicita opinión a Fundapatrimonio: (Institución Gubernamental de encargada de conservar el patrimonio en ámbito Municipal)

Ministerio de Turismo solicita opinión al Instituto Nacional del Patrimonio Cultural

❖ Acuerdos:

Ministerio de Turismo confirma el uso del terreno para uso exclusivo de instalaciones de uso Turístico.

Ingeniería Municipal condiciona las variables de densidad de población, obligando a los propietarios a mantener la escala y densidades actuales.

Fundapatrimonio reconoce el valor ambiental del inmueble, condiciona la construcción de un nuevo hotel con el respeto de algunos aspectos tipológicos de la edificación.

Instituto del Patrimonio Cultural considera que el principal valor del inmueble lo constituye su valor ambiental e histórico/documental y sugiere se respete algunos valores tipológicos y todos los ambientales.

Finalmente el inmueble tiene la autorización para ser derrumbado y construido uno nuevo que llene los requerimientos definidos en los acuerdos.

#### 4.- ACCIONES QUE PROMUEVAN LA CONSERVACIÓN

En vista de este breve análisis presentado podemos observar que son innumerables obstáculos y dificultades que se generan para poder conservar un Bien Cultural. Una vez iniciado el proceso de deterioro, es muy difícil detener o revertir este proceso que es primero un daño económico al propietario y después un daño al Bien Cultural. Los propietarios por su propia conformación utilizan el Bien para generar recursos, no mantener el inmueble para el disfrute de las generaciones futuras; esta última es una responsabilidad del Estado.

Esta es una diferencia sustancial en el momento de establecer prioridades de conservación, es al estado a quien les corresponde mantener estos Bienes. Para ello deben conjugarse una serie de elementos que generen armonía entre lo público y lo privado que podrían enmarcarse en las siguientes líneas de acción:

##### 4.1.- Reglas claras:

Los organismos gubernamentales involucrados en el proceso coordinen sus prioridades y establezcan los lineamientos y alcances precisos de intervención sobre bienes culturales protegidos. De esta manera los inversionistas; tengan la suficiente claridad en cuanto al alcance de sus intervenciones para poder evaluar la conveniencia de sus inversiones.

##### 4.2.- Estímulos fiscales:

Establecer beneficios fiscales para los propietarios de inmuebles que se encuentren afectados por algún tipo de protección legal o conservación. Se deben ofrecer a los propietarios beneficios substanciales en cuanto a la exoneración de impuestos a nivel del inmueble y personales ofreciendo ventajas a los propietarios.

##### 4.3.- Estímulos económicos:

Ofrecer subsidios para realizar reparaciones menores o promover en la banca privada o pública la utilización de créditos blandos (bajo interés o tasa fija) De la misma manera promover tarifas especiales en la prestación de servicios básicos tales como luz, agua, electricidad.

##### 4.4.- Promoción- prestigio social reconocido:

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Brijuni, May 3 – 6, 2000

## *PROTECTION OF CULTURAL GOODS – QUESTIONNAIRE*

- Belgia, Flemish Region, Anne Mie
- Belgia, Region of Brussels, Arlette Verkruyssen
- Bulgaria, Hristina Staneva and Risitza Staneva
- Croatia, Jadran Antolović and Ivančica Markovčić
- Georgia, Merab Bochoidze
- Japan, Toshiyuki Kono
- Macedonia, Kira Petkovska and Ljubica Risteska
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- Spain, Maria Rosa Suárez-Inclan Ducassi
- Sweden, Thomas Adlercreutz

## PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE

1. Is there a law that explicitly relates to the protection and preservation of cultural goods? (full title and year when it came into force)
2. Does this law encompass all problems related with protection and preservation?
3. What areas of protection and preservation of heritage are regulated by this law?
4. Does this law encompass problems concerning financing, and stimulating measures for financing, related to the protection and preservation of heritage?
5. If not, which law(s) or act(s) regulate the mentioned problems? (what financial regulations relate to the protection and preservation of heritage and how do they relate in terms of the useful benefit of the heritage as well as in terms of stimulative measures and financial exemptions for actual participants in the protection and preservation of heritage - name the ordinance and the area that it regulates)
6. Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budgets in relation to other resources, etc.)
7. Forms of stimulative measures (if they differ according to categories of users, owners, constructors, restorers, and state who it relates to) and what ordinances regulate the following:
  - subvention
  - tax exemptions
  - customs exemptions
  - loans with lowered interest rates
  - other stimulative measures
8. In what way, and on the basis of which ordinances, is compensation for different forms of use of heritage regulated?
  - form of use
  - method of payment, type of compensation
  - to whom does the income belong
  - how is it allocated
9. Is there a penalty for negligent relations, or disregard, towards heritage? (not intentional devastation)
  - to whom does the income belong
  - how is it allocated
10. Thoughts concerning the mentioned legal acts and ordinances:
  - are the areas of protection and preservation of heritage properly protected in a legal sense
  - if not, why
  - is there proper implementation of what is prescribed
  - other comments and recommendations

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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
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Belgia, Flemish Region  
Anne Mie

Belgia, Region of Brusselles  
Arlette Verkruyssen

## PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE.

**Preliminary remarks.**

This questionnaire was filled in by Arlette Verkruyssen and Anne Mie Draye.

Since Belgium is a regionalised country, they divided up the work into two parts.

Anne Mie described the situation in the Flemish Region and dealt with the matters that still belong to the federal competences. Arlette described the situation in the Region of Brussels Capital; for the federal matters, she referred to Anne Mie's text.

A text concerning the Walloon Region is following by separate fax.

## I. FLEMISH REGION.

1. \* Decree of March 3, 1976 on the protection of monuments and rural or urban sites, amended by decree of February 22, 1995 and by decree of December 8, 1998 (Belgian State Gazette, 22.04.76, 05.04.95, 26.01.99).

\* Decree of June 30, 1993 on the protection of archaeological heritage (B.S.G., 15.09.93).

\*( Decree of November 17, 1982 on the protection of movable cultural heritage) <sup>1</sup>

The decrees and their amendmends entered into force ten days after publication in the Belgian State Gazette.

2. Those two decrees and the important implementing orders completing them, allow an effective protection of valuable goods. According to the decree of march 1976, not only monuments but also larger built areas can be protected as a so called urban or rual site. The decree on the protection of archaeological heritage offers the possibility to protect (immovable) archeological goods and areas.

Those decrees contain definitions, protection procedures, legal consequences for owners, notary publics and authorities involved in the granting of urbanistic permits, the principles concerning maintenance and restoration premiums, sanctions...

3. Those decrees deal with built heritage; for landscapes, another decree was adapted on April 16, 1996 (B.S.G. 21.05.96). The decree of March 1976 is were possible also used for the protection of fixtures and fittings being part of a monument; this is quite important since the decree on the protection of movable cultural goods doesn't work.

4. As mentionned above, the principle of granting subsidies for maintenace and restorati-on works is inscribed in each of the decrees.

A detailed procedure, conditions, amounts, means of payment... is inscribed in implemen-

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<sup>1</sup> This decree isn't realy operational, still nowadays implementing orders are missing. A new decree on this subject is being prepared. For the further answering of this question-naire, this decree is not any longer taken into account.

ting orders.

For the decree of March 1976 on the protection of monuments, urban and rural sites:

\* Governmental decree of September 29, 1994 (B.S.G., 25.01.1995); maintenance premium.

\* Governmental decree of April 5, 1995, amended by governmental decree of October 15, 1996 (B.S.G., 30.06.95 and 12.12.96); restoration premium.

Important remark: premiums are only granted for works on protected monuments, not for works on goods located in urban or rural sites.

For the decree of June 1993 on the protection of the archaeological heritage:

\* Governmental decree of April 26, 1995 (B.S.G., 30.08.95); premiums for maintenance and restoration works can be granted, only until now no budget was fixed, so the system isn't operational.

For tax aid given to physical persons, see number 5.

5. A tax aid is given to physical persons carrying out maintenance or restoration works on their definitively protected monument or good located in an urban or rural site.

Is deductible from the annual taxable income 50% of the cost of this works, with an absolute maximum of one million of Belgian francs. Two conditions are imposed: the protected good must be opened for the public several times a year; the good is not rented.

For works carried out on protected goods, there is a lower VAT-rate of 6% instead of 21%; only this tax incentive is valid for all works carried out on buildings that were erected more than 15 years ago. So this measure is not specific for protected goods.

6. The level of the budget spent by the Flemish Region for maintenance and restoration of protected monuments is about 1,8 billion of Belgian francs.

Only the restoration premiums of the Region are completed by provincial and/ or local premiums. When the Region is *f.i.* giving a premium of 25% of the cost of a work to a physical or a legal person, this premium is completed with a provincial and local premium of 7,5% each. Those amounts can be doubled when the premium is asked for by an heritage association or be an owner of a monument without any economical use or value.

Local authorities can get a regional premium of 60% of the cost for the restoration of protected monuments they own. In that case, a provincial premium of 20% is added. No statistic information on the global amount of money spent by provinces and local authorities is available.

7. Maintenance and restoration premiums can be asked by owners, tenants or usufructors. For the rules concerning the granting of restoration premiums, see number 6.

For maintenance premiums, a uniform granting system was elaborated for all owners, tenants or usufructors. For works until 600.000 Belgian francs, a premium of 40% is given, for works until 1,2 million Belgian francs, a additional premium of 25 % is given. For works that costs more than 1,2 million, no premium is granted. So the maximum premium is of 390.000 B.fr. Maintenance premiums can be asked for every year.

For tax measures, see number 5.

No other stimulative measures, such as low interest grants, do exist.

8. The use as such of heritage is not regulated by public authorities. So every owner, private or public owner can decide to charge for the use of his monument.

9. Several sanctions are inscribed in both of the decrees described above.

They consist in fines, and in the obligation to restore the good into its former condition when works were carried out without the necessary previous permit. Works that are carried out illegally, can also be stopped by the competent authorities.

Also neglection of a protected good can be punished; fines can be imposed, and the obligation to carry out maintenance works.

Unfortunately, no special affection is given to the "income" out of fines; this money is allocated to the state budget.

10. The legal framework to protect built heritage in the Flemish Region is correct and sufficient. Just like in many other countries, we notice however that the concrete application of the legal rules is not always satisfactory, nor the integration of this "monument legislation" in other legislations concerning the use of soil.



LE MINISTRE-PRESIDENT

## PROTECTION OF CULTURAL GOODS REGION BRUXELLES-CAPITALE

### I. REGION BRUXELLES-CAPITALE

1. Ordonnance du 4 mars 1993 relative à la conservation du patrimoine immobilier (Moniteur Belge du 7 avril 1993).  
Cette législation a été complétée par une série d'arrêtés d'exécution relatifs à :
  - l'organisation et au fonctionnement de la Commission Royale des Monuments et des Sites (arrêté du 9/11/93)
  - l'exécution de travaux au patrimoine classé ou inscrit sur la liste de sauvegarde (arrêté du 9/11/93 mod. Par l'arr. du 2/6/94),
  - la demande d'inscription d'un bien sur une liste de sauvegarde ou de classement (arrêté du 9/11/93),
  - la désignation des fonctionnaires et agents chargés de la surveillance et du respect des dispositions de l'ordonnance du 4 mars 1993 (9/12/93),
  - l'organisation de la procédure relative à l'avis de la Commission Royale des Monuments et des Sites avant la délivrance des autorisations dont un bien relevant du patrimoine immobilier inscrit sur la liste de sauvegarde ou classé doit faire l'objet (3/2/94)
  - l'application d'un signe distinctif sur des monuments et des sites protégés (16/3/95)
  - la subvention pour travaux à des biens classés appartenant au secteur privé (30/5/96)
2. Cette ordonnance avec les arrêtés d'exécutions couvre toute la législation de protection du patrimoine en Région de Bruxelles-Capitale.
3. L'ordonnance du 4 mars 1993 prévoit la protection de l'ensemble des biens immeubles qui présentent un intérêt historique, archéologique, artistique, esthétique, scientifique, social, technique ou folklorique. Il s'agit donc aussi bien d'un monument, d'un ensemble que d'un site (archéologique).

4. L'ordonnance prévoit des dispositions fiscales propres en faveur du patrimoine de la Région de Bruxelles-Capitale, à savoir une exonération du précompte immobilier pour le patrimoine immobilier classé et une exemption des droits de succession et de mutation par décès qui sont légués à la Région ou aux fondations ayant le statut d'établissement d'utilité publique à condition qu'ils soient localisés dans la Région (loi spéciale du 16 janvier 1989 sur le financement des Communautés et des Régions).
5. En ce qui concerne les autres avantages fiscaux les propriétaires peuvent se prévaloir de la législation fédérale (déductibilité de certains frais d'entretien et de restauration de leurs revenus nets imposables).
6. Malheureusement je ne possède pas de chiffre exact concernant ce point (à vérifier).
7. Dans l'ordonnance il est spécifié que lorsque des travaux de conservation sont nécessaires, la Région et la commune concernées peuvent intervenir dans les frais de ces travaux, suivant des conditions à fixer par le Gouvernement.

Cet article constitue la base légale pour la subvention des travaux.

Pour le secteur privé (arrêté du 30/5/96) les taux de la subvention sont fixés comme suit.

- pour travaux d'entretien la Région intervient pour 40% des dépenses admissibles,
- pour des travaux de restauration la Région intervient pour 40% des dépenses admissibles mais sous condition que :
  - le bénéficiaire soit une personne physique dont les revenus sont inférieurs à 1.200.000 BEF (augmenté de 100.000 BEF par personne à charge) ;
  - le bénéficiaire soit une A.S.B.L. ou un établissement d'utilité publique, dont l'objet social est la conservation du patrimoine et dont les statuts sont publiés au Moniteur Belge depuis au moins 3 ans ;
  - le bien classé soit inoccupé ;
  - le bien classé soit accessible au public.

Dans tous les autres cas, la subvention régionale est de 25% seulement.

- pour les études, le taux de subventionnement est également de 25%.
- dans l'arrêté du 30/5/96 il est précisé que lorsque les communes interviennent dans le coût des travaux de conservation, leur intervention ne peut dépasser 15% des dépenses admissibles.

Pour le secteur public l'attribution de subsides a encore lieu selon les règles anciennes instaurées en exécution de la loi d'août 1931 (fédéral).

Pour les travaux exécutés par les administrations publiques on fait appel (momentanément) à un arrêté royal du 24 février 1974 relatif à l'intervention de l'Etat en matière de subsides pour effectuer des travaux d'infrastructure culturelle et sportive par les provinces, communes, agglomérations, fédérations et associations de communes et les Commissions pour la culture de l'Agglomération de Bruxelles (un nouvel arrêté est attendu dans un proche avenir).

8. Aucune mesure concernant cette matière n'a été prise jusqu'à présent.
9. Les travaux exécutés sans ou en méconnaissance d'une autorisation peuvent être interrompus. A côté de cette sanction administrative l'ordonnance punit un grand nombre d'infraction d'un emprisonnement de huit jours à trois mois et/ou une amende de 100 à 300.000 BFF.  
Des mesures de rétablissement sont liées à toute condamnation. Elles peuvent prendre la forme soit d'un rétablissement du bien dans son état antérieur, soit de travaux de modification. Dans les deux cas, un délai d'exécution des travaux sera fixé par le juge de condamnation.
10. Comme en Région flamande, la protection du patrimoine est efficace. Ce qui n'empêche pas que parfois l'application n'est pas toujours satisfaisante. Des améliorations pourraient être apportées, notamment sur le plan fiscal. Une ordonnance concernant « le Patrimoine Archéologique » s'impose.



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INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Bulgaria  
Hristina Staneva and  
Risitza Staneva

## ANSWERS TO THE QUESTIONARY ABOUT PROTECTION OF CULTURAL GOODS

*1. Is there a law that explicitly relates to the protection and preservation of cultural goods? (full title and year it came into force)*

- The Law for Protection and Development of Culture / Official Journal, No 50/99
- The Law for the Monuments of Culture and Museums (Official Journal, No 29/69, alteration and additions No 29/73, 36/79, 87/80, 102/81, 45/84, 10/90, 14/90, 112/95, 44/96, 117/97, 153/98, 50/90.

There are 8 normative acts specifying, explain in details and create procedure for those texts from the law, which sound commonly.

*2. Does this law encompass all problems related with protection and preservation?*

- Yes. Some attempts have been done to enclose the specific side of the various cultural activities.

*3. What areas of protection and preservation of heritage are regulated by this law?*

- There is a legal regulation of all areas of protection and preservation of the cultural heritage

*4. Does this law encompass problems concerning financing and stimulating measures for financing, related to the protection and preservation of heritage?*

- Yes. The first part of the report reveals its answer.

*6. Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budget in relation to other resources, etc.)*

- The principles according to which funds are collected and allocated are purposeful. The State subsidiary released from the Budget is pre-determined, only for purposes that are pre-approved.
- Exception is the accumulation of funds for the Fund "Culture". As it was stated above in the first section of the report, the funds are collected from 14 sources, like fines, penalties, etc. The allocation of the funds is purposefully.
- The Law for the State Budget (published in Official Journal, No 1 of 2000, apl.#7) states that the national and the municipal Funds "Culture" are transformed into secondary stewards, which means that the sums collected for the Fund are combined with the sums of the Ministry of the Culture. Therefore a measure of the percentage distribution of the allocated funds could not be provided.

*7. Forms of stimulative measures (if they differ according to categories of users, owners, constructors, and state who it relates to.) and what ordinances regulate the*

*following – subdivision, tax exemptions, custom exemptions, loans with low interest rate, other stimulative measures)*

- The answer can be found in the second part of the report.

*8. In what way and on the basis of which ordinances is compensation for different forms of use of heritage regulated?*

*- form of use*

- They could be rented, however the time period for the contract could not be longer than 3 years, they could be used by concessionaire, according to the Law of Concessions (Official Journal, No 92/95, 44/96, 62/97, 123/97, 93/98, 23/99, 56/99, 64/99, 67/99)

According to article 4, section 10 and 12 from the above mentioned law State properties could be rented when the properties are forests and parks with national importance, and natural and archeological reservations. The Minister of the Culture, is obligated to create the necessary organization, to secure the necessary resources, and to submit offers concerning the concession of State-owned archeological reservations and the parks with national importance and with cultural and historical value.

*- methods of payment, type of compensation*

- The methods for payment and compensation are to be agreed upon concretely for each site and for each contract.

*- To whom does the income belong*

- According to the Article 25 from the Concession Law the income is to be divided: 85% for the State Budget, and 15% for replenishing the Fund for reimbursing for the expenditures.

*9. Is there a penalty for negligent relations, or disregard towards heritage (non-intentional devastation) – to whom the income belong, how it is located?*

- In the Law for Protection and Development of the Culture and the Museums and Bill for the Museums there are chapters, called “Administrative and Punitive Decree”. These chapters contain text specifying the sanctions for violating these laws, as well as increased sanctions for repeated violating of the laws.

The income for these sanctions is added to the State Budget, and distributed respectively to the body issuing the particular punitive decree (the Minister of the Culture or the Mayor of the municipality). For each type of violation it specified who is authorized to execute the punitive decree. The procedure involving the executing of the decree, locating the violators, and the appeal process is established with the Law for Administrative Violations.

*10. Thoughts, concerning the mentioned legal acts and ordinances*

- In the case that the State would have sufficient resources, the intelligentsia of Bulgaria will find a way to update our legislation in order to reflect this condition with additional preferences for the Protection of our cultural heritage.

Hristina Staneva  
Rositza Staneva

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Croatia  
Jadran Antolović and  
Ivančica Markovčić

## PROTECTION OF CULTURAL GOODS IN THE REPUBLIC OF CROATIA - ANSWERS TO THE QUESTIONNAIRE

1. In the Republic of Croatia, the protection and preservation of cultural goods are regulated by the following ordinances:

- The Law on the Protection and Preservation of Cultural Goods passed in 1999
- The Law on the Endangered Monumental Site of Dubrovnik passed in 1986 and renewed in 1989, 1993, and 1999 respectively. This last instance has concerned its co-ordination with the Law on the Protection and Preservation of Cultural Goods

2. The said laws establish the system of protection and preservation of cultural goods, and their provisions prescribe the responsibility to pass sub legal acts, as follows:

- The Book of Rules on the Conditions for Physical and Legal Persons for the Obtaining of Permits for Performing Works on the Protection and Preservation of Cultural Goods (passed in 1999)
- The Book of Rules on the Identity Card of the Inspector of the Protection of Cultural Goods, as well as on the Pattern and Manner of Keeping Records of Supervision Performed (passed in 1999)
- The Book of Rules on the Register of Cultural Goods of the Republic of Croatia (currently under passing)
- The Book of Rules on the Conditions and Manner of Implementing Measures of Protection and Preservation of Cultural Goods (currently under passing)
- The Book of Rules on the Expert Calling of a Conservator-Restorer and the Manner of its Achievement (currently under passing)

We may establish that all the significant issues related with protection and preservation of cultural goods have been regulated either by the law or by sublegal acts.

3. The Law on the Protection and Preservation regulates the following issues:

- Types of cultural goods,
- The manner and procedure of establishing protection over cultural goods,
- Responsibilities and rights of the owner of a cultural good,
- Measures for the protection and preservation of a cultural good,
- Performing duties connected with the protection and preservation of cultural goods,
- The composition and authorities of the Croatian Council of Cultural Goods,
- The manner of financing the protection and preservation of cultural goods,
- Identifies violations and prescribes fines for their perpetrators

4. The Law on the Protection and Preservation encompasses provisions prescribing the manner of financing protection and preservation, as well as provisions on the collection of a monument annuity from the economic use of cultural goods. Stimulative measures, such as tax and

customs exemptions for the investments made into the preservation of cultural heritage, are not prescribed by this law. According to the so far legislative practice, they may be prescribed only within tax and customs regulations. The new Customs Act, in force since the beginning of 2000, has thus provided for customs exemption when importing goods for the protection and preservation of cultural goods.

The existing tax regulations do not encompass tax exemptions for the time being. However, the new Croatian Government has mentioned the possibility of their introduction with the tax system reform.

5. The answer has been given under Item 4.

6. In order to be able to present the policy of financing the protection and preservation of cultural goods from the state budget, we shall provide data on the resources from the state budget for culture, as well as for the protection and preservation of cultural goods in the 1994-1998 period.

YEAR	Amount for culture in budget			Amount for cultural heritage		
	HRK	DEM	% <sup>1</sup>	HRK	DEM	% <sup>2</sup>
1994	110,715,851	29,988,042	0,45	32,057,162	8,682,872	29,0
1995	183,051,503	51,610,778	0,59	42,870,000	12,076,057	23,4
1996	235,342,473	66,406,639	0,66	43,491,000	12,136,902	18,3
1997	319,448,305	89,985,436	0,80	86,585,175	24,349,722	27,1
1998	395,322,080	109,204,990	0,96	103,030,940	28,461,585	26,1

The above data show that the share of resources allocated for culture was gradually increasing with regard to the total state budget. However, at the same time, the amount for the protection and preservation of cultural goods was constantly decreasing since 1994, with the exception of 1997, when a minor increase of the funds was recorded with regard to the funds allocated for culture.

The Table below shows the ratio between the funds spent for the functioning of the state administration and of the institutions for the protection and preservation of cultural goods, and the funds spent for the program's for the protection and preservation of cultural goods.

YEAR	Financing of institutions <sup>3</sup>		Financing of the programme <sup>4</sup>	
	HRK	DEM	HRK	DEM
1994	14,644,162	3,966,458	17,413,000	4,716,414
1995	24,583,000	6,924,789	18,287,000	5,151,268
1996	25,450,000	7,054,930	18,041,000	5,081,972
1997	9,367,175	2,634,263	77,218,000	21,715,459
1998	11,520,766	3,182,532	91,510,174	25,279,053

<sup>1</sup> Per cent of the State budget

<sup>2</sup> Per cent of the amount for culture in State budget

<sup>3</sup> Salaries, current expenditures institutions for cultural heritage protection and preservation

<sup>4</sup> The program for cultural heritage protection and preservation

7. The existing legal regulations do not prescribe any special stimulative measures for the protection and preservation of cultural goods. The existing (modest) stimulative measures refer to culture in general, thus including also the protection and preservation of cultural goods.

It would be hard to say that there exists a classical system of **subventions**. The financing refers mostly to concrete renewal and protection undertakings. The Ministry of Culture of the Republic of Croatia, using state budget resources, finances program's for the protection and renewal of monuments and monumental holdings of national interest. The funds intended for the preventative protection of cultural monuments damaged in war destruction's come from the same source.

The local community has complete autonomy in the allocation of its own budget funds. It allocates funds according to its own program's, encompassing also facility renewal and restoration program's, according to decisions made by the local administration. In some cases the interests of the state and those of the local community overlap, so that the works are undertaken with joint funds i.e. with state subvention.

Article 24 of The Law on the Protection and Preservation of Cultural Goods, regulating rights of the owner of a cultural good points out also the "**right to tax and customs privileges according to special laws**". In compliance with the currently valid tax laws, there are no tax relaxation's associated with the protection and preservation of cultural goods.

**Tax exemptions** associated with cultural activities are prescribed only by the Law on the Rights of Self-employed Artists and the Encouragement of Cultural and Artistic Creation, and refer to the reduction of the tax basis of artists and sponsors of cultural program's of a creative auctorial and artistic character. Since the renewal, maintenance, and restoration of cultural heritage only exceptionally and to a very small extent have auctorial, artistic and creative character, we may safely say that there are no tax stimulating measures in the renewal, maintenance, and restoration of cultural heritage.

The Customs Act that entered into force on January 1, 2000 prescribes customs exemption for the import of goods (materials, machinery, devices, and the like) used for the renewal, maintenance, and restoration of cultural heritage (on condition that they are not manufactured locally). **Customs exemptions** refer to all those who, with the approval of the Ministry of Culture, take part in the renewal, maintenance, and restoration of cultural heritage.

There are no **special loans with lowered interest rates** for cultural heritage restoration. Since a large part of our heritage was damaged in the war, the owners of facilities in war-torn areas may benefit from favorable reconstruction loans, which are not directly associated with the reconstruction of cultural goods, though.

8. Provisions of the Law on the Protection and Preservation of Cultural Goods sets a compensation for the use of cultural heritage.

#### Form of Use

- Use of a recognizable cultural good on a product

- Use of a recognizable cultural good for one's own promotion
- Performance of an economic activity in immovable cultural goods or in the region of a cultural-historical site

#### Method of Payment, Type of Compensation, to Whom Does the Income Belong

The income from the use of a recognizable cultural good is paid into the state budget, as follows:

- For the use of a recognizable cultural good on a product (photographs, stickers, badges, souvenirs, publications, clothing, and the like), the user is required to pay 10% of the retail price of the product into the national budget.
- Legal entities or individuals that use a recognizable cultural good in their own promotions (film, commercials, billboards, and the like) are required to pay into the national budget the amount of 1,000.00 Croatian Kuna before the first proclamation of every type of promotional material.

Forty per cent of the income of the monument annuity is paid into the national budget, while 60% is paid into the budget of the city or municipality on whose territory the annuity is collected, as follows:

- All legal entities and individuals who perform economic activities in immovable cultural goods or in the region of a cultural-historical site must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit.
- Legal entities and individuals who perform the activities in catering, hotel accommodation, passenger transport, as well as nautical tourism harbor activities must calculate and pay a monument annuity at the level of 2% of the realized income, in other words profit.

#### How it is Allocated

Budget revenues (local and state budget) raised through the collection of monument annuity are used solely for the protection and preservation of cultural goods.

9. Violation provisions of the Law on the Protection and Preservation of Cultural Goods prescribe violations for negligent relations towards cultural goods, especially when this results in damage or loss of monumental properties. Such violations as a rule entail high fines, as well as the obligation of restoration in the previous state (if possible). The fines range from HRK 1,000.00 (DM 250) to HRK 500,000.00 (DM 130,000).

The money raised from the fines constitutes the state budget income which may be used solely for the protection and preservation of cultural goods. The money is paid to the Ministry of Finance account, while the Ministry of Culture has an insight into the payments made to this account.

10. Since The Law on the Protection and Preservation of Cultural Goods has been under implementation for only a year now, it is somewhat difficult to evaluate its quality. Not even all the sublegal acts have been passed yet, so that we cannot talk about the Law's full implementation. That is why a special system of monitoring the implementation of each individual provision of the Law has been established. In this way, after two years of its passing, it shall be possible to perform an analysis and introduce corrections necessary for the legal system to achieve the desired effects.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Georgia  
Merab Bochoidze

*Merab Bochoidze*  
*ICOMOS/Georgia*

**Protection of Cultural Goods  
Questionnaire**

1. Law of Georgia "On Protection of Cultural Heritage",  
25 June 1999;
2. No
3. Following areas of protection are covered by the above  
quoted Law:
  - General Provisions;
  - System of Cultural Heritage Protection and Its  
Management;
  - Protection of Immovable Monuments;
  - Protection of Movable Monuments;
  - Economic and Financial Basis of Cultural Heritage  
Protection;
  - International Relations in the Cultural Heritage  
Protection;
  - Concluding Provisions;
4. The Law specifies sources of financing protection of  
cultural heritage - state and local budgets, special  
foundations, donations, grants, etc. No stimulating  
measures are foreseen.
5. No law or act regulates stimulating measures - even no  
charity registration form does exist in Georgia at  
present.
6. Approximate % relationship can be estimated as follows:
  - state financing - 68%  
(state budget + WB credit)
  - local budget - 7.5%
  - public donations - 1.5%
  - international grants - 20%
  - other sources - 3%
7. - subvention (in form of international grants);  
- tax exemption (grants are exempted from VAT);

8. Rights and obligations of the owner of property (both immovable and movable) are specified in chapter IV, article 25-26 (immovable property) and chapter VIII, article 53-54 (movable property) of the Law on Protection of Cultural Heritage.
9. Penalty for negligent relation is specified in the chapter IV, article 29 (immovable property) and chapter VIII, article 57 (movable property) of the Law on Protection of Cultural Heritage.
10. General law on the protection of cultural heritage is newly adopted; it is not supported by new specific acts and ordinances; besides, in the majority of cases there is no proper implementation of what is prescribed.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Japan  
Toshiyuki Kono

## ANSWERS TO THE QUESTIONNAIRE

Yes, the Law for the Protection of Cultural Properties

Not all, but most important problems.

Tangible Cultural Properties, Intangible Cultural Properties, Folk-cultural Properties, Buried Cultural Properties, Historic Sites, Places of Scenic Beauty, Natural Monuments, Preservation Districts for Groups of Historic Buildings, and Protection of Traditional Techniques for the Conservation of Cultural Properties.

Partly, yes (several subventions)

Tax Laws (tax exemptions), administrative guidance for subventions by other ministries than the Agency for Cultural Affairs, local ordinances for subventions by prefectural or municipal government.

Cultural Properties Protection Department budget in fiscal year 1999: 53.2 billion Yen (aprox. 500 million dollars) - ca. 66% of the entire budget of the Agency for Cultural Affairs in the same year: 80.5 billion Yen, which is ca. 0.1 % of the National General Accounts budget in the same year: 81,860 billion Yen

Subventions, tax exemptions, special low interest rate loans

Through designation as important cultural properties, the value usually increases. Therefore only in limited cases will the state subsidize the costs of repair. However the situation of the lands designated as historic sites, places of scenic beauty or natural monuments is different, since the value may decrease due to the restrictions on the use or disposition of the land. Therefore the regular loss brought to the lands can be compensated and paid to the owner. When especially strict restrictions are imposed, the lands are purchased and the state subsidizes the large part (aprox. 80%).

Any person who has damaged or discarded any important cultural property and any person who has altered the existing state of a historic site, place of scenic beauty and/or natural monuments, or by practicing any act affecting its preservation, destroyed it,

damaged it or brought it to decay shall be liable to imprisonment, with or without hard labor, for a term not exceeding five years or to a fine not exceeding 300,000 Yen (Art. 107).

Not completely. The following remain problems to be solved:

Preservation of scenic beauty and the buffer zone; harmonization between town planning and preservation districts for groups of historic buildings; and, the legal basis of excavation and its costs.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Macedonia  
Kira Petkovska and  
Ljubica Risteska

FOR J. ANTOLOVIC

**Answer of the questions from Protection of cultural  
goods-questionnaire**

by MRS. K. PETKOVSKA  
MRS. G. RISTESKA  
MACEDONIA

- 1) The law explicitly relates to the protection and preservation of cultural goods. It has a title " Law for protection of cultural goods" and it came into force in 1973.
- 2) Great part of this law is already old with a lot of law gaps and as that one it doesn't fit into the modern social conditions, i.e. it doesn't contain problems concerning protection and preservation.
- 3) The rights and duties of the cultural monuments owners, registration and public marking of cultural monuments and other administrative measures, organization and protection of cultural monuments and penal regulation have been regulated with this Law.
- 4) This law partly solves financing of cultural monuments, while other stimulating measures for financing, related to the protection and preservation of heritage haven't been planned yet.
- 5) Additional financing related to the protection and preservation of heritage hasn't been regulated with any other law.
- 6) The protection of cultural monuments has been financed by the state budget from the Ministry of culture and it gets 2,34% from the total budget resources. 12,3% in (1999) have been received by the spending level of the Ministry of culture of protection and preservation with the help of the law of local self- management there is a chance for financing a development of culture in common frames, but there is no obligation for financing protection and preservation of cultural monuments.
- 7) This Law hasn't planned any forms of stimulative measures.
- 8) With this Law, Compensation for different forms of use of heritage hasn't. But there is an act according to which the incomes from the use of cultural monuments, obligatory have to be used for their restauration and conservation i.e. their protection.
- 9) The law includes a penalty for negligent relations or disregard, towards heritage. The income from these penalties belongs to the state budget and it has been allocated as this one again by the state budget.
- 10) With the law of protection of cultural monuments, the cultural heritage hasn't been completely protected in a legal sense, because it enters into a zone of terminological formalism. Actually, only the definition - cultural monument has been protected i. e. the goods with status of cultural monuments. Concerning the legal property there is no difference among the terms: a user, an owner and a possessor of cultural monuments. According to the conception for protection which is part of this law the same one is not accordance with regulations of the statute of R. Macedonia (1991)  
The expiration of this law and its legal gaps do not allow protection also be worked out in the laws of other fields which have points of contact with cultural goods.  
The need of passing a new law is ne necessary.

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Mexico  
Roberto Nuñez Arratia

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**ICOMOS- CROATIAN NATIONAL COMMITTEE**

**PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE**

**MEXICO**

1. IS THERE A LAW THAT EXPLICITLY RELATES TO THE PROTECTION AND PRESERVATION OF CULTURAL GOODS? (FULL TITLE AND YEAR WHEN IT CAME INTO FORCE)
  - **FEDERAL LAW OF ARCHAEOLOGICAL, ARTISTIC AND HISTORICAL MONUMENTS AND ZONES.- APRIL 28-1972. - PUBLISHED MAY 06 1972.**
2. DOES THIS LAW ENCOMPASS ALL PROBLEMS RELATED WITH PROTECTION AND PRESERVATION?
  - **NO.- THIS LAW IS NOW INSUFFICIENT DUE TO THE CULTURAL, SOCIAL, ECONOMIC AND POLITICAL DEVELOPMENT IN MEXICO.**
3. WHAT AREAS OF PROTECTION AND PRESERVATION OF HERITAGE ARE REGULATED BY THIS LAW?
  - **THE RESEARCH, PROTECTION, CONSERVATION, RESTORATION AND RECOVER OF ARCHAEOLOGICAL, ARTISTIC AND HISTORICAL MONUMENTS AND ZONES OF MONUMENTS.**
4. DOES THIS LAW ENCOMPASS PROBLEMS CONCERNING FINANCING, AND STIMULATING MEASURES FOR FINANCING, RELATED TO THE PROTECTION AND PRESERVATION OF HERITAGE?
  - **NO.- THE FEDERAL LAW DOESN'T ENCOMPASS PROBLEMS CONCERNING FINANCING AND STIMULATING MEASURES FOR FINANCING; IT ONLY ESTABLISHES A REAL ESTATE TAX EXEMPTION TO OWNERS OF HISTORIC OR ARTISTIC MONUMENTS THAT HAVE BEEN EITHER CONSERVED OR RESTAURED. (ART. 11)**

**SOCIO**



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5. IF NOT, WHICH LAW(S) OR ACT(S) REGULATE THE MENTIONED PROBLEMS? (WHAT FINANCIAL REGULATIONS RELATE TO THE PROTECTION AND PRESERVATION OF HERITAGE AND HOW DO THEY RELATE IN TERMS OF THE USEFUL BENEFIT OF THE HERITAGE AS WELL AS IN TERMS OF STIMULATIVE MEASURES AND FINANCIAL EXEMPTIONS FOR ACTUAL PARTICIPANTS IN THE PROTECTION AND PRESERVATION OF HERITAGE - NAME THE ORDINANCE AND THE AREA THAT IT REGULATES)

• **LOCAL LAWS AND ACTS:**

**MEXICO CITY.-**

*FINANCIAL CODE. - DECEMBER 31, 1999.*

**CHAPTER XI.-ART. 265. - REDUCTIONS:**

**A.- THE OWNERS AND PURCHASERS OF HISTORICAL AND ARTISTIC MONUMENTS THAT HAVE BEEN CATALOGUED OR DECLARED AND HAVE BEEN RESTORED, WILL HAVE A REDUCTIONS EQUIVALENT TO 100% OF THE FOLLOWING CONTRIBUTIONS:**

**REAL - ESTATE TAX (DURING THE RESTORATION, THE REDUCTION WILL NOT EXCEED 33% OF THE INVESTMENT, WHO'S COST WILL BE MORE THAN \$ 30,000 DLLS.)**

**SALES TAX**

**BUILDING PERMIT RIGHTS**

**HIDRAULIC INSTALATION RIGHTS**

**B.- THE OWNERS AND PURCHASERS WHO LIVE IN A CATALOGUED OR DECLARED MONUMENT, WILL HAVE A REDUCTION EQUIVALENT TO 50% OF THE REAL ESTATE TAX.**

**C.- THE PERSONS WHO INVEST IN NEW REAL ESTATE PROJECTS IN THE HISTORICAL CENTER WILL HAVE A REDUCTION OF 80% OF THE REAL ESTATE TAX AND RIGHTS CONCERNING NEW CONSTRUCTIONS AND RESTORATIONS.**



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*DECREE THAT ESTABLISHES THE SISTEM OF TRANSFERENCE OF DEVELOPMENT POTENTIALITY (AIR RIGHTS TRANSFER SYSTEM).- D.O. 19 JULIO, 88.*

THIS SYSTEM CONSISTS IN RECOGNIZING THE INTENSITY OF CONSTRUCTION RESULTING IN EXCESS IN BUILDINGS LOCATED IN THE HISTORIC CENTER, PARTING FROM ITS CONSTRUCTED AREA UNTIL AQUIRING SIX TIMES THE SIZE OF THE LAND AND AUTHHORIZE ITS TRANSFERENCE TOWARD OTHER ZONES AND REAL PROPERTY ON WHICH THE SAME CAN BE CONSTRUCTED IN ADDITION TO THAT AUTHORIZED IN THE URBAN DEVELOPMENT PROGRAM IN ORDER TO DESTIN THE VALUE OF THE TRANSFERENCE IN ECONOMIC RESOURCES TO RESCUE, CONSERVATION AND RESTORATION OF SAID HISTORIC BUILDINGS.

**GUADALAJARA.-**

*REGULATIONS OF THE HISTORICAL CENTER AND TRADITIONAL DISTRICTS. JANUARY 8 - 1997. -*

THIS REGULATIONS ESTABLISHES THE PROMOTION BEFORE THE LOCAL AUTHORITIES THE APLICACION OF FINANCIAL INCENTIVES TO THE HISTORICAL MONUMENTS AND IT'S ENVIRONS, URBAN IMPROVEMENT IN ZONES OF MONUMENTS AND THE PROCESS OF TRANSFERENCE OF DEVELOPMENT RIGHTS.

• **ESTATE LAWS**

THE LAWS OF CULTURAL HERITAGE OF THE STATES OF JALISCO (DECEMBER 18 - 1997) AND BAJA CALIFORNIA (AUGUST 3 - 1995) ESTABLISH THAT THE STATE AUTHORITIES WILL TAKE CARE OF THE PROTECTION OF CULTURAL GOODS TROUGH THE INSTITUTION OF SIMULATIVE MEASURES IN BEHALF OF THE OWNERS OR POSSESSORS IN ORDER TO PRESERVE, RESTORE AND CONSERVE SAID GOODS.

6. NAME THE PRIMARY POLICIES OF FINANCING FROM PUBLIC BUDGETS (THE LEVEL OF THE STATE BUDGET, THE LOCAL BUDGET, % RELATIONSHIP, ESTIMATE OF THE LEVEL OF RESOURCES FROM PUBLIC BUDGETS IN RELATION TO OTIHER RESOURCES, ETC.)
- ACCORDING TO THE NATIONAL DEVELOPMENT PLAN THAT THE PRESIDENT ISSUES AT THE BEGINNING OF HIS PERIOD, THE FEDERAL GOVERNMENT ASSIGNS A BUDGET FOR THE PROTECTION AND PRESERVATION OF HERITAGE THROUGH THE NATIONAL COUNCIL FOR CULTURE AND ARTS, THE NATIONAL FINE ARTS INSTITUTE AND THE NATIONAL ANTHROPOLOGY AND HISTORY INSTITUTE. A BUDGET OF \$ 1,086,000.00 MILLON PESOS WAS



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ASSIGNED TO THIS LAST INSTITUTE IN 1999 (\$ 115,000,000.00 DLLS.) OF THESE, \$ 30,000,000.00 DLLS. WERE ASSIGNED TO THE CONSERVATION OF ARCHEOLOGICAL ZONES AND MONUMENTS. THE LOCAL AND STATE GOVERNMENTS ALSO ASSIGN BUDGETS IN THEIR RESPECTIVE JURISDICTIONS FOR THE PROTECTION AND CONSERVATION OF HISTORICAL AND ARTISTIC MONUMENTS AND ZONES.

BESIDES PUBLIC BUDGETS, OTHER RESOURCES ARISE FROM PRIVATE NATIONAL OR INTERNATIONAL INSTITUTIONS; INCOMES COMING FROM SELLING PUBLICATIONS, FILMS, PICTURES, RECORDINGS, REPRODUCTIONS; POSTERS AND FUNDS AND ROYALTIES.

7. FORMS OF STIMULATIVE MEASURES (IF THEY DIFFER ACCORDING TO CATEGORIES OF USERS, OWNERS, CONTRACTORS, RESTORERS, AND STATE WHO IT RELATES TO) AND WHAT ORDINANCES REGULATE THE FOLLOWING:

- SUBVENTION
- TAX EXEMPTIONS
- CUSTOMS EXEMPTIONS
- LOANS WITH LOWERED INTEREST RATES
- OTHER STIMULATIVE MEASURES

• THE STIMULATIVE MEASURES DIFFER ACCORDING TO THE FOLLOWING CATEGORIES:

OWNERS.-	TAX DEDUCTIONS.- AIR RIGHTS TRANSFER SYSTEM.-	LOCAL LAWS AND ACTS
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CONSTRUCTORS AND INVESTORS.-	TAX DEDUCTIONS.-	LOCAL LAWS AND ACTS
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STATE.- ACCORDING TO THE FEDERAL BUDGETS LAW THE SUBSIDY ARE THE RESOURCES ASSIGNED TO PROMOTE THE DEVELOPMENT OF ACTIVITIES OF THE HIGHEST PRIORITY AT PRESENT THE NEW PROJECTS AND SPECIFIC PROGRAMS OF RESTORATION AND REVITALIZATION OF ARCHAEOLOGICAL MONUMENTS AND ZONES AND HISTORICAL AND ARTISTIC MONUMENTS ARE EXECUTED WITH THE JOINT PARTICIPATION OF:

- FEDERAL GOVERNMENT RESOURCES.
- STATE AND LOCAL GOVERNMENT RESOURCES
- CONTRIBUTION OF PRIVATE, NATIONAL AND INTERNATIONAL INSTITUTIONS AND ENTERPRISES. THESE CONTRIBUTIONS GRANTED TO THE CULTURAL INSTITUTIONS ARE 100% TAX DEDUCTIBLE IN SEVERAL CASES THE NATIONAL FUND FOR THE CULTURE AND ARTS INTERVENES LIKE A PROMOTOR



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8. IN WHAT WAY, AND ON THE BASIS OF WHICH ORDINANCES, IS COMPENSATION FOR DIFFERENT FORMS OF USE OF HERITAGE REGULATED?

- FORM OF USE
- METHOD OF PAYMENT,TYPE OF COMPENSATION
- TO WHOM DOES THE INCOME BELONG
- HOW IS IT ALLOCATED

- THE USE OF HERITAGE REGULATED IS RESTRICTED ACCORDING TO THE LAW (AGREEMENT OCT 15, 1977). THE NATIONAL AND STATE MUSEUMS AND ARCHAEOLOGICAL AND HISTORICAL MONUMENTS DEPENDING TO THE NATIONAL ANTHROPOLOGY AND HISTORY INSTITUTE (I.N.A.H.) CANNOT BE USED WITH ENDS OTHER THAN ITS NATURE AND OBJECT EXCEPT FOR RELEVANT CULTURAL AND CIVIC ACTS.

THE COMPENSATION FOR THE USE OF THE DECLARED HERITAGE DEPENDS ON THE NATURE OF THE MONUMENT, TO WHAT IT IS DESTINED AND WHETHER IT BELONG TO THE FEDERATION OR IS PRIVATE.

IN PREVIOUS YEARS (1960-1980) THE NORM WAS TO USE THE RESTORED MONUMENTS INTO MUSEUMS AND CULTURAL CENTERS, OF THE 60 MUSEUMS IN THE CITY OF MEXICO 27 ARE INSTALED IN HISTORICAL MONUMENTS AND 8 IN ARTISTIC MONUMENTS.

AT PRESENT THE USE GIVEN THEM IS VARIED: OFFICES, HOTELS, COMMERCE, CLUBS OR CENTERS FOR SOCIAL, ACADEMIC, CULTURAL AND BUSINESS ACTIVITIES OR RECREATIONAL.

THE ARE FINANCIAL INSTITUTIONS THAT HAVE ACQUIRED HISTORICAL AND ARTISTIC MONUMENTS FOR THEIR OFFICES, RESTORING AND CONSERVING THEM LIKE BANAMEX AND BANK OF MEXICO.

THERE ARE HISTORICAL MONUMENTS THAT HAVE BEEN CONVERTED TO HOTELS LIKE THE EXCONVENT OF SAINT CATHERINE IN OAXACA AND THE CONVENT OF THE CONCEPTION IN PUEBLA; OTHERS HAVE BEEN USED FOR DIFFERENT ENDS LIKE THE GIRLS COLLEGE OF OUR LADY OF CHARITY, RESTORED AND ADAPTED FOR THE BANKER'S CLUB.

9. IS THERE A PENALTY FOR NEGLIGENT RELATIONS, OR DISREGARD, TOWARDS HERITAGE? (NOT INTENTIONAL DEVASTATION)

- TO WHOM DOES THE INCOME BELONG
- HOW IS IT ALLOCATED

- THERE IS NO PENALTY FOR NEGLIGENT RELATIONS OR DESREGARD TOWARDS HERITAGE.

SOCIO



A.M.P.I. Asociación Mexicana de Profesionales Inmobiliarios, A.C.

# NUÑEZ ARRATIA Y ASOCIADOS, S.C.

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## 10. THOUGHTS CONCERNING THE MENTIONED LEGAL ACTS AND ORDINANCES:

ARE THE AREAS OF PROTECTION AND PRESERVATION OF HERITAGE PROPERLY PROTECTED IN A LEGAL SENSE

IF NOT, WHY

IS THERE PROPER IMPLEMENTATION OF WHAT IS PRESCRIBED

OTHER COMMENTS AND RECOMMENDATIONS

- NO, THE CULTURAL HERITAGE IS NOT PROPERLY PROTECTED IN A LEGAL SENSE IN MEXICO, IT IS NECESSARY YO HAVE A NEW LAW OF NATIONAL CULTURAL HERITAGE, IN WHICH THE OBJECTIVE OF THE LAW WOULD BE CONSIDERED AND REVISED, THE CONCEPT OF HERITAGE, THE DEFINITION OF MONUMENTS, SITES AND ZONES, THE CONSERVATION AND PROTECTION OF THE ENVIRONMENT AND OF THE INTANGIBLE HERITAGE, THE COORDINATION AND PARTICIPATION OF THE THREE LEVELS OF GOVERNMENT ESTABLISHING THEREBY APPROPRIATE INSTITUTIONS AND LEGAL INSTRUMENTS; MORE AMPLE PARTICIPATION OF THE CIVIL SOCIETY SUCH AS PERSONS AND CIVIL ORGANIZATIONS, PRIVATE ENTERPRISE, RELIGIOUS ASSOCIATIONS AND CULTURAL, ACADEMIC AND RESEARCH INSTITUTIONS THAT ESTABLISH THE COORDINATION WITH OTHER LAWS AND REGULATIONS RELATED TO ECOLOGY, URBAN DEVELOPMENT, FINANCING, TAXES, GOVERNMENT BUDGETS, PLANNING.

THE PRIVATE PARTICIPATIONS IS NECESSARY DUE TO THE VASTNESS AND PLURALITY OF THE MEXICAN CULTURAL HERITAGE THAT SURPASSES THE MATERIAL POSSIBILITIES AND ECONOMIC RESOURCES OF THE PUBLIC ADMINISTRATION AND IT MAKES IT DIFFICULT FOR THE PROPER IMPLEMENTATION OF THAT WHICH IS PRESCRIBED IN THE FEDERAL LAW OF MONUMENTS AND ZONES IN FORCE.

## COMMENTS AND RECCOMENDATIONS:

THE FOLLOWING IS NECESSARY TO CONSERVE AND PROTECT THE HISTORICAL CENTERS AND DISTRICTS, SITES AND ZONES:

-NOT ONLY THE PROTECTION LAWS BUT ALSO THE IMPROVEMENT OF PLANNING IN ORDER TO SAFEGUARD AND INCREASE IT VALUES

-CONSOLIDATE THE POSITIVE IMAGE OF THE SOCIAL PARTICIPATION AND THE COLLECTIVE EFFORT TO STIMULATE THE COMPANIES FOR THEM TO BE ATTRACTED TO SPONSOR CONSERVATION.



**A.M.P.I. Asociación Mexicana de Profesionales Inmobiliarios, A.C.**

# **NUÑEZ ARRATIA Y ASOCIADOS, S.C.**

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**-PROMOTE THE COLABORATION OF THE PUBLIC AND PRIVATE SECTORS THROUGH CAMPAIGNS, PROGRAMS, ATTRACTIVE AND SPECIAL ORIGINAL SYSTEMS.**

**-STIMULATE THE SOCIAL PARTICIPATION WITH SUBVENTIONS THAT FUNCTION WITH TRANSPARENCE, TAX EXEMPTIONS ATTRACTIVE AND CERTAIN, SIMPLIFICATION AND AGILITY IN PROCEDURES.**

**-SENSIBILITY OF THE AUTHORITIES IN ORDER TO OBTAIN A BALANCE BETWEEN THE CONSERVATION OF THE MONUMENTAL HERITAGE AND THE INTEGRAL, SOCIAL AND ECONOMIC DEVELOPMENT OF THE HISTORICAL CENTERS AND DISTRICTS.**

**FEBRUARY 18, 2000.**

**ROBERTO NUÑEZ ARRATIA**



**A.M.P.I. Asociación Mexicana de Profesionales Inmobiliarios, A.C.**

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ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Romania  
Sergiu Nistor

To: Jadran ANTOLOVIC  
Vice-President of the ICOMOS Croatian Committee

Dr. Sergiu NISTOR  
Vice President of the Romanian ICOMOS Committee  
Piata Presei Libere 1, tel/fax: 401.223.2847, 401.224.2889  
Bucharest, ROMANIA

Ref: MEETING OF THE INTERNATIONAL COMMITTEE ON LEGAL, ADMINISTRATIVE  
AND FINANCIAL ISSUES, CROATIA, MAY 2000

### PROTECTION OF CULTURAL GOODS - QUESTIONNAIRE

#### Answers:

1. Yes, the Governmental Ordinance 68/1994 for the protection of the national cultural heritage, sanctioned by the Parliament as Law 41/1995, modified by the Governmental Ordinance 24/1997 sanctioned through Law 56/1998.

2. No, several problems are not properly tackled. I quote from the paper presented at Toledo Meeting: "In an analysis performed late 1996, out of the 8 major fields of regulation a law on historic monuments has to cover, not a single one was properly covered by the national regulations. According to the emphasis of the provisions of the UNESCO and the Council of Europe Conventions and Recommendations, we considered these 8 fields of regulation to be the following:

- Identification and inventorying of cultural property;
- Prevention of illegal transfer of cultural property;
- Instatement of the legal protection of historic buildings and archaeological sites;
- Instatement of the legal protection of historic ensembles, historic districts and sites;
- Historic monuments intervention control, approval and monitoring;
- Historic monuments enhancement, interpretation and rehabilitation;
- State financial and fiscal support for conservation and enhancement;
- Scientific research, international co-operation and public awareness campaigning.

As for the first 2 fields, their topics (definition of the protected cultural property, definition of the protective inventory of the cultural heritage, for the first, the existence of a national inventory for the items prohibited to transfer, the effective control of the archaeological excavations or the severe punishment for breaking the regulation in this respect, for the second) were partially covered by national legal regulation. The capacity of instatement of the legal protection to buildings worth listing irrespective of their ownership status was not properly regulated, as spot, emergency listing was not provided, as well as the capacity of the relevant authority to proceed the listing process without the consent of the private owner. There were no provisions related to

compelling the owner to perform conservation work, or, in cases of the owner's unwillingness or incapacity to do so, the capacity of the state to perform works on his behalf. But the most deficient sector of the national regulations concerning the preservation of the historic monuments was the one of the financial and fiscal support for carrying conservation work, both for individuals or for private non-governmental bodies. As a matter of fact, no relationship of any kind, no strategy or structures related to the co-operation with the public or educational provisions in this respect were provided.

- 3 The protection and preservation of movable and immovable items (historic buildings)
- 4 The 1997 Ordinance more than the 1994 one stipulates that state budget can finance all kind of preservation activities, starting from studies and inventories up to restoration and site enhancement (provision of acces, parkings or public facilities, lighting, etc. On the other hand, the latest ordinance allows state budgeting for private monument conservation. This latest provision is not yet into force because of the lack of methodology and criteria for the public expenditures. This soon will be settled.
- 5 Financial provisions for historic building restoration are provided in: The State Budget Annual Law (through the budget of the Ministry of Culture), The Local Tax Law (provisions concerning exemption for land use tax and building tax to historic monument's owners), The Sponsorship Law (deductibility of sponsoring from the profit tax up to 10% from its level).
- 6 The State Budget Annual Law comprises a chapter for the preservation of the architectural heritage (some 0,03% of the GNP, at an average of 15 Mil. USD/year), local budgets allocate each year less than 25% of the state budget expenditures on restoration, with an extra of some 10% added to restoration by the Department for Religious Cults and bishopries. Private sources are less relevant at national scale, being more important in the Capital, Bucharest, where they compete the local budget for restoration.
- 7 The forms of stimulative measures are exclusively the the tax exemptions mentioned above. The situation will change according to the provisions of the new legislation now being debated in the Parliament.
- 8 No compensation is available except of the tax relief for non-commercial use of monuments.
- 9 Penalties for disregard for proper maintenance are provided (fines). The State is the beneficiary of the fines.

I will shortly send a fax and e-mail with the text of my presentation:  
**INCENTIVES FOR HISTORIC BUILDINGS CONSERVATION IN ROMANIA.**

Sincerely yours and looking forward to meet you,

Sergiu Nistor

ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Spain  
Maria Rosa Suárez-Inclan Ducassi

## PROTECCION OF CULTURAL GOODS. QUESTIONNAIRE

### María Rosa Suárez-Inclán Ducassi. Spain

1. - *Question.* - *Is there any law that explicitly relates to the protection and preservation of cultural goods? (Full title and year when it came into force)*

**Answer.** - 1. - Law of the Spanish Historical Heritage (LPHE) 16/1985 of June 25<sup>th</sup> (Official State Gazette of June 29<sup>th</sup>, 1985)

And also the following provisions:

2. - The Spanish Constitution of 27 December 1978 (Arts. 9, 44, 46, 48, 50, 148 and 149)

3. - Law 7/1985 of 2 April, regulating the Legal System for Local Entities Law 7/1985 of 2 April, regulating the Legal System for Local Entities (articles 2 and 25)

4. - Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said LPHE, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>)

5. - Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

6. - Royal Decree 1/1992 of 26 June approved the Revised Text of the Law on Land Regulations and Urban Planning.

7. - Several Laws on the protection and conservation of cultural goods, as well as on foundations and on land regulations and urban planning, have come into force in different Autonomous Communities of Spain since the above-mentioned Laws were promulgated.

2. - *Question.* - *Does this law encompass all problems related with protection and preservation?*

**Answer.** - Yes, in general terms the Law of the Spanish Historical Heritage (LPHE) of 1985 encompass all problems related with protection and preservation. With respect to historic towns article 20 of puts the protection of historic cities under the control of urban measures based on the Laws on Land Regulations and Urban Planning. In article 21 it states that urban planning will include the classification of all buildings, interior and exterior areas, other significant structures and natural components, as well as the definition of the types of intervention possible. Full protection will be provided for those items classified as having outstanding value, while planning instruments will set the level of protection for the rest. Remodeling is allowed on an exceptional basis provided that it represents "an

improvement in the relations with the urban environment of the area” and “avoids degrading uses”. In any case, the existing land divisions must be maintained. Replacements are allowed exceptionally if they contribute to “conservation of the character” of the complex as a whole.

**3. - Question.** - *What areas of protection and preservation of heritage are regulated by this law?*

**Answer.** - The Law on Spanish Historic Heritage of 1985 (LPHE), along with the Portuguese Law of the same year, constitute a notable advance in terms of comparative law, especially because of the breadth of their definition of the concept of heritage (based on the Italian concept of “cultural properties”), and because of their systematic approach to its treatment in a single text versus the dispersion of regulations that continues to exist in other European countries, many of which continue to be governed by laws from the 1920s and 1930s and numerous regulations supplementing them.

**4. - Question.** - *Does this law encompass problems concerning financing, and stimulating measures for financing, related to the protection and preservation of heritage?*

**Answer.** - “Steps for Development” are contemplated in Section VIII of the above-mentioned Law on Spanish Historical Heritage of 1985.

**5. - Question.** - *If not, which laws, or acts regulate the mentioned problems? (what financial regulations relate to the protection and preservation of heritage and how do they relate in terms of the useful benefit of the heritage as well as in terms of stimulating measures and financial exemptions for actual participants in the protection and preservation of heritage – name the ordinance and the area that it regulates)*

**Answer.** - The foreseen “Steps for Development” contemplated in Section VIII of the above-mentioned Law on Spanish Historical Heritage of 1985 are developed in the following provisions:

Royal Decree 111/1986 of January 10<sup>th</sup> as a partial development of the said Law, modified in part by Royal Decree 64/1994 of January 21<sup>st</sup> (Official State Gazette of March 2<sup>nd</sup>). They are even more developed and updated in the Law 30/1994 of November 24<sup>th</sup> of Foundation and Tax Incentives to Private Contributions in Activities of General Interest (Official State Gazette of November 25<sup>th</sup>).

Also, Income Tax and Corporation Tax, if later in time, may have an effect on the tax benefits fixed by the above provisions by determining some percentages in tax reductions foreseen by the former. For instance, Income Tax Law 18/1991 of June 6<sup>th</sup>, which in Art. 78.4 (c) and (d) reduced deductions on investments made in the acquisition, conservation, etc., of assets declared to be of cultural interest by five percentage points.

Likewise, the General Budgetary Law of the State for each year may establish a list of preferential Patronage activities or programs, for which there may be a five-percentage increase in deduction percentages and in the percentage amount of the maximum levels of

deduction. Regarding Corporation Tax, this may alter the levy rate on the tax base (fixed at 10% by the Law of Foundations and Tax Incentives), as well as altering the amount foreseen in order to reduce the liquid quota if a Foundation or Association of public utility were to exclusively carry out free services (Art. 55 and Fourth Final Provision of the said Law).

Apart from the above-mentioned Law 30/1994 of November 24<sup>th</sup> of Foundations and Tax Incentives to Private Contributions in Activities of General Interest, there are other provisions in Spain, which complement and develop it, like the following:

Royal Decree 765/1995, of May 5<sup>th</sup>, which regulates certain matters relating to the System of Tax incentives for private participation in activities of general interest in accordance with the Final Provision 5<sup>th</sup> of the said Law of Foundations.

Royal Decree 3167/1995, of February 23<sup>rd</sup>, which regulates the State Sphere's Foundations.

Royal Decree 589/1984, of February 8<sup>th</sup>, regarding Religious Foundations of the Catholic Church.

The provisions of the Law of Foundations apply notwithstanding whatever may be established by Agreements with the Catholic Church, Cooperation Agreements and Conventions entered into by the State with churches, confessions and religious communities, as well as regulations to be applied to Foundations created or developed by the same.

**6. - Question.** - *Name the primary policies of financing from public budgets (the level of the state budget, the local budget, % relationship, estimate of the level of resources from public budgets in relation to other resources, etc.)*

**Answer.** - The total amount of public spending specifically for the protection, conservation, study and rehabilitation of historic heritage both by the State and Autonomous Communities as well as Local Corporations accounts for 15 to 16% of public spending on culture, amounting to approximately 0.2% of total public spending.

Of this total amount, approximately 31.35% is provided by the State; 44.56% by Autonomous Communities; 6.13% by Province and Island Councils; 6.54% by City Councils of more than 50,000 inhabitants; and 11.42% by City Councils of less than 50,000 inhabitants.

Aside from these public funds, the Church contributes from its own resources a slightly lower amount than Autonomous Communities. To this amount, the investments made by entities such as Banks, Savings Banks and Foundations should be added. Adding together these and the previous contributions, the approximate percentages of each of the above mentioned investment sources are as follows: State, 22.30%; Autonomous Communities, 31.70%; Regional and Island Councils, 4.36%; City Councils of more than

50,000 inhabitants, 4.65%; City Councils of less than 50,000 inhabitants, 8.13%; Church, 26.78%; Banks, Saving Banks and Foundations, 2.8%.

Financial contributions by private individuals must also be taken into account, these being particularly difficult to assess because their primary purpose is for ordinary maintenance. Many restoration, conservation or rehabilitation works of cultural properties are taken on by private individuals who obtain government subsidies covering a varying percentage of the total cost of the required investment (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

**7. - Question.** – *Forms of stimulating measures (if they differ according to category of users, owners, constructors, restorers, and state who it relates to) and what ordinances regulate the following: subvention, tax exceptions, customs exceptions, loans with low interest rates, other stimulating measures*

**Answer.** – The following are the most important stimulating measures included in the legal provisions referred in answers to questions 1 and 5:

- 1) Relating constructors and firms involved in public works, as well as restorers, owners and holders, the Law establishes preferential access to official credit for funding, public works, conservation, upkeep and rehabilitation, as well as archaeological prospectuses and excavations carried out in areas declared to be of cultural interest. In order to do this, the Public Administrations may establish, by means of agreements with public and private entities, the conditions of using credit benefits.
- 2) As regards public works built and development by private persons by virtue of State dispensation without financial contribution from the State, 1 per cent of the overall budget shall be applied to funding conservation or enrichment works for the Spanish Historical Heritage, preference being given to the works themselves or they immediate surroundings. An exception is made in the case of public works with and overall budget under 100 millions pesetas, with affects State Security and the security of public services. The Ministry of Education and Culture drafts a yearly Plan for Conservation and Enrichment debited to the said funds. In order to execute the projects and programs one must request cooperation from the Administration.
- 3) Debt payment in different taxes: Succession and Gift Tax, Capital Gains Tax, Income Tax and Corporation Tax may be paid by handing over assets belonging to the Spanish Historical Heritage which are registered at the General Registry of Assets of Cultural Interest or included in the General Inventory. In such case, the said assets shall be appraised, for this purpose, by the Board of Classification, Appraisal and Export of Assets belonging to the Spanish Historical Heritage.
- 4) Exemptions and other benefits: Assets belonging to the Spanish Historical Heritage registered in the above Registry and Inventory are exempt from Income

Tax. These assets may be reappraised for tax purposes up to their market value, being exempted from increased capital tax, unless they are part of the holder's floating assets. Likewise, the following are exempt from Local Real State Tax:

- Monuments and gardens each declared to be assets belonging to the Spanish Historical Heritage;
- Those classified as "specially protected" by the urban development plan for archaeological areas;
- When included in classified Historical Sites, those at least 50 years old which receive complete urban protection;

There is an exemption from other local taxes on property or its use and conveyancing when owners or holders of real property rights have undertaken conservation, improvement or rehabilitation works on Real State declared to be of cultural interest.

These exemptions shall be applied in the terms established by respective municipal regulations.

5) Tax deductions for natural persons concern the amount of Income Tax: 20% of investments carried out in the acquisition of assets registered at the General Registry of Assets of Cultural Interest, if the asset remains available, to the purchaser for at least three years and notice of the conveyance is given to the said Registry.

In any case, this deduction shall not exceed 30% of the tax base.

- 6) Tax deductions for legal persons concern the deduction in the liquid quota of the corporation tax:
- 15% of amounts assigned to the acquisition of assets registered at the General Registry of Assets of Cultural Interest, with the requirement established for natural persons.
  - 15% of amounts used for conserving, repairing, restoring, promoting and exhibiting assets registered at the above Registry with the same requirements as for natural persons.

7) Tax incentives for private contribution in activities of general interest:

The Spanish legal system regulates private financial contribution for the conservation and restoration of Monuments through the State, other public entities, establishments, institutions, foundations or associations, including temporary "de facto" associations for the administration of funds classified as or declared to be charitable or of public utility by the relevant administrative authority. Contributions

of this matter may be made directly by natural or legal persons which in most cases do not bear the importance of foundation, both in the quantitative and qualitative terms, and are currently governed by the same legal text regulating foundations as a legal figure.

Further more, large financial companies, to name an example, do not assign assets directly for these purposes but instead, in the case of an activity which is beneficial, both in social and tax terms, with a more or less continuous nature, set up a Cultural Foundation to adequately invest the said capital, e.g. BBV Argentaria Foundation and Banesto Foundation, as well as Saving Bank Foundation, etc. As may be seen, in nearly every case, behind a large Bank there exists a Foundation with the same name.

The tax system for foundations registered at the Foundation Registry and associations declared to be of public utility has two important aspects:

- 1) Corporation tax: The above-mentioned entities shall be exempted regarding the results obtained in activities which represent their company purpose or specific aim, as well as capital increases derived both from acquisition including those from non-gratuitous transfer, as long as either are obtained or carried out when fulfilling their purpose or specific aim. They are also exempt from tax on issues such as membership fees, grants, subsidies and cooperation agreements. Furthermore, Art. 50 of the Law on Foundations points out how the tax base is adjusted according to certain items stated therein, since they may carry out other economical activities not related with their specific aim.
- 2) Local taxes: These entities are exempted from Real Estate Tax regarding the state they hold. They are also exempt from Tax on Commercial and Professional Activities regarding the activities representing their company purpose or specific aim.

Concerning the tax system for contributions made to non-profit entities, we have to distinguish the donators between natural and legal persons:

If *natural persons* make the contribution, a deduction in the amount of Income Tax corresponds to the following:

- 20% in pure and simple gifts of assets belonging to the Spanish Historical Heritage (registered at the General Registry of Assets of Cultural Interest, or included in the General Inventory) or gifts of works of art with quality guaranteed in favor of entities with the aim, amongst other ends, of developing and promoting artistic heritage and which apply the said works to public exhibition. The amount of 20% shall be applied to the value of the assets bestowed according to official appraisal carried out by the Board of Classification, Appraisal and Export.
- 20% in pure and simple gifts of assets which must be part of the bestowing entity's material assets and which contribute to fulfilling activities according to

their purposes. Any increase or decrease in capital, which may arise in the event of gifts of Assets belonging to the Spanish Historical Heritage and Works of Art, shall not be taxable.

- 20% in amounts bestowed for fulfilling activities or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage which are registered at the Registry of Assets of Cultural Interest or are included in the General Inventory. Membership dues are included under this heading as long as they do not involve services offered to members.

In all cases, the above deductions shall not exceed 30% of the tax base.

If contributions to non-profit entities are made by *legal persons*, deductions in the Tax bases of Companies Tax are the following:

- Up to 30% of the taxes, or 3 per 1,000 of the annual volume of sales in the case of gifts of assets belonging to the Spanish Historical Heritage and Works of Art, with the same conditions and requirements as for natural persons.
- Up to 10% of the tax base, or 1 per 1,000 of the annual volume of sales in gifts to material assets of the bestowing entity, the fulfillment of activities according to its purposes, or for conserving, repairing and restoring assets belonging to the Spanish Historical Heritage with the same requirements as for natural persons.

The treatment given to increases or decreases in capital ensuing for a gift of assets belonging to the Spanish Historical Heritage, Works of Art and assets of material capital for the bestowing entity, is similar to that stated above regarding natural persons. In some cases as in others, the deduction may be increased by 5% (both regarding deduction percentages and the deductible limit of the tax base) if the gift is made for any of the preferential Patronage activities or programs pointed out by the General Budgetary Law of the State of that year.

The tax system for other business cooperation activities is as follows:

Acquisition of works of Art to be bestowed on the State and other Public Entities, as well as foundations and associations of public utility may give rise to deductions, both on Corporation and Income Tax (the latter in the case of entrepreneurs and professionals subject to direct tax evaluation) as long as a series of requirements are fulfilled, such as:

An undertaking to convey the asset in 5 years; once the offer is accepted it becomes irrevocable; the offer must be made the following month after purchasing the asset; until it is conveyed it may be publicly exhibited and investigated; the Administration shall decide of the value of appraisal which shall prevail over the value of acquisition if the latter is higher; the deduction shall be carried out yearly by equal amounts during the period between the undertaking of the offer and the actual conveyance, with a maximum limit per operation. In the case of entrepreneurs and professionals, the said limit shall refer to the share of the tax base regarding net income derived from the relevant business or professional activity.

**8. - Question.** – *In what way, and on the basis of which ordinances, is compensation for different forms of use of heritage regulated?*

- form of use
- method of payment, type of compensation
- to whom does the income belong
- how is it allocated

**Answer.** – The owners of properties declared of cultural interest who obtain income from their utilization are not required to pay more taxes or make other payments to the Administration than those that would ordinarily be paid as income tax, corporate tax or those corresponding to any other business activity.

As it has been said, subsidies may be obtained from the Public Administrations covering a varying percentage of the total cost of the required investment for conservation and rehabilitation of cultural properties (amounting to 30 or 40% of the total investment value, and even to 80% in some cases), as well as low-interest or preferential rate loans.

As it has also been stated, the Law establishes preferential access to official credit for funding, conservation, upkeep and rehabilitation, carried out in areas declared to be of cultural interest. In order to do this, the Public Administration (at national, regional and local level) may establish, by means of agreements with public and private entities, the conditions of using credit benefits. Credit allocation for the areas of integrated rehabilitation are specified under article 2 of the Royal Decree of 14 May 1993. Also Regional and Local Administration develop different plans in this field.

Other compensations have been sufficiently described in the answer to question number 7.

**9. - Question.** – *Is there a penalty for negligent relations, or disregard, towards heritage? (Not intentional devastation)*

- to whom does the income belong
- how is it allocated

**Answer.** – Article 36 of the LPHE establishes that:

1. - Properties belonging to Spanish Historic Heritage must be preserved, maintained and safeguarded by their owners or by persons vested with specific rights ("*derechos reales*") towards the properties or the holders of such properties.
2. - The use of properties declared of cultural interest as well as the moveable properties included in the General Catalog will be subject to it not endangering the values advising their preservation. The competent authorities responsible for the application of this Law must duly authorize any change in use.
3. - When the owners or persons vested with specific rights ("*derechos reales*") towards the properties declared of cultural interest or properties included in the General Catalog fail to execute the required actions in compliance with the obligation envisaged in Section 1 of this Article, the competent Administration, following a warning to the interested parties

requiring said actions, shall be empowered to order its subsidiary execution. In addition, it may grant financial aid in the form of a returnable advance, which in the case of immovable properties shall be listed in the Land Register. The competent Administration may also execute any necessary works directly if so required for the most effective preservation of the properties. In exceptional cases, the competent Administration may order moveable properties to be deposited in public centers until such time as the causes giving rise to such a need are no longer present.

4. - Non compliance with the obligations laid out in the present article will be cause on the grounds of social interest for compulsory expropriation of the properties declared of cultural interest by the competent Administration.

Article 37.3 states in turn that:

“The risk of destruction or deterioration or use inconsistent with the values represented by a property shall be justifiable cause on the grounds of social interest for expropriation by the competent Administration of any properties affected by a declaration of cultural interest.”

- 10. - Question.** – *Thoughts concerning the mentioned legal acts and ordinances:*
- *are the areas of protection and preservation of heritage properly protected in a legal sense*
  - *if not, why*
  - *is there proper implementation of what is prescribed*
  - *other comments and recommendations*

**Answer.** – In general terms it may be considered that the areas of protection and preservation of heritage are properly protected in a legal sense. But in spite of the existence of a legal framework-regulating heritage that is comparatively very advanced, it can be observed that:

It is obvious that Heritage cannot be contemplated as an isolated item but inside the global scope of sustainable development as a nonrenewable resource of transcendent importance in many areas, including the economic. Therefore, it is not only necessary to consider heritage in both its material and spiritual dimensions, covering simultaneously cultural and natural values. It is also required to deal with worldwide long-term management by coordinating all the resources and converging needs, in a context of national and international ecological management serving quality of life. Thus, the different legal provisions and policies dealing with cultural and natural heritage, tourism, public works, industry, social welfare, etc should be combined so that they may be applied in a coordinated way.

Private heritage must be mainly supported by private funds, but it is also convenient to continue to strengthen cooperation between public and private organizations. Within this scope the contribution of public resources becomes necessary, especially within the framework of housing rehabilitation as it is specified under article 2 of the Royal Decree of 14 May 1993. The measures concerning deductions in the amount of both Income and

Companies Tax contemplated in the Law on Foundations and Tax Incentives of 1994 (even though it may be considered an advanced an positive instrument) do not seem to be sufficiently attractive in practice to encourage enough participation. It is so indicated by the fact that many owners of cultural properties are continually urging the authorities to extend benefits beyond the usual limits (both regarding deduction percentages and the deductible limit on the tax base).

It would also be necessary for owners to comply more widely with the social function intrinsic to cultural properties. It should also be emphasized that town or city councils often do not take subsidiary action allowing them to execute the required works and pass on the cost to the property, and very rarely do they resort to compulsory expropriation. This fact, together with the possibility of technical ruin introduced by the Law on Historic Heritage of 1985 (in accordance with the Granada Convention of the same year) and article 21 of this law results in some buildings being declared ruins even in protected cities and neighborhoods, with their consequent demolition.

Under the LPHE, protection of the heritage of historic centers is implemented through what are termed the Special Plan for Protection, the General Plan, and the Subsidiary Regulations, which are based in the Laws on Land Regulations and Urban Planning. Despite the provisions of the LPHE, quite often these plans fail to guarantee in practice an equitable distribution of obligations and benefits. Sometimes they also fail to take into account the financial measures necessary for future administration of the plans or not enough consideration is given for future difficulties in obtaining new public resources for the maintenance of the protected properties. According to the LPHE each declaration of a historic city as a historic complex implies the inclusion of a large number of protected buildings. But another problem is that, as it has been said, the Law on Historic Heritage places protection of these buildings under the control of urban regulations that do not correspond to a conservationist philosophy of consolidated urban planning. Thus, in practice the urban inventories of protected items tend to include an insufficient number of buildings belonging to cultural heritage. So, despite the Law of 1985, in certain cases the permissiveness regarding the replacement of characteristic elements by modern buildings intended to be emblematic, as in the case of many museums and other large public buildings, lays the foundation for the destruction of characteristic parts of the historic cities. Town council members responsible for urban planning, speculation, the interests of building firms, and quite a considerable number of architects foster this practice, which results in an irreparable loss of unique and characteristic heritage.

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ICOMOS – CROATIA  
INTERNATIONAL COMMITTEE OF ICOMOS ON LEGAL,  
ADMINISTRATIVE AND FINANCIAL ISSUES

Brijuni, May 3 – 6, 2000

Sweden  
Thomas Adlercreutz

ADLERCREUTZ THOMAS - SWEDEN

**Answers to protection of cultural goods questionnaire**

1. Yes, the *Cultural Monuments (etc) Act*, which came into force 1 January 1989
2. No
3. Monuments of archaeological and architectural nature, incl. special provisions for property of the Church of Sweden. Also provisions regarding export and return of cultural movable property.
4. It encompasses provisions for economic compensation in certain cases of infringement on private property rights, but no provisions for stimulating measures.
5. A regulation issued by Government in 1993 under the title (in translation) *Regulation concerning grants for management of cultural property*.
6. Within a total sum of ca. SEK 230 million, state grants can be issued to cover 90 % of works to listed historic buildings and 50 % of other cultural property.
7. The state grants are the chief means of stimulating the upkeep of cultural property. Grants from the European Union can be co-ordinated with Swedish public funds for the running of certain projects. There are a few tax rules, which can be construed as favourable to possessors of cultural property, but no system of general tax subvention.
8. The question is not quite clear to me. As mentioned under 4 infringement on property rights, e.g. restrictions to the current or permitted use of property, could make the State bound to compensate the injured party. The compensation would be monetary and would be paid to the party or creditors with a lien on the property. It could be paid either as a flat sum or through annual reimbursements.
9. Yes, violations to the *Cultural Monuments (etc.) Act* may lead to imprisonment or penalties. Penalties fall to the State.

Stockholm, 29 December 1999

Thomas Adlercreutz